AGENDA DESCRIPTION:

Consideration and possible action to adopt an urgency ordinance and to introduce an ordinance repealing and replacing Chapter 12.18 (Wireless Telecommunications Facilities in the Public Right-of-Way) to update the regulatory framework and standards for wireless facilities within the public right-of-way based on the recent Federal Communications Commission ruling (Case No. PLCA2019-0002).

RECOMMENDED COUNCIL ACTION:

(1)  Adopt Ordinance No.__U, AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES REPEALING AND REPLACING CHAPTER 12.18 (WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO UPDATE THE REGULATORY FRAMEWORK AND STANDARDS FOR PERMITTING WIRELESS FACILITIES WITHIN THE CITY’S PUBLIC RIGHT-OF-WAY IN ACCORDANCE WITH THE RECENT FEDERAL COMMUNICATIONS COMMISSION RULING AND FINDING AN EXEMPTION FROM CEQA; and,

(2)  Introduce Ordinance No.__, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES REPEALING AND REPLACING CHAPTER 12.18 (WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO UPDATE THE REGULATORY FRAMEWORK AND STANDARDS FOR PERMITTING WIRELESS FACILITIES WITHIN THE CITY’S PUBLIC RIGHT-OF-WAY IN ACCORDANCE WITH THE RECENT FEDERAL COMMUNICATIONS COMMISSION RULING AND FINDING AN EXEMPTION FROM CEQA.

FISCAL IMPACT:  City Staff costs and consultant costs (including City Attorney and RF Consultant costs) associated with the processing of Wireless Telecommunication Facility Permits are recovered through fees and trust deposits established in the City Council-adopted fee schedule based on actual time and costs incurred in processing such permits.

| Amount Budgeted: | N/A |
| Additional Appropriation: | N/A |
| Account Number(s): | N/A |

ORIGINATED BY:  Amy Seeraty, Senior Planner
REVIEWED BY:  Ara Mihranian, AICP, Director of Community Development
APPROVED BY:  Doug Wilmore, City Manager
ATTACHED SUPPORTING DOCUMENTS:

A. Urgency Ordinance No. _U (page A-1)
B. Ordinance No. ___ (page B-1)
C. Existing RPVMC Section 12.18 (page C-1)
D. FCC Order (page D-1)
E. Public Comments (page E-1)

BACKGROUND AND DISCUSSION:

The Telecommunications Act of 1996 is intended to ensure that the public has sufficient access to telecommunication services. Based on this federal law, a local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services. Further, no state or local government may dictate, or even consider, wireless entitlements based on “the environmental (health) effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.” A zoning authority’s mere consideration of health effects, including potential effects on property values due to potential radio frequency emissions, may not serve as “substantial evidence” for purposes of denying a wireless facility. The City’s role in the siting and design of wireless communications facilities (WCFs) is generally limited to aesthetics.

Wireless telecommunications providers are treated as telephone companies under their State franchise conferred in California Public Utilities Code Section 7901, and thus are entitled to use the public right-of-way (PROW) to deploy their equipment. However, even with their right to occupy the PROW under Section 7901, case law has found that providers may not “unreasonably subject the public use to inconvenience or discomfort; to unreasonably trouble, annoy, molest, embarrass, inconvenience; to unreasonably hinder, impede, or obstruct the public use.” These limitations on Section 7901 have been interpreted broadly enough to include concerns related to the appearance of a facility, and, thus, Section 7901 allows cities to condition a wireless permit by (i) regulating aesthetics, (ii) restricting the location of proposed facilities due to public safety reasons or other local concerns or even deny applications in appropriate circumstances, and (iii) exercising reasonable control over the time, place and manner of “when, where, and how telecommunications service providers gain entry to the PROW,” including the need for encroachment permits. (See, Pub. Util. Code § 7901.)

The City’s role in the siting and design of wireless facilities is generally limited to aesthetics. Up until the recent years, wireless antennas and related equipment were primarily installed on large towers or “macro-cells” on private property and were subject to the City’s discretionary Conditional Use Permits in accordance with Section 17.76.020 of the Rancho Palos Verdes Municipal Code (RPVMC).
In recent years, the Federal Communications Commission (FCC) established regulations that streamline and promote the timely buildout of wireless infrastructure across the country by eliminating discretionary regulatory processes and making it easier to install wireless facilities in the PROW. As a result, carriers now increasingly seek to place wireless facilities in the City’s PROW on utility poles, streetlights, street signs, and new poles. The demand for such wireless installations, particularly small wireless facilities (SWFs), is expected to grow exponentially over the next several years given the expansion of video streaming, social media, drones, self-driving cars, utilities, and the internet serving homes and businesses. To accommodate this expansion, the telecommunications industry is starting to look for small cell 5G (fifth-generation) technology. 5G technology is distinguished from the present 4G service by the use of low power transmitters with a coverage radius of approximately 400 feet. 5G thus requires close spacing of antennas and more of them. PROW streetlight poles and other poles are, therefore, suited for 5G SWFs.

On September 27, 2018, the FCC released a Declaratory Ruling and Third Report and Order (“FCC Order”) (Attachment D) significantly limiting state and local management of SWFs in the City’s PROW (and, in a limited way, SWFs on private property). The RPVMC contains outdated standards for dealing with SWFs in light of significant changes in law implemented by the FCC, as summarized below:

- Defines SWFs as up to 50’ in height, including antennas, or mounted on structures no more than 10% taller than other adjacent structures; or that do not extend existing structures on which they are located to a height of more than 50’ or by more than 10%, whichever is greater; each antenna is no more than 3ft³ in volume, and the total associated wireless equipment on one structure is no more than 28ft³ in volume.
- Caps all fees that local governments can charge to the actual and reasonable cost of providing service. This limitation also applies to fees for SWFs located on private property.
- Imposes shot clocks of 60 days for SWFs added to existing structures (regardless of whether the structure already supports a wireless service) and 90 days for SWFs proposing a new structure (i.e. new pole). The shortened shot clocks (reduced from 150 days in most cases) also apply to applications for SWFs on private property. A clock begins at the time an application is deemed complete for processing and ends when the permits are issued. That means the entire entitlement process including public noticing, public hearings, possible appeal hearings, and engineering review must be completed before the clock ends (unless the applicant is willing to issue a tolling agreement extending the clock).
- Preempts all aesthetic requirements for SWFs in the PROW unless they are (1) reasonable; (2) no more burdensome than those applied to other types of infrastructure deployments; (3) objective; and (4) published in advance. If a city
has not “published” its design standards in advance, then it does not appear that any standards can be enforced by a city.

The aesthetics-related portion of FCC Order goes into effect on April 14, 2019. In order to align the City’s Wireless Telecommunication Facilities Ordinance (Chapter 12.18) with the FCC Order, this report introduces an ordinance (urgency and regular ordinances) to provide the regulatory framework and standards for permitting the installation of SWFs within the City’s PROW. Staff has been working with the City Attorney’s office to draft the defensible proposed ordinance. The proposed ordinance includes design standards that have been revised in response to the FCC Order and addresses “eligible facilities requests (EFRs)” - a category of “by-right” installations that were established by the FCC several years ago, but never acknowledged in the City’s current Ordinance.

Current Wireless Telecommunication Facilities Ordinance

The City’s current rules and regulations for wireless facilities in the PROW that are subject to being repealed and replaced, as stated in Chapter 12.18 (Attachment C), consists of the following three different Wireless Telecommunication Facility Permits (WTFP) based on the application request:

- **Administrative WTFP** – Issued by the Public Works Director for new facilities, collocations or modifications to existing facilities that meet the following criteria:
  
  a. The proposal is not located on a local residential street or involves a new pole;
  b. The proposal would not significantly impair any view from any viewing area pursuant to the City’s View Ordinance; and,
  c. The proposal complies with all applicable provisions without need for an Exception (new pole or located on a local residential street).

- **Major WTFP** - All new wireless facilities, collocations, or modifications to existing wireless facilities subject to Planning Commission review.

- **Master Deployment Plan Permit** – A request for five or more wireless telecommunications facilities (including new facilities and collocations to existing facilities) subject to Planning Commission Review.

A Major WTFP or a Master Deployment Plan Permit are currently subject to the following required findings to ensure the proposed wireless facility adheres to the City’s regulations:

- All notices required for the proposed installation have been given.
- The proposed facility has been designed and located in compliance with all applicable provisions of this chapter.
• If applicable, the applicant has demonstrated its inability to locate on existing infrastructure.

• The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.

• The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible and is supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not available.

In addition to the required findings, a Major WTFP or a Master Deployment Plan Permit requires a public notice and the installation of a mock-up (at least 30 days before the public hearing), and are subject to the following design and development standards so as to minimize visual, noise and other impacts on the surrounding community:

• Screening, undergrounding, and camouflage design techniques
• Traffic safety elements
• Blending techniques by using subdued colors and non-reflective materials found within the surrounding area and structures
• Least visible equipment so that the facility is flush mounted and situated as close to the ground as possible
• Encouraging the use of existing utility, street sign, or street light poles
• Each facility is properly engineered to withstand wind loads
• Each facility would not cause any physical or visual obstruction to pedestrian or vehicular traffic
• Undergrounding of all accessory equipment
• Installation of landscaping
• No use of lighting
• Limiting noise generated by the equipment between 45 dba and 55 dba depending on the facility's location
• Limiting use of signs

Proposed Wireless Telecommunication Facilities Ordinance

The new FCC Order significantly changes federal law to shorten time frames and other requirements on local review of SWFs in the PROW. Now, if a city does not render a decision on a SWF application within a specified time period (60 days for installations on existing structures, and 90 days for new structures), the failure to meet the deadline for action will be presumed to violate federal law (emphasis added).

On aesthetics, spacing restrictions and undergrounding requirements, the FCC declares that such requirements will not be preempted if they are reasonable, no more burdensome than those applied to other types of infrastructure deployments, and
objective and published in advance. In essence, this new standard for aesthetic conditions means that cities can impose aesthetic requirements to the extent they are “technically feasible” for the provider. This is a significant departure from the “least intrusive means” analysis that developed in the Ninth Circuit over the last few decades. The FCC Order purports to overturn the “least intrusive means” standard entirely, with the new standards taking effect on April 14, 2019. Thus, if a city does not have “published” design standards, then it does not appear that any standards can be enforced. It is therefore important that the City update its ordinance with new standards and procedures by April 14, 2019.

Staff recommends that the City Council adopt an urgency ordinance (Attachment A) and introduce a matching regular ordinance (Attachment B) this evening setting the permitting procedures and updating design and development standards for wireless facilities in the PROW. The proposed ordinance, prepared in collaboration with the City Attorney’s Office, seeks to balance the community’s need for wireless services, the industry’s need to deploy quickly, and the City’s obligation to maintain safety and protect the aesthetic qualities of our neighborhoods in response to the FCC Order. The urgency ordinance will enact the regulations before the April 14, 2019 effective date. As the FCC Order applies to various parts of Chapter 12.18, it is recommended that the entire existing ordinance be repealed and replaced so as to avoid creating inadvertent inconsistencies between the different sub-sections of the Chapter. The most salient changes are summarized below:

- For all wireless facility installations in the PROW, the new ordinance provides, among other regulations, the permit and review procedures, as well as the operation and maintenance standards. The ordinance treats wireless installations in the PROW similar to other installations in the ROW by requiring an encroachment permit. Once the encroachment permit is issued, the carrier may still need to obtain traffic control plans, construction permits and if necessary, a license to attach to City infrastructure.

- The substantially shorter “shot clocks” established by the FCC Order render discretionary review by the Planning Commission (or any other hearing body) much more difficult, if not logistically impossible. To this end, the proposed ordinance presents an entirely new administrative review process for wireless facility applications, with Public Works taking the lead of administratively reviewing SWFs and EFR applications. Pursuant to this new review process, the existing permit categories of Administrative Wireless Telecommunications Facilities Permit (WFTP), Major Wireless Telecommunications Facilities Permit, and Master Deployment Plan Permit are proposed to be eliminated, and the following two new types of permits are proposed:
  
  - Minor WTFP - Applies to SWFs, which are wireless facilities that meet certain requirements including, but not limited to, location, height and size limits, and to proposals that are determined to be an EFR, which is generally defined as any request for modification to an existing eligible
support structure that does not substantially change the physical dimensions of such a structure. A minor WTFP will be processed by the Public Works Department (but can be forwarded to the Planning Commission by the Public Works Director).

- Major WTFP – Applies to any WTF project that does not qualify as a Minor WTFP and allows the Public Works Director to refer any WTFP that does not meet the Minor WTFP criteria to the Planning Director for consideration by the Planning Commission at a duly noticed public hearing.

* The new shot clock requirements allow the City to stop and restart the clock when an application is initially deemed incomplete. Subsequent submittals that are deemed incomplete only allow the shot clock to be tolled. Meaning the shot clock resumes from where it left off when an application is resubmitted.

* The current mock-up requirement has been eliminated, as it would be logically infeasible, given the shortened shot clock requirements imposed by the FCC. However, photo simulations will still be required.

* Recognizes and establishes procedures and standards for EFRs pursuant to federal law. These are ministerial modifications and collocations that must be approved by right through a Minor WTFP, for which provisions were not included in the current Municipal Code, despite being required by law since 2012.

* Contains a comprehensive list of permit conditions that will apply to wireless encroachment permits, including insurance requirements, indemnity, performance bond for removal upon abandonment, and maintenance and inspection requirements. The permits are in effect for a term of 10 years, which stems from a state law that allows the City to limit the permits to 10 years; compared to utility poles, for example, which are erected in perpetuity.

* Requires notices be mailed to owners and occupants of property within 500 feet of a proposed SWF and major facilities 10 days before they are approved

* Establishes new findings that need to be made in order to approve a Minor or Major WTFPs

* Eliminates the “significant gap” requirement for Minor WTFPs

* Establishes new appeal procedures for Minor WTFPs and retains the existing appeal procedures for Major WTFPs. Under the procedures for Minor WTFPs, an appeal must be filed within 5 days of the Notice of Decision and will be considered directly by the City Council within 10 days from the date the appeal is filed due to the limited time frame established by the shot clock. There may be cases where a
special City Council meeting may have to be called to meet the shot clock unless the applicant files a tolling agreement.

- Requires a pre-application submittal conference meeting for Major WTFPs and only recommends (not requires) it for a Minor WTFP because of the limited shot clock timeframe
- Retains the noise limits established in the current ordinance for wireless facilities requiring a WTFP
- Retains the undergrounding requirement, if technically feasible, in the current ordinance for wireless facilities requiring a WTFP
- Provides SWF design standards that will provide the industry direction on the City's aesthetic, location and design requirements. For example, the proposed design standards recommend that when there is a choice in location, carriers should choose to site on a pole or streetlight that is between structures and not immediately adjacent to a structure, that paint and design should blend with surrounding structures, that signage should be limited, and that lighting be prohibited unless required by the Federal Aviation Administration. It should be noted that such standards may need to be readily and quickly amended as an urgency ordinance based on the given frequency and magnitude of changes in law and technology surrounding wireless installations.

Urgency Ordinance

The City Council is being asked to adopt an urgency ordinance at tonight's meeting (in addition to introducing the matching non-urgency ordinance) due to the time constraint to enact legislation prior to the April 14, 2019, deadline. Government Code § 36937 states that an ordinance becomes effective immediately if the City Council finds, by a four-fifths vote, that the ordinance is for the immediate preservation of the public peace, health, or safety and contains a declaration of the facts constituting the urgency. In this case, the urgency is the fact that if a city does not have “published” design standards prior to April 14, 2019, then it does not appear that any standards can be enforced. The City must have an ordinance in place by that date to ensure that the updated design standards can be enforced. The City Council can make findings that allowing the permitting of WTFPs without regulations and limitations specifically crafted to further the City’s particular needs and character, constitutes a threat to the health, safety, and welfare of the City’s residents.

If the City Council adopts the urgency ordinance (Attachment A) at tonight’s meeting, the regular ordinance (Attachment B) will return for the second reading at the April 16, 2019, meeting. This process ensures that (1) the City will have an ordinance in effect prior to April 14, 2019; and (2) the City will also have ordinances in effect through the standard process (two readings plus 30 days) in the unlikely event of a successful challenge to the validity of the urgency ordinances.
It is important to note that it is highly likely that the regulations may change in the coming months for various reasons, including technology changes and any outcome on the legal validity of the FCC orders that are currently being litigated. The House of Representatives recently introduced H.R. 530, which would repeal recent FCC regulations which limited the ability of local governments to regulate the deployment of 5G wireless infrastructure. Therefore, the proposed ordinance may be subject to further amendments later this year if this or other bills or rulings pass.

**ADDITIONAL INFORMATION**

**Public Notice**

Although not required by the Municipal Code, on March 19, 2019, a courtesy notice was posted on the City’s website and a listserv message was issued to the Wireless listserv subscribers announcing the public hearing for tonight’s item. On March 21, 2019, the same courtesy notice was published in the Peninsula News.

**Public Correspondence**

Staff received three emails in response to the courtesy notice (Attachment E). While two of the emails requested copies of the draft ordinance and replacement codes when available, only one resident provided additional comments. The other resident expressed a concern with the health effects associated with the deployment of 5G. The main points of the concerns expressed by the resident are listed below in **bold** followed by responses prepared by the City Attorney:

- **Opposing any effort to weaken the ordinance particularly in regards to demonstrating "significant gap," local street location restrictions, or equipment undergrounding requirements.**

  The FCC Order is quite clear in overturning “significant gap” elements with respect to SWFs (and this has always been the case with EFRs). Essentially, the FCC Order overturns effective prohibition standards that have been established by the Ninth Circuit (which governs California cities), including our standard of requiring the “least intrusive means to cover a significant gap.” To quote the FCC Order on this point in detail:

  “As explained in *California Payphone* and reaffirmed here, a state or local legal requirement will have the effect of prohibiting wireless telecommunications services if it materially inhibits the provision of such services. We clarify that an 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.” (FCC Order ¶37.)
“In this Declaratory Ruling, we first reaffirm, as our definitive interpretation of the effective prohibition standard, the test we set forth in *California Payphone*, namely, that a state or local legal requirement constitutes an effective prohibition if it ‘materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.’ . . . In doing so, we confirm the First, Second, and Tenth Circuits’ understanding that under this analytical framework, a legal requirement can ‘materially inhibit’ the provision of services even if it is not an insurmountable barrier. We also resolve the conflicting court interpretations of the ‘effective prohibition’ language so that continuing confusion on the meaning of Sections 253 and 332(c)(7) does not materially inhibit the critical deployments of Small Wireless Facilities and our nation’s drive to deploy 5G.”

- **Rejecting any position that the FCC Order is settled, and expressing concern that the City is changing the Ordinance when other cities are filing suit against the FCC regarding the new regulations.**

  While the legal validity of the FCC Order is being litigated, the effectiveness of the Order has not been stayed. Further, another FCC Order that was released in August 2018 prohibits cities from imposing a moratorium on wireless installations, which means that there can be no pause in accepting or processing applications to allow a city to study and address potential issues. Hence, there is nothing in the pending litigation set to alleviate the FCC’s April 14th deadline for having compliant aesthetic standards in place. While standards could technically be established (or altered) at a later date, the City would face a significant risk of receiving applications during any interim period between April 14th and such date that the proper standards are effective. Moreover, as emphasized elsewhere in this report, the potential for changes in the law are precisely the reason the City Council should expect to see further “clean-up” edits to the ordinance in the near future.

- **Repealing and replacing the existing ordinance should not occur but rather amending only certain sections of the existing ordinance to reflect applicable changes (such as shot clocks) where the FCC authority is clear and unambiguous.**

  The significantly shorter shot clocks required by the new FCC Order render the basic discretionary process underlying our entire current ordinance untenable in the context of SWFs and EFRs. This required a fundamental overhaul of the ordinance in order to create a whole new separate process for reviewing SWFs and EFRs. Many elements of the City’s current ordinance do remain intact, such as those applicable to Major Wireless Facilities.
California Environmental Quality Act Review

The proposed ordinance is not defined as a “project” based on the definition provided in Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The ordinance creates an administrative process to process requests for wireless facilities in the PROW and the City’s discretion with these applications is limited. The ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries.

Alternatively, the ordinance is exempt from CEQA because the City Council’s adoption of the ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)). Installations, if any, would further be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land), as these facilities are allowed under Federal and State law, are by their nature smaller when placed in the PROW and subject to various siting and design preferences to prevent aesthetic impact to the extent feasible.

ALTERNATIVES

In addition to Staff’s recommendations, the following alternative actions are available for the City Council’s consideration:

1. Adopt the proposed urgency ordinance to ensure certain provisions of the FCC Order are in place before April 14, 2019, do not introduce the matching regular ordinance, and provide Staff with further direction to explore modifications to the new ordinance for consideration at a later date as part of the regular ordinance process

2. Take no action.
ORDINANCE NO. __U

AN URGENCY ORDINANCE OF THE CITY OF RANCHO PALOS VERDES REPEALING AND REPLACING CHAPTER 12.18 (WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO UPDATE THE REGULATORY FRAMEWORK AND STANDARDS FOR PERMITTING WIRELESS FACILITIES, WITHIN THE CITY’S PUBLIC RIGHT-OF-WAY IN ACCORDANCE WITH THE RECENT FEDERAL COMMUNICATIONS COMMISSION (FCC) RULING.

WHEREAS, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and,

WHEREAS, significant changes in federal and state law that affect local authority over wireless communications facilities ("WCFs") have occurred, including but not limited to the following:

i. On November 18, 2009, the Federal Communications Commission ("FCC") adopted a declaratory ruling (the "2009 Shot Clock"), which established presumptively reasonable timeframes for state and local governments to act on applications for WCFs.

ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409(a)"), which mandated that state and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.

iii. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock.

iv. On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes.

v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).
vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among other things, creates a new regulatory classification for small wireless facilities ("SWFs"), requires state and local governments to process applications for SWFs within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and,

WHEREAS, in addition to the changes described above, new federal laws and regulations that drastically alter local authority over WCFs are currently pending, including without limitation, the following:

i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment.

ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the "Streamline Small Cell Deployment Act" (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot Clock timeframes, and provide a "deemed granted" remedy for failure to act within the applicable 2009 Shot Clock; and,

WHEREAS, given the rapid and significant changes in federal and state law, the actual and effective prohibition on moratoria to amend local policies in response to such changes, and the significant adverse consequences for noncompliance with federal and state law, the City Council desires to repeal and replace Chapter 12.18 of the Rancho Palos Verdes Municipal Code, entitled “Chapter 12.18 - Wireless Telecommunications Facilities in the Public Right-Of-Way” (the “Ordinance”) to allow greater flexibility and responsiveness to the new federal and state laws while still preserving the City’s traditional authority to the maximum extent practicable; and,

WHEREAS, Government Code Sections 36934 and 36937 authorize the City Council to adopt an urgency ordinance that becomes effective immediately upon its adoption by a four-fifths vote of the City Council for the immediate preservation of the public peace, health or safety of the City; and,

WHEREAS, this Urgency Ordinance is necessary for the immediate preservation of the public peace, health and safety of the City within the meaning of Government Code Section 36937 because if a city does not have “published” design standards prior to April 14, 2019, then it does not appear that any standards can be enforced; and,
WHEREAS, the City Council finds that if the new ordinance is not adopted and the code language not changed by April 14, 2019, the inability to enforce the updated design standards constitutes an immediate threat to the public health, safety, and welfare; and,

WHEREAS, all legal prerequisites to the adoption of this ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1: The City Council of the City of Rancho Palos Verdes hereby makes the following findings:

A. The above recitals are true and correct and incorporated herein by this reference.

B. It is the intent and purpose of this Urgency Ordinance that Chapter 12.18 (Wireless Telecommunications Facilities in the Public Right-Of-Way) of the Rancho Palos Verdes Municipal Code is repealed and replaced to update the regulatory framework and standards for permitting wireless facilities, including small wireless facilities (SWF), within the City’s public right-of-way in accordance with the recent Federal Communications Commission (FCC) ruling.

C. This Urgency Ordinance is necessary for the immediate preservation of the public peace, health and safety of the City within the meaning of Government Code Section 36937 in order for the City to be able to enforce updated design standards.

Section 2: Section 12.18 of the Rancho Palos Verdes Municipal Code is being repealed and replaced as shown in Attachment A.

Section 3: CEQA Exemption. The proposed ordinance is not defined as a “project” based on the definition provided in Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The ordinance creates an administrative process to process requests for wireless facilities in the PROW and the City’s discretion with these applications is limited. The ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries.

Alternatively, the ordinance is exempt from CEQA because the City Council’s adoption of the ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA
Guidelines, § 15061(b)(3)). Installations, if any, would further be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land), as these facilities are allowed under Federal and State law, are by their nature smaller when placed in the PROW and subject to various siting and design preferences to prevent aesthetic impact to the extent feasible.

**Section 4:** Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**Section 5:** Certification and Posting. The City Clerk shall cause this Ordinance to be posted in three (3) public places in the City within fifteen (15) days after its passage, in accordance with the provisions of Section 36933 of the Government Code. The City Clerk shall further certify to the adoption and posting of this Ordinance, and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of the Council of this City.

**Section 6:** Effective Date. This Urgency Ordinance shall go into effect immediately upon its adoption by at least a four-fifths vote of the City Council pursuant to Government Code sections 36934 and 36937.

**Section 7:** Any challenge to this Ordinance, and the findings set forth therein, must be filed within the 90 day statute of limitations set forth in Code of Civil Procedure §1094.6 and Section 17.86.100(B) of the Rancho Palos Verdes Municipal Code.
PASSED, APPROVED AND ADOPTED this 2nd day of April, 2019.

Mayor

Attest:

City Clerk

STATE OF CALIFORNIA )
COUNTY OF LOS ANGELES )ss
CITY OF RANCHO PALOS VERDES )

I, EMILY COLBORN, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No._______U was duly adopted by the City Council of said City at a regular meeting thereof held on April 2, 2019, and that the same was passed and adopted by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Emily Colborn, City Clerk
CHAPTER 12.18 - WIRELESS TELECOMMUNICATIONS FACILITIES
IN THE PUBLIC RIGHT-OF-WAY

12.18.010 - PURPOSE.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of
regulations and standards for the permitting, development, siting, installation, design,
operation and maintenance of wireless telecommunications facilities in the City’s public
right-of-way. These regulations are intended to prescribe clear and reasonable criteria to
assess and process applications in a consistent and expeditious manner, while reducing
the impacts associated with wireless telecommunications facilities. This chapter provides
standards necessary (1) for the preservation of the public right-of-way (“PROW”) in the
City for the maximum benefit and use of the public, (2) to promote and protect public
health and safety, community welfare, visual resources and the aesthetic quality of the
City consistent with the goals, objectives and policies of the general plan, and (3) to
provide for the orderly, managed and efficient development of wireless
telecommunications facilities in accordance with the state and federal laws, rules and
regulations, including those regulations of the Federal Communications Commission
(“FCC”) and California Public Utilities Commission (“CPUC”), and (4) to ensure that the
use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the
placement of wireless facilities. The City recognizes the importance of wireless facilities
to provide high-quality communications service to the residents and businesses within the
City, and the City also recognizes its obligation to comply with applicable federal and state
laws. This chapter shall be constructed and applied in consistency with the provisions of
state and federal laws, and the rules and regulations of FCC and CPUC. In the event of
any inconsistency between any such laws, rules and regulations and this chapter, the
laws, rules and regulations shall control.

12.18.020 - DEFINITIONS.

“Accessory equipment” means any and all on-site equipment, including, without limitation,
back-up generators and power supply units, cabinets, coaxial and fiber optic cables,
connections, equipment buildings, shelters, vaults, radio transceivers, transmitters,
pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular
power supply units, fans, air conditioning units, cables and wiring, to which an antenna is
attached in order to facilitate the provision of wireless telecommunication services.

“Antenna” means that specific device for transmitting and/or receiving radio frequency or
other signals for purposes of wireless telecommunications services. “Antenna” is specific
to the antenna portion of a wireless telecommunications facility.

“Antenna array” shall mean two or more antennas having active elements extending in
one or more directions, and directional antennas mounted upon and rotated through a
vertical mast or tower interconnecting the beam and antenna support, all of which
elements are deemed to be part of the antenna.
“Approval authority” means the City official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications.

“Arterial road” means a road designed primarily for long-distance travel with high traffic capacity and low accessibility from neighboring roads and is not intended to be a residential street; however, some older arterial streets do provide direct access to residential units. Arterials are typically characterized by both two-lane and four-lane roadways, and collects traffic from collector roads. The term “arterial road” is defined in the City of Rancho Palos Verdes General Plan, Circulation Element.

“Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small cells). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cells).

3. Any structure other than a tower that, at the time the relevant application is filed with the City under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

4. “Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

“Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
“City” means the City of Rancho Palos Verdes.


“Collector road” means a road designed primarily as a connection between local roads and arterials that serve moderate to low traffic capacity and high accessibility from local roads. The term “collector road” is defined in the City of Rancho Palos Verdes General Plan, Circulation Element.

“Collocation” bears the following meanings:

1. For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and

2. For all other purposes, the same as defined in 47 CFR 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

“Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (See, Gov. Code, § 65850.6(d).)

“COW” means a “Cell on Wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

“Concealed” or “concealment” means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) façade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.

“Decorative pole” means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
“Distributed Antenna System” or “DAS” means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunications services.

“FCC Shot Clock” means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time. The shot clock shall commence on “day zero,” which is the day the WTFP application is submitted.

“Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment;
3. Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
4. Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.

“Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.

“Eligible support structure” means any support structure located in the PROW that is existing at the time the relevant application is filed with the City under this chapter.

“Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the City’s applicable zoning or permitting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this chapter. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is “existing” for purposes of this chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.
“Facility(ies)” means wireless telecommunications facility(ies).

“FCC” means the Federal Communications Commission.

“Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.

“Lattice tower” means an open framework structure used to support one or more antennas, typically with three or four support legs.

“Located within (or in) the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.

“Ministerial permit” means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City’s jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.

“Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.

“Monopole” means a structure composed of a pole or tower used to support antennas or related equipment. A monopole includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).

“Mounted” means attached or supported.

“OTARD antennas” means antennas covered by the “over-the-air reception devices” rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.

“Permittee” means any person or entity granted a Wireless Telecommunication Facilities Permit (WTFP) pursuant to this chapter.

“Personal wireless services” shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

“Planning Director” means the Director Community Development, or his or her designee.
“Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.

“Public works director” means the Director of Public Works, or his or her designee.

“Public right-of-way” or “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, roadway medians, parkways, and parking strips. The PROW does not include land owned, controlled or operated by the City for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, City hall and community center lands, City yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.

“Replacement” refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.

1. In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.

2. In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.

“RF” means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“Section 6409” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended. The Middle Class Tax Relief and Job Creation Act of 2012 is also reference herein occasionally as the “Spectrum Act”.

“Small cell” means a low-powered antenna (node) that has a range of 10 meters to two kilometers. The nodes of a “small cell” may or may not be connected by fiber. “Small,” for purposes of “small cell,” refers to the area covered, not the size of the facility. “Small cell” includes, but is not limited to, devices generally known as microcells, picocells and femtocells.

“Small cell network” means a network of small cells.
“Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. 1.40001(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the public works director and based upon his/her reasonable consideration of the cabinet's proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the public works director may allow for a ground mounted cabinet. A modification or collocation results in a “substantial change” to the physical dimensions of an eligible support structure if it does any of the following:

1. It increases the height of the structure by more than 10% or more than 10 feet, whichever is greater;

2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

4. It entails any excavation or deployment outside the current site. For purposes of this Subsection, excavation outside the current site occurs where excavation more than 12 feet from the eligible support structure is proposed;

5. It defeats the concealment or stealth elements of the eligible support structure; or

6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, 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 1 through 4 of this definition.

7. For all proposed collocations and modifications, a substantial change occurs when:

   a. The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 equipment cabinets;

   b. The proposed collocation or modification would defeat the concealment elements of the support structure; or
c. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this Section.

The thresholds and conditions for a “substantial change” described in this section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

“Support structure” means a tower, pole, base station or other structure used to support a wireless telecommunications facility.

“SWF” means a “small wireless facility” as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

1. The facilities:
   a. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or
   b. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or
   c. Does not extend an existing structure on which it is 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 47 C.F.R. Section 1.1320(d)), is no more than 3 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 facility does not require antenna structure registration under 47 C.F.R. Part 17;

5. The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and
6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).

“Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.40001(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

“Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.

“Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:

1. Government-owned and operated telecommunications facilities.

2. Emergency medical care provider-owned and operated telecommunications facilities.

3. Mobile services providing public information coverage of news events of a temporary nature.

4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

“Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.
“WTFP” means a “Wireless Telecommunications Facility Permit” required by this chapter, which may be categorized as either a Major WTFP or a Minor WTFP.

12.18.030- APPLICABILITY.

A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way.

B. Pre-existing Facilities in the PROW. Nothing in this chapter shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive an encroachment permit, when applicable, in order to be considered legal and conforming.

C. This chapter does not apply to the following:

1. Amateur radio facilities;

2. OTARD antennas;

3. Facilities owned and operated by the City for its use or for public safety purposes;

4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement, excepting that to the extent such the terms of state or federal law, or franchise agreement, are preemptive of the terms of this chapter, then the terms of this chapter shall be severable to the extent of such preemption and all remaining regulations shall remain in full force and effect. Nothing in the exemption shall apply so as to preempt the City’s valid exercise of police powers that do not substantially impair franchise contract rights.

5. Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the public works director, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

D. Public use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this chapter will be subordinate to the City’s use and use by the public.

12.18.040 - WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

A. Administration. Unless a matter is referred to the planning director as provided below, the public works director is responsible for administering this chapter. As part of the administration of this chapter, the public works director may:

1. Interpret the provisions of this chapter;
2. Develop and implement standards governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;

3. Develop and implement acceptable design, location and development standards for wireless telecommunications facilities in the PROW, taking into account the zoning districts bounding the PROW;

4. Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this chapter;

5. Collect, as a condition of the completeness of any application, any fee established by this chapter;

6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;

7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;

8. Require, as part of, and as a condition of completeness of any application, that an applicant for a wireless telecommunications facilities permit send notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;

9. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and

10. Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. Minor Wireless Telecommunications Facilities Permits (“Minor WTFP”).

1. A Minor WTFP, subject to the public works director’s approval, may be issued for certain wireless telecommunications facilities, collocations, modifications or replacements to an eligible support structure that meet the following criteria:

   a. The proposal is determined to be for a SWF; or

   b. The proposal is determined to be an eligible facilities request.
2. In the event that the public works director determines that any application submitted for a Minor WTFP does not meet the permit criteria of this chapter, the public works director shall convert the application to a Major WTFP and refer it to the planning director for planning commission consideration at a public hearing.

3. Except in the case of an eligible facilities request, the public works director may refer any application for a Minor WTFP to the planning director, who shall have discretion to further refer the application to planning commission for consideration at a public hearing. If the planning director determines not to present the Minor WTFP application to the planning commission for hearing, the application shall be relegated back to the public works director for processing. None of the exercises of discretion set forth in this subparagraph shall not apply to an eligible facilities request.

C. Major Wireless Telecommunications Facilities Permit (“Major WTFP”). All other new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that are not qualified for a Minor WTFP shall require a Major WTFP subject to planning commission hearing and approval unless otherwise provided for in this chapter.

D. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other City departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other City departments, state or federal agencies. Building and encroachment permits, and all City standards and requirements therefor, are applicable.

E. Eligible Applicants. Only applicants who have been granted the right to enter the PROW pursuant to state or federal law, or who have entered into a franchise agreement with the City permitting them to use the PROW, shall be eligible for a WTFP pursuant to this chapter.

12.18.050 - APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

A. General. The applicant shall submit a paper copy and an electronic copy of any application, amendments, modifications, or supplements to a WTFP application, or responses to requests for information regarding a WTFP, including all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy wireless facilities within the City’s jurisdictional and territorial boundaries within the PROWs, in accordance with the provisions of this section.

1. The City requires a pre-application submittal meeting for a Major WTFP. The City does not require a pre-application submittal meeting for a Minor WTFP;
however, the City strongly encourages applicants to schedule and attend a pre-application submittal conference with the approval authority for all proposed Minor WTFP projects, and particularly those that involve more than 5 Minor WTFPs.

a. Pre-submittal conferences do not cause the FCC Shot Clock to begin and are intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues.

b. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant with an appointment within 5 working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.

c. Any request for a pre-submittal conference shall be in writing and shall confirm that any drafts to be provided the City at the pre-submittal conference will not be deemed as “submissions” triggering the start of any FCC Shot Clock.

2. All applications for WTFPs shall be initially submitted to the public works director. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant shall fully and completely submit to the City a written application on a form prepared by the public works director.

3. Major WTFP applications must be submitted to the public works director at a scheduled application submission appointment. City staff will endeavor to provide applicants with an appointment within 5 business days after receipt of a written request therefor. A WTFP application will only be reviewed upon submission of a complete application therefor. A pre-submission appointment is not required for Minor WTFPs.

4. For SWF, applicants may submit up to 5 individual applications for a WTFP in a batch; provided, however, that SWF in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the
application fee for each site in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch as described in this chapter, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.

5. If the wireless telecommunications facility will also require the installation of fiber, cable, or coaxial cable, such cable installations shall be included within the application form and processed in conjunction with the proposal for vertical support structure(s). Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the PROW. Standalone applications for the installation of fiber, cable, or coaxial cable, or accessory equipment designed to serve an antenna must include all features of the wireless telecommunications facility proposed.

B. Application Contents – Minor WTFPs. The content of the application form for facilities subject to a Minor WTFP shall be determined by the public works director in addition to all other information reasonably deemed necessary, but at a minimum shall include the following:

1. The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless facility.

2. The name of the owner of the structure, if different from the applicant, and a signed and notarized owner’s authorization for use of the structure.

3. A complete description of the proposed wireless telecommunications facility and any and all work that will be required to install or modify it, including, but not limited to, details regarding proposed excavation, if any; detailed site plans showing the location of the wireless telecommunications facility, and dimensioned drawings with specifications for each element of the wireless facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and a dimensioned map identifying and describing the distance to the nearest residential dwelling unit and any historical structure within 250 feet of the facility. Before and after 360 degree photo simulations shall be provided.

4. Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC’s radio frequency emissions standards.

5. A copy of the lease or other agreement, if any, between the applicant and the owner of the property to which the proposed facility will be attached.

6. If the application is for a SWF, the application shall state as such and shall explain why the proposed facility meets the definition of a SWF.
7. If the application is for an eligible facilities request, the application shall state as such and must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must demonstrate that the eligible support structure was not constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. This shall include copies of all applicable local permits in-effect and as-built drawings of the current site. Before and after 360 degree photo simulations shall be provided, as well as documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC's radio frequency emissions standards.

8. For SWFs, the application shall also contain:

a. Application Fee. The applicant shall submit the applicable SWF WTFP application fee established by City Council resolution. Batched applications must include the applicable application fee for each SWF in the batch.

b. Construction Drawings. The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings shall: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number, and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

c. Site Survey. For any SWF proposed to be located within the PROW, the applicant shall submit a survey prepared, signed, and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire
hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

d. Photo Simulations. The applicant shall submit site photographs and 360 degree photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.

e. Project Narrative and Justification. The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a SWF as defined by the FCC in 47 C.F.R. 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a SWF permit as provided in Section 12.18.060.

f. RF Compliance Report. The applicant shall submit an RF exposure compliance report that certifies that the proposed SWF, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

g. Public Notice. Prior to deeming the application complete, the applicant shall submit a mailing list and two sets of labels for all properties and record owners of properties within 500 feet of the project location.

h. Regulatory Authorization. The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the SWF proposed in the application.
i. Site Agreement. For any SWF proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant must enter into a site agreement prepared on a form prepared by the City and approved by the City Attorney that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City’s form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City’s form site agreement shall be deemed a basis to deem the application incomplete.

j. Acoustic Analysis. The applicant shall submit an acoustic analysis prepared and certified by an acoustic engineer for the proposed SWF and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the following noise regulations:

i. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.;

ii. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

The acoustic analysis shall also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

k. Wind Load Analysis. The applicant shall submit a wind load analysis with an evaluation of high wind load capacity and shall include the impact of modification of an existing facility.

l. Environmental Data. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 et seq., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the City reserves its right.
to exercise its rights as a responsible agency to review de novo the environmental impacts of any WTFP application.

m. FAA Documentation. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.

n. Traffic Control Plan. A traffic control plan when the proposed installation is on any street in a non-residential zone. The City shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

o. Landscape Plan. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the SWF and its accessory equipment.

p. CPCN. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the PROW. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

9. If the applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent the City from complying with any deadline for action on an application or FCC Shot Clock.

C. Application Contents - Major WTFPs. The public works director shall develop an application form and make it available to applicants upon request and post the application form on the City’s website. The application form for a Major WTFP shall require the following information, in addition to all other information determined necessary by the public works director:

1. The name, address, and telephone number of the applicant, owner, and the operator of the proposed wireless telecommunication facility.

2. If the applicant does not, or will not, own the support structure, the applicant shall provide a duly-executed letter of authorization from the owner of the structure. If the owner of the support structure is the applicant, but such owner/applicant will not directly provide wireless telecommunications services, the owner/applicant shall provide a duly-executed letter of authorization from the person(s) or entity(ies) that will provide those services.

3. A full written description of the proposed wireless telecommunications facility and its purpose.
4. Detailed engineering plans of the proposed wireless telecommunications facility and related report prepared by a professional engineer registered in the state documenting the following:

a. Height/elevation, diameter, layout and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least intrusive equipment within the particular technology available to the carrier for deployment.

b. A photograph and model name and number of each piece of the facility or proposed antenna array and accessory equipment included.

c. Power output and operating frequency for the proposed antenna array (including any antennas existing as of the date of the application serving the carrier identified in the application).

d. Total anticipated capacity of the wireless telecommunications facility for the subject carrier, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.

e. Sufficient evidence of the structural integrity of the support structure as required by the City.

5. A written description identifying the geographic service area to be served by the proposed WTFP, plus geographic or propagation maps showing applicant’s service area objectives.

6. A justification study which includes the rationale for selecting the proposed wireless telecommunication facility design, support structure and location. A detailed explanation of the applicant’s coverage objectives that the proposal would serve, and how the proposed use is the least intrusive means for the applicant to cover such objectives. This shall include:

a. A meaningful comparative analysis that includes all factual reasons why the proposed location and design deviates from, or is the least compliant means of, or not the least intrusive location and design necessary to reasonably achieve the applicant’s reasonable objectives of covering an established significant gap (as established under state and federal law).

b. The study shall include all eligible support structures and/or alternative sites evaluated for the proposed Major WTFP, and why the alternatives are not reasonably available, technically feasible options that most closely conform to the local values. The alternative site analysis must include the consideration of at least two eligible support structures; or, if no eligible support facilities are analyzed as alternatives, why no eligible support facilities are reasonably available or technically feasible.
c. If a portion of the proposed facility lies within a jurisdiction other than the City’s jurisdiction, the applicant must demonstrate that alternative options for locating the project fully within one jurisdiction or the other is not a viable option. Applicant must demonstrate that it has obtained all approvals from the adjacent jurisdiction for the installation of the extra-jurisdictional portion of the project.

7. Site plan(s) to scale, specifying and depicting the exact location of the proposed wireless telecommunications facility, location, of accessory equipment in relation to the support structure, access or utility easements, existing utilities, adjacent land uses, and showing compliance with all design and safety requirements set forth in this chapter.

8. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 et seq., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the City reserves its right to exercise its rights as a responsible agency to review de novo the environmental impacts of any WTFP application.

9. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the wireless telecommunications facility, including scaled photo simulations from at least three different angles.

10. Completion of the RF emissions exposure guidelines checklist contained in Appendix A to the FCC’s “Local Government Official’s Guide to Transmitting Antenna RF Emission Safety” to determine whether the facility will be “categorically excluded” as that term is used by the FCC.

11. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power “ERP”) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
12. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.

13. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code, including Chapter 8.28 (Noise) of this code.

14. A traffic control plan when the proposed installation is on any street in a non-residential zone. The City shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g., crane).

15. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the wireless telecommunication facility.

16. Certification that applicant is a telephone corporation, or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

17. Evidence that the proposed wireless facility qualifies as a personal wireless services facility.

18. Address labels for use by the City in notifying all property owners within 500 feet of the proposed wireless telecommunication facility and, if applicable, all public hearing information required by the municipal code for public noticing requirements.

19. Any other information and/or studies reasonably determined to be necessary by the public works or planning director(s) may be required.

D. Application Fees and Trust Deposits. For all WTFPs, application fee(s) and the establishment of trust deposits to cover outside consultant costs shall be required to be submitted with any application, as established by City Council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable trust deposit.

Reasonable costs of City staff, consultant and attorney time (including that of the City attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the City. To this end, the public works and/or planning director, as applicable, may require applicants to enter a trust/deposit reimbursement agreement, in a form approved by the city attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of City processing of an application may be drawn-down.
E. **Independent Expert.** The public works and/or planning director, as applicable, is authorized to retain on behalf of the City one or more independent, qualified consultant(s) to review any WTFP application at the applicant’s expense. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall include, but not be limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

F. **Effect of State or Federal Law on Application Process.** In the event a state or federal law prohibits the collection of any information or application conditions required by this section, the public works director is authorized to omit, modify, or add to that request from the City’s application form in consultation with the city attorney. Requests for waivers from any application requirement of this section shall be made in writing to the public works director. The public works director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the municipal code.

G. **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, any application governed by this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City on any application within thirty (30) calendar days after the application is deemed incomplete in a written notice to the applicant. The public works or planning director (as applicable) may grant a written extension for up to an additional thirty (30) calendar days when the applicant submits a written request prior to the application deemed automatically withdrawn that shows good cause to grant the extension.

H. **Waiver of Applications Superseded by Submission of New Project.** If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any City hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including FCC Shot Clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, “substantially revised” means that the project as initially-proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application.

I. **Rejection for Incompleteness.** WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the public works director by notifying the applicant in writing and specifying the material omitted from the application.
12.18.060 - REVIEW PROCEDURE.

A. General. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risk to public safety and utilizes installation of new support structures or equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.

B. Collocation Encouraged. Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions therefor.

C. Findings Required for Approval of a WTFP.

1. Minor WTFP for SWF. For Minor WTFP applications proposing a SWF, the public works director or planning director, as the case may be, shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

   a. The facility qualifies as a SWF;

   b. The facility is not detrimental to the public health, safety, and welfare;

   c. The SWF meets applicable requirements and standards of state and federal law;

   d. The SWF would not be located on a prohibited support structure identified in this chapter;

   e. The facility would utilize the most preferred support structure and location within 250 feet from the originally proposed site in any direction, or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) or locations within 250 feet would be technically infeasible;

   f. The meets applicable requirements and design standards for SWF under this chapter, unless the applicant has demonstrated with clear and
convincing evidence in the written record that any such standard would be technically infeasible; and

g. All public notices required for the application have been given.

2. Minor WTFP for EFR. For Minor WTFP applications proposing an eligible facilities request, the public works director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

a. That the application qualifies as an eligible facilities request; and

b. That the proposed facility will comply with all generally-applicable laws.

3. Major WTFP. No Major WTFP shall be granted unless all of the following findings are made by the applicable decision-maker:

a. If applicable, all notices required for the proposed Major WTFP have been given, including the inclusion, or placement on-site, of photo simulations for the proposed facility;

b. The proposed wireless telecommunications facility has been designed and located in compliance with all applicable provisions of this chapter;

c. If applicable, the applicant has demonstrated its inability to locate on an eligible support structure;

d. The applicant has provided sufficient evidence supporting the applicant’s claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the City permitting them to use the public right-of-way; and,

e. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible, supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not reasonably available.

D. Noticing. The provisions in this Section describe the procedures for the approval process, any required notice and public hearings for a WTFP application.

1. Minor WTFP Applications. Within or reasonably about 5 business days of a SWF application being deemed complete, notice of the proposed SWF application shall be mailed by the City to owners and occupants of real property within a 500 foot radius of the proposed SWF site at least 10 days before rendering a decision. Applications qualifying for eligible facilities requests shall not require notice. The notice shall contain:
a. A general project description and dimensioned, full color photo simulations;

b. The applicant's identification and contact information as provided on the application submitted to the City;

c. Contact information for the City's approval authority;

d. A statement that the approval authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the standards in this chapter;

e. A statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures, and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review; and

f. Written public comments shall be received by the approval authority within 10 days of the public notice date.

2. Major WTFP Applications. Any Major WTFP application shall require notice and a public hearing. Notice shall be provided at least 15 days before the public hearing. Public notices shall include color photo simulations from different angles depicting the wireless telecommunication facility as proposed to be considered by the planning commission. If the application proposes the use of an existing or replacement eligible support structure, such simulations shall be posted upon the proposed support structure for a period of at least 30 days prior to the public hearing; such posted simulations shall remain in-place until a final decision, including exhausting all appeal processes, on the application is reached.

E. Notice of Decision. Within 5 days after any decision to grant, approve, deny, or conditionally grant any WTFP application, the public works director or planning director, as applicable, shall provide written notice based on substantial evidence in the written administrative record including the following:

1. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;

2. A general description of the property involved;

3. Information about applicable rights to appeal the decision, costs to appeal, and explanation of how that right may be exercised; and

4. To be given by first class mail to:
   a. The project applicant and property owner;
b. Any person who submitted written comments concerning the WTFP;

c. Any person who has filed a written request with the City to receive such notice; and

d. Any homeowner association on file with the City that has jurisdiction over the WTFP site.

5. Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.

6. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, no decision upon a WTFP shall be premised upon the environmental or health effects of RF emissions, nor shall public comments be considered to the extent they are premised upon the environmental or health effects of RF emissions.

F. Appeals.

1. Minor WTFP Appeals. Any person who receives the Notice of Decision pursuant to subsection 12.18.060(E)(4) may appeal such decision within 5 days of the Notice of Decision date. The appeal will be considered by the City Council within 10 days of filing. The City Council may decide the issues de novo and the written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of a Minor WTFP decision premised on the environmental effects of radio frequency emissions will not be considered.

2. Major WTFP Appeals. Any person claiming to be adversely affected by a decision of a Major WTFP pursuant to this chapter may appeal such decision as provided in accordance with the appeal provisions in Chapter 17.80 of the RPVMC.

G. Notice of Shot Clock Expiration. The City acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the City must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the City written notice of the expiration of any relevant FCC Shot Clock, which the applicant shall ensure is received by the City (e.g., overnight mail) no later than 20 days prior to expiration.
12.18.070 – DESIGN AND DEVELOPMENT STANDARDS.

A. **SWF Design and Development Standards.** SWFs are subject to the design and development standards and conditions of approval set forth herein. The City's grant of a WTFP for a SWF does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

1. **Visual & Other General Standards.** SWFs shall be designed in the least visible means feasible and to be compatible with support structure/surroundings.

2. **Noise.** SWFs and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations stated in this chapter.

3. **Lights.** SWFs shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(3) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.

4. **Landscape Features.** SWFs shall not displace any existing landscape features unless: (a) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (b) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance shall be performed in accordance to the public works director.

If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant, and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

To preserve existing landscaping in the public rights-of-way, all work performed in connection with SWFs shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to
plant and maintain replacement trees at the site for the duration of the permit term.

5. Site Security Measures. SWFs may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft, or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.

6. Signage and Advertisements. All SWFs shall contain a site identification sticker that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SWFs may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA, Federal Aviation Administration or other United States governmental agencies for compliance with RF emissions regulations. Permittees shall:

   a. Remove or paint over unnecessary equipment manufacturer decals and fill-in any visibly depressed manufacturer logos on equipment.

   b. Utilize the smallest and lowest visibility stickers required by government or electric utility regulations.

   c. Use sticker colors that are muted.

   d. Signage shall be maintained in legible condition and the carrier will be required to replace any faded signage within 30 days of receiving written notification from the City that it is in need of replacing.

7. Compliance with Health and Safety Regulations. All SWFs shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.

8. Dimensions and Design. Wireless facilities shall be as small, short, and unobtrusive as possible.

9. Overall Height. SWFs may not exceed either (a) the minimum separation from electrical lines required by applicable safety regulations, plus 4 feet or (b) 4 feet above the existing support structure. In addition, SWFs shall be located no higher than 10% or 10 feet, whichever is greater, than the height otherwise permitted in the immediately adjacent zoning district.
10. Concealment. All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure. The wireless facility and accessory equipment shall be camouflaged with use of one or more concealment elements to blend the facility with surrounding materials and colors of the adjacent street light or utility pole to which it is mounted. Concealment elements include:

a. Radio frequency transparent screening;

b. Approved, specific colors;

c. Use of non-reflective material(s);

d. Minimizing the size of the site;

e. Integrating the installation into existing or replacement utility infrastructure;

f. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site.

g. Antennas, brackets (mounting), PVC or steel risers and cabling shall match the color of the adjacent structure.

h. Paint shall be of durable quality.

i. Materials shall be non-flammable and non-reflective.

j. Each individual antenna may not exceed 3 cubic feet in volume and all antennas may not exceed 6 cubic feet in volume.

k. Accessory Equipment.

11. Installation Preferences. SWF accessory equipment shall be enclosed in replacement poles or placed underground where technically feasible, and if not feasible, shall be as small, short, and unobtrusive as possible. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.

12. Undergrounded Accessory Equipment. All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City’s standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and shall not exceed 2 feet above grade when placed off the sidewalk. Applicants
shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.

13. Streetlights. Applicants that propose to install SWFs on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must:

a. be located as close to the removed pole as possible;

b. be aligned with the other existing streetlights; and

c. include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas shall be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

14. Wood Utility Poles. Applicants that propose to install SWFs on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.

15. For Replacement Poles and Street Lights. If an applicant proposes a replacement pole or street light to accommodate the SWF, the replacement shall be in the same location as the street light or pole being replaced; unless the replacement will not meet all applicable standards, then replacement may be located in an alternative location that complies with the requirements herein.

16. New, Non-Replacement Poles. Applicants that propose to install SWFs on a new, non-replacement pole must install a new streetlight substantially similar to the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed 12 inches and any base enclosure diameter shall not exceed 16 inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome, and shall comply with the following:
a. The new pole must actually function for a purpose other than placement of a wireless facility (e.g., street light, utility pole, etc.).

b. The design must match the dimensions and design of existing and similar types of poles and antennas in the surrounding areas.

17. Encroachments Over Private Property. SWFs may not encroach onto or over any private or other property outside the PROW without the property owner's express written consent.

18. Backup Power Sources. Fossil-fuel based backup power sources shall not be permitted within the PROW; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.

19. Obstructions; Public Safety. SWF and any associated equipment or improvements shall not physically interfere with or impede access to any:

   a. Above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;

   b. Public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop;

   c. Above-ground or underground infrastructure owned or operated by any public or private utility agency;

   d. Fire hydrant or water valve;

   e. Doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way;

   f. Fire escape.

20. Utility Connections. All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires, and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (a) internal risers or conduits if on a concrete, composite or similar pole; or (b) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
21. Spools and Coils. To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.

22. Electric Meters.
   a. SWFs shall use unmetered (flat rate) electric service, if allowed by the utility company, or use the narrowest, shrouded electric meter and disconnect available. Permittees shall ensure the meter and other enclosures are well maintained, including regular painting, and the use of a graffiti-resistant paint, and stack the disconnect switch above/below the meter, instead of attached to the side of the meter.
   b. Electrical meters, vaults, and fans shall be located underground where feasible.

   a. Preferred Concealment Techniques. All applicants must propose new non-tower SWFs that are completely concealed and architecturally integrated into the existing façade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or façades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).
   b. Facade-Mounted Equipment. When SWFs cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve façade-mounted equipment in accordance with this Subsection. All façade-mounted equipment must be concealed behind screen walls and mounted flush to the façade. The approval authority may not approve “pop-out” screen boxes. Except in industrial zones, the approval authority may not approve any exposed façade-mounted antennas, including but not limited to exposed antennas painted to match the façade.

24. Future Modifications. Any modifications to existing facilities or collocations shall not defeat the concealment elements of the existing structure/facility.

25. Standard Conditions of Approval. In addition to the design and development standards stated in this section, all WTFPs issued for a SWF shall be subject to the following conditions:
a. Post-Installation Certification. Within 60 calendar days after the applicant commences full, unattended operations of a SWF approved or deemed-approved, the applicant shall provide the approval authority with documentation reasonably acceptable to the approval authority that the SWF has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.

b. Adverse Impacts on Other Properties. In addition to those requirements stated in this section, the applicant shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by Chapter 17.56 of this code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violate this condition in whole or in part.

c. Inspections; Emergencies. The applicant expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors, or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors, or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The applicant, if present, may observe the City's officers, officials, staff, or other designees while any such inspection or emergency access occurs.

d. Future Undergrounding Programs. If other public utilities or communications providers in the PROW underground their facilities in the segment of the PROW where the SWF is located, the applicant shall underground its equipment except the antennas and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. SWFs installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the applicant’s sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
e. Electric Meter Upgrades. If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the applicant on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the applicant shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal from the City. Upon removal, the applicant shall restore the affected area to its original condition that existed prior to installation of the equipment.

f. Rearrangement and Relocation. The applicant acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, “City work”). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in the SWF permit. If the Public Works Director determines that any City work will require the applicant’s SWF located in the PROW to be rearranged and/or relocated, the applicant shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the applicant fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee’s SWF within a reasonable time after the Public Works Director’s notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the applicant’s sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee’s SWF without prior notice to applicant when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The applicant shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

B. Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 12.18.060(C)(2) have been made are subject to the following, unless modified by the approving authority:

1. WTFP Subject to Conditions of Underlying Permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request.
2. No Permit Term Extension. The City granting, or granting by operation of law, of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City’s granting, or granting by operation of law, of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.

3. No waiver of standing. The City’s granting, or granting by operation of law, of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. Major WTFP Design and Development Standards. All wireless telecommunications facilities subject to a Major WTFP that are located within the PROW shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards:

1. General Guidelines.

   a. The applicant shall employ screening, undergrounding, and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties and public views, all in a manner that achieves compatibility with the community and in compliance with this code.

   b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility’s visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

   c. Wireless telecommunications facilities shall be located consistent with Section 12.18.080 (Location Restrictions) unless an exception is granted.

2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area, infrastructure and structures.
4. Equipment. The applicant shall use the least visible equipment for the provision of wireless telecommunications services that is technically feasible. Antenna elements shall be flush mounted, to the extent feasible, with all cables and wires clipped-up or otherwise out of public view. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this Section, antennas shall be situated as close to the ground as technically feasible.

5. Support Structures.

a. Pole-Mounted Only. Only pole-mounted antennas (excepting wooden poles per subparagraph 5.b below) shall be permitted in the public right-of-way. Mountings to all other forms of support structure in the public right-of-way are prohibited unless an exception pursuant to Section 12.18.080 is granted.

b. Utility Poles. Wireless telecommunications facilities shall not be located on wooden poles unless an exception pursuant to Section 12.18.080 is granted. The maximum height of any antenna shall not exceed 48 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 24 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.

c. Light Poles. The maximum height of any antenna shall not exceed 4 feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than 16½ feet above any drivable road surface.

d. Replacement Poles. If an applicant proposes to replace a pole that is an eligible support structure to accommodate the proposed facility, the replacement pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.

e. Equipment mounted on a support structure shall not exceed 4 cubic feet in dimension.

f. No new guy wires shall be allowed unless required by other laws or regulations.

g. An exception pursuant to Section 12.18.080 shall be required to erect any new support structure (non-eligible support structure) that is not the replacement of an existing eligible support structure.

h. As applicable to all new support structures (non-eligible support structures), regardless of location, the following requirements shall apply:
i. The new support structure shall be designed to resemble existing support structures of the same type in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing structural designs that are scheduled to be removed and not replaced.

ii. New support structures that are not replacement structures shall be located at least 90 feet from any eligible support structure to the extent feasible.

iii. New support structures shall not adversely impact public view corridors, as defined in Section 17.02.040 of the RPVMC, and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the new support structure. The applicant shall further employ concealment techniques to blend the new support structure with said features including but not limited to the addition of vegetation if feasible.

iv. A justification analysis shall be submitted for all new support structures that are not replacements to demonstrate why an eligible support facility cannot be utilized and demonstrating the new structure is the least intrusive means possible, including a demonstration that the new structure is designed to be the minimum functional height and width required to support the proposed wireless telecommunications facility.

v. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the support structure and shall be camouflaged or hidden to the fullest extent feasible. For all support structures wherein interior installation is infeasible, conduit and cables attached to the exterior shall be mounted flush thereto and painted to match the structure.

6. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

8. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public’s use of the PROW, or cause safety hazards to pedestrians and motorists.

9. Public Facilities. A facility shall not be located within any portion of the PROW interfering with access to a fire hydrant, fire station, fire escape, water valve,
underground vault, valve housing structure, or any other public health or safety facility.

10. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inches from the curb and gutter flow line.

11. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:

a. Unless City staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception pursuant to Section 12.18.080 shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.

b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of 3½ feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this chapter.

c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes.

12. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the City to provide screening or to conceal the facility.

13. Signage. No facility shall bear any signs or advertising devices other than certification, warning, or other signage required by law or permitted by the City.

14. Lighting.

a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.

c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.

d. Unless otherwise required under Federal Aviation Administration or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.

e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.

15. Noise.

a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.

b. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

16. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The public works director or the approving City body, as applicable, may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

17. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not
limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

18. The installation and construction approved by a wireless telecommunications facility permit shall occur within one year after its approval or it will expire without further action by the City.

19. Conditions of Approval. All Major WTFPs shall be subject to such conditions of approval as reasonably imposed by the public works director or the approving City body, as applicable, as well as any modification of the conditions of approval deemed necessary by the public works director or the approving City body.

12.18.080 - LOCATION RESTRICTIONS, LOCATION AND STRUCTURAL PREFERENCES, AND EXCEPTIONS.

A. Locations Requirements for SWF.

1. Preface to Location Requirements. Applications that involve lesser-preferred locations or structures as described in subsections 12.18.080(A)(2) and 12.18.080(A)(3) may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 250 feet from the proposed site; or (2) any more preferred locations or structures within 250 feet from the proposed site would be technically infeasible to achieve the operator’s service objectives, as supported by clear and convincing evidence in the written record, unless prohibited under this section. Preferred location requirements shall consist of the following:

   a. Allowable locations for SWFs are on existing or replacement infrastructure such as street lights and utility poles.

   b. When locating in an alley, the SWF shall be placed at a height above the roof line of adjacent buildings to avoid being placed adjacent to a window.

   c. When choosing locations, choose locations in between occupied buildings rather than immediately adjacent to occupied buildings, and not adjacent to a window.

   d. If the SWF is not able to be placed on existing infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such site was not feasible.

2. Locations in the Public Rights-of-Way. The City prefers SWF in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

   a. Locations within the City’s commercial zoning districts on or along arterial,
b. Locations within the City’s commercial zoning districts on or along collector roads;

c. Locations within the City’s commercial zoning districts on or along local roads;

d. Locations within the City’s institutional zoning districts on or along arterial roads;

e. Locations within the City’s institutional zoning districts on or along collector roads;

f. Locations within the City’s institutional zoning districts on or along local roads;

g. Locations within residential districts on or along arterial roads;

h. Locations within residential districts on or along collector roads;

i. Any location in any district within 250 feet from any structure approved for a residential use.

3. Support Structures in the Public Rights-of-Way. The City prefers SWFs to be installed on support structures in the PROW, ordered from most preferred to least preferred, as follows:

a. Existing or replacement streetlight poles;

b. Existing or replacement wood utility poles;

c. Existing or replacement street sign poles;

d. New, non-replacement streetlight poles;

e. New, non-replacement poles for small wireless facilities.

