

FCC FACT SHEET*

State/Local Approval of Wireless Equipment Modifications Under Section 6409(a)

Report and Order – WT Docket No. 19-250 and RM-11849

Background: In section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), Congress provided that state and local government review may not deny, and shall approve, eligible facilities requests to modify existing wireless towers or base stations that do not substantially change the physical dimensions of the structure. In 2014, the Commission adopted rules implementing section 6409(a) that, among other things, require state and local governments to approve, within 60 days, an eligible facilities request.

In this Report and Order, the Commission would revise its section 6409(a) rules to provide for streamlined state and local review of modifications that involve limited ground excavation or deployment. The Report and Order would promote accelerated deployment of 5G and other advanced wireless services by facilitating the collocation of antennas and associated equipment on existing infrastructure while preserving the ability of state and local governments to manage and protect local land-use interests.

What the Report and Order Would Do:

- Amend the Commission’s rules to provide that requests to modify an existing tower outside the public rights-of-way that entails ground excavation or deployment of up to 30 feet in any direction outside the boundary of a site will be eligible for streamlined processing pursuant to section 6409(a).
 - This change is consistent with a recent amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, which provides that excavation or deployment up to 30 feet beyond a site boundary does not generally warrant federal historic preservation review of a collocation.
- Revise the Commission’s rules to clarify that the site boundaries from which limited expansion is measured appropriately reflect prior state or local government review and approval.

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Implementation of State and Local Governments'
Obligation to Approve Certain Wireless Facility
Modification Requests Under Section 6409(a) of
the Spectrum Act of 2012
WT Docket No. 19-250
RM-11849

REPORT AND ORDER*

Adopted: []

Released: []

By the Commission:

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I. INTRODUCTION

1. In this Report and Order, we continue our efforts to reduce regulatory barriers to wireless infrastructure deployment by further streamlining the state and local government review process for modifications to existing wireless infrastructure under section 6409(a) of the Spectrum Act of 2012.1 The

* This document has been circulated for tentative consideration by the Commission at its October 27, 2020 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI (Spectrum Act of 2012), § 6409(a), 126 Stat. 156, 232-33 (Feb. 22, 2012) (codified at 47 U.S.C. § 1455(a)).

development of wireless infrastructure is critical to the deployment of 5G and other advanced wireless networks, which will enable economic opportunities across the nation. To achieve this goal, existing infrastructure can be used where it is an efficient alternative to the construction of new infrastructure. In particular, additional antennas and other equipment will need to be placed on existing infrastructure to keep pace with continually increasing consumer demand and to enable advanced services.² These collocations will allow providers to take advantage of 5G's low latency through, for example, cloud computing capabilities at the edge of the mobile network. In addition, these collocations also will enable providers to offer more reliable service, including to first responders, as well as to meet governments' policy goals of ensuring network resiliency. To facilitate the collocation of antennas and associated ground equipment, while recognizing the role of state and local governments in land use decisions, we revise our section 6409(a) rules to provide that excavation or deployment in a limited area beyond site boundaries would not disqualify the modification of an existing tower from streamlined state and local review on that basis.

2. This change is consistent with the recent amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, which now provides that, in certain circumstances, excavation or deployment within the same limited area beyond a site boundary does not warrant federal historic preservation review of a collocation.³ In addition, we revise the definition of "site" in our section 6409(a) rules in a manner that will ensure that the site boundaries from which limited expansion is measured appropriately reflect prior state or local government review and approval. Our actions today carefully balance the acceleration of the deployment of advanced wireless services, particularly through the use of existing infrastructure where efficient to do so, with the preservation of states' and localities' ability to manage and protect local land-use interests.

II. BACKGROUND

3. To advance "Congress's goal of facilitating rapid deployment [of wireless broadband service]"⁴ and to provide clarity to the industry, the Commission in 2014 adopted rules to implement section 6409(a) of the Spectrum Act of 2012.⁵ Section 6409(a) provides, in relevant part, that "[n]otwithstanding [47 U.S.C. § 332(c)(7)] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."⁶ Among other matters, the *2014 Infrastructure Order* established a 60-day period in which a state or local

² Crown Castle Comments at 5-8; WIA Comments at 5-6; Comments of the Wireless Infrastructure Association, WT Docket No. 19-250, RM-11849, WC Docket No. 17-84, at 6-7 (Oct. 29, 2019); Reply Comments of the Wireless Infrastructure Association, WT Docket No. 19-250, RM-11849, WC Docket No. 17-84, at 14-15 (Nov. 20, 2019); Petition of Wireless Infrastructure Association for Rulemaking, File No. RM-11849, at 8 (filed Aug. 27, 2019).

³ *Wireless Telecommunications Bureau Announces Execution of Second Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, Public Notice, Attach. Second Amendment to the Collocation Agreement at § I.E.4, 2020 WL 4187354 (WTB 2020) (codified at 47 CFR part 1, Appx. B) (Amended Collocation NPA).

⁴ *Acceleration of Broadband Deployment By Improving Wireless Facilities Siting Policies, Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting 2012 Biennial Review of Telecommunications Regulations*, WT Docket Nos. 13-238, 11-59, 13-32, Report and Order, 29 FCC Rcd 12865, 12872, para. 15 (2014) (*2014 Infrastructure Order*), *aff'd*, *Montgomery County, Md. v. FCC*, 811 F.3d 121 (4th Cir. 2015).

⁵ *See 2014 Infrastructure Order*, 29 FCC Rcd 12865, 12922-66, paras. 135-242; *see also* 47 U.S.C. § 1455(a); 47 CFR § 1.6100.

⁶ Spectrum Act of 2012 § 6409(a)(1) (codified at 47 U.S.C. § 1455(a)).

government must approve an “eligible facilities request.”⁷ The Commission’s rules define “eligible facilities request” as “any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving: (i) Collocation of new transmission equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission equipment.”⁸

4. The *2014 Infrastructure Order* adopted objective standards for determining when a proposed modification would “substantially change the physical dimensions” of an existing tower or base station.⁹ Among other standards, the Commission determined “that a modification is a substantial change if it entails any excavation or deployment outside the current site of the tower or base station.”¹⁰ The Commission defined “site” for towers not located in the public rights-of-way as “the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site,” and it defined “site” for other eligible support structures as being “further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.”¹¹

5. In adopting the standard for excavation and deployment that would be considered a substantial change under section 6409(a), the Commission looked to analogous concerns about impacts on historic properties reflected in implementation of the National Historic Preservation Act and primarily relied on similar language in the Collocation NPA.¹² At that time, the Commission considered, but declined to adopt,¹³ a proposal to exclude from the scope of “substantial change” any excavation or deployment of up to 30 feet in any direction of a site, a proposal that was consistent with an exclusion from Section 106 review for replacement towers in the Wireless Facilities NPA.¹⁴ In reconciling different standards for potentially analogous deployments in the NPAs, the Commission reasoned that the activities covered under section 6409(a) “are more nearly analogous to those covered under the Collocation [NPA]

⁷ 47 CFR § 1.6100(b)(3); 47 CFR § 1.6100(c); *2014 Infrastructure Order*, 29 FCC Rcd at 12952, 12955-57, paras. 206, 211-12, 215.

⁸ 47 CFR § 1.6100(b)(3). The statutory definition of “eligible facilities request” is slightly different. *See* 47 U.S.C. § 1455(a). Our use of the term eligible facilities request in this *Report and Order* relies on the definition set forth in the rule. *See also 2014 Infrastructure Order*, 29 FCC Rcd at 12944-45, 12955, paras. 188, 211.

⁹ *See 2014 Infrastructure Order*, 29 FCC Rcd at 12944-45, para. 188 (determining that a change is substantial if it exceeds defined limits on increases in the height or girth of the structure, exceeds the number of associated equipment cabinets, involves excavation or deployment on ground outside a structure’s current site, defeats the concealment elements of the preexisting structure, or violates conditions previously imposed by the local zoning authority); *see also* 47 CFR § 1.6100(b)(7).

¹⁰ *2014 Infrastructure Order*, 29 FCC Rcd at 12949, para. 198.

¹¹ 47 CFR § 1.6100(b)(6).

¹² *2014 Infrastructure Order*, 29 FCC Rcd at 12949, paras. 198-99; *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, 66 Fed. Reg. 17554-57 (2001) (Collocation NPA); 47 CFR § 1.6100(b)(6), (7). The Collocation NPA stated that, among other factors, a collocation would not be excluded from Section 106 review if the “mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.” Collocation NPA, § I.C.4.

¹³ *2014 Infrastructure Order*, 29 FCC Rcd at 12949, para. 199.

¹⁴ *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, 47 CFR pt. 1, App. C (Wireless Facilities NPA). The Wireless Facilities NPA excludes certain activities from Section 106 review, including “construction of a replacement for an existing communications tower and any associated excavation that . . . does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site.” *Id.* at § III.B.

than under the replacement towers exclusion in the [Wireless Facilities] NPA,” but the Commission did not explore the reasoning for the discrepancy between the NPAs, nor did it further explain why it chose to borrow from the older NPA instead of the more modern one.¹⁵ In addition, the Commission did not make a determination that it would be unreasonable to use 30 feet as a touchstone for defining what types of excavations would “substantially change the physical dimensions of [an existing] tower or base station.”¹⁶ Rather, the Commission established a reasonable, objective, and concrete set of criteria to eliminate the need for protracted local zoning review, in furtherance of the goals of the statute, by drawing guidance from the consensus represented by the approach taken in the Collocation NPA. That same Collocation NPA, however, was recently amended to reflect an updated consensus on what might be best regarded as a substantial increase in the size of an existing tower, as it excludes a collocation from Section 106 review if it involves excavation within 30 feet outside the boundaries of the tower site.¹⁷

6. On August 27, 2019, WIA filed a Petition for Declaratory Ruling requesting that the Commission clarify that, for towers other than towers in the public rights-of-way, the “current site” for purposes of section 1.6100(b)(7)(iv) is the property leased or owned by the applicant at the time it submits a section 6409(a) application and not the initial site boundaries.¹⁸ On the same day, WIA also filed a Petition for Rulemaking requesting that the Commission amend its rules to establish that a modification would not cause a “substantial change” if it entails excavation or deployments at locations of up to 30 feet in any direction outside the boundaries of a tower compound.¹⁹

7. On June 10, 2020, the Commission adopted a *Notice of Proposed Rulemaking* that sought comment on two issues regarding the scope of the streamlined application process under section 6409(a): (i) the definition of “site” under section 1.6100(b)(6); and (ii) the scope of modifications under section 1.6100(b)(7)(iv).²⁰ The Commission proposed to revise the definition of site “to make clear that ‘site’ refers to the boundary of the leased or owned property surrounding the tower and any access or utility easements currently related to the site as of the date that the facility was last reviewed and approved by a locality.”²¹ The Commission also proposed “to amend section 1.6100(b)(7)(iv) so that modification of an existing facility that entails ground excavation or deployment of up to 30 feet in any direction outside the facility’s site will be eligible for streamlined processing under section 6409(a).”²² The *Notice* asked, in the alternative, whether the Commission “should revise the definition of site in section 1.6100(b)(6), as proposed above, without making the proposed change to section 1.6100(b)(7)(iv) for excavation or deployment of up to 30 feet outside the site.”²³ In addition, the *Notice* asked “whether to define site in section 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request*.”²⁴

¹⁵ *2014 Infrastructure Order*, 29 FCC Rcd at 12949, para. 199.

