DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 431

[CMS–6068–F2]

RIN 0938–AS74

Medicaid/CHIP Program; Medicaid Program and Children's Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correcting amendment.

SUMMARY: This document corrects a technical error that appeared in the final rule published in the **Federal Register** on July 5, 2017 entitled ''Medicaid/CHIP Program; Medicaid Program and Children's Health Insurance Program (CHIP); Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act'' (hereinafter referred to as the ''PERM final rule'').

DATES: This correction is effective May 3, 2018.

FOR FURTHER INFORMATION CONTACT: Bridgett Rider, (410) 786–2602.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2017–13710 (82 FR 31158), there was a technical error that is identified and corrected in this correcting document. The provision in this correction document is effective as if it had been included in the document published in the **Federal Register** on July 5, 2017. Accordingly, the corrections are applicable beginning August 4, 2017.

II. Summary of Error in Regulation Text

In the regulation text, we inadvertently omitted the removal of § 431.802, which we discussed on page 31161 of the final rule.

III. Waiver of Proposed Rulemaking, 60-Day Comment Period, and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements. The document corrects technical errors in the PERM final rule, but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the PERM final rule accurately reflects the policies adopted in that document.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate information in as timely a manner as possible, and to ensure that the PERM final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not making substantive changes to our policies, but rather, we are simply implementing correctly the policies that we previously proposed, requested comment on, and subsequently finalized. This correcting document is intended solely to ensure that the PERM final rule accurately reflects these policies. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

List of Subjects in 42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendment:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302).

§ 431.802 [Removed]

■ 2. Section 431.802 is removed.

Dated: April 26, 2018.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2018–09347 Filed 5–2–18; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 17–79; FCC 18–30]

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document (Order), the Federal Communications Commission (The Commission or FCC) adopts rules to streamline the wireless infrastructure siting review process to facilitate the deployment of next-generation wireless facilities. As part of the FCC's efforts, the agency consulted with a wide range of communities to determine the appropriate steps needed to enable the rapid and efficient deployment of next-generation wireless networks—or 5G—throughout the United States. The Order focuses on ensuring the Commission's rules properly address the differences between large and small wireless facilities, and clarifies the treatment of small cell deployments. Specifically, the Order: Excludes small wireless facilities deployed on non-Tribal lands from National Historic Preservation Act

(NHPA) and National Environmental Policy Act (NEPA) review, concluding that these facilities are not ''undertakings'' or ''major Federal actions.'' Small wireless facilities deployments continue to be subject to currently applicable state and local government approval requirements. The Order also clarifies and makes improvements to the process for Tribal participation in section 106 historic preservation reviews for large wireless facilities where NHPA/NEPA review is still required; removes the requirement that applicants file Environmental Assessments solely due to the location of a proposed facility in a floodplain, as long as certain conditions are met; and establishes timeframes for the Commission to act on Environmental Assessments. These actions will reduce regulatory impediments to deploying small cells needed for 5G and help to expand the reach of 5G for faster, more reliable wireless service and other advanced wireless technologies to more Americans.

DATES: Effective July 2, 2018.

FOR FURTHER INFORMATION CONTACT: Aaron Goldschmidt, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, (202) 418–7146, email *Aaron.Goldschmidt@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (R&O), WT Docket No. 17–79 adopted March 22, 2018 and released March 30, 2018. The full text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. Also, it may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW, Room CY–B402, Washington, DC 20554; the contractor's website, *http://www.bcpiweb.com;* or by calling (800) 378–3160, facsimile (202) 488–5563, or email *FCC@BCPIWEB.com*. Copies of the R&O also may be obtained via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number WT Docket 17–79. Additionally, the complete item is available on the Federal Communications Commission's website at *http://www.fcc.gov*.

I. Excluding Small Wireless Facilities From NHPA and NEPA Review

1. In this Order, the FCC makes a threshold legal determination, and amends § 1.1312 of its rules to clarify, that the deployment of small wireless facilities by non-Federal entities is neither an ''undertaking'' within the meaning of the National Historic Preservation Act (NHPA) nor a ''major Federal action'' under the National Environmental Protection Act (NEPA). Although the FCC clarifies in the Order that the deployment of small wireless facilities on non-Tribal lands therefore will not be subject to certain Federal historic preservation and environmental review obligations, the FCC leaves undisturbed its existing requirement that the construction and deployment of larger wireless facilities, including those deployments that are regulated in accordance with the FCC's antenna structure registration (ASR) system or subject to site-by-site licensing, must continue to comply with those environmental and historic preservation review obligations.

2. Section 106 of the NHPA mandates historic preservation review for ''undertakings,'' while NEPA mandates environmental review for ''major Federal actions.'' Courts have treated these two categories as largely coextensive, and have recognized that the question of what constitutes an ''undertaking'' or a ''major Federal action'' is an objective inquiry that focuses on the degree of Federal control over a particular deployment. The FCC has previously determined, and the DC Circuit has affirmed, that wireless facility deployments associated with geographic area licenses may constitute ''undertakings'' in two limited contexts: (1) Where facilities are subject to the FCC's tower registration and approval process pursuant to section 303(q) of the Communications Act because they are over 200 feet or are near airports, and (2) where facilities not otherwise subject to pre-construction authorization are subject to § 1.1312(b) of the FCC's rules and thus must obtain FCC approval of an environmental assessment prior to construction. The FCC has referred to the rule governing this latter category of deployments as the its retention of a ''limited approval authority.'' While the DC Circuit held that the FCC acted within its discretion in classifying these two categories of actions as Federal undertakings, it noted that the FCC had not engaged in extended analysis of the issue and did not foreclose the FCC from revisiting the scope of these categories at a later time.

3. The FCC clarifies, through amendment of its rules, that the deployment of small wireless facilities by non-Federal entities does not constitute an ''undertaking'' or ''major Federal action,'' and thus does not require Federal historic preservation or environmental review under the NHPA or NEPA. Small wireless facilities that meet its definition here are not subject to ASR requirements under section 303(q) of the Act. Accordingly, the only remaining basis on which they could be considered an ''undertaking'' or ''major Federal action'' is if they are subject to the ''limited approval authority'' under § 1.1312(b) of the FCC's rules. Through this Order, the FCC clarifies that deployments of small wireless facilities do not fall within the scope of § 1.1312(b). Having made that threshold determination, there is no longer any cognizable Federal control over such deployments for purposes of the NHPA or NEPA, and hence, those deployments are neither ''undertakings'' nor ''major Federal actions'' subject to those Federal historic preservation or environmental review obligations.

4. The FCC bases this public interest analysis on a variety of considerations. Removing § 1.1312(b)'s trigger of environmental and historic preservation review for small wireless facilities will help further Congress's and the FCC's goals of facilitating the deployment of advanced wireless services (such as 5G) and removing regulatory burdens that unnecessarily raise the cost and slow the deployment of the modern infrastructure used for those services. To be able to meet current and future needs, including deployment of advanced 4G and 5G networks, providers will need to deploy tens of thousands of small wireless facilities across the country over the coming years. It would be impractical and extremely costly to subject each individual small facility deployment to the same requirements that the Commission imposes on macro towers. A report prepared by Accenture Strategy for CTIA found that 29 percent of wireless deployment costs are related to NHPA/NEPA regulations when reviews are required. There is also no legitimate reason why next-generation technology should be subjected to many times the regulatory burdens of its 3G and 4G predecessors.

5. This decision is consistent with the history of § 1.1312. When the FCC adopted that section, its focus was primarily on the deployment of macrocells and the relatively large towers that marked the deployment of prior generations of wireless service for which site-specific preconstruction review was common even in the absence of a Section 319 construction permit. Those macrocells and large towers supported legacy technology and because of their size were more likely to have an appreciable environmental impact. The world of small wireless facility deployment is materially different from the deployment of

macrocells in terms of the size of the facility, the importance of densification, and the lower likelihood of impact on surrounding areas. The Commission simply could not have anticipated that advanced wireless services would require the densification of small deployments over large geographic areas that leave little to no environmental footprint. Amending § 1.1312 to make clear that it does not apply to small wireless facility deployment accounts for this reality.

6. This decision is consistent with the FCC's treatment of small wireless facility deployments in other contexts. For example, under the Collocation Nationwide Programmatic Agreement (NPA), it already excludes many facilities that meet size limits similar to those defined below from historic preservation review. This decision builds upon the insight underlying these existing rules that small wireless facilities pose little or no risk of adverse environmental or historic preservation effects.

7. Under existing practice, the FCC currently does not subject many types of wireless facilities to environmental and historic preservation compliance procedures. For example, the FCC has not applied these review requirements to consumer signal boosters, Wi-Fi routers, and unlicensed equipment used by wireless internet service providers. Thus, the FCC has already, in effect, made a public interest determination that, even if it had the legal authority to do so, the cost of requiring NEPA and NHPA compliance for certain types of facilities outweighs the benefits. This action simply applies that existing paradigm to current circumstances.

8. Fifth, while its amendment of § 1.1312 to exclude small wireless facility deployments eliminates the only basis under *CTIA* and Commission precedent for treating such deployments as undertakings or major Federal actions subject to NHPA and NEPA review, the FCC concludes that the costs of conducting such review in the context of small wireless facilities outweigh any attendant benefits. The record in this proceeding demonstrates significant burdens on small facility deployment emanating from these requirements. The FCC expects these burdens to grow exponentially, as an ever-increasing number of small wireless facilities are deployed. The FCC also finds little environmental and historic preservation benefit associated with requiring environmental or historic preservation assessments for small wireless facility deployment. While ''wireless providers will need flexibility to strategically place thousands of [distributed antenna system] and small cell facilities throughout the country in the next few years,'' Commission requirements to conduct environmental and historic preservation review pose significant obstacles to that deployment. The FCC concludes that any marginal benefit that NHPA and NEPA review might provide in this context would be outweighed by the benefits of more efficient deployment of small wireless facilities and the countervailing costs associated with such review. Accordingly, the public interest is not served by requiring small wireless facilities to continue to adhere to this costly review process.

9. This decision is limited to small wireless facilities that are deployed to provide service under geographic area licenses and are not subject to ASR. Thus, the FCC does not address whether, or the extent to which, site-by-site licensing or ASR render construction of the licensed or registered facilities a major Federal action or undertaking. The FCC also does not revisit the Commission's previous analyses as applied to facilities falling outside the scope of small wireless facilities covered by this Order. To the extent the *Wireless Infrastructure NPRM* (82 FR 21761 (May 10, 2017)) sought comment on these questions, they remain pending and may be considered in future items. In addition, transmissions from all facilities that operate pursuant to geographic area licenses remain subject to its rules governing radio frequency (RF) emissions exposure.

A. Statutory Background and Commission Precedent

10. Section 106 of the NHPA requires Federal agencies to ''take into account'' the effects of their ''federal or federally assisted undertaking[s]'' on historic properties. An undertaking is defined by the statute as ''a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including . . . those requiring a Federal permit, license, or approval[.]'' Court precedent and Advisory Council on Historic Preservation (ACHP) guidance make clear that there must be some degree of Federal involvement for something to constitute an ''undertaking'' under the NHPA. By rule and the Commission's *2004 Order* (70 FR 556 (Jan. 4, 2005)), the FCC has authority to determine what activities constitute Federal undertakings.

