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

In the Matter of	)	
	)	
Build America: Eliminating Barriers to Wireless Deployments	)	WT Docket No. 25-276
	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: September 30, 2025 **Released: September 30, 2025**

Comment Date: 30 days after date of publication in the Federal Register
Reply Comment Date: 45 days after date of publication in the Federal Register

By the Commission: Chairman Carr and Commissioners Gomez and Trusty issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION

1. With this Notice of Proposed Rulemaking (Notice), we advance the Commission's Build America Agenda[1] by proposing reforms that would free towers and other wireless infrastructure from

[1] *See* Remarks of Hon. Brendan Carr, FCC Chairman, "A Build Agenda for America" (July 2, 2025), https://docs.fcc.gov/public/attachments/DOC-412663A1.pdf.

regulatory burdens imposed at the state and local level. This Notice answers President Trump's call across the federal government to expedite, eliminate, and simplify permitting burdens that inhibit economic development, job creation, and energy production.[2] This proceeding also builds on the Commission's successful efforts during President Trump's first term to streamline infrastructure rules,[3] which helped spur significant investment and network buildout.[4]

2. New infrastructure builds remain essential to this nation's 5G leadership. American consumers demand more from their mobile networks as wireless data traffic rises rapidly year-over-year.[5] The number of mobile voice subscriptions has continued to increase year-over-year.[6] In North America alone, experts predict a 12% compound annual growth rate in mobile data traffic per active smartphone between 2024 and 2030.[7] In addition, fixed wireless access (FWA) services, which are provided over the same networks that provide mobile voice and data service, have gained traction in the marketplace and can play a pivotal role in facilitating the delivery of broadband service.[8] Artificial intelligence (AI) is also expected to significantly increase demand on mobile networks.[9]

[2] Among the President's first actions in office was to issue Executive Order 14154—titled, "Unleashing American Energy"—which, among other things, tasked federal agencies to examine how they can help achieve these goals.

[3] *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) (*Small Cell Order*); *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, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5977 (2020) (*2020 Declaratory Ruling*).

[4] CTIA, 2025 Annual Survey Highlights at 7, https://www.ctia.org/news/2025-annual-survey-highlights (stating that FCC reformed siting rules for small cells in the first Trump Administration has translated into 110% growth in small cells since 2018); CTIA – The Wireless Association, *Wireless Siting Reforms Drive Investment and Deployment Across the U.S.,* https://api.ctia.org/wp-content/uploads/2024/10/Wireless-Siting-Reforms-Drive-Investment-and-Deployment-2024.pdf (stating that "the number of operational cell sites has grown 24% since pivotal state and federal siting reforms were implemented in 2018.").

[5] In its 2025 Annual Survey, CTIA reported that Americans collectively spent more than 2.4 trillion minutes talking on the phone and exchanged nearly 42 billion more messages and used nearly 30 billion more voice minutes in 2024 than the year before. CTIA also found that Americans exchanged nearly 2.2 trillion SMS and MMS text messages in 2024, which was more than any other year besides 2020, the first year of the COVID-19 pandemic.

[6] *See* FCC, Office of Economics and Analytics, Voice Telephone Services: Status as of June 30, 2024 at 8, Tbl. 1 (May 2025), https://docs.fcc.gov/public/attachments/DOC-411462A1.pdf (indicating consumer mobile voice subscribership increased from 386 million (based on data as of December 2023) to approximately 388 million); FCC, Office of Economics and Analytics, Voice Telephone Services: Status as of December 31, 2023 at 8-9, Tbl. 1 (Nov. 2024), https://docs.fcc.gov/public/attachments/DOC-407308A1.pdf (indicating consumer mobile voice subscribership increased from 372 million at year end of 2022 to 386 million at year end December 2023)).

[7] Ericsson, Mobility Report at 10 (June 2025), https://www.ericsson.com/en/reports-and-papers/mobility-report/reports/june-2025. CTIA states that Americans used a record 132 trillion megabytes of mobile data in 2024, shattering the 100 trillion megabytes mark set just the previous year. According to CTIA, this marks the third straight year of approximately 35% growth, a pace that would nearly double the amount of data used every two years. Further, CTIA asserts that the 32 trillion megabyte year-over-year increase in data use was the single largest jump in U.S. wireless history. CTIA, 2025 Annual Survey Highlights at 2, https://www.ctia.org/news/2025-annual-survey-highlights.

[8] Globally, FWA is steadily growing, with the share of 5G FWA subscriptions expected to rise from 14% in 2023 to 61% by 2033. Nokia, Global Network Traffic Report at 11 (2024), https://www.nokia.com/asset/213660.

[9] Ben Berkowitz, *Moving AI Compute to Phones Massively Reduces Power Use, Study Finds* (June 26, 2025) https://www.axios.com/2025/06/26/ai-compute-phones-qualcomm (Reporting that running various generative AI models on devices instead of in the cloud has been found to drastically reduce power consumption by about 90%.).

3. To ensure that mobile service providers can keep pace with consumer demands and needs, we seek to continue the success of the Commission's prior efforts to remove regulatory barriers that would unlawfully inhibit the deployment of wireless infrastructure. This objective, which reflects a longstanding bipartisan priority, is consistent with Congress's stated intent in the Telecommunications Act of 1996 to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans by opening all telecommunications markets to competition . . . ."[10]

4. In this Notice, we first seek to clarify and potentially expand upon the Commission's rulings under certain permitting provisions of section 6409(a) of the Spectrum Act of 2012 (Spectrum Act) that expedite state or local approval of certain modifications of existing tower and wireless base stations.[11] In particular, in response to court remand,[12] we seek to clarify the meaning of "concealment elements," which are used by builders to minimize the visual impact of towers and other wireless infrastructure, and to codify these clarifications in section 1.6100 of the Commission's rules, as described in Appendix A. We also ask for comment on other changes that the Commission should consider making to section 1.6100, such as changes related to siting conditions, to further streamline wireless permitting proceedings and facilitate the rapid buildout of wireless infrastructure.

5. Second, we seek comment on whether we should take further steps to ensure that state and local permitting regulations do not prohibit or have the effect of prohibiting the deployment of wireless infrastructure facilities pursuant to sections 253 and 332(c)(7) of the Communications Act. We recognize that some state and local governments have taken important steps to modernize their approach to siting requests.[13] However, in recent years, a number of state and local regulations have inhibited the deployment, densification, and upgrading of wireless networks, resulting in an effective prohibition of 5G wireless services.[14] We seek comment on such regulations, including potential preemption, particularly those that:

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[10] House Conference Report to the Telecommunications Act of 1996, H.R. Conf. Rep. No. 104–458, at 1 (1996), *as reprinted in* 1996 U.S.C.C.A.N. 10.

[11] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, title VI (Spectrum Act), § 6409(a), 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)); *2020 Declaratory Ruling* 35 FCC Rcd 5977.

[12] *League of Cal. Cities v. FCC*, 118 F.4th 995, 1024-28, 1030-31 (9th Cir. 2024) (*League of Cal. Cities*).

[13] A number of states and localities have adopted permitting provisions broadly consistent with Commission guidance on small wireless facilities. *See, e.g.*, PA, Small Wireless Facilities Deployment Act, P.L. 232, No. 50, (June 30, 2011), https://law.justia.com/codes/pennsylvania/2021/act-50/; Utah, Small Wireless Facilities Deployment Act , (Sept. 1, 2018), https://le.utah.gov/xcode/Title54/Chapter21/54-21.html?v=C54-21_2018050820180901; City of Orting, Washington, Municipal Code, § 13-9-6 Permits and Shot Clocks, https://codelibrary.amlegal.com/codes/ortingwa/latest/orting_wa/0-0-0-8453; City of Albany, New York, Municipal Code § 323-105 Permit fees and charges, https://ecode360.com/37944051#37953872 ; *see also*, Kendra Chamberlain, Fierce Network, *West Virginia is 22nd state to adopt rules for 5G small cell deployment,* (April 1, 2019), https://www.fierce-network.com/wireless/west-virginia-22nd-state-to-adopt-streamlined-rules-for-5g-small-cell-deployments (last visited Sept. 4, 2025).

[14] *See infra* para. 51 (providing examples of local regulations setting forth fees that we tentatively conclude are not justified by a state or local government's reasonable costs); *see, e.g.*, Wireless Infrastructure Association, A Roadmap to Unlocking Connectivity in the Next Administration at 1-3 (Jan. 2025), https://wia.org/wp-content/uploads/2025/01/WIA-Policy-Priorities-for-Next-Administration_January-2025.pdf?ref=broadbandbreakfast.com (stating "[r]educing delays and streamlining deployment should continue to be a north star for the new Administration to ensure the ubiquitous deployment of 5G and beyond" and identifying a need for predictable application timelines, reasonable fees, streamlined site upgrading processes); Telecoms.com, *Tackling Big Challenges in Small Cell 5G Densification* (June 6, 2025) https://www.telecoms.com/5g-6g/tackling-big-challenges-in-small-cell-5g-densification (stating "5G network densification efforts are too often stymied by planning, zoning and permitting challenges in the urban and suburban areas where they are most needed."). *See also* Remarks of Hon. Brendan Carr, FCC Chairman, "A Build Agenda for America" (July 2, 2025),

(continued….)

- Inhibit the deployment of macro cell towers and other wireless facilities;
- Impose unreasonable delays of permitting approvals;
- Assess disproportionate or otherwise unreasonable fees;
- Condition approval on aesthetic or similar criteria; and
- Impose other regulatory impediments in violation of the Telecommunications Act and Commission rules.

In addition, we seek comment on whether the Commission should consider implementing alternative dispute resolution procedures to facilitate the resolution of permitting disputes.

6. Our goal is to ensure that all state and local permitting regulations that address the deployment of wireless infrastructure are consistent with the requirements of section 6409 of the Spectrum Act and sections 253 and 332(c)(7) of the Communications Act, and do not prohibit or effectively prohibit the provision of service. As an overarching matter, we ask that commenters that responded to our companion *Notice of Inquiry* construing section 253's statutory provisions to identify portions of that record that bear on factual, policy, economic, or legal issues raised in this Notice to help inform the Commission's next steps in this proceeding.[15]

II. BACKGROUND

A. FCC Implementation of Section 6409(a) of the Spectrum Act

7. In section 6409(a) of the Spectrum Act, Congress recognized the efficiency of using existing infrastructure for the expansion of advanced wireless networks, and, accordingly, the need to expedite state or local approval of certain modifications of existing tower and wireless base stations.[16] Section 6409(a) provides that "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."[17] Further, section 6003 of the Spectrum Act requires the Commission to "implement and enforce" the provisions of the Spectrum Act as if it "is a part of the Communications Act of 1934."[18]

8. In 2014, the Commission adopted rules implementing section 6409(a).[19] Section 1.6100(c)(2) of the Commission's rules provides that a state or local government must approve an eligible

(Continued from previous page)
https://docs.fcc.gov/public/attachments/DOC-412663A1.pdf. ("Our Build America Agenda includes efforts to further streamline the many regulations that stand in the way of new infrastructure projects. While Sioux Falls [South Dakota] has led the way in modernizing its approach to siting requests, it still takes too long and costs too much to build infrastructure in so many parts of the country.").

[15] *Build America: Eliminating Barriers to Wireline Deployments*, Notice of Inquiry, WC Docket No. 25-253 (2025) (*Notice of Inquiry*).

[16] A section-by-section analysis of the Jumpstart Our Business Startups Act (JOBS Act, Pub. L. 112-106), a precursor to the Spectrum Act of 2012, was submitted in the Congressional Record during floor debate of the Middle Class Tax Relief and Job Creation Act of 2012. The analysis explains that the precursor section to section 6409(a) was intended to "streamline[] the process for siting of wireless facilities by preempting the ability of State and local authorities to delay collocation of, removal of, and replacement of wireless transmission equipment." 158 Cong. Rec. E237, E239 (2012) (statement of Rep. Fred Upton).

[17] 47 U.S.C. § 1455(a)(1).

[18] 47 U.S.C. § 1403.

[19] 47 CFR § 1.6100; *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies,* WT Docket Nos. 13-238 and 13-32, WC Docket No. 11-59*,* Report and Order, 29 FCC Rcd 12865, 12922-66, paras. 135-241 (2014) *(Wireless Infrastructure Order), aff'd, Montgomery Cty. v. FCC,* 811 F.3d 121 (4th Cir. 2015).

facilities request within 60 days of the date on which an applicant submits the request.[20] The rules define an "eligible facilities request" as "[a]ny 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."[21] The rules provide that changes are "substantial" if they: (i) exceed defined limits on increases in the height or girth of the structure or the number of associated equipment cabinets; (ii) involve excavation or deployment on ground outside a structure's current site; (iii) defeat the concealment elements of the pre-existing structure; or (iv) violate conditions previously imposed by the local zoning authority.[22]

9. In the *2020 Declaratory Ruling*, the Commission clarified the 2014 rules including clarifying that the term "concealment elements" means "elements of a stealth-designed facility intended to make the facility look like something other than a wireless tower or base station," such as a tree or flag pole.[23] The Commission clarified that, "the element must have been part of the facility that the locality approved in its prior review."[24] The Commission determined that a modification "defeats" a concealment element (and thus becomes ineligible for expedited local approval) where it "cause[s] a reasonable person to view the structure's intended stealth design as no longer effective after the modification."[25]

10. The *2020 Declaratory Ruling* also addressed the application of the siting conditions provision under which a proposed modification would not qualify as an eligible facilities request if it did "not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment . . . ."[26] The *2020 Declaratory Ruling* stated that this limitation could include aesthetic conditions to minimize the visual impact of a wireless facility, as long as the condition does not prevent modifications explicitly allowed under the rules (antenna height, antenna width, equipment cabinets, and excavations or deployments outside the current site).[27]

11. In 2024, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) upheld the *2020 Declaratory Ruling* in most respects but remanded to the Commission to use notice-and-comment rulemaking before clarifying the meaning of "concealment elements."[28] The court determined that the clarifications were "inconsistent with the unambiguous text" of the Commission's 2014 rules implementing section 6409(a) and therefore were "legislative rules" that required a notice-and-comment

[20] 47 CFR § 1.6100(c)(2).

[21] *Id*. § 1.6100(b)(3).

[22] *Id*. § 1.6100(b)(7).

[23] *2020 Declaratory Ruling*, 35 FCC Rcd at 5994, para. 34.

[24] *Id.* at 5995, para. 36.

[25] *Id. at* 5996, para. 39.

[26] 47 CFR § 1.6100(b)(7)(vi).

[27] *2020 Declaratory Ruling*, 35 FCC Rcd at 5998-99, para. 42; *see also* 1.6100(b)(7)(i)-(iv).

[28] *League of Cal. Cities*, 118 F.4th at 1030-31. The court upheld the Commission's clarifications regarding: "(1) the commencement of the shot clock, that is, 'the date on which an applicant is deemed to have submitted an eligible facilities request for purposes of triggering the 60-day shot clock'; (2) when 'a modification on a tower outside of the public rights-of-way would cause a substantial change,' by specifying how to calculate the separation between an existing antenna and a proposed new antenna; (3) when 'a proposed modification to a support structure constitutes a substantial change,' by specifying whether there is a cumulative limit to the number of equipment cabinets and what an equipment cabinet is;" and "(5) what evidence the local government must show regarding a preexisting 'condition of approval' of a wireless facility."). *Id*. at 1004-05.

rulemaking under the Administrative Procedure Act (APA).[29] The court found that the *2020 Declaratory Ruling* did not satisfy this procedural requirement and that this was not harmless error.[30]

B. FCC Implementation of Sections 253 and 332(c)(7) of the Communications Act

12. Sections 253 and 332(c)(7) of the Communications Act expressly preempt state or local requirements that prohibit or have the effect of prohibiting the provision of telecommunications service and personal wireless service, respectively.[31]

13. Section 253(a) provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[32] This provision establishes "a rule of preemption [that] articulates a reasonably broad limitation on state and local governments' authority to regulate telecommunications providers."[33] Sections 253(b) and 253(c) establish two exceptions to the rule of preemption. First, section 253(b) preserves state statutes, regulations, and legal requirements that are competitively neutral, consistent with section 253 of the Act, and "necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."[34] Second, section 253(c) preserves "the authority of a State or local government to manage their public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for the use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."[35] Section 253(d) requires the

[29] *Id*. at 1024-28, 1030-31; 5 U.S.C. §§ 551-559.

[30] *Id*. at 118 F.4th at 1030-31.

[31] 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II).

[32] 47 U.S.C. § 253(a).

[33] *Level 3 Commc'ns, L.L.C. v. City of St. Louis, Mo.*, 477 F.3d 528, 531-32 (8th Cir. 2007) (*City of St. Louis*). For ease of reference, we use the term "provider" in this Notice to refer to entities that provide telecommunications services directly to consumers, as well as entities that deploy infrastructure used to provide such telecommunications services. *See Crown Castle Fiber, L.L.C. v. City of Pasadena, Texas*, 76 F.4th 425, 436 (5th Cir. 2023) (*City of Pasadena*), *cert. denied*, 144 S. Ct. 820 (2024) ("It is evident that Crown Castle sells its services to the public by establishing the infrastructure to enable T-Mobile to provide wireless service and to transmit T-Mobile's voice and data signals across its network. T-Mobile is undoubtedly a common carrier, and Crown Castle, through its network and infrastructure contract, fits neatly within the protective umbrella of § 253(a)."); *Public Utility Commission of Texas et al., Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, CCB Pol 96-14 *et al.*, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3496, para. 74 (1997) (*Public Utility Comm'n of Texas*) (finding that "section 253(a) bars state or local requirements that restrict the means or facilities through which a party is permitted to provide service"); *Petition of the State of Minnesota for a Declaratory Ruling Regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights-of-Way*, CC Docket No. 98-1, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21705, para. 14 (1999) (*Minnesota Order*) (applying section 253 to a state's agreement with an infrastructure developer because the operative inquiry is whether the state's action has an effect on the provision of telecommunications services); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705, 7777, para. 145 & n.531 (2018) (*Moratoria Order*), *aff'd City of Portland v. U.S.*, 969 F.3d 1020, 1038 (9th Cir. 2020).

[34] 47 U.S.C. § 253(b).

[35] 47 U.S.C. § 253(c).