4. Prohibited Support Structures. The City prohibits SWFs to be installed on the following support structures:

a. Strand-mounted wireless facilities are prohibited.

b. Decorative poles;

c. Traffic signals, cabinets and related devices;

d. Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;

e. New, non-replacement wood poles.
B. Locations Requiring an Exception for Major WTFPs. Major WTFPs are strongly disfavored in certain areas and on certain support structures. Therefore the following locations are permitted only when an exception has been granted pursuant to Subsection C hereof:

1. Public right-of-way within those zones as identified in the General Plan as residential zones;

2. Public right-of-way within public view corridors identified in the General Plan and the Coastal Specific Plan;

C. Required Findings for an Exception on Major WTFPs. For any Major WTFP requiring an “exception” under this chapter, no such exception shall be granted unless the applicant demonstrates with clear and convincing evidence all the following:

1. The proposed wireless facility qualifies as a personal wireless services facility;

2. The applicant has provided the City with a clearly defined significant gap (as established under state and federal law) and a clearly defined potential site search area.

   a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant’s current service coverage levels from all adjacent wireless telecommunications facilities without the proposed facility, predicted service coverage levels from all adjacent facilities serving applicant with the proposed facility, and predicted service coverage levels from the proposed facility without all adjacent facilities.

   b. In the event the applicant seeks to address service capacity concerns, a written explanation and propagation maps identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.

3. The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the City or otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or reasonably available.

4. The applicant has provided the City with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant location and design necessary to reasonably achieve the applicant’s reasonable objectives of covering an established significant gap (as established under state and federal law).
5. The applicant has demonstrated that strict compliance with any provision in this chapter for a Major WTFP would effectively prohibit the provision of personal wireless services.

D. Scope. The planning commission or public works director, as applicable, shall limit an exemption for a Major WTFP to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its objectives of covering an established significant gap (as established under state and federal law). The planning commission or public works director, as applicable, may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

12.18.090 - OPERATION AND MAINTENANCE STANDARDS.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards:

A. The permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.

B. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent at its sole cost within 48 hours:

1. After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or

2. After permittee, owner, operator, or any designated maintenance agent receives notification from the City.

C. Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by City’s risk management. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide 30 days prior notice to the public works director of to the cancellation or material modification of any applicable insurance policy.

D. Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims,
demands, law suits, writs of mandamus, and other actions or proceedings brought against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City’s approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one’s agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City’s defense, and the property owner and/or Permittee (as applicable) shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course.

E. Performance Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the public works director in in the permit based on the characteristics of the installation. The permittee shall reimburse the City for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City council. Reimbursement shall be paid when the security is posted and during each administrative review.

F. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.

G. Contact Information. Each permittee of a wireless telecommunications facility shall provide the public works director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility (“contact information”). Contact information shall be updated within 7 days of any change.

H. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or
camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1. Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW.

2. General dirt and grease;

3. Chipped, faded, peeling, and cracked paint;

4. Rust and corrosion;

5. Cracks, dents, and discoloration;

6. Missing, discolored or damaged artificial foliage or other camouflage;

7. Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City.

8. Broken and misshapen structural parts; and

9. Any damage from any cause.

I. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the public works director.

J. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

K. Each facility shall be operated and maintained to comply with all conditions of approval. The permittee, when directed by the City, must perform an inspection of the facility and submit a report to the public works director on the condition of the facility to include any identified concerns and corrective action taken. Additionally, as the City performs maintenance on City-owned infrastructure, additional maintenance concerns may be identified. These will be reported to the permittee. The City shall give the permittee 30 days to correct the identified maintenance concerns after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the Permittee to demonstrate that it complies with the requirements herein. Prior to
issuance of a permit under this Chapter, the owner of the facility shall sign an affidavit attesting to understanding the City’s requirement for performance of annual inspections and reporting.

L. All facilities permitted pursuant to this chapter shall comply with the Americans with Disabilities Act.

M. The permittee shall be responsible for obtaining power to the facility and for the cost of electrical usage.

N. Interference.

1. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City’s structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the permittee shall provide the City with documentation establishing to the City’s satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or City utility easement to be affected by permittee’s facilities.

2. The facility shall not damage or interfere in any way with City property, the City’s operations or the operations of prior-existing, third party installations. The City will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.

   a. Signal Interference. The permittee shall correct any such interference within 24 hours of written notification of the interference. Upon the expiration of the 24-hour cure period and until the cause of the interference is eliminated, the permittee shall cease operation of any facility causing such interference until such interference is cured.

   b. Physical Interference. The City shall give the permittee 30 days to correct the interference after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit.

3. The City at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The City will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.
O. RF Exposure Compliance. All facilities shall comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC Office of Engineering and Technology Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.

1. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m. Testing is prohibited on holidays and weekends.

P. Records. The permittee shall maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

Q. Attorney’s Fees. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney’s fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

12.18.100 - NO DANGEROUS CONDITION OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants,
mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

12.18.110 - NONEXCLUSIVE GRANT; NO POSSESSORY INTERESTS.

A. No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the City for any purpose whatsoever. Further, no approval shall be construed as a warranty of title.

B. No possessory interest is created by a WTFP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, the permittee acknowledge that the City has given to the applicant notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WTFP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Wireless telecommunications facility operators shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against their right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by the WTFP.

C. The permission granted by a WTFP shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, or any part thereof, shall vest or accrue in permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

12.18.120 - PERMIT EXPIRATION; ABANDONMENT OF APPLICATIONS.

A. Permit Term. Unless Government Code Section 65964, as may be amended, authorizes the City to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of 10 years from the date of issuance, such permit shall automatically expire.

B. A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the City’s current code requirements for wireless telecommunications facilities.

C. Timing of Installation. The installation and construction authorized by a WTFP shall begin within 1 year after its approval, or it will expire without further action by the City. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within 30 days following the day construction commenced.

D. Commencement of Operations. The operation of the approved facility shall commence no later than 90 days after the completion of installation, or the WTFP
will expire without further action by the City. The permittee shall provide the public works director notice that operations have commenced by the same date.

12.18.130 - CESSATION OF USE OR ABANDONMENT.

A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

B. The operator of a facility shall notify the public works director in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within 10 days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the public works director of any discontinuation of operations of 30 days or more.

C. Failure to inform the public works director of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:

1. Litigation;
2. Revocation or modification of the permit;
3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
4. Removal of the facilities by the City in accordance with the procedures established under this code for abatement of a public nuisance at the owner’s expense; and/or
5. Any other remedies permitted under this code or by law.

12.18.140 - REMOVAL AND RESTORATION—PERMIT EXPIRATION, REVOCATION OR ABANDONMENT.

A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTFP or abandonment of the facility, the permittee, owner or operator shall within 60 days remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTFP, except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the City.
B. Revocation. Any WTFP may be amended, suspended, or revoked for violations of the provisions of this Ordinance or any condition of approval. Amendment, suspension, or revocation shall be pursuant to the procedures of Section 17.86.060 of this code, following notice of the violations to the permittee, and a reasonable opportunity to correct.

C. Summary Removal. In the event any City director or City engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes an immediate dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, “exigent circumstances”), such director or City engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within 5 business days of removal and all property removed shall be preserved for the owner’s pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.

D. Removal of Facilities by City. In the event the City removes a wireless telecommunications facility in accordance with nuisance abatement procedures stated in Chapter 8.24 of this code or pursuant to the summary removal procedures of Subsection B, above, any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the City may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the City destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the City due to exigent circumstances.

12.18.150 - EFFECT ON OTHER ORDINANCES.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of this code. In the event of a conflict between any provision of this chapter and other sections of this code, this chapter shall control.

12.18.160 - STATE OR FEDERAL LAW.

The implementation of this chapter and decisions on applications for placement of wireless telecommunications facilities in the PROW shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate
applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

12.18.170 – LEGAL NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

A. Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this chapter on the date this chapter became effective.

B. Legal nonconforming wireless telecommunications facilities shall, within 10 years from the date this chapter became effective, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, to the extent the City can require such compliance under federal and state law.

C. An aggrieved person may file an appeal to the City council of any decision of the public works director or other deciding body made pursuant to this Section. In the event of an appeal alleging that the 10-year amortization period is not reasonable as applied to a particular property, the City council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.
ORDINANCE NO. __

AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES REPEALING AND REPLACING CHAPTER 12.18 (WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO UPDATE THE REGULATORY FRAMEWORK AND STANDARDS FOR PERMITTING WIRELESS FACILITIES WITHIN THE CITY’S PUBLIC RIGHT-OF-WAY IN ACCORDANCE WITH THE RECENT FEDERAL COMMUNICATIONS COMMISSION (FCC) RULING.

WHEREAS, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and,

WHEREAS, significant changes in federal and state law that affect local authority over wireless communications facilities ("WCFs") have occurred, including but not limited to the following:

i. On November 18, 2009, the Federal Communications Commission ("FCC") adopted a declaratory ruling (the "2009 Shot Clock"), which established presumptively reasonable timeframes for state and local governments to act on applications for WCFs.

ii. On February 22, 2012, Congress adopted Section 6409(a) of the Middle Class Tax Relief and Job Creation Act ("Section 6409(a)"), which mandated that state and local governments approve certain modifications and collocations to existing WCFs, known as eligible facilities requests.

iii. On October 17, 2014, the FCC adopted a report and order that, among other things, implemented new limitations on how State and local governments review applications covered by Section 6409(a), established an automatic approval for such applications when the local reviewing authority fails to act within 60 days, and also further restricted generally applicable procedural rules under the 2009 Shot Clock.

iv. On October 9, 2015, California adopted Assembly Bill No. 57 (Quirk), which deemed approved any WCF applications when the local reviewing authority fails to act within the 2009 Shot Clock timeframes.

v. On August 2, 2018, the FCC adopted a declaratory ruling that formally prohibited express and de facto moratoria for all telecommunications services and facilities under 47 U.S.C. § 253(a).
vi. On September 26, 2018, the FCC adopted a declaratory ruling and report and order that, among other things, creates a new regulatory classification for small wireless facilities ("SWFs"), requires state and local governments to process applications for SWFs within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and,

WHEREAS, in addition to the changes described above, new federal laws and regulations that drastically alter local authority over WCFs are currently pending, including without limitation, the following:

i. On March 30, 2017, the FCC issued a Notice of Proposed Rulemaking (WT Docket No. 17-79, WC Docket No. 17-84) and has acted on some of the noticed issues referenced above, but may adopt forthcoming rulings and/or orders that further limit local authority over wireless facilities deployment.

ii. On June 28, 2018, United States Senator John Thune introduced and referred to the Senate Committee on Commerce, Science and Transportation the "Streamline Small Cell Deployment Act" (S. 3157) that, among other things, would apply specifically to small cell WCFs and require local governments to review applications based on objective standards, shorten the 2009 Shot Clock timeframes, require all proceedings to occur within the 2009 Shot Clock timeframes, and provide a "deemed granted" remedy for failure to act within the applicable 2009 Shot Clock; and,

WHEREAS, given the rapid and significant changes in federal and state law, the actual and effective prohibition on moratoria to amend local policies in response to such changes, and the significant adverse consequences for noncompliance with federal and state law, the City Council desires to repeal and replace Chapter 12.18 of the Rancho Palos Verdes Municipal Code, entitled “Chapter 12.18 - Wireless Telecommunications Facilities in the Public Right-Of-Way” (the “Ordinance”) to allow greater flexibility and responsiveness to the new federal and state laws while still preserving the City’s traditional authority to the maximum extent practicable; and,

WHEREAS, all legal prerequisites to the adoption of this ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

Section 1: The City Council of the City of Rancho Palos Verdes hereby makes the following findings:
A. The above recitals are true and correct and incorporated herein by this reference.

B. It is the intent and purpose of this Ordinance that Chapter 12.18 (Wireless Telecommunications Facilities in the Public Right-Of-Way) of the Rancho Palos Verdes Municipal Code is repealed and replaced to update the regulatory framework and standards for permitting wireless facilities, including small wireless facilities (SWF), within the City’s public right-of-way in accordance with the recent Federal Communications Commission (FCC) ruling.

Section 2: Section 12.18 of the Rancho Palos Verdes Municipal Code is being repealed and replaced as shown in Attachment A.

Section 3: CEQA Exemption. The proposed ordinance is not defined as a “project” based on the definition provided in Section 15378 of the State of California Environmental Quality Act (“CEQA”) Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The ordinance creates an administrative process to process requests for wireless facilities in the PROW and the City’s discretion with these applications is limited. The ordinance does not authorize any specific development or installation on any specific piece of property within the City’s boundaries.

Alternatively, the ordinance is exempt from CEQA because the City Council’s adoption of the ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)). Installations, if any, would further be exempt from CEQA review in accordance with either State CEQA Guidelines Section 15302 (replacement or reconstruction), State CEQA Guidelines Section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines Section 15304 (minor alterations to land), as these facilities are allowed under Federal and State law, are by their nature smaller when placed in the PROW and subject to various siting and design preferences to prevent aesthetic impact to the extent feasible.

Section 4: Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 5: Certification and Posting. The City Clerk shall cause this Ordinance to be posted in three (3) public places in the City within fifteen (15) days after its passage, in accordance with the provisions of Section 36933 of the Government Code. The City Clerk shall further certify to the adoption and posting of this Ordinance, and shall cause
this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of the Council of this City.

Section 6: Effective Date. This Ordinance shall go into effect on the 31st day after its passage.

Section 7: Any challenge to this Ordinance, and the findings set forth therein, must be filed within the 90 day statute of limitations set forth in Code of Civil Procedure §1094.6 and Section 17.86.100(B) of the Rancho Palos Verdes Municipal Code.

PASSED, APPROVED AND ADOPTED this 2nd day of April, 2019.

______________________________
Mayor

Attest:

______________________________
City Clerk

STATE OF CALIFORNIA )
COUNTY OF LOS ANGELES )ss
CITY OF RANCHO PALOS VERDES )

I, EMILY COLBORN, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No.______ passed first reading on__________, 2019, was duly adopted by the City Council of said City at a regular meeting thereof held on _________, 2019, and that the same was passed and adopted by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

______________________________
Emily Colborn, City Clerk
CHAPTER 12.18 - WIRELESS TELECOMMUNICATIONS FACILITIES
IN THE PUBLIC RIGHT-OF-WAY

12.18.010 - PURPOSE.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the City’s public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way (“PROW”) in the City for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the City consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations, including those regulations of the Federal Communications Commission (“FCC”) and California Public Utilities Commission (“CPUC”), and (4) to ensure that the use and enjoyment of the PROW is not inconvenienced by the use of the PROW for the placement of wireless facilities. The City recognizes the importance of wireless facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable federal and state laws. This chapter shall be constructed and applied in consistency with the provisions of state and federal laws, and the rules and regulations of FCC and CPUC. In the event of any inconsistency between any such laws, rules and regulations and this chapter, the laws, rules and regulations shall control.

12.18.020 - DEFINITIONS.

“Accessory equipment” means any and all on-site equipment, including, without limitation, back-up generators and power supply units, cabinets, coaxial and fiber optic cables, connections, equipment buildings, shelters, vaults, radio transceivers, transmitters, pedestals, splice boxes, fencing and shielding, surface location markers, meters, regular power supply units, fans, air conditioning units, cables and wiring, to which an antenna is attached in order to facilitate the provision of wireless telecommunication services.

“Antenna” means that specific device for transmitting and/or receiving radio frequency or other signals for purposes of wireless telecommunications services. “Antenna” is specific to the antenna portion of a wireless telecommunications facility.

“Antenna array” shall mean two or more antennas having active elements extending in one or more directions, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
“Approval authority” means the City official responsible for reviewing applications for small cell permits and vested with the authority to approve, conditionally approve or deny such applications.

“Arterial road” means a road designed primarily for long-distance travel with high traffic capacity and low accessibility from neighboring roads and is not intended to be a residential street; however, some older arterial streets do provide direct access to residential units. Arterials are typically characterized by both two-lane and four-lane roadways, and collects traffic from collector roads. The term “arterial road” is defined in the City of Rancho Palos Verdes General Plan, Circulation Element.

“Base station” shall have the meaning as set forth in Title 47 Code of Federal Regulations (C.F.R.) Section 1.40001(b)(1), or any successor provision. This means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network (regardless of the technological configuration, and encompassing DAS and small cells). “Base station” does not encompass a tower or any equipment associated with a tower. Base station includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small cells).

3. Any structure other than a tower that, at the time the relevant application is filed with the City under this chapter, supports or houses equipment described in paragraphs 1 and 2 of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

4. “Base station” does not include any structure that, at the time the relevant application is filed under this chapter, does not support or house equipment described in paragraphs 1 and 2 of this definition. Other structures that do not host wireless telecommunications facilities are not “base stations.”

As an illustration and not a limitation, the FCC’s definition of “base station” refers to any structure that actually supports wireless equipment even though it was not originally intended for that purpose. Examples include, but are not limited to, wireless facilities mounted on buildings, utility poles, light standards or traffic signals. A structure without wireless equipment replaced with a new structure designed to bear the additional weight from wireless equipment constitutes a base station.

“Cellular” means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.
“City” means the City of Rancho Palos Verdes.


“Collector road” means a road designed primarily as a connection between local roads and arterials that serve moderate to low traffic capacity and high accessibility from local roads. The term “collector road” is defined in the City of Rancho Palos Verdes General Plan, Circulation Element.

“Collocation” bears the following meanings:

1. For the purposes of any eligible facilities request, the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(2), as may be amended, which defines that term as “[t]he mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.” As an illustration and not a limitation, the FCC’s definition means to add transmission equipment to an existing facility and does not necessarily refer to two or more different facility operators in the same location; and

2. For all other purposes, the same as defined in 47 CFR 1.6002(g)(1) and (2), as may be amended, which defines that term as (1) Mounting or installing an antenna facility on a pre-existing structure, and/or (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

“Collocation facility” means the eligible support structure on, or immediately adjacent to, which a collocation is proposed, or a wireless telecommunications facility that includes collocation facilities. (See, Gov. Code, § 65850.6(d.).)

“COW” means a “Cell on Wheels,” which is a portable, self-contained wireless telecommunications facility that can be moved to a location and set up to provide wireless telecommunication services, which facility is temporarily rolled in, or temporarily installed, at a location. Under this chapter, the maximum time a facility can be installed to be considered a COW is five (5) days. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.

“Concealed” or “concealment” means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include, but are not limited to: (1) façade or rooftop mounted pop-out screen boxes; (2) antennas mounted within a radome above a streetlight; (3) equipment cabinets in the public rights-of-way painted or wrapped to match the background; and (4) an isolated or standalone faux-tree.

“Decorative pole” means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
“Distributed Antenna System” or “DAS” means a network of spatially separated antennas (nodes) connected to a common source (a hub) via a transport medium (often fiber optics) that provide wireless telecommunications service within a specific geographic area or building. DAS includes the transport medium, the hub, and any other equipment to which the DAS network or its antennas or nodes are connected to provide wireless telecommunication services.

“FCC Shot Clock” means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended from time to time. The shot clock shall commence on “day zero,” which is the day the WTFP application is submitted.

“Eligible facilities request” means any request for modification to an existing eligible support structure that does not substantially change the physical dimensions of such structure, involving:

1. Collocation of new transmission equipment;
2. Removal of transmission equipment;
3. Replacement of transmission equipment (replacement does not include completely replacing the underlying support structure); or
4. Hardening through structural enhancement where such hardening is necessary to accomplish the eligible facilities request, but does not include replacement of the underlying support structure.

“Eligible facilities request” does not include modifications or replacements when an eligible support structure was constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. “Eligible facilities request” does include collocation facilities satisfying all the requirements for a non-discretionary collocation facility pursuant to Government Code Section 65850.6.

“Eligible support structure” means any support structure located in the PROW that is existing at the time the relevant application is filed with the City under this chapter.

“Existing” means a support structure, wireless telecommunications facility, or accessory equipment that has been reviewed and approved under the City’s applicable zoning or permitting process, or under another applicable state or local regulatory review process, and lawfully constructed prior to the time the relevant application is filed under this chapter. However, a support structure, wireless telecommunications facility, or accessory equipment that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is “existing” for purposes of this chapter. “Existing” does not apply to any structure that (1) was illegally constructed without all proper local agency approvals, or (2) was constructed in noncompliance with such approvals. “Existing” does not apply where an existing support structure is proposed to be replaced in furtherance of the proposed wireless telecommunications facility.
“Facility(ies)” means wireless telecommunications facility(ies).

“FCC” means the Federal Communications Commission.

“Ground-mounted” means mounted to a pole, tower or other freestanding structure which is specifically constructed for the purpose of supporting an antenna or wireless telecommunications facility and placed directly on the ground at grade level.

“Lattice tower” means an open framework structure used to support one or more antennas, typically with three or four support legs.

“Located within (or in) the public right-of-way” includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the PROW.

“Ministerial permit” means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City’s jurisdiction. Ministerial permits may include, without limitation, a building permit, construction permit, electrical permit, encroachment permit, excavation permit and/or traffic control permit.

“Modification” means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior material. “Modification” does not include repair, replacement or maintenance if those actions do not involve whatsoever any expansion, alteration, enlargement, intensification, reduction, or augmentation of an existing wireless telecommunications facility.

“Monopole” means a structure composed of a pole or tower used to support antennas or related equipment. A monopole includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).

“Mounted” means attached or supported.

“OTARD antennas” means antennas covered by the “over-the-air reception devices” rule in 47 C.F.R. sections 1.4000 et seq. as may be amended or replaced from time to time.

“Permittee” means any person or entity granted a Wireless Telecommunication Facilities Permit (WTFP) pursuant to this chapter.

“Personal wireless services” shall have the same meaning as set forth in 47 United States Code Section 332(c)(7)(C)(i), as may be amended or superseded, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

“Planning Director” means the Director Community Development, or his or her designee.
“Pole” means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.

“Public works director” means the Director of Public Works, or his or her designee.

“Public right-of-way” or “PROW” means a strip of land acquired by reservation, dedication, prescription, condemnation, or easement that allows for the passage of people and goods. The PROW includes, but is not necessarily limited to, streets, curbs, gutters, sidewalks, roadway medians, parkways, and parking strips. The PROW does not include land owned, controlled or operated by the City for uses unrelated to streets or the passage of people and goods, such as, without limitation, parks, City hall and community center lands, City yards, and lands supporting reservoirs, water towers, police or fire facilities and non-publicly accessible utilities.

“Replacement” refers only to replacement of transmission equipment, wireless telecommunications facilities or eligible support structures where the replacement structure will be of like-for-like kind to resemble the appearance and dimensions of the structure or equipment replaced, including size, height, color, landscaping, materials and style.

1. In the context of determining whether an application qualifies as an eligible facilities request, the term “replacement” relates only to the replacement of transmission equipment and does not include replacing the support structure on which the equipment is located.

2. In the context of determining whether a SWF application qualifies as being placed upon a new eligible support structure or qualifies as a collocation, an application proposing the “replacement” of the underlying support structure qualifies as a new pole proposal.

“RF” means radio frequency or electromagnetic waves generally between 30 kHz and 300 GHz in the electromagnetic spectrum range.

“Section 6409” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended. The Middle Class Tax Relief and Job Creation Act of 2012 is also reference herein occasionally as the “Spectrum Act”.

“Small cell” means a low-powered antenna (node) that has a range of 10 meters to two kilometers. The nodes of a “small cell” may or may not be connected by fiber. “Small,” for purposes of “small cell,” refers to the area covered, not the size of the facility. “Small cell” includes, but is not limited to, devices generally known as microcells, picocells and femtocells.

“Small cell network” means a network of small cells.
“Substantial change” has the same meaning as “substantial change” as defined by the FCC at 47 C.F.R. 1.40001(b)(7). Notwithstanding the definition above, if an existing pole-mounted cabinet is proposed to be replaced with an underground cabinet at a facility where there are no pre-existing ground cabinets associated with the structure, such modification may be deemed a non-substantial change, in the discretion of the public works director and based upon his/her reasonable consideration of the cabinet’s proximity to residential view sheds, interference to public views and/or degradation of concealment elements. If undergrounding the cabinet is technologically infeasible such that it is materially inhibitive to the project, the public works director may allow for a ground mounted cabinet. A modification or collocation results in a “substantial change” to the physical dimensions of an eligible support structure if it does any of the following:

1. It increases the height of the structure by more than 10% or more than 10 feet, whichever is greater;

2. It involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet;

3. It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 cabinets. However, for towers and base stations located in the public rights-of-way, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

4. It entails any excavation or deployment outside the current site. For purposes of this Subsection, excavation outside the current site occurs where excavation more than 12 feet from the eligible support structure is proposed;

5. It defeats the concealment or stealthing elements of the eligible support structure; or

6. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure, 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 1 through 4 of this definition.

7. For all proposed collocations and modifications, a substantial change occurs when:

   a. The proposed collocation or modification involves more than the standard number of new equipment cabinets for the technology involved, but not to exceed 4 equipment cabinets;

   b. The proposed collocation or modification would defeat the concealment elements of the support structure; or
c. The proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval that is inconsistent with the thresholds for a substantial change described in this Section.

The thresholds and conditions for a “substantial change” described in this section are disjunctive such that the violation of any individual threshold or condition results in a substantial change. The height and width thresholds for a substantial change described in this section are cumulative for each individual support structure. The cumulative limit is measured from the physical dimensions of the original structure for base stations, and for all other facilities sites in the PROW from the smallest physical dimensions that existed on or after February 22, 2012, inclusive of originally approved-appurtenances and any modifications that were approved prior to that date.

“Support structure” means a tower, pole, base station or other structure used to support a wireless telecommunications facility.

“SWF” means a “small wireless facility” as defined by the FCC in 47 C.F.R. 1.6002(l) as may be amended, which are personal wireless services facilities that meet all the following conditions that, solely for convenience, have been set forth below:

1. The facilities:
   a. Is mounted on an existing or proposed structure 50 feet or less in height, including antennas, as defined in Title 47 C.F.R. Section 1.1320(d); or
   b. Is mounted on an existing or proposed structure no more than 10 percent taller than other adjacent structures, or
   c. Does not extend an existing structure on which it is 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 47 C.F.R. Section 1.1320(d)), is no more than 3 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 facility does not require antenna structure registration under 47 C.F.R. Part 17;

5. The facility is not located on Tribal lands, as defined under Title 36 C.F.R. Section 800.16(x); and
6. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in Title 47 C.F.R. Section 1.1307(b).

“Telecommunications tower” or “tower” bears the meaning ascribed to wireless towers by the FCC in 47 C.F.R. § 1.40001(b)(9), including without limitation a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

“Transmission equipment” means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“Utility pole” means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission. A telecommunications tower is not a utility pole.

“Wireless telecommunications facility” means equipment and network components such as antennas, accessory equipment, support structures, and emergency power systems that are integral to providing wireless telecommunications services. Exceptions: The term “wireless telecommunications facility” does not apply to the following:

1. Government-owned and operated telecommunications facilities.
2. Emergency medical care provider-owned and operated telecommunications facilities.
3. Mobile services providing public information coverage of news events of a temporary nature.
4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

“Wireless telecommunications services” means the provision of services using a wireless telecommunications facility or a collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.
“WTFP” means a “Wireless Telecommunications Facility Permit” required by this chapter, which may be categorized as either a Major WTFP or a Minor WTFP.

12.18.030- APPLICABILITY.

A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way.

B. Pre-existing Facilities in the PROW. Nothing in this chapter shall validate any existing illegal or unpermitted wireless facilities. All existing wireless facilities shall comply with and receive an encroachment permit, when applicable, in order to be considered legal and conforming.

C. This chapter does not apply to the following:

1. Amateur radio facilities;
2. OTARD antennas;
3. Facilities owned and operated by the City for its use or for public safety purposes;
4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement, excepting that to the extent such the terms of state or federal law, or franchise agreement, are preemptive of the terms of this chapter, then the terms of this chapter shall be severable to the extent of such preemption and all remaining regulations shall remain in full force and effect. Nothing in the exemption shall apply so as to preempt the City’s valid exercise of police powers that do not substantially impair franchise contract rights.
5. Installation of a COW or a similar structure for a temporary period in connection with an emergency or event at the discretion of the public works director, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

D. Public use. Except as otherwise provided by state or federal law, any use of the PROW authorized pursuant to this chapter will be subordinate to the City’s use and use by the public.

12.18.040 - WIRELESS TELECOMMUNICATIONS FACILITY PERMIT REQUIREMENTS.

A. Administration. Unless a matter is referred to the planning director as provided below, the public works director is responsible for administering this chapter. As part of the administration of this chapter, the public works director may:

1. Interpret the provisions of this chapter;
2. Develop and implement standards governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless facilities;

3. Develop and implement acceptable design, location and development standards for wireless telecommunications facilities in the PROW, taking into account the zoning districts bounding the PROW;

4. Develop forms and procedures for submission of applications for placement or modification of wireless facilities, and proposed changes to any support structure consistent with this chapter;

5. Collect, as a condition of the completeness of any application, any fee established by this chapter;

6. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;

7. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;

8. Require, as part of, and as a condition of completeness of any application, that an applicant for a wireless telecommunications facilities permit send notice to members of the public that may be affected by the placement or modification of the wireless facility and proposed changes to any support structure;

9. Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an application; and

10. Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

B. Minor Wireless Telecommunications Facilities Permits (“Minor WTFP”).

1. A Minor WTFP, subject to the public works director’s approval, may be issued for certain wireless telecommunications facilities, collocations, modifications or replacements to an eligible support structure that meet the following criteria:

   a. The proposal is determined to be for a SWF; or

   b. The proposal is determined to be an eligible facilities request.
2. In the event that the public works director determines that any application submitted for a Minor WTFP does not meet the permit criteria of this chapter, the public works director shall convert the application to a Major WTFP and refer it to the planning director for planning commission consideration at a public hearing.

3. Except in the case of an eligible facilities request, the public works director may refer any application for a Minor WTFP to the planning director, who shall have discretion to further refer the application to planning commission for consideration at a public hearing. If the planning director determines not to present the Minor WTFP application to the planning commission for hearing, the application shall be relegated back to the public works director for processing. None of the exercises of discretion set forth in this subparagraph shall not apply to an eligible facilities request.

C. Major Wireless Telecommunications Facilities Permit (“Major WTFP”). All other new wireless telecommunications facilities or replacements, collocations, or modifications to a wireless telecommunications facility that are not qualified for a Minor WTFP shall require a Major WTFP subject to planning commission hearing and approval unless otherwise provided for in this chapter.

D. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other City departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other City departments, state or federal agencies. Building and encroachment permits, and all City standards and requirements therefor, are applicable.

E. Eligible Applicants. Only applicants who have been granted the right to enter the PROW pursuant to state or federal law, or who have entered into a franchise agreement with the City permitting them to use the PROW, shall be eligible for a WTFP pursuant to this chapter.

12.18.050 - APPLICATION FOR WIRELESS TELECOMMUNICATIONS FACILITY PERMITS.

A. General. The applicant shall submit a paper copy and an electronic copy of any application, amendments, modifications, or supplements to a WTFP application, or responses to requests for information regarding a WTFP, including all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate or otherwise deploy wireless facilities within the City’s jurisdictional and territorial boundaries within the PROWs, in accordance with the provisions of this section.

1. The City requires a pre-application submittal meeting for a Major WTFP. The City does not require a pre-application submittal meeting for a Minor WTFP;
however, the City strongly encourages applicants to schedule and attend a pre-application submittal conference with the approval authority for all proposed Minor WTFP projects, and particularly those that involve more than 5 Minor WTFPs.

a. Pre-submittal conferences do not cause the FCC Shot Clock to begin and are intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues.

b. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable. The approval authority shall use reasonable efforts to provide the applicant with an appointment within 5 working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.

c. Any request for a pre-submittal conference shall be in writing and shall confirm that any drafts to be provided the City at the pre-submittal conference will not be deemed as “submissions” triggering the start of any FCC Shot Clock.

2. All applications for WTFPs shall be initially submitted to the public works director. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant shall fully and completely submit to the City a written application on a form prepared by the public works director.

3. Major WTFP applications must be submitted to the public works director at a scheduled application submission appointment. City staff will endeavor to provide applicants with an appointment within 5 business days after receipt of a written request therefor. A WTFP application will only be reviewed upon submission of a complete application therefor. A pre-submission appointment is not required for Minor WTFPs.

4. For SWF, applicants may submit up to 5 individual applications for a WTFP in a batch; provided, however, that SWF in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type. Each application in a batch must meet all the requirements for a complete application, which includes without limitation the
application fee for each site in the batch. If any application in a batch is incomplete, the entire batch shall be deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch as described in this chapter, the entire batch shall be deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.

5. If the wireless telecommunications facility will also require the installation of fiber, cable, or coaxial cable, such cable installations shall be included within the application form and processed in conjunction with the proposal for vertical support structure(s). Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the PROW. Standalone applications for the installation of fiber, cable, or coaxial cable, or accessory equipment designed to serve an antenna must include all features of the wireless telecommunications facility proposed.

B. Application Contents – Minor WTFPs. The content of the application form for facilities subject to a Minor WTFP shall be determined by the public works director in addition to all other information reasonably deemed necessary, but at a minimum shall include the following:

1. The name of the applicant, its telephone number and contact information, and if the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider that will be using the wireless facility.

2. The name of the owner of the structure, if different from the applicant, and a signed and notarized owner’s authorization for use of the structure.

3. A complete description of the proposed wireless telecommunications facility and any and all work that will be required to install or modify it, including, but not limited to, details regarding proposed excavation, if any; detailed site plans showing the location of the wireless telecommunications facility, and dimensioned drawings with specifications for each element of the wireless facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and a dimensioned map identifying and describing the distance to the nearest residential dwelling unit and any historical structure within 250 feet of the facility. Before and after 360 degree photo simulations shall be provided.

4. Documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC’s radio frequency emissions standards.

5. A copy of the lease or other agreement, if any, between the applicant and the owner of the property to which the proposed facility will be attached.

6. If the application is for a SWF, the application shall state as such and shall explain why the proposed facility meets the definition of a SWF.
7. If the application is for an eligible facilities request, the application shall state as such and must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must demonstrate that the eligible support structure was not constructed or deployed without proper local review, was not required to undergo local review, or involves equipment that was not properly approved. This shall include copies of all applicable local permits in-effect and as-built drawings of the current site. Before and after 360 degree photo simulations shall be provided, as well as documentation sufficient to show that the proposed facility will comply with generally-applicable health and safety provisions of the Municipal Code and the FCC’s radio frequency emissions standards.

8. For SWFs, the application shall also contain:

   a. Application Fee. The applicant shall submit the applicable SWF WTFP application fee established by City Council resolution. Batched applications must include the applicable application fee for each SWF in the batch.

   b. Construction Drawings. The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings shall: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number, and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.

   c. Site Survey. For any SWF proposed to be located within the PROW, the applicant shall submit a survey prepared, signed, and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-grade utilities and related structures and encroachments; (iv) fire
hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

d. Photo Simulations. The applicant shall submit site photographs and 360 degree photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point.

e. Project Narrative and Justification. The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a SWF as defined by the FCC in 47 C.F.R. 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a structure as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a SWF permit as provided in Section 12.18.060.

f. RF Compliance Report. The applicant shall submit an RF exposure compliance report that certifies that the proposed SWF, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts ERP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

g. Public Notice. Prior to deeming the application complete, the applicant shall submit a mailing list and two sets of labels for all properties and record owners of properties within 500 feet of the project location.

h. Regulatory Authorization. The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the SWF proposed in the application.
i. **Site Agreement.** For any SWF proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant must enter into a site agreement prepared on a form prepared by the City and approved by the City Attorney that states the terms and conditions for such non-exclusive use by the applicant. No changes shall be permitted to the City’s form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City’s form site agreement shall be deemed a basis to deem the application incomplete.

j. **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an acoustic engineer for the proposed SWF and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the following noise regulations:

i. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.;

ii. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

The acoustic analysis shall also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.

k. **Wind Load Analysis.** The applicant shall submit a wind load analysis with an evaluation of high wind load capacity and shall include the impact of modification of an existing facility.

l. **Environmental Data.** A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 et seq., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the City reserves its right
to exercise its rights as a responsible agency to review de novo the environmental impacts of any WTFP application.

m. FAA Documentation. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.

n. Traffic Control Plan. A traffic control plan when the proposed installation is on any street in a non-residential zone. The City shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

o. Landscape Plan. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the SWF and its accessory equipment.

p. CPCN. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the PROW. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

9. If the applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all information on which the applicant relies on in support of that claim. Applicants are not permitted to supplement this showing if doing so would prevent the City from complying with any deadline for action on an application or FCC Shot Clock.

C. Application Contents - Major WTFPs. The public works director shall develop an application form and make it available to applicants upon request and post the application form on the City’s website. The application form for a Major WTFP shall require the following information, in addition to all other information determined necessary by the public works director:

1. The name, address, and telephone number of the applicant, owner, and the operator of the proposed wireless telecommunication facility.

2. If the applicant does not, or will not, own the support structure, the applicant shall provide a duly-executed letter of authorization from the owner of the structure. If the owner of the support structure is the applicant, but such owner/applicant will not directly provide wireless telecommunications services, the owner/applicant shall provide a duly-executed letter of authorization from the person(s) or entity(ies) that will provide those services.

3. A full written description of the proposed wireless telecommunications facility and its purpose.
4. Detailed engineering plans of the proposed wireless telecommunications facility and related report prepared by a professional engineer registered in the state documenting the following:

   a. Height/elevation, diameter, layout and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least intrusive equipment within the particular technology available to the carrier for deployment.

   b. A photograph and model name and number of each piece of the facility or proposed antenna array and accessory equipment included.

   c. Power output and operating frequency for the proposed antenna array (including any antennas existing as of the date of the application serving the carrier identified in the application).

   d. Total anticipated capacity of the wireless telecommunications facility for the subject carrier, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.

   e. Sufficient evidence of the structural integrity of the support structure as required by the City.

5. A written description identifying the geographic service area to be served by the proposed WTFP, plus geographic or propagation maps showing applicant’s service area objectives.

6. A justification study which includes the rationale for selecting the proposed wireless telecommunication facility design, support structure and location. A detailed explanation of the applicant’s coverage objectives that the proposal would serve, and how the proposed use is the least intrusive means for the applicant to cover such objectives. This shall include:

   a. A meaningful comparative analysis that includes all factual reasons why the proposed location and design deviates from, or is the least compliant means of, or not the least intrusive location and design necessary to reasonably achieve the applicant’s reasonable objectives of covering an established significant gap (as established under state and federal law).

   b. The study shall include all eligible support structures and/or alternative sites evaluated for the proposed Major WTFP, and why the alternatives are not reasonably available, technically feasible options that most closely conform to the local values. The alternative site analysis must include the consideration of at least two eligible support structures; or, if no eligible support facilities are analyzed as alternatives, why no eligible support facilities are reasonably available or technically feasible.
c. If a portion of the proposed facility lies within a jurisdiction other than the City’s jurisdiction, the applicant must demonstrate that alternative options for locating the project fully within one jurisdiction or the other is not a viable option. Applicant must demonstrate that it has obtained all approvals from the adjacent jurisdiction for the installation of the extra-jurisdictional portion of the project.

7. Site plan(s) to scale, specifying and depicting the exact location of the proposed wireless telecommunications facility, location, of accessory equipment in relation to the support structure, access or utility easements, existing utilities, adjacent land uses, and showing compliance with all design and safety requirements set forth in this chapter.

8. A completed environmental assessment application, or in the alternative any and all documentation identifying the proposed WTFP as exempt from environmental review (under the California Environmental Quality Act, Public Resources Code 21000–21189, the National Environmental Policy Act, 42 U.S.C. §4321 et seq., or related environmental laws). Notwithstanding any determination of environmental exemption issued by another governmental entity, the City reserves its right to exercise its rights as a responsible agency to review de novo the environmental impacts of any WTFP application.

9. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the wireless telecommunications facility, including scaled photo simulations from at least three different angles.

10. Completion of the RF emissions exposure guidelines checklist contained in Appendix A to the FCC’s “Local Government Official’s Guide to Transmitting Antenna RF Emission Safety” to determine whether the facility will be “categorically excluded” as that term is used by the FCC.

11. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the City that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power “ERP”) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
12. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the proposed wireless telecommunications facility.

13. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code, including Chapter 8.28 (Noise) of this code.

14. A traffic control plan when the proposed installation is on any street in a non-residential zone. The City shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g., crane).

15. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the wireless telecommunication facility.

16. Certification that applicant is a telephone corporation, or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

17. Evidence that the proposed wireless facility qualifies as a personal wireless services facility.

18. Address labels for use by the City in notifying all property owners within 500 feet of the proposed wireless telecommunication facility and, if applicable, all public hearing information required by the municipal code for public noticing requirements.

19. Any other information and/or studies reasonably determined to be necessary by the public works or planning director(s) may be required.

D. Application Fees and Trust Deposits. For all WTFPs, application fee(s) and the establishment of trust deposits to cover outside consultant costs shall be required to be submitted with any application, as established by City Council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a WTFP unless paid as a refundable trust deposit.

Reasonable costs of City staff, consultant and attorney time (including that of the City attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a WTFP shall be reimbursable to the City. To this end, the public works and/or planning director, as applicable, may require applicants to enter a trust/deposit reimbursement agreement, in a form approved by the city attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of City processing of an application may be drawn-down.
E. Independent Expert. The public works and/or planning director, as applicable, is authorized to retain on behalf of the City one or more independent, qualified consultant(s) to review any WTFP application at the applicant’s expense. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall include, but not be limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

F. Effect of State or Federal Law on Application Process. In the event a state or federal law prohibits the collection of any information or application conditions required by this section, the public works director is authorized to omit, modify, or add to that request from the City’s application form in consultation with the city attorney. Requests for waivers from any application requirement of this section shall be made in writing to the public works director. The public works director may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the WTFP sought. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the municipal code.

G. Applications Deemed Withdrawn. To promote efficient review and timely decisions, any application governed by this chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the City on any application within thirty (30) calendar days after the application is deemed incomplete in a written notice to the applicant. The public works or planning director (as applicable) may grant a written extension for up to an additional thirty (30) calendar days when the applicant submits a written request prior to the application deemed automatically withdrawn that shows good cause to grant the extension.

H. Waiver of Applications Superseded by Submission of New Project. If an applicant submits a WTFP application, but substantially revises the proposed facility during the application process prior to any City hearing or decision on such application, the substantially revised application shall be deemed a new application for all processing purposes, including FCC Shot Clocks, and the prior submittals deemed waived and superseded by the substantially revised application. For purposes of this subparagraph, “substantially revised” means that the project as initially-proposed has been alternately proposed for a location 300 feet or more from the original proposal or constitutes a substantial change in the dimensions or equipment that was proposed in the original WTFP application.

I. Rejection for Incompleteness. WTFPs will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an application is incomplete, it may be rejected by the public works director by notifying the applicant in writing and specifying the material omitted from the application.
12.18.060 - REVIEW PROCEDURE.

A. General. Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risk to public safety and utilizes installation of new support structures or equipment cabinets in the PROW only after all existing and replacement structure options have been exhausted, and where feasible, places equipment underground, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the PROW; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the PROW, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon, or vacate the PROW or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the PROW.

B. Collocation Encouraged. Where the facility site is capable of accommodating a collocated facility upon the same site in a manner consistent with the permit conditions for the existing facility, the owner and operator of the existing facility shall allow collocation of third-party facilities, provided the parties can mutually agree upon reasonable terms and conditions therefor.

C. Findings Required for Approval of a WTFP.

1. Minor WTFP for SWF. For Minor WTFP applications proposing a SWF, the public works director or planning director, as the case may be, shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

   a. The facility qualifies as a SWF;

   b. The facility is not detrimental to the public health, safety, and welfare;

   c. The SWF meets applicable requirements and standards of state and federal law;

   d. The SWF would not be located on a prohibited support structure identified in this chapter;

   e. The facility would utilize the most preferred support structure and location within 250 feet from the originally proposed site in any direction, or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) or locations within 250 feet would be technically infeasible;

   f. The meets applicable requirements and design standards for SWF under this chapter, unless the applicant has demonstrated with clear and
convincing evidence in the written record that any such standard would be technically infeasible; and

g. All public notices required for the application have been given.

2. Minor WTFP for EFR. For Minor WTFP applications proposing an eligible facilities request, the public works director shall approve such application if, on the basis of the application and other materials or evidence provided in review thereof, all of the following findings can be made:

a. That the application qualifies as an eligible facilities request; and

b. That the proposed facility will comply with all generally-applicable laws.

3. Major WTFP. No Major WTFP shall be granted unless all of the following findings are made by the applicable decision-maker:

a. If applicable, all notices required for the proposed Major WTFP have been given, including the inclusion, or placement on-site, of photo simulations for the proposed facility;

b. The proposed wireless telecommunications facility has been designed and located in compliance with all applicable provisions of this chapter;

c. If applicable, the applicant has demonstrated its inability to locate on an eligible support structure;

d. The applicant has provided sufficient evidence supporting the applicant’s claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the City permitting them to use the public right-of-way; and,

e. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible, supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not reasonably available.

D. Noticing. The provisions in this Section describe the procedures for the approval process, any required notice and public hearings for a WTFP application.

1. Minor WTFP Applications. Within or reasonably about 5 business days of a SWF application being deemed complete, notice of the proposed SWF application shall be mailed by the City to owners and occupants of real property within a 500 foot radius of the proposed SWF site at least 10 days before rendering a decision. Applications qualifying for eligible facilities requests shall not require notice. The notice shall contain:
a. A general project description and dimensioned, full color photo simulations;

b. The applicant's identification and contact information as provided on the application submitted to the City;

c. Contact information for the City's approval authority;

d. A statement that the approval authority will act on the application without a public hearing but will accept written public comments that evaluate the application for compliance with the standards in this chapter;

e. A statement that the FCC requires the City to act on small cell permit applications, which includes any administrative appeals, in 60 days for attachments to existing structures, and 90 days for new structures, unless the applicant voluntarily agrees to toll the timeframe for review; and

f. Written public comments shall be received by the approval authority within 10 days of the public notice date.

2. Major WTFP Applications. Any Major WTFP application shall require notice and a public hearing. Notice shall be provided at least 15 days before the public hearing. Public notices shall include color photo simulations from different angles depicting the wireless telecommunication facility as proposed to be considered by the planning commission. If the application proposes the use of an existing or replacement eligible support structure, such simulations shall be posted upon the proposed support structure for a period of at least 30 days prior to the public hearing; such posted simulations shall remain in-place until a final decision, including exhausting all appeal processes, on the application is reached.

E. Notice of Decision. Within 5 days after any decision to grant, approve, deny, or conditionally grant any WTFP application, the public works director or planning director, as applicable, shall provide written notice based on substantial evidence in the written administrative record including the following:

1. A general explanation of the decision, including the findings required for the decision, if any, and how those findings were supported or not supported by substantial evidence;

2. A general description of the property involved;

3. Information about applicable rights to appeal the decision, costs to appeal, and explanation of how that right may be exercised; and

4. To be given by first class mail to:
   a. The project applicant and property owner;
b. Any person who submitted written comments concerning the WTFP;

c. Any person who has filed a written request with the City to receive such notice; and

d. Any homeowner association on file with the City that has jurisdiction over the WTFP site.

5. Once a WTFP is approved, no changes shall be made to the approved plans without review and approval in accordance with this chapter.

6. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, no decision upon a WTFP shall be premised upon the environmental or health effects of RF emissions, nor shall public comments be considered to the extent they are premised upon the environmental or health effects of RF emissions.

F. Appeals.

1. Minor WTFP Appeals. Any person who receives the Notice of Decision pursuant to subsection 12.18.060(E)(4) may appeal such decision within 5 days of the Notice of Decision date. The appeal will be considered by the City Council within 10 days of filing. The City Council may decide the issues de novo and the written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. Because Section 332(c)(7) of the Telecommunications Act preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, appeals of a Minor WTFP decision premised on the environmental effects of radio frequency emissions will not be considered.

2. Major WTFP Appeals. Any person claiming to be adversely affected by a decision of a Major WTFP pursuant to this chapter may appeal such decision as provided in accordance with the appeal provisions in Chapter 17.80 of the RPVMC.

G. Notice of Shot Clock Expiration. The City acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the City must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the City written notice of the expiration of any relevant FCC Shot Clock, which the applicant shall ensure is received by the City (e.g., overnight mail) no later than 20 days prior to expiration.
12.18.070 – DESIGN AND DEVELOPMENT STANDARDS.

A. SWF Design and Development Standards. SWFs are subject to the design and development standards and conditions of approval set forth herein. The City’s grant of a WTFP for a SWF does not waive, and shall not be construed to waive, any standing by the City to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

1. Visual & Other General Standards. SWFs shall be designed in the least visible means feasible and to be compatible with support structure/surroundings.

2. Noise. SWFs and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations stated in this chapter.

3. Lights. SWFs shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(3) shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.

4. Landscape Features. SWFs shall not displace any existing landscape features unless: (a) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (b) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscape maintenance shall be performed in accordance to the public works director.

If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant, and maintain replacement landscaping in an appropriate location for the species. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

To preserve existing landscaping in the public rights-of-way, all work performed in connection with SWFs shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to
plant and maintain replacement trees at the site for the duration of the permit term.

5. Site Security Measures. SWFs may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft, or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.

6. Signage and Advertisements. All SWFs shall contain a site identification sticker that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SWFs may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, OSHA, Federal Aviation Administration or other United States governmental agencies for compliance with RF emissions regulations. Permittees shall:

   a. Remove or paint over unnecessary equipment manufacturer decals and fill-in any visibly depressed manufacturer logos on equipment.

   b. Utilize the smallest and lowest visibility stickers required by government or electric utility regulations.

   c. Use sticker colors that are muted.

   d. Signage shall be maintained in legible condition and the carrier will be required to replace any faded signage within 30 days of receiving written notification from the City that it is in need of replacing.

7. Compliance with Health and Safety Regulations. All SWFs shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions.

8. Dimensions and Design. Wireless facilities shall be as small, short, and unobtrusive as possible.

9. Overall Height. SWFs may not exceed either (a) the minimum separation from electrical lines required by applicable safety regulations, plus 4 feet or (b) 4 feet above the existing support structure. In addition, SWFs shall be located no higher than 10% or 10 feet, whichever is greater, than the height otherwise permitted in the immediately adjacent zoning district.
10. Concealment. All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure. The wireless facility and accessory equipment shall be camouflaged with use of one or more concealment elements to blend the facility with surrounding materials and colors of the adjacent street light or utility pole to which it is mounted. Concealment elements include:

a. Radio frequency transparent screening;

b. Approved, specific colors;

c. Use of non-reflective material(s);

d. Minimizing the size of the site;

e. Integrating the installation into existing or replacement utility infrastructure;

f. Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site.

g. Antennas, brackets (mounting), PVC or steel risers and cabling shall match the color of the adjacent structure.

h. Paint shall be of durable quality.

i. Materials shall be non-flammable and non-reflective.

j. Each individual antenna may not exceed 3 cubic feet in volume and all antennas may not exceed 6 cubic feet in volume.

k. Accessory Equipment.

11. Installation Preferences. SWF accessory equipment shall be enclosed in replacement poles or placed underground where technically feasible, and if not feasible, shall be as small, short, and unobtrusive as possible. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically infeasible as supported by clear and convincing evidence in the written record.

12. Undergrounded Accessory Equipment. All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and shall not exceed 2 feet above grade when placed off the sidewalk. Applicants
shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.

13. Streetlights. Applicants that propose to install SWFs on an existing streetlight must remove and replace the existing streetlight with one substantially similar to the City’s standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must:

a. be located as close to the removed pole as possible;

b. be aligned with the other existing streetlights; and

c. include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas shall be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

14. Wood Utility Poles. Applicants that propose to install SWFs on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.

15. For Replacement Poles and Street Lights. If an applicant proposes a replacement pole or street light to accommodate the SWF, the replacement shall be in the same location as the street light or pole being replaced; unless the replacement will not meet all applicable standards, then replacement may be located in an alternative location that complies with the requirements herein.

16. New, Non-Replacement Poles. Applicants that propose to install SWFs on a new, non-replacement pole must install a new streetlight substantially similar to the City’s standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed 12 inches and any base enclosure diameter shall not exceed 16 inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome, and shall comply with the following:
a. The new pole must actually function for a purpose other than placement of a wireless facility (e.g., street light, utility pole, etc.).

b. The design must match the dimensions and design of existing and similar types of poles and antennas in the surrounding areas.

17. Encroachments Over Private Property. SWFs may not encroach onto or over any private or other property outside the PROW without the property owner's express written consent.

18. Backup Power Sources. Fossil-fuel based backup power sources shall not be permitted within the PROW; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.

19. Obstructions; Public Safety. SWF and any associated equipment or improvements shall not physically interfere with or impede access to any:

a. Above-ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors;

b. Public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop;

c. Above-ground or underground infrastructure owned or operated by any public or private utility agency;

d. Fire hydrant or water valve;

e. Doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way;

f. Fire escape.

20. Utility Connections. All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires, and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (a) internal risers or conduits if on a concrete, composite or similar pole; or (b) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
21. Spools and Coils. To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.

22. Electric Meters.

a. SWFs shall use unmetered (flat rate) electric service, if allowed by the utility company, or use the narrowest, shrouded electric meter and disconnect available. Permittees shall ensure the meter and other enclosures are well maintained, including regular painting, and the use of a graffiti-resistant paint, and stack the disconnect switch above/below the meter, instead of attached to the side of the meter.

b. Electrical meters, vaults, and fans shall be located underground where feasible.


a. Preferred Concealment Techniques. All applicants must propose new non-tower SWFs that are completely concealed and architecturally integrated into the existing façade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or façades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).

b. Facade-Mounted Equipment. When SWFs cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve façade-mounted equipment in accordance with this Subsection. All façade-mounted equipment must be concealed behind screen walls and mounted flush to the façade. The approval authority may not approve “pop-out” screen boxes. Except in industrial zones, the approval authority may not approve any exposed façade-mounted antennas, including but not limited to exposed antennas painted to match the façade.

24. Future Modifications. Any modifications to existing facilities or collocations shall not defeat the concealment elements of the existing structure/facility.

25. Standard Conditions of Approval. In addition to the design and development standards stated in this section, all WTFPs issued for a SWF shall be subject to the following conditions:
a. Post-Installation Certification. Within 60 calendar days after the applicant commences full, unattended operations of a SWF approved or deemed-approved, the applicant shall provide the approval authority with documentation reasonably acceptable to the approval authority that the SWF has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.

b. Adverse Impacts on Other Properties. In addition to those requirements stated in this section, the applicant shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by Chapter 17.56 of this code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violate this condition in whole or in part.

c. Inspections; Emergencies. The applicant expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors, or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence, the City's officers, officials, staff, agents, contractors, or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The applicant, if present, may observe the City's officers, officials, staff, or other designees while any such inspection or emergency access occurs.

d. Future Undergrounding Programs. If other public utilities or communications providers in the PROW underground their facilities in the segment of the PROW where the SWF is located, the applicant shall underground its equipment except the antennas and any other equipment that must be placed above ground to function. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. SWFs installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the applicant’s sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
e. Electric Meter Upgrades. If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the applicant on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the applicant shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal from the City. Upon removal, the applicant shall restore the affected area to its original condition that existed prior to installation of the equipment.

f. Rearrangement and Relocation. The applicant acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in the SWF permit. If the Public Works Director determines that any City work will require the applicant's SWF located in the PROW to be rearranged and/or relocated, the applicant shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the applicant fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's SWF within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the applicant's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's SWF within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the applicant's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's SWF without prior notice to applicant when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The applicant shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

B. Eligible Facilities Request Design and Development Standards. Approved eligible facilities requests for which the findings set forth in Section 12.18.060(C)(2) have been made are subject to the following, unless modified by the approving authority:

1. WTFP Subject to Conditions of Underlying Permit. Any WTFP granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit and all such conditions that were applicable to the facility prior to approval of the subject eligible facility request.
2. No Permit Term Extension. The City granting, or granting by operation of law, of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the City’s granting, or granting by operation of law, of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall have the same term as the underlying permit or other regulatory approval for the subject tower or base station.

3. No waiver of standing. The City’s granting, or granting by operation of law, of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the City to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. Major WTFP Design and Development Standards. All wireless telecommunications facilities subject to a Major WTFP that are located within the PROW shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following standards:

1. General Guidelines.
   a. The applicant shall employ screening, undergrounding, and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties and public views, all in a manner that achieves compatibility with the community and in compliance with this code.
   b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility’s visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.
   c. Wireless telecommunications facilities shall be located consistent with Section 12.18.080 (Location Restrictions) unless an exception is granted.

2. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

3. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area, infrastructure and structures.
4. Equipment. The applicant shall use the least visible equipment for the provision of wireless telecommunications services that is technically feasible. Antenna elements shall be flush mounted, to the extent feasible, with all cables and wires clipped-up or otherwise out of public view. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this Section, antennas shall be situated as close to the ground as technically feasible.

5. Support Structures.

a. Pole-Mounted Only. Only pole-mounted antennas (excepting wooden poles per subparagraph 5.b below) shall be permitted in the public right-of-way. Mountings to all other forms of support structure in the public right-of-way are prohibited unless an exception pursuant to Section 12.18.080 is granted.

b. Utility Poles. Wireless telecommunications facilities shall not be located on wooden poles unless an exception pursuant to Section 12.18.080 is granted. The maximum height of any antenna shall not exceed 48 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 24 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.

c. Light Poles. The maximum height of any antenna shall not exceed 4 feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than 16½ feet above any drivable road surface.

d. Replacement Poles. If an applicant proposes to replace a pole that is an eligible support structure to accommodate the proposed facility, the replacement pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.

e. Equipment mounted on a support structure shall not exceed 4 cubic feet in dimension.

f. No new guy wires shall be allowed unless required by other laws or regulations.

g. An exception pursuant to Section 12.18.080 shall be required to erect any new support structure (non-eligible support structure) that is not the replacement of an existing eligible support structure.

h. As applicable to all new support structures (non-eligible support structures), regardless of location, the following requirements shall apply:
i. The new support structure shall be designed to resemble existing support structures of the same type in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing structural designs that are scheduled to be removed and not replaced.

ii. New support structures that are not replacement structures shall be located at least 90 feet from any eligible support structure to the extent feasible.

iii. New support structures shall not adversely impact public view corridors, as defined in Section 17.02.040 of the RPVMC, and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the new support structure. The applicant shall further employ concealment techniques to blend the new support structure with said features including but not limited to the addition of vegetation if feasible.

iv. A justification analysis shall be submitted for all new support structures that are not replacements to demonstrate why an eligible support facility cannot be utilized and demonstrating the new structure is the least intrusive means possible, including a demonstration that the new structure is designed to be the minimum functional height and width required to support the proposed wireless telecommunications facility.

v. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the support structure and shall be camouflaged or hidden to the fullest extent feasible. For all support structures wherein interior installation is infeasible, conduit and cables attached to the exterior shall be mounted flush thereto and painted to match the structure.

6. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

7. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

8. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public’s use of the PROW, or cause safety hazards to pedestrians and motorists.

9. Public Facilities. A facility shall not be located within any portion of the PROW interfering with access to a fire hydrant, fire station, fire escape, water valve,
underground vault, valve housing structure, or any other public health or safety facility.

10. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inches from the curb and gutter flow line.

11. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:

   a. Unless City staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception pursuant to Section 12.18.080 shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.

   b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of 3½ feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this chapter.

   c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes.

12. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the City to provide screening or to conceal the facility.

13. Signage. No facility shall bear any signs or advertising devices other than certification, warning, or other signage required by law or permitted by the City.

14. Lighting.

   a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.

c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.

d. Unless otherwise required under Federal Aviation Administration or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The City may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.

e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.

15. Noise.

a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.

b. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

16. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti, and other conditions that would result in hazardous situations, visual blight, or attractive nuisances. The public works director or the approving City body, as applicable, may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

17. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not
limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

18. The installation and construction approved by a wireless telecommunications facility permit shall occur within one year after its approval or it will expire without further action by the City.

19. Conditions of Approval. All Major WTFPs shall be subject to such conditions of approval as reasonably imposed by the public works director or the approving City body, as applicable, as well as any modification of the conditions of approval deemed necessary by the public works director or the approving City body.

12.18.080 - LOCATION RESTRICTIONS, LOCATION AND STRUCTURAL PREFERENCES, AND EXCEPTIONS.

A. Locations Requirements for SWF.

1. Preface to Location Requirements. Applications that involve lesser-preferred locations or structures as described in subsections 12.18.080(A)(2) and 12.18.080(A)(3) may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 250 feet from the proposed site; or (2) any more preferred locations or structures within 250 feet from the proposed site would be technically infeasible to achieve the operator’s service objectives, as supported by clear and convincing evidence in the written record, unless prohibited under this section. Preferred location requirements shall consist of the following:

a. Allowable locations for SWFs are on existing or replacement infrastructure such as street lights and utility poles.

b. When locating in an alley, the SWF shall be placed at a height above the roof line of adjacent buildings to avoid being placed adjacent to a window.

c. When choosing locations, choose locations in between occupied buildings rather than immediately adjacent to occupied buildings, and not adjacent to a window.

d. If the SWF is not able to be placed on existing infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such site was not feasible.

2. Locations in the Public Rights-of-Way. The City prefers SWF in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

a. Locations within the City’s commercial zoning districts on or along arterial,
b. Locations within the City’s commercial zoning districts on or along collector roads;

c. Locations within the City’s commercial zoning districts on or along local roads,

d. Locations within the City’s institutional zoning districts on or along arterial roads;

e. Locations within the City’s institutional zoning districts on or along collector roads,

f. Locations within the City’s institutional zoning districts on or along local roads,

g. Locations within residential districts on or along arterial roads;

h. Locations within residential districts on or along collector roads;

i. Any location in any district within 250 feet from any structure approved for a residential use.

3. Support Structures in the Public Rights-of-Way. The City prefers SWFs to be installed on support structures in the PROW, ordered from most preferred to least preferred, as follows:

a. Existing or replacement streetlight poles;

b. Existing or replacement wood utility poles;

c. Existing or replacement street sign poles;

d. New, non-replacement streetlight poles;

e. New, non-replacement poles for small wireless facilities.

4. Prohibited Support Structures. The City prohibits SWFs to be installed on the following support structures:

a. Strand-mounted wireless facilities are prohibited.

b. Decorative poles;

c. Traffic signals, cabinets and related devices;

d. Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small cell permit application;

e. New, non-replacement wood poles.
B. Locations Requiring an Exception for Major WTFPs. Major WTFPs are strongly
disfavored in certain areas and on certain support structures. Therefore the
following locations are permitted only when an exception has been granted
pursuant to Subsection C hereof:

1. Public right-of-way within those zones as identified in the General Plan as
   residential zones;

2. Public right-of-way within public view corridors identified in the General Plan
   and the Coastal Specific Plan;

C. Required Findings for an Exception on Major WTFPs. For any Major WTFP
requiring an “exception” under this chapter, no such exception shall be granted
unless the applicant demonstrates with clear and convincing evidence all the
following:

1. The proposed wireless facility qualifies as a personal wireless services facility;

2. The applicant has provided the City with a clearly defined significant gap (as
   established under state and federal law) and a clearly defined potential site
   search area.

   a. In the event the applicant seeks to install a wireless telecommunications
      facility to address service coverage concerns, full-color signal propagation
      maps with objective units of signal strength measurement that show the
      applicant’s current service coverage levels from all adjacent wireless
      telecommunications facilities without the proposed facility, predicted service
      coverage levels from all adjacent facilities serving applicant with the
      proposed facility, and predicted service coverage levels from the proposed
      facility without all adjacent facilities.

   b. In the event the applicant seeks to address service capacity concerns, a
      written explanation and propagation maps identifying the existing facilities
      with service capacity issues together with competent evidence to
      demonstrate the inability of those facilities to meet capacity demands.