11. NEPA requires Federal agencies to identify and evaluate the environmental effects of proposed ''major Federal actions.'' Similar to an ''undertaking,'' a ''major Federal action'' under NEPA includes, among other things, ''projects and programs entirely or partly . . . approved by federal agencies.'' Courts consider ''major Federal actions'' under NEPA to be largely equivalent to ''undertakings'' under the NHPA. Accordingly, like the NHPA's requirements, ''[t]he requirements of NEPA apply only when the federal government's involvement in a project is sufficient to constitute 'major federal action.' ''

12. As relevant here, the Commission has historically identified undertakings and major Federal actions, and thus imposed corresponding NHPA and NEPA obligations, based on the Commission's activities in two areas: ASR and facilities subject to the approval requirement in § 1.1312 of its rules. Specifically, the Commission has required environmental and historic preservation review via two regulatory approval processes. The first applies only to the subset of towers that exceed 200 feet or are in the vicinity of an airport and thus are required to ''be 'registered' '' with the Commission pursuant to section 303(q) of the Communications Act. The second applies where facilities that are not otherwise subject to pre-construction Commission authorization are nonetheless required to obtain Commission approval of an environmental assessment prior to construction pursuant to § 1.1312(b) of the Commission's rules. The Commission has treated its approvals in each of these contexts as rising to the level of ''undertakings'' or ''major Federal actions'' that trigger NHPA and NEPA. And the Commission's approach has been affirmed by the U.S. Court of Appeals for the DC Circuit, which held that the Commission acted within its discretion in identifying its pre-construction antenna structure registration requirements under section 303(q) of the Act and its § 1.1312 limited-approval authority as undertakings for purposes of NHPA.

13. The history of the FCC's involvement in this area begins in 1974, when it first promulgated rules implementing NEPA. At that time, FCC licenses provided carriers with authority to operate from a specific site or physical location, and Federal law generally required the FCC to issue the provider a construction permit for that site before the agency granted a license to operate. The Commission thus had a significant, Federal role in approving construction of specific wireless communications facilities in a given location, and it treated these activities as undertakings under the NHPA and major Federal actions under NEPA.

14. In 1982, Congress altered this framework. In particular, it eliminated the construction permit requirement for certain wireless licenses, while permitting the Commission to retain the requirement if it determined that the ''public interest, convenience, and necessity'' required it. As a result of this and associated regulatory changes, the FCC now licenses many services, including most licensees operating in commercial wireless services, to transmit over a particular band of spectrum within a wide geographic area without further limitation as to transmitter locations.

15. Nonetheless, the FCC has continued by rule to require certain wireless providers previously subject to construction permit requirements to comply with environmental and historic preservation review procedures without regard to the particular type of deployment at issue. In 1990, the Commission amended § 1.1312 of its rules, so that that where construction of a Commission-regulated radio communications facility is permitted without prior Commission authorization (*i.e.,* without a construction permit), the licensee must nonetheless comply with historic preservation and environmental review procedures. As the DC Circuit observed, the Commission's 1990 decision ''never explicitly addresse[d] whether tower construction is a Federal undertaking under section 106 of the NHPA.'' Nor did it expressly address whether such construction was a major Federal action under NEPA. Instead, the Commission's adoption of § 1.1312 was grounded in the '' 'public interest benefits of ensuring, in compliance with Federal environmental statutes, that no potentially irreversible harm to the environment occurs.' '' The Commission apparently concluded that this public interest consideration sufficed for the agency to use the § 1.1312 process to trigger NEPA and NHPA review.

16. In 1995, the Commission expressly concluded that ''registering a structure,'' that is, its tower registration process, ''constitutes a 'federal action' or 'federal undertaking' '' under the relevant Federal environmental and historic preservation review statutes. However, as the DC Circuit observed, that 1995 decision ''contains no analysis of relevant statutes and regulations in support of that conclusion.''

17. In 2004, the Commission addressed the NHPA again in the context of establishing a programmatic agreement. In that decision, the Commission offered two bases for determining that the construction of communications towers and deployment of antennas require compliance with NHPA. First, the Commission relied on the agency's tower registration process and authority. It indicated that this process ''may be viewed as effectively constituting an approval process within the Commission's section 303(q) authority.'' Under section 303(q), the Commission has chosen to implement rules requiring that towers meeting certain height and location criteria be registered with the Commission prior to construction. Second, as described above, the Commission relied on what it has described as a ''limited approval authority.'' Specifically, while section 319(d) states that a construction permit shall not be required for the deployment of certain facilities, the Commission read what it described as ''section 319(d)'s public interest standard'' as allowing the Commission to require covered entities to nonetheless comply with environmental and historic preservation processing requirements. The Commission pointed in particular to § 1.1312 of the its rules, which states that ''[i]f a facility'' for which no Commission authorization prior to construction is required ''may have a significant environmental impact'' then the licensee must submit an environmental assessment to the Commission and the Commission must then rule on that assessment prior to initiation of construction of the facility.

18. At the same time, the Commission stated that the agency ''did not seek comment on the question whether the Commission should, assuming that it possesses statutory authority to do so, continue its current treatment of tower construction as an 'undertaking' for purposes of the NHPA.'' Therefore, the Commission ''decline[d] to revisit'' that question. Continuing, the Commission observed that ''[u]nless and until we undertake the reexamination and determine that it is appropriate to amend its rules . . . we believe its existing policies treating tower construction as an undertaking under the NHPA reflect a permissible interpretation of the Commission's authority under section 319(d) of the Act to issue construction permits for radio towers, as well as its authority under section 303(q) governing painting and/or illumination of towers for purposes of air navigation safety.''

19. Two Commissioners dissented in part from the agency's 2004 decision, expressing the view that, in the absence of a construction permit or a site-by-site license, the Commission's retention of jurisdiction to require historic preservation review exceeded its statutory authority. On appeal, the U.S. Court of Appeals for the DC Circuit upheld the Commission's decision against a challenge that it was arbitrary and capricious.

20. Most recently, in 2014, the FCC found ''no basis to hold categorically that small wireless facilities such as DAS and small cells are not Commission undertakings.'' But the Commission there was only evaluating the operation of the rule, by its terms, against the backdrop of the specific evidence in the record on that item. The Commission did not consider whether, in the first instance, it could amend its rules to clarify that small wireless facilities are not Commission undertakings or whether the public interest would be served by doing so.

21. In the *Wireless Infrastructure NPRM,* the Commission sought comment on updating its approach to environmental and historic preservation review. Among other things, the Commission ''invite[d] comment on whether we should revisit the Commission's interpretation of the scope of its responsibility to review the effects of wireless facility construction under the NHPA and NEPA.'' The *NPRM* invited input on ''the costs of NEPA and NHPA compliance and its utility for environmental protection and historic preservation for different classes of facilities, as well as the extent of the Commission's responsibility to consider the effects of construction associated with the provision of licensed services under governing regulations and judicial precedent,'' seeking particular comment regarding the treatment of geographic area service license and small wireless facility deployment.

B. Legal Analysis

1. By Amending Its Rules, the FCC Clarifies That Small Wireless Facility Deployment Is Neither an Undertaking Nor a Major Federal Action

22. Consistent with the DC Circuit's decision in *CTIA,* the FCC exercises its discretion to amend its rules to clarify that the deployment of small wireless facilities does not qualify as a Federal undertaking or major Federal action. As explained above, a Federal undertaking or major Federal action requires a sufficient degree of Federal involvement, and the Commission has only ever identified two potential bases by which such involvement exists with respect to the deployment of wireless facilities that do not require site-by-site licensing or construction permits. The first is the ASR obligations that flow from section 303(q) and apply to facilities that are over 200 feet in height or are close to airports. The second is

the ''limited approval authority'' that is codified in § 1.1312 of the Commission's rules. Since the deployment of small wireless facilities, as defined herein, is not subject to antenna structure registration requirements under section 303(q) of the Act, that avenue cannot provide a basis for treating small wireless facilities as an undertaking. Thus, the only possible basis by which small wireless facility deployments could be Federal undertakings would be if they were subject to the Commission's ''limited approval authority.''

23. In this Order, the FCC amends its rules to remove small wireless facilities deployment from § 1.1312 of the rules, eliminating the remaining basis for treating small wireless facility deployment as an undertaking and major Federal action. Neither the DC Circuit's *CTIA* decision nor Commission precedent precludes us from amending that rule, as long as its amendments are otherwise consistent with the Communications Act. As explained below, the Commission has multiple sound reasons for making this amendment, including that limiting § 1.1312 to larger wireless facilities is more consistent with the original purpose of the rule and Commission practice with respect to other small deployments. By clarifying that § 1.1312 does not apply to small wireless facility deployment, the FCC eliminates the predicate Federal involvement required for undertakings and major Federal actions. Accordingly, such deployments are no longer subject to those historic preservation and environmental review obligations.

2. Its Amendment of Section 1.1312 of the Rules Is Consistent With the Public Interest

24. The FCC concludes that its actions are consistent with the Commission's statutory mandates under the Communications Act, including its mandate to regulate in the public interest.

25. Although the Commission appeared to ground the adoption of § 1.1312 in its public interest authority, the Commission has never squarely addressed whether the public interest is served by exercising this authority in the context of small wireless facility deployment. Nor did the Commission have at its disposal in 1990 the wealth of evidence now available in the wake of small cell deployment replacing macro deployment as the means by which many providers are choosing to deploy new wireless technology, such as 5G. In amending the Commission's rules, and after review of the record, the FCC determines that the public interest would not be served by continuing to subject small wireless facility deployment to § 1.1312's review requirements. As part of the public interest analysis, the FCC recognizes that the approval requirement in § 1.1312 has the effect of subjecting covered deployments to environmental and historic preservation review under NEPA and the NHPA. The FCC deems the costs of that resulting review to be unduly burdensome in light of the nature of small wireless facility deployment, the benefits of efficient and effective deployment, and the minimal anticipated benefits of NHPA and NEPA review in this context, as explained in greater detail below.

26. When exercising its public interest authority to effectuate the purposes of the Communications Act, the FCC 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 intensive use of the electromagnetic spectrum.'' Relatedly, section 706 of the 1996 Act exhorts the Commission to ''encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity. . . . regulating methods that remove barriers to infrastructure investment.'' These statutory provisions do not confer authority but are consistent with the goals of the Communications Act.