Commission, after notice and comment, to preempt the enforcement of specific state or local requirements that violate section 253 to "the extent necessary to correct such violation or inconsistency."[36]

14. Similar to section 253, Congress specified in section 332(c)(7) that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—(I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services."[37] Section 332(c)(7) also sets forth a judicial remedy, stating that "[a]ny person adversely affected by any final action or failure to act by a State or local government" that is inconsistent with the requirements of Section 332(c)(7) "may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction."[38]

15. In 2018, the Commission adopted the *Small Cell Order*,[39] which affirmed that state or local statutes, regulations, or ordinances are unlawful when they prohibit or have the effect of prohibiting service under sections 253(a) and 332(c)(7) with respect to "Small Wireless Facilities."[40] Specifically, the

[36] 47 U.S.C. § 253(d). For example, the Commission has exercised the authority described in section 253(d) to preempt specific state and local statutes, regulations, and legal requirements that granted exclusive franchises and licenses to provide telecommunications services, imposed build out obligations on certain providers that restricted the means or facilities through which a provider was permitted to provide service, imposed financial burdens that effectively prohibited service, protected rural incumbents from competition, and imposed duplicative fees for use of their public rights-of-way. *See Classic Telephone, Inc.; Petition for Preemption, Declaratory Ruling and Injunctive Relief*, CCB Pol 96-10, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13101, para. 36 (1996); *Public Utility Comm'n of Texas*, 13 FCC Rcd at 3466, para. 13; *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, CCB Pol 97-1, Memorandum Opinion and Order, 12 FCC Rcd 15639, 15658, para. 42 (1997), *aff'd sub nom. RT Commc'ns, Inc. v. FCC*, 201 F.3d 1264 (10th Cir. 2000); *Connect America Fund (Sandwich Isles Communications, Inc.) Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission's Rules*, WC Docket No. 10-90, CC Docket No. 96-45, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5888, para. 26 (2017); *see also Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC*, WC Docket No. 20-46, Declaratory Ruling, 35 FCC Rcd 12811, 12821-26, paras. 25-26, 28, 31, 36 (WCB 2020) (*Bluebird Order*).

[37] 47 U.S.C. § 332(c)(7)(B)(i). Clause (B)(ii) of that section further provides that "[a] State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request." 47 U.S.C § 332(c)(7)(B)(ii).

[38] 47 U.S.C. § 332(c)(7)(B)(v). The provision further directs the court to "decide such action on an expedited basis." 47 U.S.C. § 332(c)(7)(B)(v).

[39] *Small Cell Order,* 33 FCC Rcd 9088, para. 1.

[40] The *Small Cell Order* defined "Small Wireless Facilities" as 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 § 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 § 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;

(continued….)

Commission found that state and local regulatory fees prohibit or have the effect of prohibiting the deployment of Small Wireless Facilities under sections 253 and 332, unless the fees: (1) reasonably approximate the state or local government's costs; (2) include only "objectively reasonable costs"; and (3) are "no higher than the fees charged to similarly-situated competitors in similar situations."[41] Given the characteristics of Small Wireless Facilities and the anticipated number of deployments, the Commission concluded that for Small Wireless Facilities, fees that exceed these limits prohibit or have the effect of prohibiting service when considered in the aggregate.[42] The Commission also established presumptive "shot clocks" that govern the amount of time state and local permitting authorities can take to review applications for both Small Wireless Facilities and other larger facilities.[43] The Commission also concluded that state and local "aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance."[44]

16. In August 2020, the Ninth Circuit upheld the Commission's *Small Cell Order* with respect to fee limitations, shot clocks, and the finding that aesthetic requirements must be reasonable.[45] The court, however, vacated and remanded the Commission's determination that aesthetic requirements be no more burdensome than those applied to other types of infrastructure deployments, and found that the requirement that aesthetic requirements be objective lacked a reasoned explanation.[46]

III. DISCUSSION

A. Section 6409(a) of the Spectrum Act

17. We propose to revise section 1.6100 of the Commission's rules (as set forth in Appendix A) to codify the *2020 Declaratory Ruling*'s clarifications regarding concealment elements and siting conditions. In addition, we propose to codify the guidance and examples the Commission provided in the *2020 Declaratory Ruling*, to illustrate how the rule revisions would operate in practice. We anticipate that revising the rules as proposed will help provide greater certainty, and thereby reduce the number of disputes in the permitting process.

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(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 § 1.1307(b).

47 CFR § 1.6002(l). 47 CFR § 1.6002; *see also Small Cell Order*, 33 FCC Rcd at 9091, para. 11 & n.9.

[41] *Small Cell Order*, 33 FCC Rcd at 9112-13, para. 50.

[42] *Small Cell Order*, 33 FCC Rcd at 9122, para. 65 (citing *Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Second Report and Order, 33 FCC Rcd 3102, 3123, para. 64 (2018)).

[43] *Small Cell Order*, 33 FCC Rcd at 9141, para. 103. In addition to establishing new shot clocks for Small Wireless Facilities, the Commission clarified a number of issues that are relevant to all of the Commission's shot clocks, including the types of authorizations subject to these time periods. *Id*. at 9155, para. 132.

[44] *Small Cell Order*, 33 FCC Rcd at 9132, para. 86. Examples of state and local aesthetic requirements include requirements to deploy facilities using stealth designs or other means of camouflage, restrictions on the size of equipment, colors of paint, and other details. *See id.* 33 FCC Rcd at 9131, para. 84.

[45] *City of Portland v. U.S.*, 969 F.3d 1020 (9th Cir. 2020) (*City of Portland*). The court also addressed two other Commission actions. The first was a Report and Order concerning pole attachments and the second was a Declaratory Ruling concerning moratoria. *See generally Moratoria Order*, *supra* note 33.

[46] *City of Portland*, 969 F.3d at 1042-43.

1. Concealment Elements

18. Section 1.6100(b)(7)(v) of the Commission's rules states that a modification "substantially changes" the physical dimensions of an existing structure if "[i]t would defeat the concealment elements of the eligible support structure," but it does not define what qualifies as a "concealment element."[47] In the *Wireless Infrastructure Order* the Commission stated that "concealed or 'stealth'-designed facilities" were "facilities designed to look like some feature other than a wireless tower or base station," and that "any change that defeats the concealment elements of such facilities would be considered a substantial change under section 6409(a)."[48] The Commission identified "painting to match the supporting facade or artificial tree branches" as examples of "concealment elements."[49]

19. In the *2020 Declaratory Ruling*, the Commission sought to clarify the concealment elements provision in section 1.6100(b)(7)(v), noting that stakeholders had "interpreted the definition of 'concealment element' and the types of modifications that would 'defeat' concealment in different ways."[50] The Commission clarified that concealment elements were "elements of a stealth-designed facility intended to make the facility look like something other than a wireless tower or base station."[51] The Commission also found that concealment elements are "defeated" when "the proposed modification . . . cause[s] a reasonable person to view the structure's intended stealth design as no longer effective after the modification."[52] In doing so, the Commission rejected arguments that "any attribute that minimizes the visual impact of a facility, such as a specific location on a rooftop site or placement behind a tree line or fence, can be a concealment element."[53] The Commission noted that local governments often address visual impacts "not through specific stealth conditions, but through careful placement conditions" and that the Commission's rules governing "conditions associated with the siting approval" separately address conditions to minimize the visual impact of non-stealth facilities.[54]

20. Consistent with the *2020 Declaratory Ruling*, we propose to define concealment elements as those elements intended to make a stealth-designed facility look like something other than a wireless tower or base station. We also propose that a requested modification would "defeat" a concealment element if it would cause a reasonable person to view the structure's intended stealth design as ineffective. A proposed modification would not defeat concealment if its stealth-design elements would continue to make the structure not appear to be a wireless facility.

21. We further propose to codify the guidance the Commission provided in the *2020 Declaratory Ruling* regarding the application of this approach.[55] For example, placing coaxial cable on the outside of a stealth facility would be unlikely to make the stealth design of the facility ineffective because such cables are typically a small size. A modification that involves a change in color would only defeat concealment if it would cause a reasonable person to view the intended stealth design of the underlying facility as no longer effective.[56] For facilities stealth-designed to resemble a pine tree (a

[47] 47 CFR § 1.6100(b)(7)(v).

[48] *Wireless Infrastructure Order*, 29 FCC Rcd at 12949-50, para. 200.

[49] *Id*.

[50] *2020 Declaratory Ruling*, 35 FCC Rcd at 5993, para. 33.

[51] *Id.* at 35 FCC Rcd at 5994, para. 34.

[52] *Id*. at 5994, paras. 34, 36.

[53] *Id*. at 5994-95, para. 35.

[54] *Id.* (internal quotation omitted); 47 CFR § 1.6100(b)(7)(vi).

[55] *2020 Declaratory Ruling*, 35 FCC Rcd at 5997, para. 40.

[56] As the Commission stated in the *2020 Declaratory Ruling*, "if the new equipment is shielded by an existing shroud that is not being modified, then the color of the equipment is irrelevant because it is not visible to the public and would not render an intended concealment ineffective." *Id*.

"monopine" wireless facility), if the prior approval of that facility requires that the monopine remain hidden behind a tree line, a proposed modification that makes the monopine visible above the tree line would not defeat concealment if a reasonable person would continue to view the stealth design of the monopine as effective. We would not view a requirement that the facility remain hidden behind a tree line as a feature of a stealth-designed facility, but instead as an aesthetic siting approval condition that would fall under section 1.6100(b)(7)(vi), as described below.

22. We expect that these changes will provide a clearer regulatory framework that will mitigate potential disputes during the permitting process and expedite broadband deployment. We seek comment on this analysis and on the scope of benefits and any potential drawbacks associated with our proposed approach. Do commenters agree that adopting these proposed rule changes would help spur wireless facilities deployment by providing clarity and reducing permitting disputes? We ask commenters to provide information about their experiences during the permitting process. To what extent do disputes regarding concealment elements arise? What changes have localities viewed as defeating concealment? What effect have such disputes about concealment elements had on efforts to deploy wireless infrastructure? If any commenters oppose our proposed rule changes, we ask them to explain why the proposed changes should not be adopted and to discuss alternative approaches we should consider, including any alternative approaches that should apply to small entities. We propose to codify the examples to illustrate how the rules would apply and seek comment on this approach. Are there other situations that we should consider addressing in this manner?

2. Conditions Associated with the Siting Approval

23. We also propose to revise the rules to formally codify the Commission's determinations in the *2020 Declaratory Ruling* regarding siting approval conditions. Under the current rules, a modification is "substantial" (and thus ineligible for expedited approval) if "[i]t does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in [paragraphs](b)(7)(i) through (iv)."[57] Consistent with the court's decision and the *2020 Declaratory Ruling*, we propose to revise the rule to clarify that any siting approval condition—including an aesthetics-related condition or any other condition designed to address the visual impact of a facility—cannot be used to prevent modifications specifically allowed under section 1.6100(b)(7)(i)-(iv) of the rules.

24. We further propose to adopt and codify the Commission's previous guidance and examples from the *2020 Declaratory Ruling*.[58] For example, if a locality had an aesthetics-related condition that specified a three-foot shroud cover for a three-foot antenna, the locality could not prevent replacement of the original antenna with a four-foot antenna that complies with section 1.6100(b)(7)(i).[59] If there was express evidence that the shroud cover requirement was a condition of the locality's original approval, the locality could enforce its shrouding condition if the provider could reasonably install a four-foot shroud to cover the new four-foot antenna.[60] The locality also could enforce a shrouding requirement that was not size-specific and that did not limit modifications allowed under section 1.6100(b)(7)(i)-(iv).[61]

25. Under the proposal, existing walls and fences around non-stealth designed facilities would be considered aesthetic conditions and not concealment elements. However, if there was express

[57] 47 CFR § 1.6100(b)(7)(vi).

[58] *2020 Declaratory Ruling*, 35 FCC Rcd at 5998-99, paras. 41-44.

[59] *Id*. at 5999, para. 44.

[60] *Id*.

[61] *Id*.

evidence that the wall or fence was a condition of approval in order to fully obscure the original equipment from view, the locality may require a provider to make reasonable efforts to extend the wall or fence to continue covering the equipment.[62] We further propose to codify the Commission's 2020 guidance that for a tower that was originally approved conditioned on being hidden behind a tree line, a proposed modification, allowed under 1.6100, that would make the tower visible above the tree line would be permitted. A locality could not prevent such a modification because the provider presumably could not reasonably replace a grove of mature trees with a grove of taller mature trees to maintain the absolute hiding of the tower.[63]

26. We seek comment on the proposed rule changes. We tentatively conclude that they would make the Commission's rules clearer and easier to understand, streamline the wireless permitting processes across the country, and minimize disputes over differing interpretations. We ask for comments on this analysis and on the potential benefits or drawbacks of this approach. In addition, we invite commenters to discuss their experiences with respect to aesthetics-related conditions and conditions designed to address the visual impact of wireless facilities. Do such conditions affect the time to complete deployment, increase costs, or reduce providers' ability to satisfy coverage demands and/or provide enhanced services. We ask commenters to also provide information on the extent to which such conditions have restricted modifications to existing infrastructure that would have otherwise been permitted under our rules. Commenters who oppose our approach should explain why the proposed rule changes should not be adopted and discuss alternatives the Commission should consider, including alternatives that would be appropriate for small entities.

3. Other Considerations

27. Finally, we seek comment on other possible changes to section 1.6100 to reduce permitting and other barriers to infrastructure deployment. For example, should the Commission clarify the relationship between time-limited conditional use permits (CUPs) and the requirements of section 6409(a)? Recently, some local jurisdictions have passed ordinances that require tower owners to renew their wireless tower facility permits after 10 years, which include "eligible facilities" under section 6409. In some instances, after the expiration of the initial permit period, the local government imposes new conditions on permit renewals for deployments previously deemed eligible facilities requests under section 6409(a). For example, a City of Monterey, CA ordinance states that a wireless facility permit may not have a duration longer than ten years.[64] We seek comment on whether the Commission should adopt a rule that, once a particular deployment is found to be an eligible facilities request and the permit is granted by a state or local jurisdiction, that state or local jurisdiction may not seek to impose new conditions as part of a permit renewal process. Does the imposition of new conditions at the time of renewal conflict with section 6409(a)(1), which provides, in pertinent part, that "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"?[65] Are such ordinances equivalent to a local or state government limiting eligible facilities status to the length of the term of the local permit? Is there any scenario under which an

[62] *Id*. at 6000, para. 44.

[63] *Id*.

[64] *See* City of Monterey, CA, Municipal Code 21.34.020(L), https://ecode360.com/43885093#43885098; *see also* San Diego, CA, San Diego Municipal Code, Chapter 14 § 141.0420(d)(9); San Diego, CA, San Diego Zoning Code, § 6985 Wireless Facility Application Processing, Non-SCW Applications, General Regulations (C)(11), https://docs.sandiego.gov/municode/municodechapter14/ch14art01division04.pdf; and Ventura County, CA Ventura County Code of Ordinances Div. 8, Ch. 1.1, Art. 5 § 8175-5.20.14, https://library.municode.com/ca/ventura_county/codes/code_of_ordinances?nodeId=DIV8PLDE_CH1.1ZOCO_ART5DESTCOSE_8175-5.20.14EXEFPEDIPETIEX.

[65] 47 U.S.C. § 1455(a)(1).

"eligible facility" would lose this designation after it is acknowledged at the initial permit stage? For example, would imposing a new condition be acceptable after a natural disaster alters the terrain where the eligible facility was previously authorized?

28. Are there other changes that should be made to initial permit application review and/or renewal applications that would clarify and expedite deployment?[66] Is there a need to further clarify when the timeframe for review is deemed to have begun? Are there other considerations regarding section 1.6100 that would clarify the permitting and renewal process and make it more efficient?

B. Sections 253 and 332(c)(7) of the Communications Act

29. As described in this section, we continue to see state and local regulatory impediments to vital infrastructure builds and to the provision of new and high quality services in a competitive marketplace. We seek comment on whether we should take further steps to ensure that state and local permitting regulations do not prohibit or have the effect of prohibiting the deployment of wireless infrastructure facilities pursuant to sections 253 and 332(c)(7) of the Communications Act, recognizing the Ninth Circuit's guidance outlined above. Specifically, we seek comment on state and local permitting regulations that: inhibit the deployment of macro cell towers and other wireless facilities, impose unreasonable delays on permitting approvals, assess disproportionate or otherwise unreasonable fees, condition approval on aesthetic requirements or similar criteria, and impose other regulatory impediments. In addition, we seek comment on whether the Commission should consider implementing alternative dispute resolution procedures to resolve permitting disputes between applicants and state and local governments.

1. Macro Cell Towers and Other Wireless Facilities

30. The *Small Cell Order* focused on state and local permitting requirements that affect the installation of Small Wireless Facilities. We recognize, however, the importance of ensuring the timely buildout of macro cell towers and other wireless facilities, which play a vital role in promoting competition and securing higher-quality services.

31. We seek comment on whether we should extend any of the *Small Cell Order* reforms adopted in 2018 or discussed in this Notice to macro cell towers and other wireless facilities. Are there barriers to extending the *Small Cell Order* reforms to macro facilities or other wireless facilities? Commenters should identify which reforms should or should not be extended, and provide specific examples and data that support their position. For example, are there aspects of the *Small Cell Order* related to densification or fees that are applicable to macro towers or other wireless facilities? If we extend any of the Small Wireless Facilities reforms to macro cell towers and other wireless facilities, is there a need to modify these reforms to match the specific circumstances associated with the siting of these types of facilities? Are there issues beyond those addressed in the *Small Cell Order* and this Notice that are unique to macro cell towers and, if so, how should the Commission address those issues?

32. We also seek comment on what constitutes a macro cell tower. Are macro cell towers simply wireless facilities that do not qualify as Small Wireless Facilities under our rules?[67] Are there other factors that we should consider in defining macro cell towers and related facilities? For instance, should we consider the height, width, and volume of the tower or whether the tower is a monopole, lattice, or guyed tower? Should we consider whether the macro facilities or other wireless facilities will be placed on pre-existing structures (e.g., a water tower)? Commenters should propose definitions for what qualifies as a macro cell tower or other wireless facilities, explain how these facilities are

[66] *See, e.g.*, Letter from Amy Bender, Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 25-276 (filed Sept. 22, 2025) (CTIA *ex parte*) (claiming that providers continue to have problems receiving all required permits within the shot clocks as well as issues regarding replacement of generators and other backup power which can impact network resiliency and public safety).

[67] *See supra* note 40 for definition of Small Wireless Facilities.

distinguishable from Small Wireless Facilities, and articulate how the Commission should treat these other categories of wireless facilities.

