MODEL

League of Oregon Cities

Small Wireless Facilities Model Ordinance

JUNE 2020

This model was produced in coordination with:

T-Mobile AT&T verizon

DISCLAIMER

Any model document provided by the League of Oregon Cities (LOC) is intended to be used as a starting point in an individual city's development of its own documents. Each city is unique, and any adopted document or policy should be individually tailored to meet a city's unique needs. Furthermore, this model is not intended to be a substitute for legal advice. Cities should consult with their city attorney before adopting any small wireless facility policies to ensure that they comply with all aspects of federal, state, and local law.

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Foreword

Background

On January 31, 2017, Federal Communications Commission ("FCC") Chairman Ajit Pai established a Broadband Deployment Advisory Committee (BDAC), which he tasked with making recommendations to the FCC on ways to accelerate the deployment of broadband by reducing or removing regulatory barriers to infrastructure investment. On September 27, 2018, the FCC released a Declaratory Ruling and Third Report and Order (FCC 18-133, referred throughout the document as "Small Cell Order" or "FCC Order") that significantly limits local authority over small wireless infrastructure deployment and fees for use of the rights-of-way (ROW). The FCC Order took effect January 14, 2019. The FCC order defines the size limitations for small wireless facilities (allowing antennas of up to 3 cubic feet each, with additional equipment not to exceed 28 cubic feet), and specifies that such facilities may not result in human exposure to radiofrequency radiation in excess of applicable standards in the FCC's rules (federal statute preempts local regulation of RF emissions). "Small wireless facilities" are sometimes also called "small cells". Throughout the model code, it is noted when language is mirrored in the FCC order.

LOC Model Small Wireless Facilities Code

In coordination with many cities,[1] representatives from Verizon, AT&T, T-Mobile, and the LOC met from January 2019 to May 2020 to discuss and craft a model code, model design standards relating to small wireless facilities while there is pending litigation[2] on the FCC Order. The model code and model design standards are intended to be paired together.

There is no model that will work for every jurisdiction. As such, the LOC's model is intended as a roadmap to assist local governments in adopting their code. While example language is included in the sections, the LOC does not intend to suggest these examples could work for every jurisdiction.

The LOC also recognizes there are many ways to structure a code. The appropriate structure will vary by jurisdiction. The intent is to allow each jurisdiction to draft the substantive provisions that best reflect local needs and interests. The LOC recommends that jurisdictions that own poles or other structures in the rights-of-way establish a clear code for small wireless facilities. The circumstances of each municipality may, and likely will, require modifications to the framework and/or example language of this model code.

Placement Within Local Codes

Although many communities have historically handled wireless facility siting through the land use process, new FCC regulations effectively prohibit these procedures. As explained below, the most practicable location for small wireless facility regulations may be the city's streets and highways code rather than its land development code.

[1] See "Acknowledgements" section for full list of participants.

[2] In October 2018, the LOC in coordination with other municipalities and municipal leagues filed suit against the FCC in the U.S. Ninth Circuit Court of Appeals.

Oregon state law requires at least one hearing on a land use decision – either in the initial determination or as an appeal if the initial determination is made without a hearing. These hearings necessarily require advance public notice, which can add between 10 and 20 days to the review process.

However, the new shot clock regulations are not only shorter but encompass all appeals related to the small wireless facility application. The phrase "shot clock" refers to the presumptively reasonable time frame in which the state or local government should act on a request for authorization to place, construct, or modify personal wireless service facilities, as defined by the FCC. The shot clock is 60 days for small wireless facilities on any existing structure and 90 days for small wireless facilities on new structures. See Appendix A for current shot clocks. Moreover, the FCC allows for "batched applications" with multiple requests for authorization filed at the same time. It is simply not practicable to comply with the state's land use requirements and the FCC's regulations at the same time.

As a result, the current best practice is to place new regulations for small wireless facilities within the public rights-of-way in the city's streets and highways code rather than its land development code. For those communities with existing regulations in their land development codes, an amendment to exempt small wireless facilities in the public rights-of-way from the land development code (and pointing the reader to the streets and highways code) will also be needed. Given that the process to amend a land development code is also a lengthy undertaking, interim regulations administered by the city engineer or public works director may be appropriate.

ROW Franchise and License Considerations

The model code provisions are not intended to replace local regulations for ROW franchising and licensing. In most cases, a small wireless facility provider will need both a permit to construct the small wireless facility and a franchise or license to use the public ROW for the provision of communication services.

However, cities should note that certain aspects of the FCC's new regulations will impact the applicability of existing franchise or license requirements to small wireless facilities. For example, the FCC restricts the annual recurring fees for access to the ROW to the reasonable approximation of the direct costs created by the small wireless facility. Although not expressly preempted, the FCC suggests that gross-revenue fees are likely to exceed this limitation.

Accordingly, cities should carefully examine their franchising or licensing requirements when they consider code amendments for small wireless facilities.