27. Furthermore, a close analysis of section 319(d) of the Act supports the conclusion that Congress does not want the Commission to place unnecessary regulatory barriers in the way of wireless facilities deployment. section 319(d) states, in relevant part, that ''[a] permit for construction shall not be required for . . . stations licensed to common carriers, unless the Commission determines that the public interest, convenience and necessity would be served by requiring such permits for any such stations.'' By its terms, section 319(d) eliminates Commission approval requirements for wireless communications facilities and precludes construction permits for those classes of providers unless the FCC makes affirmative public interest findings that such requirements are necessary and expressly imposes them. That language in section 319(d) was added in 1982 based on Congress's belief that in many cases the required preapproval ''may delay market entry and place an unnecessary administrative and financial burden on both the potential licensee and the Commission.'' It appears contrary to the intent of section 319(d) to replace the eliminated construction permit requirement with a different approval process that, at least in the small wireless facility context, risks replicating the harmful effects that Congress expressly sought to eliminate absent strong evidence of the public interest benefits of doing so.

28. The FCC finds on the record in this proceeding that the public interest does not support applying the § 1.1312 approval process to small wireless facilities. To the contrary, encouraging small wireless facility deployment directly advances all of the statutory objectives described above. The FCC has recognized that small wireless facilities will be increasingly necessary to support the rollout of next-generation services, with far more of them needed to accomplish the network densification that providers require, both to satisfy the exploding consumer demand for wireless data for existing services and to implement advanced technologies like 5G. The record here also supports its prior conclusions regarding the volume and pace of needed small wireless facility deployments to support the future of advanced wireless services. The FCC notes, for example, that Verizon anticipates that 5G networks will require 10 to 100 times more antenna locations than previous technologies, while AT&T estimates that carriers will deploy hundreds of thousands of wireless facilities—equal to or more than they have deployed 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.

29. In light of these statistics, the Commission cannot simply turn a blind eye to the reality that the mechanical application of § 1.1312's requirements to each of these small deployments would increase the burden of review both to regulated entities and the Commission by multiples of tens or hundreds. Nor can the FCC ignore the record evidence cited above showing the negative impact and high costs associated with subjecting small wireless facility deployments to NHPA and NEPA review. It would be impractical, extremely costly, and contrary to the purposes of the Communications Act to subject the deployments required for 5G technology to many times the regulatory burdens that the Commission previously imposed on 3G and 4G infrastructure.

30. The historical and present application of § 1.1312 supports the distinction the FCC makes between macrocell and large towers on the one hand and small wireless facilities on the other. When the Commission amended § 1.1312 in 1990 to require historic preservation and environmental review procedures for radio communications facilities that did not require pre-authorization permits, it was primarily focused on macrocells and large tower deployments, and it could not have anticipated that many small-cell antennas today would fit inside a space the size of a pizza box or that densification of many hundreds of these antennas would be necessary for deployment of more advanced wireless technologies. The Commission has nevertheless made common-sense accommodations for types of deployments that have limited potential for environmental and historic preservation effects and for which compliance would be impractical. For example, the Commission does not subject consumer signal boosters, Wi-Fi routers, or unlicensed equipment used by wireless internet service providers to § 1.1312 review. Through this Order, the FCC applies similar considerations in determining that it is consistent with the public interest to eliminate NEPA and NHPA compliance requirements for all small wireless facility deployments as defined herein.

31. The FCC further finds, on balance, that the costs of requiring § 1.1312 review for small wireless facilities outweigh the marginal benefits, if any, of environmental and historic preservation review.

32. Although commenters assess the magnitude of time and resources required for NEPA and NHPA compliance differently, the record clearly indicates that there are substantial, rising, and unnecessary costs for deployment that stem from compliance with NEPA and the NHPA. Over the last several decades, for example, Sprint estimates that it has done preliminary NEPA checklists for thousands of sites at a cost of tens of millions of dollars. Of those sites, approximately 250 triggered the requirement that Sprint prepare an environmental assessment that costs approximately $1,300. Most of those environmental assessments were for historic preservation concerns by state historic preservation officers under § 1.1307(a)(4) of the Commission's rules because the site was in or near a Historic District or Historic Property, but every one of those assessments resulted in a finding of no significant impact. In other words, the Commission's rules have required Sprint to spend tens of millions of dollars to investigate a minimal likelihood of harm.

33. Verizon and AT&T reported similar burdens. Verizon examined its small wireless facility deployments in 2017 in five urban markets across the United States and found that completing NEPA and NHPA reviews comprised, on average, 26 percent of the total cost for these deployments. In the five markets Verizon examined, the costs of completing NEPA and NHPA (including Tribal) reviews comprised, on average, 26 percent of the total cost of deployment of small cells, including equipment. AT&T offered similar figures, stating that 17 percent of its costs to deploy each small wireless facility is directed to NEPA and NHPA compliance. AT&T further represented that it expects to spend $45 million on NEPA and NHPA compliance for thousands of small wireless facilities in 2018 and that its current NEPA and NHPA costs have direct effects on its broadband deployment initiatives by funneling money away from new small wireless facility projects or the expansion of existing projects. By contrast, AT&T estimates that a Commission decision that such deployments are not major Federal actions or undertakings would reduce small cell NEPA/NHPA compliance costs by up to 80 percent, which would fund over 1,000 additional small cell nodes annually, and reduce the small cell deployment timeline by 60–90 days. CTIA submitted a report indicating that overall, in 2017, providers spent nearly $36 million on NEPA and NHPA compliance. The report estimated that, based on providers' plans to accelerate small facility deployment, NEPA and NHPA costs would increase to $241 million in 2018.

34. The record also reveals more generally that, even setting aside payments to Tribal Nations, which the FCC addresses below, review requirements can easily cost well over a thousand dollars per review—and potentially much more. Even if the time and resource expenditure associated with this review process may not appear substantial in the context of a single facility's deployment, given its prior conclusions based on the record regarding the volume and pace of needed small wireless facility deployments, the FCC expects the aggregate effect of exercising its limited reservation of authority to require environmental and historic preservation review for small wireless facilities to be substantially greater. For example, the FCC estimates that in the last several years thousands of small wireless facility deployments annually have been subject to Tribal review under its rules, representing approximately 80 percent of the total of such reviews. Given trends in small wireless facility deployment, the number of such reviews is likely to increase further over time. In addition, although aggregate annual review costs for smaller providers might well be less than that of entities with a large number of annual deployments, such small businesses also are likely less able to bear those costs. Although batch processing can have some benefits in reducing the burdens of review, even advocates of batchings observe that its benefits may be limited based on characteristics such as batch size, specific type of facility, environmental and/or historic preservation effect, and geographic area. The FCC thus is not persuaded that batch processing will reduce the burdens of the review process to such a degree that those burdens no longer would be significant.

35. The potential delay in deployment associated with the review process also appears likely to be substantial. The record reveals that, given their time and expense, environmental and historic preservation review processes ''are generally not started until the municipality has provided its approvals in case the municipality does not approve the initial location.'' Thus, environmental and historic preservation review requirements necessarily impose delays above and beyond the time when facilities otherwise could begin deployment. Although the Commission takes steps to reduce such process delays, even delays of 30 days (let alone more) are substantial enough to weigh in its public interest calculus, particularly when aggregated across all the small wireless facility deployments that will be required in the coming years.

36. At the same time, the record does not support sufficiently appreciable countervailing environmental and historic preservation benefits associated with subjecting small wireless facility deployments off of Tribal lands to historic preservation and environmental reviews. Consistent with its precedent, the FCC considers the possible benefits to the environment and historic preservation flowing from a Commission-imposed compliance requirement for small wireless facility deployments. The FCC concludes on the record here, however, that the specific, limited types of small wireless facility deployments described below do not warrant the imposition of these requirements off of Tribal lands. On

Tribal lands, the FCC leaves undisturbed the historic preservation and environmental review processes that the FCC presently has in place for deployments of wireless facilities. Based on its review of the record, including concerns raised by Tribal Nations regarding the unique nature of Tribal land and the Commission's ongoing recognition of Tribal sovereignty, the FCC clarifies that it continues to exercise its limited approval authority for the deployment of small wireless facilities on Tribal land is consistent with our focus in the *Wireless Infrastructure NPRM* on areas of Tribal interest, and supported by our review of the record, which establishes that wireless providers have not experienced the same challenges arising from the historic preservation review process on Tribal lands.[1] The Commission's public interest determination is also rooted in our ongoing commitment to fulfilling principles of Tribal sovereignty and to our Federal trust responsibility.

37. As an initial matter, the FCC defines the types of facilities excluded from the scope of § 1.1312 in such a way as to minimize the impact that these facilities, as a class, could have on the environment and historic properties. The FCC also adopts a definition that ensures that larger facilities continue to be subject to its NHPA and NEPA processes. The FCC believes that this represents a better allocation of scarce resources. The FCC thus excludes from its review requirement only facilities that are limited in antenna volume, associated equipment volume, and height.

38. As to height, its revised rule excludes small wireless facilities if they are deployed on new structures that are either no taller than the greater of 50 feet (including their antennas) or no more than 10 percent taller than other structures in the area. The rule also excludes any small wireless facility that is affixed to an existing structure, where as a result of the deployment that structure is not extended to a height of more than 50 feet or by more than 10 percent, whichever is greater. The Commission has previously used similar size specifications to delineate circumstances in which environmental and historic preservation review was unwarranted. In particular, the Commission has excluded from review those pole replacements that, among other things, ''are no more than 10 percent or five feet taller than the original pole, whichever is greater'' to guard against the risk of ''excluding replacement poles that are substantially larger than or that differ in other material ways from the poles being replaced might compromise the integrity of historic properties and districts.'' The Commission's exclusion for pole replacements was further limited in a manner designed to ensure ''that the replacement will not substantially alter the setting of any historic properties that may be nearby.'' The FCC seeks to advance similar ends here through the limits on overall size relative to other structures in the area. As AT&T observes, for example, ''the vast majority of small cell antennas are placed at a height of less than 60 feet on structures located near similarly sized structures in previously disturbed rights-of-way, greatly reducing the likelihood of adversely impacting the surrounding environment.'' The 50-foot height threshold the FCC adopts falls within the 60-foot parameter cited by AT&T and others, but the FCC also allows higher deployment in cases where such deployment is only a modest (10 percent) departure from the height of the preexisting facility or surrounding structures.

39. Its public interest finding here also applies only when certain volumetric limits are met. To qualify as a small wireless facility, the antenna associated with the deployment, excluding the associated equipment, must be no more than three cubic feet in volume. The FCC agrees with commenters that, at this size, small wireless facilities ''are unobtrusive and in harmony with the poles, street furniture, and other structures on which they are typically deployed.'' This size is analogous to that of facilities the Commission previously has excluded from review under the Collocation NPA. The Commission has found in other contexts that the size of those facilities fully eliminated the possibility of what already was only a remote potential for historic preservation effects. This size also is similar to—or smaller than—the antenna volume specified in definitions of small wireless facilities under a number of state laws seeking to facilitate small wireless facility deployment. The FCC agrees with Verizon that at ''three cubic feet or less per antenna'' small wireless facilities ''bear little resemblance to the macro facilities that represented most wireless siting'' when the Commission conducted its public interest evaluations in the past.