¹⁶ 47 U.S.C. § 1455(a).

¹⁷ Amended Collocation NPA.

¹⁸ Petition of Wireless Infrastructure Association for Declaratory Ruling, WT Docket No. 19-250, at 18 (filed Aug. 27, 2019).

¹⁹ Petition of Wireless Infrastructure Association for Rulemaking, File No. RM-11849, at 9-10 (filed Aug. 27, 2019).

²⁰ See *Implementation of State and Local Governments’ Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5977, 6003-04, paras. 51-56 (2020) (*Notice*). The *Declaratory Ruling* clarified “the meaning of our rules implementing Congress’ decisions in section 6409(a) of the Spectrum Act of 2012.” *Notice*, 35 FCC Rcd at 5979, para. 3 (citing Spectrum Act of 2012, § 6409(a)).

²¹ *Notice*, 35 FCC Rcd at 6004, para. 55.

²² *Notice*, 35 FCC Rcd at 6004, para. 55.

²³ *Notice*, 35 FCC Rcd at 6004, para. 56.

²⁴ *Notice*, 35 FCC Rcd at 6004, para. 56 (emphasis in original).

Finally, the *Notice* asked about alternatives to the proposals, costs, and benefits.²⁵

III. DISCUSSION

8. After reviewing the record in this proceeding, we make targeted revisions to sections 1.6100(b)(7)(iv) and 1.6100(b)(6) of our rules to broaden the scope of wireless facility modifications that are eligible for streamlined review under section 6409(a). The Commission has considered collocation a tool for advancing wireless services' deployment for over three decades.²⁶ As the Commission noted in the *2014 Infrastructure Order*, collocation "is often the most efficient and economical solution for mobile wireless service providers that need new cell sites to expand their existing coverage area, increase their capacity, or deploy new advanced services."²⁷ The actions we take today will further streamline the use of existing infrastructure to expedite wireless connectivity efforts nationwide while preserving localities' ability to manage local zoning.

9. First, we amend section 1.6100(b)(7)(iv) to provide that, for towers not located in the public rights-of-way, a modification of an existing site that entails ground excavation or deployment of up to 30 feet in any direction outside a tower's site will not be disqualified from streamlined processing under section 6409(a) on that basis. In general, section 1.6100(b)(7) describes when an eligible facilities request will "substantially change the physical dimensions" of a facility under section 6409(a).²⁸ Because the statutory term "substantially change" is ambiguous,²⁹ section 1.6100(b)(7) elaborates on the phrase by providing numerical and objective criteria for determining when a proposed expansion will "substantially change" the dimensions of a facility. For the reasons explained more fully below, we conclude that proposed ground excavation or deployment of up to 30 feet in any direction outside a tower's site is sufficiently modest so as not to "substantially change the physical dimensions" of a tower or base station, and that this amendment to our rules thus represents a permissible construction of section 6409(a).³⁰

10. In promulgating the initial rules to implement section 6409(a), the Commission determined that "an objective definition" of what constitutes a substantial change "will provide an appropriate balance between municipal flexibility and the rapid deployment of covered facilities."³¹ With respect to excavation and deployment in association with modifications to existing structures, the Commission found that the appropriate standard for what constitutes a substantial change was any

²⁵ *Notice*, 35 FCC Rcd at 6004, para. 56.

²⁶ See, e.g., *Amendment of the Commission's Environmental Rules*, Order, 3 FCC Rcd 4986, para. 7 (1988) ("The Commission has long held that the mounting of antennas on existing buildings or antenna towers is environmentally preferable to the construction of a new facility . . .").

²⁷ *2014 Infrastructure Order*, 29 FCC Rcd at 12925, para. 142; see also Crown Castle Comments at 5-6 (arguing that collocation on existing structures is faster, more cost-effective, and less disruptive to the surrounding environment than construction of new towers); Coleman Bazelon and Pallavi Seth, *REIT Supported Wireless Infrastructure: Foundation of the Mobile Economy* at 14-15 (May 23, 2017), https://brattlefiles.blob.core.windows.net/files/7344_reit_supported_wireless_infrastructure_foundation_of_the_mobile_economy.pdf ("Carriers have significant economic incentives to choose a collocation model, where they lease space from the tower company and share the infrastructure with another tenant, rather than build their own site.").

²⁸ See 47 C.F.R. § 1.6100(b)(7) (providing that "[a] modification *substantially changes* the physical dimensions of an eligible support structure if it meets any of the following criteria") (emphasis added); see also Spectrum Act of 2012 § 6409(a)(1) (providing that a state or local government may not deny certain eligible facility requests that do not "*substantially change* the physical dimensions of such tower or base station") (emphasis added).

²⁹ *Montgomery County, Md. v. FCC*, 811 F.3d 121, 129-30 (4th Cir. 2015) ("[W]e review Petitioners' challenge to the manner in which the FCC has defined the two terms referenced earlier: 'substantially change' and 'base station.'").

³⁰ 47 U.S.C. § 1455(a).

³¹ *2014 Infrastructure Order*, 29 FCC Rcd at 12945, para. 189.

excavation or deployment outside of the site boundaries. Here, we conclude that a revision to this standard is warranted by certain changes since our initial determination: the recent recognition by the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers of 30 feet as an appropriate threshold in the context of federal historic preservation review of collocations; and the ongoing evolution of wireless networks that rely on an increasing number of collocations, where they are an efficient alternative to new tower construction, to meet the rising demand for advanced wireless services. In light of these changes, we conclude that it is reasonable to adjust the line drawn by the Commission in 2014 for streamlined treatment of excavations or deployments associated with collocations, and in doing so we continue to believe that it is appropriate to consider in this context the analogous line drawn in the federal historic preservation context as a relevant benchmark.

11. As an initial matter, we recognize that the Commission relied on the Wireless Facilities NPA and Collocation NPA to inform its adoption of initial rules implementing section 6409(a). In particular, the Commission stated that “the objective test for ‘substantial increase in size’ under the Collocation [NPA] should inform our consideration of the factors to consider when assessing a ‘substantial change in physical dimensions,’” and that this approach “reflects our general determination that definitions in the Collocation [NPA] and [Wireless Facilities] NPA should inform our interpretation of similar terms in [s]ection 6409(a).”³² With respect to excavation and deployment associated with a modification of an existing structure, the Commission relied on a provision in the Collocation NPA and determined that “a modification is a substantial change if it entails any excavation or deployment outside the current site of the tower or base station.”³³ Further, the Commission considered, but declined to adopt,³⁴ a proposal to exclude from the scope of “substantial change” any excavation or deployment of up to 30 feet in any direction from a site’s boundaries, which would have been consistent with an exclusion from Section 106 review for replacement towers in the Wireless Facilities NPA.³⁵ Importantly, the Commission did not characterize the 30-foot standard in the Wireless Facilities NPA to be an unreasonable choice. The Commission elected to follow the language in the Collocation NPA given commonalities between the types of deployments referred to in section 6409 and the types of deployments covered under the Collocation NPA, as well as input from industry and localities.

12. The Collocation NPA was recently amended,³⁶ however, to align with the Wireless Facilities NPA, reflecting a recognition that, in the context of federal historic preservation review, permitting a limited expansion beyond the site boundaries to proceed without substantial review encourages collocations without significantly affecting historic preservation interests. Specifically, on July 10, 2020, the Wireless Telecommunications Bureau Chief (on delegated authority from the Commission), the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers executed the Amended Collocation NPA to eliminate an inconsistency between the Collocation NPA and the Wireless Facilities NPA.³⁷

³² *2014 Infrastructure Order*, 29 FCC Rcd at 12945, para. 190; *see also id.* (“the Commission has previously relied on the Collocation [NPA]’s test in comparable circumstances, concluding in the *2009 Declaratory Ruling* that collocation applications are subject to a shorter shot clock under Section 332(c)(7) to the extent that they do not constitute a ‘substantial increase in size of the underlying structure.’”) (citation omitted).

³³ 47 CFR § 1.6100(b)(7)(iv) (stating that a “modification substantially changes the physical dimensions of an eligible support structure if it . . . entails any excavation or deployment outside the current site.”); *see also 2014 Infrastructure Order*, 29 FCC Rcd at 12949, para. 198; Collocation NPA § I.C.

³⁴ *2014 Infrastructure Order*, 29 FCC Rcd at 12949, para. 199.

³⁵ Wireless Facilities NPA § III.B.

³⁶ Amended Collocation NPA.

³⁷ Amended Collocation NPA (stating that the Collocation NPA “provides that a collocation on an existing tower is excluded from Section 106 review unless it involves one of the enumerated circumstances, which include a substantial increase in the size of the tower. Prior to the amendment, a ‘substantial increase in the size of the tower’

(continued....)

13. The Amended Collocation NPA now provides that, for the purpose of determining whether a collocation may be excluded from Section 106 review, a collocation is a substantial increase in the size of the tower if it “would expand the boundaries of the current tower site by more than 30 feet in any direction or involve excavation outside these expanded boundaries.”³⁸ In adopting that change, the Amended Collocation NPA stated that, among other reasons, the parties “developed this second amendment to the Collocation Agreement to allow project proponents the same review efficiency [applicable to tower replacements in the Wireless Facilities NPA] in regard to limited excavation beyond the tower site boundaries for collocation, thereby encouraging project proponents to conduct more collocation activities instead of constructing new towers”³⁹ The parties therefore recognized the limited effect that an up to 30-foot compound expansion would impose on the site, which is also consistent with the Commission’s rationale in adopting the replacement tower exclusion in the Wireless Facilities NPA. Indeed, in the *2004 Report and Order* implementing the Wireless Facilities NPA, the Commission concluded that a 30-foot standard was “reasonable and appropriate,” and reasoned that “construction and excavation to within 30 feet of the existing leased or owned property means that only a minimal amount of previously undisturbed ground, if any, would be turned, and that would be very close to the existing construction.”⁴⁰ Our decision to permit an eligible facilities request to include limited excavation and deployment of up to 30 feet in any direction harmonizes the Commission’s rules under section 6409(a) with permitted compound expansions for exclusion from Section 106 review for replacement towers under the Wireless Facilities NPA and collocations under the Collocation NPA.

14. In that regard, we disagree with the localities’ argument that the Collocation NPA “has no bearing on [this] matter.”⁴¹ The definition of “substantial increase in size of the tower” in the Collocation NPA was a primary basis for the Commission’s decision in the *2014 Infrastructure Order* to define a substantial change as any excavation or deployment outside the boundaries of a tower site.⁴² Accordingly, the amendment to the Collocation NPA to provide that excavations of up to 30 feet of the boundaries of a site is not a substantial increase in size provides support for our decision in this *Report and Order* to once again make the section 6409(a) rules consistent with the Collocation NPA. Retaining the existing definition despite the amendment to the Collocation NPA could create confusion and invite uncertainty.⁴³

15. In addition, we find that the revised 30-foot standard is supported by the current trends

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was defined to include, among other factors, any excavation outside the current tower site”, while the Wireless Facilities NPA “excludes from Section 106 review the replacement of a tower that involves deployment and excavation by no more than 30 feet in any direction outside the boundaries of an existing tower site.”). 47 CFR part 1, Appx. B.