2. Unreasonable Delays of Permitting Approvals

33. In the Commission's *2009 Declaratory Ruling*, the Commission established a "shot clock" framework to implement the "reasonable period of time" provision of section 332(c)(7)(B)(ii), finding that the lack of a decision from a permitting authority within certain periods of time constituted a "failure to act".[68] Specifically, the Commission found that 90 days is a reasonable time frame for processing collocation applications and 150 days is a reasonable time frame to process applications other than collocations. In the *Small Cell Order*, the Commission adopted a new shot clock framework to take into account the unique features and needs of Small Wireless Facilities.[69] There, the Commission adopted a 60-day shot clock as a presumptively reasonable time period for reviewing applications for Small Wireless Facility collocations, and a 90-day shot clock as a presumptive reasonable time period for a newly constructed structure.[70] The Commission also codified the presumptive 90-day and 150-day shot clocks developed in the *2009 Declaratory Ruling* for siting applications that do not involve Small Wireless Facilities.[71]

34. We seek comment on how well the shot clocks codified in the Commission's rules have helped expedite the delivery of advanced communications services. Have the shot clock timeframes provided greater clarity and efficiency in processing permit applications? Has litigation been reduced? Would adopting additional shot clocks for specific scenarios help improve the efficiency of permit approvals and, if so, what specific revisions and/or additions should be made?

35. In the *Small Cell Order*, the Commission codified its previous determination that a shot clock begins to run when an application is submitted, not when it is deemed complete by the permitting authority.[72] The rules provide for a temporary pause or tolling if: (1) the permitting authority notifies the applicant within 30 days of submission that the application is materially incomplete and specifies the information needed for completion;[73] and (2) the locality provides written notice to the applicant within 10 days of submission of the applicant's response that not all of the specified information was submitted.[74] The shot clock restarts once the applicant submits the supplemental information.[75]

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[68] *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd 13994, 14008, para. 35 (*2009 Declaratory Ruling), aff'd City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012) (*City of Arlington*), *aff'd* 569 U.S. 290 (2013). *See also id.* at 14005, para. 33 (detailing examples of delays and providing aggregate numbers for instances of delays documented in the record evidence). 47 U.S.C. § 332(c)(7)(B)(ii) requires state and local governments to act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time.

[69] *Id.* at 9142-47, paras. 105-112.

[70] *Id.* at 9143, 9146, 9159, paras. 104, 106, 111, 138 (finding that "[m]any localities already process wireless siting applications in less time than required by those shot clocks, and a number of states have enacted laws requiring that collocation applications be processed in 60 days or less"). *See also* 47 CFR § 1.6003(c)(1)(i), (iii).

[71] *Id.* at 9159-60, paras. 138-139. The shot clock rules preserved a siting agency's ability to rebut the presumptive reasonableness of any of the applicable shots clocks based on a specific situation. *Id.* at 9145, para. 109.

[72] *Id.* at 9161, para. 141 (referencing *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report & Order, 29 FCC Rcd 12865, 12970, para. 258) (*Wireless Infrastructure Order*), *aff'd*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015)), 9163, para. 145 ("[T]he shot clock begins to run when the application is proffered.").

[73] *Id.* at 9161, para. 141; 47 CFR § 1.6003(d)(2).

[74] *Id.* at 9161, para. 141; 47 CFR § 1.6003(d)(3).

[75] *Id.* at 9162, para. 143. Subsequent determinations of incompleteness track the tolling rules that apply to non-Small Wireless Facilities. *Id.* at 9162, para. 143; 47 CFR § 1.6003(d)(3).

36. We seek comment on the effectiveness of these notifications in removing complications and ensuring the efficient processing of incomplete applications. Are permitting authorities requesting multiple rounds of supplements, with subsequent requests including comments not contained in the first request? How often do permitting authorities notify applicants of incomplete filings close to the end of the shot clock period?[76]

37. The Commission determined violations of the shot clocks for Small Wireless Facilities constitute a section 332(c) "failure to act," and a "presumptive prohibition on the provision of personal wireless services within the meaning of section 332(c)(7)(B)(i)(II)."[77] The Commission expects that either the permitting authority would "issue all necessary permits without further delay," or the applicant would have "a straightforward case" for obtaining relief in court based on violations of section 332(c)(7).[78] The Commission anticipated that courts will typically find that injunctive relief is warranted if there is inaction at the end of the shot clock period, absent extraordinary circumstances that would rebut the presumptive shot clock period.[79]

38. In the *Small Cell Order*, the Commission noted that "there may be merit" to a "deemed granted" remedy[80] but it declined to adopt this remedy because it determined that the shot clock framework that it had codified "should address the concerns raised by a 'deemed granted' remedy."[81] The Commission also indicated that if its approach "proves insufficient" it may again consider adopting a deemed granted approach."[82] The Ninth Circuit upheld the Commission's decision not to adopt a

[76] *See, e.g.*, *Extenet Systems, Inc. v. City of Cambridge*, 481 F.Supp.3d 41, 52 (D. Mass. 2020) (explaining how on the final day of shot clock period, which had been extended by mutual tolling agreement, the City denied the application for being incomplete; Court found no violation of the tolling period provisions of the shot clock rules regarding notification of a materially incomplete application (47 CFR § 1.6003(d)(1)) stating that, "Extenet has cited no authority suggesting that denying an application based on incompleteness is a shot clock violation. The failure to notify an applicant of incompleteness within ten days merely waives the local authority's ability to toll the shot clocks, absent a mutual tolling agreement with the party.").

[77] *Small Cell Order*, 33 FCC Rcd at 9148, para. 118; 47 U.S.C. § 332(c)(7)(B)(v).

[78] *Small Cell Order*, 33 FCC Rcd at 9148-49, para. 118.

[79] *Id.* at 9149-50, para. 121. Notwithstanding this expectation, the Commission stated in the *Small Cell Order* that "it will not dictate the result or the remedy appropriate for any particular case; the determination of those issues will remain within the courts' domain." *Id.* at 9151 at para. 124. A review of shot clock decisions in federal court reveals that in some instances of shot clock violations, courts have granted injunctive relief, and have directed permitting authorities to issue all necessary permits for infrastructure deployment to proceed. *See*, *e.g.*, *New Cingular Wireless PCS, LLC d/b/a AT&T Mobility v. Town of Colonie*, 2022 WL 1009436, *8-*9 (N.D.N.Y. 2022) (granting summary judgment to plaintiff on failure to act claim due to expiration of shot clock and ordering the Town to immediately approve AT&T's application and issue all necessary permits and authorizations for deployment of the Small Wireless Facility). Other courts have acted to remedy a permitting authority's shot clock violation by directing the permitting authority to act on the post-shot clock pending application within a specific time frame determined by the court. *See*, *e.g.*, *GTE Mobilnet of Cal., Limited Partnership v. City of Berkeley,* 2023WL 2648197, *18 (N.D. Cal. 2023) (granting summary judgment to Verizon on claim that the City failed to act before the expiration having concluded that the City and allied defendants failed to rebut the presumption that the shot clock afforded a reasonable period of time to act on Verizon's permit application, but nevertheless denying injunctive relief and "defer[red] the question of appropriate remedy for the failure to act claim until the effective prohibition claim is resolved. . . .").

[80] *Small Cell Order*, 33 FCC Rcd at 9153, para. 128.

[81] *Id.* at 9154, para. 129.

[82] *Id.* at 9154, para. 130.

"deemed granted" remedy because the Commission had "reasonably explained" that the new shot clock framework would reduce delays prevalent under the prior shot clock regime.[83]

39. We seek comment on whether shot clocks are preventing unreasonable delay or whether the Commission should reconsider its prior decision not to adopt a deemed granted remedy.[84] If appropriate, what would be the basis for the Commission to adopt a "deemed granted" rule for shot clock violations? For example, could a deemed granted remedy be justified on the basis that unreasonable delays have the effect of prohibiting deployment in violation of section 332(c)(7)(B)(i)(II)? Could the Commission enforce a shot clock violation through a petition under section 253(d)?

40. In addition, we seek comment on the effect of excessive delays on the prohibition of covered service[85] under section 253 and 332(c)(7). For example, can excessive delays result in the abandonment of certain planned deployments? Can such delays also raise the cost of deployments such that a provider might be forced to scale back a planned deployment, either in the locality affected by the delay or in other planned localities? Commenters should provide estimates of recent deployment costs that were raised or schedules that were not met due to expected or actual delays in authorization, including costs per day of delay. How do covered service providers determine when regulatory costs and delays make the provision of telecommunications uneconomical and, therefore, prohibitive in a community? Do delays and costs have a uniquely harmful effect on wireless deployments as opposed to other types of deployments?

3. Disproportionate or Unreasonable State and Local Fees

41. *Standard for Determining Reasonability of Fees.* In the *Small Cell Order*, the Commission recognized that "state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service" under sections 253 and 332(c)(7).[86] The Commission determined that "fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality's reasonable costs."[87] The Commission identified "specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard."[88] The Commission further found that "a variety of fees not

[83] *City of Portland*, 969 F.3d at 1044.

[84] *See Small Cell Order*, 33 FCC Rcd at 9153, para. 128-30; 47 U.S.C. § 332(c)(7)(A)-(B). *Cf. Tillman Infrastructure LLC v. Board of Supervisors of Culpeper County, VA, et. al.*, No 23-1094 (4th Cir. Aug. 13, 2025) (holding that, under a Virginia statute, a locality must approve or disapprove an application within the statutory defined deadline or lose the ability to act at all).

[85] By "covered service" we mean a telecommunications service or a personal wireless service for purposes of section 253 and section 332(c)(7), respectively.

[86] *Small Cell Order*, 33 FCC Rcd at 9091, para. 11.

[87] *Small Cell Order*, 33 FCC Rcd at 9091, para. 11. The Commission found that this requirement applies to "all state and local government fees paid in connection with a provider's use of the right-of-way (ROW) to deploy Small Wireless Facilities including, but not limited to, fees for access to the ROW itself, and fees for the attachment to or use of property within the ROW owned or controlled by the government (*e.g.*, street lights, traffic lights, utility poles, and other infrastructure within the ROW suitable for the placement of Small Wireless Facilities)." *Id*. at 9124, para. 69. The Commission noted that "this interpretation applies with equal force to any fees reasonably related to the placement, construction, maintenance, repair, movement, modification, upgrade, replacement, or removal of Small Wireless Facilities within the ROW, including, but not limited to, application or permit fees such as siting applications, zoning variance applications, building permits, electrical permits, parking permits, or excavation permits." *Id*.

[88] *Small Cell Order*, 33 FCC Rcd at 9091, para. 11. The Commission concluded that "fees at or below the following amounts presumptively do not constitute an effective prohibition under Section 253(a) or Section 332(c)(7), and are presumed to be 'fair and reasonable compensation' under Section 253(c)": $500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional $100 for each Small (continued….)

reasonably tethered to costs appear to violate sections 253(a) or 332(c)(7) . . . ."[89] For example, the Commission noted, "gross revenue fees generally are not based on the costs associated with an entity's use of the ROW, and where that is the case, are preempted under section 253(a)."[90] With respect to the use of third party contractors or consultants, the Commission found that the "fees must not only be limited to a reasonable approximation of costs, but in order to be reflected in fees, the *costs themselves* must also be reasonable."[91] In *City of Portland*, the Ninth Circuit upheld the Commission's determinations on fees, concluding that the Commission reasonably determined that, when localities impose small cell fees that exceed the localities' actual and reasonable costs, those inflated fees have a prohibitive effect on the deployment of small cells nationwide.[92]

42. Subsequent to the *Small Cell Order*, the Wireless Telecommunications Bureau (Bureau) addressed a petition for declaratory ruling requesting preemption of certain recurring fees set forth in a Clark County, Nevada (Clark County) ordinance.[93] In doing so, the Bureau clarified that, pursuant to the *Small Cell Order*, a locality, rather than the petitioner, "has the burden of demonstrating to the Commission why fees above safe harbor levels should not be preempted (assuming that the petitioner has made a *prima facie* case that the fees in question do, in fact, exceed these safe harbor levels)."[94]

43. We seek comment on the extent to which state and local fees continue to impede wireless infrastructure deployment and on whether certain findings in the *Small Cell Order* on fees are equally applicable to larger wireless facilities, such as macro towers. Additionally, we seek comment on whether we should codify the Commission's findings from the *Small Cell Order* and the *Verizon Clark County Dismissal Order*? Should we consider adopting other safe harbors for additional types of fees and/or additional types of wireless infrastructure deployments, such as larger wireless facilities? Should we further define what constitutes reasonable costs? If so, what rules should we consider to help ensure that costs are reasonably limited to the processing of applications and to the use and maintenance of rights of way? Would codifying these clarifications help prevent states and localities from continuing to impose fees that are unlawful under sections 253 and 332(c)(7)?

44. *Application of Economic Principles*. The Commission's clarifications on fees in the *Small Cell Order* stemmed from application of economic principles and its recognition that "infrastructure builders, like all economic actors, have a finite (though perhaps fluid) amount of resources to use for the deployment of infrastructure" and that "fees imposed by localities, above and beyond the recovery of localities' reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere."[95] Moreover, the Commission has recognized the importance of considering the

(Continued from previous page)
Wireless Facility beyond five, or $1,000 for non-recurring fees for a new pole (*i.e.*, not a collocation) intended to support one or more Small Wireless Facilities; and (b) $270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW. *Id*. at 9129, paras. 78-79.

[89] *Small Cell Order*, 33 FCC Rcd at 9124, para. 70.

[90] *Small Cell Order*, 33 FCC Rcd at 9125, para. 70.

[91] *Small Cell Order*, 33 FCC Rcd at 9125, para. 70 (emphasis in original).

[92] *City of Portland*, 969 F.3d at 1038-39.

[93] Petition for Declaratory Ruling that Clark County, Nevada Ordinance No. 4659 is Unlawful Under Section 253 of the Communications Act as Interpreted by the Federal Communications Commission and is Preempted, WT Docket No. 19-230, Order, 36 FCC Rcd 278 (2021) (*Verizon Clark County Dismissal Order*).

[94] *Verizon Clark County Dismissal Order*, 36 FCC Rcd at 280, para. 7. The Bureau also noted that "the [*Small Cell Order*] determined that a local government's fees for the use of public rights-of-way by small wireless facilities can effectively prohibit the ability of an entity to provide telecommunications services, in violation of Section 253(a), even when the petitioner is providing telecommunications service in that local jurisdiction. *Id* at 280-81, para. 8.

[95] *Small Cell Order*, 33 FCC Rcd at 9118-19, para. 60.

"aggregate effects of fees imposed by individual localities."[96] While the Commission's focus in the *Small Cell Order* was on the use of Small Wireless Facilities, we tentatively conclude that its implicit rationale applies with equal force to macro facilities and other wireless facilities. Such facilities continue to be critically important components of wireless network infrastructure nationwide and providers need these facilities to densify their networks and help improve the quality of the services they offer.[97] We seek comment on whether this economic interpretation of our rules could help set a standard for determining when high rights-of-way and other access fees on macro facilities and other wireless facilities would "have the effect of prohibiting" the deployment of 5G networks—as they would raise the cost of service provision above a competitive level and prohibit certain efficient investments.

45. This theoretical grounding supports and flows naturally from the principles the Commission articulated in the *Small Cell Order*,[98] and we seek comment on how to apply them in the context of macro and other wireless facilities—in particular how an economic grounding illuminates the "prohibit or have the effect of prohibiting" language in sections 253 and 332. As noted, section 253 preempts any state or local regulations that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[99] We are interested in understanding this provision from an economic perspective in a manner consistent with the *Small Cell Order*.

46. In particular, we are interested in exploring the fact that states and localities can set prices in a manner that is freed from competitive constraints when setting rights-of-way and other access charges. They therefore can charge rights-of-way fees that are higher than the direct or incremental costs of such access,[100] thereby prohibiting the making of socially beneficial investments. Indeed, all else equal, setting price above incremental costs will tend to lower investment and reduce overall social welfare. The concern over lost investment due to excessive fees for access to rights-of-way or facilities within the rights-of-way is reflected in the Commission's precedent. As the Commission said in the *California Payphone Order* and emphasized again in the *Small Cell Order*, section 253 preempts those "ordinance[s that] materially inhibi[t] or limi[t] the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[101]

47. In competitive markets, prices tend toward marginal or incremental cost resulting in greater consumer welfare. Fees that are closely connected to recovering only direct or incremental costs

[96] *Small Cell Order*, 33 FCC Rcd at 9120, para. 62.

[97] *See* Mike Saperstein, Sen. Vice Pres. Govt. Affairs and Chief Strategy Officer, Wireless Infrastructure Association "Celebrating the Unsung Hero Driving America's Economic Prosperity: Wireless Infrastructure" (Apr. 16, 2024), https://wia.org/celebrating-wireless-infrastructure/; *see also infra* paras. 68-74

[98] Small Cell Order, 33 FCC Rcd at 9115, para. 55.

[99] 47 U.S.C. § 253(a).

[100] The terms "direct cost" and "incremental cost" are similar, but not identical. Economic literature recognizes both concepts, and the Commission's pricing rules in particular incorporate "direct cost" concepts. *See Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, CC Docket No. 87-266, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992); *see also Telephone Company-Cable Television Cross-Ownership Rules*, *Sections 63.54-63.58 and Amendments to Parts 32, 36, 61, 64, and 69 of the Commission's rules to Establish and Implement Regulatory Procedures for Video Dial Tone*, CC Docket No. 87-266, Memorandum Opinion and Order on Reconsideration, and Third Report and Order, 10 FCC Rcd 244, 345-46, paras. 217-220 (1994) (for purposes of the tariff, setting expectation that carriers reflect an allocation of common cost of shared plant).

[101] *California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park California, Pursuant to Section 253(D) of the Communications Act of 1934*, Docket No. CCB Pol 96-26 Memorandum Opinion and Order, 12 FCC Rcd at 14191, 14206, para. 31 (1997); *Small Cell Order*, 33 FCC Rcd at 9093, para. 16.

are generally acceptable under section 253(a), while fees that recover more overhead such as joint and common costs require greater scrutiny. Fees that were set without regard to costs, such as those based on a percentage of a provider's revenue, require the greatest scrutiny. Do commenters agree that fees that exceed the direct or incremental costs of issuing permits for such facilities result in a reduction in infrastructure investment and effectively prohibit the provision of wireless services on that basis?

48. The *Small Cell Order* found fees above and beyond the localities' reasonable costs can result in an effective prohibition of a deployment elsewhere. As part of that determination, should we allow localities to recover some portion of joint and common costs? We note that, with the exception of Ramsey pricing,[102] there is no non-arbitrary methodology for allocating common costs.[103] Economic principles, therefore, can only suggest ranges of acceptable rights-of-way and access fees. Given the lack of clear economic principles for allocating common costs, would allowing recovery of common costs enable localities to load significant common costs on to access fees, such that they would discourage network investment?

49. With respect to macro facilities and other wireless facilities, should the Commission allow localities to recover a portion of their joint and common costs? How do these costs relate to section 253's protection of states' and localities' ability to "require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis?"[104] Given the importance of encouraging the deployment of telecommunications infrastructure, does section 253(c) require the recovery of common costs in excess of those costs directly attributable to, or caused by, the deployment of telecommunications infrastructure within the rights-of-way? We seek comment on what would be an appropriate limiting principle for joint and common costs in the context of macro and other wireless facilities that would be within the scope of this statutory provision and inform the Commission's determination in this proceeding.