Additional Considerations

The LOC model code only applies to small wireless facilities. Municipalities should review their existing ordinances, standards and policies to determine if this framework is appropriate. Municipalities may want to consider whether it would be preferable to adopt a utility-neutral code covering all utilities and communications providers. Differences in policy choices and existing standards, among other things, may impact the decision in how to proceed. It is recommended that cities consult their attorney, right-of-way specialists, engineers, master plans,

comprehensive plans, goals and/or wireless providers before final adoption of this code.

Understanding the Organization of the Model Code

As stated above, the model is best described as an outline or roadmap to assist municipalities in drafting the appropriate code for their community. The model includes example language to illustrate the intent of the section. The example language, or a variation thereof, may be appropriate for final adoption in some jurisdictions.

Finally, there may be additional notes or issues for consideration within the subsections of the model, which are [bracketed] and in ALL CAPS. These notes are intended as guidance for municipal drafters, not for adoption in a final ordinance.

Small Wireless Facility Model Ordinance

AN ORDINANCE ESTABLISHING STANDARDS FOR SMALL WIRELESS FACILITIES IN THE RIGHTS-OF-WAY IN THE CITY OF _____

Preamble

WHEREAS, the City of_____("City") desires to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities, while enabling the City to promote the management of the rights-of-way in the overall interests of the public health, safety and welfare; and

WHEREAS, the City recognizes that small wireless facilities are needed to deliver wireless access and capacity to advanced technology, broadband and first responder services to homes, and businesses, as well as health care, public safety and educational services providers within the City; and

WHEREAS, the City recognizes that the wireless industry needs small wireless facilities, including facilities commonly referred to as small cells, deployed in the public rights-of-way; and

WHEREAS, the City further recognizes that the City must balance the benefits from small cell infrastructure with its aesthetic impact on the community in order to mitigate or avoid adverse visual impacts, encourage the deployment of infrastructure consistent with the surrounding built and natural environment, and preserve the City's historic and environmental resources to the extent feasible; and

WHEREAS, the City intends to adopt a new code consistent with local, state and federal laws, standards and requirements.

NOW, THEREFORE, BE IT ORDAINED by the_____that Title_____of the Municipal Code of the City of_____shall be amended by adding the following Chapter_____that will read as follows:

Section 1 – Purpose and Scope

[NOTE: THIS SECTION SHOULD BE CONSISTENT WITH EXISTING ROW ORDINANCES.]

(A) Purpose. The purpose of this Chapter is to establish reasonable and nondiscriminatory policies and procedures for the placement of small wireless facilities in rights-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and reasonable aesthetic qualities of the City rights-of-way and the City as a whole.

(B) Intent. In enacting this Chapter, the City is establishing uniform standards consistent

with federal law to address the placement of small wireless facilities and associated poles in the rights-of-way, including without limitation, to manage the public rights-of-way in order to:

(1) prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;

(2) prevent the creation of obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;

(3) prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or public property;

(4) protect against environmental damage, including damage to trees;

(5) preserve the character of the community, historic districts or areas with decorative poles; and

(6) facilitate technology advancements, such as deployment of small wireless facilities, to provide the benefits of wireless services.

[NOTE: IT IS SUGGESTED THAT CITIES REVIEW OTHER CHAPTERS OF CITY CODE TO MAKE SURE THERE IS NO CONFLICT AND CONSIDER WHETHER IT IS APPROPRIATE TO AMEND.]

Section 2 - Definitions

(A) "Antenna" means the same as defined in 47 C.F.R. § 1.6002(b), as may be amended or superseded. The term includes an apparatus designed for the purpose of emitting radio frequencies (RF) to be operated or operating from a fixed location pursuant to Federal Communications 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 47 C.F.R. Part 15.

(B) "Antenna Equipment" means the same as defined 47 C.F.R. § 1.6002(c), as may be amended or superseded, which defines the term to mean 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.

(C) "Antenna Facility" means the same as defined in 47 C.F.R. § 1.6002(d), as may be amended or superseded, which defines the term to mean an antenna and associated antenna equipment.

(D) "Applicable codes" means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or state or local amendments to those codes that are of general application and consistent with state and federal law.

(E) "Applicant" means any person who submits an application as or on behalf of a wireless provider.

(F) "Application" means requests submitted by an applicant (i) for permission to collocate small wireless facilities; or (ii) to approve the installation, modification or replacement of a structure on which to collocate a small wireless facility in the rights-of-way, where required.

(G) "City Structure" means a structure located in the rights-of-way within the City's jurisdictional boundaries that is owned, managed or operated by the City or any subdivision or instrumentality thereof, including municipal electric utilities. [Including, but not limited to streetlights, traffic signals, utility poles, building] [Consider excluding certain structures in a new section or in section 8]. [NOTE: THIS DEFINITION RECOGNIZES THAT NOT ALL STRUCTURES OWNED, MANAGED OR OPERATED BY A CITY OR CITY SUBDIVISION OR INSTRUMENTALITY THEREOF ARE LOCATED WITHIN THE SAME CITY'S JURISDICTIONAL BOUNDARIES. FOR EXAMPLE, MONMOUTH POWER & LIGHT SERVES THE CITY OF MONMOUTH AND PORTIONS OF THE CITY OF INDEPENDENCE. TO THE EXTENT THE CITY OF MONMOUTH ADOPTED THIS MODEL CODE, IT COULD NOT ISSUE PERMITS FOR ATTACHMENTS TO STRUCTURES LOCATED WITHIN THE CITY OF INDEPENDENCE. CONVERSELY, THE CITY OF INDEPENDENCE COULD NOT MANDATE ACCESS TO STRUCTURES OWNED BY MONMOUTH POWER & LIGHT.]