³⁸ Amended Collocation NPA, § I. E(4).

³⁹ Amended Collocation NPA, Preamble.

⁴⁰ *National Programmatic Agreement Regarding the Section 106 National Historic Preservation Review Process*, WT Docket No. 03-128, Report and Order, 20 FCC Rcd 1073, 1090, para. 45 (2004).

⁴¹ Local Government Reply Comments at 9; *see also* Western Communities Coalition Comments at 12-13. Notably, localities do not argue that a different objective standard of “substantial change” is necessary—they reject any revision of the standard.

⁴² *2014 Infrastructure Order*, 29 FCC Rcd at 12949, para. 199; *see also id.* at 12945, para. 190 (“We further find that the objective test for ‘substantial increase in size’ under the Collocation Agreement should inform our consideration of the factors to consider when assessing a ‘substantial change in physical dimensions.’ This reflects our general determination that definitions in the Collocation [NPA] and [Wireless Facilities] NPA should inform our interpretation of similar terms in [s]ection 6409(a).”).

⁴³ Crown Castle Comment at 18 (“[G]iven the heavy reliance the agency placed on the 2001 Collocation NPA in its 2014 decision, it would likely be arbitrary and capricious for the Commission to *retain* the 2014 definition in light of the amendment to the Collocation NPA.”) (emphasis in original).

toward collocations and technological changes that the record evidences while preserving localities' zoning authority. Collocations necessarily include installing transmission equipment that supports the tower antenna on a site.⁴⁴ Industry commenters claim that “[t]he majority of existing towers were built many years ago and were intended to support the operations of a single carrier.”⁴⁵ Following the *2014 Infrastructure Order*'s promotion of collocations, more towers now house several operators' antennas and other transmission equipment, and industry commenters assert that, in many cases, any space that was once available at those tower sites has been used.⁴⁶ As a result, there is less space at tower sites for additional collocations without minor modifications to sites to accommodate the expansion of equipment serving existing operators at the sites and the addition of new equipment serving new operators at the sites.⁴⁷ As NTCA states, “[l]ike other wireless providers, NTCA members often find that collocations on towers require the additional installation of . . . facilities necessary to support transmission equipment. This has become increasingly difficult as towers built to hold one carrier's facilities may be used to support those utilized by multiple wireless providers.”⁴⁸ Further, additional space is generally necessary to add the latest technologies enabling 5G services, such as multi-access edge computing, which requires more space than other collocation infrastructure.⁴⁹ Given the need for more space on the ground to

⁴⁴ See *2014 Infrastructure Order*, 29 FCC Rcd at 12932, para. 160 (defining transmission equipment as “any equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and *other relevant equipment associated with and necessary to their operation . . .*”) (emphasis added); see also Crown Castle Comments at 5 (stating that collocation “also requires the use of ground space near the tower for the installation of associated equipment”).

⁴⁵ Crown Castle Comments at 5; see also WIA Comments at 5 (“[T]he record demonstrates that many existing towers were built with the intention of supporting only the operations of a single carrier.”); CTIA Comments at 3 (“Many towers and tower sites were initially designed years or even decades ago to hold a single wireless provider's antennas and supporting ground equipment.”).

⁴⁶ See, e.g., Crown Castle Comments at 5 (“[A]s a result of successful collocation policies by the Commission as well as state and local governments, available space surrounding a tower for ground-mounted equipment has been used or diminished. As a result, existing sites are often not well-suited to meet current network needs and thus cannot support collocation.”) (citations omitted); WIA Comments at 5-6 (“As collocations increased, minimizing the need for new tower construction, many towers now support antennas from multiple wireless carriers. However, the potential for additional collocations on such towers is limited because equipment cabinets or shelters originally built at the sites often are full. In many cases, space no longer exists at the original sites to support the installation of additional equipment cabinets or shelters that a new tenant-carrier would require.”); American Tower Corp. Comments at 5 (“[A]dding new carrier equipment to existing towers often requires adding additional ground equipment inside the compound, which can require slight expansion of the tower site to accommodate the ground installation.”).

⁴⁷ CTIA Comments at 3-4 (“[H]osting multiple service providers at one tower site requires the addition of more equipment at that site, including additional equipment shelters, equipment cabinets, base station equipment, HVAC, and more. That, in turn, requires more land around the base of the tower to locate equipment. Even basic customer equipment and backup power require some additional space. In addition, the transition of networks to newer generations means that more than one generation of equipment may be located at a site as providers phase out older equipment.”); American Tower Corp. Comments at 5 (“The lack of available space, and associated hurdles related to permitting new ground space, may deter operators from deploying backup power solutions in advance of events that may cause network outages.”).

⁴⁸ NTCA Comments at 3.

⁴⁹ See, e.g., CTIA Comments at 4 (“5G networks use Multi-access Edge Computing (‘MEC’) equipment, which needs to be located closer to end users rather than at network hubs. As a practical matter, this requires installing MEC equipment at antenna sites. Again, however, there can be insufficient ground space to install MEC equipment. As 5G networks continue to be deployed, more sites will need additional space for MEC equipment or other technologies.”) (footnote omitted); WIA Reply Comments at 10-11 (“The proposed rule changes will promote [] technological advances and better service because . . . many tower sites no longer have the physical space to accommodate these MECs.”). Multi-access edge computing, whose proximity to the end users provides low latency

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accommodate a growing number of facility modifications, we find that streamlined treatment of limited compound expansions is essential to achieve the degree of accelerated advanced wireless network deployment that will best serve the public interest. Further, in light of these developments and the recognition of a new compound expansion standard in the context of historic preservation review of collocations, we find it reasonable to adjust the line drawn by the Commission in 2014 for determining whether limited compound expansion is a substantial change that disqualifies a modification from eligibility for streamlined treatment.

16. We also find that streamlined treatment of limited compound expansions will promote public safety and network resiliency. For example, we note that Crown Castle states that more than 40 percent of its site expansions in the past 18 months were solely for “adding backup emergency generators to add resiliency to the network.”⁵⁰ And WIA states that, “in many cases, the need for a limited expansion of the compound is being driven by public safety demands and the desire to improve network resiliency.”⁵¹ Our rule change will also promote public safety in another context—industry commenters state that the proposed rule changes will ensure expeditious and effective deployment of FirstNet’s network, which Congress directed to leverage collocation on existing infrastructure “to the maximum extent economically desirable.”⁵² AT&T, for example, states that “many collocations on existing towers being performed to build a public safety broadband network for [FirstNet] entail site expansions to add generators as well as Band 14 equipment.”⁵³ We therefore agree with commenters that these changes will promote public safety.

17. We conclude that 30 feet is an appropriate threshold, contrary to arguments by localities.⁵⁴ The objective standard we adopt today is consistent with the current collocation marketplace

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for data-intensive applications, will further enable faster and more reliable wireless connectivity. *See, e.g.,* Monica Allevan, *Verizon’s MEC Gear Gives it an ‘Edge’ in Latency*, Fierce Wireless (Feb. 4, 2019), <https://www.fiercewireless.com/wireless/verizon-s-mec-gear-gives-it-edge-latency> (describing how Verizon achieved “significantly better” latency with MEC equipment than what it could have done otherwise); Scott Fulton III, *5G Reinvented: The Longer, Rougher Road towards Ubiquity*, ZDNet (July 3, 2020), <https://www.zdnet.com/article/5g-reinvented-the-longer-rougher-road-toward-ubiquity/> (describing how MEC is the “key 5G portfolio technology for bringing about” 5G deployment).

⁵⁰ Crown Castle Comments at 7.

⁵¹ WIA Comments at 6 (footnote omitted); *see also* American Tower Corp. Comments at 5-6 (“Allowing the limited compound expansion proposed in this [Notice] would serve the public interest by helping to streamline siting of backup power equipment to create more resilient infrastructure.”).

⁵² 47 U.S.C. § 1426(b)(1) (“[FirstNet] shall . . . take all actions necessary to ensure the building, deployment, and operation of the nationwide public safety broadband network,” “including by, at a minimum . . . issuing open, transparent, and competitive requests for proposals to private sector entities for the purposes of building, operating, and maintaining the network” and “encouraging that such requests leverage, to the maximum extent economically desirable, existing commercial wireless infrastructure to speed deployment of the network . . .”).

⁵³ AT&T Reply Comments at 5; *see also* WIA Reply Comments at 13-14 (“Allowing limited compound expansions to be included as a beneficiary of [s]ection 6409 relief will help FirstNet and other public safety services to upgrade their operations. First responders are increasingly using mobile applications for search and rescue operations, personnel and asset tracking, drones, mapping and location accuracy, weather tracking, and real-time analytics that all require high capacity, low latency connections. By allowing for more space at the tower site, FirstNet and other public safety services can put in place the additional equipment to process the data necessary for their mission-critical operations.”)

⁵⁴ For example, Virginia Localities claim that “neither the [Notice] nor any commenter has explained why 30 feet is the appropriate distance for meeting the stated needs of the wireless industry in this context.” Virginia Localities at 14. And Western Communities Coalition claims that “the record contains no evidence that ties the 30-foot compound expansion to the size needed to accommodate a collocation,” and that the “industry’s broad claims that space at existing sites is running out cannot be enough to conclude that 30 feet is the right number.” Western Communities Coalition at 7 (footnote omitted).

and with the threshold adopted in the Wireless Facilities NPA and recently included in the Amended Collocation NPA. In affirming the *2014 Infrastructure Order*, the Fourth Circuit stated that the order “provide[d] objective and numerical standards to establish when an eligible facilities request would ‘substantially change the physical dimensions’” of a site.⁵⁵ Here, we extend those objective and numerical standards in a manner that reflects the recent recognition of 30 feet as an appropriate standard in the federal historic preservation context and the changes in the collocation marketplace, which is lacking space for collocations. And no commenter in the record proposes an alternative to the 30-foot standard we adopt today. Rather, localities oppose any revision to the Commission’s existing “substantial change” definition that would enable streamlined treatment of modifications involving compound expansion outside of a site.⁵⁶ We believe that our actions today, reflecting changes since the prior Commission determination in 2014, “will provide an appropriate balance between municipal flexibility and the rapid deployment of covered facilities.”⁵⁷

18. Our limited modification of the definition of substantial change in the context of excavations or deployments is further supported by land use laws in several states. In particular, we observe that at least “eight states have passed laws that expressly permit compound expansion within certain limits . . . under an exempt or expedited review process.”⁵⁸ Most of these laws allow expansion beyond 30 feet from the approved site.⁵⁹ As Crown Castle states, “these state laws are a benefit to both the wireless industry and local officials. They permit the wireless industry to meet the burgeoning network demands while also providing certainty and clarity to all involved.”⁶⁰

19. In addition, we observe that, even with this limited modification to the definition of a substantial change with respect to excavation or deployment associated with a modification to the existing structure, all modifications are subject to the other criteria for determining whether there is a substantial change that does not warrant streamlined treatment under section 6409(a). Those criteria, which we do not alter today, provide further limitation on the size or scope of a modification that involves excavation or deployment within 30 feet of the site boundaries. For example, those criteria limit the modifications that would qualify for streamlined treatment by the number of additional equipment cabinets and by the increase in height and girth of the tower.