50. In particular, would it be helpful for the Commission to define: (1) which types of potential common costs could be recovered from telecom providers; and (2) the portion of common costs that could be recovered from each provider? As far as which types of potential common costs could be recovered, we seek comment on limiting recoverable costs to those that directly and unambiguously benefit the party on which the fee is assessed. As far as the portion of common costs that could be recovered from each provider, we seek comment on suggesting that states and localities employ some measure of usage and/or benefits of cost-imposing activity to determine the portion of common costs recovered from each party benefiting from the activity. We also seek comment on whether and to what extent we should consider cost recovery schemes the Commission has adopted in other contexts to inform our understanding of fees that "ha[ve] the effect of prohibiting" under section 253(a) and fall outside the scope of "fair and reasonable compensation" under section 253(c).[105]

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[102] *See* Frank Ramsey, *A Contribution to the Theory of Taxation*, 37 Econ. J.47 (1927); *see also* Mitchell & Vogelsang, Telecommunications Pricing: Theory and. Practice, Ch. 4 (RAND, 1991).

[103] *See* Stephen Breyer, *Analyzing Regulatory Failure: Mismatches, Less Restrictive Alternatives, and Reform,* 92 Harv. L. Rev. 549, 564 (1979) ("the allocation of joint costs in a competitive market is determined primarily by comparative demand for the final product. The butcher charges less per pound for chicken necks than breasts not because growing a neck requires less grain per pound, but because people want necks less. Thus, allocating joint costs in regulated markets is plagued by the uncertainty surrounding comparative demand.").

[104] 47 U.S.C. § 253.

[105] *See*, *e.g.*, 47 U.S.C. § 224(b) ("the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions"), (d) (providing in the context of pole attachments that "a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the

(continued….)

51. *Preemption of Local Fees*. We are aware that applicants seeking permits to deploy wireless infrastructure facilities continue to face a range of state and local fees that may prohibit or have the effect of prohibiting telecommunications service in violation of sections 253 and 332(c)(7). These state and local fees take the form of initial one-time fees,[106] consulting fees,[107] annual recurring fees,[108] and gross revenue fees.[109] These fees are applicable to permit requests for both Small Wireless Facilities as well as larger wireless facilities, such as macro towers. We tentatively conclude that the following examples are not justified by a state or local government's reasonable costs, and we seek comment on whether the Commission should preempt the local regulations that impose the fees discussed below.[110] In addition to those listed, we also seek comment on other instances where state and local fees may be prohibiting or having the effect of prohibiting covered services.

One-time Fees:

- The City of San Francisco, California: Application fee of $6,874 and a surcharge of $120 for a total of $6,994;[111]

(Continued from previous page)
entire pole, duct, conduit, or right-of-way."); *Moratoria Order*, 33 FCC Rcd 7705, 7767-71, paras. 123-129 (revising rules to address rate disparities between incumbent LECs and similarly-situated telecommunications carriers and cable television systems); *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5442-43, paras. 4-7 (2011) (describing history leading up to the adoption of Section 224 of the Act and noting Congress's recognition of public utilities' ability to extract unreasonably high pole attachment rates).

[106] Many localities require applicants to pay a fee when submitting an application, which can be referred to as an "application," "building permit," "special use," or "zoning" fee. The cumulative effect of these fees can be especially burdensome for wireless providers seeking to deploy at multiple sites within the same locality. In some cases, these initial one-time fees do not appear to be tailored to specific site conditions or to the size or the characteristics of the proposed facility.

[107] A specific kind of initial one-time fee is assessed for the purpose of retaining consultants. At least some consultant fees do not appear to be cost-based. Some local permitting authorities impose upfront consultant fees before they will start processing an application. These fees can be thousands of dollars, and it appears that these charges can potentially increase unpredictably over the course of a project's review as consultants have no incentive to limit costs.

[108] Some local permitting authorities appear to impose annual non-cost-based recurring fees. These fees are typically yearly fees for wireless facilities located in public rights-of-way. These annual fees can be in addition to up-front application and permitting fees. It appears that these annual fees can add substantially to the ongoing costs of deploying larger facilities that use public rights-of-way to provide network coverage and capacity.

[109] Gross revenue fees are generally not based on a locality's reasonable costs or the number or type of facilities that are deployed in the public rights-of-way. Instead, gross revenue fees are calculated based on the applicant's revenues and, by definition, these types of fees do not appear to be cost-based. We are encouraged that certain localities have recently updated their fee schedules to remove gross revenue fees for wireless providers. *See* Letter from Nancy L. Werner on behalf of the Cities of Lake Oswego and West Linn, Oregon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 25-276 (filed Sept. 22, 2025) at 1-2 (noting that the cities of West Linn and Lake Oswego, Oregon have updated fee ordinances—on Sept. 8 and 15, respectively–and that neither city imposes revenue-based fees on wireless providers.) Below we seek comment on other instances of gross revenue fees that may be prohibiting or having the effect of prohibiting covered services. *See* Letter from Stephen Keegan, Sr. Counsel, Govt. and Legal Affairs, WIA-The Wireless Infrastructure Association to Marlene H. Dortch, Secretary, FCC, WT Docket No. 25-276 (filed Sept. 26, 2025) (identifying regulations imposing gross revenue fees on wireless providers for access to rights-of-way).

[110] *See* 47 U.S.C. § 253(d).

[111] The City of San Francisco, California, San Francisco Planning, Fee Schedule at 8, Effective Aug. 30, 2024, updated July 1, 2025, https://sfplanning.org/sites/default/files/forms/Fee_Schedule.pdf (last visited Sept. 4, 2025).

- City of San Diego, California: Fees ranging from more than $13,000 to more than $16,000 in addition to other fees to cover an "environmental initial study" and an "historic resources review";[112]
- County of San Diego, California: Initial deposit plus fee ranging from more than $9,000 to more than $19,000 depending on type of facility;[113]
- Gwinnett County, Georgia: Application fee of $6,000 for communication towers greater than 50 feet in height;[114]
- Grant County, New Mexico: Application fee of $17,500 for a new tower and a $9,000 application fee for collocation on an existing tower or modification of existing facilities;[115]
- Rio Rancho, New Mexico: Application fee up to $15,000 for a new tower and $8,000 for collocation or substantial change;[116]
- Putnam Valley, New York: Building permitting fee of up to $5,000 per linear foot in height for a new tower plus a $3,000 fee for each antenna collocated on the tower;[117]
- Marion, North Carolina: Application fee of $5,000 for a new wireless tower plus an additional $15,000 fee for new towers to be located in the downtown district;[118]
- Portland, Oregon: Conditional use fee of $6,251 or $9,315 (depending on location), plus additional fees for design review, environmental review, greenway review, and/or historic resource review that can exceed $20,000 in total;[119] and
- Thurston County, Washington: Base application fee of $25,776 (includes community planning and economic development, environmental health, and public works development review).[120]

[112] The City of San Diego, California, Development Services, Wireless Communications Facilities (WCFs), Information Bulletin 536, May 2025, § VIII Fees, https://www.sandiego.gov/development-services/forms-publications/information-bulletin/536 (last visited Sept. 4, 2025).

[113] San Diego County, California, Major Use Permit: Modifications Tier 4 (Wireless Facility), Effective July 1, 2025, https://www.sandiegocounty.gov/content/dam/sdc/pds/zoning/formfields/PDS-PLN-ESUB_MUP_MOD_TIER_4_WIRELESS.pdf (last visited Sept. 4, 2025).

[114] Gwinnett County, Georga, Planning and Development, Fee Schedule at 2, Effective July 1, 2024, https://www.gwinnettcounty.com/static/departments/planning/pdf/fees/fee-schedule.pdf (last visited Sept. 4, 2025).

[115] County of Grant, New Mexico, Resolution No. R-23-20, Wireless Telecommunications Facilities Fees Establishment, Adopted and Approved Apr. 13, 2023, https://grantcountynm.gov/DocumentCenter/View/822/R-23-20-Wireless-Telecommunications-Facilities-Fees-Establishments-exec, (lasted visited Sept. 4, 2025).

[116] Rio Rancho, New Mexico, Rio Rancho Municipal Code, Chapter 158, Wireless Telecommunications Facilities, § 158.13, The Rio Rancho Municipal Code is current through Ordinance 25-08, passed Mar. 27, 2025, https://www.codepublishing.com/NM/RioRancho/#!/RioRancho150/RioRancho158.html (last visited Sept. 4, 2025).

[117] Town of Putnam Valley, New York, Building Department, Building Department 2025 Fees at 2, https://www.putnamvalley.gov/building-department-fees/ (last visited Sept. 4, 2025).

[118] City of Marion, North Carolina, Fee & Rate Schedule, 2025-2026, Effective July 1, 2025, https://www.marionnc.org/DocumentCenter/View/1127/2025-2026 (last visited Sept. 4, 2025).

[119] The City of Portland, Oregon, Personal Wireless Service Facilities Land Use Review Fee Schedule, https://www.portland.gov/ppd/commercial-permitting/rf-transmission-facilities/wireless-land-use-fees (last visited Sept. 4, 2025).

[120] Thurston County, Washington, 2025 Thurston County, Land Use Application Fee Schedule at 8, Updated Apr. 1, 2025, https://s3.us-west-2.amazonaws.com/thurstoncountywa.gov.if-us-west-2/s3fs-public/2025-03/cped-permitting-2025-Land-Use-Fee-Schedule.pdf (last visited Sept. 4, 2025).

Consulting Fees:

- Oyster Bay, New York: Regulation that requires an applicant to maintain an escrow account with a balance of between $2,500 and $5,000 to reimburse the town for consultant costs;[121] and
- Walkersville, Maryland: Regulation that requires an expert assistance fee of no less than $7,500 for a new tower, support structure, or a substantial modification.[122]

Recurring Fees:

- Phoenix, Arizona: Annual recurring fees for public rights-of-way use for macro facilities that range from more than $4,000 to more than $27,000 depending on the size of ground equipment that is installed at the site;[123] and
- Scottsdale, Arizona: Annual recurring fee for public rights-of-way use for macro facilities that ranges from more than $7,000 to more than $30,000 depending on the size of ground equipment installed.[124]

Gross Revenue Fees:

- Ashland, Oregon: Except for limited use telecommunications grantees, imposing minimum quarterly right-of-way usage fee equaling a percent of the grantee's gross revenues derived from grantee's provision of telecommunications services and telecommunications facilities to retail customers in the City and one percent (1%) on all other gross revenues derived from grantee's provision of telecommunications services and telecommunications facilities to wholesale customers in the City;[125]
- Ogden City, Utah: Providing that unless a wireless provider is subject to the Municipal Telecommunications License Tax under title 10, chapter 1, part 4 Utah Code Annotated, for the right to use and occupy the right-of-way the wireless provider shall pay to the City an annual fee equal to the greater of: 3.5 percent of all annual gross revenue related to the wireless provider's use of the right-of-way within the City or two hundred fifty dollars ($250.00) annually for each small wireless facility located in the City;[126]
- St. George, Utah: Imposing an annual right of way usage fee equal to the greater of: (1) three and one-half percent (3.5%) of a wireless provider's gross revenues related to wireless provider's use of the public way, or (2) two hundred fifty dollars ($250.00) per small wireless facility;[127] and
- Lake Forest, Illinois: Imposing a city telecommunications infrastructure maintenance fee upon all telecommunications retailers in the amount of 1.0% of all gross charges charged by the

[121] Oyster Bay, New York, Municipal Code § 242-13, https://ecode360.com/32592542.

[122] Walkersville, Maryland, Municipal Code § 86-18, https://ecode360.com/38498797#38499063.

[123] Phoenix, Arizona, Phoenix Row Fees (002), July 1, 2024 to June 30, 2025, Annual Fees for Wireless Communications Facilities in the ROW at 1, https://acrobat.adobe.com/id/urn:aaid:sc:US:79dcce61-271f-415c-b07b-64b2a2bca4b6?viewer%21megaVerb=group-discover (last visited Sept. 4, 2025).

[124] City of Scottsdale, Arizona, Annual Fees For SWF & WCF In The Right-Of-Way, Official Schedule of City of Scottsdale Rates and Fees, Effective July 1, 2025, at 20, https://www.scottsdaleaz.gov/docs/default-source/scottsdaleaz/planning---develpment/fees-fy25-26/annual-fees-for-swf-wcf-in-the-right-of-way.pdf?sfvrsn=950b12b4_4 (last visited Sept. 4, 2025).

[125] City of Ashland, Oregon, Municipal Code § 16.24.070, https://ashland.municipal.codes/AMC/16.24.070.

[126] Ogden City, Utah, Municipal Code § 7-19-12, https://codelibrary.amlegal.com/codes/ogdencityut/latest/ogdencity_ut/0-0-0-12959.

[127] St. George, Utah, Municipal Code, § 7-7-7, https://stgeorge.municipal.codes/Code/7-7-7.

telecommunications retailer to service addresses within the city for telecommunications originating or received in the city.[128]

52. For the four categories of fee regulations provided above we seek comment on our tentative conclusion that we should preempt these provisions because these fee regulations prohibit or have the effect of prohibiting the ability of wireless service providers to provide covered service.[129] These fees do not appear to represent a reasonable approximation of the local permitting authority's reasonable costs.[130] For example, some are assessed at a flat rate and, thus, do not appear to reflect the specifics of individual applications, such as the conditions at the particular site or the size and other characteristics of the proposed facility.

53. To the extent these fees are applicable to Small Wireless Facilities, they do not appear to comply with the Commission's safe harbor fee levels,[131] and are unlikely to be based on the costs associated with an entity's use of the public rights-of-way.[132] For those that apply to larger wireless facilities, such as macro towers, the cumulative effect of these fees on macro towers can constrain providers' capital budgets and limit their ability to upgrade and improve their networks, similar to Small Wireless Facilities.[133] Accordingly, we seek comment on whether we should preempt the local fee regulations listed above for both Small Wireless Facilities and other wireless facilities as violating sections 253(a) and 332(c)(7).

54. Commenters advocating for preemption of such fees should provide evidence and documentation demonstrating that these fees prohibit or have the effect of prohibiting covered service and demonstrating that these fees are not based on the locality's reasonable and actual costs. Commenters who support these fees should explain why the Commission should not preempt these fees.[134] They should provide evidence or documentation that: (1) these fees represent a reasonable approximation of the locality's costs and that the costs themselves are reasonable;[135] and (2) that these fees are reasonably related to the management of public rights-of-way or the fees represent fair and reasonable compensation on a competitively neutral and nondiscriminatory basis for use of public rights-of-way.[136]

55. Are there other local permitting authorities that are imposing regulatory fees that mirror the fees cited above? If so, commenters should provide cites to these regulations, explain why the Commission should preempt these fees, and provide a legal rationale supporting their position, for example, that the fees are an effective prohibition of covered services and/or are not fair and reasonable.[137]

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[128] Lake Forest, Illinois, Municipal Code, § 39.107, https://codelibrary.amlegal.com/codes/lakeforest/latest/lakeforest_il/0-0-0-2089.

[129] Section 253(d) requires the Commission, after public notice and comment, to preempt state and local regulations that violate section 253(a). 47 U.S.C. § 253(d).

[130] *Small Cell Order*, 33 FCC Rcd at 9091, para. 11.

[131] *Small Cell Order*, 33 FCC Rcd at 9091, 9129, paras. 11, 78-79.

[132] *Small Cell Order*, 33 FCC Rcd at 9125, para. 70; *see also Verizon Clark County Dismissal Order*, 36 FCC Rcd at 281, para. 9 (stating that, "a particular revenue-based fee that exceeds the Commission's safe harbor levels would violate Section 253 unless the locality can demonstrate that the fee nonetheless represents a reasonable approximation of the locality's costs and meets the other Commission criteria.")

[133] *Small Cell Order*, 33 FCC Rcd at 9120, para. 62.

[134] *Verizon Clark County Dismissal Order*, 36 FCC Rcd at 280, para. 7.

[135] *Verizon Clark County Dismissal Order*, 36 FCC Rcd at 281, para. 9.

[136] *See Bluebird Order*, 35 FCC Rcd 12811.

[137] *See* 47 U.S.C. §§ 253(a), (c), 332(c)(7)(B)(i)(II).

4. Aesthetic Requirements

56. In 2018, the Commission found that aesthetic regulations for Small Wireless Facilities significantly impacted the ability to deploy wireless infrastructure.[138] The Commission stated that "[l]ike fees, compliance with aesthetic requirements imposes costs on providers, and the impact on their ability to provide service is just the same as the impact of fees."[139] The Commission concluded that, to be permissible under section 332, aesthetic requirements had to be reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance.[140]

57. In *City of Portland*, the Ninth Circuit upheld the Commission's ruling that local aesthetic regulations be "reasonable," and left in place the requirement that such regulations be "published in advance."[141] The court vacated the requirement that local aesthetic regulations for Small Wireless Facilities be "no more burdensome" than those imposed on "other types of infrastructure deployments" because it found this requirement to "depart[] from . . . Section 332 in at least two critical ways.'"[142] First, the court found that the Commission's standard did "not permit even reasonable regulatory distinctions among functionally equivalent, but physically different services."[143] Second, the Commission's standard "require[d] the comparison of the challenged aesthetic regulation of 5G deployments to the regulation of any other infrastructure deployments, while the statute only requires a comparison with the regulation of functionally equivalent infrastructure deployments."[144]

58. Against this backdrop, we seek comment on whether the Commission should clarify what constitutes unreasonable discrimination in the siting of wireless facilities and whether certain state and local aesthetic requirements unreasonably discriminate against wireless facilities. Are such requirements unreasonably limiting the deployment of wireless infrastructure, including the deployment of Small Wireless Facilities as well as larger macro towers and other wireless facilities? Do parties seeking to deploy wireless infrastructure facilities frequently encounter state or local aesthetic regulations that unreasonably impose requirements on the deployment of wireless facilities that are more burdensome than those imposed on functionally equivalent infrastructure deployments? If so, we ask commenters to provide specific examples of such requirements and the consequences for wireless infrastructure deployment.

59. We also seek comment on the appropriate standard for detecting unreasonable discrimination and whether to adopt that standard into our rules. Does the *City of Portland* decision provide sufficient certainty about the scope of permissible distinctions in state and local permitting

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[138] *Small Cell Order*, 33 FCC Rcd at 9132, para. 86. The Commission discussed aesthetic requirements in the context of Small Wireless Facility deployments. *Id*. at 9130, para. 81; *see also* 47 CFR § 1.6002.

[139] *Small Cell Order*, 33 FCC Rcd at 9132, para. 87.

[140] *Small Cell Order*, 33 FCC Rcd at 9132, para. 86.

[141] *City of Portland*, 969 F.3d at 1041-42.