3. The applicant has provided the City with a meaningful comparative analysis that
   includes the factual reasons why any alternative location(s) or design(s)
   suggested by the City or otherwise identified in the administrative record,
   including but not limited to potential alternatives identified at any public meeting
   or hearing, are not technically feasible or reasonably available.

4. The applicant has provided the City with a meaningful comparative analysis that
   includes the factual reasons why the proposed location and design deviates is
   the least noncompliant location and design necessary to reasonably achieve
   the applicant’s reasonable objectives of covering an established significant gap
   (as established under state and federal law).
5. The applicant has demonstrated that strict compliance with any provision in this chapter for a Major WTFP would effectively prohibit the provision of personal wireless services.

D. Scope. The planning commission or public works director, as applicable, shall limit an exemption for a Major WTFP to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its objectives of covering an established significant gap (as established under state and federal law). The planning commission or public works director, as applicable, may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

12.18.090 - OPERATION AND MAINTENANCE STANDARDS.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards:

A. The permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations and other rules, including, without limitation, those applying to use of the PROW. The permittee shall ensure that all equipment and other improvements to be constructed and/or installed in connection with the approved WTFP are maintained in a manner that is not detrimental or injurious to the public health, safety, and general welfare and that the aesthetic appearance is continuously preserved, and substantially the same as shown in the approved plans at all times relevant to the WTFP.

B. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent at its sole cost within 48 hours:

1. After discovery of the need by the permittee, owner, operator, or any designated maintenance agent; or

2. After permittee, owner, operator, or any designated maintenance agent receives notification from the City.

C. Insurance. The permittee shall obtain and maintain throughout the term of the permit a type and amount of insurance as specified by City’s risk management. The relevant policy(ies) shall name the City, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insured. The permittee shall use its best efforts to provide 30 days prior notice to the public works director of to the cancellation or material modification of any applicable insurance policy.

D. Indemnities. The permittee and, if applicable, the owner of the property upon which the wireless facility is installed shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims,
demands, law suits, writs of mandamus, and other actions or proceedings brought against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City’s approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the permittee or, if applicable, the private property owner or any of each one’s agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the City becomes aware of any such actions or claims the City shall promptly notify the permittee and, if applicable, the private property owner and shall reasonably cooperate in the defense. The City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City’s defense, and the property owner and/or Permittee (as applicable) shall reimburse the City for any costs and expenses directly and necessarily incurred by the City in the course

E. Performance Bond. Prior to issuance of a wireless encroachment permit, the permittee shall file with the City, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 100% of the cost of removal of the facility as specified in the application for the WTFP or as that amount may be modified by the public works director in the permit based on the characteristics of the installation. The permittee shall reimburse the City for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the City council. Reimbursement shall be paid when the security is posted and during each administrative review.

F. Adverse Impacts on Adjacent Properties. Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility. All facilities, including each piece of equipment, shall be located and placed in a manner so as to not interfere with the use of the PROW, impede the flow of vehicular or pedestrian traffic, impair the primary use and purpose of poles/signs/traffic signals or other infrastructure, interfere with outdoor dining areas or emergency facilities, or otherwise obstruct the accessibility of the PROW.

G. Contact Information. Each permittee of a wireless telecommunications facility shall provide the public works director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility (“contact information”). Contact information shall be updated within 7 days of any change.

H. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or
camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:

1. Subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to City streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems (water, sewer, storm drains, gas, oil, electrical, etc.) that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the PROW.

2. General dirt and grease;

3. Chipped, faded, peeling, and cracked paint;

4. Rust and corrosion;

5. Cracks, dents, and discoloration;

6. Missing, discolored or damaged artificial foliage or other camouflage;

7. Graffiti, bills, stickers, advertisements, litter and debris. All graffiti on facilities must be removed at the sole expense of the permittee within forty eight (48) hours after notification from the City.

8. Broken and misshapen structural parts; and

9. Any damage from any cause.

I. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in neat, safe and good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the public works director.

J. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

K. Each facility shall be operated and maintained to comply with all conditions of approval. The permittee, when directed by the City, must perform an inspection of the facility and submit a report to the public works director on the condition of the facility to include any identified concerns and corrective action taken. Additionally, as the City performs maintenance on City-owned infrastructure, additional maintenance concerns may be identified. These will be reported to the permittee. The City shall give the permittee 30 days to correct the identified maintenance concerns after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit. The burden is on the Permittee to demonstrate that it complies with the requirements herein. Prior to
issuance of a permit under this Chapter, the owner of the facility shall sign an affidavit attesting to understanding the City’s requirement for performance of annual inspections and reporting.

L. All facilities permitted pursuant to this chapter shall comply with the Americans with Disabilities Act.

M. The permittee shall be responsible for obtaining power to the facility and for the cost of electrical usage.

N. Interference.

1. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the City shall be moved to accommodate a permitted activity or encroachment, unless the City determines that such movement will not adversely affect the City or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the City’s structure, improvement, or property. Prior to commencement of any work pursuant to a wireless encroachment permit, the permittee shall provide the City with documentation establishing to the City’s satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement, or property within the PROW or City utility easement to be affected by permittee’s facilities.

2. The facility shall not damage or interfere in any way with City property, the City’s operations or the operations of prior-existing, third party installations. The City will reasonably cooperate with the permittee and/or carrier to carry out such activities as are necessary to correct the interference.

   a. Signal Interference. The permittee shall correct any such interference within 24 hours of written notification of the interference. Upon the expiration of the 24-hour cure period and until the cause of the interference is eliminated, the permittee shall cease operation of any facility causing such interference until such interference is cured.

   b. Physical Interference. The City shall give the permittee 30 days to correct the interference after which the City reserves the right to take any action it deems necessary, which could include revocation of the permit.

3. The City at all times reserves the right to take any action it deems necessary, in its sole discretion, to repair, maintain, alter, or improve the sites. Such actions may temporarily interfere with the operation of the facility. The City will in all cases, other than emergencies, give the applicant 30 days written notification of such planned, non-emergency actions.
O. RF Exposure Compliance. All facilities shall comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the facility, the permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC Office of Engineering and Technology Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.

1. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m. Testing is prohibited on holidays and weekends.

P. Records. The permittee shall maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the City, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

Q. Attorney’s Fees. In the event the City determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a permit, and such legal action is taken, the permittee shall be required to pay any and all costs of such legal action, including reasonable attorney’s fees, incurred by the City, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the City should otherwise agree with permittee to waive said fees or any part thereof. The foregoing shall not apply if the permittee prevails in the enforcement proceeding.

12.18.100 - NO DANGEROUS CONDITION OR OBSTRUCTIONS ALLOWED.

No person shall install, use or maintain any wireless telecommunications facility that in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants,
mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

12.18.110 - NONEXCLUSIVE GRANT; NO POSSESSORY INTERESTS.

A. No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the City for any purpose whatsoever. Further, no approval shall be construed as a warranty of title.

B. No possessory interest is created by a WTFP. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, the permittee acknowledge that the City has given to the applicant notice pursuant to California Revenue and Taxation Code Section 107.6 that the use or occupancy of any public property pursuant to a WTFP may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Wireless telecommunications facility operators shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against their right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by the WTFP.

C. The permission granted by a WTFP shall not in any event constitute an easement on or an encumbrance against the PROW. No right, title, or interest (including franchise interest) in the PROW, or any part thereof, shall vest or accrue in permittee by reason of a wireless encroachment permit or the issuance of any other permit or exercise of any privilege given thereby.

12.18.120 - PERMIT EXPIRATION; ABANDONMENT OF APPLICATIONS.

A. Permit Term. Unless Government Code Section 65964, as may be amended, authorizes the City to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of 10 years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of 10 years from the date of issuance, such permit shall automatically expire.

B. A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the City’s current code requirements for wireless telecommunications facilities.

C. Timing of Installation. The installation and construction authorized by a WTFP shall begin within 1 year after its approval, or it will expire without further action by the City. The installation and construction authorized by a WTFP shall conclude, including any necessary post-installation repairs and/or restoration to the PROW, within 30 days following the day construction commenced.

D. Commencement of Operations. The operation of the approved facility shall commence no later than 90 days after the completion of installation, or the WTFP
will expire without further action by the City. The permittee shall provide the public works director notice that operations have commenced by the same date.

12.18.130 - CESSATION OF USE OR ABANDONMENT.

A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

B. The operator of a facility shall notify the public works director in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within 10 days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the public works director of any discontinuation of operations of 30 days or more.

C. Failure to inform the public works director of cessation or discontinuation of operations of any existing facility as required by this Section shall constitute a violation of any approvals and be grounds for:

1. Litigation;

2. Revocation or modification of the permit;

3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;

4. Removal of the facilities by the City in accordance with the procedures established under this code for abatement of a public nuisance at the owner’s expense; and/or

5. Any other remedies permitted under this code or by law.

12.18.140 - REMOVAL AND RESTORATION—PERMIT EXPIRATION, REVOCATION OR ABANDONMENT.

A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the WTP or abandonment of the facility, the permittee, owner or operator shall within 60 days remove its wireless telecommunications facility and restore the site to the condition it was in prior to the granting of the WTP, except for retaining the landscaping improvements and any other improvements at the discretion of the City. Removal shall be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the City. Expired, terminated or revoked wireless telecommunications facility equipment shall be removed from the site at no cost or expense to the City.
B. Revocation. Any WTFP may be amended, suspended, or revoked for violations of the provisions of this Ordinance or any condition of approval. Amendment, suspension, or revocation shall be pursuant to the procedures of Section 17.86.060 of this code, following notice of the violations to the permittee, and a reasonable opportunity to correct.

C. Summary Removal. In the event any City director or City engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes an immediate dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, “exigent circumstances”), such director or City engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within 5 business days of removal and all property removed shall be preserved for the owner’s pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.

D. Removal of Facilities by City. In the event the City removes a wireless telecommunications facility in accordance with nuisance abatement procedures stated in Chapter 8.24 of this code or pursuant to the summary removal procedures of Subsection B, above, any such removal shall be without any liability to the City for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the City may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the City has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the City destroys any such facility not timely removed by the permittee, owner or operator after notice, or removal by the City due to exigent circumstances.

12.18.150 - EFFECT ON OTHER ORDINANCES.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of this code. In the event of a conflict between any provision of this chapter and other sections of this code, this chapter shall control.

12.18.160 - STATE OR FEDERAL LAW.

The implementation of this chapter and decisions on applications for placement of wireless telecommunications facilities in the PROW shall, at a minimum, ensure that the requirements of this chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate
applicable laws or regulations. If that determination is made, the requirements of this Chapter may be waived, but only to the minimum extent required to avoid the prohibition or violation.

12.18.170 – LEGAL NONCONFORMING WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY.

A. Legal nonconforming wireless telecommunications facilities are those facilities that existed but did not conform to this chapter on the date this chapter became effective.

B. Legal nonconforming wireless telecommunications facilities shall, within 10 years from the date this chapter became effective, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, to the extent the City can require such compliance under federal and state law.

C. An aggrieved person may file an appeal to the City council of any decision of the public works director or other deciding body made pursuant to this Section. In the event of an appeal alleging that the 10-year amortization period is not reasonable as applied to a particular property, the City council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.
Chapter 12.18 - WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Footnotes:

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12.18.010 - Purpose.

The purpose and intent of this chapter is to provide a uniform and comprehensive set of regulations and standards for the permitting, development, siting, installation, design, operation and maintenance of wireless telecommunications facilities in the city's public right-of-way. These regulations are intended to prescribe clear and reasonable criteria to assess and process applications in a consistent and expeditious manner, while reducing the impacts associated with wireless telecommunications facilities. This chapter provides standards necessary (1) for the preservation of the public right-of-way in the city for the maximum benefit and use of the public, (2) to promote and protect public health and safety, community welfare, visual resources and the aesthetic quality of the city consistent with the goals, objectives and policies of the general plan, and (3) to provide for the orderly, managed and efficient development of wireless telecommunications facilities in accordance with the state and federal laws, rules and regulations.

(Ord. No. 580, § 4, 3-15-16)

12.18.020 - Definitions.

"Accessory equipment" means any equipment associated with the installation of a wireless telecommunications facility, including but not limited to cabling, generators, fans, air conditioning units, electrical panels, equipment shelters, equipment cabinets, equipment buildings, pedestals, meters, vaults, splice boxes, and surface location markers.

"Antenna" means that part of a wireless telecommunications facility designed to radiate or receive radio frequency signals.

"Cellular" means an analog or digital wireless telecommunications technology that is based on a system of interconnected neighboring cell sites.


"Collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signal for communication purposes.

"COW" means a "cell on wheels," which is a wireless telecommunications facility temporarily rolled in or temporarily installed.

"Director" means the director of public works, or his or her designee.

"Facility(ies)" means wireless telecommunications facilities.

"Ground-mounted" means mounted to a telecommunications tower.

"Modification" means a change to an existing wireless telecommunications facility that involves any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation, including, but not limited to, changes in size, shape, color, visual design, or exterior
material. "Modification" does not include repair, replacement or maintenance if those actions do not involve a change to the existing facility involving any of the following: collocation, expansion, alteration, enlargement, intensification, reduction, or augmentation.

"Monopole" means a structure composed of a pole or tower used to support antennas or related equipment. A monopole also includes a monopine, monopalm and similar monopoles camouflaged to resemble faux trees or other faux objects attached on a monopole (e.g. water tower).

"Mounted" means attached or supported.

"Located within the public right-of-way" includes any facility which in whole or in part, itself or as part of another structure, rests upon, in, over or under the public right-of-way.

"Pole" means a single shaft of wood, steel, concrete or other material capable of supporting the equipment mounted thereon in a safe and adequate manner and as required by provisions of this code.

"Public right-of-way" means any public right-of-way as defined by section 17.96.1490 (Public Right-of-Way) of this code.

"Sensitive uses" means any residential use, public or private school, day care, playground, and retirement facility.

"Telecommunications tower" means a freestanding mast, pole, monopole, guyed tower, lattice tower, free standing tower or other structure designed and primarily used to support wireless telecommunications facility antennas.

"Utility pole" means any pole or tower owned by any utility company that is primarily used to support wires or cables necessary to the provision of electrical or other utility services regulated by the California Public Utilities Commission.

"Wireless telecommunications facility," "facility" or "facilities" mean any facility that transmits and/or receives electromagnetic waves. It includes, but is not limited to, antennas and/or other types of equipment for the transmission or receipt of such signals, telecommunications towers or similar structures supporting such equipment, related accessory equipment, equipment buildings, parking areas, and other accessory development.

Exceptions: The term "wireless telecommunications facility" does not apply to the following:

1. Government owned and operated telecommunications facilities.
2. Emergency medical care provider-owned and operated telecommunications facilities.
3. Mobile services providing public information coverage of news events of a temporary nature.
4. Any wireless telecommunications facilities exempted from this code by federal law or state law.

"Wireless telecommunications services" means the provision of services using a wireless telecommunications facility or a wireless telecommunications collocation facility, and shall include, but not limited to, the following services: personal wireless services as defined in the federal Telecommunications Act of 1996 at 47 U.S.C. § 332(c)(7)(C) or its successor statute, cellular service, personal communication service, and/or data radio telecommunications.

(Ord. No. 580, § 4, 3-15-16)

12.18.030 - Applicability.

A. This chapter applies to the siting, construction or modification of any and all wireless telecommunications facilities proposed to be located in the public right-of-way as follows:

1. All facilities for which applications were not approved prior to January 19, 2016 shall be subject to and comply with all provisions of this division.
2. All facilities for which applications were approved by the city prior to January 19, 2016 shall not be required to obtain a new or amended permit until such time as a provision of this code so requires. Any wireless telecommunication facility that was lawfully constructed prior to January 19, 2016 that does not comply with the standards, regulations and/or requirements of this division, shall be deemed a nonconforming use and shall also be subject to the provisions of Section 12.18.230 (Nonconforming Wireless Telecommunications Facilities in the Right-of-Way).

3. All facilities, notwithstanding the date approved, shall be subject immediately to the provisions of this chapter governing the operation and maintenance (Section 12.18.130 (Operation and Maintenance Standards)), cessation of use and abandonment (Section 12.18.170 (Cessation of Use or Abandonment)), removal and restoration (Section 12.18.180 (Removal and Restoration—Permit Expiration, Revocation or Abandonment)) of wireless telecommunications facilities and the prohibition of dangerous conditions or obstructions by such facilities (Section 12.18.150 (No Dangerous Condition or Obstructions Allowed)); provided, however, that in the event a condition of approval conflicts with a provision of this division, the condition of approval shall control until the permit is amended or revoked.

B. This chapter does not apply to the following:
   1. Amateur radio facilities;
   2. Over the air reception devices ("OTARD") antennas;
   3. Facilities owned and operated by the city for its use;
   4. Any entity legally entitled to an exemption pursuant to state or federal law or governing franchise agreement.

(Ord. No. 580, § 4, 3-15-16)

12.18.040 - Wireless telecommunications facility permit requirements.

A. Major Wireless Telecommunications Facilities Permit. All new wireless facilities or collocations or modifications to existing wireless facilities shall require a major wireless telecommunications facilities permit subject to planning commission approval unless otherwise provided for in this chapter.

B. Administrative Wireless Telecommunications Facilities Permit.
   1. An administrative wireless telecommunications facilities permit, subject to the director's approval, may be issued for new facilities or collocations or modifications to existing facilities that meet all the following criteria:
      a. The proposal is not located in any location identified in Section 12.18.200 (Location Restrictions).
      b. The proposal would not significantly impair any view from any viewing area as those terms are interpreted and applied in code Section 17.02.040 (View Preservation and Restoration); and
      c. The proposal complies with all applicable provisions in this chapter without need for an exception pursuant to Section 12.18.190 (Exceptions).
   2. The director may, in the director's discretion, refer any application for an administrative wireless telecommunications facilities permit to the planning commission for approval.
   3. In the event that the director determines that any application submitted for an administrative wireless telecommunications facilities permit does not meet the criteria this code, the director shall convert the application to a major wireless facilities permit application and refer it to the planning commission.

C. Master Deployment Plan Permit.
1. Any applicant that seeks approval for five or more wireless telecommunications facilities (including new facilities and collocations to existing facilities) may elect to submit an application for a master deployment plan permit subject to planning commission approval. The proposed facilities in a master deployment plan shall be reviewed together at the same time and subject to the same requirements and procedures applicable to a major wireless telecommunications facilities permit.

2. A master deployment plan permit shall be deemed an approval for all wireless telecommunications facilities within the plan; provided, however, that an individual encroachment permit shall be required for each wireless telecommunications facility.

3. After the planning commission approves a master deployment plan permit, any deviations or alterations from the approved master deployment plan for an individual wireless telecommunications facility shall require either a major wireless telecommunications facilities permit or an administrative wireless telecommunications facilities permit, as applicable.

D. Other Permits Required. In addition to any permit that may be required under this chapter, the applicant must obtain all other required prior permits or other approvals from other city departments, or state or federal agencies. Any permit granted under this chapter is subject to the conditions and/or requirements of other required prior permits or other approvals from other city departments, state or federal agencies.

E. Eligible Applicants. Only applicants who have been granted the right to enter the public right-of-way pursuant to state or federal law, or who have entered into a franchise agreement with the city permitting them to use the public right-of-way, shall be eligible for a permit to install or modify a wireless telecommunications facility or a wireless telecommunications collocation facility in the public right-of-way.

F. Speculative Equipment Prohibited. The city finds that the practice of "pre-approving" wireless equipment or other improvements that the applicant does not presently intend to install but may wish to install at some undetermined future time does not serve the public's best interest. The city shall not approve any equipment or other improvements in connection with a wireless telecommunications facility permit when the applicant does not actually and presently intend to install such equipment or construct such improvements.

(Ord. No. 580, § 4, 3-15-16)

12.18.050 - Application for wireless telecommunications facility permit.

A. Application.

1. In addition to the information required of an applicant for an encroachment permit or any other permit required by this code, each applicant requesting approval of the installation or modification of a wireless telecommunications facility in the public right-of-way shall fully and completely submit to the city a written application on a form prepared by the director.

2. No applicant seeking to install wireless antennas shall seek an encroachment permit for fiber or coaxial cable only. Applicants shall simultaneously request fiber installation or other cable installation when seeking to install antennas in the right-of-way.

B. Application Contents The director shall develop an application form and make it available to applicants upon request. The supplemental application form for a new wireless telecommunications facility installation in the public right-of-way shall require the following information, in addition to all other information determined necessary by the director:

1. The name, address and telephone number of the applicant, owner and the operator of the proposed facility.

2. If the applicant is an agent, the applicant shall provide a duly executed letter of authorization from the owner of the facility. If the owner will not directly provide wireless telecommunications
services, the applicant shall provide a duly executed letter of authorization from the person(s) or entity(ies) that will provide those services.

3. If the facility will be located on or in the property of someone other than the owner of the facility (such as a street light pole, street signal pole, utility pole, utility cabinet, vault, or cable conduit), the applicant shall provide a duly executed written authorization from the property owner(s) authorizing the placement of the facility on or in the property owner's property.

4. A full written description of the proposed facility and its purpose.

5. Detailed engineering plans of the proposed facility and related report prepared by a professional engineer registered in the state documenting the following:
   a. Height, diameter and design of the facility, including technical engineering specifications, economic and other pertinent factors governing selection of the proposed design, together with evidence that demonstrates that the proposed facility has been designed to be the least visible equipment within the particular technology the carrier chooses to deploy. A layout plan, section and elevation of the tower structure shall be included.
   b. A photograph and model name and number of each piece of equipment included.
   c. Power output and operating frequency for the proposed antenna.
   d. Total anticipated capacity of the structure, indicating the number and types of antennas and power and frequency ranges, which can be accommodated.
   e. Sufficient evidence of the structural integrity of the pole or other supporting structure as required by the city.

6. A justification study which includes the rationale for selecting the proposed use; if applicable, a detailed explanation of the coverage gap that the proposed use would serve; and how the proposed use is the least intrusive means for the applicant to provide wireless service. Said study shall include all existing structures and/or alternative sites evaluated for potential installation of the proposed facility and why said alternatives are not a viable option.

7. Site plan(s) to scale, specifying and depicting the exact proposed location of the pole, pole diameter, antennas, accessory equipment, access or utility easements, landscaped areas, existing utilities, adjacent land uses, and showing compliance with Section 12.18.080 (Requirements for Facilities within the Public Right-of-Way).

8. Scaled elevation plans of proposed poles, antennas, accessory equipment, and related landscaping and screening.

9. A completed environmental assessment application.

10. If the applicant requests an exception to the requirements of this chapter (in accordance with Section 12.18.190 (Exceptions)), the applicant shall provide all information and studies necessary for the city to evaluate that request.

11. An accurate visual impact analysis showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the facility, including scaled photo simulations from at least three different angles.

12. Completion of the radio frequency (RF) emissions exposure guidelines checklist contained in Appendix A to the Federal Communications Commission's (FCC) "Local Government Official's Guide to Transmitting Antenna RF Emission Safety" to determine whether the facility will be "categorically excluded" as that term is used by the FCC.

13. For a facility that is not categorically excluded under the FCC regulations for RF emissions, the applicant shall submit an RF exposure compliance report prepared and certified by an RF engineer acceptable to the city that certifies that the proposed facility, as well as any facilities that contribute to the cumulative exposure in the subject area, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radio power "ERP") for all existing and proposed
antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

14. [Reserved.]

15. Copies of any documents that the applicant is required to file pursuant to Federal Aviation Administration regulations for the facility.

16. A noise study prepared by a qualified acoustic engineer documenting that the level of noise to be emitted by the proposed wireless telecommunications facility will comply with this code including section 12.18.080(A)(16)(b).

17. A traffic control plan when the proposed installation is on any street in a non-residential zone. The city shall have the discretion to require a traffic control plan when the applicant seeks to use large equipment (e.g. crane).

18. A scaled conceptual landscape plan showing existing trees and vegetation and all proposed landscaping, concealment, screening and proposed irrigation with a discussion of how the chosen material at maturity will screen the site.

19. A written description identifying the geographic service area for the subject installation including geographic and propagation maps, that identifies the location of the proposed facility in relation to all existing and planned facilities maintained within the city by each of the applicant, operator, and owner, if different entities, as well as the estimated number of potentially affected uses in the geographic service area. Regardless of whether a master deployment plan permit is sought, the applicant shall depict all locations anticipated for new construction and/or modifications to existing facilities, including collocation, within two years of submittal of the application. Longer range conceptual plans for a period of five years shall also be provided, if available.

a. In the event the applicant seeks to install a wireless telecommunications facility to address service coverage concerns, full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites;

b. In the event the applicant seeks to address service capacity concerns, a written explanation identifying the existing facilities with service capacity issues together with competent evidence to demonstrate the inability of those facilities to meet capacity demands.

20. Certification that applicant is a telephone corporation or a statement providing the basis for its claimed right to enter the right-of-way. If the applicant has a certificate of public convenience and necessity (CPCN) issued by the California Public Utilities Commission, it shall provide a copy of its CPCN.

21. An application fee, and a deposit for a consultant's review as set forth in paragraph E of this section in an amount set by resolution by the city council and in accordance with California Government Code Section 50030.

22. Proof that a temporary mock-up of the facility and sign has been installed at the proposed location for a period of at least 30 calendar days.

a. Applicant shall obtain an encroachment permit before installing the temporary mock-up, and must remove the temporary mock-up within five calendar days of receiving a written notice to remove from the director.
b. When seeking the encroachment permit, the applicant shall provide address labels for use by the city in notifying all property owners within 500 feet of the proposed installation. The city shall mail a notice regarding installation of the mock-up at least five business days prior to the installation.

c. The mock-up shall demonstrate the height and mass of the facility, including all interconnecting cables. The applicant shall not be entitled to install the facility it intends to install permanently. The mock-up may consist of story poles or the like.

d. The mock-up shall include a sign that displays photo simulations depicting before and after images, including any accessory equipment cabinet, and the telephone number of the public works department.

e. The applicant shall be required to follow any other city practices or processes relevant to the installation of a mock-up as may be provided in a publicly accessible form or document.

f. After installation of the mock-up, the applicant shall certify that the mock-up accurately represents the height and width of the proposed installation and has been installed consistent with this code.

23. Any other information and/or studies determined necessary by the director may be required.

C. Application Contents—Modification of Existing Facility. The content of the application form for a modification to an existing facility shall be determined by the director, and shall include but not be limited to the requirements listed in Section 12.18.050(B) unless prohibited by state or federal law.

D. Effect of State or Federal Law Change. In the event a subsequent state or federal law prohibits the collection of any information required by Section 12.18.050(B), the director is authorized to omit, modify or add to that request from the city's application form with the written approval of the city attorney, which approval shall be a public record.

E. Independent Expert. The director is authorized to retain on behalf of the city an independent, qualified consultant to review any application for a permit for a wireless telecommunications facility. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall address any or all of the following:

1. Compliance with applicable radio frequency emission standards;
2. Whether any requested exception is necessary to close a significant gap in coverage and is the least intrusive means of doing so;
3. The accuracy and completeness of submissions;
4. Technical demonstration of the unavailability of alternative sites or configurations and/or coverage analysis;
5. The applicability of analysis techniques and methodologies;
6. The validity of conclusions reached or claims made by applicant;
7. The viability of alternative sites and alternative designs; and
8. Any other specific technical issues identified by the consultant or designated by the city.

The cost of this review shall be paid by the applicant through a deposit pursuant to an adopted fee schedule resolution. No permit shall be issued to any applicant which has not fully reimbursed the city for the consultants cost.

(Ord. No. 580, § 4, 3-15-16)

12.18.060 - Review procedure.
A. Pre-submittal Conference. Prior to application submittal, the city strongly encourages all applicants to schedule and attend a pre-submittal conference with public works department staff to receive informal feedback on the proposed location, design and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal. Public works department staff will endeavor to provide applicants with an appointment within approximately five business days after receipt of a written request.

B. Application Submittal Appointment. All applications must be submitted to the city at a pre-scheduled appointment. Applicants may submit one application per appointment but may schedule successive appointments for multiple applications whenever feasible as determined by the city. City staff will endeavor to provide applicants with an appointment within five business days after receipt of a written request.

C. Notice; Decisions. The provisions in this section describe the procedures for approval and any required notice and public hearings for an application.

1. Planning Commission Hearings. Any permit application under this chapter subject to planning commission approval shall require notice and a public hearing. Notice of such hearing shall be provided in accordance with code Section 17.80.090 (Notice of Hearing). The planning commission may approve, or conditionally approve, an application only after it makes the findings required in Section 12.18.090 (Findings).

2. Director’s Decision Notice. The director may approve, or conditionally approve, an application only after it makes the findings required in Section 12.18.090 (Findings). Within five days after the director approves or conditionally approves an application under this chapter, the director shall provide notice in accordance with code Section 17.80.040 (Notice of Decision by Director).

3. Notice of Shot Clock Expiration. The city acknowledges there are federal and state shot clocks which may be applicable to a proposed wireless telecommunications facility. That is, federal and state law provide time periods in which the city must approve or deny a proposed wireless telecommunications facility. As such, the applicant is required to provide the city written notice of the expiration of any shot clock, which the applicant shall ensure is received by the city (e.g. overnight mail) no later than 20 days prior to the expiration.

4. Written Decision Required. All final decisions made pursuant to this chapter shall be in writing and based on substantial evidence in the written administrative record. The written decision shall include the reasons for the decision.

D. Appeals. Any aggrieved person or entity may appeal a decision by the director or the planning commission as provided in accordance with the provisions in code Chapter 17.80 (Hearing Notice and Appeal Procedures). The appellate authority may hear the appeal de novo.

(Ord. No. 580, § 4, 3-15-16)

12.18.080 - Requirements for facilities within the public right-of-way.

A. Design and Development Standards. All wireless telecommunications facilities that are located within the public right-of-way shall be designed and maintained as to minimize visual, noise and other impacts on the surrounding community and shall be planned, designed, located, and erected in accordance with the following:

1. General Guidelines.
   a. The applicant shall employ screening, undergrounding and camouflage design techniques in the design and placement of wireless telecommunications facilities in order to ensure that the facility is as visually screened as possible, to prevent the facility from dominating the surrounding area and to minimize significant view impacts from surrounding properties all in a manner that achieves compatibility with the community and in compliance with Section 17.02.040 (View Preservation and Restoration) of this code.
b. Screening shall be designed to be architecturally compatible with surrounding structures using appropriate techniques to camouflage, disguise, and/or blend into the environment, including landscaping, color, and other techniques to minimize the facility's visual impact as well as be compatible with the architectural character of the surrounding buildings or structures in terms of color, size, proportion, style, and quality.

c. Facilities shall be located such that views from a residential structure are not significantly impaired. Facilities shall also be located in a manner that protects public views over city view corridors, as defined in the city's general plan, so that no significant view impairment results in accordance with this code including Section 17.02.040 (View Preservation and Restoration). This provision shall be applied consistent with local, state and federal law.

2. [Reserved.]

3. Traffic Safety. All facilities shall be designed and located in such a manner as to avoid adverse impacts on traffic safety.

4. Blending Methods. All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.

5. Equipment. The applicant shall use the least visible equipment possible. Antenna elements shall be flush mounted, to the extent feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Unless otherwise provided in this section, antennas shall be situated as close to the ground as possible.

6. Poles.
   a. Facilities shall be located consistent with Section 12.18.200 (Location Restrictions) unless an exception pursuant to Section 12.18.190 (Exceptions) is granted.
   b. Only pole-mounted antennas shall be permitted in the right-of-way. All other telecommunications towers are prohibited, and no new poles are permitted that are not replacing an existing pole. (For exceptions see subparagraph (6)(h) below and sections 12.18.190 (Exceptions) and 12.18.220 (State or Federal Law).)
   c. Utility Poles. The maximum height of any antenna shall not exceed 48 inches above the height of an existing utility pole, nor shall any portion of the antenna or equipment mounted on a pole be less than 24 feet above any drivable road surface. All installations on utility poles shall fully comply with the California Public Utilities Commission general orders, including, but not limited to, General Order 95, as may be revised or superseded.
   d. Light Poles. The maximum height of any antenna shall not exceed four feet above the existing height of a light pole. Any portion of the antenna or equipment mounted on a pole shall be no less than 16½ feet above any drivable road surface.
   e. Replacement Poles. If an applicant proposes to replace a pole in order to accommodate a proposed facility, the pole shall be designed to resemble the appearance and dimensions of existing poles near the proposed location, including size, height, color, materials and style to the maximum extent feasible.
   f. Pole mounted equipment, exclusive of antennas, shall not exceed six cubic feet in dimension.
   g. [Reserved.]
   h. An exception shall be required to place a new pole in the public right-of-way. If an exception is granted for placement of new poles in the right-of-way:
      i. Such new poles shall be designed to resemble existing poles in the right-of-way near that location, including size, height, color, materials and style, with the exception of any existing pole designs that are scheduled to be removed and not replaced.
ii. Such new poles that are not replacement poles shall be located at least 90 feet from any existing pole to the extent feasible.

iii. Such new poles shall not adversely impact public view corridors, as defined in the general plan, and shall be located to the extent feasible in an area where there is existing natural or other feature that obscures the view of the pole. The applicant shall further employ concealment techniques to blend the pole with said features including but not limited to the addition of vegetation if appropriate.

iv. A new pole justification analysis shall be submitted to demonstrate why existing infrastructure cannot be utilized and demonstrating the new pole is the least intrusive means possible including a demonstration that the new pole is designed to be the minimum functional height and width required to support the proposed facility.

i. All cables, including, but not limited to, electrical and utility cables, shall be run within the interior of the pole and shall be camouflaged or hidden to the fullest extent feasible. For all wooden poles wherein interior installation is infeasible, conduit and cables attached to the exterior of poles shall be mounted flush thereto and painted to match the pole.

7. Space. Each facility shall be designed to occupy the least amount of space in the right-of-way that is technically feasible.

8. Wind Loads. Each facility shall be properly engineered to withstand wind loads as required by this code or any duly adopted or incorporated code. An evaluation of high wind load capacity shall include the impact of modification of an existing facility.

9. Obstructions. Each component part of a facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, incommode the public's use of the right-of-way, or safety hazards to pedestrians and motorists and in compliance with Section 17.48.070 (Intersection Visibility) so as not to obstruct the intersection visibility triangle.

10. Public Facilities. A facility shall not be located within any portion of the public right-of-way interfering with access to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility.

11. Screening. All ground-mounted facility, pole-mounted equipment, or walls, fences, landscaping or other screening methods shall be installed at least 18 inches from the curb and gutter flow line.

12. Accessory Equipment. Not including the electric meter, all accessory equipment shall be located underground, except as provided below:

a. Unless city staff determines that there is no room in the public right-of-way for undergrounding, or that undergrounding is not feasible, an exception shall be required in order to place accessory equipment above-ground and concealed with natural or manmade features to the maximum extent possible.

b. When above-ground is the only feasible location for a particular type of accessory equipment and will be ground-mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be fully screened and/or camouflaged, including the use of landscaping, architectural treatment, or acceptable alternate screening. Required electrical meter cabinets shall be screened and/or camouflaged. Also, while pole-mounted equipment is generally the least favored installation, should pole-mounted equipment be sought, it shall be installed as required in this chapter.

c. In locations where homes are only along one side of a street, above-ground accessory equipment shall not be installed directly in front of a residence. Such above-ground accessory equipment shall be installed along the side of the street with no homes. Unless said location is located within the coastal setback or the landslide moratorium area, then such locations shall be referred to the city's geotechnical staff for review and recommendations.
13. Landscaping. Where appropriate, each facility shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs. Additional landscaping shall be planted, irrigated and maintained by applicant where such landscaping is deemed necessary by the city to provide screening or to conceal the facility.

14. Signage. No facility shall bear any signs or advertising devices other than certification, warning or other signage required by law or permitted by the city.

15. Lighting.
   a. No facility may be illuminated unless specifically required by the Federal Aviation Administration or other government agency. Beacon lights are not permitted unless required by the Federal Aviation Administration or other government agency.
   b. Legally required lightning arresters and beacons shall be included when calculating the height of facilities such as towers, lattice towers and monopoles.
   c. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding neighborhoods.
   d. Unless otherwise required under FAA or FCC regulations, applicants may install only timed or motion-sensitive light controllers and lights, and must install such lights so as to avoid illumination impacts to adjacent properties to the maximum extent feasible. The city may, in its discretion, exempt an applicant from the foregoing requirement when the applicant demonstrates a substantial public safety need.
   e. The applicant shall submit a lighting study which shall be prepared by a qualified lighting professional to evaluate potential impacts to adjacent properties. Should no lighting be proposed, no lighting study shall be required.

   a. Backup generators shall only be operated during periods of power outages, and shall not be tested on weekends or holidays, or between the hours of 7:00 p.m. and 7:00 a.m.
   b. At no time shall equipment noise from any facility exceed an exterior noise level of 55 dBA three feet from the source of the noise if the facility is located in the public right-of-way adjacent to a business, commercial, manufacturing, utility or school zone; provided, however, that for any such facility located within 500 feet of any property zoned residential or improved with a residential use, such equipment noise shall not exceed 45 dBA three feet from the sources of the noise.

17. Security. Each facility shall be designed to be resistant to, and minimize opportunities for, unauthorized access, climbing, vandalism, graffiti and other conditions that would result in hazardous situations, visual blight or attractive nuisances. The director may require the provision of warning signs, fencing, anti-climbing devices, or other techniques to prevent unauthorized access and vandalism when, because of their location and/or accessibility, a facility has the potential to become an attractive nuisance. Additionally, no lethal devices or elements shall be installed as a security device.

18. Modification. Consistent with current state and federal laws and if permissible under the same, at the time of modification of a wireless telecommunications facility, existing equipment shall, to the extent feasible, be replaced with equipment that reduces visual, noise and other impacts, including, but not limited to, undergrounding the equipment and replacing larger, more visually intrusive facilities with smaller, less visually intrusive facilities.

19. The installation and construction approved by a wireless telecommunications facility permit shall begin within one year after its approval or it will expire without further action by the city.

B. Conditions of Approval. In addition to compliance with the design and development standards outlined in this section, all facilities shall be subject to the following conditions of approval (approval may be by operation of law), as well as any modification of these conditions or additional conditions of approval deemed necessary by the director:
1. The permittee shall submit an as built drawing within 90 days after installation of the facility. [As-buils shall be in an electronic format acceptable to the city which can be linked to the city's GIS.]

2. The permittee shall submit and maintain current at all times basic contact and site information on a form to be supplied by the city. The permittee shall notify the city of any changes to the information submitted within 30 days of any change, including change of the name or legal status of the owner or operator. This information shall include, but is not limited to, the following:
   a. Identity, including the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator, and the agent or person responsible for the maintenance of the facility.
   b. The legal status of the owner of the wireless telecommunications facility.

3. The permittee shall notify the city in writing at least 90 days prior to any transfer or assignment of the permit. The written notice required in this section must include: (1) the transferee's legal name; (2) the transferee's full contact information, including a primary contact person, mailing address, telephone number and email address; and (3) a statement signed by the transferee that the transferee shall accept all permit terms and conditions. The director may require the transferor and/or the transferee to submit any materials or documentation necessary to determine that the proposed transfer complies with the existing permit and all its conditions of approval, if any. Such materials or documentation may include, but shall not be limited to: federal, state and/or local approvals, licenses, certificates or franchise agreements; statements; photographs; site plans and/or as-built drawings; and/or an analysis by a qualified radio frequency engineer demonstrating compliance with all applicable regulations and standards of the Federal Communications Commission. Noncompliance with the permit and all its conditions of approval, if any, or failure to submit the materials required by the director shall be a cause for the city to revoke the applicable permits pursuant to and following the procedure set on in Section 12.18.180 (Removal and Restoration—Permit Expiration, Revocation or Abandonment).

4. At all times, all required notices and/or signs shall be posted on the site as required by the Federal Communications Commission, California Public Utilities Commission, any applicable licenses or laws, and as approved by the city. The location and dimensions of a sign bearing the emergency contact name and telephone number shall be posted pursuant to the approved plans.

5. Permittee shall pay for and provide a performance bond or other form of security approved by the city attorney's office, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and this code. The security instrument coverage shall include, but not be limited to, removal of the facility. (The amount of the security instrument shall be calculated by the applicant in its submittal documents in an amount rationally related to the obligations covered by the bond and shall be specified in the conditions of approval.) Before issuance of any building permit, permittee must submit said security instrument.

6. If a nearby property owner registers a noise complaint, the city shall forward the same to the permittee. Said compliant shall be reviewed and evaluated by the applicant. The permittee shall have ten business days to file a written response regarding the complaint which shall include any applicable remedial measures. If the city determines the complaint is valid and the applicant has not taken any steps to minimize the noise, the city may hire a consultant to study, examine and evaluate the noise complaint and the permittee shall pay the fee for the consultant if the site is found in violation of this chapter. The matter shall be reviewed by the director. If the director determines sound proofing or other sound attenuation measures should be required to bring the project into compliance with the code, the director may impose conditions on the project to achieve said objective.

7. A condition setting forth the permit expiration date in accordance with Section 12.18.160 (Permit Expiration) shall be included in the conditions of approval.
8. The wireless telecommunications facility shall be subject to such conditions, changes or limitations as are from time to time deemed necessary by the director for the purpose of: (a) protecting the public health, safety, and welfare; (b) preventing interference with pedestrian and vehicular traffic; and/or (c) preventing damage to the public right-of-way or any adjacent property. The city may modify the permit to reflect such conditions, changes or limitations by following the same notice and public hearing procedures as are applicable to the underlying permit for similarly located facilities, except the permittee shall be given notice by personal service or by registered or certified mail at the last address provided to the city by the permittee.

9. The permittee shall not transfer the permit to any person prior to the completion of the construction of the facility covered by the permit, unless and until the transferee of the permit has submitted the security instrument required by Section 12.18.080(B)(5).

10. The permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement or property without the prior consent of the owner of that structure, improvement or property. No structure, improvement or property owned by the city shall be moved to accommodate a wireless telecommunications facility unless the city determines that such movement will not adversely affect the city or any surrounding businesses or residents, and the permittee pays all costs and expenses related to the relocation of the city's structure, improvement or property. Prior to commencement of any work pursuant to an encroachment permit issued for any facility within the public right-of-way, the permittee shall provide the city with documentation establishing to the city's satisfaction that the permittee has the legal right to use or interfere with any other structure, improvement or property within the public right-of-way to be affected by applicant's facilities.

11. The permittee shall assume full liability for damage or injury caused to any property or person by the facility.

12. The permittee shall repair, at its sole cost and expense, any damage including, but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to city streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and systems, or sewer systems and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless telecommunications facility in the public right-of-way. The permittee shall restore such areas, structures and systems to the condition in which they existed prior to the installation or maintenance that necessitated the repairs. In the event the permittee fails to complete such repair within the number of days stated on a written notice by the city engineer. Such time period for correction shall be based on the facts and circumstances, danger to the community and severity of the disrepair. Should the permittee not make said correction within the time period allotted the city engineer shall cause such repair to be completed at permittee's sole cost and expense.

13. No facility shall be permitted to be installed in the drip line of any tree in the right-of-way.

14. Insurance. The permittee shall obtain, pay for and maintain, in full force and effect until the facility approved by the permit is removed in its entirety from the public right-of-way, an insurance policy or policies of public liability insurance, with minimum limits of $2,000,000 for each occurrence and $4,000,000 in the aggregate, that fully protects the city from claims and suits for bodily injury and property damage. The insurance must name the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers as additional named insureds, be issued by an insurer admitted in the State of California with a rating of at least a A:VII in the latest edition of A.M. Best's Insurance Guide, and include an endorsement providing that the policies cannot be canceled or reduced except with thirty (30) days prior written notice to the city, except for cancellation due to nonpayment of premium. The insurance provided by permittee shall be primary to any coverage available to the city, and any insurance or self-insurance maintained by the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers shall be excess of permittee's insurance and shall not contribute with it. The policies of insurance required by this permit shall include provisions for waiver of
In accepting the benefits of this permit, permittee hereby waives all rights of subrogation against the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers. The insurance must afford coverage for the permittee's and the wireless provider's use, operation and activity, vehicles, equipment, facility, representatives, agents and employees, as determined by the city's risk manager. Before issuance of any building permit for the facility, the permittee shall furnish the city risk manager certificates of insurance and endorsements, in the form satisfactory to the city attorney or the risk manager, evidencing the coverage required by the city.

15. Permittee shall defend, indemnify, protect and hold harmless city, its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers from and against any and all claims, actions, or proceeding against the city, and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees, and volunteers to attack, set aside, void or annul, an approval of the city, planning commission or city council concerning this permit and the project. Such indemnification shall include damages of any type, judgments, settlements, penalties, fines, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The city shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained herein shall prohibit city from participating in a defense of any claim, action or proceeding. The city shall have the option of coordinating the defense, including, but not limited to, choosing counsel after consulting with permittee and at permittee's expense.

16. Additionally, to the fullest extent permitted by law, the permittee, and every permittee and person in a shared permit, jointly and severally, shall defend, indemnify, protect and hold the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers harmless from and against all claims, suits, demands, actions, losses, liabilities, judgments, settlements, costs (including, but not limited to, attorney's fees, interest and expert witness fees), or damages claimed by third parties against the city for any injury claim, and for property damage sustained by any person, arising out of, resulting from, or are in any way related to the wireless telecommunications facility, or to any work done by or use of the public right-of-way by the permittee, owner or operator of the wireless telecommunications facility, or their agents, excepting only liability arising out of the sole negligence or willful misconduct of the city and its elected and appointed council members, boards, commissions, officers, officials, agents, consultants, employees and volunteers.

17. Should the utility company servicing the facility with electrical service that does not require the use of an above ground meter cabinet, the permittee shall at its sole cost and expense remove the meter cabinet and any related foundation within 90 days of such service being offered and reasonably restore the area to its prior condition. An extension may be granted if circumstances arise outside of the control of the permittee.

18. Relocation. The permittee shall modify, remove, or relocate its facility, or portion thereof, without cost or expense to city, if and when made necessary by (i) any public improvement project, including, but not limited to, the construction, maintenance, or operation of any underground or above ground facilities including but not limited to sewers, storm drains, conduits, gas, water, electric or other utility systems, or pipes owned by city or any other public agency, (ii) any abandonment of any street, sidewalk or other public facility, (iii) any change of grade, alignment or width of any street, sidewalk or other public facility, or (iv) a determination by the director that the wireless telecommunications facility has become incompatible with public health, safety or welfare or the public's use of the public right-of-way. Such modification, removal, or relocation of the facility shall be completed within 90 days of notification by city unless exigencies dictate a shorter period for removal or relocation. Modification or relocation of the facility shall require submittal, review and approval of a modified permit pursuant to the code including applicable notice and hearing procedures. The permittee shall be entitled, on permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new permit, without additional fee, at a location as close to the original location as the standards set forth in the code allow. In the event the facility is not modified, removed, or relocated within said
period of time, city may cause the same to be done at the sole cost and expense of permittee. Further, due to exigent circumstances including those of immediate or imminent threat to the public's health and safety, the city may modify, remove, or relocate wireless telecommunications facilities without prior notice to permittee provided permittee is notified within a reasonable period thereafter.

19. Permittee shall agree in writing that the permittee is aware of, and agrees to abide by, all conditions of approval imposed by the wireless telecommunications facility permit within 30 days of permit issuance. The permit shall be void and of no force or effect unless such written consent is received by the city within said 30-day period.

20. Prior to the issuance of any encroachment permit, permittee may be required to enter into a right-of-way agreement with the city in accordance with the city's past practice.

21. "Permittee" shall include the applicant and all successors in interest to this permit.

(Ord. No. 580, § 4, 3-15-16)

12.18.090 - Findings.

No permit shall be granted for a wireless telecommunications facility unless all of the following findings are made by the director:

A. All notices required for the proposed installation have been given.

B. The proposed facility has been designed and located in compliance with all applicable provisions of this chapter.

C. If applicable, the applicant has demonstrated its inability to locate on existing infrastructure.

D. The applicant has provided sufficient evidence supporting the applicant's claim that it has the right to enter the public right-of-way pursuant to state or federal law, or the applicant has entered into a franchise agreement with the city permitting them to use the public right-of-way.

E. The applicant has demonstrated the proposed installation is designed such that the proposed installation represents the least intrusive means possible and supported by factual evidence and a meaningful comparative analysis to show that all alternative locations and designs identified in the application review process were technically infeasible or not available.

(Ord. No. 580, § 4, 3-15-16)

12.18.100 - Reserved.

12.18.110 - Nonexclusive grant.

No permit or approval granted under this chapter shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way of the city for any purpose whatsoever. Further, no approval shall be construed as any warranty of title.

(Ord. No. 580, § 4, 3-15-16)

12.18.120 - Emergency deployment.

A COW shall be permitted for the duration of an emergency declared by the city or at the discretion of the director.

(Ord. No. 580, § 4, 3-15-16)
12.18.130 - Operation and maintenance standards.

All wireless telecommunications facilities must comply at all times with the following operation and maintenance standards:

A. Unless otherwise provided herein, all necessary repairs and restoration shall be completed by the permittee, owner, operator or any designated maintenance agent within 48 hours:
   1. After discovery of the need by the permittee, owner, operator or any designated maintenance agent; or
   2. After permittee, owner, operator or any designated maintenance agent receives notification from the city.

B. Each permittee of a wireless telecommunications facility shall provide the director with the name, address and 24-hour local or toll free contact phone number of the permittee, the owner, the operator and the agent responsible for the maintenance of the facility ("contact information"). Contact information shall be updated within seven days of any change.

C. All facilities, including, but not limited to, telecommunication towers, poles, accessory equipment, lighting, fences, walls, shields, cabinets, artificial foliage or camouflage, and the facility site shall be maintained in good condition, including ensuring the facilities are reasonably free of:
   1. General dirt and grease;
   2. Chipped, faded, peeling, and cracked paint;
   3. Rust and corrosion;
   4. Cracks, dents, and discoloration;
   5. Missing, discolored or damaged artificial foliage or other camouflage;
   6. Graffiti, bills, stickers, advertisements, litter and debris;
   7. Broken and misshapen structural parts; and
   8. Any damage from any cause.

D. All trees, foliage or other landscaping elements approved as part of the facility shall be maintained in good condition at all times, and the permittee, owner and operator of the facility shall be responsible for replacing any damaged, dead or decayed landscaping. No amendment to any approved landscaping plan may be made until it is submitted to and approved by the director.

E. The permittee shall replace its facilities, after obtaining all required permits, if maintenance or repair is not sufficient to return the facility to the condition it was in at the time of installation.

F. Each facility shall be operated and maintained to comply at all conditions of approval. Each owner or operator of a facility shall routinely inspect each site to ensure compliance with the same and the standards set forth in this chapter.

(Ord. No. 580, § 4, 3-15-16)

12.18.140 - Reserved.

12.18.150 - No dangerous condition or obstructions allowed.

No person shall install, use or maintain any facility which in whole or in part rests upon, in or over any public right-of-way, when such installation, use or maintenance endangers or is reasonably likely to endanger the safety of persons or property, or when such site or location is used for public utility
purposes, public transportation purposes or other governmental use, or when such facility unreasonably interferes with or unreasonably impedes the flow of pedestrian or vehicular traffic including any legally parked or stopped vehicle, the ingress into or egress from any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes, permitted sidewalk dining, permitted street furniture or other objects permitted at or near said location.

(Ord. No. 580, § 4, 3-15-16)

12.18.160 - Permit expiration.

A. Unless Government Code Section 65964, as may be amended, authorizes the city to issue a permit with a shorter term, a permit for any wireless telecommunications facility shall be valid for a period of ten years, unless pursuant to another provision of this code it lapses sooner or is revoked. At the end of ten years from the date of issuance, such permit shall automatically expire.

B. A permittee may apply for a new permit within 180 days prior to expiration. Said application and proposal shall comply with the city's current code requirements for wireless telecommunications facilities.

(Ord. No. 580, § 4, 3-15-16)

12.18.170 - Cessation of use or abandonment.

A. A wireless telecommunications facility is considered abandoned and shall be promptly removed as provided herein if it ceases to provide wireless telecommunications services for 90 or more consecutive days unless the permittee has obtained prior written approval from the director which shall not be unreasonably denied. If there are two or more users of a single facility, then this provision shall not become effective until all users cease using the facility.

B. The operator of a facility shall notify the city in writing of its intent to abandon or cease use of a permitted site or a nonconforming site (including unpermitted sites) within ten days of ceasing or abandoning use. Notwithstanding any other provision herein, the operator of the facility shall provide written notice to the director of any discontinuation of operations of 30 days or more.

C. Failure to inform the director of cessation or discontinuation of operations of any existing facility as required by this section shall constitute a violation of any approvals and be grounds for:

1. Litigation;
2. Revocation or modification of the permit;
3. Acting on any bond or other assurance required by this article or conditions of approval of the permit;
4. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
5. Any other remedies permitted under this code.

(Ord. No. 580, § 4, 3-15-16)

12.18.180 - Removal and restoration—Permit expiration, revocation or abandonment.

A. Upon the expiration date of the permit, including any extensions, earlier termination or revocation of the permit or abandonment of the facility, the permittee, owner or operator shall remove its wireless telecommunications facility and restore the site to its natural condition except for retaining the landscaping improvements and any other improvements at the discretion of the city. Removal shall
be in accordance with proper health and safety requirements and all ordinances, rules, and regulations of the city. The facility shall be removed from the property, at no cost or expense to the city.

B. Failure of the permittee, owner or operator to promptly remove its facility and restore the property within 90 days after expiration, earlier termination or revocation of the permit, or abandonment of the facility, shall be a violation of this code. Upon a showing of good cause, an extension may be granted by the director where circumstances are beyond the control of the permittee after expiration. Further failure to abide by the timeline provided in this section shall be grounds for:

1. Prosecution;
2. Acting on any security instrument required by this chapter or conditions of approval of permit;
3. Removal of the facilities by the city in accordance with the procedures established under this code for abatement of a public nuisance at the owner's expense; and/or
4. Any other remedies permitted under this code.

C. Summary Removal. In the event the director or city engineer determines that the condition or placement of a wireless telecommunications facility located in the public right-of-way constitutes a dangerous condition, obstruction of the public right-of-way, or an imminent threat to public safety, or determines other exigent circumstances require immediate corrective action (collectively, "exigent circumstances"), the director or city engineer may cause the facility to be removed summarily and immediately without advance notice or a hearing. Written notice of the removal shall include the basis for the removal and shall be served upon the permittee and person who owns the facility within five business days of removal and all property removed shall be preserved for the owner's pick-up as feasible. If the owner cannot be identified following reasonable effort or if the owner fails to pick-up the property within 60 days, the facility shall be treated as abandoned property.

D. Removal of Facilities by city. In the event the city removes a facility in accordance with nuisance abatement procedures or summary removal, any such removal shall be without any liability to the city for any damage to such facility that may result from reasonable efforts of removal. In addition to the procedures for recovering costs of nuisance abatement, the city may collect such costs from the performance bond posted and to the extent such costs exceed the amount of the performance bond, collect those excess costs in accordance with this code. Unless otherwise provided herein, the city has no obligation to store such facility. Neither the permittee, owner nor operator shall have any claim if the city destroys any such facility not timely removed by the permittee, owner or operator after notice, or removed by the city due to exigent circumstances.

(Ord. No. 580, § 4, 3-15-16)

12.18.190 - Exceptions.

A. The city council recognizes that federal law prohibits a permit denial when it would effectively prohibit the provision of personal wireless services and the applicant proposes the least intrusive means to provide such services. The city council finds that, due to wide variation among wireless facilities, technical service objectives and changed circumstances over time, a limited exemption for proposals in which strict compliance with this chapter would effectively prohibit personal wireless services serves the public interest. The city council further finds that circumstances in which an effective prohibition may occur are extremely difficult to discern, and that specified findings to guide the analysis promotes clarity and the city's legitimate interest in well-planned wireless facilities deployment. Therefore, in the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed personal wireless services facility, would effectively prohibit the provision of personal wireless services, the planning commission may grant a limited, one-time exemption from strict compliance subject to the provisions in this section.

B. Required Findings. The planning commission shall not grant any exception unless the applicant demonstrates with clear and convincing evidence all the following:
1. The proposed wireless facility qualifies as a "personal wireless services facility" as defined in United States Code, Title 47, section 332(c)(7)(C)(ii);

2. The applicant has provided the city with a clearly defined technical service objective and a clearly defined potential site search area;

3. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why any alternative location(s) or design(s) suggested by the city or otherwise identified in the administrative record, including but not limited to potential alternatives identified at any public meeting or hearing, are not technically feasible or potentially available; and

4. The applicant has provided the city with a meaningful comparative analysis that includes the factual reasons why the proposed location and design deviates is the least noncompliant location and design necessary to reasonably achieve the applicant's reasonable technical service objectives.

C. Scope. The planning commission shall limit its exemption to the extent to which the applicant demonstrates such exemption is necessary to reasonably achieve its reasonable technical service objectives. The planning commission may adopt conditions of approval as reasonably necessary to promote the purposes in this chapter and protect the public health, safety and welfare.

D. Independent Consultant. The city shall have the right to hire, at the applicant's expense, an independent consultant to evaluate issues raised by the exception and to submit recommendations and evidence in response to the application.

(Ord. No. 580, § 4, 3-15-16)

12.18.200 - Location restrictions.

Locations Requiring an Exception. Wireless telecommunications facilities are strongly disfavored in certain areas. Therefore the following locations are permitted when an exception has been granted pursuant to Section 12.18.190 (Exceptions):

A. Public right-of-way of local streets as identified in the general plan if within the residential zones;

B. Public right-of-way if mounted to a new pole that is not replacing an existing pole in an otherwise permitted location.

(Ord. No. 580, § 4, 3-15-16)

12.18.210 - Effect on other ordinances.

Compliance with the provisions of this chapter shall not relieve a person from complying with any other applicable provision of this code. In the event of a conflict between any provision of this division and other sections of this code, this chapter shall control.

(Ord. No. 580, § 4, 3-15-16)

12.18.220 - State or federal law.

A. In the event it is determined by the city attorney that state or federal law prohibits discretionary permitting requirements for certain wireless telecommunications facilities, such requirement shall be deemed severable and all remaining regulations shall remain in full force and effect. Such a determination by the city attorney shall be in writing with citations to legal authority and shall be a public record. For those facilities, in lieu of a minor conditional use permit or a conditional use permit, a ministerial permit shall be required prior to installation or modification of a wireless telecommunications facility, and all provisions of this division shall be applicable to any such facility.
with the exception that the required permit shall be reviewed and administered as a ministerial permit by the director rather than as a discretionary permit. Any conditions of approval set forth in this provision or deemed necessary by the director shall be imposed and administered as reasonable time, place and manner rules.

B. If subsequent to the issuance of the city attorney's written determination pursuant to subsection A above, the city attorney determines that the law has changed and that discretionary permitting is permissible, the city attorney shall issue such determination in writing with citations to legal authority and all discretionary permitting requirements shall be reinstated. The city attorney's written determination shall be a public record.

C. All installations permitted pursuant to this chapter shall comply with all federal and state laws including but not limited to the American with Disabilities Act.

(Ord. No. 580, § 4, 3-15-16)


A. Nonconforming wireless telecommunications facilities are those facilities that do not conform to this chapter.

B. Nonconforming wireless telecommunications facilities shall, within ten years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this article; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all applicable provisions of this code at such time, to the extent the city can require such compliance under federal and state law.

C. An aggrieved person may file an appeal to the city council of any decision of the director made pursuant to this section. In the event of an appeal alleging that the ten-year amortization period is not reasonable as applied to a particular property, the city council may consider the amount of investment or original cost, present actual or depreciated value, dates of construction, amortization for tax purposes, salvage value, remaining useful life, the length and remaining term of the lease under which it is maintained (if any), and the harm to the public if the structure remains standing beyond the prescribed amortization period, and set an amortization period accordingly for the specific property.

(Ord. No. 580, § 4, 3-15-16)
Before the Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

WT Docket No. 17-79

WC Docket No. 17-84

DECLARATORY RULING AND THIRD REPORT AND ORDER

Adopted: September 26, 2018                  Released: September 27, 2018

By the Commission: Chairman Pai and Commissioners O’Rielly and Carr issuing separate statements; Commissioner Rosenworcel approving in part, dissenting in part and issuing a statement.

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I. INTRODUCTION

1. America is in the midst of a transition to the next generation of wireless services, known as 5G. These new services can unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country. The FCC is committed to doing our part to help ensure the United States wins the global race to 5G to the benefit of all Americans. Today’s action is the next step in the FCC’s ongoing efforts to remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new services. We proceed by drawing on the balanced and commonsense ideas generated by many of our state and local partners in their own small cell bills.

2. Supporting the deployment of 5G and other next-generation wireless services through smart infrastructure policy is critical. Indeed, upgrading to these new services will, in many ways, represent a more fundamental change than the transition to prior generations of wireless service. 5G can enable increased competition for a range of services—including broadband—support new healthcare and Internet of Things applications, speed the transition to life-saving connected car technologies, and create jobs. It is estimated that wireless providers will invest $275 billion over the next decade in next-generation wireless infrastructure deployments, which should generate an expected three million new jobs and boost our nation’s GDP by half a trillion dollars. Moving quickly to enable this transition is important, as a new report forecasts that speeding 5G infrastructure deployment by even one year would unleash an additional $100 billion to the U.S. economy. Removing barriers can also ensure that every community gets a fair shot at these deployments and the opportunities they enable.

3. The challenge for policymakers is that the deployment of these new networks will look different than the 3G and 4G deployments of the past. Over the last few years, providers have been increasingly looking to densify their networks with new small cell deployments that have antennas often no larger than a small backpack. From a regulatory perspective, these raise different issues than the construction of large, 200-foot towers that marked the 3G and 4G deployments of the past. Indeed, estimates predict that upwards of 80 percent of all new deployments will be small cells going forward. To support advanced 4G or 5G offerings, providers must build out small cells at a faster pace and at a far greater density of deployment than before.

4. To date, regulatory obstacles have threatened the widespread deployment of these new services and, in turn, U.S. leadership in 5G. The FCC has lifted some of those barriers, including our decision in March 2018, which excluded small cells from some of the federal review procedures designed for those larger, 200-foot towers. But as the record here shows, the FCC must continue to act in partnership with our state and local leaders that are adopting forward leaning policies.

5. Many states and localities have acted to update and modernize their approaches to small cell deployments. They are working to promote deployment and balance the needs of their communities. At the same time, the record shows that problems remain. In fact, many state and local officials have urged the FCC to continue our efforts in this proceeding and adopt additional reforms. Indeed, we have

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heard from a number of local officials that the excessive fees or other costs associated with deploying small scale wireless infrastructure in large or otherwise “must serve” cities are materially inhibiting the buildout of wireless services in their own communities.