20. Based on these recent developments, we find that the standard we adopt today continues to be a reasonable line drawing exercise in defining “substantial change,” and it reflects a more appropriate balancing of the promotion of “rapid wireless facility deployment and preserving states’ and

⁵⁵ *Montgomery County, Md. v. FCC*, 811 F.3d at 130; *see also id.* at 131 n.8 (recognizing that the Commission based its standards on the two NPAs).

⁵⁶ *See, e.g.*, Local Government Comments at 13 (“Local Governments have made clear that the Commission lacks the delegated authority to expand the site and moreover, the proposal further fails to meet the substantiality test of the statute.”); NATOA Reply Comments at 12 (“Whatever superficial appeal there might be to a ‘simple’ expansion up to thirty feet outside the site, the on-the-ground realities are far more complex and not amenable to the streamlined and rigid [s]ection 6409(a) process.”); Western Communities Coalition Comments at 15 (“[T]he Commission lacks both the statutory authority and a basis in the record to adopt the proposed change to [s]ection 1.6100(b)(7)(iv).”).

⁵⁷ *2014 Infrastructure Order*, 29 FCC Rcd at 12945, para. 189.

⁵⁸ Comments of Crown Castle International Corp., WT Docket No. 19-250, RM-11849, WC Docket No. 17-84, at 32-33 (Oct. 29, 2019). *See also*, Crown Castle Comments at 17, n. 58 (noting that “eight different states have passed laws exempting minor compound expansions from local zoning and permitting requirements”).

⁵⁹ Comments of Crown Castle International Corp., WT Docket No. 19-250, RM-11849, WC Docket No. 17-84, at 32-33 n.76 (Oct. 29, 2019) (showing that at least six of these eight state laws’ standards exceed 30 feet, with some states exempting compound expansions within an area as large as 2,500 square feet).

⁶⁰ Comments of Crown Castle International Corp., WT Docket No. 19-250, RM-11849, WC Docket No. 17-84, at 33 (Oct. 29, 2019).

localities' ability to manage and protect local land-use interests"⁶¹ than the Commission articulated in 2014. In that regard, we find that it is in the public interest to modify the Commission's prior decision on what constitutes substantial change within the context of excavation or deployment.

21. In addition to amending section 1.6100(b)(7)(iv), we revise section 1.6100(b)(6) of the Commission's rules to define the current boundaries of the "site" of a tower outside of public rights-of-way in a manner relative to the prior approval required by the state or local government. In conjunction with section 1.6100(b)(7), section 1.6100(b)(6) informs when excavation or deployment associated with a modification will "substantially change the physical dimensions" of a facility under section 6409(a).⁶² While the word "site" does not itself appear in section 6409, section 1.6100(b)(7)(iv) uses the term in describing when excavation or deployment might be so distant from an existing structure that such modifications would "substantially change the physical dimensions" of the facility.⁶³ In amending our current definition, we supply a temporal baseline against which to measure whether a proposed modification would "substantially" change the facility. For the reasons explained more fully below, we think that this amendment represents a reasonable construction of the ambiguous statutory language; ascertaining whether a modification "substantially changes" an existing structure requires establishing a baseline against which to measure the proposed change. Here, because the statutory language involves streamlined approval of modifications to existing facilities, it is reasonable, based on the statutory language, to measure the boundaries of a site by reference to when a state or local government last had the opportunity to review or approve the structure that the applicant seeks to modify, if such approval occurred prior to section 6409 or otherwise outside of the section 6409(a) process. After all, the objective of the statute is to streamline approval of additions to structures that were already approved.

22. Because our actions today permit streamlined processing for modifications that entail ground excavation or deployment up to 30 feet outside a current site, we find it necessary to clarify and provide greater certainty to applicants and localities about the appropriate temporal baseline for evaluating changes to a site. While the Commission did not have reason to elaborate on the meaning of a current site in the *2014 Infrastructure Order*, because it defined any excavation or deployment outside a site as a substantial change,⁶⁴ the Commission did establish other temporal reference points for evaluating other substantial change criteria, including height increases and concealment elements.⁶⁵ We therefore base our revision to the definition of "site" on the terminology and reasoning articulated by the Commission in those related contexts, which have been upheld as a permissible construction of an ambiguous statutory provision.⁶⁶

⁶¹ *2014 Infrastructure Order*, 29 FCC Rcd at 12946, para. 190.

⁶² See 47 C.F.R. § 1.6100(b)(7) (providing that "[a] modification *substantially changes* the physical dimensions of an eligible support structure if it meets any of the following criteria") (emphasis added); Spectrum Act of 2012 § 6409(a)(1) (providing that a state or local government may not deny certain eligible facility requests that do not "*substantially change* the physical dimensions of such tower or base station") (emphasis added); 47 C.F.R. § 1.6100(b)(6) (defining "site" as "[f]or towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.")

⁶³ See Spectrum Act of 2012 § 6409(a)(1) (providing that a State or local government may not deny certain eligible facility requests that do not "substantially change the physical dimensions of such tower or base station"); 47 C.F.R. § 1.6100(b)(7) (providing that "a modification substantially changes the physical dimensions of an eligible support structure if . . . [i]t entails any excavation or deployment outside the current site.").

⁶⁴ See *2014 Infrastructure Order*, 29 FCC Rcd at 12949, para. 198.

⁶⁵ See *2014 Infrastructure Order*, 29 FCC Rcd at 12948-49, paras. 196-197; 47 CFR § 1.6100(b)(7)(i)(A); *Notice*, 35 FCC Rcd at 5995, para. 37.

⁶⁶ *Montgomery County, Md. v. FCC*, 811 F.3d 121, 130-32.

23. Specifically, in the *2014 Infrastructure Order*, the Commission found that, in the context of height increases, “whether a modification constitutes a substantial change must be determined by measuring the change in height from the dimensions of the ‘tower or base station’ as originally approved or as of the most recent modification that received local zoning or similar regulatory approval prior to the passage of the Spectrum Act, whichever is greater.”⁶⁷ In adopting that standard, the Commission noted that “since the Spectrum Act became law, approval of covered requests has been mandatory and therefore, approved changes after that time may not establish an appropriate baseline because they may not reflect a siting authority’s judgment that the modified structure is consistent with local land use values.”⁶⁸ Similarly, in the Commission’s recent *Declaratory Ruling*, we clarified that “existing” concealment elements “must have been part of the facility that was considered by the locality at the original approval of the tower or at the modification to the original tower, if the approval of the modification occurred prior to the Spectrum Act or lawfully outside of the section 6409(a) process (for instance, an approval for a modification that did not qualify for streamlined section 6409(a) treatment).”⁶⁹

24. We find that it is in the public interest to use similar text and reasoning in adopting the revised definition of “site” in this *Report and Order*. Here, we similarly are defining what would constitute a substantial change to infrastructure that was previously approved by localities under applicable local law—in this case, in the context of excavation or deployment relative to the boundaries of a site. We revise the definition of “site” to provide that the current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process. Localities assert that the definition of “site” should ensure that the “facility was last reviewed and approved by a locality with full discretion” and not as an eligible facilities request.⁷⁰ We agree with localities that a site’s boundaries should not be measured—for purposes of setting the 30-foot distance in a request for modification under section 6409(a)—from the expanded boundary points that were established by any prior invocations of that section. We do not agree, however, with localities’ framing of the definition of “site” in terms of the broad concept of discretion. First, a standard that relies on whether the locality has “full discretion” to make a decision would create uncertainty in determining whether a particular approval meets that standard. Second, non-discretionary approvals could include instances where a locality’s review is limited by State law rather than by section 6409(a), and we do not find it appropriate for the Commission to engage in line drawing under section 6409(a) based on potential interaction between State and local law.

25. We decline to adopt the industry’s “hybrid” definition of “site.” Specifically, Crown Castle claims that the industry has interpreted and relied on the definition of “site” to mean the boundaries of the leased or owned property as of the date an applicant files an application with the locality.⁷¹ The

⁶⁷ *2014 Infrastructure Order*, 29 FCC Rcd at 12948, para. 196; *see also* 47 CFR § 1.6100(b)(7)(i)(A) (“Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.”).

⁶⁸ *2014 Infrastructure Order*, 29 FCC Rcd at 12948, para. 197.

⁶⁹ *Notice*, 35 FCC Rcd at 5996, para. 37.

⁷⁰ Local Governments Comments at 15-16; *see also* Western Communities Coalition Comments at 11 (“The proposed definition would also allow the applicant to unilaterally alter the benchmark set by the last discretionary approval.”); NATOA Comments at 3-5 (“[T]o avoid any ambiguity, it should be clear that the phrase ‘last reviewed and approved’ does not apply to an EFR application or other non-discretionary review process.”).

⁷¹ Crown Castle Comments at 9-10 (“The Commission did not define ‘current’ for purposes of the 2014 Order and for years, the industry, including Crown Castle, has relied upon the definition of ‘current site’ using the plain meaning rule – namely, that ‘current’ should be given its ordinary meaning of ‘occurring in or existing at the present

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industry therefore proposes a hybrid approach, which urges us to define site as of “the later of (a) [the date that the Commission issues a new rule under the *Notice*]; or (b) the date of the last review and approval related to said tower by a state or local government issued outside of the framework of 47 U.S.C. § 1455(a) and these regulations promulgated thereunder.”⁷² Adopting that proposal would risk permitting a tower owner to file an eligible facilities request even if it may have substantially increased the size of a tower site prior to the adoption of this *Report and Order* and without any necessary approval from a locality. Indeed, several localities caution against the industry’s proposal.⁷³ They raise concerns that adopting the industry’s proposed definition would create “unending accretion of [a] site by repeated applications for expansion.”⁷⁴ We share those concerns, and find that our revision addresses them by ensuring that a locality has reviewed and approved the eligible support structure that is the subject of the eligible facilities request outside of the section 6409(a) process, while recognizing that the boundaries may have changed since the locality initially approved the eligible support structure.⁷⁵ Further, we maintain the *2014 Infrastructure Order*’s approach that a locality “is not obligated to grant a collocation application under [s]ection 6409(a)” if “a tower or base station was constructed or deployed without proper review, was not required to undergo siting review, or does not support transmission equipment that received another form of affirmative State or local regulatory approval[.]”⁷⁶

26. Crown Castle also proposes that, to the extent that we revise the definition of “site” as proposed in the *Notice*, we should revise the language to provide that the site boundaries are determined as of the date a locality “last reviewed and issued a permit,” rather than as of the date the locality last

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time.’ Accordingly, the industry has relied upon – and in countless jurisdictions has requested and received approval of modifications as eligible facilities requests – with the understanding of the ‘current site’ as the boundaries of the leased or owned property at the time of the submission of the eligible facilities request.” (citations omitted); *see also* WIA Reply Comments at 14, n.56.