(H) "Collocate" means the same as defined in 47 C.F.R. § 1.6002(g), as may be amended or superseded, which defines that term to mean (1) mounting or installing an antenna facility on a preexisting structure, and/or (2) modifying a structure for the purpose of mounting or installing an antenna facility on that structure. "Collocation" has a corresponding meaning.

(I) "Day" means calendar day. For purposes of the FCC shot clock, a terminal day that falls on a holiday or weekend shall be deemed to be the next immediate business day. [NOTE: DAY IS IN REFERENCE TO FCC SHOT CLOCKS]

(J) "Decorative pole" means a city structure that is specially designed and placed for aesthetic purposes.

(K) "Historic district" means a group of buildings, properties, or sites that are either: (1) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or, (2) a locally designated historic district as of the effective date of this Chapter or in a locally

designated historic district existing when an application is submitted. [NOTE: THIS IS NOT MEANT TO RETROACTIVELY AFFECT SWFs ALREADY IN PLACE WHEN A NEW DISTRICT IS CREATED].

(L) "Permissions" means [list various permits, agreements and licenses needed for SWF deployment].

(M) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

(N) "Pole" means a type of structure in the rights-of-way that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for collocation of small wireless facilities; provided, such term does not include a tower, building or electric transmission structures.

(O) "Rights-of-Way" or "ROW" means [insert a consistent definition across other codes. Example: "Right-of-way," "rights-of-way," "public right-of-way," or "ROW" means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel.]

(P) "Routine Maintenance" means inspections, testing, repair, and modifications subject to Section 6409(a) that maintain functional capacity, aesthetic and structural integrity of a small wireless facility and/or the associated pole or structure.

(Q) "Small wireless facility" means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

(1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, 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; and,

(2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,

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

(4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

(R) "Structure" means the same as defined in 47 C.F.R. § 1.6002(m), as may be amended or superseded, which defines that term as a pole, tower, or base station, 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 comingled with other types of service).

(S) "Wireless Infrastructure Provider" means any person, including a person authorized to provide communications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, but that is not a wireless services provider.

(T) "Wireless Provider" means a wireless infrastructure provider or a wireless services provider.

(U) "Wireless Services Provider" means a person who provides personal wireless services (whether or not it is comingled with other services).

Section 3 – Permitted Use; Application and Fees

(A) Permitted Use. The following uses within the rights-of-way shall be a permitted use, subject to compliance with the city's applicable design standards [insert cross-reference here], administrative review only and issuance of a permit as set forth in this Chapter:

(1) Collocation of a small wireless facility; and,

(2) Placement of a new, modified, or replacement pole to be used for collocation of a small wireless facility.

(B) Permissions Required. Except as otherwise provided in this Chapter, no person shall place any small wireless facility described in Section 3(A) in the rights-of-way, without first filing an application for the facility and obtaining [a permit, license, or agreement].

(C) Application Requirements. [THIS SECTION CAN BE LEFT IN OR HANDLED ADMINISTRATIVELY. NOTE: THE FCC PROVIDES THAT APPLICATION REQUIREMENTS MUST BE IN A PUBLICLY STATED FORMAT. TO THE EXTENT THAT CITIES PREFER TO ADOPT ADMINISTRATIVE APPLICATION REQUIREMENTS, THEY SHOULD BE WRITTEN AS CHECKLISTS, GUIDELINES, WORKSHEETS, AND/OR OTHER HANDOUTS, AND BE MADE PUBLICLY AVAILABLE. AT A MINIMUM, CITIES SHOULD REQUIRE THE FOLLOWING MATERIALS.]

An application filed pursuant to this Chapter shall be made by the wireless provider or its duly authorized representative and shall contain the following:

(1) The applicant's name, address, telephone number, and e-mail address;

(2) The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application.

(3) A general description of the proposed small wireless facility and associated pole, if applicable. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;

(4) Site plans and engineering drawings to scale that identify the proposed small wireless facility.

(5) A statement or other demonstration that the small wireless facility shall comply with all applicable codes, regulations and standards, including applicable FCC regulations for human exposure to RF emissions.

(6) The application requirements shall not be more burdensome than those for any similarly situated small wireless facilities.