6. We thus find that now is the appropriate time to move forward with an approach geared at the conduct that threatens to limit the deployment of 5G services. In reaching our decision today, we have benefited from the input provided by a range of stakeholders, including state and local elected officials.\(^5\) FCC leadership spent substantial time over the course of this proceeding meeting directly with local elected officials in their jurisdictions. In light of those discussions and our consideration of the record here, we reach a decision today that does not preempt nearly any of the provisions passed in recent state-level small cell bills. We have reached a balanced, commonsense approach, rather than adopting a one-size-fits-all regime. This ensures that state and local elected officials will continue to play a key role in reviewing and promoting the deployment of wireless infrastructure in their communities.

7. Although many states and localities support our efforts, we acknowledge that there are others who advocated for different approaches.\(^6\) We have carefully considered these views, but nevertheless find our actions here necessary and fully supported. By building on state and local ideas, today’s action boosts the United States’ standing in the race to 5G. According to a study submitted by Corning, our action would eliminate around $2 billion in unnecessary costs, which would stimulate around $2.4 billion of additional buildouts.\(^7\) And that study shows that such new service would be

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\(^5\) See, e.g., Letter from Brian D. Hill, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 31, 2018) (“While the FCC and the Ohio Legislature have worked to reduce the timeline for 5G deployment, the same cannot be said for all local and state governments. Regulations written in a different era continue to dictate the regulatory process for 5G infrastructure”); Letter from Maureen Davey, Commissioner, Stillwater County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 18, 2018) (“[T]he Commission’s actions to lower regulatory barriers can enable more capital spending to flow to areas like ours. Reducing fees and shortening review times in urban areas, thereby lowering the cost of deployment in such areas, can promote speedier deployment across all of America.”); Letter from Board of County Commissioners, Yellowstone County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 21, 2018) (“Reducing these regulatory barriers by setting guidelines on fees, siting requirements and review timeframes, will promote investment including rural areas like ours.”); Letter from Board of Commissioners, Harney County, Oregon, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 5, 2018) (“By taking action to speed and reduce the costs of deployment across the country, and create a more uniform regulatory framework, the Commission will lower the cost of deployment, enabling more investment in both urban and rural communities.”); Letter from Niraj J. Antani, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 4, 2018) (“[T]o truly expedite the small cell deployment process, broader government action is needed on more than just the state level.”); Letter from Michael C. Taylor, Mayor, City of Sterling Heights, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 30, 2018) (“[T]here are significant, tangible benefits to having a nation-wide rule that promotes the deployment of next-generation wireless access without concern that excessive regulation or small cell siting fees slows down the process.”).


deployed where it is needed most: 97 percent of new deployments would be in rural and suburban communities that otherwise would be on the wrong side of the digital divide.  

8. The FCC will keep pressing ahead to ensure that every community in the country gets a fair shot at the opportunity that next-generation wireless services can enable. As detailed in the sections that follow, we do so by taking the following steps.

9. In the Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. We thus address and reconcile this split in authorities by taking three main actions.

10. First, we express our agreement with the U.S. Courts of Appeals for the First, Second, and Tenth Circuits that the “materially inhibit” standard articulated in 1997 by the Clinton-era FCC’s California Payphone decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

11. Second, we note, as numerous courts and prior FCC cases have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress’s limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision.9 Namely, fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality’s reasonable costs. In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. We do so to help avoid unnecessary litigation over fees.

12. Third, we focus on a subset of other, non-fee provisions of local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities, recognizing that certain reasonable aesthetic considerations do not run afoul of Sections 253 and 332. This responds in particular to many concerns we heard from state and local governments about deployments in historic districts.

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9 “Small Wireless Facilities,” as used herein and consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

(1) The facilities—
   (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
   (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
   (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

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

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

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

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

(6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 1.1307(b).
13. Next, we issue a Report and Order that addresses the “shot clocks” governing the review of wireless infrastructure deployments. We take three main steps in this regard. First, we create a new set of shot clocks tailored to support the deployment of Small Wireless Facilities. In particular, we read Sections 253 and 332 as allowing 60 days for reviewing the application for attachment of a Small Wireless Facility using an existing structure and 90 days for the review of an application for attachment of a small wireless facility using a new structure. Second, while we do not adopt a “deemed granted” remedy for violations of our new shot clocks, we clarify that failing to issue a decision up or down during this time period is not simply a “failure to act” within the meaning of applicable law. Rather, missing the deadline also constitutes a presumptive prohibition. We would thus expect any locality that misses the deadline to issue any necessary permits or authorizations without further delay. We also anticipate that a provider would have a strong case for quickly obtaining an injunction from a court that compels the issuance of all permits in these types of cases. Third, we clarify a number of issues that are relevant to all of the FCC’s shot clocks, including the types of authorizations subject to these time periods.

II. BACKGROUND

A. Legal Background

14. In the Telecommunications Act of 1996 (the 1996 Act), Congress enacted sweeping new provisions intended to facilitate the deployment of telecommunications infrastructure. As U.S. Courts of Appeals have stated, “[t]he [1996] Act “represents a dramatic shift in the nature of telecommunications regulation.””\(^\text{10}\) The Senate floor manager, Senator Larry Pressler, stated that “[t]his is the most comprehensive deregulation of the telecommunications industry in history.”\(^\text{11}\) Indeed, the purpose of the 1996 Act is to “provide for a pro-competitive, deregulatory national policy framework . . . by opening all telecommunications markets to competition.”\(^\text{12}\) The conference report on the 1996 Act similarly indicates that Congress “intended to remove all barriers to entry in the provision of telecommunications services.”\(^\text{13}\) The 1996 Act thus makes clear Congress’s commitment to a competitive telecommunications marketplace unhindered by unnecessary regulations, explicitly directing the FCC to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”\(^\text{14}\)

15. Several provisions of the 1996 Act speak directly to Congress’s determination that certain state and local regulations are unlawful. 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.”\(^\text{15}\) Courts have observed that Section 253 represents a “broad preemption of laws that inhibit competition.”\(^\text{16}\)

16. The Commission has issued several rulings interpreting and providing guidance regarding the language Congress used in Section 253. For instance, in the 1997 California Payphone decision, the Commission, under the leadership of then Chairman William Kennard, stated that, in determining whether a state or local law has the effect of prohibiting the provision of telecommunications services, it

\(^{10}\) Sprint Telephony PCS LP v. County of San Diego, 543 F.3d 571, 575 (9th Cir. 2008) (en banc) (County of San Diego) (quoting Cablevision of Boston, Inc. v. Pub. Improvement Comm’n, 184 F.3d 88, 97 (1st Cir. 1999)).


\(^{15}\) 47 U.S.C. § 253(a).

\(^{16}\) Puerto Rico Tel. Co. v. Telecomm. Reg. Bd. of Puerto Rico, 189 F.3d 1, 11 n.7 (1st Cir. 1999).
“consider[s] whether the ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”

17. 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.”  

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.”

Section 332(c)(7) generally preserves state and local authority over the “placement, construction, and modification of personal wireless service facilities” but with the important limitations described above. 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.” The provision further directs the court to “decide such action on an expedited basis.”

18. The Commission has previously interpreted the language Congress used and the limits it imposed on state and local authority in Section 332. For instance, in interpreting Section 332(c)(7)(B)(i)(II), the Commission has found that “a State or local government that denies an application for personal wireless service facilities siting solely because ‘one or more carriers serve a given geographic market’ has engaged in unlawful regulation that ‘prohibits or ha[ ] the effect of prohibiting the provision of personal wireless services,’ within the meaning of Section 332(c)(7)(B)(i)(II).” In adopting this interpretation, the Commission explained that its “construction of the provision achieves a balance that is most consistent with the relevant goals of the Communications Act” and its understanding that “[i]n promoting the construction of nationwide wireless networks by multiple carriers, Congress sought ultimately to improve service quality and lower prices for consumers.” The Commission also noted that an alternative interpretation would “diminish the service provided to [a wireless provider’s] customers.”

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19 47 U.S.C § 332(c)(7)(B)(ii).
20 47 U.S.C. § 332(c)(7)(A) (stating that, “[e]xcept as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless services facilities”). The statute defines “personal wireless services” to include CMRS, unlicensed wireless services, and common carrier wireless exchange access services. 47 U.S.C. § 332(c)(7)(C). In 2012, Congress expressly modified this preservation of local authority by enacting Section 6409(a), which requires local governments to approve certain types of facilities siting applications “[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified in substantial part as Section 332(c)(7)] . . . or any other provision of law.” Spectrum Act, 47 U.S.C. § 6409(a)(1).
24 2009 Declaratory Ruling, 24 RCC Rcd at 14017-18, para. 61.
25 Id.
19. In the 2009 Declaratory Ruling, the Commission acted to speed the deployment of then-new 4G services and concluded that, “given the evidence of unreasonable delays in siting decisions and the public interest in avoiding such delays,” it should offer guidance regarding the meaning of the statutory phrases “reasonable period of time” and “failure to act” “in order to clarify when an adversely affected service provider may take a dilatory State or local government to court.”

The Commission interpreted “reasonable period of time” under Section 332(c)(7)(B)(ii) to be 90 days for processing collocation applications and 150 days for processing applications other than collocations. The Commission further determined that failure to meet the applicable time frame enables an applicant to pursue judicial relief within the next 30 days. In litigation involving the 90-day and 150-day time frames, the locality may attempt to “rebut the presumption that the established time frames are reasonable.” If the agency fails to make such a showing, it may face “issuance of an injunction granting the application.”

In its 2014 Wireless Infrastructure Order, the Commission clarified that the time frames under Section 332(c)(7) are presumptively reasonable and begin to run when the application is submitted, not when it is found to be complete by a siting authority.

20. In 2012, Congress adopted Section 6409 of the Middle Class Tax Relief and Job Creation Act (the Spectrum Act), which provides further evidence of Congressional intent to limit state and local laws that operate as barriers to infrastructure deployment. It states that, “[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified as 47 U.S.C. § 332(c)(7)] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” Subsection (a)(2) defines the term “eligible facilities request” as any request for modification of an existing wireless tower or base station that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment. In implementing Section 6409 and in an effort to “advance[e] Congress’s goal

26 Id. at 14008, para. 37; see also id. at 14029 (Statement of Chairman Julius Genachowski) (“[T]he rules we adopt today . . . will have an important effect in speeding up wireless carriers’ ability to build new 4G networks--which will in turn expand and improve the range of wireless choices available to American consumers.”).

27 Id. at 14012, para. 45.

28 Id. at 14005, 14012, paras. 32, 45.

29 Id. at 14008-10, 14013-14, paras. 37-42, 49-50.

30 Id. at 14009, para. 38; see also City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 115 (2005) (proper remedies for Section 332(c)(7) violations include injunctions but not constitutional tort damages).

31 Specifically, the Commission determined that once a siting application is considered complete for purposes of triggering the Section 332(c)(7) shot clocks, those shot clocks run regardless of any moratoria imposed by state or local governments, and the shot clocks apply to DAS and small-cell deployments so long as they are or will be used to provide “personal wireless services.” Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report & Order, 29 FCC Rcd 12865, 12966, 12973, paras. 243, 270, (2014) (2014 Wireless Infrastructure Order), aff’d, Montgomery County v. FCC, 811 F.3d 121 (4th Cir. 2015) (Montgomery County); see also Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330, 3339, para. 22 (2017) (Wireless Infrastructure NPRM/NOP); 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, FCC 18-111, paras. 140-68 (rel. Aug. 3, 2018) (Moratoria Declaratory Ruling).

32 2014 Wireless Infrastructure Order, 29 FCC Rcd at 12970, para. 258. (“Accordingly, to the extent municipalities have interpreted the clock to begin running only after a determination of completeness, that interpretation is incorrect.”).


34 Id.
of facilitating rapid deployment,” the Commission adopted rules to expedite the processing of eligible facilities requests, including documentation requirements and a 60-day period for states and localities to review such requests. The Commission further determined that a “deemed granted” remedy was necessary for cases in which the reviewing authority fails to issue a decision within the 60-day period in order to “ensur[e] rapid deployment of commercial and public safety wireless broadband services.” The Fourth Circuit, affirming that remedy, explained that “[f]unctionally, what has occurred here is that the FCC—pursuant to properly delegated Congressional authority—has preempted state regulation of wireless towers.”

21. Consistent with these broad federal mandates, courts have recognized that the Commission has authority to interpret Sections 253 and 332 of the Act to further elucidate what types of state and local legal requirements run afoul of the statutory parameters Congress established. For instance, the Fifth Circuit affirmed the 2009 Declaratory Ruling in City of Arlington. The court concluded that the Commission possessed the “authority to establish the 90- and 150-day time frames” and that its decision was not arbitrary and capricious. More generally, as the agency charged with administering the Communications Act, the Commission has the authority, responsibility, and expert judgement to issue interpretations of the statutory language and to adopt implementing regulations that clarify and specify the scope and effect of the Act. Such interpretations are particularly appropriate where the statutory language is ambiguous, or the subject matter is “technical, complex, and dynamic,” as it is in the Communications Act, as recognized by the Supreme Court. Here, the Commission has ample experience monitoring and regulating the telecommunications sector. It is well-positioned, in light of this experience and the record in this proceeding, to issue a clarifying interpretation of Sections 253 and 332(c)(7) that accounts both for the changing needs of a dynamic wireless sector that is increasingly reliant on Small Wireless Facilities and for state and local oversight that does not materially inhibit wireless deployment.

22. The congressional and FCC decisions described above point to consistent federal action, particularly when faced with changes in technology, to ensure that our country’s approach to wireless infrastructure deployment promotes buildout of the facilities needed to provide Americans with next-generation services. Consistent with that long-standing approach, in the 2017 Wireless Infrastructure NPRM/NOI, the Commission sought comment on whether the FCC should again update its approach to infrastructure deployment to ensure that regulations are not operating as prohibitions in violation of Congress’s decisions and federal policy. In August 2018, the Commission concluded that state and local moratoria on telecommunications services and facilities deployment are barred by Section 253(a).

36 Id. at 12922, 12956-57, paras. 135, 214-15.
37 Id. at 12961-62, paras. 226, 228.
38 Montgomery County, 811 F.3d at 129.
39 See, e.g., City of Arlington, 668 F.3d at 253-54; County of San Diego, 543 F.3d at 578; RT Commc’ns., Inc. v. FCC, 201 F.3d 1264, 1268 (10th Cir. 2000).
40 City of Arlington, 668 F.3d at 254, 260-61.
42 See generally Wireless Infrastructure NPRM/NOI, 32 FCC Rcd at 3332-39, paras. 4-22.
43 See generally Moratoria Declaratory Ruling, FCC 18-111, paras. 140-68.
B. The Need for Commission Action

23. In response to the opportunities presented by offering new wireless services, and the problems facing providers that seek to deploy networks to do so, we find it necessary and appropriate to exercise our authority to interpret the Act and clarify the preemptive scope that Congress intended. The introduction of advanced wireless services has already revolutionized the way Americans communicate and transformed the U.S. economy. Indeed, the FCC’s most recent wireless competition report indicates that American demand for wireless services continues to grow exponentially. It has been reported that monthly data usage per smartphone subscriber rose to an average of 3.9 gigabytes per subscriber per month, an increase of approximately 39 percent from year-end 2015 to year-end 2016.\textsuperscript{44} As more Americans use more wireless services, demand for new technologies, coverage and capacity will necessarily increase, making it critical that the deployment of wireless infrastructure, particularly Small Wireless Facilities, not be stymied by unreasonable state and local requirements.

24. 5G wireless services, in particular, will transform the U.S. economy through increased use of high-bandwidth and low-latency applications and through the growth of the Internet of Things.\textsuperscript{45} While the existing wireless infrastructure in the U.S. was erected primarily using macro cells with relatively large antennas and towers, wireless networks increasingly have required the deployment of small cell systems to support increased usage and capacity. We expect this trend to increase with next-generation networks, as demand continues to grow, and providers deploy 5G service across the nation.\textsuperscript{46} It is precisely “[b]ecause providers will need to deploy large numbers of wireless cell sites to meet the country’s wireless broadband needs and implement next-generation technologies” that the Commission has acknowledged “an urgent need to remove any unnecessary barriers to such deployment, whether caused by Federal law, Commission processes, local and State reviews, or otherwise.”\textsuperscript{47} As explained below, the need to site so many more 5G-capable nodes leaves providers’ deployment plans and the underlying economics of those plans vulnerable to increased per site delays and costs.

25. Some states and local governments have acted to facilitate the deployment of 5G and other next-gen infrastructure, looking to bring greater connectivity to their communities through forward-looking policies. Leaders in these states are working hard to meet the needs of their communities and balance often competing interests. At the same time, outlier conduct persists. The record here suggests that the legal requirements in place in other state and local jurisdictions are materially impeding that deployment in various ways.\textsuperscript{48} Crown Castle, for example, describes “excessive and unreasonable” “fees


\textsuperscript{45} See Wireless Infrastructure NPRM/NOI, 32 FCC Rcd at 3331, para. 1.

\textsuperscript{46} 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), available at https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-5gdeployment-imperative.pdf.

\textsuperscript{47} See Wireless Infrastructure NPRM/NOI, 32 FCC Rcd at 3331, para. 2.

\textsuperscript{48} See, e.g., Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 10, 2018) (“Unfortunately, many municipalities are unable, unwilling, or do not make it a priority to act on applications within the shot clock period.” ); Letter from Keith Buell, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Aug. 13, 2018) (Sprint Aug. 13, 2018 Ex Parte Letter); Letter from Katherine R. Saunders, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 21,
to access the [rights-of-way] that are completely unrelated to their maintenance or management.” It also points to barriers to market entry “for independent network and telecommunications service providers,” including municipalities that “restrict access to the [right-of-way] only to providers of commercial mobile services” or that impose “onerous zoning requirements on small cell installations when other similar [right-of-way] utility installations are erected with simple building permits.” 49 Crown Castle is not alone in describing local regulations that slow deployment. AT&T states that localities in Maryland, California, and Massachusetts have imposed fees so high that it has had to pause or decrease deployments. 50 Likewise, AT&T states that a Texas city has refused to allow small cell placement on any structures in a right-of-way (ROW). 51 T-Mobile states that the Town of Hempstead, New York requires service providers who seek to collocate or upgrade equipment on existing towers that have been properly constructed pursuant to Class II standards to upgrade and certify these facilities under Class III standards that apply to civil and national defense and military facilities. 52 Verizon states that a Minnesota town has proposed barring construction of new poles in rights-of-way and that a Midwestern suburb where it has been trying to get approval for small cells since 2014 has no established procedures for small cell approvals. 53 Verizon states that localities in New York and Washington have required special use permits involving multiple layers of approval to locate small cells in some or all zoning districts. 54 While some localities dispute some of these characterizations, their submissions do not persuade us that there is no basis or need for the actions we take here.

26. Further, the record in this proceeding demonstrates that many local siting authorities are not complying with our existing Section 332 shot clock rules. 55 WIA states that its members routinely face lengthy delays and specifically cite localities in New Jersey, New Hampshire, and Maine as being

(Continued from previous page)
problematic.\textsuperscript{56} Similarly, AT&T identified an instance in which it took a locality in California 800 days to process an application.\textsuperscript{57} GCI provides an example in which it took an Alaska locality nine months to decide an application.\textsuperscript{58} T-Mobile states that a community in Colorado and one in California have lengthy pre-application processes for all small cell installations that include notification to all nearby households, a public meeting, and the preparation of a report, none of which these jurisdictions view as triggering a shot clock.\textsuperscript{59} Similarly, Lightower provides examples of long delays in processing siting applications.\textsuperscript{60} Finally, Crown Castle describes a case in which a “town took approximately two years and nearly twenty meetings, with constantly shifting demands, before it would even ‘deem complete’ Crown Castle’s application.”\textsuperscript{61}

27. Our Declaratory Ruling and Third Report and Order are intended to address these issues and outlier conduct. Our conclusions are also informed by findings, reports, and recommendations from the FCC Broadband Deployment Advisory Committee (BDAC), including the Model Code for Municipalities, the Removal of State and Local Regulatory Barriers Working Group report, and the Rates and Fees Ad Hoc Working Group report, which the Commission created in 2017 to identify barriers to deployment of broadband infrastructure, many of which are addressed here.\textsuperscript{62} We also considered input from numerous state and local officials about their concerns, and how they have approached wireless deployment, much of which we took into account here. Our action is also consistent with congressional efforts to hasten deployment, including bi-partisan legislation pending in Congress like the STREAMLINE Small Cell Deployment Act and SPEED Act. The STREAMLINE Small Cell Deployment Act proposes to streamline wireless infrastructure deployments by requiring siting agencies to act on deployment requests within specified time frames and by limiting the imposition of onerous

\textsuperscript{56} WIA Comments at 8. WIA states that one of its “member reports that the wireless siting approval process exceeds 90 days in more than 33% of jurisdictions it surveyed and exceeds 150 days in 25% of surveyed jurisdictions.” WIA Comments at 8. In some cases, WIA members have experienced delays ranging from one to three years in multiple jurisdictions—significantly longer than the 90- and 150-day time frames that the Commission established in 2009.

\textsuperscript{57} See WIA Comments at 9 (citing and discussing AT&T’s Comments in the 2016 Streamlining Public Notice, WT Docket No. 16-421).

\textsuperscript{58} GCI Comments at 5-6.

\textsuperscript{59} T-Mobile Comments at 21.

\textsuperscript{60} Lightower submits that average processing timeframes have increased from 300 days in 2016 to approximately 570 days in 2017, much longer than the Commission’s shot clocks. Lightower states that “forty-six separate jurisdictions in the last two years had taken longer than 150 days to consider applications, with twelve of those jurisdictions—representing 101 small wireless facilities—taking more than a year.” Lightower Comments at 5-6. See also WIA Comments at 9 (citing and discussing Lightower’s Comments in the 2016 Streamlining Public Notice, WT Docket No. 16-421).

\textsuperscript{61} WIA Comments at 8 (citing and discussing Crown Castle’s Comments in 2016 Streamlining Public Notice, WT Docket No. 16-421).

conditions and fees. The SPEED Act would similarly streamline federal permitting processes. In the same vein, the Model Code for Municipalities adopts streamlined infrastructure siting requirements while other BDAC reports and recommendations emphasize the negative impact of high fees on infrastructure deployments.

28. As do members of both parties of Congress and experts on the BDAC, we recognize the urgent need to streamline regulatory requirements to accelerate the deployment of wireless infrastructure for current needs and for the next generation of wireless service in 5G. State government officials also have urged us to act to expedite the deployment of 5G technology, in particular, by streamlining overly burdensome regulatory processes to ensure that 5G technology will expand beyond just urban centers. These officials have expressed their belief that reducing high regulatory costs and delays in urban areas would leave more money and encourage development in rural areas. “[G]etting [5G] infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources. The solution is to streamline relevant policies—allowing more modern rules for modern infrastructure.”

State officials have acknowledged that current regulations are “outdated” and “could hinder the timely arrival of 5G throughout the country,” and urged the FCC “to push for more reforms that will streamline infrastructure rules from coast to coast.” Although many states and localities support our efforts, we acknowledge that there are others who advocated for different approaches, arguing, among other points,
that the FCC lacks authority to take certain actions. We have carefully considered these views, but nevertheless find our actions here necessary and fully supported.

29. Accordingly, in this Declaratory Ruling and Third Report and Order, we act to reduce regulatory barriers to the deployment of wireless infrastructure and to ensure that our nation remains the leader in advanced wireless services and wireless technology.

III. DECLARATORY RULING

30. In this Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. In light of these diverging views, Congress’s vision for a consistent, national policy framework, and the need to ensure that our approach continues to make sense in light of the relatively new trend towards the large-scale deployment of Small Wireless Facilities, we take this opportunity to clarify and update the FCC’s reading of the limits Congress imposed. We do so in three main respects.

31. First, in Part III.A, we express our agreement with the views already stated by the First, Second, and Tenth Circuits that the “materially inhibit” standard articulated in 1997 by the Clinton-era FCC’s California Payphone decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

32. Second, in Part III.B, we note, as numerous courts have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can effectively prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress’s limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision. Namely, fees are only permitted to the extent that they represent a reasonable approximation of the local government’s objectively reasonable costs, and are non-discriminatory. In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. We do so to help avoid unnecessary litigation, while recognizing that it is the standard itself, not the particular, presumptive fee levels we articulate, that ultimately will govern whether a particular fee is allowed under Sections 253 and 332. So fees above

70 See, e.g., City of Manhattan, KS Sept. 13, 2018 Ex Parte Letter at 1-2; Ronny Berdugo Sept. 18, 2018 Ex Parte Letter at 1-2; Damon Connolly Sept. 17, 2018 Ex Parte Letter at 1-2.

71 Fees charged by states or localities in connection with Small Wireless Facilities would be “compensation” for purposes of Section 253(c). This Declaratory Ruling interprets Section 253 and 332(c)(7) in the context of three categories of fees, one of which applies to all deployments of Small Wireless Facilities while the other two are specific to Small Wireless Facilities deployments inside the ROW. (1) “Event” or “one-time” fees are charges that providers pay on a non-recurring basis in connection with a one-time event, or series of events occurring within a finite period. The one-time fees addressed in this Declaratory Ruling are not specific to the ROW. For example, a provider may be required to pay fees during the application process to cover the costs related to processing an application building or construction permits, street closures, or a permitting fee, whether or not the deployment is in the ROW. (2) Recurring charges for a Small Wireless Facility’s use of or attachment to property inside the ROW owned or controlled by a state or local government, such as a light pole or traffic light, is the second category of fees addressed here, and is typically paid on a per structure/per year basis. (3) Finally, ROW access fees are recurring charges that are assessed, in some instances, to compensate a state or locality for a Small Wireless Facility’s access to the ROW, which includes the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property (including when such property is government-owned). A ROW access fee may be charged even if the Small Wireless Facility is not using government owned property within the ROW. AT&T Comments at 18 (describing three categories of fees); Letter from Tamara Preiss, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 11 (filed Aug. 10, 2018) (Verizon Aug. 10, 2018 Ex Parte Letter) (characterizing fees as recurring or non-recurring); see also Draft BDAC Rates and Fees Report at p. 15-16. Unless otherwise specified, a reference to “fee” or “fees” herein refers to any one of, or any combination of, these three categories of charges.
those levels would be permissible under Sections 253 and 332 to the extent a locality’s actual, reasonable costs (as measured by the standard above) are higher.

33. Finally, in Part III.C, we focus on a subset of other, non-fee provisions of state and local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities. We note that the Small Wireless Facilities that are the subject of this Declaratory Ruling remain subject to the Commission’s rules governing Radio Frequency (RF) emissions exposure.\footnote{See 47 CFR §§ 1.1307, 1.1310. We disagree with commenters who oppose the Declaratory Ruling on the basis of concerns regarding RF emissions. \textit{See, e.g.}, Comments from Judy Aizuss, Comments from Jeffrey Arndt, Comments from Jeanice Barcelo, Comments from Kristin Beatty, Comments from James M. Benster, Comments from Terrie Burns, Comments from EMF Safety Network, Comments from Kate Reese Hurd, Comments from Marilyne Martin, Comments from Lisa Mayock, Comments from Kristen Moriarty Termunde, Comments from Sage Associates, Comments from Elizabeth Shapiro, Comments from Paul Silver, Comments from Natalie Ventrice. The Commission has authority to adopt and enforce RF exposure limits, and nothing in this Declaratory Ruling changes the applicability of the Commission’s existing RF emissions exposure rules. \textit{See, e.g.}, Section 704(b) of the Telecommunications Act of 1996, Pub. L. No. 104-104 (directing Commission to “prescribe and make effective rules regarding the environmental effects of radio frequency emissions” upon completing action in then-pending rulemaking proceeding that included proposals for, \textit{inter alia}, maximum exposure limits); 47 U.S.C. § 332(c)(7)(B)(iv) (recognizing legitimacy of FCC’s existing regulations on environmental effects of RF emissions of personal wireless service facilities, by proscribing state and local regulation of such facilities on the basis of such effects, to the extent such facilities comply with Commission regulations concerning such RF emissions); 47 U.S.C. § 151 (creating the FCC “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service, . . . for the purpose of [inter alia] promoting safety of life and property through the use of wire and radio communications”). \textit{See also} H.R. Rep. No. 204(I), 104th Cong., 1st Sess. 94 (1995), \textit{reprinted in} 1996 U.S.C.C.A.N. 10, 61 (1996) (in legislative history of Section 704 of 1996 Telecommunications Act, identifying “adequate safeguards of the public health and safety” as part of a framework of uniform, nationwide RF regulations); \textit{Reassessment of FCC Radiofrequency Exposure Limits and Policies, First Report and Order, Further Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Red 3498, 3530-31, para. 103, n.176 (2013).}

34. In Sections 253(a) and 332(c)(7)(B) of the Act, Congress determined that state or local requirements that prohibit or have the effect of prohibiting the provision of service are unlawful and thus preempted.\footnote{47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II).} Section 253(a) addresses “any interstate or intrastate telecommunications service,” while Section 332(c)(7)(B)(i)(II) addresses “personal wireless services.”\footnote{Id. The actions in this proceeding update the FCC’s approach to Sections 253 and 332 by addressing effective prohibitions that apply to the deployment of services covered by those provisions. Our interpretations in this proceeding do not provide any basis for increasing the regulation of services deployed consistent with Section 621 of the Cable Communications Policy Act of 1984.} Although the provisions contain identical “effect of prohibiting” language, the Commission and different courts over the years have each employed inconsistent approaches to deciding what it means for a state or local legal requirement to have the “effect of prohibiting” services under these two sections of the Act. This has caused confusion among both providers and local governments about what legal requirements are permitted under Sections 253 and 332(c)(7). For example, despite Commission decisions to the contrary construing such language under Section 253, some courts have held that a denial of a wireless siting application will “prohibit or have the effect of prohibiting” the provision of a personal wireless service under Section 332(c)(7)(B)(i)(II) only if the provider can establish that it has a significant gap in service coverage in the
area and a lack of feasible alternative locations for siting facilities.\textsuperscript{75} Other courts have held that evidence of an already-occurring or complete inability to offer a telecommunications service is required to demonstrate an effective prohibition under Section 253(a).\textsuperscript{76} Conversely, still other courts like the First, Second, and Tenth Circuits have endorsed prior Commission interpretations of what constitutes an effective prohibition under Section 253(a) and recognized that, under that analytical framework, a legal requirement can constitute an effective prohibition of services even if it is not an insurmountable barrier.\textsuperscript{77}

35. In this Declaratory Ruling, we first reaffirm, as our definitive interpretation of the effective prohibition standard, the test we set forth in \textit{California Payphone}, namely, that a state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” We then explain how this “material inhibition” standard applies in the context of state and local fees and aesthetic requirements. In doing so, we confirm the First, Second, and Tenth Circuits’ understanding that under this analytical framework, a legal requirement can “materially inhibit” the provision of services even if it is not an insurmountable barrier.\textsuperscript{78} We also resolve the conflicting court interpretations of the

\textsuperscript{75}Courts vary widely regarding the type of showing needed to satisfy the second part of that standard. The First, Fourth, and Seventh Circuits have imposed a “heavy burden” of proof on applicants to establish a lack of alternative feasible sites, requiring them to show “not just that this application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try.” \textit{Green Mountain Realty Corp. v. Leonard,} 750 F.3d 30, 40 (1st Cir. 2014); accord \textit{New Cingular Wireless PCS, LLC v. Fairfax County,} 674 F.3d 270, 277 (4th Cir. 2012); \textit{T-Mobile Northeast LLC v. Fairfax County,} 672 F.3d 259, 266-68 (4th Cir. 2012) (\textit{en banc}); \textit{Helsinki v. Dearborn County,} 595 F.3d 710, 723 (7th Cir. 2010) (\textit{Helsinki}). The Second, Third, and Ninth Circuits have held that an applicant must show only that its proposed facilities are the “least intrusive means” for filling a coverage gap in light of the aesthetic or other values that the local authority seeks to serve. \textit{Sprint Spectrum, LP v. Willoth,} 176 F.3d 630, 643 (2d Cir. 1999) (\textit{Willoth}); \textit{APT Pittsburgh Ltd. P’ship v. Penn Township,} 196 F.3d 469, 480 (3d Cir. 1999) (\textit{APT}); \textit{American Tower Corp. v. City of San Diego,} 763 F.3d 1035, 1056-57 (9th Cir. 2014); \textit{T-Mobile USA, Inc. v. City of Anacortes,} 572 F.3d 987, 995-99 (9th Cir. 2009) (\textit{City of Anacortes}).

\textsuperscript{76}See, e.g., \textit{County of San Diego,} 543 F.3d at 579-80; \textit{Level 3 Commc’ns, LLC v. City of St. Louis,} 477 F.3d 528, 533-34 (8th Cir. 2007) (\textit{City of St. Louis}).

\textsuperscript{77}See \textit{Puerto Rico Tel. Co. v. Municipality of Guayanilla,} 450 F.3d 9, 18 (1st Cir. 2006) (\textit{Municipality of Guayanilla}); \textit{TGC New York, Inc. v. City of White Plains,} 305 F.3d 67, 76 (2d Cir. 2002) (\textit{City of White Plains}); \textit{RT Communications v. FCC,} 201 F.3d 1264, 1268 (10th Cir. 2000) (“[Section] 253(a) forbids any statute which prohibits or has ‘the effect of prohibiting’ entry. Nowhere does the statute require that a bar to entry be insurmountable before the FCC must preempt it.”) (\textit{RT Communications}) (affirming \textit{Silver Star Tel. Co. Petition for Preemption and Declaratory Ruling,} 12 FCC Rcd 15639 (1997)).

\textsuperscript{78}\textit{California Payphone,} 12 FCC Rcd at 14206, para. 31. A number of circuit courts have cited \textit{California Payphone} as the leading authority regarding the standard to be applied under Section 253(a). See, e.g., \textit{County of San Diego,} 543 F.3d at 578; \textit{City of St. Louis,} 477 F.3d at 533; \textit{Municipality of Guayanilla,} 450 F.3d at 18; \textit{Qwest Corp. v. City of Santa Fe,} 380 F.3d 1258, 1270 (10th Cir. 2004) (\textit{City of Santa Fe}); \textit{City of White Plains,} 305 F.3d at 76. Crown Castle argues that the Eighth and Ninth Circuit cited the FCC’s \textit{California Payphone} decision, but read the standard in an overly narrow fashion. See, e.g., Letter from Kenneth J. Simon, Senior Vice Pres. and Gen. Counsel, Crown Castle, \textit{et al.,} to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 12 (filed June 7, 2018) (Crown Castle June 7, 2018 \textit{Ex Parte Letter}); see also Smart Communities Comments at 60-61 (describing circuit split). Some commenters cite selected dictionary definitions or otherwise argue for a narrow definition of “prohibit.” See, e.g., Smart Communities Reply at 53. But because they do not go on to dispute the validity of the \textit{California Payphone} standard that has been employed not only by the Commission but also many courts, those arguments do not persuade us to depart from the \textit{California Payphone} standard here.

\textsuperscript{79}See, e.g., \textit{City of White Plains,} 305 F.3d at 76; \textit{Municipality of Guayanilla,} 450 F.3d at 18; see also, e.g., Crown Castle June 7, 2018 \textit{Ex Parte Letter} at 12. Because the clarifications in this order should reduce uncertainty regarding the application of these provisions for state and local governments as well as stakeholders, we are not persuaded by some commenters’ arguments that an expedited complaint process is required. See, e.g., AT&T Comments at 28; CTIA Reply at 21. We do not address, at this time, recently-filed petitions for reconsideration of our August 2018 \textit{Moratoria Declaratory Ruling.} See, e.g., Smart Communities Petition for Reconsideration, WC
‘effective prohibition’ language so that continuing confusion on the meaning of Sections 253 and 332(c)(7) does not materially inhibit the critical deployments of Small Wireless Facilities and our nation’s drive to deploy 5G.\textsuperscript{80}

36. As an initial matter, we note that our Declaratory Ruling applies with equal measure to the effective prohibition standard that appears in both Sections 253(a) and 332(c)(7).\textsuperscript{81} This ruling is consistent 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.\textsuperscript{82} Moreover, both of these provisions apply to wireless telecommunications services\textsuperscript{83} as well as to commingled services and facilities.\textsuperscript{84}

\textsuperscript{80} See, e.g., Crown Castle June 7, 2018 \textit{Ex Parte} Letter at 11-12 (arguing that “[d]espite the Commission’s efforts to define the boundaries of federal preemption under Section 253, courts have issued a number of conflicting decisions that have only served to confuse the preemption analysis under section 253” and that “the Commission should clarify that the \textit{California Payphone} standard as interpreted by the First and Second Circuits is the appropriate standard going forward”); see also BDAC Regulatory Barriers Report at p. 9 (“The Commission should provide clarity on what actually constitutes an “excessive” fee for right-of-way access and use. The FCC should provide guidance on what constitutes a fee that is excessive and/or duplicative, and that therefore is not “fair and reasonable.” The Commission should specifically clarify that “fair and reasonable” compensation for right-of-way access and use implies some relation to the burden of new equipment placed in the ROW or on the local asset, or some other objective standard.”). Because our decision provides clarity by addressing conflicting court decisions and reaffirming that the “materiaily inhibits” standard articulated in the Commission’s \textit{California Payphone} decision is the appropriate standard for determining whether a state or local law operates as an effective prohibition within the meaning of Sections 253 and 332, we reject arguments that our action will increase conflicts and lead to more litigation. See e.g., Letter from Michael Dylan Brennan, Mayor, City of University Heights, Ohio, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Sept. 19, 2018) (stating that “…this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding”).

\textsuperscript{81} See \textit{infra} Part III.A, B.

\textsuperscript{82} See \textit{County of San Diego}, 543 F.3d at 579 (“We see nothing suggesting that Congress intended a different meaning of the text ‘prohibit or have the effect of prohibiting’ in the two statutory provisions, enacted at the same time, in the same statute. * * * * * As we now hold, the legal standard is the same under either [Section 253 or 332(c)(7)].”); see also, \textit{e.g.}, \textit{Puerto Rico v. Franklin Cal. Tax-Free Trust}, 136 S. Ct. 1938, 1946 (citing \textit{Sullivan v. Stroop}, 496 U.S. 478, 484 (1990) (reading same term used in different parts of the same Act to have the same meaning); \textit{Northercross v. Board of Ed. of Memphis City Schools}, 412 U.S. 427, 428 (1973) (per curiam) (“[S]imilarity of language . . . is . . . a strong indication that the two statutes should be interpreted \textit{pari passu}”); \textit{Verizon Comments} at 9-10; \textit{AT&T Reply} at 3-4; \textit{Crown Castle June 7, 2018 \textit{Ex Parte} Letter} at 15.

\textsuperscript{83} Common carrier wireless services meet the definition of “telecommunications services,” and thus are within the scope of Section 253(a) of the Act. See, e.g., \textit{Moratoria Declaratory Ruling}, FCC 18-111, para 142 n.523; see also, e.g., \textit{League of Minnesota Cities Comments} at 11; \textit{Verizon Reply} at 9-10. While some commenters cite certain distinguishing factual characteristics between wireline and wireless services, the record does not reveal why those distinctions would be material to whether wireless telecommunications services are covered by Section 253 in the first instance. See, e.g., \textit{City of San Antonio et al. Comments}, Exh. A at 13; \textit{Virginia Joint Commenters Comments} at 5, Exh. A at 45-46. To the contrary, Section 253(c) expressly preserves “application of section 332(c)(3) of this title to commercial mobile service providers” notwithstanding Section 253—a provision that would be meaningless if wireless telecommunications services already fell outside the scope of Section 253. 47 U.S.C. § 253(e). For this same reason, we also reject claims that the existence of certain protections for personal wireless services in Section 332(c)(7), or the phrase “nothing in this chapter” in Section 332(c)(7)(A), demonstrate that states’ or localities’
37. As explained in *California Payphone* and reaffirmed here, a state or local legal requirement will have the effect of prohibiting wireless telecommunications services if it materially inhibits the provision of such services. We clarify that an 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. 85 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

(Continued from previous page) regulations affecting wireless telecommunications services must fall outside the scope of Section 253. See, e.g., Virginia Joint Commenters Comments, Exh. A at iii, 45-46; Smart Communities Comments at 56. Even if, as some parties argue, the phrase “nothing in this chapter” could be construed as preserving state or local decisions on the placement, construction, or modification of personal wireless service facilities from preemption by other sections of the Communications Act, Section 332(c)(7)(A) goes on to make clear that such state or local decisions are not immune from preemption if they violate any of the standards set forth in Section 332(c)(7)(B)—including Section 332(c)(7)(B)(i)(II)’s ban of requirements that “prohibit or have the effect of prohibiting” the provision of service, which is identical to the preemption provision in Section 253(a). Thus, states and localities may charge fees and dispose of applications relating to the matters subject to Section 332(c)(7) in any manner they deem appropriate, so long as that conduct does not amount to a prohibition or effective prohibition, as interpreted in this Declaratory Ruling or otherwise run afoul of federal or state law; but because Sections 332(c)(7)(B)(i)(II) and 253(a) use identical “effective prohibition” language, the standard for what is saved and what is preempted is the same under both provisions.

84 See infra para. 40 (discussing use of small cells to close coverage gaps, including voice gaps); see also, e.g., *Moratoria Declaratory Ruling*, FCC 18-111, para 145 n.531; *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 425, para. 190 (2018); Letter from Andre J. Lachance, Associate General Counsel, Verizon to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 3 (filed Sept. 19, 2018) (confirming that “telecommunications services can be provided over small cells and Verizon has deployed Small Wireless Facilities in its network that provide telecommunications services.”); Letter from David M. Crawford, Senior Corporate Counsel, Fed. Reg. Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 19, 2018) (stating that “small wireless facilities are a critical component of T-Mobile’s network deployment plans to support both the 5G evolution of wireless services, as well as more traditional services such as mobile broadband and even voice calls. T-Mobile, for example, uses small wireless facilities to densify our network to provide better coverage and greater capacity, and to provide traditional services such as voice calls in areas where our macro site coverage is insufficient to meet demand.”); Letter from Henry G. Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 20, 2018) (“AT&T has operated and continues to operate commercial mobile radio services as well as information services from small wireless facilities.”); see also, e.g., *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d 425, 441-42 (E.D.N.Y. 2009) (finding that a restriction on advertising on newly-installed payphones was subject to Section 253(a) where the advertising was a material factor in the provider’s ability to provide the payphone service itself). The fact that facilities are sometimes deployed by third parties not themselves providing covered services also does not place such deployment beyond the purview of Section 253(a) or Section 332(c)(7)(B)(i) insofar as the facilities are used by wireless service providers on a wholesale basis to provide covered services (among other things). See, e.g., T-Mobile Comments at 26. Given our conclusion that neither commingling of services nor the identity of the entity engaged in the deployment activity changes the applicability of Section 253(a) or Section 332(c)(7)(B)(i)(II) where the facilities are being used for the provisioning of services within the scope of the relevant statutory provisions, we reject claims to the contrary. See, e.g., *Colorado Communications and Utility Alliance et al.* Comments at 15-16; *City of San Antonio et al.* Comments, Exh. A at 12; *id.*, Exh. C at 13-15. Because local jurisdictions do not have the authority to regulate these interstate services, there is no basis for local jurisdictions to conduct proceedings on the types of personal wireless services offered over particular wireless service facilities or the licensee’s service area, which are matters within the Commission’s licensing authority. Furthermore, local jurisdictions do not have the authority to require that providers offer certain types or levels of service, or to dictate the design of a provider’s network. See 47 U.S.C. § 332(c)(3)(A); see also *Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 989 (7th Cir. 2000).

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.
capabilities. Under the California Payphone standard, a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services. Thus, an effective prohibition includes materially inhibiting additional services or improving existing services.

38. Our reading of Section 253(a) and Section 332(c)(7)(B)(i)(II) reflects and supports a marketplace in which services can be offered in a multitude of ways with varied capabilities and performance characteristics consistent with the policy goals in the 1996 Act and the Communications Act. To limit Sections 253(a) and 332(c)(7)(B)(i)(II) to protecting only against coverage gaps or the like would be to ignore Congress’s contemporaneously-expressed goals of “promot[ing] competition[,] . . . secur[ing] . . . higher quality services for American telecommunications consumers and encourag[ing] the rapid deployment of new telecommunications technologies.” In addition, as the Commission recently explained, the implementation of the Act “must factor in the fundamental objectives of the Act, including the deployment of a ‘rapid, efficient . . . wire and radio communication service with adequate facilities at reasonable charges’ and ‘the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays[,] and] efficient and

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86 See, e.g., Crown Castle Comments at 54-55; Free State Foundation Comments at 12; T-Mobile Comments at 43-45; CTIA Reply at 14; WIA Reply at 26; Crown Castle June 7, 2018 Ex Parte Letter at 13-14; Letter from Kara Romagnino Graves, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 8-9 (filed June 27, 2018) (CTIA June 27, 2018 Ex Parte Letter). As T-Mobile explains, for example, a provider might need to improve “signal strength or system capacity to allow it to provide reliable service to consumers in residential and commercial buildings.” T-Mobile Comments at 43; see also, e.g., Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket Nos. 13-238, et al., Notice of Proposed Rulemaking, 28 FCC Rcd 14238, 14253, para. 38 (2013) (observing that “DAS and small cell facilities[ ] are critical to satisfying demand for ubiquitous mobile voice and broadband services”). The growing prevalence of smart phones has only accelerated the demand for wireless providers to take steps to improve their service offerings. See, e.g., Twentieth Wireless Competition Report, 32 FCC Rcd at 9011-13, paras. 62-65.

87 Our conclusion finds further support in our broad understanding of the statutory term “service,” which, as we explained in our recent Moratoria Declaratory Ruling, means “any covered service a provider wishes to provide, incorporating the abilities and performance characteristics it wishes to employ, including to provide existing services more robustly, or at a higher level of quality—such as through filling a coverage gap, densification, or otherwise improving service capabilities.” Moratoria Declaratory Ruling, FCC 18-111, para. 162 n.594; see also Public Utility Comm’n of Texas Petition for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3496, para. 74 (1997) (Texas PUC Order) (interpreting the scope of ‘telecommunications services’ covered by Section 253(a) and clarifying that it would be an unlawful prohibition for a state or locality to specify “the means or facilities” through which a service provider must offer service); Crown Castle June 7, 2018 Ex Parte Letter at 10-11 (discussing this precedent). We find this interpretation of “service” warranted not only under Section 253(a), but Section 332(c)(7)(B)(i)(II)’s reference to “services” as well.

88 Preamble to the Telecommunications Act of 1996, Pub. Law. No. 104-104, § 202, 110 Stat. 56 (1996). Consequently, we reject arguments suggesting that the provision of some level of wireless service in the past necessarily demonstrates that there is no effective prohibition of service under the state or local legal requirements that applied during those periods or that an effective prohibition only is present if a provider can provide no covered service whatsoever. See, e.g., City and County of San Francisco Comments at 25-26; Virginia Joint Commenters Comments, Exh. A at 31-33. Nor, in light of these goals, do we find it reasonable to interpret the protections of these provisions as doing nothing more than guarding against a monopoly as some suggest. See, e.g., Smart Communities Comments, WC Docket No. 17-84, at 8-9 (filed June 15, 2017) cited in Smart Communities Comments at 57 n.141.
intensive use of the electromagnetic spectrum.”⁸⁹ These provisions demonstrate that our interpretation of Section 253 and Section 332(c)(7)(B)(i)(II) is in accordance with the broader goals of the various statutes that the Commission is entrusted to administer.

39. California Payphone further concluded that providers must be allowed to compete in a “fair and balanced regulatory environment.”⁹⁰ As reflected in decisions such as the Commission’s Texas PUC Order, a state or local legal requirement can function as an effective prohibition either because of the resulting “financial burden” in an absolute sense, or, independently, because of a resulting competitive disparity.⁹¹ We clarify that “[a] regulatory structure that gives an advantage to particular services or facilities has a prohibitory effect, even if there are no express barriers to entry in the state or local code; the greater the discriminatory effect, the more certain it is that entities providing service using the disfavored facilities will experience prohibition.”⁹² This conclusion is consistent with both Commission and judicial precedent recognizing the prohibitory effect that results from a competitor being treated materially differently than similarly-situated providers.⁹³ We provide our authoritative interpretation below of the circumstances in which a “financial burden,” as described in the Texas PUC Order, constitutes an effective prohibition in the context of certain state and local fees.

40. As we explained above, we reject alternative readings of the effective prohibition language that have been adopted by some courts and used to defend local requirements that have the effect of prohibiting densification of networks. Decisions that have applied solely a “coverage gap”-based approach under Section 332(c)(7)(B)(i)(II) reflect both an unduly narrow reading of the statute and an outdated view of the marketplace.⁹⁴ Those cases, including some that formed the foundation for

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⁹⁰ California Payphone, 12 FCC Rcd at 14206, para. 31.

⁹¹ Texas PUC Order, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81; see also, e.g., Crown Castle June 7, 2018 Ex Parte at 10-11, 13.


⁹⁴ Smart Communities seeks clarification of whether this Declaratory Ruling is meant to say that the “coverage gap” standard followed by a number of courts should include consideration of capacity as well as coverage issues. Letter from Gerard Lavery Lederer, Counsel, Smart Communities and Special Districts Coalition, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Att. at 17 (Sept. 19, 2018) (Smart Communities Sept. 19 Ex Parte Letter). We are not holding that prior “coverage gap” analyses are consistent with the standards we articulate here as long as they also take into account “capacity gaps”; rather, we are articulating here the effective prohibition standard that should apply while, at the same time, noting one way in which prior approaches erred by requiring coverage gaps. Accordingly, we reject both the version of the “coverage gap” test followed by the First, Fourth, and Seventh Circuits (requiring applicants to show “not just that this application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try”) and the version endorsed by the Second, Third, and Ninth Circuits (requiring applicants to show that the proposed facilities are the “least intrusive means” for filling a coverage gap) See supra n. 75. We also note that some courts have expressed concern about alternative readings of the statute that would lead to extreme outcomes—either always requiring a grant under some interpretations, or never preventing a denial under other interpretations. See, e.g., Willloth, 176 F.3d at 639-41; APT, 196 F.3d at 478-79; Town of Amherst v. Omnipoint Communications Enterprises, Inc., 173 F.3d 9, 14 (1st Cir. 1999); AT&T Wireless PCS v. City Council of Virginia Beach, 155 F.3d 423, 428 (4th Cir. 1998) (City Council of Virginia Beach); see also, e.g., Greenling Comments at 2; City and County of San Francisco Reply
“coverage gap”-based analytical approaches, appear to view wireless service as if it were a single, monolithic offering provided only via traditional wireless towers. 95 By contrast, the current wireless marketplace is characterized by a wide variety of offerings with differing service characteristics and deployment strategies. 96 As Crown Castle explains, coverage gap-based approaches are “simply

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at 16. Our interpretation avoids those concerns while better reflecting the text and policy goals of the Communications Act and 1996 Act than coverage gap-based approaches ultimately adopted by those courts. Our approach ensures meaningful constraints on state and local conduct that otherwise would prohibit or have the effect of prohibiting the provision of personal wireless services. At the same time, our standard does not preclude all state and local denials of requests for the placement, construction, or modification of personal wireless service facilities, as explained below. See infra III.B, C.

95 See, e.g., Willoth, 176 F.3d at 641-44; 360 Degrees Commc’ns Co. v. Board of Supervisors of Albemarle County, 211 F.3d 79, 86-88 & n.1 (4th Cir. 2000) (Albemarle County); see also, e.g., ExteNet Comments at 29; T-Mobile Comments at 42; Verizon Comments at 18; WIA Comments at 38-40. Even some cases that implicitly recognize the limitations of a gap-based test fail to account for those limitations in practice when applying Section 332(c)(7)(B)(i)(II). See, e.g., Second Generation Properties v. Town of Pelham, 313 F.3d 620, 633 n.14 (4th Cir. 2002) (discussing scenarios where a carrier has coverage but insufficient capacity to adequately handle the volume of calls or where new technology emerges and a carrier would like to use it in areas that already have coverage using prior-generation technology). Courts that have sought to identify limited set of characteristics of personal wireless services covered by the Act essentially allow actual or effective prohibition of many personal wireless services that providers wish to offer with additional or more advanced characteristics. See, e.g., Willoth, 176 F.3d at 641-43 (drawing upon certain statutory definitions); Cellular Tel. Co. v. Zoning Bd. of Adjustment of the Borough of Ho-Ho-Kus, 197 F.3d 64, 70 (3d Cir. 1999) (Borough of Ho-Ho-Kus) (concluding that it should be up to state or local authorities to assess and weigh the benefits of differing service qualities); Albemarle County, 211 F.3d at 87 (citing 47 CFR §§ 22.99, 22.911(b) as noting the possibility of some “dead spots”); cf. USCOC of Greater Iowa, Inc. v. Zoning Bd. of Adjustment of the City of Des Moines, 465 F.3d 817 (8th Cir. 2006) (describing as a “dubious proposition” the argument that a denial of a request to construct a tower resulting in “less than optimal” service quality could be an effective prohibition). An outcome that allows the actual or effective prohibition of some covered services is contrary to the Act. Section 253(a) applies to any state or local legal requirement that prohibits or has the effect of prohibiting any entity from providing “any” interstate or intrastate telecommunications service, 47 U.S.C. § 253(a). Similarly, Section 332(c)(7)(B)(i)(II) categorically precludes state or local regulation of the placement, construction, or modification of personal wireless service facilities that prohibits or has the effect of prohibiting the provision of personal wireless “services.” 47 U.S.C. § 332(c)(7)(B)(i)(II). We find the most natural interpretation of these sections is that any service that meets the definition of “telecommunications service” or “personal wireless service” is encompassed by the language of each provision, rather than only some subset of such services or service generally. The notion that such state or local regulation permit[s]sly could prohibit some personal wireless services, so long as others are available, is at odds with that interpretation. In addition, as we explain above, a contrary approach would fail to advance important statutory goals as well as the interpretation we adopt. Further, the approach reflected in these court decisions could involve state or local authorities “inquir[ing] into and regulat[ing] the services offered—an inquiry for which they are ill-qualified to pursue and which could only delay infrastructure deployment.” Crown Castle June 7, 2018 Ex Parte Letter at 14. Instead, our effective prohibition analysis focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public.

96 See generally, e.g., Twentieth Wireless Competition Report, 32 FCC Rcd at 8968; see also, e.g., T-Mobile Comments at 42-43; AT&T Reply at 4-5; CTIA Reply at 13-14; WIA Reply at 23-24; Crown Castle June 7, 2018 Ex Parte Letter at 15. We do not suggest that viewing wireless service as if it were a single, monolithic offering provided only via traditional wireless towers would have reflected an accurate understanding of the marketplace in the past, even if it might have been somewhat more understandable that courts held such a simplified view at that time. Rather, the current marketplace conditions highlight even more starkly the shortcomings of coverage gap-based approaches, which do not account for other characteristics and deployment strategies. See, e.g., Twentieth Wireless Competition Report, 32 FCC Rcd at 8974-75, para. 12 (observing that “[p]roviders of mobile wireless services typically offer an array of mobile voice and data services,” including “interconnected mobile voice services”); id. at 8997-97, paras. 42-43 (discussing various types of wireless infrastructure deployment to, among
incompatible with a world where the vast majority of new wireless builds are going to be designed to add network capacity and take advantage of new technologies, rather than plug gaps in network coverage.”

Moreover, a critical feature of these new wireless builds is to accommodate increased in-building use of wireless services, necessitating deployment of small cells in order to ensure quality service to wireless callers within such buildings.

41. Likewise, we reject the suggestion of some courts like the Eighth and Ninth Circuits that evidence of an existing or complete inability to offer a telecommunications service is required under section 253(a). Such an approach is contrary to the material inhibition standard of California Payphone and the correct recognition by courts “that a prohibition does not have to be complete or ‘insurmountable’” to constitute an effective prohibition. Commission precedent beginning with California Payphone itself makes clear that an insurmountable barrier is not required to find an effective prohibition under Section 253(a). The “effectively prohibit” language must have some meaning independent of the “prohibit”

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other things, “improve spectrum efficiency for 4G and future 5G services,” “to fill local coverage gaps, to densify networks and to increase local capacity”).

97 Crown Castle June 7, 2018 Ex Parte Letter at 15; see also id. at 13 (“Densification of networks will be key for augmenting the capacity of existing networks and laying the groundwork for the deployment of 5G.”); id. at 15-16 (“When trying to maximize spectrum re-use and boost capacity, moving facilities by just a few hundred feet can mean the difference between excellent service and poor service. The FCC’s rules, therefore, must account for the effect siting decisions would have on every level of service, including increasing capacity and adding new spectrum bands. Practices and decisions that prevent carriers from doing either materially prohibit the provision of telecommunications service and thus should be considered impermissible under Section 332. ”). Contrary approaches appear to occur in part when courts’ policy balancing places more importance on broadly preserving state and local authority than is justified. See, e.g., APT, 196 F.3d at 479; Albermarle County, 211 F.3d at 86; City Council of Virginia Beach, 155 F.3d at 429; National Tower, LLC v. Plainville Zoning Bd. of Appeals, 297 F.3d 14 (1st Cir. 2002); see also, e.g., League of Arizona Cities et al. Joint Comments at 45; Smart Communities Reply at 33. As explained above, our interpretation that “telecommunications services” in Section 253(a) and “personal wireless services” in Section 332(c)(7)(B)(i)(II) are focused on the covered services that providers seek to provide —including the relevant service characteristics they seek to incorporate—not only is consistent with the text of those provisions but better reflects the broader policy goals of the Communications Act and the 1996 Act.

98 See WIA Comments at 39; T-Mobile Comments at 43-44.

99 See, e.g., County of San Diego, 543 F.3d at 577, 579-80; City of St. Louis, 477 F.3d at 533-34; see also, e.g., Virginia Joint Commenters Comments, Exh. A at 39-41. Although the Ninth Circuit in County of San Diego found that “the unambiguous text of §253(a)” precluded a prior Ninth Circuit approach that found an effective prohibition based on broad governmental discretion and the “mere possibility of prohibition,” that holding is not implicated by our interpretations here. County of San Diego, 543 F.3d at 578; cf. City of St. Louis, 477 F.3d at 532. Consequently, those decisions do not preclude the Commission’s interpretations here, see, e.g., Verizon Reply at 7, and we reject claims to the contrary. See, e.g., Smart Communities Comments at 60.

100 City of White Plains, 305 F.3d at 76 (citing RT Commc’ns, 201 F.3d at 1268); see also, e.g., Municipality of Guayanilla, 450 F.3d at 18 (quoting City of White Plains, 305 F.3d at 76 and citing City of Santa Fe, 380 F.3d at 1269); Crown Castle June 7, 2018 Ex Parte Letter at 12; Verizon Aug. 10, 2018 Ex Parte Letter, Attach at 5. Indeed, the Eighth Circuit’s City of St. Louis decision acknowledges that under Section 253 “[t]he plaintiff need not show a complete or insurmountable prohibition,” even while other aspects of that decision suggest that an insurmountable barrier effectively would be required. City of St. Louis, 477 F.3d at 533 (citing City of White Plains, 305 F.3d at 76).

101 In California Payphone, the Commission concluded that the ordinance at issue “does not ‘prohibit’ the ability of any payphone service provider to provide payphone service in the Central Business District within the meaning of section 253(a),” but went on to evaluate the possibility of an effective prohibition by considering “whether the Ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” California Payphone, 12 FCC Rcd at 14205, 14206, paras. 28, 31. In the Texas PUC Order, the Commission found that state law build-out requirements would require “substantial financial investment” and a “comparatively high cost per loop sold” in particular areas, interfering with the
language, and we find that the interpretation of the First, Second, and Tenth Circuits reflects that principle, while being more consistent with the California Payphone standard than the approach of the Eighth and Ninth Circuits.\(^{102}\) The reasonableness of our interpretation that ‘effective prohibition’ does not require a showing of an insurmountable barrier to entry is demonstrated not only by a number of circuit courts’ acceptance of that view, but in the Supreme Court’s own characterization of Section 253(a) as “prohibit[ing] state and local regulation that impedes the provision of telecommunications service.”\(^{103}\)

42. The Eighth and Ninth Circuits’ suggestion that a provider must show an insurmountable barrier to entry in the jurisdiction imposing the relevant regulation is at odds with relevant statutory purposes and goals, as well. Section 253(a) is designed to protect “any entity” seeking to provide telecommunications services from state and local barriers to entry, and Sections 253(b) and (c) emphasize the importance of “competitively neutral” and “nondiscriminatory” treatment of providers.\(^{104}\) Yet focusing on whether the carrier seeking relief faces an insurmountable barrier to entry would lead to disparities in statutory protections among providers based merely on considerations such as their access to capital and the breadth or narrowness of their entry strategies.\(^{105}\) In addition, the Commission has observed in connection with Section 253: “Each local government may believe it is simply protecting the

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“statewide entry” plans that new entrants “may reasonable contemplate” in violation of Section 253(a) notwithstanding claims that the specific new entrants at issue had “vast resources and access to capital” sufficient to meet those added costs. Texas PUC Order, 13 FCC Rcd at 3498, para. 78. The Commission also has expressed “great concern” about an exclusive rights-of-way access agreement that “appear[ed] to have the potential to adversely affect the provision of telecommunications services by facilities-based providers, in violation of the provision of section 253(a),” Minnesota Order, 14 FCC Rcd at 21700, para. 3. As another example, in the Western Wireless Order, the Commission stated that a “universal service fund mechanism that provides funding only to ILECs” would likely violate Section 253(a) not because it was insurmountable but because it would “effectively lower the price of ILEC-provided service relative to competitor-provided service” and thus “give customers a strong incentive to choose service from ILECs rather than competitors.” Western Wireless Order, 15 FCC Rcd at 16231, para. 8.

\(^{102}\) We discuss specific applications of the California Payphone standard in the context of certain fees and non-fee regulations in the sections below; we leave others to be addressed case-by-case as they arise or otherwise are taken up by the Commission or courts in the future.

\(^{103}\) Verizon Communications, Inc. v. FCC, 535 U.S. 467, 491 (2002) (emphasis added); see also, e.g., Level 3 Communications, Petition for a Writ of Certiorari, Level 3 Communications, LLC v. City of St. Louis, No. 08-626, at 13 (filed Nov. 7, 2008) (“[T]he term ‘[p]rohibit’ commonly has a less absolute meaning than that adopted below, and properly refers to actions that ‘hold back,’ ‘hinder,’ or ‘obstruct.’” (quoting Random House Webster’s Unabridged Dictionary 1546 (2d ed. 1998))). We thus are not compelled to interpret ‘effective prohibition’ to set the high bar suggested by some commenters based on other dictionary definitions. Smart Communities Petition for Reconsideration, WC Docket No. 17-84, WT Docket No. 17-79 at 7 (filed Sept. 4, 2018). Because we are unpersuaded that the statutory terminology requires us to interpret an effective prohibition as satisfied only by an insurmountable barrier to entry, we likewise reject commenters’ attempts to argue that “effective prohibition” must be understood to set a higher bar by comparison to the “impairment” language in Section 251 of the Act and associated regulatory interpretations of network unbundling requirements taken from that context. Id at 6. In addition, commenters do not demonstrate why the statutory framework and regulatory context of network unbundling under Section 251—and the specific concerns about access by non-facilities-based providers to competitive networks underlying the court precedent they cite—is sufficiently analogous to that of Section 253 and Section 332(c)(7)(B)(i)(II) that statements from that context should inform our interpretation here. See, e.g., AT&T Corp. v. Iowa Utilities Bd., 525 U.S. at 392. In responding to these discrete arguments raised in a petition for reconsideration of the Moratoria Declaratory Ruling that bear on actions we take in this order we do not thereby resolve any of the petition’s arguments with respect to that order. The requests for relief raised in the petition remain pending in full.

\(^{104}\) 47 U.S.C. § 253(a), (b), (c).

