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

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
	)	

ORDER

Adopted: October 8, 2019 **Released: October 8, 2019**

By the Chief, Wireless Telecommunications Bureau:

1. In *United Keetoowah Band of Cherokee Indians v. FCC*, the U.S. Court of Appeals for the District of Columbia Circuit vacated those portions of the Commission's 2018 *Second Report and Order*[1] that exempted certain small wireless facilities from federal environmental and historic preservation review.[2] Pursuant to F. R. App. P. 41(b), the court issued its mandate on October 7, 2019. Consistent with the court's mandate, this Order repeals the subsection of the Commission's rules implementing the small wireless facilities exemption,[3] and deletes a cross-reference to that subsection contained elsewhere in the Commission's rules.[4] As a result of the court's decision and this rule revision, deployments of small wireless facilities are subject to review to the same extent as larger wireless facilities pursuant to the National Historic Preservation Act (NHPA)[5] and the National Environmental Policy Act of 1969 (NEPA).[6]

2. The Bureau finds that notice and comment are unnecessary for these rule amendments under 5 U.S.C. § 553(b), because this ministerial order merely implements the mandate of the United States Court of Appeals for the District of Columbia Circuit, and the Commission lacks discretion to depart from this mandate.[7]

3. Accordingly, IT IS ORDERED that Section 1.1312(e)(2) of the Commission's rules, 47 CFR § 1.1312(e)(2), IS REPEALED and Section 1.6002, 47 CFR § 1.6002, is amended as set forth in

[1] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 3102 (2018) *(Second Report and Order)*, *remanded in part sub nom., United Keetoowah Band of Cherokee Indians v. FCC*, No. 18-1129, 2019 WL 3756373 (D.C. Cir Aug. 9, 2019) (*United Keetoowah*).

[2] *See United Keetoowah at* *15.

[3] *See* 47 C.F.R. § 1.1312(e)(2).

[4] *See id.* § 1.6002 ("consistent with section 1.1312(e)(2)").

[5] 54 U.S.C. § 300101 *et seq*.

[6] 42 U.S.C. § 4321 *et seq.*

[7] 5 U.S.C. § 553(b)(B); *see also EME Homer City Generation LP v. EPA*, 795 F.3d 118, 134 (D.C. Cir. 2015) (affirming agency good cause determination that notice and comment were unnecessary when a court order invalidated a rule and "commentators could not have said anything during a notice and comment period that would have changed that fact"); *Amendment of Part 95*, Order, 3 FCC Rcd 5032, 1988 WL 488084 *2 (1988) (notice and comment unnecessary when revisions in an order "merely…delete redundant or obsolete rules").

Appendix A, effective 30 days after publication in the Federal Register.

4. This action is taken pursuant to sections 4(i), 4(j), 5(c), 303, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155(c), 303 and 309(j) and Section 0.331(d) of the Commission's rules, 47 CFR 0.331(d).

5. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are major under the Congressional Review Act, 5 U.S.C. § 804(2). The Bureau will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A). The Bureau finds good cause to make this rule effective earlier than 60 days after the Order is submitted to Congress and the Government Accountability Office, pursuant to 5 U.S.C. § 808(2), because this ministerial order merely implements the mandate of the United States Court of Appeals for the District of Columbia Circuit, and the Commission lacks discretion to depart from this mandate.

FEDERAL COMMUNICATIONS COMMISSION

Donald K. Stockdale, Jr.
Chief
Wireless Telecommunications Bureau

APPENDIX

Final Rules

PART 1 - PRACTICE AND PROCEDURE

1. Section 1.1312 is amended by revising subparagraph (e) to read as follows:

(e): Paragraphs (a) through (d) of this section shall not apply to the construction of mobile stations.

2. Section 1.6002 is amended by revising subparagraph (l) to read as follows:

(l) *Small wireless facilities* are facilities that meet each of the following conditions:

(1) The facilities—

(i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or

(iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in section 1.1320(d)), is no more than three cubic feet in volume;

(3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;

(4) The facilities do not require antenna structure registration under part 17 of this chapter;

(5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).