[142] *City of Portland*, 969 F.3d at 1041. Section 332(c)(7)(B)(i)(I) provides that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services." 47 U.S.C. § 332(c)(7)(B)(i)(I).

[143] *City of Portland*, 969 F.3d at 1041.

[144] *City of Portland*, 969 F.3d at 1041. The court stated that the Communications Act "permits some difference in the treatment of different providers, so long as the treatment is reasonable" and that to "establish unreasonable discrimination, providers 'must show that they have been treated differently from other providers whose facilities are similarly situated in terms of the structure, placement or cumulative impact as the facilities in question.'" *City of Portland*, 969 F.3d at 1040 (citing *MetroPCS, Inc. v. City & County of San Francisco*, 400 F.3d 715, 727 (9th Cir. 2005)). The court also found that the requirement that local aesthetic regulations be "objective" was "neither adequately defined nor its purpose adequately explained." *City of Portland*, 969 F.3d at 1043.

requirements generally and aesthetic regulations in particular? What costs and resources would providers need to expend to make a showing under the Ninth Circuit standard? Are there other factors that should be considered in determining whether discrimination is unreasonable in the context of a permitting authority's aesthetic requirements for wireless infrastructure?[145]

5. Regulatory Impediments

60. As we describe below, we continue to have concerns that state and local authorities are adopting regulations that impede the deployment of new and high quality services, and thereby could be in violation of the Telecommunications Act and Commission rules. In this section, we address the use of siting regulations for the unlawful regulation of radiofrequency (RF) emissions, the negative impact of conditional use permits on the provision of service, and the continued imposition of *de facto* moratoria by local authorities on wireless providers in violation of the Commission's *Moratoria Order*. We also reaffirm our position that restrictions which prohibit densifying or upgrading wireless networks result in an effective prohibition of service. Further, we seek comment on how state and local regulations on AI may be an effective prohibition on wireless providers' ability to provide service using AI technologies.

61. *Setbacks and Radio Frequency Emissions.* Our research shows that some localities adopted ordinances restricting the placement and manner of infrastructure deployment (e.g., through setback provisions and pole height requirements) for the purpose of limiting human exposure to RF emissions.[146] Other localities require that service providers pay for third-party randomized testing of RF emissions, regardless of whether there is any objective basis to suspect the tower or antennas may have become out of compliance with the Commission's RF emissions rules.[147] We seek comment regarding any additional scenarios of RF emissions regulation where state and local authorities add barriers to the

[145] *See, e.g.*, *Gulfstream Towers, LLC, v. Brevard County*, No. 24-11648 (11th Cir. Aug. 13, 2025) (holding that subjective opinions based on aesthetic concerns are insufficient grounds to deny a permit).

[146] *See, e.g.*, Alyse DiNapoli, *San Mateo wireless ordinance moves ahead*, The Daily Journal (Nov. 1, 2024) https://www.smdailyjournal.com/news/local/san-mateo-wireless-ordinance-moves-ahead/article_c2161aa4-97ee-11ef-903c-6f8611a3377e.html (describing how the San Mateo, CA city council proposes to "designate certain restricted areas, which will mandate setbacks of small cells anywhere within 300 feet of a housing unit, day care facility or school structure."); and Katherine Simpson, *Los Altos council finally passes wireless ordinance, reviews new budget*, Los Altos Town Crier (June 21, 2022), https://www.losaltosonline.com/news/los-altos-council-finally-passes-wireless-ordinance-reviews-new-budget/article_2152c61e-f1bd-11ec-825a-1fda31e7257e.html; *see also* State of New Hampshire, *Final Report of the Commission to Study The Environmental and Health Effects of Evolving 5G Technology*, at 13 (Nov. 2020), https://gc.nh.gov/statstudcomm/committees/1474/reports/5G%20final%20report.pdf (recommending that the New Hampshire legislature adopt rules requiring that "that any new wireless antennae located on a state or municipal right-of-way or on private property be set back from residences, businesses, and schools" in order to reduce citizen exposure to 5G emissions).

[147] *See, e.g.*, Fountain Hills, AZ, Fountain Hills Zoning Ordinance, Ch. 17 § 17.08.B.2.b. ("*Random RF Radiofrequency Testing*. At the operator's expense, the Town may retain an engineer to conduct random unannounced RF radiation testing of such wireless facilities to ensure the facility's compliance with the limits codified within 47 CFR § 1.1310(e)(1) *et seq*. The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one (1) test per facility per calendar year unless such testing reveals that one (1) or more of the owner and/or operator's facilities are exceeding the limits codified within 47 CFR § 1.1310(e)(1) *et seq*.[.]"); City of Ithaca, NY, Code of Ithaca, NY, Ch. 32 § 325-29.18.C.(2)-(3) ("The owner or operator of PWSF shall provide for and conduct an inspection of radio frequency radiation at least once annually by a licensed radio frequency engineer." "The City shall have the right to employ a qualified RF engineer to conduct an annual random and unannounced test of PWSF [Personal Wireless Service Facility] and small cell wireless installations located within the City to certify their compliance with all FCC radio-frequency emission limits as they pertain to exposure to the public. The reasonable cost of such tests shall be paid by the carriers as a pro rata percentage based on the carrier's total number of PWSF installed within the City and the total number of PWSF installations within the City.").

deployment of communications facilities. Commenters should provide descriptions of such barriers and evidence of the material impacts upon the cost and timing of facility deployment.

62. The Commission has exclusive authority to set RF emissions limits.[148] Section 332(c)(7)(B)(iv) specifically prohibits state and local jurisdictions from regulating deployments based on RF emissions "to the extent that such facilities comply with the Commission's regulations concerning such emissions."[149] Accordingly, we seek comment on whether the Commission should preempt, under sections 253(a) and (d) and section 332(c)(7)(B)(iv), these specific state and local ordinances (including setback regulations) as unlawful regulation of RF emissions. Are there other specific examples of such restrictions that the Commission should consider preempting? Should the Commission adopt a rule prohibiting state and local government regulation of RF emissions which involve setback requirements or establish limits on state and local requirements for RF testing? We seek comment on additional actions the Commission can take to prevent the use of state and local authority to regulate the placement, construction, and modification of wireless facilities for unlawful purposes such as RF emissions concerns.

63. *Conditional Use Permits.* Outside of the context of facilities eligible for section 6409 preemptive relief, some states and localities grant applications to build or install wireless communications facilities under a conditional use permit (CUP) with conditions, including time-limited provisions.[150] Under time-limited CUP approvals, once initial approvals have expired, some localities treat renewals as opportunities to impose new conditions on previously approved facilities, resulting in significant costs for service providers. We seek comment on whether state and local conditional CUPs are effectively prohibiting the provision of covered services under sections 253 and 332(c)(7) when they apply to facilities that not are eligible for preemptive relief under section 6409.

64. In Ventura County, California, for example, providers requesting permit extensions must "replace or upgrade existing equipment when feasible to reduce the facility's visual impacts and improve

[148] *See* Telecommunications Act of 1996, Pub. L. No. 104-104, § 704(b), 101 Stat. 56, 152 (directing Commission to "prescribe and make effective rules regarding the environmental effects of radio frequency emissions"); 47 U.S.C. § 332(c)(7)(B)(iv) (recognizing Commission's predominant role in regulating RF emissions by proscribing state and local regulation of placement, construction, and modification of FCC-compliant personal wireless service facilities based on environmental effects of such RF emissions); *see also Fontana v. Apple, Inc. et al.,* 321 F.Supp.3d 850, 852 (W.D. Tenn. N.E. Div. 2018) (c*iting Robbins v. New Cingular Wireless LLC*, 854 F.3d 315, 319-20 (6th Cir. 2017) ("By delegating the task of setting RF-emissions levels to the FCC, Congress authorized the federal government—and not local governments—to strike the proper balance between protecting the public from RF-emissions exposure and promoting a robust telecommunications infrastructure."); *Farina v. Nokia, Inc.*, 625 F.3d 97 (3d Cir. 2010) (FCC regulation of health effects of cell phone RF emissions preempted state lawsuit alleging adverse health effects from FCC-compliant cell phone RF emissions); 47 CFR §§ 1.1307(b), 2.1091, and 2.1093. In addition, our rules contain power and emission limits as part of the technical rules associated with specific types of radio services and authorizations. *See, e.g.,* 47 CFR §§ 15.209, 24.232, and 90.1323.

[149] 42 U.S.C. § 332(c)(7)(B)(iv) ("No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.").

[150] Some jurisdictions may call these Special Use Permits or Special Exceptions. For example, the CUP provisions in Wisconsin's State Code provide that "a conditional use permit shall remain in effect as long as the conditions upon which the permit was issued are followed, but the county may impose conditions such as the permit's duration, transfer, or renewal, in addition to any other conditions specified in the zoning ordinance or by the county zoning board." Wis. Stat. § 59.69(5e)(d). *See also* Wis. Stat. § 60.61(4e)(d) and 62.26(7)(de). The California Code provides that a city or county shall not "unreasonably limit the duration of any permit for a wireless telecommunications facility." Cal. Gov. Code § 65964(b). It also states that "[l]imits of less than 10 years are presumed to be unreasonable absent public safety reasons or substantial land use reasons. However, cities and counties may establish a build-out period for a site." Cal. Gov. Code § 65964(b).

land use compatibility."[151] In Carlsbad, California, upon a request for an extension of a CUP, the city will review whether the existing facility's design continues to meet certain criteria.[152] Do state and local CUPs and regulations relating to the extension of such permits, like the examples here, result in the effective prohibition of the provision of covered service? How frequently do localities change the permitting requirements and what are the costs to service providers and tower owners of these changes? What are some examples of new conditions that localities have imposed at CUP renewals? Are infrastructure providers being required to change the design of their facilities to accommodate the locality's updated aesthetic preferences?[153] Do the unpredictable costs of CUP renewal requirements discourage the deployment of needed infrastructure?

65. Are the burdens associated with these types of provisions significant enough to warrant Commission preemption under section 253(d)? We seek comment on whether we should preempt the specific local regulations listed above and whether they prohibit or have the effect of prohibiting covered service. If we preempt state and local CUP regulations, how can we ensure that the range of preempted conditions is tailored to avoid broadly preempting CUPs altogether? For example, should we preempt durational limitations? Should we permit durational limitations only if changes in permit conditions are limited to legitimate safety concerns and do not include new aesthetic limitations on existing facilities? Should we permit new conditions to be imposed on previously approved facilities when a natural disaster has altered the terrain thereby requiring the new condition? Alternatively, or in addition to preemption under section 253(d), should the Commission adopt a rule addressing CUPs and the scope of appropriate renewal conditions?

66. *Moratoria.* In its 2018 *Moratoria Order*,[154] the Commission concluded that "state and local moratoria on telecommunications services and facilities deployment are barred by section 253(a) of the Communications Act because they 'prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.'"[155] The Declaratory Ruling gave a brief summary of ways in which state and local governments impose moratoria on construction,[156] and found that moratoria fall into two categories, express and *de facto*, both of which are presumptively prohibited under section 253(a).[157] Express moratoria are those restrictions "that expressly, by their very terms, prevent or suspend the acceptance, processing, or approval of applications or permits necessary for deploying telecommunications services and/or facilities."[158] *De facto* moratoria are state and local actions "not formally codified by state or local governments as outright prohibitions but . . . by their operation, prohibit or have the effect of prohibiting deployment of telecommunications services and/or

[151] Ventura County, CA Ventura County Code of Ordinances Div. 8, Ch. 1.1, Art. 5 § 8175-5.20.14.

[152] City of Carlsbad, Council Policy Statement—Wireless Communication Facilities at 25 (Dec. 14, 2021), https://records.carlsbadca.gov/WebLink/DocView.aspx?id=5160838&dbid=0&repo=CityofCarlsbad&cr=1 (the "city will review the appropriateness of the existing facility's design, and that the applicant documented that the [wireless facility] maintains the design that is the smallest, most efficient, and least visible and that there are not now more appropriate and available locations for the facility, such as the opportunity to collocate or relocate to an existing building.").

[153] For example, might a facility previously required to look like a palm tree be required at renewal of the CUP to be redesigned to look like a different type of tree? Or might a facility previously covered by a shroud required to be redesigned to look like a tree?

[154] *Moratoria Order*, 33 FCC Rcd 7705.

[155] *Moratoria Order*, 33 FCC at 7707, para. 4 (quoting 47 U.S.C. § 253(a)).

[156] *Moratoria Order*, 33 FCC at 7777, para. 143.

[157] *Moratoria Order*, 33 FCC at 7777, para. 144.

[158] *Moratoria Order*, 33 FCC at 7777, para. 145.

telecommunications facilities."[159] The difference between *de facto* moratoria and state and local actions that simply result in delay is one of degrees. An action becomes a *de facto* moratorium when it results in delay that is so unreasonable or indefinite that it discourages the filing of applications or prevents carriers from deploying facilities.[160]

67. Despite the Commission's adoption of the *Small Cell Order* and the *Moratoria Order*, state and local governments continue to engage in the practice of moratoria. For example, temporary bans on 5G deployments have been adopted by Keene, NH,[161] Hawaii County, HI,[162] and Easton, CT.[163] Although not a ban, Farragut, TN passed a resolution asking states and the federal government to take the lead in halting 5G deployments until the FCC conducts a study of the possible health risks of 5G.[164] We seek comment on whether these local ordinances meet the existing definition of moratoria or otherwise violate section 253(a) and section 332(c)(7) because they appear to prohibit or have the effect of prohibiting wireless service and do not appear to meet the requirements of section 253(b) and (c). We ask commenters to provide additional information about whether express or *de facto* moratoria continue to exist in state or local ordinances. For example, do localities impose setbacks of such size or frequency that they function as *de facto* moratoria?

68. If these specific resolutions remain in effect, should we preempt these resolutions under section 253(d)? Are there other examples of resolutions we should consider preempting? Should the Commission address either *de facto* or express moratoria through adoption of rules? What other actions should the Commission take to address the continued existence of these moratoria?

69. *Deployment and Densification of New and High Quality Services*. The continued deployment of new and high quality services is a cornerstone of the Communications Act and integral to the provision of telecommunications services. When Congress comprehensively amended the Communications Act in the Telecommunications Act of 1996 (1996 Act) and adopted sections 253 and 332(c)(7), its stated goal was to promote competition, improve service quality, and enable the rapid deployment of new technologies.[165] Section 706(a) of the 1996 Act, which exhorts the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans," informs the Commission's exercise of its statutory authority under sections 253 and 332(c)(7)."[166]

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[159] *Moratoria Order*, 33 FCC at 7780, para. 149.

[160] *Moratoria Order*, 33 FCC at 7781, para. 150.

[161] Sierra Hubbard, *City Council approves temporary 5G ban in Keene*, The Keene Sentinel (Mar. 6, 2020), https://www.keenesentinel.com/news/local/city-council-approves-temporary-g-ban-in-keene/article_1341857d-4c7c-5fb4-ab27-70d8e5b9d131.html.

[162] Inside Towers, The Big Island Calls a Halt to 5G (July 27, 2020), https://insidetowers.com/cell-tower-news-the-big-island-calls-a-halt-to-5g/.

[163] Hector Ramirez, *Easton bans 5G technology roll out citing lack of research, testing*, News 8 (May 20, 2020), https://www.wtnh.com/news/technology/easton-bans-5g-technology-rollout-citing-lack-of-research-testing/.

[164] WBIR Staff, *Farragut leaders call on state, federal governments for halt to 5G towers*, 10 News (May 15, 2020), https://www.wbir.com/article/news/local/farragut-leaders-call-on-state-federal-governments-for-halt-to-5g-towers/51-09909f8c-3ef2-4b35-83a0-127e33b48390.

[165] Preamble to the Telecommunications Act of 1996 (1996 Act), Pub. Law. No. 104-104, 110 Stat. 56, 56.

[166] 1996 Act § 706, 110 Stat. at 153, *codified at* 47 U.S.C. § 1302. The statute defines advanced communications capability as "the "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology," regardless of "transmission media or technology." 47 U.S.C. § 1302(d)(1).

70. 5G is the fastest growing segment of the wireless industry and these 5G networks integrate voice services as well as new and evolving services such as video, mobile gaming, and telehealth. Consequently, service providers need to continue to grow their network capacity to meet demand.[167] However, there are a limited number of ways to increase capacity: acquire more spectrum; develop and deploy more advanced and efficient technology; or, reuse existing spectrum through network densification. Spectrum is a finite resource with many users and use cases, each with unique demands. And while technological advancements in efficient network management are vital, they are unpredictable. Therefore, in a spectrum constrained environment, densification, which permits the efficient reuse of spectrum, is more important than ever to satisfy increasing demand.

71. It is with this context that we turn to the preemption provisions of the Communications Act in the context of deployment densification and enhanced capacity for covered services. Under sections 253 and 332(c)(7), state and local laws may not "prohibit or have the effect of prohibiting the provision of" telecommunications services or personal wireless services.[168] At the core of providing new and high quality services is the need to densify networks. Here, the term "densification" refers to the build-out of facilities in support of 5G services. Such services are reliant upon the siting of additional antennas, including macro sites and small wireless facilities, that can transmit frequency signals that travel short distances and efficiently reuse finite spectrum resources to provide higher bandwidth applications.[169] Densification enhances capacity and speed, which are necessary to manage growing network congestion.[170] A local regulation blocking or delaying network deployments that provide access

[167] CTIA reports that in 2024 5G devices accounted for nearly half of wireless connections, up from 39% from the previous year, and that for the third year in a row, 99% of new home broadband subscribers chose 5G. CTIA states that 5G market penetration is projected to increase by 1.7 times by 2028. CTIA, 2025 Annual Survey Highlights at 4, 6, https://www.ctia.org/news/2025-annual-survey-highlights; *see also 2024 Communications Marketplace Report*, GN 24-119, 39 FCC Rcd 14116, 14170 (Dec. 31, 2024) (noting that monthly data usage per smartphone subscriber rose to an average of 15.5 GB per subscriber per month in 2023, an increase of approximately 11% from year-end 2022 to year-end 2023)..

[168] 47 U.S.C. §§ 253(a), 332(c)(7). "[C]onsistent with the basic canon of statutory interpretation that identical words appearing in neighboring provisions of the same statute generally should be interpreted to have the same meaning[,]" the effective prohibition standard appearing in 47 U.S.C. § 253(a) applies equally to the effective prohibition language of 47 U.S.C. § 332(c)(7). *Small Cell Order*, 33 FCC Rcd at 9104, para. 36.