\(^{105}\) See, e.g., Texas PUC Order, 13 FCC Rcd at 3498, para. 78 (rejecting claims that there should be a higher bar to find an effective prohibition for providers with significant financial resources and recognizing that the effects of the relevant state requirements on a given provider could differ depending on the planned geographic scope of entry).
interests of its constituents. The telecommunications interests of constituents, however, are not only local. They are statewide, national and international as well. We believe that Congress’ recognition of this fact was the genesis of its grant of preemption authority to this Commission.” 106 As illustrated by our consideration of effective prohibitions flowing from state and local fees, there also can be cases where a narrow focus on whether an insurmountable barrier can be shown within the jurisdiction imposing a particular legal requirement would neglect the serious effects that flow through in other jurisdictions as a result, including harms to regional or national deployment efforts. 107

B. State and Local Fees

43. Federal courts have long recognized that the fees charged by local governments for the deployment of communications infrastructure can run afoul of the limits Congress imposed in the effective prohibition standard embodied in Sections 253 and 332. 108 In Municipality of Guayanilla, for example, the First Circuit addressed whether a city could lawfully charge a 5 percent gross revenue fee. The court found that the “5% gross revenue fee would constitute a substantial increase in costs” for the provider, and that the ordinance consequently “will negatively affect [the provider’s] profitability.” 109 The fee, together with other requirements, thus “place a significant burden” on the provider. 110 In light of this analysis, the First Circuit agreed that the fee “‘materially inhibits or limits the ability’” of the provider “‘to compete in a fair and balanced legal and regulatory environment.’” 111 The court thus held that the fee does not survive scrutiny under Section 253. In doing so, the First Circuit also noted that the inquiry is not limited to the impact that a fee would have on deployment in the jurisdiction that imposes the fee. Rather, the court noted the aggregate effect of fees when totaled across all relevant jurisdictions. 112 At the same time, the First Circuit did not decide whether the fair and reasonable compensation allowed under Section 253 must be limited to cost recovery or, at the very least, related to the actual use of the ROW. 113

44. In City of White Plains, the Second Circuit likewise faced a 5 percent gross revenue fee, which it found to be “[t]he most significant provision” in a franchise agreement implementing an ordinance that the court concluded effectively prohibited service in violation of Section 253. 114 While the court noted that “compensation is . . . sometimes used as a synonym for cost,” 115 it ultimately did not resolve whether fair and reasonable compensation “is limited to cost recovery, or whether it also extends to a reasonable rent,” relying instead on the fact that “White Plains has not attempted to charge Verizon


107 See infra Part III.B.

108 The Commission also has recognized the potential for fees to result in an effective prohibition. See, e.g., Pittencrief, 13 FCC Rcd at 1751-52, para. 37 (observing that “even a neutral [universal service] contribution requirement might under some circumstances effectively prohibit an entity from offering a service”).

109 Municipality of Guayanilla, 450 F.3d at 18-19.

110 Id. at 19.

111 Id. (quoting City of White Plains, 305 F.3d at 76).

112 Municipality of Guayanilla, 450 F.3d at 17 (looking at the aggregate cost of fees charged across jurisdictions given the interconnected nature of the service).

113 Id. at 22 (“We need not decide whether fees imposed on telecommunications providers by state and local governments must be limited to cost recovery. We agree with the district court’s reasoning that fees should be, at the very least, related to the actual use of rights of way and that ‘the costs [of maintaining those rights of way] are an essential part of the equation.’”).

114 City of White Plains, 305 F.3d at 77.

115 Id. In this context, the court stated that the term “compensation” is “flexible” and capable of different meanings depending on the context in which it is used. Id.
the fee that it seeks to charge TCG," thus failing Section 253’s “competitively neutral and
c nondiscriminatory” standard.116 But the court did observe that “Section 253(c) requires compensation to
be reasonable essentially to prevent monopolist pricing by towns.”117

45. In another example, the Tenth Circuit in City of Santa Fe addressed a $6,000 per foot fee
set for Qwest’s use of the ROW.118 The court held “that the rental provisions are prohibitive because they create[d] a massive increase in cost” for Qwest.119 The court recognized that Section 253 allows the
recovery of cost-based fees, though it ultimately did not decide whether to “measure ‘fair and reasonable’
by the City’s costs or by a ‘totality of circumstances test’” applied in other courts because it determined
that the fees at issue were not cost-based and “fail[ed] even the totality of the circumstances test.”120 Consequently, the fee was preempted under Section 253.

46. At the same time, the courts have adopted different approaches to analyzing whether fees
run afoul of Section 253, at times failing even to articulate a particular test.121 Among other things, courts
have expressed different views on whether Section 253 limits states’ and localities’ fees to recovery of
their costs or allows fees set in excess of that level.122 We articulate below the Commission’s
interpretation of Section 253(a) and the standards we adopt for evaluating when a fee for Small Wireless
Facility deployment is preempted, regardless how the fee is challenged. We also clarify that the
Commission interprets Section 332(c)(7)(B)(i)(II) to have the same substantive meaning as Section
253(a).

47. Record Evidence on Costs Associated with Small Wireless Facilities. Keeping pace with
the demands on current 4G networks and upgrading our country’s wireless infrastructure to 5G require

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116 City of White Plains, 305 F.3d at 79. In particular, the court concluded that “fees that exempt one competitor are
inherently not ‘competitively neutral,’ regardless of how that competitor uses its resulting market advantage,” id. at
80, and thus “[a]llowing White Plains to strengthen the competitive position of the incumbent service provider
would run directly contrary to the pro-competitive goals of the [1996 Act],” id. at 79.

117 Id.

118 City of Santa Fe, 380 F.3d at 1270-71.

119 Id. at 1271.

120 Id. at 1272 (observing that “[t]he City acknowledges . . . that the rent required by the Ordinance is not limited to
recovery of costs”).

121 Compare, e.g., Municipality of Guayanilla, 450 F.3d at 18-19 (finding that fees were significant and had the
effect of prohibiting service); City of Santa Fe, 380 F.3d at 1271 (similar); with, e.g., Qwest v. Elephant Butte
Irrigation Dist., 616 F. Supp. 2d 1110, 1123-24 (D.N.M. 2008) (rejecting Qwest’s reliance on preceding finding of
effective prohibition from quadrupled costs where the fee at issue was a penny per foot); Qwest v. City of Portland,
2006 WL 2679543, *15 (D. Or. 2006) (asserting with no explanation that “a registration fee of $35 and a refundable
deposit of $2,000 towards processing expenses . . . could not possibly have the effect of prohibiting Qwest from
providing telecommunications services”).

122 For example and as noted above, in Municipality of Guayanilla the First Circuit reserved judgment on whether
the fair and reasonable compensation allowed under Section 253 must be limited to cost recovery or if it was
sufficient if the compensation was related to the actual use of rights of way. Municipality of Guayanilla, 450 F.3d at
22. Other courts have found reasonable compensation to require cost-based fees. XO Missouri v. City of Maryland
Heights, 256 F. Supp. 2d 987, 993-95 (E.D. Mo. 2003) (City of Maryland Heights); Bell Atlantic–Maryland, Inc. v.
Prince George’s County, 49 F. Supp. 2d 805, 818 (D. Md. 1999) (Prince George’s County) vacated on other
grounds, 212 F.3d 863 (4th Cir. 2000). Still other courts have applied a test that weighs a number of considerations
when evaluating whether compensation is fair and reasonable. TCG Detroit v. City of Dearborn, 206 F.3d 618, 625
(6th Cir. 2000) (City of Dearborn) (considering “the amount of use contemplated . . . the amount that other providers
would be willing to pay . . . and the fact that TCG had agreed in earlier negotiations to a fee almost identical to what
it now was challenging as unfair”).
the deployment of many more Small Wireless Facilities. For example, Verizon anticipates that network densification and the upgrade to 5G will require 10 to 100 times more antenna locations than currently exist. AT&T estimates that providers will deploy hundreds of thousands of wireless facilities in the next few years alone—equal to or more than the number providers have deployed in total over the last few decades. Sprint, in turn, has announced plans to build at least 40,000 new small sites over the next few years. A report from Accenture estimates that, overall, during the next three or four years, 300,000 small cells will need to be deployed—a total that it notes is “roughly double the number of macro cells built over the last 30 years.”

48. The many-fold increase in Small Wireless Facilities will magnify per-facility fees charged to providers. Per-facility fees that once may have been tolerable when providers built macro towers several miles apart now act as effective prohibitions when multiplied by each of the many Small Wireless Facilities to be deployed. Thus, a per-facility fee may affect a prohibition on 5G service or the densification needed to continue 4G service even if that same per-facility fee did not effectively prohibit previous generations of wireless service.

49. Cognizant of the changing technology and its interaction with regulations created for a previous generation of service, the 2017 Wireline Infrastructure NPRM/NOI sought comment on whether government-imposed fees could act as a prohibition within the meaning of Section 253, and if so, what fees would qualify for 253(c)’s savings clause. The 2017 Wireless Infrastructure NPRM/NOI similarly sought comment on the scope of Sections 253 and 332(c)(7) and on any new or updated guidance the Commission should provide, potentially through a Declaratory Ruling. In particular, the Commission sought comment on whether it should provide further guidance on how to interpret and apply the phrase “prohibit or have the effect of prohibiting.”

50. We conclude that ROW access fees, and fees for the use of government property in the ROW, such as light poles, traffic lights, utility poles, and other similar property suitable for hosting

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123 See CTIA June 27, 2018 Ex Parte Letter at 6 (“[s]mall cell technology is needed to support 4G densification and 5G connectivity.”); see also Accelerating Wireless Deployment by Removing Barriers to Infrastructure Investment, Report and Order, 32 FCC Rcd 9760, 9765, para. 12 (2017) (2017 Pole Replacement Order) (recognizing that Small Wireless Facilities will be increasingly necessary to support the rollout of next-generation services).

124 See Verizon Comments at 3; AT&T Comments at 1.

125 See Letter from Keith C. Buell, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Feb. 21, 2018).

126 Accelerating Future Economic Value Report at 6; see also Deloitte 5G Paper.


129 Wireless Infrastructure NPRM/NOI, 32 FCC Rcd at 3362, para. 90.

130 We do not find these fees to be taxes within the meaning of Section 601(c)(2) of the 1996 Act. See, e.g., Smart Communities Reply at 36 (quoting the savings clause for “State or local law pertaining to taxation” in Section 601(c)(2) of the 1996 Act). It is ambiguous whether a fee charged for access to ROWs should be viewed as a tax for purposes of Section 601(c)(2) of the 1996 Act. See, e.g., City of Dallas v. FCC, 118 F.3d 393, 397-98 (5th Cir. 1997) (distinguishing “the price paid to rent use of public right-of-ways” from a “tax” and citing similar precedent). Given that Congress clearly contemplated in Section 253(c) that states’ and localities’ fees for access to ROWs could be subject to preemption where they violate Section 253—or else the savings clause in that regard would be superfluous—we find the better view is that such fees do not represent a tax encompassed by Section 601(c)(2) of
Small Wireless Facilities, as well as application or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of Small Wireless Facilities inside and outside the ROW, violate Sections 253 or 332(c)(7) unless these conditions are met: (1) the fees are a reasonable approximation of the state or local government’s costs,\textsuperscript{131} (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.\textsuperscript{132}

51. We base our interpretation on several considerations, including the text and structure of the Act as informed by legislative history, the economics of capital expenditures in the context of Small Wireless Facilities (including the manner in which capital budgets are fixed \textit{ex ante}), and the extensive record evidence that shows the actual effects that state and local fees have in deterring wireless providers from adding to, improving, or densifying their networks and consequently the service offered over them (including, but not limited to, introducing next-generation 5G wireless service). We address each of these considerations in turn.

52. Text and Structure. We start our analysis with a consideration of the text and structure of Section 253. That section contains several related provisions that operate in tandem to define the roles that Congress intended the federal government, states, and localities to play in regulating the provision of telecommunications services. Section 253(a) sets forth Congress’s intent to preempt state or local legal requirements that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”\textsuperscript{133} Section 253(b), in turn, makes clear Congress’s intent that state “requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights

(Continued from previous page) the 1996 Act. We do not address whether particular fees could be considered taxes under other statutes not administered by the FCC, but we reject the suggestion that tests courts use to determine what constitute “taxes” in the context of such other statutes should apply to the Commission’s interpretation of Section 601(c)(2) here in light of the statutory context for Section 601(c)(2) in the 1996 Act and the Communications Act discussed above. See, \textit{e.g.}, \textit{Qwest Corp. v. City of Surprise}, 434 F.3d 1176, 1183-84 & n.3 (9th Cir. 2006) (holding that particular fees at issue there were taxes for purposes of the Tax Injunction Act and stating in dicta that had the Tax Injunction Act not applied it would agree with the conclusion of the district court that it was covered by Section 601(c)(2) of the 1996 Act); \textit{MCI Communications Services, Inc. v. City of Eugene}, 359 F. Appx. 692, 696 (9th Cir. 2009) (asserting without analysis that the same test would apply to determine if a fee constitutes a tax under both the Tax Injunction Act and Section 601(c)(2) of the 1996 Act).

\textsuperscript{131} By costs, we mean those costs specifically related to and caused by the deployment. These include, for instance, the costs of processing applications or permits, maintaining the ROW, and maintaining a structure within the ROW. \textit{See Puerto Rico Tel. Co. v. Municipality of Guayanilla}, 354 F. Supp. 2d 107, 114 (D.P.R. 2005) (\textit{Guayanilla District Ct. Opinion}), aff'd, 450 F.3d 9 (1st Cir. 2006) (“fees charged by a municipality need to be related to the degree of actual use of the public rights-of way” to constitute fair and reasonable compensation under Section 253(c)).

\textsuperscript{132} We explain above what we mean by “fees.” \textit{See supra} note 71. Contrary to some claims, we are not asserting a “general ratemaking authority.” \textit{Virginia Joint Commenters Comments} at 6. Our interpretations in this order bear on whether and when fees associated with Small Wireless Facility deployment have the effect of prohibiting wireless telecommunications service and thus are subject to preemption under Section 253(a), informed by the savings clause in Section 253(c). While that can implicate issues surrounding how those fees were established, it does so only to the extent needed to vindicate Congress’s intent in Section 253. We do not interpret Section 253(a) or (c) to authorize the regulation or establishment of state and local fees as an exercise in itself. We likewise are not persuaded by undeveloped assertions that the Commission’s interpretation of Section 253 in the context of fees would somehow violate constitutional separation of powers principles. \textit{See, e.g.}, \textit{Virginia Joint Commenters Comments}, Exh. A at 52.

\textsuperscript{133} 47 U.S.C. § 253(a).
of consumers” are not preempted.\textsuperscript{134} Of particular importance in the fee context, Section 253(c) reflects a considered policy judgment that “[n]othing in this section” shall prevent states and localities from recovering certain carefully delineated fees. Specifically, Section 253(c) makes clear that fees are not preempted that are “fair and reasonable” and imposed on a “competitively neutral and nondiscriminatory basis,” for “use of public rights-of-way on a “nondiscriminatory basis,”” so long as they are “publicly disclosed” by the government.\textsuperscript{135} Section 253(d), in turn, provides one non-exclusive mechanism by which a party can obtain a determination from the Commission of whether a specific state or local requirement is preempted under Section 253(a)—namely, by filing a petition with the Commission.\textsuperscript{136}

53. In reviewing this statutory scheme, the Commission previously has construed Section 253(a) as “broadly limit[ing] the ability of state[s] to regulate,” while the remaining subsections set forth “defined areas in which states may regulate.”\textsuperscript{137} We reaffirm this conclusion, consistent with the view of most courts to have considered the issue—namely, that Sections 253(b) and (c) make clear that certain state or local laws, regulations, and legal requirements are not preempted under the expansive scope of Section 253(a).\textsuperscript{138} Our interpretation of Section 253(a) is informed by this statutory context,\textsuperscript{139} and the observation of courts that when a preemption provision precedes a narrowly-tailored savings clause, it is reasonable to infer that Congress intended a broad preemptive scope.\textsuperscript{140} We need not decide today whether Section 253(a) preempts all fees not expressly saved by Section 253(c) with respect to all types of deployments. Rather, we conclude, based on the record before us, that with respect to Small Wireless Facilities, even fees that might seem small in isolation have material and prohibitive effects on deployment,\textsuperscript{141} particularly when considered in the aggregate given the nature and volume of anticipated Small Wireless Facility deployment.\textsuperscript{142} Against this backdrop, and in light of significant evidence, set forth herein, that Congress intended Section 253 to preempt legal requirements that effectively prohibit service, including wireless infrastructure deployment, we view the substantive standards for fees that Congress sought to insulate from preemption in Section 253(c) as an appropriate ceiling for state and local fees that apply to the deployment of Small Wireless Facilities in public ROWs.\textsuperscript{143}

\textsuperscript{134} 47 U.S.C. § 253(b).
\textsuperscript{135} 47 U.S.C. § 253(c).
\textsuperscript{136} 47 U.S.C. § 253(d).
\textsuperscript{137} Texas PUC Order, 13 FCC Rcd at 3481, para. 44.
\textsuperscript{138} See, e.g., Connect America Fund; Sandwich Isles Communications, Inc., Memorandum Opinion and Order, 32 FCC Rcd 5878, 5881, 5885-87, paras. 8, 19-25 (2017) (Sandwich Isles Section 253 Order); Texas PUC Order, 13 FCC Rcd at 3480-81, paras. 41-44; Global Network Commc’ns, Inc. v. City of New York, 562 F.3d 145, 150-51 (2d Cir. 2009); Southwestern Bell Tel. Co. v. City of Houston, 529 F.3d 257, 262 (5th Cir. 2008); City of St. Louis, 477 F.3d at 531-32 (8th Cir. 2007); Municipality of Guayanilla, 450 F.3d at 15-16; City of Santa Fe, 380 F.3d at 1269; BellSouth Telecomm’s, Inc. v. Town of Palm Beach, 252 F.3d 1169, 1187-89 (11th Cir. 2001). Some courts appear to have viewed Section 253(c) as an independent basis for preemption. See, e.g., City of Dearborn, 206 F.3d at 624 (after concluding that a franchise fee did not violate Section 253(a), going on to evaluate whether it was “fair and reasonable” under Section 253(c)). We find more persuasive the Commission and other court precedent to the contrary, which we find better adheres to the statutory language.
\textsuperscript{139} See, e.g., Utility Air Regulatory Group v. EPA, 134 S. Ct. 2427, 2442 (2014).
\textsuperscript{141} See infra paras. 62-63.
\textsuperscript{142} See, e.g., Wireless Infrastructure Second R&O, FCC 18-30, at para. 64.
\textsuperscript{143} See, e.g., Verizon Aug. 10, 2018 Ex Parte Letter, Attach. at 9-10. We therefore reject the view of those courts that have concluded that Section 253(a) necessarily requires some additional showing beyond the fact that a particular fee is not cost-based. See, e.g., Qwest v. City of Berkeley, 433 F.3d 1253, 1257 (9th Cir. 2006) (“we
54. In addition, notwithstanding that Section 253(c) only expressly governs ROW fees, we find it appropriate to look to its substantive standards as a ceiling for other state and local fees addressed by this Declaratory Ruling.\(^\text{144}\) For one, our evaluation of the material effects of fees on the deployment of Small Wireless Facilities does not differ whether the fees are for ROW access, use of government property within the ROW, or one-time application and review fees or the like—any of which drain limited capital resources that otherwise could be used for deployment—and we see no reason why the Act would tolerate a greater prohibitory effect in the case of application or review fees than for ROW fees.\(^\text{145}\) In addition, elements of the substantive standards for ROW fees in Section 253(c) appear at least analogous to elements of the California Payphone standard for evaluating an effective prohibition under Section 253(a). In pertinent part, both incorporate principles focused on the legal requirements to which a provider may be fairly subject,\(^\text{146}\) and seek to guard against competitive disparities.\(^\text{147}\) Without resolving the precise interplay of those concepts in Section 253(c) and the California Payphone standard, their similarities support our use of the substantive standards of Section 253(c) to inform our evaluation of fees at issue here that are not directly governed by that provision.

55. From the foregoing analysis, we can derive the three principles that we articulate in this Declaratory Ruling about the types of fees that are preempted. As explained in more detail below, we also interpret Section 253(c)’s “fair and reasonable compensation” provision to refer to fees that represent a reasonable approximation of actual and direct costs incurred by the government, where the costs being passed on are themselves objectively reasonable.\(^\text{148}\) Although there is precedent that “fair and reasonable” compensation could mean not only cost-based charges but also market-based charges in certain instances,\(^\text{149}\) the statutory context persuades us to adopt a cost-based interpretation here. In particular, while the general purpose of Section 253(c) is to preserve certain state and local conduct from preemption, it includes qualifications and limitations to cabin state and local action under that savings clause in ways that ensure appropriate protections for service providers. The reasonableness of interpreting the qualifications and limitations in the Section 253(c) savings clause as designed to protect the interests of service providers is emphasized by the statutory language. The “competitively neutral and

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\(\text{See supra note } 71.\)

\(^\text{144}\) \(\text{See supra note } 71.\)

\(^\text{145}\) \(\text{Cf. Cheney R. Co. v. ICC, } 902 \text{ F.2d } 66, 69 (D.C. Cir. 1990) (observing that the } \text{expressio unius } \text{canon is a “feeble helper in an administrative setting, where Congress is presumed to have left to reasonable agency discretion questions that it has not directly resolved,” and concluding there that “Congress's mandate in one context with its silence in another suggests not a prohibition but simply a decision not to mandate any solution in the second context, i.e., to leave the question to agency discretion”).}\)

\(^\text{146}\) For ROW compensation to be saved under Section 253(c) it must be “fair and reasonable,” while the California Payphone standard looks to whether a legal requirement “materially limits or inhibits” the ability to compete in a “fair” legal environment for a covered service. \(\text{California Payphone, } 12 \text{ FCC Rcd at } 14206, \text{para. } 31.\)

\(^\text{147}\) For ROW compensation to be saved under Section 253(c) it also must be “competitively neutral and nondiscriminatory,” while the California Payphone standard also looks to whether a legal requirement “materially limits or inhibits” the ability to compete in a “balanced” legal environment for a covered service. \(\text{California Payphone, } 12 \text{ FCC Rcd at } 14206, \text{para. } 31.\)

\(^\text{148}\) \(\text{See infra paras. } 69-77; \text{see also, e.g., City of Maryland Heights, } 256 \text{ F. Supp. } 2d \text{ at } 993-95; \text{Bell Atlantic–Maryland, } 49 \text{ F. Supp. } 2d \text{ at } 818.\)

\(^\text{149}\) \(\text{See, e.g., NetCoalition v. SEC, } 615 \text{ F.3d } 525 (D.C. Cir. 2010) (statute did not unambiguously require the SEC to interpret “fair and reasonable” to mean cost-based, and the SEC’s reliance on market-based rates as “fair and reasonable” where there was competition was a reasonable interpretation).\)
nondiscriminatory” and public disclosure qualifications in Section 253(c) appear most naturally understood as protecting the interest of service providers from fees that otherwise would have been saved from preemption under Section 253(c) absent those qualifiers. Under the *noscitur a sociis* canon of statutory interpretation, that context persuades us that the “fair and reasonable” qualifier in Section 253(c) similarly should be understood as focused on protecting the interest of providers. As discussed in greater detail below, while it might well be fair for providers to bear basic, reasonable costs of entry, the record does not reveal why it would be fair or reasonable from the standpoint of protecting providers to require them to bear costs beyond that level, particularly in the context of the deployment of Small Wireless Facilities. In addition, the text of Section 253(c) provides that ROW access fees must be imposed on a “competitively neutral and nondiscriminatory basis.” This means, for example, that fees charged to one provider cannot be materially higher than those charged to a competitor for similar uses.

56. Other considerations support our approach, as well. By its terms, Section 253(a) preempts state or local legal requirements that “prohibit” or have the “effect of prohibiting” the provision of services, and we agree with court precedent that “[m]erely allowing the [local government] to recoup its processing costs . . . cannot in and of itself prohibit the provision of services.” The Commission has long understood that Section 253(a) is focused on state or local barriers to entry for the provision of service, and we conclude that states and localities do not impose an unreasonable barrier to entry when they merely require providers to bear the direct and reasonable costs caused by their decision to enter the market. We decline to interpret a government’s recoupment of such fundamental costs of entry as having the effect of prohibiting the provision of services, nor has any commenter argued that recovery of cost by a government would prohibit service in a manner restricted by Section 253(a). Reasonable state and local regulation of facilities deployment is an important predicate for a viable marketplace for

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150 See, e.g., *Life Technologies Corp. v. Promega Corp.*, 137 S. Ct. 734 (2017) (“A word is given more precise content by the neighboring words with which it is associated.” (internal alteration and quotation marks omitted)).

151 See infra para. 56.

152 See, e.g., *City of White Plains*, 305 F.3d at 80.

153 *City of Santa Fe*, 380 F.3d at 1269; see also Verizon Comments at 17.

154 See, e.g., *Sandwich Isles Section 253 Order*, 32 FCC Rcd at 5878, 5882-83, paras. 1, 13; *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8; *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*, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21707, para. 18 (Minnesota Order); *Hyberion Order*, 14 FCC Rcd at 11070, para. 13; *Texas PUC Order*, 13 FCC Rcd at 3480, para. 41; *TCI Cablevision Order*, 12 FCC Rcd at 21399, para. 7; *California Payphone*, 12 FCC Rcd at 14209, para. 38; see also, e.g., *AT&T Comm’ns of the Sw. v. City of Dallas*, 8 F. Supp. 2d 582, 593 (N.D. Tx. 1998) (AT&T v. *City of Dallas*) (“[A]ny fee that is not based on AT&T’s use of City rights-of-way violates § 253(a) of the FTA as an economic barrier to entry.”); Verizon Comments at 11-12; Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 7. Because we view the *California Payphone* standard as reflecting a focus on barriers to entry, we decline requests to adopt a distinct, additional standard with that as an explicit focus. See, e.g., T-Mobile Comments at 35.

155 See, e.g., *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5301-03, paras. 142-45 (2011) (rejecting an approach to defining a lower bound rate for pole attachments that “would result in pole rental rates below incremental cost” as contrary to cost causation principles); *Investigation of Interstate Access Tariff Non-Recurring Charges*, Memorandum Opinion and Order, 2 FCC Rcd 3498, 3502, para. 34 (1987) (observing in the rate regulation context that “the public interest is best served, and a competitive marketplace is best encouraged, by policies that promote the recovery of costs from the cost-causer”). Our interpretation limiting states and localities to the recovery of a reasonable approximation of objectively reasonable cost also takes into account state and local governments’ exclusive control over access to the ROW.

156 For example, Verizon states that “[a]lthough any fee could be said to raise the cost of providing service,” Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 9, “[t]he Commission should interpret . . . Section 253(a) to allow cost-based fees for access to public rights-of-way and structures within them, but to prohibit above-cost fees that generate revenue in excess of state and local governments’ actual costs.” *Id.*, Attach. at 6.
communications services by protecting property rights and guarding against conflicting deployments that could harm or otherwise interfere with others’ use of property.\textsuperscript{157} By contrast, fees that recover more than the state or local costs associated with facilities deployment—or that are based on unreasonable costs, such as exorbitant consultant fees or the like—go beyond such governmental recovery of fundamental costs of entry. In addition, interpreting Section 253(a) to prohibit states and localities from recovering a reasonable approximation of reasonable costs could interfere with the ability of states to exercise the police powers reserved to them under the Tenth Amendment.\textsuperscript{158} We therefore conclude that Section 253(a) is circumscribed to permit states and localities to recover a reasonable approximation of their costs related to the deployment of Small Wireless Facilities.

57. **Commission Precedent.** We draw further confidence in our conclusions from the Commission’s \textit{California Payphone} decision, which we reaffirm here, finding that a state or local legal requirement would violate Section 253(a) if it “materially limits or inhibits” an entity’s ability to compete in a “balanced” legal environment for a covered service.\textsuperscript{159} As explained above, fees charged by a state or locality that recover the reasonable approximation of reasonable costs do not “materially inhibit” a provider’s ability to compete in a “balanced” legal environment. To the contrary, those costs enable localities to recover their necessary expenditures to provide a stable and predictable framework in which market participants can enter and compete. On the other hand, in the \textit{Texas PUC Order} interpreting \textit{California Payphone}, the Commission concluded that state or local legal requirements such as fees that impose a “financial burden” on providers can be effectively prohibitive.\textsuperscript{160} As the record shows, excessive state and local governments’ fees assessed on the deployment of Small Wireless Facilities in the ROW in fact materially inhibit the ability of many providers to compete in a balanced environment.\textsuperscript{161}

58. \textit{California Payphone} and \textit{Texas PUC} separately support the conclusion that fees cannot be discriminatory or introduce competitive disparities, as such fees would be inconsistent with a “balanced” regulatory marketplace. Thus, fees that treat one competitor materially differently than other competitors in similar situations are themselves grounds for finding an effective prohibition—even in the case of fees that are a reasonable approximation of the actual and reasonable costs incurred by the state or locality. Indeed, the Commission has previously recognized the potential for subsidies provided to one

\textsuperscript{157} See, e.g., TCI Cablevision Order, 12 FCC Rcd at 21441, para. 103; see also, e.g., Garrett Hardin, \textit{The Tragedy of the Commons}, 162 Sci. 1243 (1968). States’ or localities’ regulation premised on addressing effects of deployment besides these costs caused by facilities deployment are distinct issues, which we discuss below. See \textit{infra} Part III.C.

\textsuperscript{158} The Supreme Court has recognized that land use regulation can involve an exercise of police powers. See, e.g., \textit{Hodel v. Va. Surface Min. & Reclamation Ass’n, Inc.}, 452 U.S. 264, 289 (1981). As that Court observed, “[i]t would . . . be a radical departure from long-established precedent for this Court to hold that the Tenth Amendment prohibits Congress from displacing state police power laws regulating private activity.” \textit{Id.} at 292. At the same time, the Court also has held that “historic police powers of the States” are not to be preempted by federal law “unless that was the clear and manifest purpose of Congress.” \textit{Wisconsin Public Intervenor v. Mortier}, 501 U.S. 597, 605 (1991) (internal quotation marks omitted). As relevant here, we see no clear and manifest intent that Congress intended to preempt publicly disclosed, objectively reasonable cost-based fees imposed on a nondiscriminatory basis, particularly in light of Section 253(c).

\textsuperscript{159} We disagree with suggestions that the Commission applied an additional and more stringent “commercial viability” test in \textit{California Payphone}. See, e.g., Crown Castle June 7, 2018 \textit{Ex Parte} Letter at 10. Instead, the Commission was simply evaluating the Section 253 petition on its own terms, see, e.g., \textit{California Payphone}, 12 FCC Rcd at 14204, 14210, paras. 27, 41, and, without purporting to define the bounds of Section 253(a), explaining that the petitionor “ha[d] not sufficiently supported its allegation” that the provision of service at issue “would be ‘impractical and uneconomic.’” \textit{Id.} at 14210, para. 41. Confirming that this language was simply the Commission’s short-hand reference to arguments put forward by the petitioner itself, and not a Commission-announced standard for applying Section 253, the Commission has not applied a “commercial viability” standard in other decisions, as these same commenters recognize. See, e.g., Crown Castle June 7, 2018 \textit{Ex Parte} Letter at 10.

\textsuperscript{160} \textit{Texas PUC Order}, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81.

\textsuperscript{161} See \textit{infra} paras. 60-65.
competitor to distort the marketplace and create a barrier to entry in violation of Section 253(a). We reaffirm that conclusion here.

59. **Legislative History.** While our interpretation follows directly from the text and structure of the Act, our conclusion finds further support in the legislative history, which reflects Congress’s focus on the ability of states and localities to recover the reasonable costs they incur in maintaining the rights of way. Significantly, Senator Dianne Feinstein, during the floor debate on Section 253(c), “offered examples of the types of restrictions that Congress intended to permit under Section 253(c), including [to] ‘require a company to pay fees to recover an appropriate share of the increased street repair and paving costs that result from repeated excavation.’” Representative Bart Stupak, a sponsor of the legislation, similarly explained during the debate on Section 253 that “if a company plans to run 100 miles of trenching in our streets and wires to all parts of the cities, it imposes a different burden on the right-of-way than a company that just wants to string a wire across two streets to a couple of buildings,” making clear that the compensation described in the statute is related to the burden, or cost, from a provider’s use of the ROW. These statements buttress our interpretation of the text and structure of Section 253 and confirm Congress’s apparent intent to craft specific safe harbors for states and localities, and to permit recovery of reasonable costs related to the ROW as “fair and reasonable compensation,” while preempting fees above a reasonable approximation of cost that improperly inhibit service.

60. **Capital Expenditures.** Apart from the text, structure, and legislative history of the 1996 Act, an additional, independent justification for our interpretation follows from the simple, logical premise, supported by the record, that state and local fees in one place of deployment necessarily have the effect of reducing the amount of capital that providers can use to deploy infrastructure elsewhere, whether the reduction takes place on a local, regional or national level. We are persuaded that providers and infrastructure builders, like all economic actors, have a finite (though perhaps fluid) amount of resources to use for the deployment of infrastructure. This does not mean that these resources are limitless, however. We conclude that fees imposed by localities, above and beyond the recovery of localities’ reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere. This and regulatory uncertainty created by such effectively prohibitive conduct creates an

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163 See, e.g., *WIA Comments*, Attach. 2 at 70.

164 *WIA Comments*, Attach. 2 at 70 (quoting 141 Cong. Rec. S8172 (daily ed. June 12, 1995) (statement of Sen. Feinstein, quoting letter from Office of City Attorney, City and County of San Francisco)) (emphasis added)); see also, e.g., *Verizon Comments* at 15 (similar); *City of Maryland Heights*, 256 F. Supp. 2d at 995-96.


166 We reject other comments downplaying the relevance of legislative statements by some commenters as inconsistent with the text and structure of the Act. See, e.g., *League of Arizona Cities et al. Joint Comments* at 27-28; *NATOA Comments*, Exh. A at 26-28; *Smart Communities Reply* at 57-58; *Cities of San Antonio et al. Reply* at 20-21; see also, e.g., *City of Portland v. Electric Lightwave, Inc.*, 452 F. Supp. 2d 1049, 1071-72 (D. Or. 2005).

167 At a minimum, this analysis complements and reinforces the justifications for our interpretation provided above. While the relevant language of Section 253(a) and Section 332(c)(7)(B)(i)(II) is not limited just to Small Wireless Facilities, we proceed incrementally in our Declaratory Ruling here and address the record before us, which indicates that our interpretation of the effective prohibition standard here is particularly reasonable in the context of Small Wireless Facility deployment.

168 For example, the precise amount of these resources might shift as a service provider encounters unexpected costs, recovers costs passed on to subscribers, or earns a profit above those costs.

169 As Verizon observes, “[a] number of states enacted infrastructure legislation because they determined that rate relief was necessary to ensure wireless deployment,” and thus could be seen as having “acknowledged that excessive fees impose a substantial barrier to the provision of service.” Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 7-8. In view of the evidence in the record regarding the effect of state and local fees on capital expenditures, see, e.g., *Corning Sept. 5, 2018* *Ex Parte* Letter (noting that cost savings from reduced small cell attachment and application
appreciable impact on resources that materially limits plans to deploy service. This record evidence emphasizes the importance of evaluating the effect of fees on Small Wireless Facility deployment on an aggregate basis. Consistent with the First Circuit’s analysis in *Municipality of Guayanilla*, the record persuades us that fees associated with Small Wireless Facility deployment lead to “a substantial increase in costs”—particularly when considered in the aggregate—thereby “plac[ing] a significant burden” on carriers and materially inhibiting their provision of service contrary to Section 253 of the Act.¹⁷¹

61. The record is replete with evidence that providers have limited capital budgets that are constrained by state and local fees.¹⁷² As AT&T explains, “[a]ll providers have limited capital dollars to invest, funds that are quickly depleted when drained by excessive ROW fees.”¹⁷³ AT&T added that “[c]ompetitive demands will force carriers to deploy small cells in the largest cities. But, when those largest cities charge excessive fees to access ROWs and municipal ROW structures, carriers’ finite capital dollars are prematurely depleted, leaving less for investment in mid-level cities and smaller communities. Larger municipalities have little incentive to not overcharge, and mid-level cities and smaller

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fees could result in $2.4 billion in capital expenditure and that 97% of this capital expenditure would go toward investments in rural and suburban areas), we disagree with arguments that fees do not affect the deployment of wireless facilities in rural and underserved areas. See, e.g., Letter from Sam Liccardo, Mayor, City of San Jose, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 4 (filed Sept. 18, 2018) (City of San Jose Sept. 18, 2018 Ex Parte Letter) (stating that “whether or not a provider wishes to invest in a dense urban area, including underserved urban areas, or a rural area is fundamentally based on the size of the customer base and the market demand for service—not on the purported wiles of a ‘must-serve’ jurisdiction somehow forcing investment away from rural areas because a right of way or attachment fee is charged.”); Letter from Joanne Hovis, Chief Executive Officer, Coalition for Local Internet Choice, James Baller, President, Coalition for Local Internet Choice, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 3 (filed Sept. 18, 2018) (“in lucrative areas, carriers will pay market fees for access to property just as they would any other cost of doing business. But they will not, as rational economic actors, necessarily apply new profits (created by FCC preemption) to deploying in otherwise unattractive areas.”).¹⁷⁰

¹⁷⁰ See, e.g., CTIA Comments at 32 (identifying “disparate interpretations” regarding the fees that are preempted and seeking FCC clarification to “dispel the resulting uncertainty”); Verizon Comments at 10 (similar); Letter from Cathleen A. Massey, Vice Pres.-Fed. Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 7 (filed Sept. 21, 2017) (seeking clarification of Section 253); BDAC Regulatory Barriers Report, p. 9 (“The FCC should provide guidance on what constitutes a fee that is excessive and/or duplicative, and that therefore is not ‘fair and reasonable.’ The Commission should specifically clarify that ‘fair and reasonable’ compensation for right-of-way access and use implies some relation to the burden of new equipment placed in the ROW or on the local asset, or some other objective standard.”).

¹⁷¹ *Municipality of Guayanilla*, 450 F.3d at 19.

¹⁷² See, e.g., AT&T Comments at 2; Conterra Broadband et al. Comments at 6; Mobilitie Comments at 3; Sprint Comments at 17; Letter from Courtney Neville, Associate General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2-3 (filed July 16, 2018) (CCA July 16, 2018 Ex Parte Letter); Letter from Henry Hultquist, Vice President, Federal Regulatory, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed June 8, 2018) (AT&T June 8, 2018 Ex Parte Letter); Crown Castle June 7, 2018 Ex Parte Letter at 2; Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed June 21, 2018) (Verizon June 21, 2018 Ex Parte Letter); Letter from Ronald W. Del Sesto, Jr., Counsel for Uniti Fiber, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 5 (filed Oct. 30, 2017); Verizon Aug. 10, 2018 Ex Parte Letter, Attach. at 2-4. When developing capital budgets, companies rationed capital to anticipate for anticipated revenues associated with the services that can be provided by virtue of planned facilities deployment, and the record does not reveal—nor do we see any basis to assume—that such revenues would be so great as to eliminate constraints on providers’ capital budgets so as to enable full deployment notwithstanding the level of state and local fees.

¹⁷³ AT&T Aug. 6, 2018 Ex Parte Letter at 2.
municipalities have no ability to avoid this harm.”

As to areas that might not be sufficiently crucial to deployment to overcome high fees, AT&T identified jurisdictions in Maryland, California, and Massachusetts where high fees have directly resulted in paused or decreased deployments. Limiting localities to reasonable cost recovery will “allow[] AT&T and other providers to stretch finite capital dollars to additional communities.” Verizon similarly explains that “[c]apital budgets are finite. When providers are forced to spend more to deploy infrastructure in one locality, there is less money to spend in others. The leverage that some cities have to extract high fees means that other localities will not enjoy next generation wireless broadband services as quickly, if at all.” Sprint, too, affirms that, because “all carriers face limited capital budgets, they are forced to limit the number and pace of their deployment investments to areas where the delays and impediments are the least onerous, to the detriment of their customers and, ultimately and ironically, to the very jurisdictions that imposed obstacles in the first place.” Sprint gives a specific example of its deployments in two adjacent jurisdictions—the City of Los Angeles and Los Angeles County—and describes how high fees in the county prevented Sprint from activating any small cells there, while more than 500 deployments occurred in the city, which had significantly lower fees. Similarly, Conterra Broadband states that “[w]hen time and capital are diverted away from actual facility installation and instead devoted to clearing regulatory roadblocks, consumers and enterprises, including local small businesses, schools and healthcare centers, suffer.”

Based on the record, we find that fees charged by states and localities are causing actual delays and restrictions on deployments of Small Wireless Facilities in a number of places across the country in violation of Section 253(a).

62. Our conclusion finds further support when one considers the aggregate effects of fees imposed by individual localities, including, but not limited to, the potential limiting implications for a nationwide wireless network that reaches all Americans, which is among the key objectives of the statutory provisions in the 1996 Act that we interpret here. When evaluating whether fees result in an effective prohibition of service due to financial burden, we must consider the marketplace regionally and nationally and thus must consider the cumulative effects of state or local fees on service in multiple geographic areas that providers serve or potentially would serve. Where providers seek to operate on a regional or national basis, they have constrained resources for entering new markets or introducing, expanding, or improving existing services, particularly given that a provider’s capital budget for a given

174 Id.

175 Id. (pausing or delaying deployments in Citrus Heights, CA, Oakland, CA and three Maryland counties; decreasing deployments in Lowell, MA and decreasing deployments from 98 to 25 sites in Escondido, CA).

176 Id.


178 Sprint Comments at 17.


180 Conterra Broadband et al. Comments at 6; see also Letter from John Scott, Counsel for Mobilitie, LLC to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (“high fees imposed by some cities hurt other cities that have reasonable fees, because they reduce capital resources that might have gone to those cities, and because they pressure other financially strapped cities not to turn away what appears to be a revenue opportunity”).


period of time is often set in advance. In such cases, the resources consumed in serving one geographic area are likely to deplete the resources available for serving other areas. The text of Section 253(a) is not limited by its terms only to effective prohibitions within the geographic area targeted by the state or local fee. Where a fee in a geographic area affects service outside that geographic area, the statute is most naturally read to encompass consideration of all affected areas.

63. A contrary, geographically-restrictive interpretation of Section 253(a) would exacerbate the digital divide by giving dense or wealthy states and localities that might be most critical for a provider to serve the ability to leverage their unique position to extract fees for their own benefit at the expense of regional or national deployment by decreasing the deployment resources available for less wealthy or dense jurisdictions. As a result, the areas likely to be hardest hit by excessive government fees are not necessarily jurisdictions that charge those fees, but rather areas where the case for new, expanded, or improved service was more marginal to start—and whose service may no longer be economically justifiable in the near-term given the resources demanded by the “must-serve” areas. To cite some examples of harmful aggregate effects, AT&T notes that high annual recurring fees are particularly harmful because of their “continuing and compounding nature.” It also states that, “if, as S&P Global Market Intelligence estimates, small-cell deployments reach nearly 800,000 by 2026, a ROW fee of $1000 per year … would result in nearly $800 million annually in forgone investment.” Yet another commenter notes that, “[f]or a deployment that requires a vast number of small cell facilities across a metropolitan area, these fees quickly mount up to hundreds of thousands of dollars, often making deployment economically infeasible,” and “far exceed[ing] any costs the locality incurs by orders of magnitude, while taking capital that would otherwise go to investment in new infrastructure.”

Endorsing such a result would thwart the purposes underlying Section 253(a). As Crown Castle observes, “[e]ven where the fees do not result in a direct lack of service in a high-demand area like a city or urban core, the high cost of building and operating facilities in these jurisdictions consume [sic] capital and revenue that could otherwise be used to expand wireless infrastructure in higher cost areas. This impact of egregious fees is prohibitory and should be taken into account in any prohibition analysis.”

64. Some municipal commenters endorse a cost-based approach to “ensure that localities are fully compensated for their costs [and that] fees should be reasonable and non-discriminatory, and should ensure that localities are made whole” in recognition that “getting [5G] infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources.” Commenters from smaller municipalities recognize that “thousands and thousands of small cells are needed for 5G… [and]

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183 See, e.g., AT&T June 8, 2018 Ex Parte Letter at 2; Crown Castle June 7, 2018 Ex Parte Letter at 2; Verizon June 21, 2018 Ex Parte Letter at 2.

184 See, e.g., Municipality of Guayanilla, 450 F.3d at 17 (“Given the interconnected nature of utility services across communities and the strain that the enactment of gross revenue fees in multiple municipalities would have on PRTC’s provision of services, the Commonwealth-wide estimates are relevant to determining how the ordinance affects PRTC’s ‘ability . . . to provide any interstate or intrastate telecommunications service’” under Section 253(a)).

185 See, e.g., Letter from Sam Liccardo, Mayor of San Jose, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, Attachment at 1-2 (filed Aug. 2, 2018) (describing payment by providers of $24 million to a Digital Inclusion Fund in order to deploy small cells in San Jose on city owned light poles).

186 AT&T Comments at 19.

187 AT&T Comments at 19-20.

188 Mobilitie Comments at 3.


190 Sal Pace July 30, 2018 Ex Parte Letter at 1.

191 LaWana Mayfield July 31, 2018 Ex Parte Letter at 1
old regulations could hinder the timely arrival of 5G throughout the country”\textsuperscript{192} and urge the Commission to “establish some common-sense standards insofar as it relates to fees associated with the deployment of small cells [due to] a cottage industry of consultants [] who have wrongly counseled communities to adopt excessive and arbitrary fees.”\textsuperscript{193} Representatives from non-urban areas in particular caution that, “if the investment that goes into deploying 5G on the front end is consumed by big, urban areas, it will take longer for it to flow outwards in the direction of places like Florence, [SC].”\textsuperscript{194} “[R]educing the high regulatory costs in urban areas would leave more dollars to development in rural areas [because] most of investment capital is spent in the larger urban areas [since] the cost recovery can be made in those areas. This leaves the rural areas out.”\textsuperscript{195} We agree with these commenters, and we further agree with courts that have considered “the cumulative effect of future similar municipal [fees ordinances]” across a broad geographic area when evaluating the effect of a particular fee in the context of Section 253(a).\textsuperscript{196} To the extent that other municipal commenters argue that our interpretation gives wireless providers preferential treatment compared to other users of the ROW, the record does not contain data about other users that would support such a conclusion.\textsuperscript{197} In any event, Section 253 of the Communications Act expressly bars legal requirements that effectively prohibit telecommunications service without regard to whether it might result in preferential treatment for providers of that service.\textsuperscript{198}

65. Applying this approach here, the record reveals that fees above a reasonable approximation of cost, even when they may not be perceived as excessive or likely to prohibit service in isolation, will have the effect of prohibiting wireless service when the aggregate effects are considered, particularly given the nature and volume of anticipated Small Wireless Facility deployment.\textsuperscript{199} The record reveals that these effects can take several forms. In some cases, the fees in a particular jurisdiction will lead to reduced or entirely forgone deployment of Small Wireless Facilities in the near term for that

\textsuperscript{192} Dr. Carolyn Prince July 31, 2018 \textit{Ex Parte} Letter at 2.

\textsuperscript{193} Letter from Ashton J. Hayward III, Mayor, Pensacola, FL to the Hon. Brendan Carr, Commissioner, WT Docket No. 17-79 at 1 (filed June 8, 2018).

\textsuperscript{194} Representative Terry Alexander Aug. 7, 2018 \textit{Ex Parte} Letter at 1.

\textsuperscript{195} Senator Duane Ankney July 31, 2018 \textit{Ex Parte} Letter at 1; \textit{see also} Letter from Elder Alexis D. Pipkins, Sr. to the Hon. Brendan Carr, Commissioner, FCC at 1 (filed July 26, 2018) (“the race to 5G is global…instead of each city or state for itself, we should be working towards aligned, streamlined frameworks that benefit us all.”); Letter from Jeffrey Bohm, Chairman of the Board of Commissioners, County of St. Clair to Brendan Carr, Commissioner, FCC, WT Docket 17-79 at 1-2 (filed August 22, 2018) (“Smaller communities, such as those located in St. Clair County would benefit from having the Commissions reduce the costly and unnecessary fee’s that some larger communities place on small cells as a condition of deployment. These fees, wholly disproportionate to any cost, put communities like ours at an unfair disadvantage”); Letter from Scott Niesler, Mayor, City of Kings Mountain, to Brendan Carr, Commissioner, FCC, WT Docket 17-79 at 1-2 (filed June 4, 2018) (“the North Carolina General Assembly has enacted legislation to encourage the deployment of small cell technology to limit exorbitant fees which can siphon off capital from further expansion projects. I was encouraged to see the FCC taking similar steps to enact policies that help clear the way for the essential investment”).

\textsuperscript{196} \textit{Guayanilla District Ct. Opinion}, 354 F. Supp. 2d at 111-12; \textit{but see}, \textit{e.g.}, Letter from Nina Beety to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 at 5 (filed Sept. 17, 2018) (Nina Beety Sept. 17, 2018 \textit{Ex Parte} Letter) (asserting that providers artificially under-capitalize their deployment budgets to build the case for poverty).

\textsuperscript{197} Letter from Larry Hanson, Executive Director, Georgia Municipal Association to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Sept. 17, 2018) (Georgia Municipal Association Sept. 17, 2018 \textit{Ex Parte} Letter).

\textsuperscript{198} 47 U.S.C. § 253(a).

\textsuperscript{199} \textit{See}, \textit{e.g.}, \textit{Wireless Infrastructure Second R&O}, FCC 18-30, at para. 64. In addition, although one could argue that, in theory, a sufficiently small departure from actual and reasonable costs might not have the effect of prohibiting service in a particular instance, the record does not reveal an alternative, administrable approach to evaluating fees without a cost-based focus.
jurisdiction.\textsuperscript{200} In other cases, where it is essential for a provider to deploy in a given area, the fees charged in that geographic area can deprive providers of capital needed to deploy elsewhere, and lead to reduced or forgone near-term deployment of Small Wireless Facilities in other geographic areas.\textsuperscript{201} In both of those scenarios the bottom-line outcome on the national development of 5G networks is the same—diminished deployment of Small Wireless Facilities critical for wireless service and building out 5G networks.\textsuperscript{202}

66. Some have argued that our decision today regarding Sections 253 and 332 should not be applied to preemption agreements (or provisions within agreements) entered into prior to this Declaratory Ruling.\textsuperscript{203} We note that courts have upheld the Commission’s preemption of the enforcement of provisions in private agreements that conflict with our decisions.\textsuperscript{204} We therefore do not exempt existing agreements (or particular provisions contained therein) from the statutory requirements that we interpret here. That said, however, this Declaratory Ruling’s effect on any particular existing agreement will depend upon all the facts and circumstances of that specific case.\textsuperscript{205} Without examining the particular features of an agreement, including any exchanges of value that might not be reflected by looking at fee provisions alone, we cannot state that today’s decision does or does not impact any particular agreement entered into before this decision.

67. \textit{Relationship to Section 332.} While the above analysis focuses on the text and structure of the Act, legislative history, Commission orders, and case law interpreting Section 253(a), we reiterate that in the fee context, as elsewhere, the statutory phrase “prohibit or have the effect of prohibiting” in Section 332(c)(7)(B)(i)(II) has the same meaning as the phrase “prohibits or has the effect of prohibiting” in Section 253(a). As noted in the prior section, there is no evidence to suggest that Congress intended for virtually identical language to have different meanings in the two provisions.\textsuperscript{206} Instead, we find it

\textsuperscript{200} See, e.g., AT&T June 8, 2018 \textit{Ex Parte} Letter at 1-2; Crown Castle June 7, 2018 \textit{Ex Parte} Letter at 2.

\textsuperscript{201} AT&T June 8, 2018 \textit{Ex Parte} Letter at 1-2; Crown Castle June 7, 2018 \textit{Ex Parte} Letter at 2; Verizon June 21, 2018 \textit{Ex Parte} Letter at 2; CCA July 16, 2018 \textit{Ex Parte} Letter at 2-3.

\textsuperscript{202} See, e.g., Letter from Thomas J. Navin, Counsel to Corning, Inc. to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Jan 25, 2018), Attach at 6-7 (comparing different effects on deployment between a base case and a high fee case, and estimating that pole attachment fees nationwide assuming high fees would result in 28.2M fewer premises passed, or 31 percent of the 5G Base case results, and an associated $37.9B in forgone network deployment).

\textsuperscript{203} City of San Jose Sept. 18, 2018 \textit{Ex Parte} Letter at 1-2.

\textsuperscript{204} See, e.g., \textit{Building Owners and Managers Ass’n Int’l v. FCC}, 254 F.3d 89 (D.C. Cir. 2001) (OTARD rules barring exclusivity provisions in lease agreements). As the D.C. Circuit has recognized, “[w]here the Commission has been instructed by Congress to prohibit restrictions on the provision of a regulated means of communication, it may assert jurisdiction over a party that directly furnishes those restrictions, and, in so doing, the Commission may alter property rights created under State law.” \textit{Id.} at 96; see also \textit{Lansdowne on the Potomac Homeowners Ass’n v. OpenBand at Lansdowne, LLC}, 713 F.3d 187 (4th Cir. 2013).

\textsuperscript{205} For example, the City of Los Angeles asserts that fee provisions in its agreements with providers are not prohibitory and must be examined in light of a broader exchange of value contemplated by the agreements in their entirety. Letter from Eric Garcetti, Mayor, City of Los Angeles to the Hon. Ajit Pai, Chairman, FCC, WT Docket No. 17-79 (filed Sept 18, 2018). We agree that agreements entered into before this decision will need to be examined in light of their potentially unique circumstances before a decision can be reached about whether those agreements or any particular provisions in those agreements are or are not impacted by today’s FCC decision.

\textsuperscript{206} We reject the claims of some commenters that Section 332(c)(7)(B)(i)(II) is limited exclusively to decisions on individual requests and therefore must be interpreted differently than Section 253(a). \textit{See, e.g., San Francisco Comments at 24-26.} Section 332(c)(7)(B)(i) explicitly applies to “regulation of the placement, construction, and modification,” and it would be irrational to interpret “regulation” in that paragraph to mean something different from the term “regulation” as used in 253(a) or to find that it does not encompass generally applicable “regulations” as well as decisions on individual applications. Moreover, even assuming \textit{arguendo} that San Francisco’s position reflects the appropriate interpretation of the scope of Section 332(c)(7)(B)(i)(II), the record does not reveal why a
more reasonable to conclude that the language in both sections generally should be interpreted to have the same meaning and to reflect the same standard, including with respect to preemption of fees that could “prohibit” or have “the effect of prohibiting” the provision of covered service. Both sections were enacted to address concerns about state and local government practices that undermined providers’ ability to provide covered services, and both bar state or local conduct that prohibits or has the effect of prohibiting service.

68. To be sure, Sections 253 and 332(c)(7) may relate to different categories of state and local fees. Ultimately, we need not resolve here the precise interplay between Sections 253 and 332(c)(7). It is enough for us to conclude that, collectively, Congress intended for the two provisions to cover the universe of fees charged by state and local governments in connection with the deployment of telecommunications infrastructure. Given the analogous purposes of both sections and the consistent language used by Congress, we find the phrase “prohibit or have the effect of prohibiting” in Section 332(c)(7)(B)(i)(II) should be construed as having the same meaning and governed by the same preemption standard as the identical language in Section 253(a).

69. Application of the Interpretations and Principles Established Here. Consistent with the interpretations above, the requirement that compensation be limited to a reasonable approximation of objectively reasonable costs and be non-discriminatory applies to all state and local government fees paid in connection with a provider’s use of the 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). 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.

70. Applying the principles established in this Declaratory Ruling, a variety of fees not reasonably tethered to costs appear to violate Sections 253(a) or 332(c)(7) in the context of Small Wireless Facility deployments. We agree with courts that have recognized that gross distinction between broadly-applicable requirements and decisions on individual requests would call for a materially different analytical approach, even if it arguably could be relevant when evaluating the application of that analytical approach to a particular preemption claim. In addition, although some commenters assert that such an interpretation would make it virtually impossible for local governments to enforce their zoning laws with regard to wireless facility siting,” they provide no meaningful explanation why that would be the case. See, e.g., San Francisco Reply at 16. While some local commenters note that the savings clauses in Section 253(b) and (c) do not have express counterparts in the text of Section 332(c)(7)(B)(i), see, e.g., San Francisco Comments at 26, we are not persuaded that this compels a different interpretation of the virtually identical language restricting actual or effective prohibitions of service in Section 253(a) and Section 332(c)(7)(B)(i)(II), particularly given our reliance on considerations in addition to the savings clauses themselves when interpreting the “effective prohibition” language. See supra paras. 57-65. We offer these interpretations both to respond to comments and in the event that some court decision could be viewed as supporting a different result.

207 Section 253(a) expressly addresses state or local activities that prohibit or have the effect of prohibiting “any entity” from providing a telecommunications service. 47 U.S.C. § 253(a). In the 2009 Declaratory Ruling, the Commission likewise interpreted Section 332(c)(7)(B)(i)(II) as implicated where the state or local conduct prohibits or has the effect of prohibiting the provision of personal wireless service by one entity even if another entity already is providing such service. See 2009 Declaratory Ruling, 24 FCC Rcd at 14016-19, paras. 56-65.

208 We acknowledge that a fee not calculated by reference to costs might nonetheless happen to land at a level that is a reasonable approximation of objectively reasonable costs, and otherwise constitute fair and reasonable compensation as we describe herein. If all these criteria are met, the fee would not be preempted.
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). In addition, although we reject calls to preclude a state or locality’s use of third party contractors or consultants, or to find all associated compensation preempted, we make clear that the principles discussed herein regarding the reasonableness of cost remain applicable. Thus, 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. Accordingly, any unreasonably high costs, such as excessive charges by third party contractors or consultants, may not be passed on through fees even though they are an actual “cost” to the government. If a locality opts to incur unreasonable costs, Sections 253 and 332(c)(7) do not permit it to pass those costs on to providers. Fees that depart from these principles are not saved by Section 253(c), as we discuss below.

71. Interpretation of Section 253(c) in the Context of Fees. In this section, we turn to the interpretation of several provisions in Section 253(c), which provides that state or local action that otherwise would be subject to preemption under Section 253(a) may be permissible if it meets specified criteria. Section 253(c) expressly provides that state or local governments may require telecommunications providers to pay “fair and reasonable compensation” for use of public ROWs but requires that the amounts of any such compensation be “competitively neutral and nondiscriminatory” and “publicly disclosed.”

72. We interpret the ambiguous phrase “fair and reasonable compensation,” within the statutory framework we outlined for Section 253, to allow state or local governments to charge fees that recover a reasonable approximation of the state or local governments’ actual and reasonable costs. We conclude that an appropriate yardstick for “fair and reasonable compensation,” and therefore an indicator of whether a fee violates Section 253(c), is whether it recovers a reasonable approximation of a state or local government’s objectively reasonable costs of, respectively, maintaining the ROW, maintaining a structure within the ROW, or processing an application or permit.

73. We disagree with arguments that “fair and reasonable compensation” in Section 253(c) should somehow be interpreted to allow state and local governments to charge “any compensation,” and we give weight to BDAC comments that, “[a]s a policy matter, the Commission should recognize that local fees designed to maximize profit are barriers to deployment.” Several commenters argue, in

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209 See, e.g., Municipality of Guayanilla, 450 F.3d at 21; City of Maryland Heights, 256 F. Supp. 2d at 993-96; Prince George’s County, 49 F. Supp. 2d at 818; AT&T v. City of Dallas, 8 F. Supp. 2d at 593; see also, e.g., CTIA Comments at 30, 45; id. Attach. at 17; ExteNet Comments, Exh. 1 at 41; T-Mobile Comments at 7; WIA Comments at 52-53.

210 See, e.g., CCA Comments at 17-21 (asking the Commission to declare franchise fees or percentage of revenue fees outside the scope of fair and reasonable compensation and to prohibit state and localities from requiring service providers to obtain business licenses for individual cell sites). For example, although fees imposed by a state or local government calculated as a percentage of a provider’s revenue are unlikely to be a reasonable approximation of cost, if such a percentage-of-revenue fee were, in fact, ultimately shown to amount to a reasonable approximation of costs, the fee would not be preempted.

211 47 U.S.C. § 253(c).

212 Guayanilla District Ct. Opinion, 354 F. Supp. 2d at 114 (“fees charged by a municipality need to be related to the degree of actual use of the public rights-of-way” to constitute fair and reasonable compensation under Section 253(c)); New Jersey Payphone Ass’n, Inc. v. Town of West New York, 130 F. Supp. 2d 631, 638 (D.N.J. 2001), aff’d 299 F. 3d 235 (3d Cir. 2002) (New Jersey Payphone) (“Plainly, a fee that does more than make a municipality whole is not compensatory in the literal sense, and risks becoming an economic barrier to entry.”)

213 BDAC Regulatory Barriers Report, Appendix C, p. 3 (a “[ROW] burden-oriented [fee] standard is flexible enough to suit varied localities and network architectures, would ensure that fees are not providing additional
particular, that Section 253(c)’s language must be read as permitting localities latitude to charge any fee at all\(^{214}\) or a “market-based rent.”\(^{215}\) Many of these arguments seem to suggest that Section 253 or 332 have not previously been read to impose limits on fees, but as noted above courts have long read these provisions as imposing such limits. Still others argue that limiting the fees state and local governments may charge amounts to requiring taxpayers to subsidize private companies’ use of public resources.\(^{216}\) We find little support in the record, legislative history, or case law for that position.\(^{217}\) Indeed, our

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214 See, e.g., Baltimore Comments at 15-16 (noting that local governments traditionally impose fees based on rent, and other ROW users pay market-based fees and arguing that citizens should not have to “subsidize” wireless deployments); Bellevue et al. Reply at 12-13 (stating that “the FCC should compensate municipalities at fair market value because any physical invasion is a taking under the Fifth Amendment, and just compensation is "typically" calculated using fair market value.”); NLC Comments at 5 (“local governments, like private landlords, are entitled to collect rent for the use of their property and have a duty to their residents to assess appropriate compensation. This does not necessarily translate to restricting this compensation to just the cost of managing the asset—just as private property varies in value, so does municipal property.”); Smart Communities Reply at 7-10 (stating that “fair and reasonable compensation (i.e., fair market value) is not, as some commenters contend, measured by the regulatory cost for use of a ROW or other property; rather it is measured by what it would cost the user of the ROW to purchase rights form a local property owner.”).


216 See, e.g., NLC Comments, Statement of the Hon. Gary Resnick, Mayor, Wilton Manors, FL Comments at 6-7 (“preemption of local fees or rent for use of government-owned light and traffic poles, or fees for use of the right-of-way amounts to a taxpayer subsidy of wireless providers and wireless infrastructure companies. There is no corresponding benefit for such taxpayers such as requiring the broadband industry to reduce consumer rates or offer advanced services to all communities within a certain time frame.”); Letter from Rondella M. Hawkins, Officer, City of Austin—Telecommunications & Regulatory Affairs, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 7, 2018) at 1. These commenters do not explain why allowing recovery of a reasonable approximation of the state or locality’s objectively reasonable costs would involve a taxpayer subsidy of service providers, and we are not persuaded that our interpretation would create a subsidy.