⁷² Crown Castle Comments at 2-4; *see also* CTIA Reply Comments at 3-4; AT&T Reply Comments at 2. WIA initially suggested their own revisions to the definition of “site,” *see* WIA Comments at 9, but it has since aligned with Crown Castle’s proposed revised definitions. *See* WIA Reply Comments at 14.

⁷³ *See, e.g.,* Western Communities Coalition Reply Comments at 1-2 (“Crown Castle’s proposal would capture all expansions—whether approved or not—that occurred prior to a Commission order from this *Notice*”); NATOA Reply Comments at 16 (arguing that Crown Castle’s proposed definition “would seem to set establish [sic] multiple site boundaries for the same tower; apparently each lease or other property interest could establish its own site boundary for the tower, provided they did so before the date of the new rule.”); Virginia Localities Reply Comments at 12 (“[Crown Castle’s] proposal merely gives the industry what it wants most: immediate expansion at every site in the country. Future expansion would apply the correct, lawful standard, but the immediate effect would be unlawful because Section 6409 does not give the Commission the power to override local zoning and other regulatory concerns at locations that have not been already reviewed by a zoning authority and deemed suitable for the placement of wireless facilities.”).

⁷⁴ Local Government Comments at 16; *see also* NATOA Reply Comments at 18 (“Allowing the leased or other property area, rather than the reviewed and approved boundaries, to dictate the ‘site’—even if (or perhaps especially if) it is limited to expansions prior to the new rule—is incompatible with Section 6409(a) and wholly arbitrary.”); Western Communities Coalition Comments at 10 (arguing that the industry’s proposal “would remove any reasonable limit on applications that mandate local approval and likely lead to disputes and delays.”); Virginia Localities Reply Comments at 12 (“Nothing in Section 6409 suggests that Congress anticipated that carriers would be able to use that statute to override local concerns in the event of actual expansion of the boundaries of a site, as opposed to changes in equipment.”).

⁷⁵ *See* NATE Comments at 2 (arguing that if the site “was previously subject to the appropriate federal and local reviews . . . it is immaterial when the boundary was defined, just as long as it was defined. There is no need to reinvent the wheel by imposing repetitive reviews; the fact remains that the site by definition was determined by the previous local review and approval regardless of when a modification request is submitted.”).

⁷⁶ *2014 Infrastructure Order*, 29 FCC Rcd at 12937, para. 174.

reviewed and approved the site.⁷⁷ Crown Castle claims that, contrary to an approval, a “permit . . . applies to a wide variety of processes, and represents a tangible and unambiguous event[.]”⁷⁸ We decline to adopt Crown Castle’s proposal, as the mere issuance of a permit (*e.g.*, an electrical permit) does not necessarily involve a locality’s review of the eligible support structure, and thus would not necessarily provide an opportunity for the locality to take into account an increase in the size of the site associated with that structure.⁷⁹

27. Accordingly, we revise section 1.6100(b)(6) as follows:

Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.⁸⁰

28. We emphasize that our revisions to the compound expansion provision in section 1.6100(b)(7)(iv) and to the definition of “site” in section 1.6100(b)(6) do not apply to towers in the public rights-of-way. The *2014 Infrastructure Order* provided for streamlined review in more narrowly targeted circumstances with respect to towers in the public rights-of-way, and we leave those distinctions unchanged.⁸¹ The Commission has recognized that activities in public rights-of-way “are more likely to raise aesthetic, safety, and other issues,” and that “towers in the public rights-of-way should be subject to the more restrictive . . . criteria applicable to non-tower structures rather than the criteria applicable to other towers.”⁸² The record reflects agreement by both industry and locality commenters that our rule change to provide for compound expansion should not apply to towers in the public rights-of-way.⁸³ Our

⁷⁷ Letter from Joshua Turner, Counsel to Crown Castle, to Marlene Dortch, Secretary, FCC, WT Docket No. 19-250, at 1 (filed Aug. 27, 2020) (Crown Castle Aug. 27 *Ex Parte*).

⁷⁸ Crown Castle Aug. 27 *Ex Parte* at 1-2; *see also* Letter from John Howes, WIA, to Marlene Dortch, Secretary, FCC, WT Docket No. 19-250, at 2 (filed Sept. 9, 2020) (expressing agreement with Crown Castle’s latest proposal).

⁷⁹ Crown Castle’s proposal would also introduce more uncertainty than it purports to cure. A locality may issue building, electrical, or other permits for a site without reviewing the eligible support structure on that site. A permit may therefore not constitute a “proper review” of a site. *See 2014 Infrastructure Order*, 29 FCC Rcd at 12937, para. 174. Review and approval of the eligible support structure, on the other hand, provides an opportunity for the locality to take into account an increase in the size of the site.

⁸⁰ *See infra*, App. B. The *2014 Infrastructure Order* defined site as, “for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.” *2014 Infrastructure Order*, 29 FCC Rcd at 12990, App. B; *see also* 47 CFR § 1.6100(b)(6).

⁸¹ *2014 Infrastructure Order*, 29 FCC Rcd at 12949, para. 198 (“For other towers and all base stations, we further restrict the site to that area in proximity to the structure and to other transmission equipment already deployed on the ground”).

⁸² *2014 Infrastructure Order*, 29 FCC Rcd at 12948, para. 195.

⁸³ *See* WIA Comments at 8 (“[T]he [proposed] rule change would not authorize providers to extend into public rights-of-way without local approval.”); American Tower Corp. Reply Comments at 4 (“WIA and other commenters have made it clear that any compound expansion rule adopted by the Commission should only apply outside of the right-of-way.”); NCTA Reply Comments at 2 (“To the extent the Commission moves ahead with this proposal, it should limit this clarification to towers not located in public rights-of-way”); Local Governments Comments at ii, 12-14 (“Should the Commission choose to move forward with its proposed rule, it should clarify . . . that a site is limited to areas outside the public rights-of-way.”); NATOA Comments at 4 (“[T]he proposal only makes sense if it

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revised compound expansion rule also does not apply to non-tower structures (*e.g.*, base stations), which “use very different support structures and equipment configurations” than towers.⁸⁴

29. We also emphasize that our actions here are not intended to affect any setback requirements that may apply to a site,⁸⁵ and that we preserve localities’ authority to impose requirements on local-government property. Accordingly, the expansion of up to 30 feet in any direction is subject to any land use requirements or permissions that a local authority may impose or grant within the allowed expansion (*e.g.*, storm drain easement) at the time of the last review by a locality. In addition, to address certain localities’ concerns regarding easements,⁸⁶ we clarify that the revised definition of “site” does not restrict a locality from issuing building permits or approving easements within the expanded boundaries (*e.g.*, a sewer or storm drain easement; a road; or a bike path).

30. In addition, while localities raise health and safety concerns with modifying the scope of substantial change,⁸⁷ we observe that the modifications we make today do not affect localities’ ability to address those concerns. The Commission previously has clarified that neither the statute nor our rules preempt localities’ health and safety requirements or their procedures for reviewing and enforcing compliance with such requirements,⁸⁸ and we reaffirm this conclusion today. We emphasize that section 6409(a) “does not preclude States and localities from continuing to require compliance with generally applicable health and safety requirements on the placement and operation of backup power sources, including noise control ordinances if any.”⁸⁹ We find that our revision strikes the appropriate balance between promoting rapid wireless facility deployment while preserving localities’ local-use authority.

31. Finally, we disagree with the contentions of some localities that the Commission lacks the legal authority to adopt some or all of the rule changes that we promulgate today, or that the Administrative Procedure Act⁹⁰ otherwise precludes such action. Localities allege several infirmities. First, Virginia Localities argue that Congress limited the Commission’s authority to changes to the dimensions of towers and base stations only, and not to the underlying site.⁹¹ We disagree with that artificial distinction. A tower cannot exist without a site.⁹² And “[t]here is no question that [certain]

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is applied solely to towers outside the rights of way.”); Western Communities Coalition at 8 (arguing that the Commission’s modifications “should be limited to ‘towers outside the public rights-of-way’ . . .”).

⁸⁴ Western Communities Coalition Comments at 16.

⁸⁵ Both industry and locality commenters urge us to clarify that the action we might take here not affect any setback requirements that apply to a site. *See, e.g.*, American Tower Corp. Reply Comments at 5 (requesting that any compound expansion should be subject to generally applicable setbacks for an underlying municipal zone for the improvement proposed in the new space); Western Communities Coalition Comments at 17 (requesting that by-right expansions remain subject to generally applicable setback requirements).

⁸⁶ Local Governments Comments at 7; NATOA Comments at 5.

⁸⁷ *See, e.g.*, Illinois Municipal League Ex Parte at 2 (claiming that narrowing the substantial change definition to exclude activities of up to 30 feet would endanger the public health and welfare of communities, as localities would lose the opportunity to review activities and study their impact).

⁸⁸ *2014 Infrastructure Order*, 29 FCC Rcd at 12951, 12956, paras. 202, 214 n.595.

⁸⁹ *2014 Infrastructure Order*, 29 FCC Rcd at 12951, para. 202.

⁹⁰ Administrative Procedure Act, 5 U.S.C. § 500 *et seq.* (APA).

⁹¹ Virginia Localities Reply Comments at 5-6 (“The issue is actually whether Congress intended to preempt local authority to review changes to the physical dimensions of the underlying site, as opposed to physical dimensions of a tower or base station . . . Congress clearly limited the scope of the preemption to changes to the dimensions of towers and base stations.”).

⁹² 47 C.F.R. § 1.6100(b)(9) (defining “tower” as “[a]ny structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities . . . and the associated site.”) (emphasis added).

terms of the Spectrum Act . . . are ambiguous,”⁹³ including what constitutes substantial change to a site.⁹⁴ The Fourth Circuit determined that the Commission can “establish[] objective criteria for determining when a proposed modification ‘substantially changes the physical dimensions’” of an eligible support structure.⁹⁵ The *Report and Order*’s revisions to the terms “site” and “substantial change” ensure that wireless deployments will continue while preserving localities’ site review and approval process.

32. Second, some localities argue that the Commission failed to provide the specific rule language in the *Notice* and that the *Notice* contains several ambiguities. Virginia Localities claims that it would be “very difficult to assess the potential practical effects of the proposed amendment to the EFR Rule without language to evaluate.”⁹⁶ Local Governments claim that, among other issues, the *Notice* is ambiguous on the operative date of the approval, the operative boundaries of the proposed expansion, and whether the definition of “site” will provide for other eligible support structures.⁹⁷ Western Communities Coalition claims that the *Notice* “appears to suggest that various rule changes might be limited to ‘macro tower compounds.’”⁹⁸

33. These arguments lack merit. The APA requires that an agency’s notice of proposed rulemaking must include “either the terms *or substance of the proposed rule or a description of the subjects and issues involved*.”⁹⁹ The D.C. Circuit has held that a notice of proposed rulemaking meets the requirements of administrative law if it “provide[s] sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.”¹⁰⁰ The *Notice* in this proceeding did just that. Not only did the Commission include the substance of the proposed rule and describe the subjects and issues involved,¹⁰¹ it also clearly propose specific language for the definition of “site” and the revision to “substantial change,”¹⁰² and it offered specific alternatives and sought comment on other possible

⁹³ *Montgomery County, Md. v. FCC*, 811 F.3d at 129; *id.* at 130 (“[W]e review Petitioners’ challenge to the manner in which the FCC has defined the two terms referenced earlier: ‘substantially change’ and ‘base station.’”).