(D) Routine Maintenance and Replacement. An application shall not be required for: (1) routine maintenance; or (2) the replacement of a small wireless facility with another small wireless facility that is the same, substantially similar or smaller in size and weight and height. The City may require a permit for work within the right of way. Such a permit must be issued to the applicant on a non-discriminatory basis upon terms and conditions applied to any other person performing similar activities, regardless of technology, in the ROW. [NOTE: CONSIDER INCLUDING A LIST OF ACTIVITIES THAT REQUIRE A PERMIT EITHER IN CODE, ON THE APPLICATION, IN AGREEMENTS, ETC. For example, *The City requires a permit for work within the ROW for activities that require excavation or closure of sidewalks or vehicular lanes.*]

(E) Information Updates. Any amendment to non-material information contained in an application shall be submitted in writing to the City within thirty (30) days of the change. [NOTE: MATERIAL CHANGES MAY NECESSITATE A NEW APPLICATION.]

(F) Application Fees. Application fees shall be set by [resolution].

[NOTE: THE FCC PRESCRIBED THE FOLLOWING SAFE HARBOR FEES BELOW IN THE SMALL CELL ORDER. CITIES MAY CHOOSE TO INCORPORATE THIS

LANGUAGE INTO THEIR CODE OR REFERENCE A FEE SCHEDULE SET BY RESOLUTION.

(1) $500 for up to the first five small wireless facilities in the same application, with an additional $100 for each small wireless facility beyond five in the same application, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory.

(2) $1000 for the installation, modification or replacement of a pole together with the collocation of an associated small wireless facility in the rights-of-way that is a permitted use in accordance with this Chapter, or fees that are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are nondiscriminatory.]

Section 4 – Action on Administrative Permit Applications Subject to this Chapter

(A) The City must process all applications on a nondiscriminatory basis and may deny an application subject to this Chapter if the proposed small wireless facility or new, modified, or replaced pole:

(1) Materially and demonstrably interferes with the safe operation of traffic control equipment;

(2) Materially and demonstrably interferes with sight lines or clear zones for transportation or pedestrians;

(3) Materially fails to comply with the Americans with Disabilities Act or similar federal, state, or local laws, standards and regulations regarding pedestrian access or movement;

(4) Fails to comply with applicable codes, standards and regulations, including the City's design standards; or

(5) Fails to comply with the provisions in this Chapter.

(B) The City must act on an application within the applicable shot clock and provide written notice to the applicant if the application is denied. The written notice shall state the reasons for denial, with reference to specific code provisions, ordinance, application instruction or otherwise publicly-stated procedures on which the denial was based, and be sent to the applicant within five (5) days after the City denies the application or before the applicable shot clock expires, whichever occurs first.

(C) Batch Applications. [NOTE: FCC SMALL CELL ORDER ALLOWS APPLICANTS TO SUBMIT SWF APPLICATIONS IN BATCHES, WITHOUT NUMERICAL LIMITS.

CITIES MAY CONSIDER TO BATCH APPLICATIONS. SOME MAY CHOOSE TO BATCH BY COMMON DESIGN ELEMENTS AND/OR VICINITY, AS WELL AS OTHER MEASURES TO PROMOTE EFFICIENCY.

A BATCH APPLICATION THAT INCLUDES DEPLOYMENT(S) THAT FALL WITHIN COLLOCATIONS ON EXISTING STRUCTURES *AND* DEPLOYMENT(S) ON NEW STRUCTURES SHALL BE SUBJECT TO A 90-DAY TIMEFRAME FOR APPROVAL AS OPPOSED TO A 60-DAY TIMEFRAME.]

Section 5 – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements

(A) Maximum Size of Permitted Use. Any wireless provider that seeks to install, modify, or replace facilities on a pole in the rights-of-way that exceeds the height limits contained in Section 2(R)(1), shall be subject to applicable requirements [or insert cross references to macro facilities code].

[CITIES MAY CONSIDER ADDING A SUBSECTIONS (B) – (D) HERE OR A SECTION IN THE DESIGN STANDARDS THAT HANDLES THE METHODS FOR DECORATIVE POLES, UNDERGROUND AND HISTORIC DISTRICTS. SECTION 5 IS ALSO AN APPROPRIATE PLACE TO INSERT DESIGN STANDARDS IF CITIES CHOOSE TO CODIFY SUCH STANDARDS.]

(B) Decorative Poles. Subject to this code and applicable design standards, a wireless provider is permitted to collocate on or replace a decorative pole when necessary to collocate a small wireless facility; provided that any such replacement pole shall, to the extent feasible, replicate the design of the pole being replaced.

(C) Underground District. [ACCORDING TO THE FCC ORDER, UNDERGROUNDING REQUIREMENTS ARE SUBJECT TO THE SAME CRITERIA AS OTHER AESTHETIC STANDARDS.

SOME COMPONENTS OF SMALL WIRELESS FACILITIES WILL OFTEN NOT WORK UNDERGROUND. THEREFORE, CITY UNDERGROUNDING REQUIREMENTS OR UNDERGROUND DISTRICTS MAY CREATE AN EFFECTIVE PROHIBITION. CITIES ARE ENCOURAGED TO REVIEW CURRENT UNDERGROUNDING REQUIREMENTS AND WORK WITH THEIR ATTORNEYS/ROW SPECIALISTS TO MAKE SURE THOSE REQUIREMENTS ARE NOT IN CONFLICT WITH THE FCC ORDER.]