[169] *See, e.g.*, Letter from Brett Haan, Principal, Deloitte Consulting, U.S., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Sept. 17, 2018) ("Significant investment in new network infrastructure is needed to deploy 5G networks at-scale in the United States. 5G's speed and coverage capabilities rely on network densification, which requires the addition of towers and small cells to the network. . . . This requires carriers to add 3 to 10 times the number of existing sites to their networks. Most of this additional infrastructure will likely be built with small cells that use lampposts, utility phones, or other structures of similar size able to host smaller, less obtrusive radios required to build a densified network." (citation omitted)); *see also* Deloitte LLP, 5G: The Chance to Lead for a Decade (2018) (Deloitte 5G Paper), https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-5gdeployment-imperative.pdf; *see also City of Pasadena*, 76 F.4th at 430. ("[T]he higher radio frequencies used for 5G communications cannot easily pass through buildings and can only travel short distances. As a result, telecommunications providers have begun using 'small cell sites' placed close together to relay signals in an umbrella-esque pattern to provide similar coverage by relaying signals further distances and around obstacles. Unlike the infrastructure required for older networks, the small cell sites can be installed on utility poles, buildings, streetlights, and other structures. Such a buildout of small cells is referred to as 'densification.'").

[170] 5G networks provide higher speeds and lower latency than previous generations of network technology. 5G networks achieve these improvements through the use of technologies like Massive Multiple-Input, Multiple-Output (MIMO) antennas and by utilizing mid and high band frequency bands that support greater bandwidth but do not propagate as far as low band frequencies. This allows 5G networks to address large demands for capacity, even in densely crowded areas like urban environments or special events, whereas earlier generations struggle to manage network congestion. However, because mid and high band frequency bands do not propagate as far as low band frequencies, the networks require more antennas in a dense distribution in order to function.

to new and high quality services does not merely govern the "placement" of antennas, it prevents the provision of the level of service Congress intended the Communications Act to protect. It follows, then, that section 253's and 332(c)(7)'s preemption of local measures that effectively prohibit the provision of covered service must necessarily protect a provider's right to upgrade their network through densification in order to ensure the continued provision of high quality telecommunications services and personal wireless services.

72. Jurisdictions that prohibit densification—for example, by requiring that a coverage gap exists—overlook that 5G is a different technology with unique features and benefits that make it well-suited to meet demands for modern communications. Preventing the densification of 5G networks can have a significant effect on the functionality of telecommunications and personal wireless services, which are integrated on 5G devices. Indeed, access to these new technologies are central to public safety and emergency services such as transmission of 911 calls or other emergency traffic when a network is congested or service is at least partially disrupted. 5G networks can provide critical communications needs—including better call reliability and management of network congestion— for first responders during tragic events such as natural disasters or mass shootings when communications needs surge and time is of the essence.[171] While prior generations of wireless technology may become overloaded in such circumstances—leading to audio distortions, delays in connecting calls, or dropped calls[172]—5G networks can minimize or eliminate these problems and help people reach first responders and family members during emergencies. State and local restrictions that prevent densification can pose a real and substantial risk to public safety. In a technology-driven sector, the inability to timely densify a network can lead to network degradation and can effectively prohibit these important covered services.

73. We propose to affirm our long-standing understanding that state and local regulations that prevent the densification of a network can be an effective prohibition of covered services.[173] We seek comment on whether we should codify in our rules that an effective prohibition occurs where a state or local requirement prevents a service provider from improving its service capabilities (such as coverage, capacity, speed, latency, and/or reliability) or introducing new services. What types of limits could state or local governments place on the densification of a network without undermining the statutory goals of protecting against network degradation or ensuring access to new or upgraded services? Should the Commission adopt presumptions about what would suffice to avoid violating sections 253 and 332(c)(7)?

74. Our research shows that some localities continue to consider factors that prevent the densification of networks.[174] We seek comment on whether the Commission should preempt these

[171] One study indicates that due to the complexities inherent in passing prioritized calls between cellular and Wi-Fi systems, and across multiple generations of cellular systems, inadequate densification can result in increased numbers of dropped emergency calls and as many as 90% of emergency calls taking at least 2 minutes to be correctly routed to a Public Safety Answering Point when made from inside a building interior. Yiwen Hu, et al., Uncovering Problematic Designs Hindering Ubiquitous Cellular Emergency Services Access, at 2, 8-9, 11, ACM MobiCom '24 (Nov. 2024), https://dl.acm.org/doi/10.1145/3636534.3690704.

[172] *See* Intratel, *The Impact of 5G on VoIP Services* (June 5, 2024), https://www.intratel.ca/the-impact-of-5g-on-voip-services/; Yiwen Hu, et al., Uncovering Problematic Designs Hindering Ubiquitous Cellular Emergency Services Access, at 2, 8-9, 11, ACM MobiCom '24 (Nov. 2024), https://dl.acm.org/doi/10.1145/3636534.3690704.

[173] *See Small Cell Order*, 33 FCC Rcd at 9104-05 ("[A]n effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities."); *see also Moratoria Order*, 33 FCC Rcd at 7788, n.594.

[174] City of Monterey, California, Municipal Code § 21.34.020(H)(1)(e), (k) (requiring a showing of a "coverage gap" and preparation of an "alternative site analysis"), https://ecode360.com/43885093#43885098; Code of Oyster Bay, New York, § 242-5(H)(1), (6) (requiring a showing of a "significant gap in coverage" and "due diligence" in the search for "alternate placement sites"), https://ecode360.com/32592542#32603366; City of West Linn, Oregon, (continued….)

regulations under section 253(a) and (d). We also seek assistance in identifying other instances where state and local regulations have the effect of preventing carriers from meeting evolving consumer demands. What consumer uses are prevented or limited by state and local restrictions on densification? Could state and local limits on densification inhibit or slow progress in building wireless networks capable of supporting advanced technologies beyond 5G? Are there state or local regulatory limitations on wireless network deployment that otherwise could inhibit U.S. leadership in evolving technologies like artificial intelligence or future technologies like 6G? And how might those inhibitions affect the functionality of telecommunications and personal wireless services? Are there additional actions we should consider to help implement the Communications Act's goals regarding competition, service quality, and rapid deployment of new technologies and covered services while taking into account the role that Congress intended for state and local authorities?

75. *Artificial Intelligence*. Mobile network operators use AI technologies to help manage and optimize the performance of their networks. In seeking to leverage these technologies, providers increasingly face a complex landscape of state and local regulations on AI.[175] We seek comment on whether state and local regulations addressing the use of AI may be an effective prohibition on wireless providers' ability to provide covered service using AI technologies.

(Continued from previous page)
Community Development Code, § 57.070.8(a),12. (requiring a showing of "reasons why" a facility "must be located at the proposed site (service demands, topography, dropped coverage, etc.)" and reasons for not alternatively collocating on an "existing structure approved for co-location" by demonstrating that "at least one of the following deficiencies: (a) The structure is not of sufficient height to meet engineering requirements; (b) The structure is not of sufficient structural strength to accommodate the WCF [(wireless communications facility)]; (c) Electromagnetic interference for one or both WCF will result from co-location; or (d)The radio frequency coverage objective cannot be adequately met."), https://www.codepublishing.com/OR/WestLinn/#!/WestLinnCDC/WestLinnCDC57.html#57.070; Pima County, Arizona, Pima County, Arizona Code § 18.07.030.H.3.f. (For new towers, applicants must submit a narrative report which "shall be accompanied by before and after propagation maps prepared and signed by a radio frequency engineer evidencing that a gap in coverage exists and demonstrating how the proposed tower will eliminate the existing gap"), https://codelibrary.amlegal.com/codes/pimacounty/latest/pimacounty_az/0-0-0-15809; City of Atherton, California, Atherton Municipal Code § 12.05.070.H. ("Unless it is determined that there is no less intrusive alternative available to close a significant gap in the service . . . the city manager may not approve an application for a [facility] whose highest point would be more than thirty-five feet above surrounding ground level[.]"), https://atherton.municipal.codes/Code/12.05.070; City of Ithaca, New York, Code of Ithaca, NY The Code § 325-29.12.B.(1)-(3) (Applicants have the burden of proof in showing to the board that a significant coverage gap exists and that the proposed facility would be the least intrusive means of remedying that gap.) https://ecode360.com/8394650#8394910; City of Ithaca, New York, Code of Ithaca, NY The Code SIGNIFICANT GAP IN COVERAGE or SIGNIFICANT COVERAGE GAP ("A significant coverage gap exists when a remote user of those services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. A significant coverage gap exists when customers cannot receive and send signals, and when customers pass through a coverage gap their calls are disconnected. An applicant's claim that it needs the proposed tower for 'future capacity' or to 'improve coverage' is not sufficient to establish that it suffers from a significant gap in service coverage.").

[175] *See* CTIA *ex parte* at 4 (encouraging the Commission to consider whether state and local laws on broadband could have the effect of impeding development of AI); National Conference of State Legislatures, Artificial Intelligence 2025 Legislation, (updated Apr. 24, 2025), https://www.ncsl.org/technology-and-communication/artificial-intelligence-2025-legislation (stating that in the 2025 legislative session, all 50 states, Puerto Rico, the Virgin Islands, and Washington, D.C. have introduced legislation on this topic this year" and that "twenty-eight states and the Virgin Islands adopted or enacted over 75 new measures this year."); *see also* Bryan Cave Leighton Paisner, LLP, *US state-by-state AI legislation snapshot* https://www.bclplaw.com/en-US/events-insights-news/us-state-by-state-artificial-intelligence-legislation-snapshot.html (last visited Sept. 4, 2025).

76. In July 2025, the White House released "Winning the Race-America's AI Action Plan" (AI Action Plan) aimed at ensuring U.S. leadership in AI technology development.[176] The AI Action Plan directs the Commission to "evaluate whether state AI regulations interfere with the agency's ability to carry out its obligations and authorities under the Communications Act of 1934." In particular, the Commission is responsible for implementing the Communications Act, including the deployment of higher quality service and new technologies for American telecommunications consumers.[177] Congress also directed the Commission to ensure the efficient and intensive use of the electromagnetic spectrum.[178]

77. Accordingly, we seek comment on ways AI tools are, or may be, used in communications networks to provide higher quality service and ensure the efficient and intensive use of the electromagnetic spectrum for the public benefit. Similarly, we seek comment on how state and local regulations on AI are, or have the effect of, impeding the advancement of telecommunications and personal wireless service. We also request that commenters provide legal theories on how the Commission has authority under sections 253 and 332(c)(7) to preempt these state and local AI regulations.

78. We ask commenters to provide information about state and local AI regulations that prohibit or have the effect of prohibiting the provision of covered wireless services, including specific examples that may limit providers' ability to use AI tools to improve the efficiency and quality of covered services. Are these rules overly broad and difficult to implement, and might they prevent deployment of AI infrastructure?

6. Expedited Processes for Resolving Permitting Disputes

79. Significant litigation at the state and local level continues to impede the Congressional mandate of promoting a pro-competitive, de-regulatory national policy that accelerates private sector deployment of advanced telecommunications and information technologies and service to all Americans.[179] Litigation is notoriously costly and time consuming. Delays caused by litigation diminish American consumers' access to advanced telecommunications and take a toll in the form of lost economic and educational opportunities and productivity, the ability to communicate, and even harms to health and safety. Conscious of these effects, we seek comment on whether there is a role for the Commission to play in reducing litigation in the implementation of sections 253 and 332(c)(7) through alternative dispute resolution procedures to resolve disagreements between permitting authorities and siting applicants. Are there models within the Commission already that offer a template for developing this option for permitting authorities and applicants?

80. For example, what can be learned or adapted from the Market Disputes Resolution Division of the Enforcement Bureau,[180] which serves an adjudicatory role in resolving formal complaints against common carriers and utility pole owners that are filed by industry participants, entities, or other

[176] Winning the Race-America's AI Action Plan AI Action Plan, July 2025, https://whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf.

[177] Preamble to the Telecommunications Act of 1996, Pub. Law. No. 104-104, § 202, 110 Stat. 56 (1996).

[178] Preamble to the Telecommunications Act of 1996, Pub. Law. No. 104-104, § 202, 110 Stat. 56 (1996); 47 U.S.C. §§ 151, 309(j)(3)(A), (D).

[179] *See* Conf. Rep., Telecommunications Act of 1996, S. Rpt. 104-230, 104th Cong., 2d Sess. at 1 (1996) https://www.govinfo.gov/app/details/CRPT-104srpt230 (last visited Sept. 4, 2025) (Conference Report).

[180] *See* FCC, "Market Disputes Resolution Division," https://www.fcc.gov/enforcement/divisions-offices/mdrd (last visited Sept. 4, 2025); FCC, "Mediation," https://www.fcc.gov/enforcement/processes-services/mediation (last visited Sept. 4, 2025).

organizations?[181] What might be learned or adapted from the structure, operation, and experience of the Rapid Broadband Assessment Team (RBAT),[182] which is a joint initiative of the Wireline Competition Bureau and the Enforcement Bureau, to efficiently and effectively resolve broadband-related pole attachment disputes? Should the Commission create a process that is non-public similar to RBAT to encourage participation?

81. Along these lines, should the Commission create an accelerated process or "rocket docket" to resolve disputes under section 253(d)? Section 253(d) authorizes the Commission to preempt any statute, regulation, or legal requirement—after notice and opportunity for public comment—if it determines that the requirement violates section 253(a) or (b). We seek comment on creating an expedited process whereby applicants could submit petitions of disputes involving state or local legal requirements that may violate 253(a) or (b). Would such a process help reduce costly litigation and expedite permitting in a manner consistent with the Communications Act?

82. We seek comment on the Commission's legal authority to help resolve infrastructure siting disputes between permitting authorities and applicants for permits to deploy communications infrastructure. How can the Commission encourage the use of internal procedures and processes, whether through its bureaus or offices or through other institutions that offer these services? Are there any other approaches or alternatives the Commission should consider to facilitate the resolution of infrastructure siting disputes?

IV. PROCEDURAL MATTERS

83. *Ex Parte Rules*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[183] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR § 1.1206(b). In proceedings governed by 47 CFR § 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

[181] *See* FCC, Enforcement Bureau, "Divisions and Offices," at https://www.fcc.gov/enforcement/divisions-offices (last visited Sept. 4, 2025); 47 CFR § 1.1415; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 38 FCC Rcd 12379, 12383-90, paras. 8-21 (2023).

[182] *See* FCC, "Market Disputes Resolution Division," https://www.fcc.gov/enforcement/rapid-broadband-assessment-team-rbat-review-and-assessment (last visited Sept. 4, 2025); *Enforcement Bureau and Wireline Competition Bureau Announce Launch of Rapid Broadband Assessment Team to Speed Resolution of Broadband-Related Pole Attachment Disputes*, WC Docket No. 17-84, Public Notice, DA 24-719, 24 WL 3565369 (EB/WCB July 25, 2024).

[183] 47 CFR § 1.1200 *et seq.*

84. *Filing of Comments and Reply Comments*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service mail. **All filings must be addressed to the Secretary, Federal Communications Commission.**
  - Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

85. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

86. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[184] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[185] Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this Notice of Proposed Rulemaking. The IRFA is set forth in Appendix B. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the first page of this Notice of Proposed Rulemaking and must have a separate and distinct heading designating them as responses to the IRFA.

87. *Paperwork Reduction Act*. This document may contain proposed new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on any information collections contained in this document, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3521. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

88. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on https://www.fcc.gov/proposed-rulemakings.

[184] 5 U.S.C. §§ 601 *et seq.*, as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

[185] 5 U.S.C. § 605(b).

89. *Contact Person*. For further information about this proceeding, contact Jeff Bartlett, FCC, Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, Jeffrey.Bartlett@fcc.gov.

V. ORDERING CLAUSES

90. Accordingly, IT IS ORDERED that, 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 sections 6003 and 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, 1403, 1455(a) this Notice of Proposed Rulemaking in WT Docket No. 25-276 IS ADOPTED.[186]

91. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before 30 days after publication in the Federal Register, and reply comments on or before 45 days after publication in the Federal Register.

92. IT IS FURTHER ORDERED that the Commission's Office of the Secretary SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[186] Pursuant to Executive Order 14215, 90 Fed. Reg. 10447 (Feb. 20, 2025), this regulatory action has been determined to be not significant under Executive Order 12866, 58 Fed. Reg. 68708 (Dec. 28, 1993).

APPENDIX A

Proposed Rules

For the reasons discussed in the Notice of Proposed Rulemaking, the Federal Communications Commission proposes to amend 47 C.F.R. Part 1 as follows:

PART 1 – PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754, unless otherwise noted.

§ 1.6100 Wireless Facility Modifications.

2. Section 1.6100(b)(7)(v) and (vi) are revised as follows:

*****

(v) It would defeat the concealment elements of the eligible support structure. For purposes of this paragraph, "concealment elements" are elements intended to make a stealth-designed facility look like something other than a wireless tower or base station. A proposed modification would defeat the concealment elements of the eligible support structure if it would cause a reasonable person to view the structure's intended stealth design as ineffective; or

> Example 1 to paragraph (v): Placement of coaxial cable on the outside of a stealth-designed facility would be unlikely to render the intended stealth design of the facility ineffective at the distance from which individuals would view a facility because of the typically small size of such cabling.
>
> Example 2 to paragraph (v): A modification that involves a change in color would only defeat concealment if it would cause reasonable person to view the intended stealth design of the underlying facility as no longer effective. For instance, if new equipment is shielded by an existing shroud that is not being modified, then the color of the equipment is irrelevant because it is not visible to the public and would not render an intended concealment ineffective.
>
> Example 3 to paragraph (v): For a stealth-designed facility, (such as a wireless facility designed to resemble a pine tree), that was originally conditioned on the facility being hidden behind a tree line, a proposed modification that would make the facility visible above the tree line would not defeat the concealment elements of the facility under § 1.6100(b)(7)(v) if a reasonable person would continue to view the intended stealth design as effective. The requirement that the facility be hidden behind a tree line is not a feature of a stealth-designed facility, but rather an aesthetic condition that falls under § 1.6100(b)(7)(vi).

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in paragraphs (b)(7)(i) through (iv) of this section. Any condition under this paragraph (b)(7)(vi), including aesthetics-related conditions or any other conditions designed to address the visual impact of a facility, cannot be used to prevent modifications allowed under paragraphs 1.6100(b)(7)(i) through (iv)

Example 1 to paragraph (vi): If a locality imposes an aesthetics-related condition that specifies a three-foot shroud cover for a three-foot antenna, the locality could not prevent the replacement of the original antenna with a four-foot antenna otherwise permissible under § 1.6100(b)(7)(i) because the new antenna could not fit in the original shroud. If there was express evidence that the shroud was a condition of approval, the locality could enforce its shrouding condition if the provider could reasonably install a four-foot shroud to cover the new four-foot antenna. The locality also could enforce a shrouding requirement that was not size-specific and did not limit modifications allowed under § 1.6100(b)(7)(i)-(iv).

Example 2 to paragraph (vi): Existing walls and fences around non-camouflaged towers would be considered aesthetic conditions and not concealment elements. However, if there was express evidence that the wall or fence was a condition of approval, the locality may require a provider to extend the wall or fence to continue covering the equipment.