40. Additionally, the wireless equipment associated with the antenna must be no larger than 28 cubic feet. The FCC derives this limit from analogous limits on associated equipment in the Collocation NPA and the small wireless facility definitions in many state laws. The record persuades us that this definition appropriately balances its policy goal of promoting advanced wireless service and its recognition of the importance of environmental and historic preservation concerns where they might meaningfully be implicated. In particular, the FCC agrees with commenters that urge us to build on the small wireless facility definitions in the Collocation NPA and state laws, ''while retaining flexibility to account for changes in technologies.''Advanced wireless services are migrating from 4G to 5G, and the FCC wants to foster that migration. As T-Mobile observes, ''5G systems are still in the early stages of development,'' and ''any small wireless facility definition should accommodate this new, critical phase of broadband deployment.'' Commenters identify 28 cubic feet as a workable definition for associated equipment, which will help encourage small wireless facility deployment to a greater extent than relying on some prior, smaller definitions of associated equipment size that would provide more limited relief. At the same time, just as the Collocation NPA and state laws commonly have adopted a numerical limit on associated equipment, the FCC finds a numerical limit warranted here, consistent with its goal of defining these facilities in a way that constrains the potential for environmental and historic preservation effects. The FCC is not persuaded that limits larger than 28 cubic feet—or forgoing any numeric limit on associated equipment at all—would balance that interest as effectively. The FCC also notes, as a practical matter, the general trend toward increasingly smaller equipment deployments, which will make it less likely that associated equipment will need to exceed the 28 cubic feet limit, and also less likely that deployment of associated equipment will have environmental or historic preservation effects.

41. The FCC is not persuaded to further restrict the definition of small wireless facility by placing an aggregation limit on the number of such facilities on a given structure or pole, as some propose. The FCC is skeptical that even in scenarios involving multiple small wireless facilities deployed on a single structure or pole, the resulting aggregate deployment would resemble

[1] *See, e.g.,* CTIA/WIA Comments at 7–8 (distinguishing between projects proposed on Tribal lands versus those proposed on non-Tribal lands and addressing its comments to the latter); Verizon Comments at 44 n. 142 (emphasizing that Verizon was not proposing changes to the process for reviewing facilities to be constructed on Tribal lands).

macrocells or towers of the sort the Commission generally envisioned in its past public interest analysis. Indeed, there are practical limitations on how many small wireless facilities can fit on a single pole. However, even if there are deployments where two or more small cells have a larger antenna volume in the aggregate than a single macrocell deployment, the FCC still finds its approach reasonable given the economic, technical, and public interest benefits of promoting small wireless facility deployments discussed above. Finally, nothing the FCC does in this order precludes any review conducted by other authorities—such as state and local authorities—insofar as they have review processes encompassing small wireless facility deployments. The existence of state and local review procedures, adopted and implemented by regulators with more intimate knowledge of local geography and history, reduces the likelihood that small wireless facilities will be deployed in ways that will have adverse environmental and historical preservation effects.

42. While a number of commenters argue that review confers environmental and historic preservation benefits, to the extent they provide factual support, they provide no more than generalized claims of effects of small wireless facility deployment that have been addressed in isolated cases. While other commenters identify specific factual scenarios of concern to them regarding small wireless facility deployment, there is substantial record evidence that actual instances of concern identified by review are few.

43. For example, Crown Castle states that it has never received a report or a negative response from a Tribal Nation regarding a proposed small cell deployment. Other commenters echo this experience. Sprint, for instance, remarks that in the thousands of tower and antenna projects it has undertaken since 2004, which included numerous small cell deployments, it has never had a substantive consultation with Tribal Nations that revealed possible adverse impacts on historic properties. Verizon, likewise, represents that between 2012 and 2015, only 0.3% of Verizon's requests for Tribal review resulted in findings of an adverse effect to Tribal historic properties, while AAR states that ''more than 99.6 percent of deployments pose no risk to historic, tribal, and environmental interests.'' Based on these apparently minimal effects of small wireless facility deployment on environmental and historic preservation interests, the FCC believes that the benefits associated with requiring such review are *de minimis* both individually and in the aggregate. And even if, as some contend, the aggregate effects of small wireless facility deployment rendered the benefits of review more than *de minimis,* the FCC nonetheless determines that those benefits would be outweighed by the detrimental effects on the roll-out of advanced wireless service.

44. As further support for this conclusion, Sprint points in its comment to the Super Bowl as an example of the way that historic preservation review can impede broadband deployment with minimal to no benefit. In particular, Sprint deployed 23 small cells in Houston to upgrade its network in preparation for the crowds descending on Super Bowl LI. Even though the stadium construction itself did not involve any historic preservation consultation with Tribal Nations under Section 106 of the NHPA (because the stadium construction was not a Federal undertaking), carriers building an antenna in the parking lot were obligated by FCC rules to engage in the Section 106 process. And as with Sprint's other reviews since 2004, those reviews did not lead to any substantive consultation with Tribal Nations that revealed adverse impacts. That nonsensical result was purely a consequence of the Commission's discretionary decision to apply § 1.1312 to such small deployments. That the Commission's rule would lead to such an anomalous outcome—requiring environmental and historic preservation review of small wireless facilities deployed in the parking lot of an NFL stadium that did not itself require such review—highlights what the FCC sees as the misdirected public interest consequences that would result if the FCC applied § 1.1312's approval requirement to small wireless facility deployment.

45. In short, the record evidence persuades us that the costs to small wireless facility deployment attributable to § 1.1312's approval requirement far outweigh any incremental benefits of such environmental or historic preservation review.

3. Other Considerations Raised by Its Prior Rules and Comments in the Record

46. *1990 Order.* As explained above, the Commission's *1990 Order* (55 FR 20396 (May 16, 1990)) did not specifically address whether the public interest was served by subjecting small wireless facility deployments to § 1.1312's requirements. The FCC now does so and finds that it is not.

47. To the extent the *1990 Order* made a public interest determination with respect to large facilities, the FCC notes that it is not bound by that determination because its public interest analysis for small wireless facilities presents materially different considerations than the Commission confronted in the past. Although the Commission anticipated that § 1.1312 would ''establish[] an appropriate balance between section 319(d)'s purpose of expediting the delivery of communications services to the public'' and potentially countervailing environmental considerations, the reasoning in the *1990 Order* turns on materially different facts and assumptions than apply in the case of small wireless facility deployment. In particular, the Commission anticipated that its requirement would not ''significantly affect construction or . . . have any effect on the vast majority of facilities covered by the rule.'' In a world in which a relatively small number of large structures were being built, such predictions might have made sense. But with the high volume of small wireless facility deployments that the FCC anticipates being necessary to facilitate the provision of advanced wireless services, the FCC anticipates that absent Commission action significant numbers of deployments—in fact, the vast majority of them—will be significantly delayed and detrimentally affected without any actual historic preservation or environmental benefit.

48. *Geographic Area Licenses.* In determining that small wireless facilities are not subject to historic preservation or environmental review obligations, the FCC rejects the position offered by some commenters that mere issuance of a broad geographic area service license constitutes sufficient Federal action to convert small wireless facility deployments into undertakings and major Federal actions, triggering NHPA and NEPA review. Indeed, the Commission has never taken the position that every form of license or authorization demonstrates a sufficient Federal nexus to convert the separate deployment of facilities into a Federal undertaking or major Federal action. Nonetheless, certain commenters make general assertions that a geographic area service license could be sufficient to implicate NHPA and NEPA. The FCC disagrees and find the Commission's role regarding such deployment too limited to render the deployments ''undertakings'' under the NHPA or ''major Federal actions'' under NEPA.

49. As discussed above, the key consideration in determining whether a particular deployment is a Federal undertaking is the degree of Federal involvement, and the Commission has discretion to make the threshold determination as to whether that involvement exists. The FCC concludes that the Commission's issuance of a license that authorizes provision of wireless service in a geographic area does not create sufficient Commission involvement in the deployment of particular wireless facilities in connection with that license for the deployment to constitute an undertaking for purposes of the NHPA. Applying the relevant statutory text, the geographic area service license does not result in wireless facility deployment being ''carried out by or on behalf of a Federal agency.'' To the contrary, geographic area service licensing does not provide for Commission involvement in wireless facility deployment decisions. Geographic area service licenses also do not provide ''Federal financial assistance'' for wireless facility deployment. Nor is the geographic area service license ''a Federal permit, license or approval'' that must be obtained before wireless facility deployment can proceed. In particular, although geographic area service licenses are a legal prerequisite to the provision of licensed wireless service, and can affect entities' economic incentives to deploy small wireless facilities—insofar as the facilities can be used to offer the licensed service—neither the geographic area service license nor any other Commission approval is a legal prerequisite to the deployment of those particular facilities. In addition, viewing the deployment of small wireless facilities as an undertaking on the basis of geographic area service licenses is inconsistent with the manner in which Commission licensing occurs. In particular, although NHPA requires agencies to evaluate the effects of their undertakings before those undertakings occur, the FCC does not require any such determinations to take place prior to issuance of these licenses—thus, confirming that the issuance of the geographic area license itself is not the Federal undertaking. Indeed, the conduct at issue here—the physical deployment of particular infrastructure—occurs in a manner and at locations that the Commission cannot foresee at the time of licensing, as discussed in greater detail below. Under the geographic area service license, it is generally state and local zoning authorities that exercise their lawful authority regarding the placement of wireless facilities by private parties. The FCC thus does not find the issuance of a geographic area service license, in itself, to provide the requisite level of Commission involvement in wireless facility deployment to render that deployment an undertaking under relevant court precedent and ACHP guidance.

50. For the same basic reasons, the FCC concludes that the geographic area service license is insufficient to render deployment of wireless facilities in connection with that license a ''major Federal action'' under NEPA. As explained above, the geographic licensing does not cause associated wireless facility deployment to be ''carried out by or on behalf of'' the Commission, the licensing does not involve the provision of Federal funding for such deployments, nor is the license technically required before wireless facility deployment can proceed (in other words, while carriers generally obtain a geographic area service license before they deploy the facilities through which they will eventually provide that service, they are not legally required to obtain the license until they want to provide service). As noted above, courts treat ''major Federal actions'' under NEPA similarly to ''undertakings'' under the NHPA. Indeed, the ACHP points out ''major Federal actions'' are arguably narrower than ''undertakings'' in various ways. Insofar as ''major Federal actions'' under NEPA are narrower than the universe of ''undertakings'' under the NHPA, its conclusion regarding NEPA necessarily will be the same as that for NHPA. Court precedent directly applying NEPA in the first instance likewise supports its view that the virtually nonexistent Commission involvement in the deployment of wireless facilities under a geographic area service license takes wireless facility deployment outside the scope of ''major Federal action.'' The FCC thus finds the geographic area license itself insufficient to render wireless facility deployment in connection with that license ''major Federal action'' under NEPA.

51. The FCC distinguishes precedent cited by American Bird Conservancy, in which the Commission found that ''[t]he fact that a carrier's construction of facilities is authorized by rule rather than by action on an individual application does not eliminate the existence of federal action or affect its obligation to comply with NEPA and other federal environmental statutes.'' In that case, however, the Commission rule at issue directly authorized the construction of particular facilities. Here, by contrast, the geographic area license itself only authorizes transmissions. The FCC finds this is an insufficient connection to in itself cause the construction to constitute an undertaking under the NHPA or major Federal action under NEPA.