(D) Historic District. Small wireless facilities or poles to support collocation of small wireless facilities located in Historic Districts shall be designed to have a similar appearance, including coloring and design elements, if technically feasible, of other poles in the rights-of-way within 500 feet of the proposed installation. Any such design or

concealment measures may not be considered part of the small wireless facility for purpose of the size restrictions in the definition of small wireless facility.

[NOTE:(B) – (D) OF THIS SECTION CODIFY THE FCC SMALL CELL ORDER'S REQUIREMENT THAT AESTHETIC STANDARDS MUST BE: (1) REASONABLE, MEANING THEY ARE TECHNICALLY FEASIBLE AND REASONABLY DIRECTED TO AVOIDING OR REMEDYING THE INTANGIBLE PUBLIC HARM OF UNSIGHTLY OR OUT-OF-CHARACTER DEPLOYMENTS; (2) NO MORE BURDENSOME THAN THOSE APPLIED TO OTHER TYPES OF INFRASTRUCTURE DEPLOYMENT; (3) OBJECTIVE; AND, (4) PUBLISHED IN ADVANCE. THE REQUIREMENTS MAY NOT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING WIRELESS SERVICE.]

Section 6 – Effect of Construction/Work Permit

[NOTE: CITIES SHOULD CROSS-REFERENCE BACK TO PERMITTING CODE SO LANGUAGE WITHIN THIS SECTION IS CONSISTENT.]

(A) Authority Granted. No Property Right or Other Interest Created. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this Chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way. [NOTE: IF YOUR CITY HAS A ROW LICENSE, CLARIFY THAT THIS DOES NOT GRANT A ROW LICENSE OR RIGHT TO PROVIDE SERVICES.]

(B) Permit Duration.

(1) A permit for construction granted pursuant to this Section shall be valid for a period of_____days after issuance unless the City agrees to extend this period for good cause, including but not limited to delay caused by the lack of commercial power or communications facilities, or by other events outside of the reasonable control of the wireless provider. [NOTE: IF YOUR CITY HAS A BUILDOUT PERIOD ALREADY ESTABLISHED FOR ROW CONSTRUCTION, THIS SUBSECTION SHOULD ALLOW A CONSISTENT PERIOD OF TIME.THE USE OF "DAYS" IN THIS SUBSECTION IS NOT INTENDED TO BE LIMITING; 180 TO 365 DAYS MAY BE APPROPRIATE IN THIS SUBSECTION. THE BUILDOUT PERIOD MUST REASONABLY ALLOW TIME FOR CONSTRUCTION.]

(2) The installed facility is subject to applicable relocation requirements, termination for material non-compliance after notice and a reasonable opportunity to cure, and an applicant's right to terminate a permit at any time.

Section 7 – Removal, Relocation or Modification of Small Wireless Facility in the ROW

[NOTE: IF YOUR CITY HAS REMOVAL, RELOCATION, ABANDONMENT, OR MODIFICATION SECTIONS IN OTHER ROW CODES, CONSIDER CROSS-REFERENCING TO THOSE SECTIONS HERE.]

(A) Notice. The City shall provide the applicant reasonable advance notice, but no less than ___days following written notice from the City, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way.

(B) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City in the event of an emergency, as the City may determine to be necessary, appropriate or useful in response to any imminent danger to public health, safety, or property. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider promptly after cutting or removing a small wireless facility.

(C) Abandonment of Facilities. [NOTE: MAKE CONSISTENT WITH THE CITY'S HANDLINGS OF ABANDONMENT IN OTHER CODES.]

(D) Damage and Repair. The City may require a wireless provider to repair all damage to the rights-of-way directly caused by the activities of the wireless provider and return the rights-of-way to its functional equivalence before the damage pursuant to the competitively neutral, reasonable requirements and specifications. If the wireless provider fails to make the repairs within_____days after written notice, the City may affect those repairs and charge the applicable party the actual, documented cost of such repairs.

Section 8 – Collocation on City Structures in the ROW

[NOTE: NOT ALL CITIES MAY CHOOSE TO ALLOW SMALL WIRELESS FACILITIES TO BE COLLOCATED ON CITY STRUCTURES.]

(A) Collocation on City Structures. Small wireless facilities may be collocated on city structures in the rights-of-way pursuant to this Chapter. No person will be permitted an exclusive arrangement or an arrangement which excludes otherwise qualified applicants to attach to city structures in the rights-of-way. A person who purchases or otherwise acquires a City structure is subject to the requirements of this section.

[NOTE: COLLOCATION ON CITY STRUCTURES OFTEN IMPLICATES MAKE-READY WORK TO PREPARE THE STRUCTURE FOR THE NEW ATTACHMENT. MAKE-READY PROVISIONS ARE TRADITIONALLY NEGOTIATED IN POLE ATTACHMENT AGREEMENTS BETWEEN THE PARTIES. TO THE EXTENT THAT THE CITY HAS CONTROL OVER SUCH NEGOTIATIONS OR SEEKS GENERAL GUIDANCE ON APPROPRIATE RATES, FEES, TERMS AND CONDITIONS, THE FOLLOWING SAMPLE LANGUAGE PROVIDES A USEFUL STARTING POINT:

Make-Ready. The rates, fees, terms and conditions for the make-ready work to collocate a small wireless facility on a pole owned or controlled by the City must be nondiscriminatory, competitively neutral, reasonable, comply with this Chapter and be subject to the following:

(1) The City or any person owning, managing, or controlling the poles owned by the City will provide a good faith estimate for any make-ready work reasonably necessary to make a specific city pole suitable for attachment of the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed request. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant.