⁹⁴ *Montgomery County, Md. v. FCC*, 811 F.3d at 129 n.5 (“Petitioners do not dispute that the term ‘substantial’ is ambiguous.”).

⁹⁵ *Montgomery County, Md. v. FCC*, 811 F.3d at 127; *see id.* at 130 (“It was not unreasonable for the FCC to supply a strictly numerical definition of substantiality in this context, because the physical dimensions of objects are, by their very nature, suitable for regulation through quantifiable standards.”).

⁹⁶ Virginia Localities Reply Comments at 16; *see also* Local Governments Comments at 4 (claiming that the Commission’s failure to provide either a proposed rule or an unambiguous description of the proposed rule changes fails to pass muster of the APA requirements); NATOA Comments at 3 n.13 (expressing concern with the absence of proposed rule language).

⁹⁷ Local Governments Comments at 5-8.

⁹⁸ Western Communities Coalition Comments at 5.

⁹⁹ 5 U.S.C. § 553(b)(3) (emphasis added).

¹⁰⁰ *Honeywell International, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004) (internal quotation marks omitted); *Agape Church, Inc. v. FCC*, 738 F.3d 397, 411 (D.C. Cir. 2013) (holding that an agency’s final rule “need not be the one proposed in the NPRM,” but rather “‘need only be a logical outgrowth of its notice’”) (quoting *Covad Communications Co. v. FCC*, 450 F.3d 528, 548 (D.C. Cir. 2006)).

¹⁰¹ *Notice*, 35 FCC Rcd at 6003-04, paras. 51-54.

¹⁰² *Notice*, 35 FCC Rcd at 6004, para. 55 (“[W]e propose to revise the definition of ‘site’ in section 1.6100(b)(6) to make clear that ‘site’ refers to the boundary of the leased or owned property surrounding the tower and any access or utility easements currently related to the site as of the date that the facility was last reviewed and approved by a locality. We further propose to amend section 1.6100(b)(7)(iv) so that modification of an existing facility that entails ground excavation or deployment of up to 30 feet in any direction outside the facility’s site will be eligible for streamlined processing under section 6409(a).”).

options.¹⁰³ The actions we take today reflect commenters' responses to the *Notice*. For example, in response to our proposed definition of "site,"¹⁰⁴ we establish site boundaries as those that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process. Furthermore, various changes we are making to the proposed language are reasonably foreseeable modifications designed to prevent any confusion that the proposed language might have caused based on concerns that commenters raised. For example, in defining "site," we substitute the term "eligible support structure," a defined term, for the proposed use of the word "facility," which is not defined in section 1.6100 of our rules. Further, the *Notice* also proposed specific alternatives.¹⁰⁵ All localities that allege ambiguities raised meaningful comments and opined on the specific rule changes that we adopt today.¹⁰⁶

34. Third, Local Governments claim that any collocation policy modification should be achieved through 47 U.S.C. § 332.¹⁰⁷ We disagree. Congress has directed the Commission to "encourage the rapid deployment of telecommunications services,"¹⁰⁸ including with section 6409(a), in which Congress specifically addressed modifications of an existing tower or base station "[n]otwithstanding" Section 332.¹⁰⁹ And the Commission has relied on section 6409(a) to require a streamlined review process for modifications of existing towers or base stations.¹¹⁰ Similar to our actions in the *2014 Infrastructure Order*, the rules we promulgate today "will serve the public interest by providing guidance to all stakeholders on their rights and responsibilities under the provision, reducing delays in the review process for wireless infrastructure modifications, and facilitating the rapid deployment of wireless infrastructure, thereby promoting advanced wireless broadband services."¹¹¹

35. Finally, Western Communities Coalition argues that the comment cycle is unusually short.¹¹² The Administrative Procedure Act and the Commission's rules require only that commenters be afforded reasonable notice of the proposed rulemaking.¹¹³ Western Communities Coalition provides no

¹⁰³ *Notice*, 35 FCC Rcd at 6004, para. 56 ("Alternatively, we seek comment on whether we should revise the definition of site in section 1.6100(b)(6), as proposed above, without making the proposed change to section 1.6100(b)(7)(iv) for excavation or deployment of up to 30 feet outside the site. As another option, we seek comment on whether to define site in section 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request.*"); see also *Horsehead Res. Dev. Co., Inc. v. Browner*, 16 F.3d 1246, 1268 (D.C.Cir.1994) (holding that a notice "must describe the range of alternatives being considered with reasonable specificity. Otherwise, interested parties will not know what to comment on, and notice will not lead to better-informed agency decision-making.") (internal citations omitted).

¹⁰⁴ *Notice*, 35 FCC Rcd at 6004, paras. 54, 56.

¹⁰⁵ *Notice*, 35 FCC Rcd at 6004, para. 56.

¹⁰⁶ See, e.g., Local Governments Comments at 12-15; NATOA Comments at 3-5; Western Communities Coalition Comments at 8-17; Virginia Localities Reply Comments at 19-22.

¹⁰⁷ See Local Governments Reply Comments at 3-5.

¹⁰⁸ Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996).

¹⁰⁹ See *2014 Infrastructure Order*, 29 FCC Rcd at 12872, para. 15 ("We accordingly adopt rules that clarify [section 6409(a)'s] terms and enforce their requirements, thus advancing Congress' goal of facilitating rapid deployment.").

¹¹⁰ See *2014 Infrastructure Order*, 29 FCC Rcd at 12872, para. 15 ("By requiring timely approval of eligible requests, Congress intended to advance wireless broadband service for both public safety and commercial users.").

¹¹¹ *2014 Infrastructure Order*, 29 FCC Rcd at 12872, para. 15.

¹¹² Western Communities Coalitions Comments at 4.

¹¹³ *Omnipoint Corp. v. FCC*, 78 F.3d 620 (D.C. Cir. 1996); 47 C.F.R. § 1.415(b).

basis for its view that more than the 30-day time period following Federal Register publication (20 days for comments and 10 days for reply comments), was inadequate here, given that the *Notice* raised a narrow set of issues that had been subject to prior public input in response to WIA's petition for declaratory ruling and petition for rulemaking. And no commenter argues that it was prejudiced by the comment cycle's length. Indeed, several commenters, including the Western Communities Coalition, have been considering these issues on the record since at least October 2019.¹¹⁴ Claims that the *Notice* is vague or that commenters have had insufficient time to comment are therefore contradicted by the record.

36. Accordingly, we revise the compound expansion provision in section 1.6100(b)(7)(iv) and the definition of "site" in section 1.6100(b)(6). We find that the revisions we adopt today will streamline the use of existing infrastructure for the deployment of 5G and other advanced wireless networks while preserving localities' ability to review and approve an eligible support structure.

IV. PROCEDURAL MATTERS

37. *Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹¹⁵ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."¹¹⁶ Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

38. *Paperwork Reduction Act.* This *Report and Order* does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

39. *Congressional Review Act.* [[The Commission will submit this draft *Report and Order* to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is "major" or "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2).]] The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i)-(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, and section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 157, 201, 253, 301, 303, 309, 319, 332, 1455, that this *Report and Order* IS hereby ADOPTED.

41. IT IS FURTHER ORDERED that this *Report and Order* SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

42. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

¹¹⁴ *See, e.g.*, Joint Comments of City of San Diego, Cal., *et al.*, WT Docket Nos. 19-250, 17-79, 17-84, RM-11849, at 48-55 (Oct. 29, 2019) (responding to WIA's petitions requesting to clarify the definition of "site" and modify the definition of "substantial change").

¹¹⁵ *See* 5 U.S.C. § 604. The RFA, 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹¹⁶ 5 U.S.C. § 605(b).

43. IT IS FURTHER ORDERED that this *Report and Order* SHALL BE sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
List of Comments and Replies

Comments

American Tower Corporation

Cities of Portland, Oregon; Boston, Mass.; Brookhaven, Georgia; Los Angeles, Cal.; Culver City, Cal.; Piedmont, Cal.; Gaithersburg, Maryland; Rockville, Maryland; Gig Harbor, Wash.; Kirkland, Wash.; Lincoln, Nebr.; Plano, Tex.; The Town of Hillsborough, Cal.; Howard County, Maryland; Clarke County, Nev.; The Texas Coalition of Cities for Utility Issues; The Texas Municipal League; The Michigan Municipal League; and Protec: The Michigan Coalition to Protect Public Rights-of-Way (Local Governments)

City of Coconut Creek, Florida

City of Gaithersburg, Maryland

City of San Diego, Cal.; City of Beaverton, Or.; City of Boulder, Colo.; Town of Breckenridge, Colo.; City of Carlsbad, Cal.; City of Cerritos, Cal.; Colorado Communications and Utility Alliance; City of Coronado, Cal.; Town of Danville, Cal.; City of Encinitas, Cal.; City of Glendora, Cal.; King County, Wash.; City of Lacey, Wash.; City of La Mesa, Cal.; City of Lawndale, Cal.; League of Oregon Cities; League of California Cities; City of Napa, Cal.; City of Olympia, Wash.; City of Oxnard, Cal.; City of Pleasanton, Cal.; City of Rancho Palos Verdes, Cal.; City of Richmond, Cal.; Town of San Anselmo, Cal.; City of San Marcos, Cal.; City of San Ramon, Cal.; City of Santa Cruz, Cal.; City of Santa Monica, Cal.; City of Solana Beach, Cal.; City of South Lake Tahoe, Cal.; City of Tacoma, Wash.; City of Thousand Oaks, Cal.; Thurston County, Wash.; City of Tumwater, Wash. (Western Communities Coalition)

Crown Castle International Corp.

CTIA

Illinois Municipal League

NATE: The Communications Infrastructure Contractors Association

NTCA-The Rural Broadband Association

The National Association of Telecommunications Officers and Advisors; The United States Conference of Mayors; and The National Association of Counties (NATOA)

WIA-The Wireless Infrastructure Association (WIA)

Reply Comments

American Tower Corporation

Arlington County, Virg.; The City of Alexandria, Virg.; The City of Fairfax, Virg. (Virginia Localities)

AT&T Services, Inc.

Cities of Portland, Oregon; Boston, Mass.; Brookhaven, Georgia; Los Angeles, Cal.; Culver City, Cal.; Piedmont, Cal.; Gaithersburg, Maryland; Rockville, Maryland; Gig Harbor, Wash.; Kirkland, Wash.; Lincoln, Nebr.; Plano, Tex.; The Town of Hillsborough, Cal.; Howard County, Maryland; Clarke County, Nev.; The Texas Coalition of Cities for Utility Issues; The Texas Municipal League; The Michigan Municipal League; and Protec: The Michigan Coalition to Protect Public Rights-of-Way (Local Governments)

City of San Diego, Cal.; City of Beaverton, Or.; City of Boulder, Colo.; Town of Breckenridge, Colo.; City of Carlsbad, Cal.; City of Cerritos, Cal.; Colorado Communications and Utility Alliance; City of Coronado, Cal.; Town of Danville, Cal.; City of Encinitas, Cal.; City of Glendora, Cal.; King County, Wash.; City of Lacey, Wash.; City of La Mesa, Cal.; City of Lawndale, Cal.; League of Oregon Cities; League of California Cities; City of Napa, Cal.; City of Olympia, Wash.; City of Oxnard, Cal.; City of Pleasanton, Cal.; City of Rancho Palos Verdes, Cal.; City of Richmond, Cal.; Town of San Anselmo, Cal.; City of San Marcos, Cal.; City of San Ramon, Cal.; City of Santa Cruz, Cal.; City of Santa Monica, Cal.; City of Solana Beach, Cal.; City of South Lake Tahoe, Cal.; City of Tacoma, Wash.; City of Thousand Oaks, Cal.; Thurston County, Wash.; City of Tumwater, Wash. (Western Communities Coalition)

County of Marin

Crown Castle International Corp.