52. In addition, the FCC emphasizes that issuance of geographic service licenses is remote in both time and regulatory reach from the deployment of small wireless facilities. Any wireless facility deployment will happen after the Commission has issued the geographic service licenses, and will occur in a manner and at locations that the Commission cannot reasonably foresee at the time of licensing. As to geographic service licenses issued in the past, at the time the licenses were issued, it is unlikely that significant small wireless facility deployment itself would have been reasonably foreseeable. The deployment of small wireless facilities today is a function of marketplace decisions by private actors in light of applicable regulatory regimes, such as any state or local zoning requirements.

53. These characteristics of the Commission's regulatory approach to geographic service licensing support the view that NHPA and NEPA do not require Commission evaluation of any effects of small wireless facility deployment based on the issuance of such licenses. NHPA and NEPA require agencies to evaluate the effects of their undertakings or major Federal actions in advance of those undertakings or actions. Under the rules implementing NEPA and the NHPA and relevant court precedent, agencies need not consider effects of agency actions if they are not reasonably foreseeable. Because there is no plausible way for the Commission to meaningfully assess environmental and historic preservation effects associated with the deployment of small wireless facilities at the time geographic service licenses issue, the FCC concludes that there are no reasonably foreseeable effects that ''a person of ordinary prudence would take into account'' prior to issuing such licenses.

54. The Commission also does not possess authority it could exercise to regulate small wireless facility deployment to address environmental and historic preservation concerns given the public interest findings the FCC makes in this order. Agencies have no obligation to consider potential effects under NEPA or the NHPA if they cannot exercise authority to address them under their organic statutes. As relevant here, addressing environmental and/or historic preservation effects of small wireless facility deployment would

necessitate a review process to identify such concerns—but the FCC has found such a review process unwarranted under its public interest determination above. Because the FCC finds that such a requirement is not in the public interest for the deployment of small wireless facilities, the FCC cannot exercise the public interest authority to impose such duties. A contrary interpretation of its public interest authority under the Communications Act would require us to treat concerns under the NHPA and NEPA as dispositive. The FCC finds no grounds to believe that Congress intended the Commission, when exercising its Title III public interest authority, to summarily cast aside policy objectives of the Communications Act itself when interests implicated by NHPA or NEPA might be present. Instead, the FCC concludes that its approach of giving due consideration to the policy goals under Federal communications law along with those of the NHPA and NEPA better enables all relevant interests to be weighed in the public interest analysis. As clarified by its modification of § 1.1312 of the rules, its geographic service licensing regime thus reflects neither any intent or ability to regulate the deployment of small wireless facilities after this order.

55. The FCC also does not interpret language in the *1990 Order* to suggest that the Commission believed that Federal environmental statutes required it to adopt a condition that triggered those statutes for construction not otherwise subject to Commission approval. The *1990 Order* does not include an analysis of the degree of Federal control required to trigger Federal environmental and historic preservation statutes. Rather, the *1990 Order* addressed whether changes to an already-existing review requirement were warranted. To the extent that the Commission weighed historic preservation and environmental considerations in determining whether to amend its rules, the FCC reads those statements as part of its broader public-interest evaluation, not as an analysis of whether the rule's requirements constituted sufficient Federal involvement to rise to the level of a ''federal undertaking'' or ''major Federal action.''

56. *Other Comments.* Its public interest balancing also is not materially altered by claims that the potential for Commission-imposed review can alter decisions about how and where to deploy small wireless facilities by causing providers to tailor the manner or location of such deployments to avoid implicating environmental and historic preservation concerns. Commenters' arguments in this regard are generalized, and undercut by its conclusion that, as a class, the nature of small wireless facility deployments appears to render them inherently unlikely to trigger environmental and historic preservation concerns. For example, deployment of small wireless facilities commonly (although not always) involves previously disturbed ground, where fewer concerns generally arise than on undisturbed ground. In addition, as the Commission recently observed, ''[i]n implementing large-scale network densification projects that require deployment of large numbers of facilities within a relatively brief period of time, use of existing structures, where feasible, can both promote efficiency and avoid adverse impacts on the human environment.'' Based on the entire record before us, the FCC is not persuaded that requiring Federal environmental and historic preservation review for small wireless facility deployments will have a meaningful amount of benefits, particularly when this consideration is balanced against the other public interest considerations associated with promoting the deployment of small wireless facilities.

57. Because the FCC finds the record of claimed potential benefits to be limited and otherwise fundamentally speculative, the FCC also is not persuaded that some more streamlined review process or other alternative to the action the FCC takes is warranted in the public interest. For example, proposals to reduce the length of review would not eliminate the financial burdens of the review process, which would continue to delay deployment, whether required individually or on some aggregated basis. In addition, arguments that the Commission should exclude small wireless facilities from § 1.1312 when deployed in a narrower range of circumstances do not demonstrate sufficient benefits to justify the burdens § 1.1312 imposes even in a narrower context. The FCC further expects that the more generalized approach the FCC takes for small wireless facility deployments will provide greater clarity in implementation, rather than leaving providers with uncertainty about whether a given small wireless facility deployment is excluded. Finally, the FCC is not persuaded that it would be preferable to rely on programmatic agreements or similar measures to streamline or exclude small wireless facility deployment from review. Its amendment of § 1.1312 of the rules involves a public interest evaluation under the Communications Act—an Act the FCC is responsible for administering—while programmatic agreements involve negotiations among multiple external parties that need not account for such considerations. In addition, given the importance of fostering small wireless facility deployment, the FCC is not persuaded that negotiated agreements would be warranted—even assuming *arguendo* that they ultimately resulted in the same outcome—given the time required for their negotiation and the associated delay in facilitating small wireless facility deployment.

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58. In sum, directly evaluating the question for the first time here, the FCC is not persuaded that it is in the public interest to exercise its limited reservation of authority to impose § 1.1312 on small wireless facility deployments and thereby trigger environmental and historic preservation review. Although the record does not enable a precise quantification of costs and benefits, it amply supports its conclusion that environmental and historic preservation review imposes burdens on small wireless facility deployment, and the FCC expects that these burdens will have a significant effect on small wireless facility deployment, at least in the aggregate, given the volume and nature of small wireless facility deployments that the FCC anticipates. Imposing such burdens would be at odds with several of its statutory mandates, and the FCC exercises its predictive judgment in finding that the benefits of eliminating these burdens will include hastening wireless deployment and freeing up funds for additional deployments that will benefit consumers, grow the economy, and strengthen the country's 5G readiness.

59. The FCC acknowledges, of course, the policy goals expressed by Federal environmental and historic preservation statutes. But Congress prescribed specific triggers for the obligations that those statutes impose on Federal agencies, persuading us that agencies' consideration of those statutes' more general policy pronouncements is simply to be weighed alongside consideration of its principal duties under its organic statutes. Thus, although the record does not persuade us of meaningful benefits that are likely to result from environmental and historic preservation review of small wireless facility deployments, even assuming *arguendo* that there are some benefits, the FCC is not persuaded that they are likely to overcome the harms

that the FCC finds run contrary to its responsibilities under the Communications Act, as informed by the Telecommunications Act of 1996. Accordingly, the FCC finds no basis to conclude here that it is in the public interest to apply § 1.1312 to small wireless facility deployment, triggering environmental and historic preservation review.

II. Streamlining NHPA and NEPA Review for Larger Wireless Facilities

A. Clarifying the Section 106 Tribal Consultation Process

1. Background

60. Notwithstanding its narrowing the scope of deployments subject to Section 106 and NEPA review, many constructions of wireless facilities will continue to be treated as Commission undertakings under the NHPA because they are subject to site-by-site licensing, they require antenna structure registration, or their size exceeds its definition of small wireless facility. The ACHP's regulations prescribe detailed procedures for the review of proposed undertakings, including consulting with Tribal Nations and NHOs. As authorized under the ACHP's rules, the Commission has entered into two NPAs and the ACHP has issued a program comment, each of which modifies the procedures set forth in the ACHP's rules to tailor them to different classes of Commission undertakings. § 1.1320 of the FCC's rules directs applicants, when determining whether a proposed action may affect historic properties, to comply with the ACHP's rules or one of these program alternatives.

61. An important component of the Section 106 process involves engaging and consulting with Tribal Nations and NHOs. section 101(d)(6) of the NHPA requires Federal agencies to consult with any Tribal Nation or NHO that attaches religious and cultural significance to a property eligible for inclusion on the National Register of Historic Places that may be affected by their undertakings. The ACHP rules implement that provision by requiring that agencies make a reasonable and good faith effort to identify such Tribal Nations or NHOs and invite them to be consulting parties. Procedures to implement this requirement are set forth in the Wireless Facilities NPA, which became effective in 2005. Properties to which Tribal Nations and NHOs attach cultural and religious significance are commonly located outside Tribal lands and may include Tribal burial grounds, land vistas, and other sites that Tribal Nations or NHOs regard as sacred or otherwise culturally significant. The consultation process for undertakings on Tribal lands is covered by separate provisions of the ACHP's rules, and is not addressed in this Order; as previously noted, nothing in this Order disturbs existing Commission practices for section 106 review on Tribal lands.

62. In order to efficiently connect parties seeking to construct facilities with Tribal Nations while respecting Tribal sovereignty, the FCC established the Tower Construction Notification System (TCNS). TCNS is an online, password-protected system that notifies Tribal Nations, NHOs, and State Historic Preservation Officers (SHPOs) (collectively, recipients) of proposed wireless communications facility deployments in areas of interest designated by the recipients. The system also provides a means for Tribal Historic Preservation Officers (THPOs) and other Tribal or NHO officials to respond directly to applicants as to whether they have concerns about the effects of the proposed construction on historic properties.

63. Tribal demands for fees that are not legally required to review projects submitted through TCNS have increased over the course of time. And though the FCC has taken steps to address these issues for small wireless facilities, the FCC takes further action here to address fee matters as they relate to the ongoing construction of macrocells and other large radio transmission facilities. The FCC also takes steps to make the Tribal participation process more efficient for applicants, Tribal Nations, and NHOs. The record details multiple issues causing confusion and delay in Tribal consideration of proposals submitted in TCNS. Many applicants have complained that there is uncertainty concerning how long a Tribal Nation will take in processing an application and that in some instances the process can extend for months or longer. Delays in obtaining Tribal comment on even a few individual sites can cause delays to larger projects and impede delivery of communications services to American consumers. In response, several Tribal commenters argue that most requests are handled in a timely manner. Moreover, Tribal governments have indicated that applicants often do not provide sufficient information in TCNS for a THPO or cultural preservation officer to opine as to whether a particular project may affect historic or cultural resources, thereby slowing the Tribal review process. The FCC addresses these concerns below.