(2) The City or any person owning, managing, or controlling the poles owned by the city shall not require more make-ready work than required to meet applicable codes or may be reasonably necessary to avoid interference with other attachments on the pole . Fees for make-ready work shall not include costs related to pre-existing or prior damage and non-compliance. Fees for make-ready work including any pole replacement shall not exceed actual and direct costs, or the amount charged to others for similar work and shall not include any revenue or contingency based consultant fees or expenses of any kind.]

Section 9 – Rates for ROW and Collocation on City Structures in the ROW

[NOTE: THE FCC PRESCRIBED THE FOLLOWING SAFE HARBOR FEES BELOW IN (A). CITIES MAY CHOOSE TO INCORPORATE THIS LANGUAGE INTO THEIR CODE, LICENSE, FRANCHISE, OR RIGHT-OF-WAY USE AGREEMENT OR MAKE REFERENCE HERE TO A FEE SCHEDULE SET BY RESOLUTION]

(A) The recurring rate for use of the ROW and attachment of small wireless facilities to a city structure in the ROW shall be subject to the following requirements:

(1) Annual Rate. A wireless provider authorized to place small wireless facilities and any related pole in the rights-of-way will pay to the City compensation for use of the rights-of-way and collocation on city structures in the ROW a rate that is

based on (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory. This rate, together with the one-time application fees, shall be the total compensation that the wireless provider is required to pay the city for the deployment of each small wireless facility in the ROW and any associated pole. The FCC's safe harbor rate is an aggregate annual rate not to exceed $270 per small wireless facility. [NOTE: THE FCC DOES NOT PROVIDE DIRECTION REGARDING THE POTENTIAL ALLOCATION OF FEES CHARGED FOR THE USE OF THE ROW AND ATTACHMENT TO A CITY STRUCTURE, BUT THE TOTAL FEE CHARGED FOR EACH SMALL WIRELESS FACILITY MUST MEET THE CRITERIA IN THE 2018 FCC ORDER. IN OTHER WORDS, THE CITY MAY NOT CHARGE TWICE FOR THE REIMBURSEMENT OF THE SAME COSTS.]

(2) Payment Obligation Upon or After Facility Removal. A wireless provider may remove one or more of its small wireless facilities at any time from the rights-of-way and city structures in the ROW with the required permits. The wireless provider will cease owing the City compensation, as of the date of removal, for such removed facilities.

Section 10 – Effective Date

This Ordinance shall take effect_____days after its passage, approval and publication.

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Appendix A – Shot Clock Information

Shot clock provisions that apply to small wireless facilities are codified in 47 C.F.R. Section 1.6003, which is provided below.

§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) *Review periods for individual applications.* The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth in paragraphs (c)(1)(i) through (iv) of this section:

(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 (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) of this section 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 (ii) of this section.

(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 in paragraphs (d)(1) through (3) of this section.

(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 creatingthe

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) of this section 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 (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) of this section 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 (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 §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 §1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

Appendix B – Code of Federal Regulations (C.F.R) Cited Throughout Document

47 C.F.R. Section 1.1307

§1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

Link to an amendment published at 85 FR 18142, Apr. 1, 2020.

Link to a correction of the above amendment published at 85 FR 33578, June 2, 2020.

(a) Commission actions with respect to the following types of facilities may significantly affect the environment and thus require the preparation of EAs by the applicant (see §§1.1308 and 1.1311) and may require further Commission environmental processing (*see* §§1.1314, 1.1315 and 1.1317):

(1) Facilities that are to be located in an officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that: (i) May affect listed threatened or endangered species or designated critical habitats; or (ii) are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

NOTE: The list of endangered and threatened species is contained in 50 CFR 17.11, 17.22, 222.23(a) and 227.4. The list of designated critical habitats is contained in 50 CFR 17.95, 17.96 and part 226. To ascertain the status of proposed species and habitats, inquiries may be directed to the Regional Director of the Fish and Wildlife Service, Department of the Interior.

(4) Facilities that may affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or are eligible for listing, in the National Register of Historic Places (*see* 54 U.S.C. 300308; 36 CFR parts 60 and 800), and that are subject to review pursuant to section 1.1320 and have been determined through that review process to have adverse effects on identified historic properties.

(5) Facilities that may affect Indian religious sites.

(6) Facilities to be located in floodplains, if the facilities will not be placed at least one foot above the base flood elevation of the floodplain.

(7) Facilities whose construction will involve significant change in surface features (e.g., wetland fill, deforestation or water diversion). (In the case of wetlands on Federal property, *see* Executive Order 11990.)