217 As discussed more fully above, Congress intended through Section 253 to preempt state and local governments from imposing barriers in the form of excessive fees, while also preserving state and local authority to protect specified interests through competitively neutral regulation consistent with the Act. Our interpretation of Section 253(c) is consistent with Congress’s objectives. Our interpretation of “fair and reasonable compensation” in Section 253(c) is also consistent with prior Commission action limiting fees, and easing access, to other critical communications infrastructure. For example, in implementing the requirement in the Pole Attachment Act that utilities charge “just and reasonable” rates, the Commission adopted rules limiting the rates utilities can impose on cable companies for pole attachments. Based on the costs associated with building and operation of poles, the rates the Commission adopted were upheld by the Supreme Court, which found that the rates imposed were permissible and not “confiscatory” because they “provid[ed] for the recovery of fully allocated cost, including the actual cost of capital.” See FCC v. Florida Power Corp., 480 U.S. 245, 254 (1987). Here, based on the specific language in the separate provision of Section 253, we interpret the “effective prohibition” language, as applied to small cells, to permit state and local governments to recover only “fair and reasonable compensation” for their maintenance of ROW and government-owned structures within ROW used to host Small Wireless Facilities. Relatedly, Smart Communities errs in arguing that the Commission’s Order “provides localities 60 days to provide access and sets the rate for access,” making it a “classic taking.” Smart Communities Sept. 19, 2018 Ex Parte Letter at 25. To the contrary, the Commission has not given providers any right to compel access to any particular state or local property. Cf. Loretto v. Telepromter Manhattan CATV Corp., 458 U.S. 419 (1982). There may well be legitimate reasons for states and localities to deny particular placement applications, and adjudication of whether such decisions amount to an effective prohibition must be resolved on a case-by-case basis. In this regard, we note that the record in this proceeding reflects that the vast majority of local jurisdictions voluntarily accept placement of wireless, utility, and other facilities in their rights-of-way. And in any event, cost-based recovery of the type we provide here has been approved as just compensation for takings purposes in the context of such facilities. See Alabama Power Co. v. FCC, 311 F.3d 1357, 1368, 1370-71 (11th Cir. 2002). See also United States v. 564.54 Acres
The approach to compensation ensures that cities are not going into the red to support or subsidize the deployment of wireless infrastructure.

74. The existence of Section 253(c) makes clear that Congress anticipated that “effective prohibitions” could result from state or local government fees, and intended through that clause to provide protections in that respect, as discussed in greater detail herein. Against that backdrop, we find it unlikely that Congress would have left providers entirely at the mercy of effectively unconstrained requirements of state or local governments. Our interpretation of Section 253(c), in fact, is consistent with the views of many municipal commenters, at least with respect to one-time permit or application fees, and the members of the BDAC Ad Hoc Committee on Rates and Fees, who unanimously concurred that one-time fees for municipal applications and permits, such as an electrical inspection or a building permit, should be based on the cost to the government of processing that application. The Ad Hoc Committee noted that “[the] cost-based fee structure [for one-time fees] unanimously approved by the committee accommodates the different siting related costs that different localities may incur to review and process permit applications, while precluding excessive fees that impede deployment.

We find that the same reasoning should apply to other state and local government fees such as ROW access fees or fees for the use of government property within the ROW.

75. We recognize that state and local governments incur a variety of direct and actual costs in connection with Small Wireless Facilities, such as the cost for staff to review the provider’s siting application, costs associated with a provider’s use of the ROW, and costs associated with maintaining the ROW itself or structures within the ROW to which Small Wireless Facilities are attached. We also recognize that direct and actual costs may vary by location, scope, and extent of providers’ planned deployments, such that different localities will have different fees under the interpretation set forth in this Declaratory Ruling.

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of Land, 441 U.S. 506, 513 (1979) (recognizing that alternative measure of compensation might be appropriate “with respect to public facilities such as roads or sewers”).

218 See supra Parts III.A, B.

219 See, e.g., City of White Plains, 305 F.3d at 78-79; Guayanilla District Ct. Opinion, 354 F. Supp. 2d at 114. We disagree with arguments that competition between municipalities, or competition from adjacent private landowners, would be sufficient to ensure reasonable pricing in the ROW. See e.g., Smart Communities Comments, Exh. 2, The Economics of Government Right of Way Fees, Declaration of Kevin Cahill, Ph.D at para. 15. We find this argument unpersuasive in view of the record evidence in this proceeding showing significant fees imposed on providers in localities across the country. See, e.g., AT&T Comments at 18; Verizon Comments at 6-7; see also BDAC Regulatory Barriers Report, Appendix. C, p. 2.

220 See, e.g., Smart Communities Comments Cahill 2A at 2-3 (noting that “…a common model is to charge a fee that covers the costs that a municipality incurs in conducting the inspections and proceedings required to allow entry, fees that cover ongoing costs associated with inspection or expansion of facilities ...”); Colorado Comm. and Utility All. et al. Comments at 19 (noting that “application fees are based upon recovery of costs incurred by localities.”); Draft BDAC Rates and Fees Report, p. 15-16.

221 See also Draft BDAC Rates and Fees Report, p. 15-16. Although the BDAC Ad Hoc Rates and Fees Committee and municipal commenters only support a cost-based approach for one-time fees, we find no reason not to extend the same reasoning to ROW access fees or fees for the use of government property within the ROW, when all three types of fees are a legal requirement imposed by a government and pose an effective prohibition. The BDAC Rates and Fees Report did not provide a recommendation on fees for ROW access or fees for the use of government property within the ROW, and we disagree with suggestions that our ruling, which was consistent with the committee’s recommendation for one-time fees, circumvents the efforts of the Ad Hoc Rates and Fees Committee. See Georgia Municipal Association Sept. 17, 2018 Ex Parte Letter at 3.

222 See supra para. 50.

223 See, e.g., Colorado Comm. and Utility All. et al. Comments at 18-19 (discussing range of costs that application fees cover).
Because we interpret fair and reasonable compensation as a reasonable approximation of costs, we do not suggest that localities must use any specific accounting method to document the costs they may incur when determining the fees they charge for Small Wireless Facilities within the ROW. Moreover, in order to simplify compliance, when a locality charges both types of recurring fees identified above (i.e., for access to the ROW and for use of or attachment to property in the ROW), we see no reason for concern with how it has allocated costs between those two types of fees. It is sufficient under the statute that the total of the two recurring fees reflects the total costs involved.\footnote{\textit{See supra} note 71 (identifying three categories of fees charged by states and localities).} Fees that cannot ultimately be shown by a state or locality to be a reasonable approximation of its costs, such as high fees designed to subsidize local government costs in another geographic area or accomplish some public policy objective beyond the providers’ use of the ROW, are not “fair and reasonable compensation…for use of the public rights-of-way” under Section 253(c).\footnote{47 U.S.C. § 253(c) (emphasis added). Our interpretation is consistent with court decisions interpreting the “fair and reasonable” compensation language as requiring fees charged by municipalities relate to the degree of actual use of a public ROW. \textit{See}, e.g., \textit{Puerto Rico Tel. Co. v. Municipality of Guayanilla}, 283 F. Supp. 2d 534, 543-44 (D.P.R. 2003); \textit{see also} \textit{Municipality of Guayanilla}, 450 F.3d at 21-24; \textit{City of Maryland Heights}, 256 F. Supp. 2d at 984.} Likewise, we agree with both industry and municipal commenters that excessive and arbitrary consulting fees or other costs should not be recoverable as “fair and reasonable compensation,”\footnote{\textit{See}, e.g, \textit{Letter from Ashton J. Hayward III, Mayor, Pensacola, FL to the Hon. Brendan Carr, Commissioner, WT Docket No. 17-79 at 1 (filed June 8, 2018); \textit{see also Illinois Municipal League Comments at 2 (noting that proposed small cell legislation in Illinois allows municipalities to recover “reasonable costs incurred by the municipality in reviewing the application.”).}} because they are not a function of the provider’s “use” of the public ROW.

In addition to requiring that compensation be “fair and reasonable,” Section 253(c) requires that it be “competitively neutral and nondiscriminatory.” The Commission has previously interpreted this language to prohibit states and localities from charging fees on new entrants and not on incumbents.\footnote{\textit{TCI Cablevision of Oakland County}, 12 FCC Rcd. at 21443, para. 108 (1997).} Courts have similarly found that states and localities may not impose a range of fees on one provider but not on another\footnote{\textit{City of White Plains}, 305 F.3d 80.} and even some municipal commenters acknowledge that governments should not discriminate as to the fees charged to different providers.\footnote{\textit{City of Baltimore Reply at 15 (“The City does agree that rates to access the right of way by similar entities must be nondiscriminatory.”).} Other commenters argue that nothing in Section 253 can apply to property in the ROW. \textit{City of San Francisco Reply at 2-3, 19 (denying that San Francisco is discriminatory to different providers but also asserting that “[l]ocal government fees for use of their poles are simply beyond the purview of section 253(c)).}} The record reflects continuing concerns from providers, however, that they face discriminatory charges.\footnote{\textit{See}, e.g., \textit{CFP Comments at 31-33 (noting that the City of Baltimore charges incumbent Verizon “less than $.07 per linear foot for the space that it leases in the public right-of-way” while it charges other providers “$3.33 per linear foot to lease space in the City’s conduit). Some municipal commenters argue that wireless infrastructure occupies more space in the ROW. \textit{See Smart Communities Reply Comments at 82 (“wireless providers are placing many of those permanent facilities in the public rights-of-way, in ways that require much larger deployments. It is not discrimination to treat such different facilities differently, and to focus on their impacts”). We recognize that different uses of the ROW may warrant charging different fees, and we only find fees to be discriminatory and not competitively neutral when different amounts are charged for similar uses of the ROW.}}
for similar use of the public ROW.\footnote{232}

78.  \textit{Fee Levels Likely to Comply with Section 253.}  Our interpretation of Section 253(a) and “fair and reasonable compensation” under Section 253(c) provides guidance for local and state fees charged with respect to one-time fees generally, and recurring fees for deployments in the ROW.  Following suggestions for the Commission to “establish a presumptively reasonable ‘safe harbor’ for certain ROW and use fees,”\footnote{231} and to facilitate the deployment of specific types of infrastructure critical to the rollout of 5G in coming years, we identify in this section three particular types of fee scenarios and supply specific guidance on amounts that presumptively are not prohibited by Section 253.  Informed by our review of information from a range of sources, we conclude that fees at or below these 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).

79.  Based on our review of the Commission’s pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, we presume that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) $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 Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (\textit{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.\footnote{233}

80.  By presuming that fees at or below the levels above comply with Section 253, we assume

\footnote{231}{Our interpretation is consistent with principles described by the BDAC’s Ad Hoc Committee on Rates and Fees.  Draft BDAC Rates and Fees Report at 5 (Jul. 24, 2018) (listing “neutral treatment and access of all technologies and communication providers based upon extent/nature of ROW use” as principle to guide evaluation of rates and fees).}

\footnote{232}{BDAC Regulatory Barriers Report, Appendix C, p. 3.}

\footnote{233}{These presumptive fee limits are based on a number of different sources of data.  Many different state small cell bills, in particular, adopt similar fee limits despite their diversity of population densities and costs of living, and we expect that these presumptive fee limits will allow for recovery in excess of costs in many cases.  47 CFR § 1.1409; National Conference of State Legislatures, Mobile 5G and Small Cell Legislation, (May 7, 2018), http://www.ncsl.org/research/telecommunications-and-information-technology/mobile-5g-and-small-cell-legislation.aspx (providing description of state small cell legislation); Little Rock, Ark. Ordinance No. 21,423 (June 6, 2017); NCTA August 20, 2018 Ex Parte Letter, Attachment; \textit{see also} H.R. 2365, 2018 Leg. 2d Reg. Sess. (Ariz. 2018) ($100 per facility for first 5 small cells in application; $50 annual utility attachment rate, $50 ROW access fee); H.R. 189 149th Gen. Assemb. Reg. Sess. (Del. 2017) ($100 per small wireless facility on application; fees not to exceed actual, direct and reasonable cost); S. 21320th Gen. Assemb. Reg. Sess. (Ind. 2017) ($100 per small wireless facility); H.R. 189, 99th Gen. Assemb. 2nd Reg. Sess. (Missouri, 2018) ($100 for each facility collocated on authority pole; $150 annual fee per pole); H.R. 38 2018 Leg. Assemb. 2d Reg. Sess. (N.M. 2018) ($100 for each of first 5 small facilities in an application; $20 per pole annually; $250 per facility annually for access to ROW); S. 189, 2018 Leg. Gen. Sess. (Utah 2018) ($100 per facility to collocate on existing or replacement utility pole; $250 annual ROW fee per facility for certain attachments). \textit{See also} Letter from Kara R. Graves, Director, Regulatory Affairs, CTIA, and D. Zachary Champ, Director, Government Affairs, WIA to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018) Attach. (listing fees in twenty state small cell legislations) (CTIA/WIA Aug. 10, 2018 \textit{Ex Parte} Letter); Letter from Scott K. Bergmann, Sen. Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 4, 2018) at 3, Attach. (analyzing average and median recurring fee levels permitted under state legislation).}
that there would be almost no litigation by providers over fees set at or below these levels. Likewise, our review of the record, including the many state small cell bills passed to date, indicate that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253. In those limited circumstances, a locality could prevail in charging fees that are above this level by showing that such fees nonetheless comply with the limits imposed by Section 253—that is, that they are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory.234 Allowing localities to charge fees above these levels upon this showing recognizes local variances in costs.235

C. Other State and Local Requirements that Govern Small Facilities Deployment

81. There are also other types of state and local land-use or zoning requirements that may restrict Small Wireless Facility deployments to the degree that they have the effect of prohibiting service in violation of Sections 253 and 332. In this section, we discuss how those statutory provisions apply to requirements outside the fee context, both generally and with a particular focus on aesthetic and undergrounding requirements.

82. As discussed above, a state or local legal requirement constitutes an effective prohibition if it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”236 Our interpretation of that standard, as set forth above, applies equally to fees and to non-fee legal requirements. And as with fees, Section 253 contains certain safe harbors that permit some legal requirements that might otherwise be preempted by Section 253(a). Section 253(b) saves state “requirements 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.”237 And Section 253(c) preserves state and local authority to manage the public rights-of-way.238

83. Given the wide variety of possible legal requirements, we do not attempt here to determine which of every possible non-fee legal requirements are preempted for having the effect of prohibiting service, although our discussion of fees above should prove instructive in evaluating specific requirements. Instead, we focus on some specific types of requirements raised in the record and provide guidance on when those particular types of requirements are preempted by the statute.

84. Aesthetics. The Wireless Infrastructure NPRM/NOI sought comment on whether deployment restrictions based on aesthetic or similar factors are widespread and, if so, how Sections 253 and 332(c)(7) should be applied to them.239 Parties describe a wide range of such requirements that allegedly restrict deployment of Small Wireless Facilities. For example, many providers criticize

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234 Several state and local commenters express concern about the presumptively reasonable fee levels we establish, including concerns about the effect of the fee levels on existing fee-related provisions included in state and local legislation. See e.g., Letter from Kent Scarlett, Exec. Director, Ohio Municipal League to Marlene H. Dortch, Secretary, FCC at 1 (filed Sept. 18, 2018); Letter from Liz Kniss, Mayor, City of Palo Alto to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 at 1 (filed Sept. 17, 2018). As stated above, while the fee levels we establish reflect our presumption regarding the level of fees that would be permissible under Section 253 and 332(c)(7), state or local fees that exceed these levels may be permissible if the fees are based on a reasonable approximation of costs and the costs themselves are objectively reasonable.

235 We emphasize that localities may charge fees to recover their objectively reasonable costs and thus reject arguments that our approach requires localities to bear the costs of small cell deployment or applies a one-size-fits-all standard. See, e.g., Letter from Mike Posey, Mayor, City of Huntington Beach, to Marlene Dorcht, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Sept.11, 2018) (Mike Posey Sept. 11, 2018 Ex Parte Letter).

236 California Payphone, 12 FCC Rcd at 14206, para. 31; see supra paras. 34-42.


238 47 U.S.C. § 253(c).

burdensome requirements to deploy facilities using “stealth” designs or other means of camouflage, as well as unduly stringent mandates regarding the size of equipment, colors of paint, and other details. Providers also assert that the procedures some localities use to evaluate the appearance of proposed facilities and to decide whether they comply with applicable land-use requirements are overly restrictive. Many providers are particularly critical of the use of unduly vague or subjective criteria that may apply inconsistently to different providers or are only fully revealed after application, making it impossible for providers to take these requirements into account in their planning and adding to the time necessary to deploy facilities. At the same time, we have heard concerns in the record about carriers deploying unsightly facilities that are significantly out of step with similar, surrounding deployments.

85. State and local governments add that many of their aesthetic restrictions are justified by factors that the providers fail to mention. They assert that their zoning requirements and their review and enforcement procedures are properly designed to, among other things, (1) ensure that the design, appearance, and other features of buildings and structures are compatible with nearby land uses; (2) manage ROW so as to ensure traffic safety and coordinate various uses; and (3) protect the integrity of

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240 See, e.g., CCIA Comments at 14-15 (discussing regulations enacted by Village of Skokie, Illinois); WIA Reply Comments (WT Docket No. 16-421) at 9-10 (discussing restrictions imposed by Town of Hempstead, New York); see also AT&T Comments at 14-17; PTA-FLA Comments at 19; Verizon Comments at 19-20; AT&T Aug. 6, 2018 ex parte at 3.

241 See, e.g., CCIA Comments at 13-14 (describing regulations established by Skokie, Illinois that prescribe in detail the permissible colors of paint and their potential for reflecting light); AT&T Aug. 6, 2018 ex parte at 3 (“Some municipalities require carriers to paint small cell cabinets a particular color when like requirements were not imposed on similar equipment placed in the ROW by electric incumbents, competitive telephone companies, or cable companies,” and asserts that it often “is highly burdensome to maintain non-factory paint schemes over years or decades, including changes to the municipal paint scheme,” due to “technical constraints as well such as manufacture warranty or operating parameters, such as heat dissipation, corrosion resistance, that are inconsistent with changes in color, or finish.”); AT&T Comments at 16-17 (contending that some localities “allow for a single size and configuration for small cell equipment while requiring case-by-case approval of any non-conforming equipment, even if smaller and upgraded in design and performance,” and thus effectively compel “providers [to] incur the added expense of conforming their equipment designs to the approved size and configuration, even if newer equipment is smaller, to avoid the delays associated with the approval of an alternative equipment design and the risk of rejection of that design.”); id. at 17 (some local governments “prohibit the placement of wireless facilities in and around historic properties and districts, regardless of the size of the equipment or the presence of existing more visually intrusive construction near the property or district”).

242 See, e.g., Crown Castle Comments at 14-15 (criticizing San Francisco’s aesthetic review procedures that discriminate against providers and criteria and referring to extended litigation); CTIA Reply Comments at 17 (“San Francisco imposes discretionary aesthetic review for wireless ROW facilities.”); T-Mobile Comments at 40; but see San Francisco Comments at 3-7 (describing aesthetic review procedures). See also AT&T Comments at 13-17; Extenet Comments at 37; CTIA Comments at 21-22; Sprint Comments at 38-40; T-Mobile Comments at 8-12; Verizon Comments at 5-8.

243 See, e.g., AT&T Comments at 13-17; Sprint Comments at 38-40; T-Mobile Comments at 8-12; Verizon Comments at 5-8. WIA cites allegations that an unnamed city in California recently declined to support approval of a proposed small wireless installation, claiming that the installations do not meet “Planning and Zoning Protected Location Compatibility Standards,” even though the same equipment has been deployed elsewhere in the city dozens of times, and even though the “Protected Location” standards should not apply because the proposals are not on “protected view” streets. WIA Reply Comments, WT Docket No. 16-421 at 9-10; id. at 8 (noting that one city changed its aesthetic standards after a proposal was filed); AT&T Comments at 17 (noting that a design approval took over a year); Virginia Joint Commenters, WT Docket No. 16-421 (state law providing discretion for zoning authority to deny application because of “aesthetics” concerns without additional guidance); Extenet Reply Comments at 13 (noting that some “local governments impose aesthetic requirements based entirely on subjective considerations that effectively give local governments latitude to block a deployment for virtually any aesthetically-based reason”)
their historic, cultural, and scenic resources and their citizens’ quality of life.\textsuperscript{244}

86. Given these differing perspectives and the significant impact of aesthetic requirements on the ability to deploy infrastructure and provide service, we provide guidance on whether and in what circumstances aesthetic requirements violate the Act. This will help localities develop and implement lawful rules, enable providers to comply with these requirements, and facilitate the resolution of disputes. We conclude that 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.

87. Like 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. We therefore draw on our analysis of fees to address aesthetic requirements. We have explained above that fees that merely require providers to bear the direct and reasonable costs that their deployments impose on states and localities should not be viewed as having the effect of prohibiting service and are permissible.\textsuperscript{245} Analogously, aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible. In assessing whether this standard has been met, aesthetic requirements that are more burdensome than those the state or locality applies to similar infrastructure deployments are not permissible, because such discriminatory application evidences that the requirements are not, in fact, reasonable and directed at remedying the impact of the wireless infrastructure deployment. For example, a minimum spacing requirement that has the effect of materially inhibiting wireless service would be considered an effective prohibition of service.

88. Finally, in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—\textit{i.e.}, they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance.\textsuperscript{246} “Secret” rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers’ costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.\textsuperscript{247}

\textsuperscript{244} See, e.g., NLC Comments, WT Docket No. 16-421 at 8-10; Smart Communities Comments, WT Docket No. 16-421 at 35-36; New York City Comments at 10-15; New Orleans Comments at 1-2, 5-8; San Francisco Comments at 3-12; CCUA Reply Comments at 5; Irvine (CA) Comments at 2; Oakland County (MI) Comments at 3-5; Florida Coalition of Local Gov’ts Reply Comments at 6-12 (justifications for undergrounding requirements); \textit{id.} at 16-421 (justifications for municipal historic-preservation requirements); \textit{id.} at 22-16 (justifications for aesthetics and design requirements).

\textsuperscript{245} See supra paras. 55-56.

\textsuperscript{246} Our decision to adopt this objective requirement is supported by the fact that many states have recently adopted limits on their localities’ aesthetic requirements that employ the term “objective.” \textit{See, e.g.}, Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 8 (filed Sept. 19, 2018) (noting requirements enacted in the states of Arizona, Delaware, Missouri, North Carolina, Ohio, and Oklahoma, that local siting requirements for small wireless facilities be “objective”); \textit{see also} Letter from Kara R. Graves, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 8 (filed Sept. 4, 2018)

\textsuperscript{247} Some local governments argue that, because different aesthetic concerns may apply to different neighborhoods, particularly those considered historic districts, it is not feasible for them to publish local aesthetic requirements in advance. \textit{See, e.g.}, Letter from Mark J. Schwartz, County Manager, Arlington County, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018) (Arlington County Sept. 18 Ex Parte Letter); Letter from Allison Silberberg, Mayor, City of Alexandria, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018). We believe this concern is unfounded. As noted above, the fact that our approach here (including the publication requirement) is consistent with that already enacted in many state-level small cell bills supports the feasibility of our decision. Moreover, the aesthetic requirements to be published in advance need not
89. We appreciate that at least some localities will require some time to establish and publish aesthetics standards that are consistent with this Declaratory Ruling. Based on our review and evaluation of commenters’ concerns, we anticipate that such publication should take no longer than 180 days after publication of this decision in the Federal Register.

90. **Undergrounding Requirements.** We understand that some local jurisdictions have adopted undergrounding provisions that require infrastructure to be deployed below ground based, at least in some circumstances, on the locality’s aesthetic concerns. A number of providers have complained that these types of requirements amount to an effective prohibition. In addressing this issue, we first reiterate that, while undergrounding requirements may well be permissible under state law as a general matter, any local authority to impose undergrounding requirements under state law does not remove such requirements from the provisions of Section 253. In this regard, we believe that a requirement that all wireless facilities be deployed underground would amount to an effective prohibition given the propagation characteristics of wireless signals. In this sense, we agree with the U.S. Court of Appeals for the Ninth Circuit when it observed that, “[i]f an ordinance required, for instance, that all facilities be underground and the plaintiff introduced evidence that, to operate, wireless facilities must be above ground, the ordinance would effectively prohibit it from providing services.” Further, a requirement that materially inhibits wireless service, even if it does not go so far as requiring that all wireless facilities be deployed underground, also would be considered an effective prohibition of service. Thus, the same criteria discussed above in the context of aesthetics generally would apply to state or local undergrounding requirements.

91. **Minimum Spacing Requirements.** Some parties complain of municipal requirements regarding the spacing of wireless installations—i.e., mandating that facilities be sited at least 100, 500, or 1,000 feet, or some other minimum distance, away from other facilities, ostensibly to avoid excessive overhead “clutter” that would be visible from public areas. We acknowledge that while some such requirements may violate 253(a), others may be reasonable aesthetic requirements. For example, under the principle that any such requirements be reasonable and publicly available in advance, it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use. Such a rule change with retroactive effect would prescribe in detail every specification to be mandated for each type of structure in each individual neighborhood. Localities need only set forth the objective standards and criteria that will be applied in a principled manner at a sufficiently clear level of detail as to enable providers to design and propose their deployments in a manner that complies with those standards.

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almost certainly have the effect of prohibiting service under the standards we articulate here. Therefore, such requirements should be evaluated under the same standards for aesthetic requirements as those discussed above.252

D. States and Localities Act in Their Regulatory Capacities When Authorizing and Setting Terms for Wireless Infrastructure Deployment in Public Rights of Way

92. We confirm that our interpretations today extend to state and local governments’ terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within such ROW, such as new, existing and replacement light poles, traffic lights, utility poles, and similar property suitable for hosting Small Wireless Facilities.253 As explained below, for two alternative and independent reasons, we disagree with state and local government commenters who assert that, in providing or denying access to government-owned structures, these governmental entities function solely as “market participants” whose rights cannot be subject to federal preemption under Section 253(a) or Section 332(c)(7).254

93. First, this effort to differentiate between such governmental entities’ “regulatory” and “proprietary” capacities in order to insulate the latter from preemption ignores a fundamental feature of the market participant doctrine.255 As the Ninth Circuit has observed, at its core, this doctrine is “

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252 Another type of restriction that imposes substantial burdens on providers, but does not meaningfully advance any recognized public-interest objective, is an explicit or implicit quid pro quo in which a municipality makes clear that it will approve a proposed deployment only on condition that the provider supply an “in-kind” service or benefit to the municipality, such as installing a communications network dedicated to the municipality’s exclusive use. See, e.g., Comcast Comments at 9-10 Verizon Comments at 7, Crown Castle Comments at 55-56. Such requirements impose costs, but rarely, if ever, yield benefits directly related to the deployment. Additionally, where such restrictions are not cost-based, they inherently have “the effect of prohibiting” service, and thus are preempted by Section 253(a). See also BDAC Regulatory Barriers Report, Appendix E at 1 (describing “conditions imposed that are unrelated to the project for which they were seeking ROW access” as “inordinately burdensome”); BDAC Model Municipal Code at 19, § 2.5a.(v)(F) (providing that municipal zoning authority “may not require an Applicant to perform services . . . or in-kind contributions [unrelated] to the Communications Facility or Support Structure for which approval is sought”).

253 See supra paras. 50-91. Some have argued that Section 224 of the Communications Act’s exception of state-owned and cooperative-owned utilities from the definition of “utility,” “[a]s used in this section,” suggests that Congress did not intend for any other portion of the Act to apply to poles or other facilities owned by such entities. City of Mukilteo, et. al. Ex Parte Comments on the Draft Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from James Bradford Ramsay, General Counsel, NARUC to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79 at 7 (filed Sept. 19, 2018). We see no basis for such a reading. Nothing in Section 253 suggests such a limited reading, nor does Section 224 indicate that other provisions of the Act do not apply. We conclude that our interpretation of effective prohibition extends to fees for all government-owned property in the ROW, including utility poles. Compare 47 U.S.C. § 224 with 47 U.S.C. § 253. We are not addressing here how our interpretations apply to access or attachments to government-owned property located outside the public ROW.

254 See, e.g., AASHTO Comments, Att. 1 (Del. DOT Comments) at 3-5; New York City Comments at 2-8; San Antonio et al. Comments at 14-15; Smart Communities Comments at 62-66; San Francisco Comments at 28-30; League of Arizona Cities et al. Comments, WT Docket No. 16-421 at 3-9; San Antonio et al. Comments, WT Docket No. 16-421 at 14-15. See also Wireless Infrastructure NPRM/N0I, 32 FCC Red at 3364-65, para. 96 (seeking comment on this issue).

255 The market participant doctrine establishes that, unless otherwise specified by Congress, federal statutory provisions may be interpreted as preempting or superseding state and local governments’ activities involving regulatory or public policy functions, but not their activities as “market participants” to serve their “purely proprietary interests,” analogous to similar transactions of private parties. Building & Construction Trades Council
presumption about congressional intent,” which “may have a different scope under different federal statutes.”

The Supreme Court has likewise made clear that the doctrine is applicable only “[i]n the absence of any express or implied indication by Congress.” In contrast, where state action conflicts with express or implied federal preemption, the market participant doctrine does not apply, whether or not the state or local government attempts to impose its authority over use of public rights-of-way by permit or by lease or contract. Here, both Sections 253(a) and Section 332(c)(7)(B)(i)(II) expressly address preemption, and neither carves out an exception for proprietary conduct.

94. Specifically, Section 253(a) expressly preempts certain state and local “legal requirements” and makes no distinction between a state or locality’s regulatory and proprietary conduct. Indeed, as the Commission has long recognized, Section 253(a)’s sweeping reference to “State [and] local statute[s] [and] regulation[s]” and “other State [and] local legal requirement[s]” demonstrates Congress’s intent “to capture a broad range of state and local actions that prohibit or have the effect of prohibiting entities from providing telecommunications services.” Section 253(b) mentions “requirement[s],” a phrase that is even broader than that used in Section 253(a) but covers “universal service,” “public safety and welfare,” “continued quality of telecommunications,” and “safeguard[s for the] rights of consumers.” The subsection does not recognize a distinction between regulatory and proprietary. Section 253(c), which expressly insulates from preemption certain state and local government activities, refers in relevant part to “manag[ing] the public rights-of-way” and “requir[ing] fair and reasonable compensation,” while eliding any distinction between regulatory and proprietary action in either context. The Commission has previously observed that Section 253(c) “makes explicit a local government’s continuing authority to issue construction permits regulating how and when construction is conducted on roads and other public


256 See, e.g., Engine Mfrs. Ass’n v. South Coast Air Quality Mgmt. Distr., 498 F.3d 1031, 1042 (9th Cir. 2007); Johnson v. Rancho Santiago Comm. College, 623 F.3d 1011, 1022 (9th Cir. 2010).

257 See Boston Harbor, 507 U.S. at 231.


259 At a minimum, we conclude that Congress’s language has not unambiguously pointed to such a distinction. See Letter from Tamara Preiss, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Aug. 23, 2018) (Verizon Aug. 23, 2018 Ex Parte Letter). Furthermore, we contrast these statutes with those that do not expressly or impliedly preempt proprietary conduct. Compare, e.g., American Trucking, 569 U.S. 641 (finding that FAA Authorization Act of 1994’s provision that “State [or local government] may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property” expressly preempted the terms of a standard-form concession agreement drafted to govern the relationship between the Port of Los Angeles and any trucking company seeking to operate on the premises), and Gould, 475 U.S. at 289 (finding that NLRA preempted a state law barring state contracts with companies with disfavored labor practices because the state scheme was inconsistent with the federal scheme), with Boston Harbor, 507 U.S. at 224-32. In Boston Harbor, the Supreme Court observed that the NLRA contained no express preemption provision or implied preemption scheme and consequently held:

In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction.

Id. (internal citations omitted).

260 See Minnesota Order, 14 FCC Red at 21707, para. 18. We find these principles to be equally applicable to our interpretation of the meaning of “regulation[s]” referred to under Section 332(c)(7)(B) insofar as such actions impermissibly “prohibit or have the effect of prohibiting the provision of personal wireless services.” Supra paras. 34-42.
We conclude here that, as a general matter, “manage[ment]” of the ROW includes any conduct that bears on access to and use of those ROW, notwithstanding any attempts to characterize such conduct as proprietary. This reading, coupled with Section 253(c)’s narrow scope, suggests that Congress’s omission of a blanket proprietary exception to preemption was intentional, and thus, that such conduct can be preempted under Section 253(a). We therefore construe Section 253(c)’s requirements, including the requirement that compensation be “fair and reasonable,” as applying equally to charges imposed via contracts and other arrangements between a state or local government and a party engaged in wireless facility deployment. This interpretation is consistent with Section 253(a)’s reference to “State or local legal requirement[s],” which the Commission has consistently construed to include such agreements. In light of the foregoing, whatever the force of the market participant doctrine in other contexts, we believe the language, legislative history, and purpose of Sections 253(a) and (c) are incompatible with the application of this doctrine in this context. We observe once more that “[o]ur conclusion that Congress intended this language to be interpreted broadly is reinforced by the scope of section 253(d),” which “directs the Commission to preempt any statute, regulation, or legal requirement permitted or imposed by a state or local government if it contravenes sections 253(a) or (b). A more restrictive interpretation of the term ‘other legal requirements’ easily could permit state and local restrictions on competition to escape preemption based solely on the way in which [state] action was structured. We do not believe that Congress intended this result.”

Similarly, and as discussed elsewhere, we interpret Section 332(c)(7)(B)(ii)’s references to “any request[es] for authorization to place, construct, or modify personal wireless service facilities” broadly, consistent with Congressional intent. As described below, we find that “any” is unqualifiedly broad, and that “request” encompasses anything required to secure all authorizations necessary for the deployment of personal wireless services infrastructure. In particular, we find that Section 332(c)(7) includes authorizations relating to access to a ROW, including but not limited to the


262 Indeed, to permit otherwise could limit the utility of ROW access for telecommunications service providers and thus conflict with the overarching preemption scheme set up by Section 253(a), for which 253(b) and 253(c) are exceptions. By construing “manage[ment]” of a ROW to include some proprietary behaviors, we mean to suggest that conduct taken in a proprietary capacity is likewise subject to 253(c)’s general limitations, including the requirement that any compensation charged in such capacity be “fair and reasonable.”

263 Cf. Minnesota Order, 14 FCC Rcd at 21729-30, para. 61-62 (internal citations omitted) (“Moreover, Minnesota has not shown that the compensation required for access to the right-of-way is ‘fair and reasonable.’ The compensation appears to reflect the value of the exclusivity inherent in the Agreement [which provides the developer with exclusive physical access, for at least ten years, to longitudinal rights-of-way along Minnesota’s interstate freeway system] rather than fair and reasonable charges for access to the right-of-way. Nor has Minnesota shown that the Agreement provides for ‘use of public rights-of-way on a nondiscriminatory basis.’”)

264 Cf. Crown Castle June 7, 2018 Ex Parte Letter at 17 n.83 (“Section 253(c), which carves out ROW management, would hardly be necessary if all ROW decisions were proprietary and shielded from the statute’s sweep.”).

265 We acknowledge that the Commission previously concluded that “Section 6409(a) applies only to State and local governments acting in their role as land use regulators” and found that “this conclusion is consistent with judicial decisions holding that Sections 253 and 332(c)(7) of the Communications Act do not preempt ‘non regulatory decisions[,]’” See 2014 Wireless Infrastructure Order, 29 FCC Rcd at 12964-65, paras. 237-240. To the extent necessary, we clarify here that the actions and analysis there were limited in scope given the different statutory scheme and record in that proceeding, which did not, at the time, suggest a need to “further elaborate as to how this principle should apply to any particular circumstance” (there, in connection with application of Section 6409(a)). Here, in contrast, as described herein, we find that further elucidation by the Commission is needed.

266 Minnesota Order, 14 FCC Rcd at 21707, para. 18 (internal citations omitted) (emphasis omitted).

267 See infra Part IV.C.1 (Authorizations Subject to the “Reasonable Period of Time” Provision of Section 332(c)(7)(B)(ii)).
“place[ment], construct[ion], or modification)” of facilities on government-owned property, for the purpose of providing “personal wireless service.” We observe that this result, too, is consistent with Commission precedent such as the Minnesota Order, which involved a contract that provided exclusive access to a ROW. As but one example, to have limited that holding to exclude government-owned property within the ROW even if the carrier needed access to that property would have the effect of diluting or completely defeating the purpose of Section 332(c)(7).

96. Second, and in the alternative, even if Section 253(a) and Section 332(c)(7) were to permit leeway for states and localities acting in their proprietary role, the examples in the record would be excepted because they involve states and localities fulfilling regulatory objectives. In the proprietary context, “a State acts as a ‘market participant with no interest in setting policy.’”269 We contrast state and local governments’ purely proprietary actions with states and localities acting with respect to managing or controlling access to property within public ROW, or to decisions about where facilities that will provide personal wireless service to the public may be sited. As several commenters point out, courts have recognized that states and localities “hold the public streets and sidewalks in trust for the public” and “manage public ROW in their regulatory capacities.”270 These decisions could be based on a number of regulatory objectives, such as aesthetics or public safety and welfare, some of which, as we note elsewhere, would fall within the preemption scheme envisioned by Congress. In these situations, the state or locality’s role seems to us to be indistinguishable from its function and objectives as a regulator.271 To

268 See also infra para. 134-36 and cases cited therein. Precedent that may appear to reach a different result can be distinguished in that it resolves disputes arising under Section 332 and/or 253(a) without analyzing the scope of Section 253(c). Furthermore, those situations did not involve government-owned property or structures within a public ROW. See, e.g., Sprint Spectrum L.P. v. Mills, 283 F.3d 404, 420-21 (2d Cir. 2002) (declining to find preemption under Section 332 applicable to terms of a school rooftop lease); Omnipoint Commc’ns, Inc. v. City of Huntington Beach, 738 F.3d 192, 195-96, 200-01 (9th Cir. 2013) (declining to find preemption under Section 332 applicable to restrictions on lease of parkland).

269 In this regard, also relevant to our interpretations here is courts’ admonition that government activities that are characterized as transactions but in reality are “tantamount to regulation” are subject to preemption, Gould, 475 U.S. at 289, and that government action disguised as private action may not be relied on as a pretext to advance regulatory objectives. See, e.g., Coastal Communications Service v. City of New York, 658 F. Supp. 2d 425, 441-42 (E.D.N.Y. 2009) (finding that a restriction on advertising on newly-installed payphones was subject to section 253(a) where the advertising was a material factor in the provider’s ability to provide the payphone service itself).


271 Indeed, the Commission has long recognized that, in enacting Sections 253(c) and 332(c)(7), Congress affirmatively protected the ability of state and local governments to carry out their responsibilities for maintaining, managing, and regulating the use of ROW and structures therein for the benefit of the public. TCI Cablevision Order, 12 FCC Rcd at 21441, para. 103 (1997) (“We recognize that section 253(c) preserves the authority of state and local governments to manage public rights-of-way. Local governments must be allowed to perform the range of vital tasks necessary to preserve the physical integrity of streets and highways, to control the orderly flow of vehicles and pedestrians, to manage gas, water, cable (both electric and cable television), and telephone facilities that crisscross the streets and public rights-of-way.”); Moratoria Declaratory Ruling, FCC 18-111, para. 142 (same); Classic Telephone, Inc. Petition for Preemption, Declaratory Ruling, and Injunctive Relief, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13103, para. 39 (1996) (same). We find these situations to be distinguishable from those where a state or locality might be engaged in a discrete, bona fide transaction involving sales or purchases of services that do not otherwise violate the law or interfere with a preemption scheme. Compare, e.g., Cardinal Towing & Auto Repair, Inc., v. City of Bedford, 180 F.3d 686, 691, 693-94 (5th Cir. 1999) (declining to find that the FAA Authorization Act of 1994, as amended by the ICC Termination Act of 1995, preempted an ordinance and contract specifications that were designed only to procure services that a municipality itself needed, not to regulate the conduct of others), with NextG Networks of N.Y., Inc. v. City of New York, 2004 WL 2884308 (N.D.N.Y., Dec. 10, 2004) (crediting allegations that a city’s actions, such as issuing a request for proposal and implementing a general franchising scheme, were not of a purely proprietary nature, but rather, were taken in pursuit of a regulatory objective or policy). This action could include, for example, procurement of services for the state or locality, or a
the extent that there is some distinction, the temptation to blend the two roles for purposes of insulating conduct from federal preemption cannot be underestimated in light of the overarching statutory objective that telecommunications service and personal wireless services be deployed without material impediments.

97. Our interpretation of both provisions finds ample support in the record of this proceeding. Specifically, commenters explain that public ROW and government-owned structures within such ROW are frequently relied upon to supply services for the benefit of the public, and are often the best-situated locations for the deployment of wireless facilities. However, the record is also replete with examples of states and localities refusing to allow access to such ROW or structures, or imposing onerous terms and conditions for such access. These examples extend far beyond governments’ treatment of single structures; indeed, in some cases it has been suggested that states or localities are using their proprietary roles to effectuate a general municipal policy disfavoring wireless deployment in public ROW. We believe that Section 253(c) is properly construed to suggest that Congress did not intend to permit states and localities to rely on their ownership of property within the ROW as a pretext to advance regulatory objectives that prohibit or have the effect of prohibiting the provision of covered services, and thus that such conduct is preempted. Our interpretations here are intended to facilitate the implementation of the scheme Congress intended and to provide greater regulatory certainty to states, municipalities, and regulated parties about what conduct is preempted under Section 253(a). Should factual questions arise about whether a state or locality is engaged in such behavior, Section 253(d) affords state and local governments and private parties an avenue for specific preemption challenges.

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contract for employment services between a state or locality and one of its employees. We do not intend to reach these scenarios with our interpretations today.

273 See, e.g., Verizon Aug. 23, 2018 Ex Parte Letter at 4-5.

274 See supra para. 25.


277 We contrast this instance to others in which we either declined to act or responded to requests for action with respect to specific disputes. See, e.g., 2014 Wireless Infrastructure Order, 29 FCC Rcd at 12964-65, paras. 237-240; Continental Airlines Petition for Declaratory Ruling Regarding the Over-the-Air Reception Devices (OTARD) Rules, Memorandum Opinion and Order, 21 FCC Rcd 13201, 13220, para. 43 (2006) (observing, in the context of a different statutory and regulatory scheme, that “[g]iven that the Commission intended to preempt restrictions [regarding restrictions on Continental’s use of its Wi-Fi antenna] in private lease agreements, however, Massport would be preempted even if it is acting in a private capacity with regard to its lease agreement with Continental.”); Sandwich Isles Section 253 Order, 32 FCC Rcd at 5883, para. 14 (rejecting argument that argument that Section 253(a) is inapplicable where it would affect the state’s ability to “deal[] with its real estate interests . . . as it sees fit,” such as by granting access to “rights-of-way over land that it owns); Minnesota Order, 14 FCC Rcd at 21706-08, paras. 17-19; cf. Amigo.Net Petition for Declaratory Ruling, Memorandum Opinion and Order, 17 FCC Rcd 10964, 10967 (WCB 2002) (Section 253 did not apply to carrier’s provision of network capacity to government entities exclusively for such entities’ internal use); T-Mobile West Corp. v. Crow, 2009 WL 5128562 (D. Ariz., Dec. 17, 2009) (Section 332(c)(7) did not apply to contract for deployment of wireless facilities and services for use on state university campus). We clarify here that such prior instances are not to be construed as a concession that Congress did not make preemption available, or that the Commission lacked the authority to support parties’ attempts to avail themselves of relief offered under preemption schemes, when confronted with instances in which a state or locality is relying on its proprietary role to skirt federal regulatory reach. Indeed, these instances demonstrate the opposite—that preemption is available to effectuate Congressional intent—and merely illustrate application of this principle. Also, we do not find it necessary to await specific disputes in the form of Section 253(d) petitions to offer these interpretations. In the alternative and as an independent means to support the interpretations here, we clarify that we intend for our views to guide how preemption should apply in fact-specific scenarios.
E. Responses to Challenges to Our Interpretive Authority and Other Arguments

98. We reject claims that we lack authority to issue authoritative interpretations of Sections 253 and 332(c)(7) in this Declaratory Ruling. As explained above, we act here pursuant to our broad authority to interpret key provisions of the Communications Act, consistent with our exercise of that interpretive authority in the past. In this instance, we find that issuing a Declaratory Ruling is necessary to remove what the record reveals is substantial uncertainty and to reduce the number and complexity of legal controversies regarding certain fee and non-fee state and local requirements in connection with Small Wireless Facility infrastructure. We thus exercise our authority in this Declaratory Ruling to interpret Section 253 and Section 332(c)(7) and explain how those provisions apply in the specific scenarios at issue here.

99. Nothing in Sections 253 or 332(c)(7) purports to limit the exercise of our general interpretive authority. Congress’s inclusion of preemption provisions in Section 253(d) and Section 332(c)(7)(B)(v) does not limit the Commission’s ability pursuant to other sections of the Act to construe and provide its authoritative interpretation as to the meaning of those provisions. Any preemption under Section 253 and/or Section 332(c)(7)(B) that subsequently occurs will proceed in accordance with the enforcement mechanisms available in each context. But whatever enforcement mechanisms may be available to preempt specific state and local requirements, nothing in Section 253 or Section 332(c)(7) prevents the Commission from declaring that a category of state or local laws is inconsistent with Section 253(a) or Section 332(c)(7)(B)(i)(II) because it prohibits or has the effect of prohibiting the relevant covered service.


279 Targeted interpretations of the statute like those we adopt here fall far short of a “federal regulatory program dictating the scope and policies involved in local land use” that some commenters fear. League of Minnesota Cities Comments at 9.

280 We also reject claims that Section 601(c)(1) of the 1996 Act constrains our interpretation of these provisions. See, e.g., NARUC Reply at 3; Smart Communities Reply at 33, 35-36. That provision guards against implied preemption, while Section 253 and Section 332(c)(7)(B) both expressly restrict state and local activities. See, e.g., Texas PUC Order, 13 FCC Red at 3485-86, para. 51. Courts also have read that provision narrowly. See, e.g., In re FCC 11-161, 753 F.3d 1015, 1120 (10th Cir. 2014); Qwest Corp. v. Minnesota Pub. Utilities Comm’n, 684 F.3d 721, 730-31 (8th Cir. 2012); Farina v. Nokia Inc., 625 F.3d 97, 131 (3d Cir. 2010). Although the Ninth Circuit in County of San Diego asserted that there is a presumption that express preemption provisions should be read narrowly, and that the presumption would apply to the interpretation of Section 253(a), County of San Diego, 543 F.3d at 548, the cited precedent applies that presumption where “the State regulates in an area where there is no history of significant federal presence.” Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm’n, 410 F.3d 492, 496 (9th Cir. 2005). Whatever the applicability of such a presumption more generally, there is a substantial history of federal involvement here, particularly insofar as interstate telecommunications services and wireless services are implicated. See, e.g., Ting v. AT&T, 319 F.3d 1126, 1136 (9th Cir. 2003); Ivy Broadcasting Co. v. Am. Tel. & Tel. Co., 391 F.2d 486, 490-92 (2d Cir. 1968); 47 U.S.C., Title III.

281 We thus reject claims to the contrary. See, e.g., City of New York Comments at 8; Virginia Joint Commenters Comments, Exh. A at 41-44; City of New York Reply at 1-2; NARUC Reply at 9-10; Smart Communities Reply at 34. Indeed, the Fifth Circuit upheld just such an exercise of authority with respect to the interpretation of Section 332(c)(7) in the past. See generally City of Arlington, 668 F.3d at 249-54. While some commenters assert that the questions addressed by the Commission in the order underly the Fifth Circuit’s City of Arlington decision are somehow more straightforward than our interpretations here, they do not meaningfully explain why that is the case, instead seemingly contemplating that the Commission would address a wider, more general range of circumstances than we actually do here. See, e.g., Virginia Joint Commenters Comments, Exh. A at 44-45.

282 Consequently, we reject claims that relying on our general interpretative authority to interpret Section 253 and Section 332(c)(7) would render any provisions of the Act mere surplusage, see, e.g., Smart Communities Reply at 34-35, or would somehow “usurp the role of the judiciary.” Washington State Cities Reply at 14. We likewise
100. Although some commenters contend in general terms that differences in judicial approaches to Section 253 are limited and thus there is little need for Commission guidance, the interpretations we offer in this Declaratory Ruling are intended to help address certain specific scenarios that have caused significant uncertainty and legal controversy, irrespective of the degree to which this uncertainty has been reflected in court decisions. We also reject claims that a Supreme Court brief joined by the Commission demonstrates that there is no need for the interpretations in this Declaratory Ruling. To the contrary, that brief observed that some potential interpretations of certain court decisions “would create a serious conflict with the Commission’s understanding of Section 253(a), and [] would undermine the federal competition policies that the provision seeks to advance.” The brief also noted that, if warranted, “the Commission can restore uniformity by issuing authoritative rulings on the application of Section 253(a) to particular types of state and local requirements.” Rather than cutting against the need for, or desirability of, the interpretations we offer in this Declaratory Ruling, the brief instead presaged them.

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101. Our interpretations of Sections 253 and Section 332(c)(7) are likewise not at odds with the Tenth Amendment and constitutional precedent, as some commenters contend. The outcome of violations of Section 253(a) or Section 332(c)(7)(B) of the Act are no more than a consequence of “the limits Congress already imposed on State and local governments” through its enactment of Section 332(c)(7).

102. We also reject the suggestion that the limits Section 253 places on state and local ROW fees and management will unconstitutionally interfere with the relationship between a state and its political subdivisions. As relevant to our interpretations here, it is not clear, at first blush, that such concerns would be implicated. Because state and local legal requirements can be written and structured in myriad ways, and challenges to such state or local activities could be framed in broad or narrow terms, we decline to resolve such questions here, divorced from any specific context.

IV. THIRD REPORT AND ORDER

103. In this Third Report and Order, we address the application of shot clocks to state and local review of wireless infrastructure deployments. We do so by taking action in three main areas. First, we adopt a new set of shot clocks tailored to support the deployment Small Wireless Facilities. Second, we adopt a specific remedy that applies to violations of these new Small Wireless Facility shot clocks, which we expect will operate to significantly reduce the need for litigation over missed shot clocks. Third, we clarify a number of issues that are relevant to all of the FCC’s shot clocks, including the types of authorizations subject to these time periods.

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A. New Shot Clocks for Small Wireless Facility Deployments

104. In 2009, the Commission concluded that we should use shot clocks to define a presumptive “reasonable period of time” beyond which state or local inaction on wireless infrastructure siting applications would constitute a “failure to act” within the meaning of Section 332.\(^{293}\) We adopted a 90-day clock for reviewing collocation applications and a 150-day clock for reviewing siting applications other than collocations. The record here suggests that our two existing Section 332 shot clocks have increased the efficiency of deploying wireless infrastructure. Many 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.\(^{294}\) Some siting agencies acknowledge that they have worked to gain efficiencies in processing siting applications and welcome the addition of new shot clocks tailored to the deployment of small scale facilities.\(^{295}\) Given siting agencies’ increased experience with existing shot clocks, the greater need for rapid siting of Small Wireless Facilities nationwide, and the lower burden siting of these facilities places on siting agencies in many cases, we take this opportunity to update our approach to speed the deployment of Small Wireless Facilities.\(^{296}\)

1. Two New Section 332 Shot Clocks for Deployment of Small Wireless Facilities

105. In this section, using authority confirmed in *City of Arlington*, we adopt two new Section 332 shot clocks for Small Wireless Facilities—60 days for review of an application for collocation of Small Wireless Facilities using a preexisting structure and 90 days for review of an application for attachment of Small Wireless Facilities using a new structure. These new Section 332 shot clocks carefully balance the well-established authority that states and local authorities have over review of wireless siting applications with the requirements of Section 332(c)(7)(ii) to exercise that authority “within a reasonable period of time… taking into account the nature and scope of the request.”\(^{297}\) Further, our decision is consistent with the BDAC’s Model Code for Municipalities’ recommended timeframes, which utilize this same 60-day and 90-day framework for collocation of Small Wireless Facilities and new structures\(^{298}\) and are similar to shot clocks enacted in state level small cell bills and the real world

\(^{293}\) *2009 Declaratory Ruling*, 24 FCC Rcd at 13994.

\(^{294}\) *See infra para. 106.*

\(^{295}\) Chicago Comments at 7 (“[T]he City has worked to achieve efficient processing times even for applications where no federal deadline exists.”); New Orleans Comments at 3 (“City supports the concept proposed by the Commission . . . to establish . . . more narrowly defined classes of deployments, with distinct reasonable times frames for action within each class.”).

\(^{296}\) *See LaWana Mayfield July 31, 2018 Ex Parte Letter* at 2 (“However, getting this infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources. The solution is to streamline relevant policies—allowing more modern rules for modern infrastructure.”); Letter from John Richard C. King, House of Representatives, South Carolina, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed Aug. 27, 2018) (“A patchwork system of town-to-town, state-to-state rules slows the approval of small cell installations and delays the deployment of 5G. We need a national framework with guardrails to streamline the path forward to our wireless future”); Letter from Andy Thompson, State Representative, Ohio House District 95, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 24, 2018) (“In order for 5G to arrive as quickly and as effectively as possible, relevant infrastructure regulations must be streamlined. It makes very little sense for rules designed for 100-foot cell towers to govern the path to deployment for modern equipment called small cells that can fit into a pizza box.”); Letter from Todd Nash, Wallowa County Board of Commissioners, Oregon, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 2 (filed Sept. 10, 2018) (FCC should streamline regulatory processes by, for example, tightening the deadlines for states and localities to approve new network facilities).\(^{297}\) 47 U.S.C. § 332(c)(7)(ii).

\(^{298}\) The BDAC Model Municipal Code recommended, for certain types of facilities, shot clocks of 60 days for collocations and 90 days for new constructions on applications for siting Small Wireless Facilities. BDAC Model
experience of many municipalities which further supports the reasonableness of our approach. Our actions will modernize the framework for wireless facility siting by taking into consideration that states and localities should be able to address the siting of Small Wireless Facilities in a more expedited review period than needed for larger facilities.

106. We find compelling reasons to establish a new presumptively reasonable Section 332 shot clock of 60 days for collocations of Small Wireless Facilities on existing structures. The record demonstrates the need for, and reasonableness of, expediting the siting review of these collocations. Notwithstanding the implementation of the current shot clocks, more streamlined procedures are both reasonable and necessary to provide greater predictability for siting applications nationwide for the deployment of Small Wireless Facilities. The two current Section 332 shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the existing Section 332 shot clocks were adopted nine years ago. Since 2009, localities have gained significant experience processing wireless siting applications. Indeed, many localities already process wireless siting applications in less than the required time and several

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Municipal Code at §§ 2.2, 2.3, 3.2a(i)(B). Our approach utilizes the same timeframes set forth in the Model Municipal Code, and we disagree with comments that it is inconsistent with or ignores the work of the BDAC. GMA September 17 Ex Parte Letter at 4-5.

299 For instance, while the City of Chicago opposes the shot clocks adopted here, we note that the City has also stated that, “[d]espite th[e] complex review process, involving many utilities and other entities, CDOT on average processed small cell applications last year in 55 days.” Letter from Edward N. Siskel, Corp. Counsel, Dept. of Law, City of Chicago, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 19, 2018).

300 Just like the shot clocks originally established in 2009—later affirmed by the Fifth Circuit and the Supreme Court—the shot clocks framework in this Third Report and Order are no more than an interpretation of “the limits Congress already imposed on State and local governments” through its enactment of Section 332(c)(7). 2009 Declaratory Ruling, 24 FCC Rcd at 14002, para. 25. See also City of Arlington, 668 F.3d at 259. As explained in the 2009 Declaratory Ruling, the shot clocks derived from Section 332(c)(7) “will not preempt State or local governments from reviewing applications for personal wireless service facilities placement, construction, or modification,” and they “will continue to decide the outcome of personal wireless service facility siting applications pursuant to the authority Congress reserved to them in Section 332(c)(7)(A).” 2009 Declaratory Ruling, 24 FCC Rcd at 14002, para. 25.

301 CTIA Comments, WT Docket No. 16-421, at 33 (filed Mar. 8, 2017); Letter from Juan Huizar, City Manager of the City of Pleasanton, TX, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed June 4, 2018) (describing the firsthand benefit of small cells and noting that communications infrastructure is a critical component of local growth); Letter from Sara Blackhurst, President, Action 22, to the Hon. Ajit Pai, Chairman, FCC, WT Docket No. 17-79 at 2 (filed Sept. 5, 2018) (encourages the Commission to remove unnecessary barriers such as unreasonable delays so deployment can proceed expeditiously); Fred A. Lamphere Sept. 11, 2018 Ex Parte Letter (It is critical that the Commission continue to remove barriers to building new wireless infrastructure such as by setting reasonable timelines to review applications).

302 T-Mobile Comments at 20; Crown Castle Reply at 5 (noting that the adoption of similar time frames by several states for small cell siting review confirms their reasonableness, and the Commission should apply these deadlines on a nationwide basis).

303 Alaska Dep’t of Natural Resources Comments at 2 (“[W]e are currently meeting or exceeding the proposed timeframe of the ‘Shot Clock.’”); see also CTIA Aug. 30, 2018 Ex Parte Letter at 5 (“Eleven states—Delaware, Florida, Indiana, Kansas, Missouri, North Carolina, Rhode Island, Tennessee, Texas, Utah, and Virginia—recently adopted small cell legislation that includes 45-day or 60-day shot clocks for small cell collocations.”); Jason R. Saine Sept. 14, 2018 Ex Parte Letter.
jurisdictions require by law that collocation applications be processed in 60 days or less.\footnote{4} With the passage of time, siting agencies have become more efficient in processing siting applications.\footnote{5} These facts demonstrate that a shorter, 60-day shot clock for processing collocation applications for Small Wireless Facilities is reasonable.\footnote{6}

107. As we found in 2009, collocation applications are generally easier to process than new construction because the community impact is likely to be smaller.\footnote{7} In particular, the addition of an antenna to an existing tower or other structure is unlikely to have a significant visual impact on the community.\footnote{8} The size of Small Wireless Facilities poses little or no risk of adverse effects on the environment or historic preservation.\footnote{9} Indeed, many jurisdictions do not require public hearings for approval of such attachments, underscoring their belief that such attachments do not implicate complex issues requiring a more searching review.\footnote{10} Further, we find no reason to believe that applying a 60-day time frame for Small Wireless Facility collocations under Section 332 creates confusion with collocations that fall within the scope of “eligible facilities requests” under Section 6409 of the Spectrum Act, which are also subject to a 60-day review.\footnote{11} The type of facilities at issue here are distinctly different and the definition of a Small Wireless Facility is clear. Further, siting authorities are required to process Section 6409 applications involving the swap out of certain equipment in 60 days, and we see no meaningful difference in processing these applications than processing Section 332 collocation applications in 60 days. There is

\footnote{4} North Carolina requires its local governments to decide collocation applications within 45 days of submission of a complete application. N.C. Gen. Stat. Ann. § 153A-349.53(a2). The same 45-day shot clock applies to certain collocations in Florida. Fla. Stat. Ann. § 365.172(13)(a)(1), (d)(1). In New Hampshire, applications for collocation or modification of wireless facilities generally have to be decided within 45 days (subject to some exceptions under certain circumstances) or the application is deemed approved. N.H. Rev. Stat. Ann. § 12-K:10. Wisconsin requires local governments to decide within 45 days of receiving complete applications for collocation on existing support structure that does not involve substantial modification, or the application will be deemed approved, unless the local government and applicant agree to an extension. Wis. Stat. Ann. § 66.0404(3)(c). Local governments in Indiana have 45 days to decide complete collocation applications, unless an extension is allowed under the statute. Ind. Code Ann. § 8-1-32.3-22. Minnesota requires any zoning application, including both collocation and non-collocation applications, to be processed in 60 days. Minn. Stat. § 15.99, subd. 2(a). By not requiring hearings, collocation applications in these states can be processed in a timely manner.

\footnote{5} Chicago Comments at 7 (“T]he City has worked to achieve efficient processing times even for applications where no federal deadline exists.”); New Orleans Comments at 3 (“City supports the concept proposed by the Commission . . . to establish . . . more narrowly defined classes of deployments, with distinct reasonable times frames for action within each class.”); Action 22 Ex Parte at 2 (“While we understand the need for relevant federal rules and protections appropriate for larger wireless infrastructure, we feel these same rules are not well-suited for smaller wireless facilities and risk slowing deployment in communities that need connectivity now.”).

\footnote{6} CCA Comments at 11-14; T-Mobile Comments at 20; Incompas Reply at 9; Sprint Comments at 45-47 (noting that Florida, Indiana, Kansas, Texas and Virginia all have passed small cell legislation that requires small cell application attachments to be acted upon in 60 days); T-Mobile Comments at 18 (arguing that the Commission should accelerate the Section 332 shot clocks for all sites to 60 days for collocations, including small cells).

\footnote{7} 2009 Declaratory Ruling, 24 FCC Rcd at 14012, para. 40.

\footnote{8} TIA Comments at 4.

\footnote{9} Wireless Infrastructure Second R&O, FCC 18-30 at para. 42 (citing Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR Part 1, Appx. B, § VI (Collocation NPA)); see also 47 CFR § 1.1306(c)(1) (excluding certain wireless facilities from NEPA review).

\footnote{10} 2009 Declaratory Ruling, 24 FCC Rcd at 14012, para. 46.

\footnote{11} DESHPO Comments at 2 (“opposes the application of separate time limits for review of facility deployments not covered by the Spectrum Act, as it would lead to confusion within the process for all parties involved (Applicants/Carrier, Consultants, SHPO”).
no reason to apply different time periods (60 vs. 90 days) to what is essentially the same review: modification of an existing structure to accommodate new equipment. Finally, adopting a 60-day shot clock will encourage service providers to collocate rather than opting to build new siting structures which has numerous advantages.313

109. Some municipalities argue that smaller facilities are neither objectively “small” nor less obtrusive than larger facilities.314 Others contend that shorter shot clocks for a broad category of “smaller” facilities are too restrictive, and would fail to take into account the varied and unique climate, historic architecture, infrastructure, and volume of siting applications that municipalities face.315 We take those considerations into account by clearly defining the category of “Small Wireless Facility” in our rules and allowing siting agencies to rebut the presumptive reasonableness of the shot clocks based upon the actual circumstances they face. For similar reasons, we disagree that establishing shorter shot clocks for smaller facilities would impair states’ and localities’ authority to regulate local rights of way.316

110. While some commenters argue that additional shot clock classifications would make the siting process needlessly more complex without any proven benefits, any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process. We


313 Letter from Richard Rossi, Senior Vice President, General Counsel, American Tower, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 3 (filed Aug. 10, 2018) (“The reason to encourage collocation is straightforward, it is faster, cheaper, more environmentally sound, and less disruptive than building new structures.”).

314 League of Az Cities and Towns Comments at 13, 29 (arguing that many small cells or micro cells can be taller and more visually intrusive than macro cells).

315 See, e.g., Letter from Geoffrey C. Beckwith, Executive Director & CEO, Mass. Municipal. Assoc., Boston, MA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, (filed Sept. 11, 2018) (Geoffrey C. Beckwith Sept. 11, 2018 Ex Parte Letter); Mike Posey Sept. 11, 2018 Ex Parte Letter; Letter from John A. Barbish, Mayor, City of Wickliffe, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 13, 2018); Letter from Pauline Russo Cutter, Mayor, City of San Leandro, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 12, 2018); Letter from Ed Waage, Mayor, City of Pismo Beach, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from Scott A. Hancock, Executive Director, MML, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Sept. 18, 2018); Letter from Leon Towarnicki, City Manager, Martinsville, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from Thomas Aujero Small, Mayor, City of Culver City, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018).