2. Timeline for Initial Tribal Responses

64. The NPA states that Tribal Nations and NHOs ordinarily should be able to respond to communications from applicants within 30 days,but applicants are required to seek guidance from the Commission if a Tribal Nation or NHO does not respond to the applicant's inquiries. The Commission, in 2005, issued a Declaratory Ruling establishing a process that enables an applicant to proceed toward construction when a Tribal Nation or NHO does not timely respond to a TCNS notification.

65. In the *Wireless Infrastructure NPRM,* the Commission sought comment on the measures, if any, it should take to expedite the review processes for Tribal Nations and NHOs, either by amending the Wireless Facilities NPA or otherwise, while assuring that potential effects on historic preservation are fully evaluated. The Commission sought comment on whether the procedures established by the *2005 Declaratory Ruling* (see Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations Under the Nationwide Programmatic Agreement, Declaratory Ruling, 20 FCC Rcd 16092 (2005) (*2005 Declaratory Ruling*)) were adequate to ensure the completion of section 106 review when a Tribal Nation or NHO is non-responsive. It also sought comment on whether these processes could be revised in a manner that would permit applicants to self-certify their compliance with the section 106 process and therefore proceed once they meet the Commission's notification requirements, without requiring Commission involvement. The Commission asked whether such an approach would be consistent with the Wireless Facilities NPA and with the Commission's legal obligations. The Commission also asked whether the information in FCC Form 620 or 621 is sufficient to meet the requirement that ''all information reasonably necessary'' has been provided to the Tribal Nation or NHO.

66. In response to the *Wireless Infrastructure NPRM,* many commenters contend that further improvements to the process for engaging Tribal Nations and NHOs in Section 106 review are warranted. Evidence in the record indicates that there are often delays associated with Tribal review and that these delays can significantly affect service providers' ability to complete Section 106 review and move toward deployment. Delays associated with Tribal engagement can be substantial, with estimates of the average time to complete Tribal review ranging between 75 and 110 days per project where Tribal review is required. Several Tribal

Nations, however, dispute such arguments and note that they provide timely responses to communications from applicants in the vast majority of cases. With the number of deployments needed to support expanded 4G and 5G network technologies, service providers are increasingly concerned about the delays they are experiencing. Tribal representatives, however, contend that their ability to provide timely responses is impeded by some applicants who fail initially to provide them with sufficient information to determine their interest in a proposed project. They contend that, without sufficient information, they are forced to go back to applicants and request the information they need and that delays often result from repeated attempts to obtain needed information. For example, Tribal commenters have noted applicants' omission of key information, such as a precise location and a full description of the proposed project, and information needed to assess potential effects. They also point out that many delays are the result of applicants' error, such as failing to submit information to the Tribal point of contact identified in TCNS, or in some instances, submitting information to the wrong Tribal Nation altogether.

67. The FCC takes several steps in this Order to make the Tribal participation process more efficient for applicants, Tribal Nations, and NHOs.

68. First, to address Tribal concerns with receiving insufficient information to identify potentially affected historic properties, the FCC clarifies that going forward applicants must provide all potentially affected Tribal Nations and NHOs with a Form 620 (new towers) or Form 621 (collocations) submission packet in cases where this form is prepared for the SHPO following the requirements established in the Wireless Facilities NPA. While applicants retain the option of sending an initial notification of a proposed project to Tribal Nations and NHOs through TCNS without a Form 620/621 submission packet to provide an early opportunity for a Tribal Nation or NHO to disclaim interest, as described further below, the time period for a Tribal response will not begin to run until an applicant sends the Form 620/621 submission packet or, when no Form 620/621 is required, the alternative submission discussed below. The Form 620/621 submission packet contains detailed information about proposed facilities, including their proposed location(s); the dimensions, scale, and description of proposed projects; and information about the potential direct effects and visual effects of the project. It also requires applicants to provide their contact information and to include attachments providing additional detail, such as photographs and maps of the proposed site. The FCC agrees with Tribal Nations and other commenters who contend that providing Tribal Nations and NHOs with this detailed set of information at the initial notification stage will enable them to determine more quickly whether a project may affect historic properties of religious and cultural significance to them. The FCC emphasizes to applicants the importance of completing the Form 620/621 submission packet accurately and completely. Complete and accurate information about proposed facilities, including, for example, a specific and correct site address or a detailed description of the location of proposed facilities if no address is available as well as a complete description of all elements of the proposed facility, is critical to enable Tribal Nations and NHOs to identify potentially affected historic properties. Thus, if this information is inaccurate or incomplete, the FCC will not consider the time period for Tribal response to have started.

69. The FCC disagrees that requiring applicants to send their Form 620/621 submission packet to Tribal Nations and NHOs would be inconsistent with the requirements of the Wireless Facilities NPA. To the contrary, the Wireless Facilities NPA requires that applicants provide Tribal Nations and NHOs with ''all information reasonably necessary for the [Tribal Nation] or NHO to evaluate whether [h]istoric [p]roperties of religious and cultural significance may be affected.'' The process the FCC establishes here is consistent with this requirement because it provides Tribal Nations and NHOs with more complete information to evaluate proposed projects. Moreover, under the revised process the FCC establishes, applicants retain the ability to make initial notifications to Tribal Nations and NHOs before sending them Form 620/621 submission packets.

70. The FCC finds that providing the detailed information included in the Form 620/621 submission packet constitutes a reasonable and good faith effort to provide the information reasonably necessary for Tribal Nations and NHOs to ascertain whether historic properties of religious and cultural significance to them may be affected by the undertaking. The record shows that some Tribal Nations request that applicants provide information such as ethnographic reports, SHPO concurrence letters, and other information in excess of what the Wireless Facilities NPA requires to be included in a Form 620/621 submission packet before making an initial determination about their interest in a proposed project. The FCC clarifies that to the extent that any such information exceeds what is required under the Wireless Facilities NPA to be included in a Form 620/621 submission packet, the FCC requires the applicant to provide it, if necessary, only after a Tribal Nation or NHO has indicated that a historic property may be affected and has become a consulting party. Thus, to the extent that Tribal Nations or NHOs currently have auto replies in TCNS requesting additional information from applicants, the Commission will remove such language.

71. The FCC further clarifies that, if a Tribal Nation or NHO conditions its response to an applicant's submission packet on the receipt of additional information beyond that required in the Form 620/621 submission packet, an applicant should respond that the FCC does not require the applicant to provide this information. If the Tribal Nation or NHO subsequently fails to indicate concerns about a historic property of traditional religious and cultural significance that may be affected by the proposed construction, the applicant may make use of the process described below for addressing instances in which Tribal Nations and NHOs do not initially respond. To the extent that Tribal Nations or NHOs seek to clarify information presented in the Form 620/621 submission packet, such as by requesting an explanation of the photographs included in the submission packet, the FCC encourages applicants to provide the requested clarifications, and the parties may copy Commission staff on communications related to such requests. If circumstances require the Commission to help resolve a dispute about whether a Form 620/621 submission packet or alternative submission has been properly completed or other cases that may present unique issues, Commission staff will provide assistance when it is requested. In bringing a dispute to Commission staff, an objecting party should provide a complete and detailed explanation of the basis of the dispute, evidence regarding the information the applicant has provided to the Tribal Nation or NHO, and all communications between the applicant and the Tribal Nation or NHO.

72. In cases in which a Form 620/621 submission packet is not required to be prepared for the SHPO because the construction does not require SHPO review, the FCC adopts a different procedure. The Wireless Facilities NPA

ordinarily excludes from Section 106 review by the SHPO, the Commission, and the ACHP certain categories of undertakings deemed to have minimal to no potential to affect historic properties. For two of these excluded categories, however, applicants are still required to identify and contact Tribal Nations and NHOs to ascertain whether historic properties of religious or cultural significance to them may be affected. In these instances where no Form 620/621 submission packet is otherwise prepared, the FCC requires applicants to provide Tribal Nations and NHOs with information adequate to fully explain the project and its location. At minimum, this alternate submission must include contact information for the applicant, a map of the proposed location of the facility, coordinates of the proposed facility, a description of the facility to be constructed including all proposed elements (such as, for example, access roads), and a description of the proposed site, including both aerial and site photographs. Given that applicants are not otherwise required affirmatively to identify historic properties within the Area of Potential Effects for these undertakings (other than the limited inquiry necessary to determine whether the exclusion applies), the FCC finds that this package constitutes an adequate baseline set of information to enable Tribal Nations and NHOs to comment on these projects. The FCC therefore disagrees with the contention that the FCC is required to provide Tribal Nations and NHOs with all the information contained in Form 620/621 in these instances.

73. The FCC turns next to the timeframe for Tribal Nations and NHOs to respond to notifications by indicating any concerns about potentially affected historic properties. The FCC clarifies that the 30-day period for a Tribal response provided in the Wireless Facilities NPA will begin to run on the date that the Tribal Nation or NHO can be shown to have received or may reasonably be expected to have received the Form 620/621 submission packet (or the alternative submission where no 620/621 packet has been prepared). Consistent with existing practice, applicants may use TCNS to provide an initial notification to Tribal Nations and NHOs about proposed facility deployments. As noted above, TCNS automatically notifies Tribal Nations and NHOs of proposed construction within the geographic areas they have identified as potentially containing historic properties of religious and cultural significance to them. A Tribal Nation or NHO receiving a notification of proposed construction through TCNS, however, is under no obligation to respond until it receives a Form 620/621 submission packet (or alternative submission). The 30-day period for a response indicating whether the Tribal Nation or NHO has concerns about a historic property of traditional religious and cultural significance that may be affected by the proposed construction will begin to run on the date that the Tribal Nation or NHO can be shown to have been, or may reasonably be expected to have been, notified that a Form 620/621 submission packet or alternative is available for viewing via TCNS. The FCC is cognizant of Tribal concerns that applicants sometimes submit information to outdated points of contact or deviate from Tribal Nations' preferred means of communications. Therefore, the FCC reminds applicants that, consistent with the requirements in Section IV of the Wireless Facilities NPA, contact and communications shall be made in accordance with preferences expressed by the Tribal Nation or NHO, and misdirected communications will not begin the period for Tribal response unless and until they are actually received. Where the Tribal Nation or NHO is notified by email that a Form 620/621 submission packet has been submitted, the submission packet is presumed to have been received on the day the submission packet is provided. Where the applicant sends the notification through the mail, the FCC will presume that the packet may reasonably be expected to have been received by no later than the fifth calendar day after the date it is sent.