Example 3 to paragraph (vi): In regard to a tower that was originally approved conditioned on being hidden behind a tree line, a proposed modification within the thresholds of § 1.6100(b)(7)(i)-(iv) that would make the tower visible above the tree line would be permitted under § 1.6100(b)(7)(vi), assuming the provider cannot reasonably replace a grove of mature trees with a grove of taller mature trees to maintain the absolute hiding of the tower.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the policies and rules proposed in the Notice of Proposed Rulemaking (*Notice*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for and Objectives of the Proposed Rules

2. In the *Notice*, the Commission proposes to revise its rules implementing section 6409 of the Spectrum Act of 2012[4] and sections 332(c)(7) and 253 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996,[5] to further streamline the wireless permitting process and facilitate the rapid buildout of wireless infrastructure. Specifically, the *Notice* proposes and seeks comment on revising sections 1.6100(b)(7)(v) and 1.6100(b)(7)(vi) of the Commission's rules regarding concealment elements and siting conditions, respectively, in order to formally codify the clarifications made in the *2020 Declaratory Ruling*.[6] The *Notice* proposes to codify the guidance and examples the Commission provided in the *2020 Declaratory Ruling*, to illustrate how the rule revisions would operate in practice. The *Notice* also seeks comment on whether to adopt new rules to ensure that state and local permitting regulations do not prohibit or have the effect of prohibiting the deployment of wireless infrastructure facilities pursuant to sections 253 and 332(c)(7) of the Communications Act. Specifically, the *Notice* seeks comment on state and local permitting regulations that: inhibit the deployment of macro cell towers and other wireless facilities, impose unreasonable delays on permitting approvals, assess disproportionate or otherwise unreasonable fees, condition approval on aesthetic requirements or similar criteria, and impose other regulatory impediments. The *Notice* seeks comment on whether to adopt new rules codifying the protections of the Communications Act for service providers to densify and upgrade their networks. The Notice seeks comment on whether to adopt new rules preempting state and local regulations that violate provisions of the Communications Act. In addition, it seeks comment on whether the Commission should consider implementing alternative dispute resolution procedures to facilitate the resolution of permitting disputes. The Commission wishes to ensure that all state and local permitting regulations that address the deployment of wireless infrastructure are consistent with the requirements of sections 6409 of the Spectrum Act and 253 and 332(c)(7) of the Communications Act, the legislative

[1] 5 U.S.C. §§ 601 *et seq*., as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. No. 104-121, 110 Stat. 847 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[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 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)).

[5] Communications Act of 1934, as added Pub. L. 97-259, Title I, § 120(a), 96 Stat. 1096 (Sept. 13, 19892) and Pub. L. 104-104, Title I, § 101(a), 110 Stat. 70 (Feb. 8. 1996) (codified as 47 U.S.C. §§ 253 and 332); as amended by the Telecommunications Act of 1996, Pub. Law. No. 104-104, § 202, 110 Stat. 56 (1996) (collectively, the Communications Act).

[6] *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5977 (2020) (*2020 Declaratory Ruling*).

intent of Congress, and do not prohibit or effectively prohibit the provision of telecommunications service.

3. *Section 6409.* The *Notice* proposes to revise section 1.6100(b)(7)(v) of the Commission's rules to define concealment elements as elements of a stealth-designed facility intended to make the facility look like something other than a wireless tower or base station and to provide that a proposed modification would defeat a concealment element if it would cause a reasonable person to view the structure's intended stealth design as no longer effective after the modification. Next, the *Notice* proposes to revise section 1.6100(b)(7)(vi) of the Commission's rules to clarify that neither an aesthetics-related condition nor any other condition designed to address the visual impact of a facility may be used to prevent modifications specifically allowed under section 1.6100(b)(7)(i)-(iv) of the rules. The Commission proposes these revisions to help reduce permitting disputes, which in turn would promote expedited deployments.

4. Additionally, the *Notice* seeks comment on amending section 1.6100 of the Commission's rules to address the relationship between time-limited conditional use permits (CUPs) and section 6409(a) of the Spectrum Act. Some jurisdictions have ordinances that require tower owners to renew wireless tower facility permits after 10 years. In some cases, the local governments have imposed new conditions on permit renewals for deployments that were previously found to be eligible facilities requests under section 6409(a). The *Notice* seeks comment on whether the Commission should adopt a rule that clarifies that, once a particular deployment is found to be an eligible facilities request and the permit is granted by a state or local jurisdiction, the state or local jurisdiction may not seek to impose new conditions when reviewing the deployment as part of a permit renewal process. The *Notice* seeks comment on whether such ordinances that impact eligible facilities requests conflict with section 6409(a).

5. *Sections 332(c)(7) and 253*. The *Notice* seeks comment on whether to extend any of the *Small Cell Order* reforms or any other measures the Commission may adopt in this proceeding to macro cell towers and other wireless facilities. While the *Small Cell Order* focused on state and local permitting requirements that impact the installation of Small Wireless Facilities,[7] the Commission is equally interested in ensuring the timely buildout of macro cell towers and other wireless facilities, and removing regulatory obstacles that may unlawfully delay these buildouts. The Commission also seeks comment on how and whether to clarify the definition of a macro cell tower, and comment on what state or local permitting issues commonly delay the buildout of macro cell and other wireless facility deployments.

6. Next, the *Notice* addresses issues associated with its shot clock rules. The Commission initially adopted shot clock rules in its *2009 Declaratory Ruling*, finding that unreasonable delays in the siting process "impede[d] the promotion of advanced services and competition that Congress deemed critical to the Telecommunications Act of 1996,"[8] it established a defined time period or "shot clock" framework to effectuate the "reasonable period of time" provision of section 332(c)(7)(B)(ii).[9] This shot clock approach was intended to provide clarity and a degree of certainty both to the applicants for siting permits as well as to state and local permitting authorities.[10] In the *Small Cell Order*, the Commission

[7] *See Small Cell Order*, 33 FCC Rcd at 9142-47, para. 105-12.

[8] *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, WT Docket No. 08-165, Declaratory Ruling, 24 FCC Rcd 13994, 14008, para. 35 (*2009 Declaratory Ruling), aff'd City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012) (*City of Arlington*), *aff'd* 569 U.S. 290 (2013). *See also id.* at 14005, para. 33 (detailing examples of delays and providing aggregate numbers for instances of delays documented in the record evidence).

[9] 47 U.S.C. § 332(c)(7)(B)(ii) (requiring state and local governments to act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time).

[10] *2009 Declaratory Ruling*, 24 FCC Rcd at 14008, para. 37 ("Given the evidence of unreasonable delays and the public interest in avoiding such delays, we conclude that the Commission should define the statutory terms 'reasonable period of time' and 'failure to act' in order to clarify when an adversely affected service provider may (continued….)

adopted a new set of shot clocks calibrated to the unique features of Small Wireless Facilities.[11] The Commission adopted a presumptive 60-day shot clock for reviewing Small Wireless Facility collocations and a presumptive 90-day shot clock for Small Wireless Facilities to be attached to a newly constructed structure.[12] The Commission also codified the presumptive 90-day and 150-day shot clocks developed in the *2009 Declaratory Ruling*, for a total of four shot clocks.[13] The shot clock rules preserved a siting agency's ability to rebut the presumptive reasonableness of any of the applicable shots clocks based on a specific situation.[14] The *Notice* seeks comment on how well the shot clocks codified in the Commission's rules have helped expedite the delivery of advanced communications services. It also seeks comment on whether further refinement through a broader number of shot clocks for specific scenarios is warranted.

7. The Commission also previously codified its determination in the *Wireless Infrastructure Order* that a shot clock begins to run when an application is submitted, not when it is deemed complete by the permitting authority.[15] The *Notice* seeks comment on how well the notification of incompleteness feature of the shot clock framework is functioning as a means to remove complications in the smooth processing of incomplete applications.

8. Regarding remedies for shot clock violations, the Commission determined violations of the shot clocks for Small Wireless Facilities constitute not only a section 332(c)(7)(B)(v) "failure to act," but also a "presumptive prohibition on the provision of personal wireless services within the meaning of section 332(c)(7)(B)(i)(II)."[16] The Commission noted that "there may be merit" to a "deemed granted" remedy[17] but it declined to adopt this remedy because it determined that the shot clock framework that it had codified "should address the concerns raised by a 'deemed granted' remedy."[18] The Commission also indicated that if its approach "proves insufficient" it may again consider adopting a deemed granted approach. The *Notice* seeks comment on whether shot clocks are preventing unreasonable delay or whether the Commission should reconsider its prior decision not to adopt a deemed granted remedy.

9. Next, the *Notice* addresses issues associated with fees imposed by state and local permitting authorities to process permit applications. In the *Small Cell Order* and the *Verizon Clark County Dismissal Order*, the Commission explained that localities have the burden of proving the reasonableness of their fees, and that fees for use of a right-of-way can constitute an effective prohibition of service.[19] The *Notice* seeks comment on state and local fees. Service providers continue to face a range of state and local fees that may increase unpredictably over the course of a project. These state and

(Continued from previous page)
take a dilatory State or local government to court. Specifically, we find that when a State or local government does not act within a 'reasonable period of time' under Section 332(c)(7)(B)(i)(II), a 'failure to act' occurs within Section 332(c)(7)(B)(v).").

[11] *Small Cell Order*, 33 FCC Rcd at 9142-48.

[12] *Id.* at 9143, 9146, 9159, paras. 106, 111, 138. *See also* 47 CFR §1.6003(c)(1)(i), (iii).

[13] *Id.* at 9159-60, paras. 138-139.

[14] *Id.* at 9145, para. 109.

[15] *Id.* at 9161, para. 141 (referencing *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, 13-32, WC Docket No. 11-59, Report & Order, 29 FCC Rcd 12865, 12970, para. 258 (2014)) (*Wireless Infrastructure Order*), *aff'd*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015)), 9163, para. 145 ("[T]he shot clock begins to run when the application is proffered.").

[16] *Small Cell Order*, 33 FCC Rcd at 9148, para. 118.

[17] *Small Cell Order*, 33 FCC Rcd at 9153, para. 128.

[18] *Id.* at 9154, para. 129.

[19] *Small Cell Order*, 33 FCC Rcd at 9091, para. 11; *Verizon Clark County Dismissal Order*, 36 FCC Rcd at 280, para. 7.

local fees take the form of initial one-time fees, annual recurring fees, and gross revenue fees. The *Notice* seeks comment on whether to preempt a number of local regulations that impose these types of fees as prohibiting or having the effect of prohibiting service under sections 253(a) and 332(c)(7) and also seeks comment on preempting the fee regulations of other local permitting authorities whose fees mirror those described in the *Notice*. The *Notice* seeks comment on whether to preempt the fee regulations listed in the *Notice* both for Small Wireless Facilities and other larger facilities as violating sections 253(a) and 332(c)(7). The *Notice* also seeks comment on whether the Commission should take additional steps to address fees including whether to adopt rules codifying the fee guidance of the *Small Cell Order* and the *Verizon Clark County Dismissal Order* and whether to extend application of the previous clarifications on fees to macro and other wireless facilities.

10. Next, the *Notice* seeks comment on how state and local aesthetic requirements are affecting the deployment of wireless infrastructure. In the *Small Cell Order*, the Commission found that that "[l]ike fees, compliance with aesthetic requirements imposes costs on providers, and the impact on their ability to provide service is just the same as the impact of fees."[20] The Commission concluded that, to be permissible under section 332(c)(7), aesthetic requirements had to be reasonable, no more burdensome than those applied to other types of infrastructure deployments, and objective and published in advance.[21]

11. In *City of Portland*, the Court of Appeals for the Ninth Circuit upheld most of the *Small Cell Order*, but vacated the requirement that local aesthetic regulations for Small Wireless Facilities be "no more burdensome" than those imposed on other technologies, finding that this requirement was not consistent with the "more lenient statutory standard that regulations not 'unreasonably discriminate.'"[22] The court also found that the requirement that local aesthetic regulations be "objective" was "neither adequately defined nor its purpose adequately explained."[23] The court held that section 332(c)(7)(B)(i)(I) of the Communications Act "permits some difference in the treatment of different providers, so long as the treatment is reasonable" and that to "establish unreasonable discrimination, providers 'must show that they have been treated differently from other providers whose facilities are similarly situated in terms of the structure, placement or cumulative impact as the facilities in question.'"[24]

12. In response to this decision, the *Notice* seeks comment on whether the Commission should revisit the issue of what constitutes unreasonable discrimination in the siting of wireless facilities, and in particular, whether certain state and local aesthetic requirements unreasonably discriminate against wireless facilities. The *Notice* also seeks comments on whether the *City of Portland* decision addressing the meaning of "unreasonable discrimination" under section 332(c)(7) provides sufficient certainty about the scope of permissible distinctions in state and local permitting requirements generally and aesthetic regulations, in particular. The *Notice* asks whether additional guidance is needed with regard to the scope of permissible aesthetic regulations, and whether the Commission should codify the test articulated by the 9th Circuit, into its rules.

13. Next, the *Notice* addresses state and local regulations associated with radiofrequency (RF). Although any RF-based state or local wireless infrastructure deployment restrictions are explicitly

[20] *Small Cell Order*, 33 FCC Rcd at 9132, para. 87.

[21] *Small Cell Order*, 33 FCC Rcd at 9132, para. 86.

[22] *City of Portland*, 969 F. 3d at 1043. Section 332(c)(7)(B)(i)(I) provides that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services." 47 U.S.C. § 332(c)(7)(B)(i)(I).

[23] *City of Portland*, 969 F. 3d at 1043.

[24] *City of Portland*, 969 F. 3d at 1040 (citing *MetroPCS, Inc. v. City & County of San Francisco*, 400 F.3d 715, 727 (9th Cir. 2005).

prohibited by section 332(c)(7)(B)(iv) of the Communications Act,[25] the Commission finds that state and local authorities continue to adopt such regulations—particularly within the context of local setback restrictions for siting wireless communications facilities. The *Notice* seeks comment on whether the Commission should adopt rules to address this practice of some state and local permitting authorities. The *Notice* also seeks comment on whether the Commission should preempt these types of regulations, and the Commission's legal authority for doing so.

14. Next, the *Notice* seeks comment on the impact of conditional use permits on the rapid deployment of wireless infrastructure. The Commission has found that numerous localities impose conditional use permits on tower builders with strict durational limits. When the duration of the permit is over, the permit renewal process may require expensive changes to or complete removal of the already constructed infrastructure. These permits inject uncertainty into the network planning process and impose large costs on tower builders and service providers. The *Notice* also seeks comment on whether the Commission should take action to preempt state and local conditional use permits under section 253(d) of the Communications Act. In the alternative, the Commission seeks comment on whether to adopt a rule narrowing the scope of conditional use permits in order to limit unlawful conditional use permits.

15. Next, the *Notice* considers the persistence of state and local authorities imposing moratoria on the buildout of wireless infrastructure. Despite the Commission stating in the *Moratoria Order* that moratoria are barred by section 253(a) of the Communications Act because they effectively prohibit the ability of any entity to provide telecommunication services, state and local governments continue to engage in the practice of moratoria.[26] The *Notice* seeks comment on whether, pursuant to section 253(d), to preempt local ordinances banning 5G equipment. It also seeks comment on what further actions the Commission can take to address the phenomenon of *de facto* moratoria.[27]

16. Next, the *Notice* addresses the issue of network upgrades and densification. It is the stated purpose of the Telecommunications Act to promote competition, improve service quality, and to enable the rapid deployment of new technologies.[28] The Act contains several provisions to advance this goal including section 706 which imposes on the Commission an affirmative duty to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans," and section 332(c)(7)(B)(i)(II) which provides that state and local regulations may not have the effect of prohibiting the provision of wireless service.[29] In the *Small Cell Order*, the Commission clarified that, consistent with the intent of Congress in passing the Communications Act to promote the rapid deployment of new technologies, state and local regulations that prevent service providers from upgrading their networks or densifying their networks constitute an effective prohibition of service.[30] Despite this, numerous jurisdictions, not recognizing that 5G networks are a new technology with distinct network infrastructure needs, continue to prevent service providers from densifying or upgrading their

[25] 47 U.S.C. § 332(c)(7)(B)(iv).

[26] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, WC Docket No. 17-84 and WT Docket No. 17-79, 33 FCC Rcd 7705 (2018) (*Moratoria Order*).

[27] *De facto* moratoria is defined as state and local actions, "not formally codified by state or local governments as outright prohibitions but [. . .] by their operation, prohibit or have the effect of prohibiting deployment of telecommunications services and/or telecommunications facilities." *Moratoria Order*, 33 FCC at 7780.

[28] Preamble to the Telecommunications Act of 1996, Pub. Law. No. 104-104, § 202, 110 Stat. 56 (1996).

[29] 47 U.S.C. § 706(a) and (b) and 47 U.S.C. § 332(c)(7)(B)(i)(II). The statute defines advanced communications capability as "the "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology," regardless of "transmission media or technology." 47 U.S.C. 1302(d)(1).

[30] *Small Cell Order*, 33 FCC Rcd at 9104-05, para. 37.

networks where an outdated legacy network already exists. The *Notice* seeks to affirm the Commission's historic understanding that state and local regulations that prevent the densification of a network can be an effective prohibition of protected services.[31] The *Notice* also seeks comment on whether to codify within our rules that state and local restrictions that prohibit the densification and upgrading of existing networks constitute an effective prohibition of service under sections 332(c)(7) and 253(a) of the Communications Act, and seek comment on what presumptions the Commission can adopt to preserve state and local authority while still protecting the right of providers to densify and upgrade their networks. The *Notice* seeks comment on whether the Commission should preempt restrictions that prohibit the upgrading and densification of networks under sections 253(a) and (d).

17. In the *Notice*, in order to ensure Americans' have access to high equality services and the latest technology, the Commission asks commenters to identify ways in which AI tools are used in communications networks. The *Notice* further requests comment on how state and local regulations on AI are, or have the effect of, impeding the advancement of telecommunications and personal wireless service. The *Notice* also requests that commenters provide legal theories on how the Commission has authority under sections 253 and 332(c)(7) to preempt these state and local AI regulations.

18. Finally, the *Notice* turns its attention to whether, in order to reduce costly litigation and to accelerate permitting, the Commission should explore alternative dispute resolution procedures that could facilitate the resolution of disagreements between permitting authorities and siting applicants and seeks comment on what a successful alternative dispute resolution might look like. The *Notice* also seeks comment on how permitting disputes could be put on an Accelerated Docket for resolution. In addition, the *Notice* seeks comment on whether the Commission has legal authority to engage in facilitating infrastructure siting disputes between permitting authorities and applicants for permits to deploy communications infrastructure.