316 Philadelphia Comments at 4-5 (arguing that shorter shot clocks should not be implemented because “cities are already resource constrained and any further attempt to further limit the current time periods for review of applications will seriously and adversely affect public safety as well as diminish the proper role, under our federalist system, of state and local governments in regulating local rights of way”); Smart Communities Comments, Docket 16-421, at 13 (filed Mar. 8, 2017) (included by reference by Austin’s Comments); Alaska Dept. of Trans. Comments at 2. See, e.g., TX Hist. Comm. Comments at 2 (current shot clocks are appropriate and that further shortening these shot clocks is not warranted); Arlington, TX Comments at 2; Letter from William Tomko, Mayor of Chagrin Falls, OH, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 1-2 (filed Sept. 17, 2018); Nina Beety Sept. 17, 2018 Ex Parte Letter; Georgia Municipal Association Sept. 17, 2018 Ex Parte Letter at 4.

317 League of Az Cities and Towns et al. Comments at 26-27, 29-35; Cities of San Antonio et. al Comments at 8; Philadelphia Comments at 4.

318 T-Mobile Comments at 22; Florida Coalition Comments at 9 (creating new shot clocks would result in “too many ‘shot clocks’ and both the industry and local governments would be confused as to which shot clock applied to what application”).

319 While several parties proposed additional shot clock categories, we believe that the any benefit from a closer tailoring of categories to circumstances is not outweighed by the administrative burden on siting authorities and
also reject the assertion that revising the period of time to review siting decisions would amount to a
nationwide land use code for wireless siting.\textsuperscript{320} Our approach is consistent with the Model Code for
Municipalities that recognizes that the shot clocks that we are adopting for the review of Small Wireless
Facility deployment applications correctly balance the needs of local siting agencies and wireless service
providers.\textsuperscript{321} Our balance of the relevant considerations is informed by our experience with the
previously adopted shot clocks, the record in this proceeding, and our predictive judgment about the
effectiveness of actions taken here to promote the provision of personal wireless services.

111. For similar reasons as set forth above, we also find it reasonable to establish a new 90 day
Section 332 shot clock for new construction of Small Wireless Facilities. Ninety days is a presumptively
reasonable period of time for localities to review such siting applications. Small Wireless Facilities have
far less visual and other impact than the facilities we considered in 2009, and should accordingly require
less time to review.\textsuperscript{322} Indeed, some state and local governments have already adopted 60-day maximum
reasonable periods of time for review of all small cell siting applications, and, even in the absence of such
maximum requirements, several are already reviewing and approving small-cell siting applications within
60 days or less after filing.\textsuperscript{323} Numerous industry commenters advocated a 90-day shot clock for all non-
collocation deployments.\textsuperscript{324} Based on this record, we find it reasonable to conclude that review of an
application to deploy a Small Wireless Facility using a new structure warrants more review time than a
mere collocation, but less than the construction of a macro tower.\textsuperscript{325} For the reasons explained below, we

\textsuperscript{320} Cities of San Antonio \textit{et. al} Comments, Exh. A at 17-18. In the same vein, the Florida Department of
Transportation contends that “[p]ermit review times should comply with state statutes,” especially if the industry
insists on being treated similarly as other utilities. AASHTO Comments, Attach. at 13 (Florida Dept. of Trans.
Comments); \textit{see also} Alaska Dept. of Trans. Comments at 2; TX Dept. of Trans. Comments at 2 (explaining that
variations in topography, weather, government interests, and state and local political structure counsel against
standardized nationwide shot clocks). The Maryland Department of Transportation is concerned about the shortened
shot clocks proposed because they would conflict with a Maryland law that requires a 90-day comment period in
considering wireless siting applications and because certain applications can be complex and necessitate longer
review periods. AASHTO Comments, Attach. at 40 (MD Dept. of Trans. Comments).

\textsuperscript{321} BDAC Model Municipal Code at § 3.2a(i)(B).

\textsuperscript{322} CTIA Comments, Attach. 1 at 38.

\textsuperscript{323} T-Mobile Comments at 19-20 (stating that some states already have adopted more expedited time frames to lower
siting barriers and speed deployment, which demonstrates the reasonableness of the proposed 60-day and 90-day
revised shot clocks); Incompas Reply at 9 (stating that there is no basis for differing time-periods for similarly-
situated small cell installation requests, and the lack of harmonization could discourage the use of a more efficient
infrastructure); CCA Comments at 14 n.52 (citing CCA Streamlining Reply at 7-8 that in Houston, Texas, the
review process for small cell deployments “usually takes 2 weeks, but no more than 30 days to process and complete
the site review. In Kenton County, Kentucky, the maximum time permitted to act upon new facility siting requests
is 60 days. Louisville, Kentucky generally processes small cell sitting requests within 30 days, and Matthews, North
Carolina generally processes wireless siting applications within 10 days”).

\textsuperscript{324} CTIA Reply at 3 (stating that the Commission should shorten the shot clocks to 90 days for new facilities); CTIA
Comments at 11-12 (asserting that the existing 150-day review period for new wireless sites should be shortened to
90 days); Crown Castle Comments at 29 (stating that a 90-day shot clock for new facilities is appropriate for macro
cells and small cells alike, to the extent such applications require review under Section 332 at all); ExteNet
Comments at 8 (asserting that the Commission should accelerate the shot clock for all other non-collocation
applications, including those for new DNS poles, from 150 days to 90 days); WIA Reply at 2.

\textsuperscript{325} CCUA argues that the new shot clocks would force sitting authorities to deny applications when they find that
applications are incomplete. Letter from Kenneth S. Fellman, Counsel, CCUA, to Marlene H. Dortch, Secretary,
also specify today a provision that will initially reset these two new shot clocks in the event that a locality receives a materially incomplete application.

112. Finally, we note that our 60- and 90-day approach is similar to that in pending legislation that has bipartisan congressional support, and is consistent with the Model Code for Municipalities. Specifically, the draft STREAMLINE Small Cell Deployment Act, would apply a 60-day shot clock to collocation of small personal wireless service facilities and a 90-day shot clock to any other action relating to small personal wireless service facilities. Further, the Model Code for Municipalities recommended by the FCC’s Broadband Deployment Advisory Committee also utilizes this same 60-day and 90-day framework for collocation of Small Wireless Facilities and new structures.

2. Batched Applications for Small Wireless Facilities

113. Given the way in which Small Wireless Facilities are likely to be deployed, in large numbers as part of a system meant to cover a particular area, we anticipate that some applicants will submit “batched” applications: multiple separate applications filed at the same time, each for one or more sites or a single application covering multiple sites. In the Wireless Infrastructure NPRM/NOI, the Commission asked whether batched applications should be subject to either longer or shorter shot clocks than would apply if each component of the batch were submitted separately. Industry commenters contend that the shot clock applicable to a batch or a class of applications should be no longer than that applicable to an individual application of the same class. On the other hand, several commenters, contend that batched applications have often been proposed in historic districts and historic buildings (areas that require a more complex review process), and given the complexities associated with reviews of that type, they urge the Commission not to apply shorter shot clocks to batched applications. Some localities also argue that a single, national shot clock for batched applications would fail to account for unique local circumstances.

114. We see no reason why the shot clocks for batched applications to deploy Small Wireless Facilities should be longer than those that apply to individual applications because, in many cases, the batching of such applications has advantages in terms of administrative efficiency that could actually

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make review easier.\textsuperscript{333} Our decision flows from our current Section 332 shot clock policy. Under our two existing Section 332 shot clocks, if an applicant files multiple siting applications on the same day for the same type of facilities, each application is subject to the same number of review days by the siting agency.\textsuperscript{334} These multiple siting applications are equivalent to a batched application and therefore the shot clocks for batching should follow the same rules as if the applications were filed separately. Accordingly, when applications to deploy Small Wireless Facilities are filed in batches, the shot clock that applies to the batch is the same one that would apply had the applicant submitted individual applications. Should an applicant file a single application for a batch that includes both collocated and new construction of Small Wireless Facilities, the longer 90-day shot clock will apply, to ensure that the siting authority has adequate time to review the new construction sites.

115. We recognize the concerns raised by parties arguing for a longer time period for at least some batched applications, but conclude that a separate rule is not necessary to address these concerns. Under our approach, in extraordinary cases, a siting authority, as discussed below, can rebut the presumption of reasonableness of the applicable shot clock period where a batch application causes legitimate overload on the siting authority’s resources.\textsuperscript{335} Thus, contrary to some localities’ arguments,\textsuperscript{336} our approach provides for a certain degree of flexibility to account for exceptional circumstances. In addition, consistent with, and for the same reasons as our conclusion below that Section 332 does not permit states and localities to prohibit applicants from requesting multiple types of approvals simultaneously,\textsuperscript{337} we find that Section 332(c)(7)(B)(ii) similarly does not allow states and localities to refuse to accept batches of applications to deploy Small Wireless Facilities.

B. New Remedy for Violations of the Small Wireless Facilities Shot Clocks

116. In adopting these new shot clocks for Small Wireless Facility applications, we also provide an additional remedy that we expect will substantially reduce the likelihood that applicants will need to pursue additional and costly relief in court at the expiration of those time periods.

117. At the outset, and for the reasons the Commission articulated when it adopted the 2009 shot clocks, we determine that the failure of a state or local government to issue a decision on a Small Wireless Facility siting application within the presumptively reasonable time periods above will constitute a “failure to act” within the meaning of Section 332(c)(7)(B)(v). Therefore, a provider is, at a minimum, entitled to the same process and remedies available for a failure to act within the new Small Wireless Facility shot clocks as they have been under the FCC’s 2009 shot clocks. But we also add an additional remedy for our new Small Wireless Facility shot clocks.

118. State or local inaction by the end of the Small Wireless Facility shot clock will function not only as a Section 332(c)(7)(B)(v) failure to act but also amount to a presumptive prohibition on the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II). Accordingly, we would expect the state or local government to issue all necessary permits without further delay. In cases where such action is not taken, we assume, for the reasons discussed below, that the applicant

\textsuperscript{333} See, e.g., Sprint Comments, Docket No. 16-421, at 43-44 (filed Mar. 8, 2017); Verizon Comments at 42; CTIA Comments at 17.

\textsuperscript{334} WIA Comments at 27 (“Merely bundling similar sites into a single batched application should not provide a locality with more time to review a single batched application than to process the same applications if submitted individually.”).

\textsuperscript{335} See infra paras. 117, 119. See Letter from Nina Beety, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 17, 2018); Letter from Dave Ruller, City Manager, City of Kent, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Sept. 18, 2018).

\textsuperscript{336} Cities of San Antonio et al. Comments, Exh. A at 17, 19-20; see also Smart Communities Comments, Docket 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin’s Comments).

\textsuperscript{337} See infra para. 144.
would have a straightforward case for obtaining expedited relief in court.\[^{338}\]

119. As discussed in the Declaratory Ruling, a regulation under Section 332(c)(7)(B)(i)(II) constitutes an effective prohibition if it materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.\[^{339}\] Missing shot clock deadlines would thus presumptively have the effect of unlawfully prohibiting service in that such failure to act can be expected to materially limit or inhibit the introduction of new services or the improvement of existing services.\[^{340}\] Thus, when a siting authority misses the applicable shot clock deadline, the applicant may commence suit in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II), in addition to a violation of Section 332(c)(7)(B)(ii), as discussed above. The siting authority then will have an opportunity to rebut the presumption of effective prohibition by demonstrating that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services.

120. Given the seriousness of failure to act within a reasonable period of time, we expect, as noted above, siting authorities to issue without any further delay all necessary authorizations when notified by the applicant that they have missed the shot clock deadline, absent extraordinary circumstances. Where the siting authority nevertheless fails to issue all necessary authorizations and litigation is commenced based on violations of Sections 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii), we expect that applicants and other aggrieved parties will likely pursue equitable judicial remedies.\[^{341}\] Given the relatively low burden on state and local authorities of simply acting—one way or the other—within the Small Wireless Facility shot clocks, we think that applicants would have a relatively low hurdle to clear in establishing a right to expedited judicial relief. Indeed, for violations of Section 332(c)(7)(B), courts commonly have based the decision whether to award preliminary and permanent injunctive relief on several factors. As courts have concluded, preliminary and permanent injunctions fulfill Congressional intent that action on applications be timely and that courts consider violations of Section 332(c)(7)(B) on an expedited basis.\[^{342}\] In addition, courts have observed that “[a]lthough Congress in the Telecommunications Act left intact some of local zoning boards’ authority under state law,” they should not be owed deference on issues relating to Section 332(c)(7)(B)(ii), meaning that “in the majority of cases the proper remedy for a zoning board decision that violates the Act will be an order... instructing the board to authorize construction.”\[^{343}\] Such relief also is supported where few or no issues remain to be decided, and those that remain can be addressed by a court.\[^{344}\]

121. Consistent with those sensible considerations reflected in prior precedent, we expect that

\[^{338}\] Where we discuss litigation here, we refer, for convenience, to “the applicant” or the like, since that is normally the party that pursues such litigation. But we reiterate that under the Act, “[a]ny person adversely affected by” the siting authority’s failure to act could pursue such litigation. 47 U.S.C. § 332(c)(7)(B)(v).

\[^{339}\] See supra paras. 34-42.

\[^{340}\] Id.

\[^{341}\] See, e.g., 2014 Wireless Infrastructure Order, 29 FCC Rcd at 12978, para. 284.


\[^{343}\] See, e.g., Nat’l Tower, 297 F.3d at 21-22; AT&T Mobility, 127 F. Supp. 3d at 1176.

\[^{344}\] See, e.g., Green Mountain Realty, 750 F.3d at 41-42; Nat’l Tower, 297 F.3d at 24-25; Cellular Tel. Co., 166 F.3d at 497; Bell Atl. Mobile, 848 F. Supp. 2d at 403; New Cingular Wireless PCS, 2014 WL 79932, *8.
courts will typically find expedited and preliminary and permanent injunctive relief warranted for violations of Sections 332(c)(7)(B)(i)(II) and 332(c)(7)(B)(ii) of the Act when addressing the circumstances discussed in this Order. Prior findings that preliminary and permanent injunctive relief best advances Congress’s intent in assuring speedy resolution of issues encompassed by Section 332(c)(7)(B) appear equally true in the case of deployments of Small Wireless Facilities covered by our interpretation of Section 332(c)(7)(B)(ii) in this Third Report and Order. 345 Although some courts, in deciding whether an injunction is the appropriate form of relief, have considered whether a siting authority’s delay resulted from bad faith or involved other abusive conduct, 346 we do not read the trend in court precedent overall to treat such considerations as more than relevant (as opposed to indispensable) to an injunction. We believe that this approach is sensible because guarding against barriers to the deployment of personal wireless facilities not only advances the goal of Section 332(c)(7)(B) but also policies set out elsewhere in the Communications Act and 1996 Act, as the Commission recently has recognized in the case of Small Wireless Facilities. 347 This is so whether or not these barriers stem from bad faith. Nor do we anticipate that there would be unresolved issues implicating the siting authority’s expertise and therefore requiring remand in most instances.

122. In light of the more detailed interpretations that we adopt here regarding reasonable time frames for siting authority action on specific categories of requests—including guidance regarding circumstances in which longer time frames nonetheless can be reasonable—we expect that litigation generally will involve issues that can be resolved entirely by the relevant court. Thus, as the Commission has stated in the past, “in the case of a failure to act within the reasonable time frames set forth in our rules, and absent some compelling need for additional time to review the application, we believe that it would also be appropriate for the courts to treat such circumstances as significant factors weighing in favor of [injunctive] relief.” 348 We therefore caution those involved in potential future disputes in this area against placing too much weight on the Commission’s recognition that a siting authority’s failure to act within the associated timeline might not always result in a preliminary or permanent injunction under the Section 332(c)(7)(B) framework while placing too little weight on the Commission’s recognition that policies established by federal communications laws are advanced by streamlining the process for deploying wireless facilities.

123. We anticipate that the traditional requirements for awarding preliminary or permanent injunctive relief would likely be satisfied in most cases and in most jurisdictions where a violation of 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii) is found. Typically, courts require movants to establish the following elements of preliminary or permanent injunctive relief: (1) actual success on the merits for permanent injunctive relief and likelihood of success on the merits for preliminary injunctive relief, (2) continuing irreparable injury, (3) the absence of an adequate remedy at law, (4) the injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party, and (5) award of injunctive relief would not be adverse to the public interest. 349 Actual success on the merits would be

345 See Green Mountain Realty Corp., 750 F.3d at 41 (reasoning that remand to the siting authority “would not be in accordance with the text or spirit of the Telecommunications Act); Cellular Tel. Co., 166 F.3d at 497 (noting “that injunctive relief best serves the TCA’s stated goal of expediting resolution” of cases brought under 47 U.S.C. § 332(c)(7)(B)(v)).


demonstrated when an applicant prevails in its failure-to-act or effective prohibition case; likelihood of success would be demonstrated because, as discussed, missing the shot clocks, depending on the type of deployment, presumptively prohibits the provision of personal wireless services and/or violates Section 332(c)(7)(B)(ii)’s requirement to act within a reasonable period of time. Continuing irreparable injury likely would be found because remand to the siting authority “would serve no useful purpose” and would further delay the applicant’s ability to provide personal wireless service to the public in the area where deployment is proposed, as some courts have previously determined. There also would be no adequate remedy at law because applicants “have a federal statutory right to participate in a local [personal wireless services] market free from municipally-imposed barriers to entry,” and money damages cannot directly substitute for this right. The public interest and the balance of harms also would likely favor the award of a preliminary or permanent injunction because the purpose of Section 332(c)(7) is to encourage the rapid deployment of personal wireless facilities while preserving, within bounds, the authority of states and localities to regulate the deployment of such facilities, and the public would benefit if further delays in the deployment of such facilities—which a remand would certainly cause—are prevented. We also expect that the harm to the siting authority would be minimal because the only right of which it would be deprived by a preliminary or permanent injunction is the right to act on the siting application beyond a reasonable time period, a right that “is not legally cognizable, because under [Sections 332(c)(7)(B)(i)(II) and 332(c)(7)(B)(ii)], the [siting authority] has no right to exercise this power.” Thus, in the context of Small Wireless Facilities, we expect that the most appropriate remedy in typical cases involving a violation of Sections 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii) is the award of injunctive relief in the form of an order to issue all necessary authorizations.

124. Our approach advances Section 332(c)(7)(B)(v)’s provision that certain siting disputes, including those involving a siting authority’s failure to act, shall be heard and decided by a court of competent jurisdiction on an expedited basis. The framework reflected in this Order will provide the courts with substantive guiding principles in adjudicating Section 332(c)(7)(B)(v) cases, but 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. This accords with the Fifth Circuit’s recognition in City of Arlington

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Note that the standards for permanent injunctive relief differ in some respects among the circuits and the states. For example, “most courts do not consider the public interest element in deciding whether to issue a permanent injunction, though the Third Circuit has held otherwise.” Klay, 376 F.3d at 1097. Courts in the Second Circuit consider only irreparable harm and success on the merits. Omnipoit Commc’ns, Inc. v. Vill. of Tarrytown Planning Bd., 302 F. Supp. 2d 205, 225 (S.D.N.Y. 2004). The Third and Fifth Circuits have precedents holding that irreparable harm is not an essential element of a permanent injunction. See Roe v. Operation Rescue, 919 F.2d 857, 873 n. 8 (3d Cir. 1990); Lewis v. S. S. Baune, 534 F.2d 1115, 1123–24 (5th Cir. 1976). For the sake of completeness, our analysis discusses all of the elements that have been used in decided cases.

350 See New Jersey Payphone, 130 F. Supp. 2d at 640.
352 New Jersey Payphone, 130 F. Supp. 2d at 641.
353 City of Arlington, 668 F.3d at 234.
355 New Jersey Payphone, 130 F. Supp. 2d at 641.
356 See Cellular Tel. Co, 166 F.3d at 496. While our discussion here focused on cases that apply the permanent injunction standard, we have the same view regarding relief under the preliminary injunction standard when a locality fails to act within the applicable shot clock periods. See, e.g., Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008) (discussing the standard for preliminary injunctive relief).
357 Several commenters support this position, urging the Commission to reaffirm that adversely affected applicants must seek redress from the courts. See, e.g., League of Ar Cities and Towns et al. Comments at 14-21; Philadelphia
that the Act could be read “as establishing a framework in which a wireless service provider must seek a remedy for a state or local government’s unreasonable delay in ruling on a wireless siting application in a court of competent jurisdiction while simultaneously allowing the FCC to issue an interpretation of § 332(c)(7)(B)(ii) that would guide courts’ determinations of disputes under that provision.”

125. The guidance provided here should reduce the need for, and complexity of, case-by-case litigation and reduce the likelihood of vastly different timing across various jurisdictions for the same type of deployment. This clarification, along with the other actions we take in this Third Report and Order, should streamline the courts’ decision-making process and reduce the possibility of inconsistent rulings. Consequently, we believe that our approach helps facilitate courts’ ability to “hear and decide such [lawsuits] on an expedited basis,” as the statute requires.

126. Reducing the likelihood of litigation and expediting litigation where it cannot be avoided should significantly reduce the costs associated with wireless infrastructure deployment. For instance, WIA states that if one of its members were to challenge every shot clock violation it has encountered, it would be mired in lawsuits with forty-six localities. And this issue is likely to be compounded given the expected densification of wireless networks. Estimates indicate that deployments of small cells could reach up to 150,000 in 2018 and nearly 800,000 by 2026. If, for example, 30 percent (based on T-Mobile’s experience) of these expected deployments are not acted upon within the applicable shot clock periods, the process would be significantly slowed. Our interpretation thus preserves a meaningful role for courts under Section 332(c)(7)(B)(v), contrary to the concern some commenters expressed with particular focus on alternative proposals we do not adopt, such as a deemed granted remedy. See, e.g., Colorado Comm. and Utility All. Comments at 6-7; League of Az Cities and Towns et al. Comments at 14-23; Philadelphia Comments at 2; Baltimore Reply at 11; City of San Antonio et al. Reply at 2; San Francisco Reply at 6; League of Az Cities and Towns et al. Reply at 2-3. In addition, our interpretation of Section 332(c)(7)(B)(ii) does not result in a regime in which the Commission could be seen as implicitly issuing local land use permits, a concern that states and localities raised regarding an absolute deemed granted remedy, because applicants are still required to petition a court for relief, which may include an injunction directing siting authorities to grant the application. See Alexandria Comments at 2; Baltimore Reply at 10; Philadelphia Reply at 8; Smart Cities Coal Comments at ii, 4, 39.

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358 City of Arlington, 668 F.3d at 250.

359 The likelihood of non-uniform or inconsistent rulings on what time frames are reasonable or what circumstances could rebut the presumptive reasonableness of the shot clock periods stems from the intrinsic ambiguity of the phrase “reasonable period of time,” which makes it susceptible of varying constructions. See City of Arlington, 668 F.3d at 255 (noting “that the phrase ‘a reasonable period of time,’ as it is used in § 332(c)(7)(B)(ii), is inherently ambiguous”); Capital Network System, Inc. v. FCC, 28 F.3d 201, 204 (D.C. Cir. 1994) (“Because ‘just,’ ‘unjust,’ ‘reasonable,’ and ‘unreasonable’ are ambiguous statutory terms, this court owes substantial deference to the interpretation the Commission accords them.”). See also Lightower Comments at 3 (“The lack of consistent guidance regarding statutory interpretation is creating uncertainty at the state and local level, with many local jurisdictions seeming to simply make it up as they go. Differences in the federal courts are only exacerbating the patchwork of interpretations at the state and local level.”).


361 WIA Comments at 16.


363 T-Mobile Comments at 8.
period, that would translate to 45,000 violations in 2018 and 240,000 violations in 2026. These sheer
numbers would render it practically impossible to commence Section 332(c)(7)(B)(v) cases for all
violations, and litigation costs for such cases likely would be prohibitive and could virtually bar providers
from deploying wireless facilities.

127. Our updated interpretation of Section 332(c)(7) for Small Wireless Facilities effectively
balances the interest of wireless service providers to have siting applications granted in a timely and
streamlined manner and the interest of localities to protect public safety and welfare and preserve their
authority over the permitting process. Our specialized deployment categories, in conjunction with the
acknowledgement that in rare instances, it may legitimately take longer to act, recognize that the siting
process is complex and handled in many different ways under various states’ and localities’ long-
established codes. Further, our approach tempers localities’ concerns about the inflexibility of the
Wireless Infrastructure NPRM/NOI’s deemed granted proposal because the new remedy we adopt here
accounts for the breadth of potentially unforeseen circumstances that individual localities may face and
the possibility that additional review time may be needed in truly exceptional circumstances. We
further find that our interpretive framework will not be unduly burdensome on localities because a
number of states have already adopted even more stringent deemed granted remedies.

128. At the same time, there may be merit in the argument made by some commenters that the
FCC has the authority to adopt a deemed granted remedy. Nonetheless, we do not find it necessary to
decide that issue today, as we are confident that the rules and interpretations adopted here will provide
substantial relief, effectively avert unnecessary litigation, allow for expeditious resolution of siting
applications, and strike the appropriate balance between relevant policy considerations and statutory

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364 These numbers would escalate under WIA’s estimate that 70 percent of small cell deployment applications exceed the applicable shot clock. WIA Comments at 7.

365 See CTIA Comments at 9 (explaining that, “[p]articularly for small cells, the expense of litigation can rarely be justified); WIA Comments at 16 (quoting and discussing Lightower’s Comments in 2016 Streamlining Public Notice); T-Mobile Comment, Attach. A at 8.

366 See, e.g., AT&T Comments at 26; CCA Comments at 7, 9, 11-12; CCA Reply at 5-6, 8; Cityscape Consultants Comments at 1; CompTIA Comments at 3; CIC Comments at 17-18; Crown Castle Comments at 23-28; Crown Castle Reply at 3; CTIA Comments at 7-9, Attach. 1 at 5, 39-43, Attach. 2 at 3, 23-24; GCI Comments at 5-9; Lightower Comments at 7, 18-19; Samsung Comments at 6; T-Mobile Comments at 13, 16, Attach. A at 25; WIA Comments at 15-17.

367 See, e.g., Arizona Munis Comments at 23; Arizona Munis Reply at 8-9; Baltimore Reply at 10; Lansing Comments at 2; Philadelphia Reply at 9-12; Torrance Comments at 1-2; CPUC Comments at 14; CWA Reply at 5; Minnesota Munis Comments at 9; but see CTIA Reply at 9.

368 See, e.g., Chicago Comments at 2 (contending that wireless facilities siting entails fact-specific scenarios); AASHTO Comments, Attach. at 40 (MD Dept. of Trans. SHA Comments) (describing the complexity of reviewing proposed deployments on rights-of-way); AASHTO Comments, Attach. at 51 (Wyoming DOT Comments); Baltimore Reply at 11; Philadelphia Comments at 4; Alexandria Comments at 6; Mukilteo Comments at 1; Alaska Dept. of Trans. Comments at 2; Alaska SHPO Reply at 1.


370 See, e.g., CTIA Comments at 10-11; T-Mobile Comments at 15-18, Verizon Comments at 37, 39-41, WIA Comments at 17-20.
interests to preserve the traditional role of state and local governments in land use and zoning regulation and the adoption of a deemed granted remedy. We do not agree with WIA that courts have failed to provide meaningful remedies to such an extent as would require the Brehmer v. Planning Bd. of Town of Wellfleet, 497; 166 F.3d at stated goal of expediting resolution of cases brought under Section 332(c)(7)(B)(v).

But see Up State Tower Co. v. Town of Cincinnati Bell Wireless, LLC v. Brown County, Ohio, No. 1:04-CV-733, 257 F. Supp. 3d at 318 (concluding that the siting authority’s failure to act within the 150-day shot clock was unreasonable and awarding a permanent injunction in favor of the applicant); Am. Towers, Inc. v. Wilson County, No. 3:10-CV-1196, 2014 WL 28953, at *13–14 (M.D. Tenn. Jan. 2, 2014) (finding that the county failed to act within a reasonable period of time, as required under Section 332(c)(7)(B)(ii)), and granting an injunction directing the county to approve the applications and issue all necessary authorizations for the applicant; Inc. v. Wilson County, 150-day shot clock was unreasonable and awarding a permanent injunction in favor of the applicant); Upstate Cellular Network, 668 F.3d at 234 (noting that the purpose of Section 332(c)(7) is to balance the competing interests to preserve the traditional role of state and local governments in land use and zoning regulation and the rapid development of new telecommunications technologies).

See supra paras. 119-20 (explaining how the remedy strikes the proper balance between competing interests). Because our approach to shot clocks involves our interpretation of Section 332(c)(7)(B)(ii) and the consequences that flow from that—and does not rely on Section 253 of the Act—we need not, and thus do not, resolve disputes about the potential use of Section 253 in this specific context, such as whether it could serve as authority for a deemed granted or similar remedy. See, e.g., San Francisco Comments at 9-10; CPUC Comments at 10; Smart Communities Comments at 4-11, 21; Smart Communities Reply at 78-79; League of Az Cities and Towns et al. Reply at 4; Alexandria Comments at 5; Irvine Comments at 5; Minnesota Cities Comments at 11-13; Philadelphia Reply at 2, 7; Fairfax County Comments at 17; Greenlining Reply at 4; NRUC Reply at 3-5; NATOA June 21, 2018 Ex Parte Letter. To the extent that commenters raise arguments regarding the proper interpretation of “prohibit or have the effect of prohibiting” under Section 253 or the scope of Section 253, these issues are discussed in the Declaratory Ruling, see supra paras. 34-42.

See App Association Comments at 9; CCI Comments at 6-8; Conterra Comments at 14-17; ExteNet Comments at 13; T-Mobile Comments at 17; Quintillion Reply at 6; Verizon Comments at 8-18; WIA Comments at 9-10. WIA contends that adoption of a deemed granted remedy is needed because various courts faced with shot clock claims have failed to provide meaningful remedies, citing as an example a case in which the court held that the town failed to act within the shot clock period but then declined to issue an injunction directing the siting agency to grant the application. WIA Comments at 16-17. However, a number of cases involving violations of the “reasonable period of time” requirement of Section 332(c)(7)(B)(ii)—decided either before or after the promulgation of the Commission’s Section 332(c)(7)(B)(ii) shot clocks—have concluded with an award of injunctive relief. See, e.g., Upstate Cellular Network, 257 F. Supp. 3d at 318 (concluding that the siting authority’s failure to act within the 150-day shot clock was unreasonable and awarding a permanent injunction in favor of the applicant); Am. Towers, Inc. v. Wilson County, No. 3:10-CV-1196, 2014 WL 28953, at *13–14 (M.D. Tenn. Jan. 2, 2014) (finding that the county failed to act within a reasonable period of time, as required under Section 332(c)(7)(B)(ii)), and granting an injunction directing the county to approve the applications and issue all necessary authorizations for the applicant to build and operate the proposed tower); Cincinnati Bell Wireless, LLC v. Brown County, Ohio, No. 1:04-CV-733, 2005 WL 1629824, at *4–5 (S.D. Ohio July 6, 2005) (finding that the county failed to act within a reasonable period of time under Section 332(c)(7)(B)(ii) and awarding injunctive relief). But see Up State Tower Co. v. Town of Kiantone, 718 Fed. Appx. 29 (2d Cir. 2017) (declining to reverse district court’s refusal to issue injunction compelling immediate grant of application). Courts have also held “that injunctive relief best serves the TCA’s stated goal of expediting resolution of” cases brought under Section 332(c)(7)(B)(v). Cellular Tel. Co., 166 F.3d at 497; Brehmer v. Planning Bd. of Town of Wellfleet, 238 F.3d 117, 121 (1st Cir. 2001). Under these circumstances, we do not agree with WIA that courts have failed to provide meaningful remedies to such an extent as would require the adoption of a deemed granted remedy.

See supra paras. 119-20 (explaining how the remedy strikes the proper balance between competing interests). Because our approach to shot clocks involves our interpretation of Section 332(c)(7)(B)(ii) and the consequences that flow from that—and does not rely on Section 253 of the Act—we need not, and thus do not, resolve disputes about the potential use of Section 253 in this specific context, such as whether it could serve as authority for a deemed granted or similar remedy. See, e.g., San Francisco Comments at 9-10; CPUC Comments at 10; Smart Communities Comments at 4-11, 21; Smart Communities Reply at 78-79; League of Az Cities and Towns et al. Reply at 4; Alexandria Comments at 5; Irvine Comments at 5; Minnesota Cities Comments at 11-13; Philadelphia Reply at 2, 7; Fairfax County Comments at 17; Greenlining Reply at 4; NRUC Reply at 3-5; NATOA June 21, 2018 Ex Parte Letter. To the extent that commenters raise arguments regarding the proper interpretation of “prohibit or have the effect of prohibiting” under Section 253 or the scope of Section 253, these issues are discussed in the Declaratory Ruling, see supra paras. 34-42.

See supra paras. 119-20 (explaining how the remedy strikes the proper balance between competing interests). Because our approach to shot clocks involves our interpretation of Section 332(c)(7)(B)(ii) and the consequences that flow from that—and does not rely on Section 253 of the Act—we need not, and thus do not, resolve disputes about the potential use of Section 253 in this specific context, such as whether it could serve as authority for a deemed granted or similar remedy. See, e.g., San Francisco Comments at 9-10; CPUC Comments at 10; Smart Communities Comments at 4-11, 21; Smart Communities Reply at 78-79; League of Az Cities and Towns et al. Reply at 4; Alexandria Comments at 5; Irvine Comments at 5; Minnesota Cities Comments at 11-13; Philadelphia Reply at 2, 7; Fairfax County Comments at 17; Greenlining Reply at 4; NRUC Reply at 3-5; NATOA June 21, 2018 Ex Parte Letter. To the extent that commenters raise arguments regarding the proper interpretation of “prohibit or have the effect of prohibiting” under Section 253 or the scope of Section 253, these issues are discussed in the Declaratory Ruling, see supra paras. 34-42.
decision-making process.

130. We find that the more specific deployment categories and shot clocks, which presumptively represent the reasonable period within which to act, will prevent the outcome proponents of a deemed granted remedy seek to avoid: that siting agencies would be forced to reject applications because they would be unable to review the applications within the prescribed shot clock period. Because the more specific deployment categories and shot clocks inherently account for the nature and scope of a variety of deployment applications, our new approach should ensure that siting agencies have adequate time to process and decide applications and will minimize the risk that localities will fail to act within the established shot clock periods. Further, in cases where a siting authority misses the deadline, the opportunity to demonstrate exceptional circumstances provides an effective and flexible way for siting agencies to justify their inaction if genuinely warranted. Our overall framework, therefore, should prevent situations in which a siting authority would feel compelled to summarily deny an application instead of evaluating its merits within the applicable shot clock period. We also note that if the approach we take in this Order proves insufficient in addressing the issues it is intended to resolve, we may again consider adopting a deemed granted remedy in the future.

131. Some commenters also recommend that the Commission issue a list of “Best Practices” or “Recommended Practices.” The joint comments filed by NATOA and other government associations suggest the “development of an informal dispute resolution process to remove parties from an adversarial relationship to a partnership process designed to bring about the best result for all involved” and the development of “a mediation program which could help facilitate negotiations for deployments for parties who seem to have reached a point of intractability.” Although we do not at this time adopt these proposals, we note that the steps taken in this order are intended to facilitate cooperation between parties to reach mutually agreed upon solutions. For example, as explained below, mutual agreement between the parties will toll the running of the shot clock period, thereby allowing parties to resolve disagreements in a collaborative, instead of an adversarial, setting.

C. Clarification of Issues Related to All Section 332 Shot Clocks

1. Authorizations Subject to the “Reasonable Period of Time” Provision of Section 332(c)(7)(B)(ii)

132. As indicated above, Section 332(c)(7)(B)(ii) requires state and local governments to act “within a reasonable period of time” on “any request for authorization to place, construct, or modify personal wireless service facilities.” Neither the 2009 Declaratory Ruling nor the 2014 Wireless Infrastructure Order addressed the specific types of authorizations subject to this requirement. Industry commenters contend that the shot clocks should apply to all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment. Local siting authorities, on the other hand, argue that a broad application of Section 332 will harm public safety and welfare by not

375 Baltimore Reply at 12; Mukilteo Comments at 1; Cities of San Antonio et al. Reply at 10; Washington Munis Comments, Attach. 1 at 8-9; but see CTIA Reply at 9.
376 We also note that a summary denial of a deployment application is not permitted under Section 332(c)(7)(B)(iii), which requires the siting authority to base denials on “substantial evidence contained in a written record.”
378 See supra paras. 145-46.
380 See, e.g., CTIA Comments at 15; CTIA Reply at 10; Mobilitie Comments at 6-7; WIA Comments at 24; WIA Reply at 13; T-Mobile Comments at 21-22; CCA Reply at 9; Sprint June 18 Ex Parte at 3.
giving them enough time to evaluate whether a proposed deployment endangers the public.\textsuperscript{382} They assert that building and encroachment permits should not be subsumed within the shot clocks because these permits incorporate essential health and safety reviews.\textsuperscript{383} After carefully considering these arguments, we find that “any request for authorization to place, construct, or modify personal wireless service facilities” under Section 332(c)(7)(B)(ii) means all authorizations necessary for the deployment of personal wireless services infrastructure. This interpretation finds support in the record and is consistent with the courts’ interpretation of this provision and the text and purpose of the Act.

133. The starting point for statutory interpretation is the text of the statute,\textsuperscript{384} and here, the statute is written broadly, applying to “any” request for authorization to place, construct, or modify personal wireless service facilities. The expansive modifier “any” typically has been interpreted to mean “one or some indiscriminately of whatever kind,” unless Congress “add[ed] any language limiting the breadth of that word.”\textsuperscript{385} The title of Section 332(c)(7) (“Preservation of local zoning authority”) does not restrict the applicability of this section to zoning permits in light of the clear text of Section 332(c)(7)(B)(ii).\textsuperscript{386} The text encompasses not only requests for authorization to place personal wireless service facilities, e.g., zoning requests, but also requests for authorization to construct or modify personal wireless service facilities. These activities typically require more than just zoning permits. For example, in many instances, localities require building permits, road closure permits, and the like to make construction or modification possible.\textsuperscript{387} Accordingly, the fact that the title standing alone could be read

\textsuperscript{382} League of Az Cities and Towns et al. Reply at 21-22. \textit{See also} Arlington County, Sept. 18 Ex Parte Letter at 1-2 (asserting that it is infeasible to have the shot clock encompass all steps related the small cell siting process because there is no single application to get ROW access, public notice, lease negotiations, road closures, etc.; because these are separate processes involving different departments; and because the timeline in some instances will depend on the applicant, or the required information may interrelate in a manner that makes doing them all at once infeasible); Letter from Robert McBain, Mayor, Piedmont, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 3 (filed Sept. 18, 2018).

\textsuperscript{383} League of Az Cities and Towns et al. Reply at 21-22.


\textsuperscript{386} \textit{See Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.}, 331 U.S. 519, 528–29 (1947) (“[H]eadings and titles are not meant to take the place of the detailed provisions of the text.”). Our conclusion is also consistent with our interpretation that Sections 253 and 332(c)(7) apply to fees for all applications related to a Small Wireless Facility. \textit{See supra} para. 50.

\textsuperscript{387} \textit{See, e.g.,} Virginia Joint Commenters Comments at 21-22 (stating that deployment of personal wireless facilities generally requires excavation and building permits); San Francisco Comments at 4-7, 12, 20-22 (describing the permitting process in San Francisco, the layers of multi-departmental review involved, and the required authorizations before certain personal wireless facilities can be constructed); Smart Cities Coal. Comments at 33-34 (describing several authorizations necessary to deploy personal wireless facilities depending on the location, e.g., public rights-of-way and other public properties, of the proposed site and the size of the proposed facility).
to limit Section 332(c)(7) to zoning decisions does not overcome the specific language of Section 332(c)(7)(B)(ii), which explicitly applies to a variety of authorizations.\(^\textit{388}\)

134. The purpose of the statute also supports a broad interpretation. As noted above, the Supreme Court has stated that the 1996 Act was enacted “to promote competition and higher quality in American telecommunications services and to encourage the rapid deployment of new telecommunications technologies” by, \textit{inter alia}, reducing “the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers.”\(^\textit{389}\) A narrow reading of the scope of Section 332 would frustrate that purpose by allowing local governments to erect impediments to the deployment of personal wireless services facilities by using or creating other forms of authorizations outside of the scope of Section 332(c)(7)(B)(ii).\(^\textit{390}\) This is especially true in jurisdictions requiring multi-departmental siting review or multiple authorizations.\(^\textit{391}\)

135. In addition, our interpretation remains faithful to the purpose of Section 332(c)(7) to balance Congress’s competing desires to preserve the traditional role of state and local governments in regulating land use and zoning, while encouraging the rapid development of new telecommunications technologies.\(^\textit{392}\) Under our interpretation, states and localities retain their authority over personal wireless facilities deployment. At the same time, deployment will be kept on track by ensuring that the entire approval process necessary for deployment is completed within a reasonable period of time, as defined by the shot clocks addressed in this Third Report and Order.

136. A number of courts have either explicitly or implicitly adopted the same view, that all necessary permits are subject to Section 332. For example, in \textit{Cox Communications PCS, L.P. v. San Marcos}, the court considered an excavation permit application as falling within the parameters of Section 332.\(^\textit{393}\) In \textit{USCOC of Greater Missouri, LLC v. County of Franklin}, the Eighth Circuit reasoned that “[t]he issuance of the requisite building permits” for the construction of a personal wireless services facility arises under Section 332(c)(7).\(^\textit{394}\) In \textit{Ogden Fire Co. No. 1 v. Upper Chichester Township}, the Third Circuit affirmed the district court’s order compelling the township to issue a building permit for the

\(^{388}\) See \textit{Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.}, 331 U.S. 519, 528-29 (1947). If the title of Section 332(c)(7) were to control the interpretation of the text, it would render superfluous the provision of Section 332(c)(7)(B)(ii) that applies to “authorization to . . . construct, or modify personal wireless service facilities” and give effect only to the provision that applies to “authorization to place . . . personal wireless service facilities.” This result would “flout[] the rule that ‘a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous.’” \textit{Clark v. Rameker}, 134 S. Ct. 2242, 2248 (2014) (quoting \textit{Corley v. United States}, 556 U.S. 303, 314 (2009)).

\(^{389}\) \textit{City of Rancho Palos Verdes v. Abrams}, 544 U.S. at 115 (internal quotation marks and citations omitted).

\(^{390}\) For example, if we were to interpret Section 332(c)(7)(B)(ii) to cover only zoning permits, states and localities could delay their consideration of other permits (e.g., building, electrical, road closure or other permits) to thwart the proposed deployment.

\(^{391}\) See, e.g., Virginia Joint Commenters Comments at 21-22; San Francisco Comments at 4-7, 12, 20-22; Smart Communities Comments at 33-34; CTIA Comments at 15 (stating that some jurisdictions “impose multiple, sequential stages of review”); WIA Comments at 24 (noting that “[m]any jurisdictions grant the application within the shot clock period only to stall on issuing the building permit”); Verizon Comments at 6 (stating that “[a] large Southwestern city requires applicants to obtain separate and sequential approvals from three different governmental bodies before it will consider issuing a temporary license agreement to access city rights-of-way”); Sprint June 18 \textit{Ex Parte} at 3 (noting that “after a land-use permit or attachment permit is received, many localities still require electric permits, road closure permits, aesthetic approval, and other types of reviews that can extend the time required for final permission well beyond just the initial approval.”).

\(^{392}\) \textit{City of Arlington}, 668 F.3d at 234.


\(^{394}\) \textit{USCOC of Greater Mo., LLC v. County of Franklin}, 636 F.3d 927, 931-32 (8th Cir. 2011).
construction of a wireless facility after finding that the township had violated Section 332(c)(7). In Upstate Cellular Network v. Auburn, the court directed the city to approve the application, including site plan approval by the planning board, granting a variance by the zoning authority, and “any other municipal approval or permission required by the City of Auburn and its boards or officers, including but not limited to, a building permit.” And in PI Telecom Infrastructure V, LLC v. Georgetown–Scott County Planning Commission, the court ordered that the locality grant “any and all permits necessary for the construction of the proposed wireless facility.” Our interpretation is also consistent with judicial precedents involving challenges under Section 332(c)(7)(B) to denials by a wide variety of governmental entities, many of which involved variances, special use/conditional use permits, land disturbing activity and excavation permits, building permits, and a state department of education permit to install an antenna at a high school. Notably, a lot of cases have involved local agencies that are separate and distinct from the local zoning authority, confirming that Section 332(c)(7)(B) is not limited in application to decisions of zoning authorities. Our interpretation also reflects the examples in the record where providers are required to obtain other types of authorizations besides zoning permits before they can “place, construct, or modify personal wireless service facilities.”

137. We reject the argument that this interpretation of Section 332 will harm the public because it would “mean that building and safety officials would have potentially only a few days to

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395 Ogden Fire Co. No. 1 v. Upper Chichester TP., 504 F.3d 370, 395-96 (3d Cir. 2007).
396 Upstate Cellular Network, 257 F. Supp. 3d at 319.
399 See, e.g., Virginia Metronet, Inc. v. Bd. of Sup’rs of James City County, 984 F. Supp. 966, 968 (E.D. Va. 1998); Cellular Tel. Co., 166 F.3d at 491; T-Mobile Cent., LLC v. Unified Gov’t of Wyandotte County, 546 F.3d 1299, 1303 (10th Cir. 2008); City of Anacortes, 572 F.3d at 989; Helcher, 595 F.3d at 713-14; AT&T Wireless Servs. of California LLC v. City of Carlsbad, 308 F. Supp. 2d 1148, 1152 (S.D. Cal. 2003); PrimeCo Pers. Commc’ns L.P. v. City of Mequon, 242 F. Supp. 2d 567, 570 (E.D. Wis.), aff’d, 352 F.3d 1147 (7th Cir. 2003); Preferred Sites, LLC v. Troup County, 296 F.3d 1210, 1212 (11th Cir. 2002).
401 See, e.g., Upstate Cellular Network, 257 F. Supp. 3d at 319; Ogden Fire Co. No. 1 v. Upper Chichester Twp., 504 F.3d 370, 395-96 (3rd Cir. 2007).
404 See, e.g., Virginia Joint Commenters Comments at 21-22 (stating that deployment of personal wireless facilities generally requires excavation and building permits); San Francisco Comments at 4-7, 12, 20-22 (describing the permitting process in San Francisco, the layers of multi-departmental review involved, and the required authorizations before certain personal wireless facilities can be constructed); Smart Communities Comments at 33-34 (describing several authorizations necessary to deploy personal wireless facilities depending on the location, e.g., public rights-of-way and other public properties, of the proposed site and the size of the proposed facility).
evaluate whether a proposed deployment endangers the public." Building and safety officials will be subject to the same applicable shot clock as all other siting authorities involved in processing the siting application, with the amount of time allowed varying in the rare case where officials are unable to meet the shot clock because of exceptional circumstances.

2. Codification of Section 332 Shot Clocks

138. In addition to establishing two new Section 332 shot clocks for Small Wireless Facilities, we take this opportunity to codify our two existing Section 332 shot clocks for siting applications that do not involve Small Wireless Facilities. In the 2009 Declaratory Ruling, 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. Since these Section 332 shot clocks were adopted as part of a declaratory ruling, they were not codified in our rules. In the Wireless Infrastructure NPRM/NOI, the Commission sought comment on whether to modify these shot clocks. We find no need to modify them here and will continue to use these shot clocks for processing Section 332 siting applications that do not involve Small Wireless Facilities.

408 We do, though, codify these two existing shot clocks in our rules alongside the two newly-adopted shot clocks so that all interested parties can readily find the shot clock requirements in one place.

139. While some commenters argue for a 60-day shot clock for all collocation categories, we conclude that we should retain the existing 90-day shot clock for collocations not involving Small Wireless Facilities. Collocations that do not involve Small Wireless Facilities include deployments of

409 We also adopt a non-substantive modification to our existing rules. We redesignate the rule adopted in 2014 to codify the Commission’s implementation of the 2012 Spectrum Act, formerly designated as section 1.40001, as section 1.6100, and we move the text of that rule from Part 1, Subpart CC, to the same Subpart as the new rules promulgated in this Third Report and Order (Part 1, Subpart U). This recognizes that both sets of requirements pertain to “State and local government regulation of the placement, construction, and modification of personal wireless service facilities” (the caption of new Subpart U). The reference in paragraph (a) of that preexisting rule to 47 U.S.C. § 1455 has been consolidated with new rule section 1.6001 to reflect that all rules in Subpart U, collectively, implement both § 332(c)(7) and § 1455. With those non-substantive exceptions, the text of the 2014 rule has not been changed in any way. Contrary to the suggestion submitted by the Washington Joint Counties, see Letter from W. Scott Snyder et al., Counsel for the Washington Cities of Bremerton, Mountlake Terrace, Kirkland, Redmond, Issaquah, Lake Stevens, Richland, and Mukilteo, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 6-7 (filed June 19, 2018), this change is not substantive and does not require advance notice. We find that “we have good cause to reorganize and renumber our rules in this fashion without expressly seeking comment on this change, and we conclude that public comment is unnecessary because no substantive changes are being made. Moreover, the delay engendered by a round of comment would be contrary to the public interest.” See 2017 Pole Replacement Order, 32 FCC Rcd at 9770, para. 26; see also 5 U.S.C. §553(b)(B) (notice not required “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”).

410 CCIA Comments at 10; CCA Comments at 13-14; CCA Reply at 6 (arguing for 30-day shot clock for collocations and a 60-to-75-day shot clock for all other siting applications); WIA Reply at 21. See also Letter from Jill Canfield, NTCA Vice President Legal & Industry and Assistant General Counsel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 19, 2018) (stating that NTCA supports a revised interpretation of the phrase “reasonable period of time” as found in Section 332(c) (7)(B)(ii) of the Communications Act as applicable to small cell facilities and that sixty days for collocations and 90 days for all other small cell siting applications should provide local officials sufficient time for review of requests to install small cell facilities in public rights-of-way).
larger antennas and other equipment that may require additional time for localities to review and process.\footnote{Wireless Infrastructure Second R&O, FCC 18-30 at paras. 74-76.} For similar reasons, we maintain the existing 150-day shot clock for new construction applications that are not for Small Wireless Facilities. While some industry commenters such as WIA, Samsung, and Crown Castle argue for a 90-day shot clock for macro cells and small cells alike, we agree with commenters such as the City of New Orleans that there is a significant difference between the review of applications for a single 175-foot tower versus the review of a Small Wireless Facility with much smaller dimensions.\footnote{New Orleans Comments at 2-3; Samsung Comments at 4-5 (arguing that the Commission should reduce the shot clock applicable to new construction from 150 days to 90 days); Crown Castle Comments at 29 (stating that a 90-day shot clock for new facilities is appropriate for macro cells and small cells alike, to the extent such applications require review under Section 332 at all); TX Hist. Comm. Comments at 2 (arguing that the reasonable periods of time that the FCC proposed in 2009, 90 days for collocation applications and 150 days for other applications appear to be appropriate); WIA Comments at 20-23; WIA Reply at 11 (arguing for a 90-day shot clock for applications involving substantial modifications, including tower extensions; and a 120-day shot clock for applications for all other facilities, including new macro sites); CTIA Reply at 3 (stating that the Commission should shorten the shot clocks to 90 days for new facilities).}

3. Collocations on Structures Not Previously Zoned for Wireless Use

Wireless industry commenters assert that they should be able to take advantage of the Section 332 collocation shot clock even when collocating on structures that have not previously been approved for wireless use.\footnote{AT&T Comments at 10; AT&T Reply at 9; Verizon Reply at 32; WIA Comments at 22; ExteNet Comments at 9.} Siting agencies respond that the wireless industry is effectively seeking to have both the collocation definition and a reduced shot clock apply to sites that have never been approved by the local government as suitable for wireless facility deployment.\footnote{Bellevue et al. Reply at 6-7 (arguing that the Commission has rejected this argument twice and instead determined that a collocation occurs when a wireless facility is attached to an existing infrastructure that houses wireless communications facilities; San Francisco Reply at 7-8 (arguing that under Commission definitions, a utility pole is neither an existing base station nor a tower; thus, the Commission simply cannot find that adding wireless facilities to utility pole that has not previously been used for wireless facilities is an eligible facilities request). See, e.g., Letter from Bonnie Michael, City Council President, Worthington, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 18, 2018); Letter from Jill Boudreau, Mayor, Mount Vernon, WA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 18, 2018).} We take this opportunity to clarify that for purposes of the Section 332 shot clocks, attachment of facilities to existing structures constitutes collocation, regardless whether the structure or the location has previously been zoned for wireless facilities. As the Commission stated in the 2009 Declaratory Ruling, “an application is a request for collocation if it does not involve a ‘substantial increase in the size of a tower’ as defined in the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas.”\footnote{2009 Declaratory Ruling, 24 FCC Rcd at 14012, para 46.} The definition of “[c]ollocation” in the NPA provides for the “mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.”\footnote{47 CFR Part 1, App. B, NPA, Subsection C, Definitions.} The NPA’s definition of collocation explicitly encompasses collocations on structures and buildings that have not yet been zoned for wireless use. To interpret the NPA any other way would be unduly narrow and there is no persuasive reason to accept a narrower interpretation. This is particularly true given that the NPA definition of collocation stands in direct contrast with the definition of collocation in the
Spectrum Act, pursuant to which facilities only fall within the scope of an “eligible facilities request” if they are attached to towers or base stations that have already been zoned for wireless use.\(^{417}\)

4. When Shot Clocks Start and Incomplete Applications

141. In the 2014 Wireless Infrastructure Order, the Commission clarified, among other things, that a shot clock begins to run when an application is first submitted, not when the application is deemed complete.\(^{418}\) The clock can be paused, however, if the locality notifies the applicant within 30 days that the application is incomplete.\(^{419}\) The locality may pause the clock again if it provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.\(^{420}\) In the Wireless Infrastructure NPRM/NOI, the Commission sought comment on these determinations.\(^{421}\) Localities contend that the shot clock period should not begin until the application is deemed complete.\(^{422}\) Industry commenters argue that the review period for incompleteness should be decreased from 30 days to 15 days.\(^{423}\)

142. With the limited exception described in the next paragraph, we find no cause or basis in the record to alter the Commission’s prior determinations, and we now codify them in our rules. Codified rules, easily accessible to applicants and localities alike, should provide helpful clarity. The complaints by states and localities about the sufficiency of some of the applications they receive are adequately addressed by our current policy, particularly as amended below, which preserves the states’ and localities’ ability to pause review when they find an application to be incomplete.\(^{424}\) We do not find it necessary at this point to shorten our 30-day initial review period for completeness because, as was the case when this review period was adopted in the 2009 Declaratory Ruling, it remains consistent with review periods for completeness under existing state wireless infrastructure deployment statutes\(^{425}\) and still “gives State and local governments sufficient time for reviewing applications for completeness, while protecting applicants

\(^{417}\) See 47 CFR § 1.40001(b)(3), (4), (5) (definitions of eligible facilities request, eligible support structure, and existing). Each of these definitions refers to facilities that have already been approved under local zoning or siting processes.


\(^{419}\) 2009 Declaratory Ruling, 24 FCC Rcd at 14014, paras. 52-53 (providing that the “timeframes do not include the time that applicants take to respond to State and local governments’ requests for additional information”).


\(^{421}\) Wireless Infrastructure NPRM/NOI, 32 FCC Rcd at 3338, para. 20.

\(^{422}\) See, e.g., Maine DOT Comments at 2-3; Philadelphia Comments at 6; League of Az Cities and Towns et al. at 4, 8-9; Letter from Barbara Coler, Chair, Marin Telecommunications Agency, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 4, 2018) (Barbara Coler Sept. 4, 2018 Ex Parte Letter); Letter from Sam Liccardo, Mayor, San Jose, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 5 (filed Sept. 18, 2018).

\(^{423}\) Verizon Comments at 43. See Sprint June 18 Ex Parte at 2 (asserting that the shot clocks should begin to run when the application is complete and that a sitting authority should review the application for completeness within the first 15 days of receipt or it would waive the right to object on that basis).

\(^{424}\) See, e.g., Barbara Coler Sept. 4, 2018 Ex Parte Letter at 2 (the pace of installation may be affected by incomplete applications); Kenneth S. Fellman Sept. 18, 2018 Ex Parte Letter at 3 (not uncommon to find documents not properly prepared and not in compliance with relevant regulations).

from a last minute decision that an application should be denied as incomplete.”

However, for applications to deploy Small Wireless Facilities, we implement a modified tolling system designed to help ensure that providers are submitting complete applications on day one. This step accounts for the fact that the shot clocks applicable to such applications are shorter than those established in the 2009 Declaratory Ruling and, because of which, there may instances where the prevailing tolling rules would further shorten the shot clocks to such an extent that it might be impossible for siting authorities to act on the application. For Small Wireless Facilities applications, the siting authority has 10 days from the submission of the application to determine whether the application is incomplete. The shot clock then resets once the applicant submits the supplemental information requested by the siting authority. Thus, for example, for an application to collocate Small Wireless Facilities, once the applicant submits the supplemental information in response to a siting authority’s timely request, the shot clock resets, effectively giving the siting authority an additional 60 days to act on the Small Wireless Facilities collocation application. For subsequent determinations of incompleteness, the tolling rules that apply to non-Small Wireless Facilities would apply—that is, the shot clock would toll if the siting authority provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.

As noted above, multiple authorizations may be required before a deployment is allowed to move forward. For instance, a locality may require a zoning permit, a building permit, an electrical permit, a road closure permit, and an architectural or engineering permit for an applicant to place, construct, or modify its proposed personal wireless service facilities. All of these permits are subject to Section 332’s requirement to act within a reasonable period of time, and thus all are subject to the shot clocks we adopt or codify here.

We also find that mandatory pre-application procedures and requirements do not toll the shot clocks. Industry commenters claim that some localities impose burdensome pre-application requirements before they will start the shot clock. Localities counter that in many instances, applicants submit applications that are incomplete in material respects, that pre-application interactions smooth the application process, and that many of their pre-application requirements go to important health and safety matters. We conclude that the ability to toll a shot clock when an application is found incomplete or by

428 See Sprint June 18 Ex Parte at 3; cf. Virginia Joint Commenters Comments at 21-22; San Francisco Comments at 4-7, 12, 20-22; CTIA Comments at 15 (“The Commission should declare that the shot clocks apply to the entire local review process.”).
429 Wireless Infrastructure NPRM/NOI, 32 FCC Rcd at 3338, para. 20.
430 See, e.g., CCA Reply at 7 (noting also that some localities unreasonably request additional information after submission that is either already provided or of unreasonable scope); GCI Comments at 8-9; WIA Comments at 24; Crown Castle Comments at 21-22; CTIA Reply at 21; CIC Comments at 18; WIA Reply at 14; Conterra Comments at 2-3; Crown Castle Comments at 30-31; CTIA Comments at 15; ExteNet Comments at 4, 15-16; Mobility Comments at 6; T-Mobile Comments at 21-22; Verizon Comment at 42-43; AT&T Comments at 26.
431 See, e.g., Philadelphia Reply at 9 (arguing that shot clocks should not run until a complete application with a full set of engineering drawings showing the placement, size and weight of the equipment, and a fully detailed structural analysis is submitted, to assess the safety of proposed installations); Philadelphia Comments at 6; League of Az Cities and Towns et al. Comments at 4 (arguing that the shot clock should not begin until after an application has been “duly filed,” because “some applicants believe the shot clock commences to run no matter how they submit their request, or how inadequate their submittal may be”); Colorado Comm. and Utility All. et al. Comments at 14 (explaining that the pre-application meetings are intended “to give prospective applicants an opportunity to discuss code and regulatory provisions with local government staff, and gain a better understanding of the process that will be followed, in order to increase the probability that once an application is filed, it can proceed smoothly to final decision”).
mutual agreement by the applicant and the siting authority should be adequate to address these concerns. Much like a requirement to file applications one after another, requiring pre-application review would allow for a complete circumvention of the shot clocks by significantly delaying their start date. An application is not ruled on within “a reasonable period of time after the request is duly filed” if the state or locality takes the full ordinary review period after having delayed the filing in the first instance due to required pre-application review. Indeed, requiring a pre-application review before an application may be filed is similar to imposing a moratorium, which the Commission has made clear does not stop the shot clocks from running. Therefore, we conclude that if an applicant proffers an application, but a state or locality refuses to accept it until a pre-application review has been completed, the shot clock begins to run when the application is proffered. In other words, the request is “duly filed” at that time, notwithstanding the locality’s refusal to accept it.

146. That said, we encourage voluntary pre-application discussions, which may well be useful to both parties. The record indicates that such meetings can clarify key aspects of the application review process, especially with respect to large submissions or applicants new to a particular locality’s processes, and may speed the pace of review. To the extent that an applicant voluntarily engages in a pre-application review to smooth the way for its filing, the shot clock will begin when an application is filed, presumably after the pre-application review has concluded.

147. We also reiterate, consistent with the 2009 Declaratory Ruling, that the remedies granted under Section 332(c)(7)(B)(v) are independent of, and in addition to, any remedies that may be available under state or local law. Thus, where a state or locality has established its own shot clocks, an applicant may pursue any remedies granted under state or local law in cases where the siting authority fails to act within those shot clocks. However, the applicant must wait until the Commission shot clock period has expired to bring suit for a “failure to act” under Section 332(c)(7)(B)(v).

V. PROCEDURAL MATTERS

148. Final Regulatory Flexibility Analysis. With respect to this Third Report and Order, a Final Regulatory Flexibility Analysis (FRFA) is contained in Appendix C. As required by Section 603 of (Continued from previous page) Community Comments at 15, 35 (pre-application procedures “may translate into faster consideration of individual applications over the longer term, as providers and communities alike, gain a better understanding of what is required of them, and providers submit applications that are tailored to community requirements”); UT Dept. of Trans. Comments at 5 (“The purpose of the pre-application access meeting is to help the entity or person with the application and provide information concerning the requirements contained in the rule.”); CCUA et al. Reply at 6 (“[Pre-application meetings] provide an opportunity for informal discussion between prospective applicants and the local jurisdiction. Pre-application meetings serve to educate, answer questions, clarify process issues, and ultimately result in a more efficient process from application filing to final action.”); AASHTO Comments, Attach. at 3 (GA Dept. of Trans. contending that pre-application procedures “should be encouraged and separated from an ‘official’ “application submittal”); League of Az Cities and Towns et al. Comments at 5-7 (providing examples of incomplete applications).

433 See, e.g., CCA Reply at 7; GCI Comments at 8-9; WIA Comments at 24; Crown Castle Comments at 21-22; CTIA Reply at 21; CIC Comments at 18; WIA Reply at 14; Conterra Comments at 2-3; Crown Castle Comments at 30-31; CTIA Comments at 15; ExteNet Comments at 4, 15-16; Mobilitie Comments at 6; T-Mobile Comments at 21-22; Verizon Comment at 42-43; AT&T Comments at 26.
435 See CCUA et al. Comments at 14; Smart Communities Comments at 15, 35; UT Dept. of Trans. Comments at 5; CCUA et al. Reply at 6; Mukilteo Reply, Docket No. WC 17-84, at 1 (filed July 10, 2017).
436 2009 Declaratory Ruling, 24 FCC Rcd at 14013-14, para. 50.
437 2009 Declaratory Ruling, 24 FCC Rcd at 14013-14, para. 50.
the Regulatory Flexibility Act, the Commission has prepared a FRFA of the expected impact on small entities of the requirements adopted in this Third Report and Order. The Commission will send a copy of the Third Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

149. **Paperwork Reduction Act.** This Third Report and Order does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

150. **Congressional Review Act.** The Commission will send a copy of this Declaratory Ruling and Third Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. § 801(a)(1)(A).