74. In addition to clarifying when the initial 30-day timeframe for Tribal response begins to run, the FCC also establishes a new procedure to address instances in which Tribal Nations or NHOs fail to respond after receiving a Form 620/621 submission packet. As noted above, the *2005 Declaratory Ruling* established a process to enable an applicant to proceed toward construction when a Tribal Nation or NHO does not respond to a TCNS notification in a timely manner. The Wireless Facilities NPA requires that, if an applicant does not receive a response after contacting a Tribal Nation or NHO, the applicant is required to make a reasonable attempt to follow up. Under the *2005 Declaratory Ruling,* if the Tribal Nation or NHO does not respond to a second contact within 10 calendar days after the initial 30-day period, the applicant can refer the matter to the Commission for guidance. Upon receiving a referral, the Commission contacts the Tribal Nation or NHO by letter or email to request that it inform the Commission and the applicant within 20 calendar days whether it has an interest in participating in the Section 106 review. In addition, Commission staff attempts a phone call unless the Tribal Nation or NHO has indicated it does not wish to receive calls. The Commission also informs the applicant when its letter or email has been sent. If the Tribal Nation or NHO does not respond within 20 days of the date of the Commission's written communication, it is deemed to have no interest in pre-construction review and the applicant's pre-construction obligations under the Wireless Facilities NPA are discharged with respect to that Tribal Nation or NHO. Together, these procedures provide for a 60-day process for resolving cases where a Tribal Nation or NHO fails to provide a timely response to an initial notification provided through TCNS.

75. In this Order, the FCC replaces the procedures outlined in the *2005 Declaratory Ruling* with new procedures that establish a 45-day process for moving forward with construction in cases in which Tribal Nations or NHOs do not respond after having been given the opportunity to review a Form 620/621 submission packet, or when no Form 620/621 submission is required, an alternative submission. Under the process the FCC adopts here, if an applicant does not receive a response within 30 calendar days of the date the Tribal Nation or NHO can be shown or may reasonably be expected to have received notification that the Form 620/621 submission packet (or alternative submission) is available for review, the applicant can refer the matter to the Commission for follow-up. To facilitate prompt processing of its request, the applicant may submit its referral via TCNS. Upon receiving a referral, the Commission will contact promptly (and, in any case, within five business days) the Tribal Nation's or NHO's designated cultural resource representative by letter and/or email to request that the Tribal Nation or NHO inform the Commission and applicant within 15 calendar days of the date of the letter and/or email of its interest or lack of interest in participating in the section 106 review. The Commission also will inform the applicant when this letter and/or email has been sent, either by copying it on the correspondence or by other effective means. If the Tribal Nation or NHO does not respond within 15 calendar days, the applicant's pre-construction obligations are discharged with respect

to that Tribal Nation or NHO. As discussed above, the FCC establishes here that the information in the Form 620/621 submission packet (or the alternative submission where no 620/621 packet has been prepared) will be considered sufficient for Tribal Nations and NHOs to comment on proposed projects.

76. The FCC concludes that these revised procedures satisfy the Commission's obligation to make reasonable and good faith efforts to identify Tribal Nations and NHOs that may attach religious and cultural significance to historic properties that may be affected by an undertaking, as specified by the Wireless Facilities NPA and as required under the NHPA and the rules of the ACHP. The revised procedures the FCC adopts will provide Tribal Nations and NHOs with a total period of 45 days to provide a response to an applicant's notification of a proposed construction. The 45-day period will also include a Commission-initiated reminder after 30 days have elapsed. While the process the FCC adopts provides less time for Tribal review than the process established in the *2005 Declaratory Ruling,* it nonetheless allows a longer opportunity to respond than the 30-day period that the Wireless Facilities NPA stipulates as an ordinarily reasonable period for Tribal review. Overall, the FCC concludes that the procedures the FCC adopts here are reasonable and consistent with its consultation responsibilities.

77. The FCC rejects requests for the Commission to allow applicants to move forward unilaterally without Commission involvement in the absence of a response from a Tribal Nation or NHO. The processes the FCC establishes herein are consistent with the provisions of the Wireless Facilities NPA that outline applicants' responsibilities with respect to Tribal Nations and NHOs. Section IV of the Wireless Facilities NPA stipulates that a Tribal Nation's or NHO's failure to respond to a single communication does not establish that the Tribal Nation or NHO is not interested in participating in the review of a proposed construction, and it requires applicants to seek guidance from the Commission in cases where a Tribal Nation or NHO does not respond to the applicant's inquiries. The revised procedures the FCC adopts here are faithful to these requirements by providing multiple opportunities for Tribal Nations and NHOs to express their interest in proposed constructions and by involving the Commission in the consultation process when an applicant has not received a response to its attempted communications. Moreover, the FCC expects that the revised procedures the FCC establishes here will reduce delays and facilitate resolution of cases where Tribal Nations or NHOs have not provided timely responses.

3. Tribal Fees

78. In the *Wireless Infrastructure NPRM,* the FCC sought comment on a number of questions related to fees charged by Tribal Nations for their participation in the section 106 process. In this section, the FCC interprets the Commission's and applicants' obligations under the NHPA and the Wireless Facilities NPA, in light of ACHP guidance, to clarify that applicants are not required to pay fees requested by Tribal Nations or NHOs that have been invited to participate in the section 106 process. The FCC also clarifies the circumstances under which an applicant may be required to retain an appropriately qualified expert, who may be a representative of a Tribal Nation or NHO, to perform consultant services for which that expert may reasonably expect to be compensated.

79. Neither the NHPA nor the ACHP's implementing regulations expressly address fees, nor does the Wireless Facilities NPA, but the ACHP, as the agency charged with implementing the NHPA, has issued guidance on the subject in a 2001 memorandum and as part of a handbook last issued in 2012. The ACHP's guidance repeatedly makes clear that the proponent of an undertaking is not required to accede to unilateral requests for payment. Rather, the agency (in its case, through its applicants) ''has full discretion'' on how to fulfill its legal obligation—namely the obligation to make ''reasonable and good faith efforts'' to identify historic properties that may be affected by its undertaking and invite potentially interested Tribal Nations and NHOs to be consulting parties.

a. Up-Front Fees

80. Consistent with the Wireless Facilities NPA, once an applicant, through TCNS, has identified that particular Tribal Nations or NHOs may attach religious and cultural significance to historic properties located in the area that may be affected by an undertaking, the applicant contacts each such Tribal Nation or NHO, typically through TCNS, to ascertain whether there are in fact such properties that may be affected. The record indicates that, at this stage in the section 106 review, some Tribal Nations are directing applicants to pay an ''up-front fee'' before the Tribal Nation will respond to the contact. At no time to date has the Commission explicitly endorsed such up-front fees. The FCC now clarifies, consistent with ACHP guidance, that applicants are not required to pay Tribal Nations or NHOs up-front fees simply for initiating the Section 106 consultative process.

81. At the time the Wireless Facilities NPA was adopted and TCNS was implemented, Tribal Nations generally did not request fees to review proposed constructions upon receiving notification. Over time, however, some Tribal Nations began assessing fees at notification, and gradually it became a more common practice. In addition, the amounts of these fees have increased significantly over the years, and industry commenters assert that the rate of increase itself has risen sharply in recent years. CCA contends, for example, that one of its member companies reports that the average amount it pays in Tribal fees increased from $381.67 per project in 2011 to more than $6,300 for projects in late 2016 to early 2017. Consequently, industry commenters ask that the Commission provide guidance on up-front fees. AT&T, for example, asks the Commission to establish that, ''if a carrier does not ask for 'specific information and documentation' from the Tribal Nation, pursuant to the ACHP Handbook, then no contractor relationship has been established and no payment is necessary.'' NATHPO, on the other hand, argues that the relative rarity of instances in which tower construction has harmed historic properties demonstrates that the current system works, and it urges the Commission not to take actions that would limit Tribal capacity to become involved in the process.

82. The ACHP's 2001 fee guidance memorandum addresses the practice of Tribal Nations and NHOs charging fees for their participation in the section 106 process. In that memorandum, the ACHP distinguishes between Tribal Nations participating in section 106 reviews in their capacity as government entities with a designated role in the process versus the possibility that they may be engaged to provide services in a different capacity, that of a consultant or contractor. The former capacity entails no obligation or expectation for the applicant to pay fees. The ACHP 2001 Fee Guidance explains that ''the agency or applicant is not required to pay the tribe for providing its views.'' The ACHP 2012 Tribal Consultation Handbook echoes this guidance, and clearly states that no ''portion of the NHPA or the ACHP's regulations require[s] an agency or an applicant to

pay for any form of tribal involvement.'' Further, ''[i]f the agency or applicant has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult and is free to move to the next step in the section 106 process.'' The Handbook does acknowledge that there may be circumstances in which payment is reasonably expected, but not merely for acting in the Tribal Nation's governmental capacity:

> . . . during the identification and evaluation phase of the Section 106 process when the agency or applicant is carrying out its duty to identify historic properties that may be significant to an Indian tribe, it may ask a tribe for specific information and documentation regarding the location, nature, and condition of individual sites, or even request that a survey be conducted by the tribe. In doing so, the agency or applicant is essentially asking the tribe to fulfill the duties of the agency in a role similar to that of a consultant or contractor. In such cases, the tribe would be justified in requesting payment for its services, just as is appropriate for any other contractor.

83. The up-front fees requested by some Tribal Nations for providing their initial assessment as part of the Section 106 review process do not compensate Tribal Nations for fulfilling specific requests for information and documentation, or for fulfilling specific requests to conduct surveys. They are more in the nature of a processing fee, in exchange for which the Tribal Nation responds to the applicant's contact, and to the extent necessary, reviews the materials submitted before indicating whether the Tribal Nation has reason to believe that historic properties of religious and cultural significance to it may be affected. In recognition of ACHP guidance and having reviewed the record, the FCC affirms that applicants are not required to pay up-front fees to Tribal Nations and NHOs to initiate section 106 reviews. Thus, fees need not be paid to obtain a response to an applicant's initial contact with a Tribal Nation or NHO and, to the extent that Tribal Nations or NHOs currently have auto replies in TCNS requesting that applicants pay up-front fees, the Commission will remove such language. If a Tribal Nation or NHO nevertheless purports to condition its response to an applicant's TCNS contact on the receipt of up-front compensation, the FCC will treat its position as a failure to respond, and the applicant will be able to avail itself of the process discussed above for when a Tribal Nation or NHO fails to supply a timely response. The FCC finds such an approach to be consistent with the ACHP's guidance that, where the agency or applicant ''has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult and is free to move to the next step in the section 106 process.''

84. A number of Tribal Nations have argued that Tribal sovereignty prohibits the Commission from establishing rules about fees. The FCC emphasizes that no action it takes here questions or interferes with Tribal Nations' rights to act as sovereigns. The FCC does not dictate or proscribe any actions by Tribal Nations. The FCC simply clarifies that nothing in the applicable law of the United States—the NHPA, ACHP rules, and the Wireless Facilities NPA—*requires* applicants (or the Commission for that matter) to pay up-front fees as part of the Section 106 process. Accordingly, Tribal Nations remain free to request upfront fees and applicants may, if they choose, voluntarily pay such fees. If, however, a Tribal Nation or NHO opts not to provide its views without an up-front payment, and the applicant does not voluntarily agree to provide the payment, consistent with the ACHP's guidance, its obligations have been satisfied and the FCC may allow its applicant to proceed with its project after the 45-day period described above.