CTIA

NCTA - The Internet & Television Association

The National Association of Telecommunications Officers and Advisors; The United States
Conference of Mayors; and The National Association of Counties (NATOA)

WIA-The Wireless Infrastructure Association (WIA)

APPENDIX B
Final Rules

Subpart U - State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities

1. The authority citation for Part 1 continues to read as follows:

AUTHORITY: [[To be inserted.]]

2. Section 1.6100 is revised by amending subparagraphs 6 and 7 of paragraph b to read as follows:

§ 1.6100 Wireless Facility Modifications.

* * * * *

(b) *Definitions.* Terms used in this section have the following meanings:

* * * * *

(6) *Site.* For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the Section 6409(a) process.

(7) *Substantial change.* A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) * * *

(ii) * * *

(iii) * * *

(iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment outside of the current site by more than 30 feet in any direction.

* * * * *

APPENDIX C
Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking (Notice)* released in June 2020.² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. In the *Report and Order*, the Commission continues its efforts to reduce regulatory barriers to infrastructure deployment by further streamlining the state and local government review process for modifications to existing wireless towers or base stations under section 6409(a) of the Spectrum Act of 2012.⁴ The Commission's decision will encourage the use of existing infrastructure, where efficient, to accelerate deployment of 5G and other advanced networks, which will enable economic opportunities across the nation. More specifically, the *Report and Order* revises the Commission's rules to provide that the modification of an existing tower outside the public rights-of-way that entails ground excavation or deployment of up to 30 feet in any direction outside the site will be eligible for streamlined processing under section 6409(a) review.⁵ It also revises the Commission's rules to clarify that a site's current boundaries are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.⁶

3. Our rule revisions reflect the recent recognition of 30 feet as an appropriate standard in the federal historic preservation context and the changes in the collocation marketplace, which is lacking space for collocations. This standard is consistent with the current collocation marketplace and with the threshold adopted in the Wireless Facilities NPA and recently included in the Amended Collocation NPA. Further, at least "eight states have passed laws that expressly permit compound expansion within certain limits . . . under an exempt or expedited review process."⁷ Most of these laws allow expansion beyond 30 feet from the approved site.⁸

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250, RM-11849, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5977 (2020) (*Notice*).

³ See 5 U.S.C. § 604.

⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI (Spectrum Act of 2012), § 6409(a), 126 Stat. 156, 232-33 (Feb. 22, 2012) (codified at 47 U.S.C. § 1455(a)).

⁵ See 47 CFR § 1.6100(b)(7)(iv).

⁶ See 47 CFR § 1.6100(b)(6).

⁷ Comments of Crown Castle International Corp., WT Docket No. 19-250, RM-11849, WC Docket No. 17-84, at 32-33 (Oct. 29, 2019).

⁸ Comments of Crown Castle International Corp., WT Docket No. 19-250, RM-11849, WC Docket No. 17-84, at 32-33 n.76 (Oct. 29, 2019).

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁹

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules and adopted herein.¹⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹³

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹⁴ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁵ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.¹⁶

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁷ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁸ Nationwide, for tax year 2018, there

⁹ 5 U.S.C. § 604(a)(3).

¹⁰ 5 U.S.C. § 604(a)(4).

¹¹ 5 U.S.C. § 601(6).

¹² 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹³ 15 U.S.C. § 632.

¹⁴ See 5 U.S.C. § 601(3)-(6).

¹⁵ See SBA, Office of Advocacy, “What’s New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

¹⁶ *Id.*

¹⁷ 5 U.S.C. § 601(4).

were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁹

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²⁰ U.S. Census Bureau data from the 2017 Census of Governments²¹ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²² Of this number there were 36,931 general purpose governments (county²³, municipal and town or township²⁴) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²⁵ with enrollment populations of less than 50,000.²⁶ Accordingly, based on the 2017 U.S. Census of Governments data, we

(Continued from previous page) _____

¹⁸ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁹ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

²⁰ 5 U.S.C. § 601(5).

²¹ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

²² See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

²³ See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁴ See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁵ See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²⁶ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments (continued....)

estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁷

11. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.²⁸ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.²⁹ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.³⁰ Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1000 employees or more.³¹ Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

12. The Commission’s own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions.³² The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.³³ Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.³⁴ Thus, using available data, we estimate that the majority of wireless firms can be considered small.

13. *All Other Telecommunications*. The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.³⁵ This industry also

(Continued from previous page) _____
category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁷ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

²⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search>.

²⁹ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

³⁰ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

³¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³² See <http://wireless.fcc.gov/uls>. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

³³ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

³⁴ See *id.*

³⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.³⁶ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.³⁷ The SBA has developed a small business size standard for “All Other Telecommunications”, which consists of all such firms with annual receipts of \$35 million or less.³⁸ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.³⁹ Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999.⁴⁰ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

14. *Fixed Microwave Services.* Microwave services include common carrier,⁴¹ private-operational fixed,⁴² and broadcast auxiliary radio services.⁴³ They also include the Upper Microwave Flexible Use Service,⁴⁴ Millimeter Wave Service,⁴⁵ Local Multipoint Distribution Service (LMDS),⁴⁶ the Digital Electronic Message Service (DEMS),⁴⁷ and the 24 GHz Service,⁴⁸ where licensees can choose between common carrier and non-common carrier status.⁴⁹ There are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services.⁵⁰ The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)⁵¹ and the appropriate size standard

³⁶ *Id.*

³⁷ *Id.*

³⁸ See 13 CFR § 121.201, NAICS Code 517919.

³⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁴⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴¹ See 47 CFR Part 101, Subparts C and I.

⁴² See 47 CFR Part 101, Subparts C and H.

⁴³ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁴⁴ See 47 CFR Part 30.

⁴⁵ See 47 CFR Part 101, Subpart Q.

⁴⁶ See 47 CFR Part 101, Subpart L.

⁴⁷ See 47 CFR Part 101, Subpart G.

⁴⁸ See *id.*

⁴⁹ See 47 CFR §§ 101.533, 101.1017.

⁵⁰ These statistics are based on a review of the Universal Licensing System on September 22, 2015.

⁵¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite)”, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search>.

for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁵² For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁵³ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁵⁴ Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

15. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. We note, however, that the microwave fixed licensee category includes some large entities.

16. *FM Translator Stations and Low Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations.⁵⁵ This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public.⁵⁶ Programming may originate in their own studio, from an affiliated network, or from external sources.⁵⁷ The SBA has established a small business size standard which consists of all radio stations whose annual receipts are \$41.5 million dollars or less.⁵⁸ U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year.⁵⁹ Of that number, 2,806 operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 million and 26 with annual receipts of \$50 million or more.⁶⁰ Therefore, based on the SBA's size standard we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

17. *Location and Monitoring Service (LMS).* LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a "small business" as an entity that, together with controlling interests and

⁵² See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

⁵³ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series, Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁵⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "515112 Radio Stations", <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See 13 CFR § 121.201, NAICS Code 515112.

⁵⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.:2012*, NAICS Code 515112, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁶⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

affiliates, has average annual gross revenues for the preceding three years not to exceed \$15 million.⁶¹ A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed \$3 million.⁶² These definitions have been approved by the SBA.⁶³ An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

18. *Multichannel Video Distribution and Data Service (MVDDS)*. MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding \$3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding \$15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding \$40 million for the preceding three years.⁶⁴ These definitions were approved by the SBA.⁶⁵ On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.⁶⁶ Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.⁶⁷

19. *Multiple Address Systems*. Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define “small entity” for MAS licensees as an entity that has average annual gross revenues of less than \$15 million over the three previous calendar years.⁶⁸ A “Very small business” is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than \$3 million over the preceding three calendar years.⁶⁹ The SBA has approved

⁶¹ Amendment of Part 90 of the Commission’s Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93-61, *Second Report and Order*, 13 FCC Rcd 15182, 15192 para. 20 (1998); *see also* 47 CFR § 90.1103.

⁶² *Id.*

⁶³ *See* Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Feb. 22, 1999).

⁶⁴ Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission’s Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, *Memorandum Opinion and Order and Second Report and Order*, 17 FCC Rcd 9614, 9711, para. 252 (2002).

⁶⁵ *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 13, 2002).

⁶⁶ *See* “*Multichannel Video Distribution and Data Service Spectrum Auction Closes; Winning Bidders Announced*,” Public Notice, 19 FCC Rcd 1834 (2004).

⁶⁷ *See* “*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63*,” Public Notice, 20 FCC Rcd 19807 (2005).

⁶⁸ *See* Amendment of the Commission’s Rules Regarding Multiple Address Systems, *Report and Order*, 15 FCC Rcd 11956, 12008, para. 123 (2000).

⁶⁹ *Id.*

these definitions.⁷⁰ The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications.

20. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS licenses in 176 EAs was conducted.⁷¹ Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

21. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The closest applicable definition of a small entity is the "Wireless Telecommunications Carriers (except Satellite)" definition under the SBA size standards.⁷² The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁷³ For this category, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁷⁴ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁷⁵ Thus under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by our action can be considered small.

22. *Non-Licensee Owners of Towers and Other Infrastructure.* Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission's Antenna Structure Registration ("ASR") system and comply with applicable rules regarding review for impact on the environment and historic properties.

23. As of March 1, 2017, the ASR database includes approximately 122,157 registration

⁷⁰ See Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (June 4, 1999).

⁷¹ See "Multiple Address Systems Spectrum Auction Closes," Public Notice, 16 FCC Rcd 21011 (2001).

⁷² See 13 CFR § 121.201, NAICS Code 517312 (formerly 517210).

⁷³ *Id.*

⁷⁴ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁷⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

records reflecting a “Constructed” status and 13,987 registration records reflecting a “Granted, Not Constructed” status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.⁷⁶ Regarding towers that do not require ASR registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which we seek comment. Moreover, the SBA has not developed a size standard for small businesses in the category “Tower Owners.” Therefore, we are unable to determine the number of non-licensee tower owners that are small entities. We believe, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which we seek comment. We do not have any basis for estimating the number of such non-licensee owners that are small entities.

24. The closest applicable SBA category is All Other Telecommunications,⁷⁷ and the appropriate size standard consists of all such firms with gross annual receipts of \$38 million or less.⁷⁸ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.⁷⁹ Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999.⁸⁰ Thus, under this SBA size standard a majority of the firms potentially affected by our action can be considered small.

25. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio services include services operating in spectrum licensed under Part 95 of our rules.⁸¹ These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service.⁸² There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore we apply the definition of Wireless

⁷⁶ We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

⁷⁷ See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017>.