(8) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(b) In addition to the actions listed in paragraph (a) of this section, Commission actions granting construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilities, require the preparation of an Environmental Assessment (EA) if the particular facility, operation or transmitter would cause human exposure to levels of radiofrequency radiation in excess of the limits in §§1.1310 and 2.1093 of this chapter. Applications to the Commission for construction permits, licenses to transmit or renewals thereof, equipment authorizations or modifications in existing facilitiesmust

contain a statement confirming compliance with the limits unless the facility, operation, or transmitter is categorically excluded, as discussed below. Technical information showing the basis for this statement must be submitted to the Commission upon request. Such compliance statements may be omitted from license applications for transceivers subject to the certification requirement in §25.129 of this chapter.

(1) The appropriate exposure limits in §§1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in §1.1310 or §2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for facilities, operations and transmitters that fall into the categories listed in table 1, or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (c) and (d) of this section. For purposes of table 1, *building-mounted antennas* means antennas mounted in or on a building structure that is occupied as a workplace or residence. The term *power* in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), equivalent isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in §2.1 of this chapter. For the case of the Cellular Radiotelephone Service, subpart H of part 22 of this chapter; the Personal Communications Service, part 24 of this chapter and the Specialized Mobile Radio Service, part 90 of this chapter, the phrase *total power of all channels* in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying the criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, applicants and licensees should apply the criteria to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions.

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
Experimental Radio Services (part 5)	Power >100 W ERP (164 W EIRP).
Commercial Mobile Radio Services (part 20)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP). Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
	Consumer Signal Booster equipment grantees under the Commercial Mobile Radio Services provisions in part 20 are required to attach a label to Fixed Consumer Booster antennas that:
	(1) Provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transmitting antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
Paging and Radiotelephone Service (subpart E of part 22)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
Cellular Radiotelephone Service (subpart H of part 22)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).

	Building-mounted antennas: total power of all channels >1000 W ERP (1640 W EIRP).
Personal Communications Services (part 24)	(1) Narrowband PCS (subpart D):
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: total power of all channels >1000 W ERP (1640 W EIRP).
	(2) Broadband PCS (subpart E):
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >2000 W ERP (3280 W EIRP).
	Building-mounted antennas: total power of all channels >2000 W ERP (3280 W EIRP).
Satellite Communications Services (part 25)	All included.
	In addition, for NGSO subscriber equipment, licensees are required to attach a label to subscriber transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310 of this chapter.
Miscellaneous Wireless Communications Services (part 27 except subpart M)	(1) For the 1390-1392 MHz, 1392-1395 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz bands:
	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >2000 W ERP (3280 W EIRP).
	Building-mounted antennas: total power of all channels >2000 W ERP (3280 W EIRP).
	(2) For the 698-746 MHz, 746-764 MHz, 776-794 MHz, 2305-2320 MHz, and 2345-2360 MHz bands:
	Total power of all channels >1000 W ERP (1640 W EIRP).
Broadband Radio Service and Educational Broadband Service (subpart M of part 27)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Building-mounted antennas: power >1640 W EIRP.
	BRS and EBS licensees are required to attach a label to subscriber transceiver or transverter antennas that:

	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
Upper Microwave Flexible Use Service (part 30)	Non-building-mounted antennas: Height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Antennas are mounted on buildings.
Radio Broadcast Services (part 73)	All included.
Auxiliary and Special Broadcast and Other Program Distributional Services (part 74)	Subparts G and L: Power >100 W ERP.
Stations in the Maritime Services (part 80)	Ship earth stations only.
Private Land Mobile Radio Services Paging Operations (subpart P of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: power >1000 W ERP (1640 W EIRP).
Private Land Mobile Radio Services Specialized Mobile Radio (subpart S of part 90)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and total power of all channels >1000 W ERP (1640 W EIRP).
	Building-mounted antennas: Total power of all channels >1000 W ERP (1640 W EIRP).
76-81 GHz Radar Service (part 95)	All included.
Amateur Radio Service (part 97)	Transmitter output power >levels specified in §97.13(c)(1) of this chapter.
Local Multipoint Distribution Service (subpart L of part 101) and 24 GHz (subpart G of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.
	Building-mounted antennas: power >1640 W EIRP.
	LMDS and 24 GHz Service licensees are required to attach a label to subscriber transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.
70/80/90 GHz Bands (subpart Q of part 101)	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.

	Building-mounted antennas: power >1640 W EIRP.
	Licensees are required to attach a label to transceiver antennas that:
	(1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and
	(2) references the applicable FCC-adopted limits for radiofrequency exposure specified in §1.1310.

(2)(i) Mobile and portable transmitting devices that operate in the Commercial Mobile Radio Services pursuant to part 20 of this chapter; the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services (PCS) pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Upper Microwave Flexible User Service pursuant to part 30 of this chapter; the Maritime Services (ship earth stations only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, the 4.9 GHz Band Service, and the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; the Wireless Medical Telemetry Service (WMTS), the Medical Device Radiocommunication Service (MedRadio), and the 76-81 GHz Band Radar Service pursuant to part 95 of this chapter; and the Citizens Broadband Radio Service pursuant to part 96 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§2.1091 and 2.1093 of this chapter.