**VI. ORDERING CLAUSES**

151. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i)-(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 157, 201, 253, 301, 303, 309, 319, 332, that this Declaratory Ruling and Third Report and Order in WT Docket No. 17-79 IS hereby ADOPTED.

152. IT IS FURTHER ORDERED that Part 1 of the Commission’s Rules is AMENDED as set forth in Appendix A, and that these changes SHALL BE EFFECTIVE 90 days after publication in the Federal Register.

153. IT IS FURTHER ORDERED that this Third Report and Order SHALL BE effective 90 days after its publication in the Federal Register. The Declaratory Ruling and the obligations set forth therein ARE EFFECTIVE on the same day that this Third Report and Order becomes effective. It is our intention in adopting the foregoing Declaratory Ruling and these rule changes that, if any provision of the Declaratory Ruling or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such Declaratory Ruling and the rules not deemed unlawful, and the application of such Declaratory Ruling and the rules to other person or circumstances, shall remain in effect to the fullest extent permitted by law.

154. IT IS FURTHER ORDERED that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this Declaratory Ruling and Third Report and Order will commence on the date that a summary of this Declaratory Ruling and Third Report and Order is published in the Federal Register.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary
APPENDIX A

Final Rules

Streamlining State and Local Review of Wireless Facility Siting Applications

Part 1—Practice and Procedure

1. Add subpart U to Part 1 of Title 47 to read as follows:

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

§ 1.6001 Purpose.

This subpart implements 47 U.S.C. 332(c)(7) and 1455.

§ 1.6002 Definitions.

Terms used in this subpart have the following meanings:

(a) Action or to act on a siting application means a siting authority’s grant of a siting application or issuance of a written decision denying a siting application.

(b) Antenna, consistent with section 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this title.

(c) Antenna equipment, consistent with section 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) Antenna facility means an antenna and associated antenna equipment.

(e) Applicant means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) Authorization means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) Collocation, consistent with section 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, Appendix B of this part, section I.B, means—

(1) Mounting or installing an antenna facility on a pre-existing structure, and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(3) The definition of “collocation” in paragraph (b)(2) of section 1.6100 applies to the term as used in that section.
(h) **Deployment** means placement, construction, or modification of a personal wireless service facility.

(i) **Facility** or **personal wireless service facility** means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

(j) **Siting application** or **application** means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

(k) **Siting authority** means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(l) **Small wireless facilities**, consistent with section 1.1312(e)(2), are facilities that meet each of the following conditions:

1. The facilities—
   - (i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or
   - (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or
   - (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;

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

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

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

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

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

(m) **Structure** means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or commingled with other types of services).

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in Part 1 of Title 47 and the Communications Act of 1934, 47 U.S.C. 151 et seq.
§ 1.6003  Reasonable periods of time to act on siting applications

(a) Timely action required. A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) Shot clock period. The shot clock period for a siting application is the sum of—

1. the number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section, plus

2. the number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) Presumptively reasonable periods of time.

1. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth below:

   i. Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

   ii. Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

   iii. Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

   iv. Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

2. Batching.

   i. If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

   ii. If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

   iii. Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (c)(2)(ii).

(d) Tolling period. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth below.

1. For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information, the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.
(2) For all other initial applications, the tolling period shall be the number of days from –

   (i) The day after the date when the siting authority notifies the applicant in writing that the
application is materially incomplete and clearly and specifically identifies the missing documents
or information that the applicant must submit to render the application complete and the specific
rule or regulation creating this obligation, until

   (ii) The date when the applicant submits all the documents and information identified by the
siting authority to render the application complete,

   (iii) But only if the notice pursuant to paragraph (d)(2)(i) is effectuated on or before the 30th day
after the date when the application was submitted; or

(3) For resubmitted applications following a notice of deficiency, the tolling period shall be the
number of days from—

   (i) The day after the date when the siting authority notifies the applicant in writing that the
applicant's supplemental submission was not sufficient to render the application complete and
clearly and specifically identifies the missing documents or information that need to be submitted
based on the siting authority’s original request under paragraph (d)(1) or paragraph (d)(2) of this
section, until

   (ii) The date when the applicant submits all the documents and information identified by the
siting authority to render the application complete,

   (iii) But only if the notice pursuant to paragraph (d)(3)(i) is effectuated on or before the 10th day
after the date when the applicant makes a supplemental submission in response to the siting
authority’s request under paragraph (d)(1) or paragraph (d)(2) of this section.

(e) Shot clock date. The shot clock date for a siting application is determined by counting forward,
beginning on the day after the date when the application was submitted, by the number of calendar days
of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-
application period asserted by the siting authority; provided, that if the date calculated in this manner is a
“holiday” as defined in section 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction,
the shot clock date is the next business day after such date. The term “business day” means any day as
defined in section 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local
jurisdiction.

3. Redesignate § 1.40001 as § 1.6100, remove and reserve paragraph (a) of newly redesignated
§ 1.6100, and revise paragraph (b)(7)(vi) of newly redesignated § 1.6100 by changing
“1.40001(b)(7)(i)-(iv)” to “1.6100(b)(7)(i)-(iv).”

4. Remove subpart CC.
APPENDIX B

Comments and Reply Comments

Comments

5G Americas
Aaron Rosenzweig
ACT | The App Association
Advisory Council on Historic Preservation
Advisors to the International EMF Scientist Appeal
African American Mayors Association
Agua Caliente Band of Cahuilla Indians Tribal Historic Preservation Office
Alaska Department of Transportation & Public Facilities
Alaska Native Health Board
Alaska Office of History and Archaeology
Alexandra Ansell
American Association of State Highway and Transportation Officials
American Bird Conservancy
American Cable Association
American Petroleum Institute
American Public Power Association
Angela Fox
Arctic Slope Regional Corporation
Arizona State Parks & Trails, State Historic Preservation Office
Arkansas SHPO
Arnold A. McMahon
Association of American Railroads
AT&T
B. Golomb
Bad River Band of Lake Superior Tribe of Chippewa Indians
Benjamin L. Yousef
BioInitiative Working Group
Blue Lake Rancheria
Board of County Road Commissioners of the County of Oakland
Bristol Bay Area Health Corporation
Cahuilla Band of Indians
California Office of Historic Preservation, Department of Parks and Recreation
California Public Utilities Commission
Cape Cod Bird Club, Inc.
Catawba Indian Nation Tribal Historic Preservation Office
Charter Communications, Inc.
Cheyenne River Sioux Tribe Cultural Preservation Office
Chickasaw Nation
Chippewa Creek Tribe
Choctaw Nation of Oklahoma
Chuck Matzker
Cindy Li
Cindy Russell
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee
Citizen Potawatomi Nation
Citizens Against Government Waste
City and County of San Francisco
City of Alexandria, Virginia; Arlington County, Virginia; and Henrico County, Virginia
City of Arlington, Texas
City of Austin, Texas
City of Bellevue, City of Bothell, City of Burien, City of Ellensburg, City of Gig Harbor, City of Kirkland, City of Mountlake Terrace, City of Mukilteo, City of Normandy Park, City of Puyallup, City of Redmond, and City of Walla Walla
City of Chicago
City of Claremont (Tony Ramos, City Manager)
City of Eden Prairie, MN
City of Houston
City of Irvine, California
City of Kenmore, Washington, and David Baker, Vice-Chair, National League of Cities Information Technology and Communications Committee
City of Lansing, Michigan
City of Mukilteo
City of New Orleans, Louisiana
City of New York
City of Philadelphia
City of Springfield, Oregon
Cityscape Consultants, Inc.
Coalition for American Heritage, Society for American Archaeology, American Cultural Resources Association, Society for Historical Archaeology, and American Anthropological Association
Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC), City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey Access Group (JAG), and Colorado Municipal League (CML)
Colorado River Indian Tribes
Colorado State Historic Preservation Office
Comcast Corporation
Commissioner Sal Pace, Pueblo Board of County Commissioners
Community Associations Institute
Competitive Carriers Association
CompTIA (The Computing Technology Industry Association)
Computer & Communications Industry Association (CCIA)
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Umatilla Indian Reservation Cultural Resources Protection Program
Consumer Technology Association
Conterra Broadband Services, Southern Light, LLC, and Uniti Group, Inc.
Critical Infrastructure Coalition
Crow Creek Sioux Tribe
Crown Castle
CTIA
CTIA and Wireless Infrastructure Association
David Roetman, Minnehaha County GOP Chairman
Defenders of Wildlife
Department of Arkansas Heritage (Arkansas Historic Preservation Program)
DuPage Mayors and Managers Conference
East Bay Municipal Utility District
Eastern Shawnee Tribe of Oklahoma
Edward Czelada
Elijah Mondy
Elizabeth Doonan
Ellen Marks
EMF Safety Network, Ecological Options Network
Environmental Health Trust
ExteNet Systems, Inc.
Fairfax County, Virginia
FibAire Communications, LLC d/b/a AireBeam
Florida Coalition of Local Governments
Fond du Lac Band of Lake Superior Chippewa
Forest County Potawatomi Community of Wisconsin
Fort Belknap Indian Community
Free State Foundation
General Communication, Inc.
Georgia Department of Transportation
Georgia Historic Preservation Division
Georgia Municipal Association, Inc.
Gila River Indian Community
Greywale Advisors
History Colorado (Colorado State Historic Preservation Office)
Hongwei Dong
Hualapai Department of Cultural Resources
Illinois Department of Transportation
Illinois Municipal League
INCOMPAS
Information Technology and Innovation Foundation
International Telecommunications Users Group
Jack Li
Jackie Cale
Jerry Day
Joel M. Moskowitz, Ph.D.
Jonathan Mirin
Joyce Barrett
Karen Li
Karen Spencer
Karon Gubbrud
Kate Kheel
Kaw Nation
Kevin Mottus
Keweenaw Bay Indian Community
Kialeege Tribal Town
League of Minnesota Cities
Leo Cashman
Lower Brule Sioux Tribe
Li Sun
Lightower Fiber Networks
Lisbeth Britt
Lower Brule Sioux Tribe
Maine Department of Transportation
Marty Feffer
Mary Whisenand, Iowa Governor’s Commission on Community Action Agencies
Mashantucket (Western) Pequot Tribe
Mashpee Wampanoag Tribe
Matthew Goulet
Mayor Patrick Furey, City of Torrance, California
McLean Citizens Association
Miami Tribe of Oklahoma
Missouri State Historic Preservation Office
Mobile Future
Mobilitie, LLC
Mohegan Tribe of Indians of Connecticut
Montana State Historic Preservation Office
Monte R. Lee and Company
Muckleshoot Indian Tribe
Muscogee (Creek) Nation
National Association of Tower Erectors (NATE)
National Association of Tribal Historic Preservation Officers
National Black Caucus of State Legislators
National Conference of State Historic Preservation Officers
National Congress of American Indians
National Congress of American Indians, National Association of Tribal Historic Preservation Officers, and United South and Eastern Tribes Sovereignty Protection Fund
National Congress of American Indians and United South and Eastern Tribes Sovereignty Protection Fund
National League of Cities
National Tribal Telecommunications Association
National Trust for Historic Preservation
Native Public Media
NATO
Natural Resources Defense Council
Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission
Naveen Albert
NCTA—The Internet & Television Association
nepsa solutions LLC
New Mexico Department of Cultural Affairs, Historic Preservation Division
Nez Perce Tribe
Nina Beety
Nokia
North Carolina State Historic Preservation Office
Northern Cheyenne Tribal Historic Preservation Office
NTCA—The Rural Broadband Association
Office of Historic Preservation for the Mashantucket Pequot Tribal Nation of Connecticut
Ohio State Historic Preservation Office
Oklahoma History Center State Historic Preservation Office
Olemara Peters
Omaha Tribe of Nebraska
ONE Media, LLC
Oregon State Historic Preservation Office
Osage Nation
Otoe-Missouria Tribe
Pala Band of Mission Indians
Patrick Wronkiewicz
Pechanga Band of Luiseno Indians
Pennsylvania State Historic Preservation Office
Prairie Island Indian Community
PTA-FLA, Inc.
Pueblo of Laguna
Pueblo of Pojoaque
Pueblo of Tesuque
Puerto Rico State Historic Preservation Office
Quad Cities Cable Communications Commission
Quapaw Tribe of Oklahoma
R Street Institute
Rebecca Carol Smith
Red Cliff Band of Lake Superior Chippewa
Representative Tom Sloan, State of Kansas House of Representatives
Representatives Anna G. Eshoo, Frank Pallone, Jr., and Raul Ruiz, U.S. House of Representatives
Rhode Island Historical Preservation and Heritage Commission
Rosebud Sioux Tribe Tribal Historic Preservation Cultural Resource Management Office
Ronald M. Powell, Ph.D.
S. Quick
Sacred Wind Communications, Inc.
Samsung Electronics America, Inc.
Santa Clara Pueblo
Sault Ste. Marie Tribe of Chippewa Indians
SCAN NATOA, Inc.
Seminole Nation of Oklahoma
Seminole Tribe of Florida
Senator Duane Ankney, Montana State Senate
Shawnee Tribe
Sisseton Wahpeton Oyate
Skokomish Indian Tribe Tribal Historic Preservation Office
Skull Valley Band of Goshute
Smart Communities and Special Districts Coalition
Soula Culver
Sprint
Standing Rock Sioux Tribe
Starry, Inc.
State of Washington Department of Archaeology & Historic Preservation
Sue Present
Swinomish Indian Tribal Community
Table Mountain Rancheria Tribal Government Office
Tanana Chiefs Conference
Telecommunications Industry Association
Texas Department of Transportation
Texas Historical Commission
Thlopthlocco Tribal Town
T-Mobile USA, Inc.
Tonkawa Tribe of Oklahoma
Triangle Communication System, Inc.
Twenty-Nine Palms Band of Mission Indians
United Keetoowah Band of Cherokee Indians In Oklahoma
Utah Department of Transportation
Ute Mountain Ute Tribe
Utilities Technology Council
Verizon
Wampanoag Tribe of Gay Head (Aquinnah)
WEC Energy Group, Inc.
Wei Shen
Wei-Ching Lee, MD, California Medical Association Delegate of Los Angeles County
Winnebago Tribe of Nebraska
Wireless Infrastructure Association
Wireless Internet Service Providers Association
Xcel Energy Services Inc.

Reply Comments
Alaska State Historic Preservation Office
American Cable Association
American Public Power Association
Association of American Railroads
California Public Utilities Commission
Catherine Kleiber
Chippewa Cree Tribe
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee
City of Baltimore, Maryland
City of New York
City of Philadelphia
Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC), City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey Access Group (JAG), and Colorado Municipal League (CML)
Comcast Corporation
Communications Workers of America
Competitive Carriers Association
Consumer Technology Association
Conterra Broadband Services, Southern Light, LLC, and Uniti Group Inc.
Critical Infrastructure Coalition
CTIA
Dan Kleiber
Enterprise Wireless Alliance
Environmental Health Trust
ExteNet Systems, Inc.
Florida Coalition of Local Governments
Confederated Tribes of Grand Ronde Community of Oregon Historic Preservation Department
INCOMPAS
Irregulators
National Association of Regulatory Utility Commissioners
National Association of Telecommunications Officers and Advisors, National League of Cities, National Association of Towns and Townships, National Association of Regional Councils, United States Conference of Mayors, and Government Finance Officers Association
National Congress of American Indians, United South and Eastern Tribes Sovereignty Protection Fund, and National Association of Tribal Historic Preservation Officers
National Organization of Black Elected Legislative (NOBEL) Women
National Rural Electric Cooperative Association
Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission
NCTA—The Internet & Television Association
Pueblo of Acoma
Puerto Rico Telephone Company, Inc., d/b/a Claro
Quintillion Networks, LLC, and Quintillion Subsea Operations, LLC
Rebecca Carol Smith
SDN Communications
Skyway Towers, LLC
SmallCellSite.Com
Smart Communities and Special Districts Coalition
Sue Present
The Greenlining Institute
T-Mobile USA, Inc.
Triangle Communication System, Inc.
United States Conference of Mayors
Verizon
Washington, D.C. Office of the Chief Technology Officer
Wireless Internet Service Providers Association
Xcel Energy Services Inc.
APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)\textsuperscript{1} an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM), released in April 2017.\textsuperscript{2} The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The comments received are addressed below in Section B. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.\textsuperscript{3}

A. Need for and Objectives of the Rules

2. In the Third Report and Order, the Commission continues its efforts to promote the timely buildout of wireless infrastructure across the country by eliminating regulatory impediments that unnecessarily delay bringing personal wireless services to consumers. The record shows that lengthy delays in approving siting applications by siting agencies has been a persistent problem.\textsuperscript{4} With this in mind, the Third Report and Order establishes and codifies specific rules concerning the amount of time siting agencies may take to review and approve certain categories of wireless infrastructure siting applications. More specifically, the Commission addresses its Section 332 shot clock rules for infrastructure applications which will be presumed reasonable under the Communications Act. As an initial matter, the Commission establishes two new shot clocks for Small Wireless Facilities applications. For collocation of Small Wireless Facilities on preexisting structures, the Commission adopts a 60-day shot clock which applies to both individual and batched applications. For applications associated with Small Wireless Facilities new construction we adopt a 90-day shot clock for both individual and batched applications.\textsuperscript{5} The Commission also codifies two existing Section 332 shot clocks for all other Non-Small Wireless Facilities that were established in the 2009 Declaratory Ruling without codification.\textsuperscript{6} These existing shot clocks require 90-days for processing of all other Non-Small Wireless Facilities collocation applications, and 150-days for processing of all other Non-Small Wireless Facilities applications other than collocations.

3. The Third Report and Order addresses other issues related to both the existing and new shot clocks. In particular we address the specific types of authorizations subject to the “Reasonable Period of Time” provisions of Section 332(c)(7)(B)(ii), finding that “any request for authorization to place, construct, or modify personal wireless service facilities” under Section 332(c)(7)(B)(ii) means all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment of personal wireless services infrastructure.\textsuperscript{7} The Commission also addresses collocation on structures not previously zoned for wireless use,\textsuperscript{8} when the four Section 332 shot clocks begin to run,\textsuperscript{9}

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\textsuperscript{2} See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment, Notice of Proposed Rulemaking, 32 FCC Rcd 3330 (2017).

\textsuperscript{3} See 5 U.S.C. § 604.

\textsuperscript{4} See supra paras. 23-9.

\textsuperscript{5} See supra paras. 111-12.

\textsuperscript{6} See supra paras. 138-39; 2009 Declaratory Ruling.

\textsuperscript{7} See supra paras. 132-37.

\textsuperscript{8} See supra para. 140.
the impact of incomplete applications on our Section 332 shot clocks,\textsuperscript{9} and how state imposed shot clocks remedies effect the Commission’s Section 332 shot clocks remedies.\textsuperscript{10}

4. The Commission discusses the appropriate judicial remedy that applicants may pursue in cases where a siting authority fails to act within the applicable shot clock period.\textsuperscript{12} In those situations, applicants may commence an action in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II) and seek injunctive relief granting the application. Notwithstanding the availability of a judicial remedy if a shot clock deadline is missed, the Commission recognizes that the Section 332 time frames might not be met in exceptional circumstances and has refined its interpretation of the circumstances when a period of time longer than the relevant shot clock would nonetheless be a reasonable period of time for action by a siting agency.\textsuperscript{13} In addition, a siting authority that is subject to a court action for missing an applicable shot clock deadline has the opportunity to demonstrate that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services thereby rebutting the effective prohibition presumption.

5. The rules adopted in the \textit{Third Report and Order} will accelerate the deployment of wireless infrastructure needed for the mobile wireless services of the future, while preserving the fundamental role of localities in this process. Under the Commission’s new rules, localities will maintain control over the placement, construction and modification of personal wireless facilities, while at the same time the Commission’s new process will streamline the review of wireless siting applications.

\textbf{B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA}

6. Only one party—the Smart Communities and Special Districts Coalition—filed comments specifically addressing the rules and policies proposed in the IRFA. They argue that any shortening or alteration of the Commission’s existing shot clocks or the adoption of a deemed granted remedy will adversely affect small local governments, special districts, property owners, small developers, and others by placing their siting applications behind wireless provider siting applications.\textsuperscript{14} Subsequently, NATOA filed comments concerning the draft FRFA.\textsuperscript{15} NATOA argues that the new shot clocks impose burdens on local governments and particularly those with limited resources. NATOA asserts that the new shot clocks will spur more deployment applications than localities currently process.

7. These arguments, however, fail to acknowledge that Section 332 shot clocks have been in place for years and reflect Congressional intent as seen in the statutory language of Section 332. The record in this proceeding demonstrates the need for, and reasonableness of, expediting the siting review of certain facility deployments.\textsuperscript{16} More streamlined procedures are both reasonable and necessary to provide greater predictability. The current shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the original shot clocks were adopted nine years ago. Localities have gained significant experience processing wireless siting applications and several jurisdictions already have in place laws that require

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applications to be processed in less time than the Commission’s new shot clocks. With the passage of time, sitting agencies have become more efficient in processing siting applications and this, in turn, should reduce any economic burden the Commission’s new shot clock provisions have on them.

8. The Commission has carefully considered the impact of its new shot clocks on siting authorities and has established shot clocks that take into consideration the nature and scope of siting requests by establishing shot clocks of different lengths of time that depend on the nature of the siting request at issue. The length of these shot clocks is based in part on the need to ensure that local governments have ample time to take any steps needed to protect public safety and welfare and to process other pending utility applications. Since local siting authorities have gained experience in processing siting requests in an expedited fashion, they should be able to comply with the Commission’s new shot clocks.

9. The Commission has taken into consideration the concerns of the Smart Communities and Special Districts Coalition and NATOA. It has established shot clocks that will not favor wireless providers over other applicants with pending siting applications. Further, instead of adopting a deemed granted remedy that would grant a siting application when a shot clock lapses without a decision on the merits, the Commission provides guidance as to the appropriate judicial remedy that applicants may pursue and examples of exceptional circumstance where a siting authority may be justified in needing additional time to review a siting application then the applicable shot clock allows. Under this approach, the applicant may seek injunctive relief as long as several minimum requirements are met. The siting authority, however, can rebut the presumptive reasonableness of the applicable shot clock under certain circumstances. The circumstances under which a sitting authority might have to do this will be rare. Under this carefully crafted approach, the interests of siting applicants, siting authorities, and citizens are protected.

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

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

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

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

12. 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. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.

17 See supra paras. 105-112.

18 Id.

19 See supra paras. 116-131.


concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.  

13. **Small Businesses, Small Organizations, Small Governmental Jurisdictions.** Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 28.8 million businesses. 

14. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS). 

15. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were

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(Continued from previous page) 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.”


29 Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than $100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of $50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of $100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See http://nccs.urban.org/sites/all/nccs-archive/html//tablewiz/tw.php where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.


31 See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#.

32 See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).
37, 132 General purpose governments (county\textsuperscript{33}, municipal and town or township\textsuperscript{34}) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts\textsuperscript{35} and special districts\textsuperscript{36}) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.\textsuperscript{37} Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”\textsuperscript{38}.

16. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.\textsuperscript{39} The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.\textsuperscript{40} For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.\textsuperscript{41} Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.\textsuperscript{42} Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications

\textsuperscript{33} See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01. There were 2,114 county governments with populations less than 50,000.

\textsuperscript{34} See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States—States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.


\textsuperscript{37} See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

\textsuperscript{38} Id.


\textsuperscript{40} 13 CFR § 121.201, NAICS Code 517210.


\textsuperscript{42} Id. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”
carriers (except satellite) are small entities.

17. The Commission’s own data—available in its Universal Licensing System—indicate that, as of May 17, 2018, there are 264 Cellular licensees that will be affected by our actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

18. Personal Radio Services. Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio services include services operating in spectrum licensed under Part 95 of our rules. These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service. There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which the SBA’s small entity size standard is defined as those entities employing 1,500 or fewer persons. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. We note however that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by our actions in this proceeding.

19. Public Safety Radio Licensees. Public Safety Radio Pool licensees as a general matter, include police, fire, local government, forestry conservation, highway maintenance, and emergency

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


45 See id.

46 47 CFR Part 90.


48 13 CFR § 121.201, NAICS Code 517312.


50 Id. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”
medical services. Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services. There are 3,121 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of March 29, 2017. We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

20. Private Land Mobile Radio Licensees. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business

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

52 See 13 CFR § 121.201, NAICS Code 517210.


54 Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 fewer employees; the largest category provided is for firms with “1000 employees or more.” This figure was derived from Commission licensing records as of June 27, 2008. Licensing numbers change daily. We do not expect this number to be significantly smaller as of the date of this order. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of public safety licensees that have less than 1,500 employees.

55 This figure was derived from Commission licensing records as of June 27, 2008. Licensing numbers change daily. We do not expect this number to be significantly smaller as of the date of this order. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of public safety licensees that have less than 1,500 employees.

56 Based on an FCC Universal Licensing System search of March 29, 2017. Search parameters: Radio Service = PA—Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

is small if it has 1,500 or fewer employees.\textsuperscript{58} For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.\textsuperscript{59} Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.\textsuperscript{60} Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

21. According to the Commission’s records, a total of approximately 400,622 licenses comprise PLMR users.\textsuperscript{61} Of this number there are a total of 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz, which is the range affected by the Third Report and Order.\textsuperscript{62} The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

22. \textit{Multiple Address Systems.} Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define “small entity” for MAS licensees as an entity that has average annual gross revenues of less than $15 million over the three previous calendar years.\textsuperscript{63} A “Very small business” is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than $3 million over the preceding three calendar years.\textsuperscript{64} The SBA has approved these definitions.\textsuperscript{65} The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications.

23. The Commission’s licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission’s licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission’s licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS

\begin{footnotesize}
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\item \textsuperscript{58} \textit{See} 13 CFR § 121.201, NAICS Code 517210.
\item \textsuperscript{60} \textit{Id.} Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”
\item \textsuperscript{61} This figure was derived from Commission licensing records as of September 19, 2016. Licensing numbers change on a daily basis. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of PLMR licensees that have fewer than 1,500 employees.
\item \textsuperscript{62} This figure was derived from Commission licensing records as of August 16, 2013. Licensing numbers change daily. We do not expect this number to be significantly smaller as of the date of this order. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of licensees that have fewer than 1,500 employees.
\item \textsuperscript{63} \textit{See} Amendment of the Commission’s Rules Regarding Multiple Address Systems, Report and Order, 15 FCC Red 11956, 12008 para. 123 (2000).
\item \textsuperscript{64} \textit{Id.}
\item \textsuperscript{65} \textit{See} Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (June 4, 1999).
\end{itemize}
\end{footnotesize}
licenses in 176 EAs was conducted.\footnote{See Multiple Address Systems Spectrum Auction Closes, Public Notice, 16 FCC Rcd 21011 (2001).} Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

24. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission’s definition. The closest applicable definition of a small entity is the “Wireless Telecommunications Carriers (except Satellite)” definition under the SBA rules.\footnote{13 CFR § 121.201, NAICS Code 517210.} The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.\footnote{Id.} For this category, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.\footnote{Id.} Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.\footnote{U.S. Census Bureau, 2012 Economic Census of the United States, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.} Thus under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by our action can be considered small.

25. \textit{Broadband Radio Service and Educational Broadband Service.} Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high-speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).\footnote{Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).}

26. \textit{BRS -} In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.\footnote{47 CFR § 21.961(b)(1).} The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent
BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules.

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

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

73 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1,500 or fewer employees.


75 Id. at 8296 para. 73.


80 Id.
institutions and school districts, which are by statute defined as small businesses.81

29. **Location and Monitoring Service (LMS).** LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a “small business” as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million.82 A “very small business” is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million.83 These definitions have been approved by the SBA.84 An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

30. **Television Broadcasting.** This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.”85 These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.86 These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts.87 The 2012 Economic Census reports that 751 firms in this category operated in that year.88 Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more.89 Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

31. The Commission has estimated the number of licensed commercial television stations to be 1,377.90 Of this total, 1,258 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 384.91 Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how

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


83 Id.


86 Id.

87 13 CFR § 121.201; 2012 NAICS Code 515120.


89 Id.


91 Id.
many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations.\footnote{100} Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

32. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included.\footnote{93} Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

33. Radio Stations. This Economic Census category “comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.”\footnote{94} The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts.\footnote{95} Economic Census data for 2012 show that 2,849 radio station firms operated during that year.\footnote{96} Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more.\footnote{97} Therefore, based on the SBA’s size standard the majority of such entities are small entities.

34. According to Commission staff review of the BIA/Kelsey, LLC’s Publications, Inc. Media Access Pro Radio Database (BIA) as of January 2018, about 11,261 (or about 99.92 percent) of 11,270 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition.\footnote{98} The Commission has estimated the number of licensed commercial AM radio stations to be 4,633 stations and the number of commercial FM radio stations to be 6,738, for a total number of 11,371.\footnote{99} We note, that the Commission has also estimated the number of licensed NCE radio stations to be 4,128.\footnote{100} Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

\footnote{92}Id.

\footnote{93}See 13 CFR § 21.103(a)(1) “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.”


\footnote{95}13 CFR § 121.201, NAICS Code 515112.


\footnote{97}Id.

\footnote{98}BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).


\footnote{100}Id.
35. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.\textsuperscript{101} The Commission’s estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a “small business,” an entity may not be dominant in its field of operation.\textsuperscript{102} We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of “small business” is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

36. **FM Translator Stations and Low Power FM Stations.** FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations.\textsuperscript{103} This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public.\textsuperscript{104} Programming may originate in their own studio, from an affiliated network, or from external sources.\textsuperscript{105} The SBA has established a small business size standard which consists of all radio stations whose annual receipts are $38.5 million dollars or less.\textsuperscript{106} U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year.\textsuperscript{107} Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more.\textsuperscript{108} Therefore, based on the SBA’s size standard, we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

37. **Multichannel Video Distribution and Data Service (MVDDS).** MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.\textsuperscript{109} These definitions were approved by the SBA.\textsuperscript{110} On January 27, 2004, the Commission

\textsuperscript{101} 13 CFR § 121.103(a)(1). “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both.”

\textsuperscript{102} 13 CFR § 121.102(b).


\textsuperscript{104} Id.

\textsuperscript{105} Id.

\textsuperscript{106} 13 CFR § 121.201, NAICS code 515112.


\textsuperscript{108} Id.

\textsuperscript{109} Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with QSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission’s Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers,
completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.\textsuperscript{111} Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.\textsuperscript{112}

38. \textit{Satellite Telecommunications}. This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”\textsuperscript{113} Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules.\textsuperscript{114} For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.\textsuperscript{115} Of this total, 299 firms had annual receipts of less than $25 million.\textsuperscript{116} Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

39. \textit{All Other Telecommunications}. The “All Other Telecommunications” category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.\textsuperscript{117} This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.\textsuperscript{118} Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.\textsuperscript{119} The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of $32.5 million or less.\textsuperscript{120} For this category, U.S. Census data for 2012 show that there


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


\textit{Id.} 13 CFR § 121.201, NAICS Code 517410.


\textit{Id.} Id.


\textit{Id.} Id.

\textit{Id.} 13 CFR § 121.201, NAICS Code 517919.
were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million and 42 firms had annual receipts of $25 million to $49,999,999. Thus, a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

40. **Fixed Microwave Services.** Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), the 39 GHz Service (39 GHz), the 24 GHz Service, and the Millimeter Wave Service where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business size standard for microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012, show that there were 967 firms in this category that operated for the entire year. Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

41. The Commission notes that the number of firms does not necessarily track the number of

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122 Id.

123 See 47 CFR Part 101, Subpart I.

124 Persons eligible under parts 80 and 90 of the Commission’s rules can use Private-Operational Fixed Microwave services. See 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee’s commercial, industrial, or safety operations.

125 See 47 CFR Parts 74, 78 (governing Auxiliary Microwave Service) Available to licensees of broadcast stations, cable operators, and to broadcast and cable network entities. Auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes TV pickup and CARS pickup, which relay signals from a remote location back to the studio.


128 See 47 CFR Part 101, Subpart N (reserved for Competitive bidding procedures for the 38.6-40 GHz Band).

129 See id.


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

133 13 CFR § 121.201.

licensees. The Commission also notes that it does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA’s small business size standard. The Commission estimates however, that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

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

43. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a “Constructed” status and 13,987 registration records reflecting a “Granted, Not Constructed” status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Firms that do not require ASR registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which we seek comment. Moreover, the SBA has not developed a size standard for small businesses in the category “Tower Owners.” Therefore, we are unable to determine the number of non-licensee tower owners that are small entities. We believe, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which we seek comment. We do not have any basis for estimating the number of such non-licensee owners that are small entities.

44. The closest applicable SBA category is All Other Telecommunications, and the appropriate size standard consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, under this SBA size standard a majority of the firms potentially affected by our action can be considered small.

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

45. The Third Report and Order does not establish any reporting, recordkeeping, or other

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

136 13 CFR § 121.201, NAICS Code 517919.


138 Id.
compliance requirements for companies involved in wireless infrastructure deployment.\textsuperscript{139} In addition to not adopting any reporting, recordkeeping or other compliance requirements, the Commission takes significant steps to reduce regulatory impediments to infrastructure deployment and, therefore, to spur the growth of personal wireless services. Under the Commission’s approach, small entities as well as large companies will be assured that their deployment requests will be acted upon within a reasonable period of time and, if their applications are not addressed within the established time frames, applicants may seek injunctive relief granting their siting applications. The Commission, therefore, has taken concrete steps to relieve companies of all sizes of uncertainty and has eliminated unnecessary delays.

46. The \textit{Third Report and Order} also does not impose any reporting or recordkeeping requirements on state and local governments. While some commenters argue that additional shot clock classifications would make the siting process needlessly complex without any proven benefits, the Commission concludes that any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process.\textsuperscript{140} The Commission’s actions are consistent with the statutory language of Section 332 and therefore reflect Congressional intent. Further, siting agencies have become more efficient in processing siting applications and will be able to take advantage of these efficiencies in meeting the new shot clocks. As a result, the additional shot clocks that the Commission adopts will foster the deployment of the latest wireless technology and serve consumer interests.

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

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”\textsuperscript{141}

48. The steps taken by the Commission in the \textit{Third Report and Order} eliminate regulatory burdens for small entities as well as large companies that are involved with the deployment of person wireless services infrastructure. By establishing shot clocks and guidance on injunctive relief for personal wireless services infrastructure deployments, the Commission has standardized and streamlined the permitting process. These changes will significantly minimize the economic burden of the siting process on all entities, including small entities, involved in deploying personal wireless services infrastructure. The record shows that permitting delays imposes significant economic and financial burdens on companies with pending wireless infrastructure permits. Eliminating permitting delays will remove the associated cost burdens and enabling significant public interest benefits by speeding up the deployment of personal wireless services and infrastructure. In addition, siting agencies will be able to utilize the efficiencies that they have gained over the years processing siting applications to minimize financial impacts.

49. The Commission considered but did not adopt proposals by commenters to issue “Best Practices” or “Recommended Practices,”\textsuperscript{142} and to develop an informal dispute resolution process and

\textsuperscript{139} \textit{See supra} para. 144.

\textsuperscript{140} \textit{See supra} para. 110.

\textsuperscript{141} 5 U.S.C. § 603(c)(1)-(4).

\textsuperscript{142} KS Rep. Sloan Comments at 2; Nokia Comments at 10.
mediation program,\textsuperscript{143} noting that the steps taken in the \textit{Third Report and Order} address the concerns underlying these proposals to facilitate cooperation between parties to reach mutually agreed upon solutions.\textsuperscript{144} The Commission anticipates that the changes it has made to the permitting process will provide significant efficiencies in the deployment of personal wireless services facilities and this in turn will benefit all companies, but particularly small entities, that may not have the resources and economies of scale of larger entities to navigate the permitting process. By adopting these changes, the Commission will continue to fulfill its statutory responsibilities, while reducing the burden on small entities by removing unnecessary impediments to the rapid deployment of personal wireless services facilities and infrastructure across the country.

\textbf{Report to Congress}

\textsuperscript{50} The Commission will send a copy of the \textit{Third Report and Order}, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.\textsuperscript{145} In addition, the Commission will send a copy of the \textit{Third Report and Order}, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the \textit{Third Report and Order} and FRFA (or summaries thereof) also will be published in the \textit{Federal Register}.\textsuperscript{146}
STATEMENT OF
CHAIRMAN AJIT PAI

Re:  Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure
Investment, WT Docket No. 17-79; Accelerating Wireline Broadband Deployment by Removing
Barriers to Infrastructure Investment, WC Docket No. 17-84

Perhaps the defining characteristic of the communications sector over the past decade is that the
world is going wireless. The smartphone’s introduction in 2007 may have seemed an interesting novelty
to some at the time, but it was a precursor of a transformative change in how consumers access and use
the Internet. 4G LTE was a key driver in that change.

Today, a new transition is at hand as we enter the era of 5G. At the FCC, we’re working hard to
ensure that the United States leads the world in developing this next generation of wireless connectivity
so that American consumers and our nation’s economy enjoy the immense benefits that 5G will bring.

Spectrum policy of course features prominently in our 5G strategy. We’re pushing a lot more
spectrum into the commercial marketplace. On November 14, for example, our 28 GHz band spectrum
auction will begin, and after it ends, our 24 GHz band spectrum auction will start. And in 2019, we plan
to auction off three additional spectrum bands.

But all the spectrum in the world won’t matter if we don’t have the infrastructure needed to carry
5G traffic. New physical infrastructure is vital for success here. That’s because 5G networks will depend
less on a few large towers and more on numerous small cell deployments—deployments that for the most
part don’t exist today.

But installing small cells isn’t easy, too often because of regulations. There are layers of
(sometimes unnecessary and unreasonable) rules that can prevent widespread deployment. At the federal
level, we acted earlier this year to modernize our regulations and make our own review process for
wireless infrastructure 5G fast. And many states and localities have similarly taken positive steps to
reform their own laws and increase the likelihood that their citizens will be able to benefit from 5G
networks.

But as this Order makes clear, there are outliers that are unreasonably standing in the way of
wireless infrastructure deployment. So today, we address regulatory barriers at the local level that are
inconsistent with federal law. For instance, big-city taxes on 5G slow down deployment there and also
jeopardize the construction of 5G networks in suburbs and rural America. So today, we find that all fees
must be non-discriminatory and cost-based. And when a municipality fails to act promptly on
applications, it can slow down deployment in many other localities. So we mandate shot clocks for local
government review of small wireless infrastructure deployments.

I commend Commissioner Carr for his leadership in developing this Order. He worked closely
with many state and local officials to understand their needs and to study the policies that have worked at
the state and local level. It should therefore come as no surprise that this Order has won significant
support from mayors, local officials, and state legislators.

To be sure, there are some local governments that don’t like this Order. They would like to
continue extracting as much money as possible in fees from the private sector and forcing companies to
navigate a maze of regulatory hurdles in order to deploy wireless infrastructure. But these actions are not
only unlawful, they’re also short-sighted. They slow the construction of 5G networks and will delay if
not prevent the benefits of 5G from reaching American consumers. And let’s also be clear about one
thing: When you raise the cost of deploying wireless infrastructure, it is those who live in areas where the
investment case is the most marginal—rural areas or lower-income urban areas—who are most at risk of losing out. And I don’t want 5G to widen the digital divide; I want 5G to help close that divide.

In conclusion, I’d like to again thank Commissioner Carr for leading this effort and his staff for their diligent work. And I’m grateful to the hardworking staff across the agency who have put many hours into this Order. In particular, thanks to Jonathan Campbell, Stacy Ferraro, Garnet Hanly, Leon Jackler, Eli Johnson, Jonathan Lechter, Kate Matraves, Betsy McIntyre, Darrel Pae, Jennifer Salhus, Dana Shaffer, Jiaming Shang, David Sieradzki, Michael Smith, Don Stockdale, Cecilia Sulhoff, Patrick Sun, Suzanne Tetreault, and Joseph Wyer from the Wireless Telecommunications Bureau; Matt Collins, Adam Copeland, Dan Kahn, Deborah Salons, and John Visclosky from the Wireline Competition Bureau; Chana Wilkerson from the Office of Communications Business Opportunities; and Ashley Boizelle, David Horowitz, Tom Johnson, Marcus Maher, Bill Richardson, and Anjali Singh from the Office of General Counsel.
STATEMENT OF
COMMISSIONER MICHAEL O’RIELLY

Re:  Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

I enthusiastically support the intent of today’s item and the vast majority of its content, as it will lower the barriers that some localities place to infrastructure siting. By tackling exorbitant fees, ridiculous practices, and prolonged delays, we are taking the necessary steps to expedite deployment and make it more cost efficient. Collectively, these provisions will help facilitate the deployment of 5G and enable providers to expand services throughout our nation, with ultimate beneficiaries being the American people.

While this is a tremendous step in the right direction, there are some things that could have been done to improve the situation further. For instance, the agreement reached by all parties in the 1996 Telecommunications Act was that states and localities would have no role over radio frequency emission issues, could not regulate based on the aesthetics of towers and antennas, and were prohibited from imposing any moratoriums on processing wireless siting applications. State and localities did not honor this agreement and the courts have sadly enabled their efforts via harmful and wrongly decided cases. Accordingly, I would have preferred that the aesthetics related provisions in the item be deleted, but I will have to swallow it recognizing that I can’t get the rest without it. At the very least, I do appreciate that, at my request, it was clarified that the aesthetic requirements, which must be published in advance, must be objective.

I am also concerned that by setting application and recurring fees that are presumed to be reasonable, the Commission is inviting localities to adopt these rates, even if they are not cost based. Providers should be explicitly provided the right to challenge these rates if they believe they are not cost based. Even if not stated, I hope that providers will challenge unreasonable rates. I thank my colleagues for agreeing to my edits that the application fee presumption applies to all non-recurring costs, not just the application fee.

Further, I think there should be a process and standards in place if a locality decides that it needs more time to review batched applications. Objective criteria are needed regarding what are considered “exceptional circumstances” or “exceptional cases” warranting a longer review period for batch processing, when localities need to inform the applicant that they need more time, how this notification will occur, and how much time they will get. For instance, the item appears to excuse a locality that does not act within the shot clocks for any application if there are “extraordinary circumstances,” but there are no parameters on what circumstances we are envisioning. Is a lack of adequate staff or having processing rules or policies in place a sufficient excuse? Such things should be determined upfront, as opposed to allowing courts to decide such matters. Without further clarity, I fear that we may be creating unnecessary loopholes, resulting in further delay.

Finally, I would have liked today’s item to be broader and cover the remaining infrastructure issues in the record. First, the Commission’s new interpretation of sections 253 and 332 applies beyond small cells. While our focus has been on these newer technologies, there needs to be a recognition that macro towers will continue to play a crucial role in wireless networks. One tower provider states that “[m]acro cell sites will continue to be a central component of wireless infrastructure . . . ,” because 80 [percent] of the population lives in suburban or rural areas where “macro sites are the most efficient way
Further, many of the interpretations in today’s item apply not only to these macro towers, but also to other telecommunications services, including those provided by traditional wireline carriers and potentially cable companies.

Second, the Commission needs to close loopholes in section 6409 that some localities have been exploiting. While these rules pertaining to the modification of existing structures are clear, some localities are trying to undermine Congress’s intent and our actions. For instance, localities are refusing ancillary permissions, such as building or highway permits, to slow down or prevent siting; using the localities’ concealment and aesthetic additions to increase the size of the facility or requiring that poles be replaced with stealth infrastructure for the purpose of excluding facilities from section 6409; placing improper conditions on permits; and forcing providers to sign agreements that waive their rights under section 6409. And, I have been told that some are claiming that section 6409 does not apply to their siting processes. This must stop. I appreciate the Chairman’s firm commitment to my request for an additional item to address such matters, and I expect that it will be coming in the very near future.

Third, there is a need to harmonize our rules regarding compound expansion. Currently, an entity seeking to replace a structure is allowed to expand the facility’s footprint by 30 feet, but if the same entity seeks to expand the tower area to hold new equipment associated with a collocation, a new review is needed. It doesn’t make sense that these situations are treated differently. And while we are at it, the Commission should also harmonize its shot clocks and remedies. These issues should also be added to any future item.

Lastly, the Commission also must finish its review of the comments filed in response to the twilight towers notice, make the revisions to the program comment, and submit it to Advisory Council on Historic Preservation for their review and vote. These towers are eligible, yet not permitted, to hold an estimated 6,500 collocations that will be needed for next-generation services and FirstNet. It is time to bring this embarrassment, which started in 2001, to an end.

Not only do I thank the Chairman for agreeing to additional infrastructure items, but I also thank the Chairman and Commissioner Carr for implementing several of my edits to the item today. Besides those already mentioned, they include applying the aesthetic criteria, including that any requirements must be reasonable, objective, and published in advance, to undergrounding; stating that undergrounding requirements that apply to some, but not all facilities, will be considered an effective prohibition if they materially inhibit wireless service; and adding similar language to the minimum spacing section of the item. Further, the minimum spacing requirements will not apply to replacement facilities or prevent collocations on existing structures. Additionally, localities claiming that an application is incomplete will need to specifically state what rule requires the submission of the missing information.

With this, I approve.

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STATEMENT OF
COMMISSIONER BRENDAN CARR

Re:  Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

The United States is on the cusp of a major upgrade in wireless technology to 5G. The WALL STREET JOURNAL has called it transformative from a technological and economic perspective. And they’re right. Winning the global race to 5G—seeing this new platform deployed in the U.S. first—is about economic leadership for the next decade. Those are the stakes, and here’s how we know it.

Think back ten years ago when we were on the cusp of upgrading from 3G to 4G. Think about the largest stocks and some of the biggest drivers of our economy. It was big banks and big oil. Fast forward to today: U.S.-based technology companies, from FAANG (Facebook, Apple, Amazon, Netflix, and Google) down to the latest startup, have transformed our economy and our lives.

Think about your own life. A decade ago, catching a ride across town involved calling a phone number, waiting 20 minutes for a cab to arrive, and paying rates that were inaccessible to many people. Today, we have Lyft, Uber, Via, and other options.

A decade ago, sending money meant going to a brick-and-mortar bank, standing in that rope line, getting frustrated when that pen leashed to the table was out of ink (again!), and ultimately conducting your transaction with a teller. Now, with Square, Venmo, and other apps you can send money or deposit checks from anywhere, 24 hours a day.

A decade ago, taking a road trip across the country meant walking into your local AAA office, telling them the stops along your way, and waiting for them to print out a TripTik booklet filled with maps that you would unfold as you drove down the highway. Now, with Google Maps and other apps you get real-time updates and directions right on your smartphone.

American companies led the way in developing these 4G innovations. But it’s not by chance or luck that the United States is the world’s tech and innovation hub. We have the strongest wireless economy in the world because we won the race to 4G. No country had faster 4G deployment and more intense investment than we did. Winning the race to 4G added $100 billion to our GDP. It led to $125 billion in revenue for U.S. companies that could have gone abroad. It grew wireless jobs in the U.S. by 84 percent. And our world-leading 4G networks now support today’s $950 billion app economy. That history should remind policymakers at all levels of government exactly what is at stake. 5G is about our leadership for the next decade.

And being first matters. It determines whether capital will flow here, whether innovators will start their new businesses here, and whether the economy that benefits is the one here. Or as Deloitte put it: “First-adopter countries . . . could sustain more than a decade of competitive advantage.”

We’re not the only country that wants to be first to 5G. One of our biggest competitors is China. They view 5G as a chance to flip the script. They want to lead the tech sector for the next decade. And they are moving aggressively to deploy the infrastructure needed for 5G.

Since 2015, China has deployed 350,000 cell sites. We’ve built fewer than 30,000. Right now, China is deploying 460 cell sites a day. That is twelve times our pace. We have to be honest about this infrastructure challenge. The time for empty statements about carrots and sticks is over. We need a concrete plan to close the gap with China and win the race to 5G.
We take this challenge seriously at the FCC. And we are getting the government out of the way, so that the private sector can invest and compete.

In March, we held that small cells should be treated differently than large, 200-foot towers. And we’re already seeing results. That decision cut $1.5 billion in red tape, and one provider reports that it is now clearing small cells for construction at six times the pace as before.

So we’re making progress in closing the infrastructure gap with China. But hurdles remain. We’ve heard from dozens of mayors, local officials, and state lawmakers who get what 5G means—they understand the economic opportunity that comes with it. But they worry that the billions in investment needed to deploy these networks will be consumed by the high fees and long delays imposed by big, “must-serve” cities. They worry that, without federal action, they may not see 5G. I’d like to read from a few of the many comments I’ve received over the last few months.

Duane Ankney is a retired coal miner from Montana with a handlebar mustache that would be the envy of nearly any hipster today. But more relevantly, he’s a Member of the Montana State Legislature and chairs its Energy and Telecommunications Committee. He writes: “Where I see the problem is, that most of investment capital is spent in the larger urban areas. This is primarily due to the high regulatory cost and the cost recovery [that] can be made in those areas. This leaves the rural areas out.”

Mary Whisenand, an Iowa commissioner, writes: “With 99 counties in Iowa, we understand the need to streamline the network buildout process so it’s not just the big cities that get 5G but also our small towns. If companies are tied up with delays and high fees, it’s going to take that much longer for each and every Iowan to see the next generation of connectivity.”

Ashton Hayward, the Mayor of Pensacola, Florida, writes: “[E]xcessive and arbitrary fees . . . result[] in nothing more than telecom providers being required to spend limited investment dollars on fees as opposed to spending those limited resources on the type of high-speed infrastructure that is so important in our community.”

And the entire board of commissioners from a more rural area in Michigan writes: “Smaller communities such as those located in St. Clair County would benefit by having the [FCC] reduce the costly and unnecessary fees that some larger communities place on small cells as a condition of deployment. These fees, wholly disproportionate to any cost, put communities like ours at an unfair disadvantage. By making small cell deployment less expensive, the FCC will send a clear message that all communities, regardless of size, should share in the benefits of this crucial new technology.”

They’re right. When I think about success—when I think about winning the race to 5G—the finish line is not the moment we see next-gen deployments in New York or San Francisco. Success can only be achieved when all Americans, no matter where they live, have a fair shot at fast, affordable broadband.

So today, we build on the smart infrastructure policies championed by state and local leaders. We ensure that no city is subsidizing 5G. We prevent excessive fees that would threaten 5G deployment. And we update our shot clocks to account for new small cell deployments. I want to thank Commissioner Rosenworcel for improving the new shot clocks with edits that protect municipalities from providers that submit incomplete applications and provide localities with more time to adjust their operations. Her ideas improved this portion of the order.

More broadly, our decision today has benefited from the diverse views expressed by a range of stakeholders. On the local government side, I met with mayors, city planners, and other officials in their home communities and learned from their perspectives. They pushed back on the proposed “deemed
granted” remedy, on regulating rents on their property outside of rights-of-way, and on limits to reasonable aesthetic reviews. They reminded me that they’re the ones that get pulled aside at the grocery store when an unsightly small cell goes up. Their views carried the day on all of those points. And our approach respects the compromises reached in state legislatures around the country by not preempting nearly any of the provisions in the 20 state level small cells bills.

This is a balanced approach that will help speed the deployment of 5G. Right now, there is a cottage industry of consultants spurring lawsuits and disputes in courtrooms and city halls around the country over the scope of Sections 253 and 332. With this decision, we provide clear and updated guidance, which will eliminate the uncertainty inspiring much of that litigation.

Some have also argued that we unduly limit local aesthetic reviews. But allowing reasonable aesthetic reviews—and thus only preventing unreasonable ones—does not strike me as a claim worth lodging.

And some have asked whether this reform will make a real difference in speeding 5G deployment and closing the digital divide. The answer is yes. It will cut $2 billion in red tape. That’s about $8,000 in savings per small cell. Cutting these costs changes the prospects for communities that might otherwise get left behind. It will stimulate $2.4 billion in new small cell deployments. That will cover 1.8 million more homes and businesses—97% of which are in rural and suburban communities. That is more broadband for more Americans.

* * * *

In closing, I want to thank my colleagues for working to put these ideas in place. I want to thank Chairman Pai for his leadership in removing these regulatory barriers. And I want to recognize the exceptionally hard-working team at the FCC that helped lead this effort, including, in the Wireless Telecommunications Bureau, Donald Stockdale, Suzanne Tetrault, Garnet Hanly, Jonathan Campbell, Stacy Ferraro, Leon Jackler, Eli Johnson, Jonathan Lechter, Marcus Maher, Betsy McIntyre, Darrel Pae, Jennifer Salhus, Jiaming Shang, and David Sieradzki. I also want to thank the team in the Office of General Counsel, including Tom Johnson, Ashley Boizelle, Bill Richardson, and Anjali Singh.
STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
APPROVING IN PART, DISSENTING IN PART

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

A few years ago, in a speech at a University of Colorado event, I called on the Federal Communications Commission to start a proceeding on wireless infrastructure reform. I suggested that if we want broad economic growth and widespread mobile opportunity, we need to avoid unnecessary delays in the state and local approval process. That’s because they can slow deployment.

I believed that then. I still believe it now.

So when the FCC kicked off a rulemaking on wireless infrastructure last year, I had hopes. I hoped we could provide a way to encourage streamlined service deployment nationwide. I hoped we could acknowledge that we have a long tradition of local control in this country but also recognize more uniform policies across the country will help us in the global race to build the next generation of wireless service, known as 5G. Above all, I hoped we could speed infrastructure deployment by recognizing the best way to do so is to treat cities and states as our partners.

In one respect, today’s order is consistent with that vision. We shorten the time frames permitted under the law for state and local review of the deployment of small cells—an essential part of 5G networks. I think this is the right thing to do because the shot clocks we have now were designed in an earlier era for much bigger wireless facilities. At the same time, we retain the right of state and local authorities to pursue court remedies under Section 332 of the Communications Act. This strikes an appropriate balance. I appreciate that my colleagues were willing to work with me to ensure that localities have time to update their processes to accommodate these new deadlines and that they are not unfairly prejudiced by incomplete applications. I support this aspect of today’s order.

But in the remainder of this decision, my hopes did not pan out. Instead of working with our state and local partners to speed the way to 5G deployment, we cut them out. We tell them that going forward Washington will make choices for them—about which fees are permissible and which are not, about what aesthetic choices are viable and which are not, with complete disregard for the fact that these infrastructure decisions do not work the same in New York, New York and New York, Iowa. So it comes down to this: three unelected officials on this dais are telling state and local leaders all across the country what they can and cannot do in their own backyards. This is extraordinary federal overreach.

I do not believe the law permits Washington to run roughshod over state and local authority like this and I worry the litigation that follows will only slow our 5G future. For starters, the Tenth Amendment reserves powers to the states that are not expressly granted to the federal government. In other words, the constitution sets up a system of dual sovereignty that informs all of our laws. To this end, Section 253 balances the interests of state and local authorities with this agency’s responsibility to expand the reach of communications service. While Section 253(a) is concerned with state and local requirements that may prohibit or effectively prohibit service, Section 253(d) permits preemption only on a case-by-case basis after notice and comment. We do not do that here. Moreover, the assertion that fees above cost or local aesthetic requirements in a single city are tantamount to a service prohibition elsewhere stretches the statute beyond what Congress intended and legal precedent affords.

In addition, this decision irresponsibly interferes with existing agreements and ongoing deployment across the country. There are thousands of cities and towns with agreements for infrastructure deployment—including 5G wireless facilities—that were negotiated in good faith. So
many of them could be torn apart by our actions here. If we want to encourage investment, upending commitments made in binding contracts is a curious way to go.

Take San Jose, California. Earlier this year it entered into agreements with three providers for the largest small cell-driven broadband deployment of any city in the United States. These partnerships would lead to 4,000 small cells on city-owned light poles and more than $500 million of private sector investment. Or take Little Rock, Arkansas, where local reforms to the permitting process have put it on course to become one of the first cities to benefit from 5G service. Or take Troy, Ohio. This town of under 26,000 spent time and energy to develop streamlined procedures to govern the placement, installation, and maintenance of small cell facilities in the community. Or take Austin, Texas. It has been experimenting with smart city initiatives to improve transportation and housing availability. As part of this broader effort, it started a pilot project to deploy small cells and has secured agreements with multiple providers.

This declaratory ruling has the power to undermine these agreements—and countless more just like them. In fact, too many municipalities to count—from Omaha to Overland Park, Cincinnati to Chicago and Los Angeles to Louisville—have called on the FCC to halt this federal invasion of local authority. The National Governors Association and National Conference of State Legislatures have asked us to stop before doing this damage. This sentiment is shared by the United States Conference of Mayors, National League of Cities, National Association of Counties, and Government Finance Officers Association. In other words, every major state and municipal organization has expressed concern about how Washington is seeking to assert national control over local infrastructure choices and stripping local elected officials and the citizens they represent of a voice in the process.

Yet cities and states are told to not worry because with these national policies wireless providers will save as much as $2 billion in costs which will spur deployment in rural areas. But comb through the text of this decision. You will not find a single commitment made to providing more service in remote communities. Look for any statements made to Wall Street. Not one wireless carrier has said that this action will result in a change in its capital expenditures in rural areas. As Ronald Reagan famously said, “trust but verify.” You can try to find it here, but there is no verification. That’s because the hard economics of rural deployment do not change with this decision. Moreover, the asserted $2 billion in cost savings represents no more than 1 percent of investment needed for next-generation networks.

It didn’t have to be this way. So let me offer three ideas to consider going forward.

First, we need to acknowledge we have a history of local control in this country but also recognize that more uniform policies can help us be first to the future. Here’s an idea: Let’s flip the script and build a new framework. We can start with developing model codes for small cell and 5G deployment—but we need to make sure they are supported by a wide range of industry and state and local officials. Then we need to review every policy and program—from universal service to grants and low-cost loans at the Department of Commerce, Department of Agriculture, and Department of Transportation and build in incentives to use these models. In the process, we can create a more common set of practices nationwide. But to do so, we would use carrots instead of sticks.

Second, this agency needs to own up to the impact of our trade policies on 5G deployment. In this decision we go on at length about the cost of local review but are eerily silent when it comes to the consequences of new national tariffs on network deployment. As a result of our escalating trade war with China, by the end of this year we will have a 25 percent duty on antennas, switches, and routers—the essential network facilities needed for 5G deployment. That’s a real cost and there is no doubt it will diminish our ability to lead the world in the deployment of 5G.
Finally, in this decision the FCC treats the challenge of small cell deployment with a bias toward more regulation from Washington rather than more creative marketplace solutions. But what if instead we focused our efforts on correcting the market failure at issue? What if instead of micromanaging costs we fostered competition? One innovative way to do this involves dusting off our 20-year old over-the-air-reception-device rules, or OTARD rules.

Let me explain. The FCC’s OTARD rules were designed to protect homeowners and renters from laws that restricted their ability to set up television and broadcast antennas on private property. In most cases they accomplished this by providing a right to install equipment on property you control—and this equipment for video reception was roughly the size of a pizza box.

Today OTARD rules do not contemplate 5G deployment and small cells. But we could change that by clarifying our rules. If we did, a lot of benefits would follow. By creating more siting options for small cells, we would put competitive pressure on public rights-of-way, which could bring down fees through competition instead of the government ratemaking my colleagues offer here. Moreover, this approach would create more opportunities for rural deployment by giving providers more siting and backhaul options and creating new use cases for signal boosters. Add this up and you get more competitive, more ubiquitous, and less costly 5G deployment.

We don’t explore these market-based alternatives in today’s decision. We don’t say a thing about the real costs that tariffs impose on our efforts at 5G leadership. And we don’t consider creative incentive-based systems to foster deployment, especially in rural areas.

But above all we neglect the opportunity to recognize what is fundamental: if we want to speed the way for 5G service we need to work with cities and states across the country because they are our partners. For this reason, in critical part, I dissent.
FW: concerns over 5G coming to our community

Sent from my iPad

Begin forwarded message:

From: Judy Frankel <judyfrankel@gmail.com>
Date: March 24, 2019 at 9:35:25 AM PDT
To: cc@rpvca.gov
Subject: concerns over 5G coming to our community

Dear City Council Members,

I will be coming to the meeting on April 2nd to give my input about 5G for three minutes. Three minutes isn't much time to cover such a complex subject, but I will be giving some highlights from the following three videos:

Dr. Martin Pall:
https://www.youtube.com/watch?v=kBsUWbUB6PE

Dr. Sharon Goldberg:
https://www.youtube.com/watch?v=CK0AliMe-KA

Theodora Scarato:
https://www.youtube.com/watch?v=Exf3rVBTxRQ

The problem with 5G as I see it, is that once it's installed, it will be impossible to get away from the pulses. We should all become knowledgeable about the effects of 5G before we allow the telecommunications company to bathe our community in electromagnetic pulses.

Thank you for your attention to this matter.
Sincerely,
Judy Frankel

"A healthy person has a thousand wishes. A sick man has only one: to heal." --Agnes Kahr Schwest Krankenpfleger
Hi Ara and Elias,

in response to the public notification that was sent earlier today, please provide me the replacement draft Wireless Telecommunication Facility ordinance as soon as possible.

While I agree that the ordinance does require an update to align nomenclature and shot clock timeframes, I will vigorously oppose any effort to weaken the ordinance particularly in regards to demonstrating "significant gap", local street location restrictions, or equipment undergrounding requirements. These requirements have served our City well and are fully within the law.

Further, the scope of the new FCC regulations are far from settled as communities across the US are filing suit challenging the FCC's authority in this regard. Also, the FCC regulations contain nebulous claims in many areas that are little more than industry talking points, are ill defined, and lack statutory and/or constitutional authority.

I'm very concerned that the City is considering repealing/replacing the existing ordinance rather than making adjustments as required in specific areas (i.e. such as shot clocks where the FCC authority is clear and unambiguous). I look forward to reviewing the replacement draft ordinance as soon as possible. The City has stood strong in this area and we've fixed a process that was completely out of control. Our City must be just as aggressive in interpreting these new FCC regulations or we risk returning to where we were. Further, we should be working with other like-minded cities to pool our resources and ensure we have the strongest legal guidance.

You may recall that back when the City Council was debating our existing ordinance (Dec 2015-Jan 2016) there were all sorts of claims from the industry that our proposed ordinance was illegal and we couldn't do it. That turned out to be completely false and the existing ordinance has served the City well. I'm very concerned that we not back-track on those achievements without clear legal precedence. The City should not be weakening our
ordinance unless the FCC requirements are unambiguous and clearly within the statutory authority granted them by Congress. This can be done with limited modifications to the existing ordinance.

Please advise as to who is drafting the replacement ordinance and the legal advisors involved. I know this is a difficult challenge for the City and appreciate your leadership in this regard.

Best regards,

Jeff Calvagna

On 3/19/2019 9:39 AM, Wireless Telecommunications Facilities wrote:

View this in your browser

This message from the City of Rancho Palos Verdes is being sent to subscribers of this list who might be interested in its content. Please do not press “reply” when responding to this message, it is a non-monitored email address. If there is contact information it will be included in the body of the message.

Wireless Telecommunication Facilities in the Public Right-of-Way – Code Amendment

On April 2, 2019, the City Council will consider repealing and replacing its ordinance regulating wireless telecommunication facilities in the public right-of-way (Chapter 12.18 of the RPVMC). The new ordinance language is intended to reflect the regulatory framework and standards for permitting wireless facilities, including small wireless facilities (SWF), within the City’s public right-of-way in accordance with the recent Federal Communications Commission (FCC) ruling.

Click here to view the public notice for the upcoming April 2, 2019 City Council meeting.

Inquiries should be directed to Amy Seeraty at (310) 544-5231 or amys@rpvca.gov.
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You are receiving this message because you are subscribed to Wireless Telecommunications Facilities on www.rpvca.gov. To unsubscribe, click the following link:
Unsubscribe
Hi... Please email the draft of chapter 12.18 that will be discussed at the April 2nd City Council Meeting.
Thanks,
Marita Daly