⁷⁸ See 13 CFR § 121.201, NAICS Code 517919.

⁷⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁸⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸¹ 47 CFR Part 90.

⁸² The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of Part 95 of the Commission’s rules. See generally 47 CFR Part 95.

Telecommunications Carriers (except Satellite),⁸³ pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons.⁸⁴ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁸⁵ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁸⁶ Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. We note however, that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by our actions in this proceeding.

26. *Private Land Mobile Radio Licensees.* Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in *radiotelephone communications*.⁸⁷ The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁸⁸ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁸⁹ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁹⁰ Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

27. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users.⁹¹ There are a total of approximately 3,577 PLMR licenses in the 4.9 GHz band⁹²;

⁸³ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)", <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search>.

⁸⁴ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

⁸⁵ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁸⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)", <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search>.

⁸⁸ See 13 CFR § 121.201, NAICS Code 517312 (formerly 517210).

⁸⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁹⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹¹ This figure was derived from Commission licensing records as of September 19, 2016. Licensing numbers change on a daily basis. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of PLMR licensees that have fewer than 1,500 employees.

⁹² Based on an FCC Universal Licensing System search of September 18, 2020. Search parameters: Radio Service = PA – Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

19,359 PLMR licenses in the 800 MHz band⁹³; and 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz.⁹⁴ The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

28. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.⁹⁵ Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications.⁹⁶ The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁹⁷ For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.⁹⁸ Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.⁹⁹ Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services.¹⁰⁰ There are 3,577 licenses in

⁹³ Based on an FCC Universal Licensing System search of September 18, 2020. Search parameters: Radio Service = GB, GE, GF, GJ, GM, GO, GP, YB, YE, YF, YJ, YM, YO, YP, YX; Authorization Type = Regular; Status = Active.

⁹⁴ This figure was derived from Commission licensing records as of August 16, 2013. Licensing numbers change daily. We do not expect this number to be significantly smaller today. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of licensees that have fewer than 1,500 employees.

⁹⁵ See subparts A and B of Part 90 of the Commission's Rules, 47 CFR §§ 90.1-90.22. Police licensees serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees are comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include state, county, or municipal entities that use radio for official purposes. State departments of conservation and private forest organizations comprise forestry service licensees that set up communications networks among fire lookout towers and ground crews. State and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Additional licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

⁹⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)", <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search>.

⁹⁷ See 13 CFR § 121.201, NAICS Code 517312 (formerly 517210).

⁹⁸ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁹⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁰ This figure was derived from Commission licensing records as of June 27, 2008. Licensing numbers change on a daily basis. We do not expect this number to be significantly smaller today. This does not indicate the number of

(continued....)

the 4.9 GHz band, based on an FCC Universal Licensing System search of September 18, 2020.¹⁰¹ We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

29. *Radio Stations.* This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”¹⁰² The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts.¹⁰³ U.S. Census Bureau data for 2012 show that 2,849 radio station firms operated during that year.¹⁰⁴ Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year and 17 with annual receipts between \$25 million and \$49,999,999 million.¹⁰⁵ Therefore, based on the SBA’s size standard the majority of such entities are small entities.

30. According to Commission staff review of the BIA/Kelsey, LLC’s Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition.¹⁰⁶ The Commission has estimated the number of licensed commercial AM radio stations to be 4,580 stations and the number of commercial FM radio stations to be 6,726, for a total number of 11,306.¹⁰⁷ We note the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,172.¹⁰⁸ Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

31. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.¹⁰⁹ The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a “small business,” an entity may not be dominant in its field of operation.¹¹⁰ We

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licensees, as licensees may hold multiple licenses. There is no information currently available about the number of public safety licensees that have less than 1,500 employees.

¹⁰¹Based on an FCC Universal Licensing System search of September 18, 2020. Search parameters: Radio Service = PA – Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

¹⁰² See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017>.

¹⁰³ See 13 CFR § 121.201, NAICS Code 515112.

¹⁰⁴ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515112, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515112&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

¹⁰⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁶ BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

¹⁰⁷ Broadcast Station Totals as of March 31, 2020, Press Release (MB April 6, 2020) (March 31, 2020 Broadcast Station Totals), <https://docs.fcc.gov/public/attachments/DOC-363515A1.pdf>.

¹⁰⁸ *Id.*

¹⁰⁹ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.” 13 CFR § 121.103(a)(1).

¹¹⁰ 13 CFR § 121.102(b).

further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

32. *Satellite Telecommunications.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹¹¹ Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules.¹¹² For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.¹¹³ Of this total, 299 firms had annual receipts of less than \$25 million.¹¹⁴ Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

33. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”¹¹⁵ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹¹⁶ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having \$41.5 million or less in annual receipts.¹¹⁷ The 2012 Economic Census reports that 751 firms in this category operated in that year.¹¹⁸ Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999.¹¹⁹ Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

¹¹¹ See U.S. Census Bureau, *2017 NAICS Definition, “517410 Satellite Telecommunications”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

¹¹² See 13 CFR § 121.201, NAICS Code 517410.

¹¹³ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517410, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517410&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false&vintage=2012>.

¹¹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁵ See U.S. Census Bureau, *2017 NAICS Definition, “515120 Television Broadcasting”*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515120&search=2017+NAICS+Search&search=2017>.

¹¹⁶ *Id.*

¹¹⁷ See 13 CFR § 121.201, NAICS Code 515120.

¹¹⁸ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series – Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 515120, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=515120&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

¹¹⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

34. The Commission has estimated the number of licensed commercial television stations to be 1,377.¹²⁰ Of this total, 1,258 stations (or about 91 percent) had revenues of \$38.5 million or less, according to Commission staff review of the BIA/Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 384.¹²¹ Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations.¹²² Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

35. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹²³ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

36. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).¹²⁴

37. *BRS* - In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.¹²⁵ The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the

¹²⁰ *Broadcast Station Totals* as of June 30, 2018, Press Release (MB, rel. Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals Press Release), <https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

¹²⁴ *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

¹²⁵ 47 CFR § 21.961(b)(1).

small business size standard).¹²⁶ After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

38. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.¹²⁷ The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.¹²⁸ Auction 86 concluded in 2009 with the sale of 61 licenses.¹²⁹ Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

39. *EBS* - Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."¹³⁰ The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees.¹³¹ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.¹³² Of this total, 3,083 operated with fewer than 1,000 employees.¹³³ Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to U.S. Census Bureau data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational

¹²⁶ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

¹²⁷ *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

¹²⁸ *Id.* at 8296 para. 73.

¹²⁹ *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

¹³⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers" (partial definition), <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

¹³¹ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

¹³² See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

¹³³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

institutions and school districts, which are by statute defined as small businesses.¹³⁴

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

40. The excavation or deployment boundaries of an eligible facilities request pose significant policy implications associated with the Commission's rules implementing section 6409(a) of the Spectrum Act of 2012.¹³⁵ The Commission believes that the rule changes in the *Report and Order* provide certainty for providers, state and local governments (collectively, localities), and other entities interpreting these rules. We do not believe that our resolution of these matters will create any new reporting, recordkeeping, or other compliance requirements for small entities that will be impacted by our decision.

41. More specifically, the amendment of section 1.6100(b)(7)(iv) to allow a modification of an existing site that entails ground excavation or deployment of up to 30 feet in any direction outside a tower's site does not create any new reporting, recordkeeping, or other compliance requirements for small entities. Rather, it permits an entity submitting an eligible facilities request to undertake limited excavation and deployment of up to 30 feet in any direction. While the Commission cannot quantify the cost of compliance with the changes adopted in the *Report and Order*, small entities should not have to hire attorneys, engineers, consultants, or other professionals to in order to comply. Similarly, the revised definition of "site" adopted in the *Report and Order* addresses localities' concerns of "unending accretion of [a] site by repeated applications for expansion" by ensuring that a locality has reviewed and approved the site that is the subject of the eligible facilities request, and recognizes that the site may have changed since the locality initially approved it. This action does not create any new reporting, recordkeeping, or other compliance requirements for small entities. Instead, it prevents entities from having to file, and localities from having to receive and review, repeated applications for site excavation or deployments. Further, our actions providing clarity on the definitions of site and substantial change pursuant to the Commission's rules implementing section 6409(a) requirements should benefit all entities involved in the wireless facility modification process.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

42. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.¹³⁶

43. In the *Report and Order*, the Commission clarifies and amends its rules associated with wireless infrastructure deployment to provide more certainty to relevant parties and enable small entities and others to more effectively navigate state and local application processes for eligible facilities requests. These changes, which broaden the scope wireless facility modifications that are eligible for streamlined review by localities under the Commission's rules implementing section 6409(a), should reduce the economic impact on small entities that deploy wireless infrastructure by reducing the costs and delay associated with the deployment of such infrastructure. The Commission's efforts to reduce regulatory

¹³⁴ The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

¹³⁵ Spectrum Act of 2012 § 6409(a).

¹³⁶ See 5 U.S.C. § 604(a)(6).

barriers to infrastructure deployment by further streamlining the review process by localities for modifications to existing wireless towers or base stations under section 6409(a) should also reduce the economic impact on small localities by reducing the administrative costs associated with the review process.

44. The Commission considered but declined to adopt the industry’s “hybrid” definition of “site.”¹³⁷ Adopting that proposal would risk permitting a tower owner to file an eligible facilities request even if it may have substantially increased the size of a tower site prior to the adoption of this *Report and Order* and without any necessary approval from a locality. It agreed with localities’ concerns on the industry’s proposed definition, and found that our revision addresses them by ensuring that a locality has reviewed and approved the eligible support structure that is the subject of the eligible facilities request outside of the section 6409(a) process, while recognizing that the boundaries may have changed since the locality initially approved the eligible support structure. It also considered and rejected a proposal that would risk creating a loophole whereby a tower owner could use the issuance of a permit—which does not necessarily involve a locality’s review of the eligible support structure, and thus would not necessarily provide an opportunity for the locality to take into account an increase in the size of the site associated with that structure—to justify expansion of the site without proper local approval.¹³⁸ On balance, the Commission believes the revisions adopted in the *Report and Order* best achieve the Commission’s goals while at the same time minimize or further reduce the economic impact on small entities, including small state and local government jurisdictions.

Report to Congress

45. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹³⁹ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁴⁰

¹³⁷ See Crown Castle Comments at 2-4; see also CTIA Reply Comments at 3-4; AT&T Reply Comments at 2. WIA initially suggested their own revisions to the definition of “site,” see WIA Comments at 9, but it has since aligned with Crown Castle’s proposed revised definitions. See WIA Reply Comments at 14

¹³⁸ See Letter from Joshua Turner, Counsel to Crown Castle, to Marlene Dortch, Secretary, FCC, WT Docket No. 19-250, at 1 (filed Aug. 27, 2020). Crown Castle’s proposal would also introduce more uncertainty than it purports to cure. A locality may issue building, electrical, or other permits for a site without reviewing the eligible support structure on that site. A permit may therefore not constitute a “proper review” of a site. See *2014 Infrastructure Order*, 29 FCC Rcd at 12937, para. 174. Review and approval of the eligible support structure, on the other hand, provides an opportunity for the locality to take into account an increase in the size of the site.

¹³⁹ See 5 U.S.C. § 801(a)(1)(A).

¹⁴⁰ See 5 U.S.C. § 604(b).