(ii) Unlicensed PCS, unlicensed NII, and millimeter-wave devices are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§15.255(g), 15.257(g), 15.319(i), and 15.407(f) of this chapter.

(iii) Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) is subject to routine environmental evaluation as specified in §§2.1093 and 95.2385 of this chapter.

(iv) Equipment authorized for use in the Medical Device Radiocommunication Service (MedRadio) as a medical implant device or body-worn transmitter (as defined in subpart I of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization, as specified in §§2.1093 and 95.2585 of this chapter by finite difference time domain (FDTD) computational modeling or laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that supporting documentation and/or specific absorption rate (SAR) measurement data be submitted.

(v) All other mobile, portable, and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§2.1091, 2.1093 of this chapter except as specified in paragraphs (c) and (d) of this section.

(3) In general, when the guidelines specified in §1.1310 are exceeded in an accessible area due to the emissions from multiple fixed transmitters, actions necessary to bring the area into compliance are the shared responsibility of all licensees whose transmitters produce, at the area in question, power density levels that exceed 5% of the power density exposure limit applicable to their particular transmitter or field strength levels that, when squared, exceed 5% of the square of the electric or magnetic field strength limit applicable to their particular transmitter. Owners of transmitter sites are expected to allow applicants and licensees to take reasonable steps to comply with the requirements contained in §1.1307(b) and, where feasible, should encourage co-location of transmitters and common solutions for controlling access to areas where the RF exposure limits contained in §1.1310 might be exceeded.

(i) Applicants for proposed (not otherwise excluded) transmitters, facilities or modifications that would cause non-compliance with the limits specified in §1.1310 at an accessible area previously in compliance must submit an EA if emissions from the applicant's transmitter or facility would result, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter or facility.

(ii) Renewal applicants whose (not otherwise excluded) transmitters or facilities contribute to the field strength or power density at an accessible area not in compliance with the limits specified in §1.1310 must submit an EA if emissions from the applicant's transmitter or facility results, at the area in question, in a power density that exceeds 5% of the power density exposure limit applicable to that transmitter or facility or in a field strength that, when squared, exceeds 5% of the square of the electric or magnetic field strength limit applicable to that transmitter of facility.

(c) If an interested person alleges that a particular action, otherwise categorically excluded, will have a significant environmental effect, the person shall submit to the Bureau responsible for processing that action a written petition setting forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. (*See* §1.1313). The Bureau shall review the petition and consider the environmental concerns that have been raised. If the Bureau determines that the action may have a significant environmental impact, the Bureau will require the applicant to prepare an EA (*see* §§1.1308 and 1.1311), which will serve as the basis for the determination to proceed with or terminate environmental processing.

(d) If the Bureau responsible for processing a particular action, otherwise categorically excluded, determines that the proposal may have a significant environmental impact, the Bureau, on its own motion, shall require the applicant to submit an EA. The Bureau will review and consider the EA as in paragraph (c) of this section.

NOTE TO PARAGRAPH (d): Pending a final determination as to what, if any, permanent measures should be adopted specifically for the protection of migratory birds, the Bureau shall require an Environmental Assessment for an otherwise categorically excluded action involving a new or existing antenna structure, for which an antenna structure registration application (FCC Form 854) is required under part 17 of this chapter, if the proposed antenna structure will be over 450 feet in height above ground level (AGL) and involves either:

1. Construction of a new antenna structure;

2. Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in paragraph I(C)(1)(3) of Appendix B to part 1 of this chapter; or

3. Addition of lighting or adoption of a less preferred lighting style as defined in §17.4(c)(1)(iii) of this chapter. The Bureau shall consider whether to require an EA for other antenna structures subject to §17.4(c) of this chapter in accordance with §17.4(c)(8) of this chapter. An Environmental Assessment required pursuant to this note will be subject to the same procedures that apply to any Environmental Assessment required for a proposed tower or modification of an existing tower for which an antenna structure registration application (FCC Form 854) is required, as set forth in §17.4(c) of this chapter.

(e) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph:

(1) The term *personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term *personal wireless service facilities* means facilities for the provision of personal wireless services;

(3) The term *unlicensed wireless services* means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term *direct-to-home satellite services* means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

[51 FR 15000, Apr. 22, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.1307, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov.*

EFFECTIVE DATE NOTE: At 85 FR 18142, Apr. 1, 2020, §1.1307 was amended by revising paragraph (b). At 85 FR 33578, June 2, 2020, this revision was delayed indefinitely.

47 C.F.R Section 1.6002

§1.6002 Definitions.

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in this part and the Communications Act of 1934, 47 U.S.C. 151 *et seq.* 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 §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 chapter.

(c) *Antenna equipment,* consistent with §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 §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 §1.6100(b)(2) 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* 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 §1.1320(d); or

(ii) Are mounted on structures no more than 10 percent taller than other adjacent structures; or

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

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

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

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

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

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

(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 comingled with other types of services).

[83 FR 51884, Oct. 15, 2018, as amended at 84 FR 59567, Nov. 5, 2019]