19. These proposed revisions will satisfy Congress's intent and meet the Commission's statutory responsibility to enhance regulatory certainty, reduce disputes and litigation in the permitting process, and facilitate deployment of 5G and other advanced wireless services throughout the country in a competitive marketplace for the advantage all Americans.

B. Legal Basis

20. The proposed action is authorized 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 sections 6003 and 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, 1403, 1455(a).

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

21. 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 adopted herein.[32] The RFA generally defines the term "small entity" as having the same meaning as under the Small Business Act.[33] In addition, the term "small business" has the same meaning as the term "small business concern" under the

[31] *See Small Cell Order*, 33 FCC Rcd at 9104-05 ("[A]n effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities."); *See also Moratoria Order*, 33 FCC Rcd at 7788, n.594.

[32] *Id.* § 604 (a)(4).

[33] *Id.* § 601(6).

Small Business Act."[34] 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.[35]

22. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe three broad groups of small entities that could be directly affected by our actions.[36] In general, a small business is an independent business having fewer than 500 employees.[37] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses.[38] Next, "small organizations" are not-for-profit enterprises that are independently owned and operated and not dominant their field.[39] While we do not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees.[40] Finally, "small governmental jurisdictions" are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand.[41] Based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.[42]

23. The actions taken in the *Notice* will apply to small entities in the industries identified in the chart below by their six-digit North American Industry Classification System[43] codes and corresponding SBA size standard.[44]

[34] *Id*. § 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."

[35] 15 U.S.C. § 632.

[36] 5 U.S.C. § 601(3)-(6).

[37] *See* SBA, Office of Advocacy, *Frequently Asked Questions About Small Business* (July 23, 2024), https://advocacy.sba.gov/wp-content/uploads/2024/12/Frequently-Asked-Questions-About-Small-Business_2024-508.pdf.

[38] *Id*.

[39] 5 U.S.C. § 601(4).

[40] *See* SBA, Office of Advocacy, *Small Business Facts, Spotlight on Nonprofits* (July 2019), https://advocacy.sba.gov/2019/07/25/small-business-facts-spotlight-on-nonprofits/.

[41] 5 U.S.C. § 601(5).

[42] *See* U.S. Census Bureau, 2022 Census of Governments –Organization, https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html, tables 1-11.

[43] The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. *See* www.census.gov/NAICS for further details regarding the NAICS codes identified in this chart.

[44] The size standards in this chart are set forth in 13 CFR 121.201 by six digit NAICS code.

Regulated Industry	NAICS Code	SBA Size Standard	Total Firms[45]	Small Firms[46]	% Small Firms in Industry
All Other Information Services[47]	519190	1,500 employees	704	556	78.98
All Other Telecommunications[48]	517810	$40 million	1,079	1,039	96.29
Cable and Other Subscription Programming[49]	515210	$47 million	378	149	39.42
Media Streaming Distribution Services, Social Networks, and Other Media Networks and Content Providers[50]	516210	$47 million	6,417	5,710	88.98
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing	334220	1,250 employees	656	624	95.12
Satellite Telecommunications	517410	$47 million	275	242	88.00
Telecommunications Resellers[51]	517121	1,500 Employees	1,386	1,375	99.21
Wired Telecommunications Carriers[52]	517111	1,500 employees	3,054	2,964	97.05
Wireless Telecommunications Carriers (except Satellite)[53] [54]	517112	1,500 employees	2,893	2,837	98.06

[45] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, and *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM.

[46] *Id.*

[47] Per the 2022 NAICS update, the industry name is now "Web Search Portals and All Other Information Services," with a NAICS Code of 519290.

[48] Affected Entities in this industry include Internet Service Providers (Non-Broadband).

[49] 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. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[50] This industry description and NAICS code were added by the U.S. Census Bureau in 2022. Affected Entities in this industry include Cable System Operators (Telecom Act Standard) and Cable Companies and Systems (Rate Regulation).

[51] Affected Entities in this industry include Local Resellers, Toll Resellers, and Prepaid Calling Providers.

[52] Affected Entities in this industry include Competitive Local Exchange Carriers (CLECs), Incumbent Local Exchange Carriers (Incumbent LECs), Interexchange Carriers (IXCs), Local Exchange Carriers (LECs), Other Toll Carriers, and Wired Broadband Internet Access Service Providers.

[53] Affected Entities in this industry include Fixed Microwave Services, Wireless Broadband Internet Access Service Providers, Wireless Carriers and Service Providers, Wireless Communications Service, and Wireless Telephony.

[54] Affected Entities in this industry that also have a Commission small business size standard involving eligibility for bidding credits and installment payments in the auction of licenses codified in the Commission's rules include: Wireless Communications Services (47 CFR §§ 27.201–27.1601).

24. Based on currently available U.S. Census data regarding the estimated number of small firms in each identified industry, we conclude that the adopted rules will impact a substantial number of small entities. Where available, we provide additional information regarding the number of potentially affected entities in the above identified industries, and information for other affected entities, as follows.

2024 Universal Service Monitoring Report Telecommunications Service Provider Data [55] **(Data as of December 2023)**	**SBA Size Standard (1500 Employees)**		
Affected Entity	**Total # FCC Form 499A Filers**	**Small Firms**	**% Small Entities**
Competitive Local Exchange Carriers (CLECs)	3,729	3,576	95.90
Incumbent Local Exchange Carriers (Incumbent LECs)	1,175	917	78.04
Interexchange Carriers (IXCs)	113	95	84.07
Local Exchange Carriers (LECs).	4,904	4,493	91.62
Local Resellers	222	217	97.75
Other Toll Carriers	74	71	95.95
Prepaid Card Providers	47	47	100.00
Toll Resellers	411	398	96.84
Telecommunications Resellers	633	615	97.16
Wired Telecommunications Carriers	4,682	4,276	91.33
Wireless Telecommunications Carriers (except Satellite)	585	498	85.13

[55] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2024), https://docs.fcc.gov/public/attachments/DOC-408848A1.pdf.

Broadband Internet Access Providers[56] (Internet Access Services Report: Status as of June 30, 2024)	
Affected Entity	**# of Providers of connections over 200 kbps in at least one direction**
Wired Broadband Internet Access Service Providers (Wired ISPs)	2,204
Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)[57]	1,209

D. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

25. The RFA directs agencies to provide a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.[58] At this time, the we do not believe that the proposed rules in the *Notice*, if adopted, will create any new reporting, recordkeeping, or other compliance requirements for small and other entities preparing eligible facilities requests under sections 6409(a), 253, or 332(c)(7) as entities are already required to submit construction proposals outlining the work to be done regardless of whether the project qualifies as an eligible facilities request under sections 6409(a), 253, and 332(c)(7). In addition, for these reasons we do not anticipate that any action we take on the matters raised in the *Notice* will require small entities to hire additional attorneys, engineers, consultants, or other professionals to comply with the proposed revised rules.

26. We anticipate that the proposed rule changes on which the *Notice* seeks comment would help reduce the economic impact on small entities that may need to deploy wireless infrastructure by reducing the cost and delay associated with the deployment of such infrastructure and by reducing costly litigation. To assist the Commission in its evaluation of the economic impact on small entities, and of the proposed rule changes generally, and to better explore options and alternatives, the *Notice* asks small entities to discuss any benefits or drawbacks associated with making the proposed rule changes in their comments. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *Notice*, including costs and benefits information.

E. Discussion of Significant Alternatives Considered That Minimize the Significant Economic Impact on Small Entities

27. The RFA directs agencies to provide a description of any significant alternatives to the proposed rules that would accomplish the stated objectives of applicable statutes, and minimize any significant economic impact on small entities.[59] The discussion is required to include alternatives such as: "(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

[56] Federal Communications Commission, Internet Access Services: Status as of June 30, 2024 at 40, Fig. 41 *(IAS Status 2024)*, Industry Analysis Division, Office of Economics & Analytics (May 2025). As of June 30, 2022, FCC Form 477 classifies all fixed wired connections into three mutually exclusive technology categories: (1) Copper Wire, (2) Coaxial Cable (hybrid fiber-coaxial), and (3) Optical Carrier (fiber to the premises), https://www.fcc.gov/economics-analytics/industry-analysis- division/iad-data-statistical-reports.

[57] This number includes fixed wireless and mobile wireless providers.

[58] 5 U.S.C. § 603(b)(4).

[59] *Id.* § 603(c).

compliance and reporting requirements under the rules 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.[60]

28. The *Notice* seeks comment on proposed changes to the Commission's existing rules implementing section 6409(a) of the Spectrum Act and sections 253 and 332(c)(7) of the Communications Act, as well as adopting new rules implementing sections 253 and 332(c)(7) of the Communications Act. The purpose of these changes is to reduce economic impact and regulatory burden on small entities and other applicants. In this regard, the *Notice* seeks comment on different approaches or alternatives the Commission might take in streamlining compliance with section 6409(a) of the Spectrum Act and sections 253 and 332(c)(7) of the Communications Act. For instance, the Commission may adopt rules implementing section 6409(a) of the Spectrum Act and sections 253 and 332(c)(7) of the Communications Act establishing that, once a particular deployment is found to be an eligible facilities request and the permit is granted by a state or local jurisdiction, that state or local jurisdiction may not seek to impose new conditions when reviewing the deployment as part of a permit renewal process. The Commission is also evaluating whether to adopt a deemed granted remedy for violations of its shot-clock rules, and whether to codify rules that state and local restrictions that prohibit the densification and upgrading of existing networks constitute an effective prohibition of service prohibited under sections 253(a) and 332(c)(7) of the Communications Act.

29. In the *Notice*, the Commission also seeks comment on proposals to revise the concealment elements and siting conditions provisions of section 1.6100 of its rules to provide more clarity to parties involved in the process of obtaining local approval for siting of wireless infrastructure and to enable small entities and others to navigate the permitting process more effectively. In making its determinations for the proposed rules in the *Notice*, the Commission considered alternatives intended to minimize significant economic impact on small entities. For example, we considered other potential changes to the application review process, such as timeframes for review, that would help clarify and expedite the process and thereby reduce economic burdens on small entities seeking to comply with the revised rules that are ultimately adopted. In developing the proposed rule revisions for concealment elements, we considered to what extent disputes about concealment elements had on efforts to deploy wireless infrastructure and what other approaches could be considered. Lastly, regarding the proposed rule revisions for siting conditions, we considered factors such as the time to complete deployment, cost impacts, and the potential delays in satisfying coverage demand and/or enhancements for consumers.

30. The *Notice* seeks comment on whether to revise existing rules and/or adopt new rules under sections 253 and 332(c)(7) of the Communications Act to protect the rights of service providers to densify and upgrade their networks, to establish a "deemed granted" remedy for shot-clock violations, and to prohibit fees that constitute an effective prohibition of service or otherwise violate the guidance of the *Small Cell Order*. It seeks comment on whether to offer clarifying guidance on the meaning of "unreasonable discrimination" under section 332 of the Communications Act. The *Notice* also seeks comment on whether to preempt under sections 253(a) and (d) and section 332(c)(7)(B)(iv) of the Communications Act state and local regulations predicated on RF emissions, ordinances that permit or require the use of conditional use permits, and ordinances or resolutions that impose moratoria on the buildout of wireless infrastructure. In the alternative, the Commission seeks comment on whether to adopt a rule narrowing the scope of conditional use permits in order to limit conditional use permit abuse. The Notice seeks comment on (1) whether to preempt a number of local regulations that impose certain fees on applicants seeking to build wireless infrastructure as prohibiting or having the effect of prohibiting service under sections 253(a) and 332(c)(7); (2) whether to preempt the fee regulations listed in the Notice both for Small Wireless Facilities and other larger facilities as violating sections 253(a) and 332(c)(7); and (3) whether the Commission could and should offer an alternative dispute resolution option to reduce litigation between permit applicants and permitting authorities.

[60] *Id*. § 603(c)(1)–(4).

31. The Commission will decide what actions it should take based on the record developed to the *Notice*. Part of the decisional process will include evaluating the impact of these decisions on small entities and what alternatives it might adopt to lessen significant economic impact and regulatory burden on small entities while complying with the requirements of sections 6409(a), 253, and 332(c)(7) of the Communications Act. Alternative proposals and approaches from commenters will further develop the record and could help the Commission further minimize the economic impact on small entities. The Commission's evaluation of the comments filed in this proceeding will shape the final conclusions it reaches, the final alternatives it considers, and the actions it ultimately takes to minimize any significant economic impact that may occur on small entities from the final rules.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

32. None.

STATEMENT OF
CHAIRMAN BRENDAN CARR

Re: *Build America: Eliminating Barriers to Wireless Deployments*, WT Docket No. 25-276, Notice of Proposed Rulemaking (Sept. 30, 2025).

Today's meeting is the "Permitting Reform Edition" of our Build America Agenda. We just voted to advance a proposal to streamline permitting for *wireline* builds. Now, we're doing the same for *wireless* infrastructure. We have two great reasons for doing so: one, it works; and two, it's necessary.

Back in 2017, Chairman Pai asked me to lead the Commission's work to identify and remove barriers to the deployment of thousands of small cells—the building blocks for 5G.

As part of this effort, we first set our sights on the FCC's environmental and historic review processes, which accounted for an outsized share of deployment costs. So, in March 2018, we passed rules to exempt small cells from the types of reviews required for large, 200-foot towers. Later that year, we adopted a second package of infrastructure reforms to cap state and local permitting fees and speed up approvals through shot clocks.

Those reforms worked. Many state and local governments became key partners in accelerating 5G builds. Just two years after we adopted our reforms, investment in wireless infrastructure surpassed the previous seven years combined. And since 2018, the number of cell sites in service has more than doubled. Thanks to all this investment and deployment, U.S. networks handled more wireless data in 2023 than they did from 2010 to 2018 combined.

But even with all this success, we have more to do. For one, some state and local governments still do not follow our rules. They sit on applications for too long or demand enormous sums of money to process permitting applications. For another, some authorities have stalled infrastructure builds using new tactics that we didn't have a chance to consider in 2018. And for yet another, our 2018 reforms largely focused on small cells, but not other types of wireless deployments. All told, wireless providers still have to navigate a thicket of red tape to get the permits they need.

That's why we're dusting off our permitting reform playbook as part of the Build America Agenda. We kickstarted those efforts in earnest last month when we opened a proceeding to modernize our environmental and historic reviews.

And with today's item, we are taking a fresh look at our authorities under sections 253 and 332 of the Communications Act to preempt state and local barriers to next-gen builds. We also look to finish our work to implement Section 6409 of the Spectrum Act of 2012, which Congress enacted to fast-track modifications to existing wireless infrastructure.

We're pursuing these reforms because we want American companies to spend less time and money dealing with red tape, and more resources turning dirt and building world class networks.

For their great work on this item, I want to thank Jeff Bartlett, Rashann Duvall, Jennifer Flynn, Eli Johnson, Robert Krinsky, and Jennifer Salhus, from the Wireless Telecommunications Bureau; and Anjali Singh and Scott Noveck from the Office of General Counsel.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Build America: Eliminating Barriers to Wireless Deployments*, WT Docket No. 25-276, Notice of Proposed Rulemaking (Sept. 30, 2025).

Americans rely on wireless technology and infrastructure on a daily basis. The wireless connectivity that we have come to expect, whether to call a friend, email our doctor, make a dinner reservation, or keep an eye on the dog via the doggy cam, is possible thanks to physical infrastructure deployed around us. As with any infrastructure, building it involves negotiations between service providers and local governments.

The Notice of Proposed Rulemaking before us seeks to make it easier to deploy necessary infrastructure that extends wireless communications for the benefit of communities across the country. Successful deployment requires collaboration, so I look forward to hearing from all stakeholders, including industry and local governments, about the proposals in this notice.

Additionally, I want to caution against getting sidetracked by attempts to fulfill a failed congressional effort and second-guess states that are placing guardrails on Artificial Intelligence. States can be important test labs for what may or may not work with emerging technologies like this one. Not to mention, our authority in this area is dubious at best, particularly after recent court decisions limiting our authority. We will be better served by focusing on the areas where we stand on firm legal ground.

Finally, thank you to the Office of the Chairman for incorporating my edits to this item, including seeking comment about our legal authority regarding Artificial Intelligence.

STATEMENT OF
COMMISSIONER OLIVIA TRUSTY

Re: *Build America: Eliminating Barriers to Wireless Deployments*, WT Docket No. 25-276, Notice of Proposed Rulemaking (Sept. 30, 2025).

As the Commission examines whether state and local requirements may actually or effectively prohibit providers from offering wireline telecommunications service, it is equally important to consider the impact of these requirements on wireless services.

Americans are increasingly dependent on mobile devices and the networks that deliver high-speed internet access anytime and anywhere. This progress is due in no small part to substantial investments by wireless providers. A recent industry report highlights that over 15,000 new towers were activated in 2024, leading to expanded coverage and better quality mobile services.

In my travels to Alaska, and Mississippi, and in conversations with wireless carriers – large and small – I consistently hear the same concern: some of the biggest barriers to widespread deployment of mobile and fixed wireless networks are delays and restrictions caused by state and local requirements. The Commission made important strides to accelerate the deployment of 5G networks in 2018 and 2020, during President Trump's first term. Yet our work continues. As I noted last month, the U.S. has made significant progress, but international comparisons show that we still lag behind global competitors like China, which has gained an advantage in part by aggressively streamlining its infrastructure siting policies.

For this reason, it is both necessary and timely to revisit the Ninth Circuit's decision in League of California Cities v. FCC and seek comment on the Commission's prior efforts to clarify the definition of "concealment elements" under the Spectrum Act's streamlined processing rules. In parallel with our work on wireline networks, this NPRM recognizes that excessive fees and delays in wireless authorizations can effectively prohibit deployment, with serious consequences: consumers remain unconnected, public safety is diminished, and U.S. leadership in advanced communications is undermined.

Building on our efforts to accelerate small cell deployment, the NPRM also examines whether state and local permitting regulations are inhibiting other critical infrastructure, such as macro towers and additional wireless facilities, needed to bring the full benefits of 5G and beyond to suburban and rural communities.

In this item, I appreciate the Chairman's inclusion of questions about the impact of state and local limits on densification. This inquiry will help inform how such limits may be slowing progress to 5G, 6G, artificial intelligence, and other future innovations.

And as I noted with respect to the wireline infrastructure NOI, I look forward to developing a robust record on the legal requirements of state and local permitting practices, as well as examples of effective approaches that successfully balance Congress's goal of fostering wireless telecommunications services with state and local interests. This understanding will guide our continued efforts to promote high-speed infrastructure builds in support of the Build America Agenda and the New Golden Age of Communications.

I thank the Wireless Bureau for its work on this item and look forward to working with my colleagues, and with Congress, to unleash the full potential of wireless networks and strengthen America's leadership in next-generation communications technologies.