85. Some Tribal Nations assert that they are entitled to up-front fees to compensate them for the effort or cost of participating in the section 106 process. For instance, some Tribal commenters have indicated that they rely upon up-front fees to fund their section 106 activities or to eliminate the administrative burden of calculating actual costs incurred in reviewing each TCNS submission. Other Tribal commenters maintain that they should be compensated because their up-front fees are meant to cover their actual average costs associated with reviewing and commenting on commercial projects. While this may be true, the fact remains that the law and applicable guidance do not require the Commission and its applicants to compensate Tribal Nations and NHOs for providing their comments or views in the context of the section 106 process. Moreover, in light of its decision above to require that an applicant provide a completed FCC Form 620/621 or alternative submission when a project is proposed within a Tribal Nation's or NHO's geographic area of interest, the FCC finds that in most instances, a Tribal Nation or NHO should have sufficient information to provide comment on the undertaking and its potential to affect an historic property of significance to it. In assessing the applicant's submission during the initial consultation stage, the FCC believes it reasonable to expect a Tribal Nation or NHO to rely on information already in its possession. If a Tribal Nation elects to conduct research to obtain this information, however, the ACHP's guidance does not assign responsibility to applicants to fund such research.

86. While certain commenters claim they should be entitled to a share of revenue from commercial ventures that may impact their cultural heritage, the fact that its applicants frequently are for-profit entities is irrelevant to whether fees for non-consultant services should be required. Finally, some commenters assert that Tribal Nations act in a consultant capacity and therefore are entitled to compensation at all stages of a project, including from the moment the review process begins. The FCC disagrees, as such an interpretation conflicts with ACHP guidance indicating when fees may be appropriate. In the section that follows, the FCC discusses the ACHP's guidance on consultant fees.

b. Consultant Fees

87. As noted above, the ACHP's 2001 fee guidance memorandum states that, when a Tribal Nation ''fulfills the role of a consultant or contractor'' when conducting reviews, ''the tribe would seem to be justified in requiring payment for its services, just as any other contractor,'' and the applicant or agency ''should expect to pay for the work product.'' The FCC sought comment in the *Wireless Infrastructure NPRM* on the circumstances under which a Tribal Nation or NHO might act as a contractor or consultant and expect compensation, as well as whether and how the Commission might provide guidance regarding the fees to be paid for such services. The FCC also sought input on how a Tribal Nation's or NHO's request for fees interacts with the obligation to use reasonable and good faith efforts to identify historic properties.

88. In addition to requests for up-front fees addressed above, Tribal Nations have requested payment for activities undertaken after the initial determination that historic properties are likely to be located in the site vicinity, including monitoring and other activities directed toward completing the identification of historic properties as well as assessing and mitigating the project's impacts on those properties. As described more fully below, the FCC finds that while an applicant may

negotiate and contract with a Tribal Nation or NHO for such services, an applicant is not obligated to hire a Tribal Nation or accede to Tribal requests for fees in the absence of an agreement.

89. As noted above, ACHP guidance states that no ''portion of the NHPA or the ACHP's regulations require an agency or an applicant to pay for any form of Tribal involvement'' in section 106 reviews. Thus, as discussed above, when a Tribal Nation or NHO is participating in the section 106 review process in response to a notification or request to consult on the identification of historic properties, payment is not required. The ACHP acknowledges that an agency or applicant may *ask* a Tribal Nation or NHO to perform work, such as providing specific information or documentation or conducting surveys—just as the applicant may negotiate a commercial agreement with any other qualified contractor. If the applicant asks the tribal Nation or NHO to perform work, ''the agency or applicant essentially is asking the tribe to fulfill the duties of the agency in a role similar to that of a consultant or contractor. In such cases, the tribe would be justified in requesting payment for its services, just as is appropriate for any other contractor.'' Applying the ACHP's guidance, the FCC finds that, if an applicant asks a Tribal Nation or NHO to perform work of the type described by the ACHP, the applicant should expect to negotiate a fee for that work. If, however, the applicant and the Tribal Nation or NHO are unable to agree on a fee, the applicant may seek other means to fulfill its obligations. The ACHP Handbook specifically addresses this scenario: ''The agency or applicant is free to refuse just as it may refuse to pay for an archaeological consultant, but the agency still retains the duties of obtaining the necessary information for the identification of historic properties, the evaluation of their National Register eligibility, and the assessment of effects on those historic properties, through reasonable means.'' In other words, so long as the underlying obligation to make reasonable and good faith efforts to identify historic properties is satisfied, the applicant is not bound to any particular method of gathering information.

90. The FCC emphasizes that while applicants must make reasonable and good faith efforts, they are not required to make every possible effort to identify potentially affected properties. In fact, the ACHP regulations ''*do not require* identification of all properties'' (emphasis in original). The ACHP makes this clear in its guidance on ''Meeting the 'Reasonable and Good Faith' Identification Standard in section 106 Review.'' In that document, the ACHP states that:

> ''[i]t is . . . important to keep in mind what a reasonable and good faith effort does *not* require:
>
> The ''approval'' of a SHPO/THPO or other consulting party. The ACHP, SHPO/THPO and other consulting parties advise and assist the federal agency official in developing its identification efforts, but do not dictate its scope or intensity.
>
> Identification of every historic property within the APE. One of the reasons the ACHP's regulations contain a post-review discovery provision (36 CFR 800.13) is that a reasonable and good faith effort to identify historic properties may well not be exhaustive and, therefore, some properties might be identified as the project is implemented.''

That is to say, perfection is not required in the section 106 review process. Thus, the mere possibility that *every* possible historic property may not be identified does not inherently render the applicant's efforts inadequate.

91. In addition to charging fees to assist in the identification of historic properties, some Tribal commenters have suggested that they are entitled to compensation for monitoring or other services they find necessary to assess impacts and mitigate adverse effects once historic properties have been identified. In these instances, the same principle applies as in the case of fee requests to assist in identification of historic properties. That is, the applicant is ultimately responsible for satisfying its obligations under the FCC's rules, including the Wireless Facilities NPA. The applicant must invite a Tribal Nation or NHO that identifies a historic property of religious and cultural significance that may be affected to become a consulting party and must provide it with all of the information, copies of submissions, and other prerogatives of a consulting party. The Tribal Nation or NHO will have the opportunity to provide its views on the potential effect on the identified historic property, and to comment on alternatives to avoid or mitigate any harm. The applicant is not presumed to be required to engage the services of any particular party, including a Tribal Nation or NHO, either to identify historic properties or to monitor efforts to avoid or minimize harm. An applicant is free to engage a Tribal Nation or NHO as a paid consultant at any point in the section 106 process, but it is under no obligation to do so. While a Tribal Nation or NHO, in certain circumstances, may possess the greatest knowledge relevant to assessing a particular site, the obligation placed on the Commission and applicants under the ACHP rules and the Wireless Facilities NPA requires only a reasonable and good-faith review.

92. Consistent with the ACHP's guidance, the FCC finds that an applicant is not required to hire any particular person or entity to perform paid consultant services. To the contrary, the FCC expects that competition among experts qualified to perform the services that are needed will generally ensure that the fees charged are commensurate with the work performed. To ignore these dynamics would be fundamentally inconsistent with the notion that an agency and its applicants throughout the section 106 process are only required to exercise reasonable efforts. The applicant may generally hire any properly qualified consultant or contractor when expert services are required, whether in the course of identifying historic properties, assessing effects, or mitigation. The appropriate qualifications will depend upon the work to be performed. For example, different qualifications may be needed to confirm the presence or absence of archeological properties during a site visit, to apply traditional knowledge in assessing the significance of above-ground features, or to monitor construction. In any event, the Wireless Facilities NPA stipulates that with respect to the identification and evaluation of historic properties, any assessment of effects shall be undertaken by a professional who meets the Secretary of the Interior's Professional Qualification Standards.

93. In addition, the FCC finds that inherent in the ACHP's guidance recognizing that an applicant may choose to engage a Tribal Nation or NHO to provide services is the corollary that a Tribal Nation or NHO need only be compensated for fulfilling its role as a consultant or contractor where there is an agreement in place between the Tribal Nation and the applicant to perform a compensable service. Without such an agreement, the applicant has not undertaken to engage the Tribal Nation or NHO, and it is not compelled to comply with a unilateral request for fees.

94. Finally, there may be individual cases in which the applicant and a Tribal Nation or NHO disagree on whether the applicant has met the reasonable and good faith standard in connection with the hiring of paid consultants, including considerations of whether consultant services are necessary, what qualifications are required, and whether the applicant's chosen consultant meets those

qualifications. In particular, there may be disputes about whether the applicant has obtained a qualified consultant or has unreasonably refused to use a Tribal Nation or NHO as a consultant in light of the amount of the fee requested by the Tribal Nation or NHO for such services. In such cases, either party may ask the Commission to decide whether the applicant's obligations have been satisfied, and Commission staff will continue to make determinations where it has been provided with complete information and evidence as described below. In case of a dispute, the applicant will have the burden of stating facts to substantiate its claim that it has met the reasonable and good faith standard in connection with the hiring of paid consultants within 15 days of being directed to do so. After the applicant has stated such facts, the objecting party will then have the burden of stating facts showing that the applicant has not met such standard within 15 days of being directed to do so. In determining whether the reasonable and good faith standard has been met, Commission staff will consider all relevant facts, including but not limited to ''the special expertise possessed by Indian tribes and Native Hawaiian organizations in assessing the eligibility of historic properties that may possess religious and culture significance to them;'' the nature and significance of the historic property at issue, the fees sought by the Tribal Nation or NHO; the qualifications and expertise of, and fees charged by, other paid consultants, either on the project in question or in comparable situations; the qualifications of any consultant that the applicant wishes to engage in lieu of a Tribal consultant, and all actions the applicant has taken to satisfy its obligations.

B. Reforming the FCC's Environmental Review Process

95. Separate and apart from the section 106 process, the *Wireless Infrastructure NPRM* sought comment on ways the Commission might streamline its environmental compliance regulations and processes while ensuring it meet its NEPA obligations. In particular, the Commission sought comment on whether to revise or eliminate § 1.1307(a)(6) of the rules, which governs EAs or proposed facilities located in floodplains, and on any measures it could take to reduce unnecessary processing burdens consistent with NEPA. The FCC now takes actions to address both of these concerns.

96. The Commission's rules require an applicant to prepare and file an EA if its proposed construction meets any of several conditions specified in the rules, designed to identify construction that is located in an environmentally sensitive area or that has other potentially significant environmental impacts. All other constructions are categorically excluded from environmental processing unless the processing bureau determines, in response to a petition or on its own motion, that the action may nonetheless have a significant environmental impact. In implementing NEPA, the Commission has delegated preparation of EAs to applicants. Nevertheless, the Commission is responsible for the EA's content, scope, and evaluation of environmental issues.

97. If the applicant files an EA, then members of the public are given the opportunity to file informal complaints or petitions to deny. Commission staff review the application and any informal complaints or petitions to deny that have been filed, and consider whether the proposed facility will cause any significant impacts on the environment. If such impacts are found, the applicant is given an opportunity to reduce, minimize, or eliminate the impacts by changing some aspect of the project. If no such impacts are found, or once any impacts that are found have been reduced below the level of significance, then the Commission staff completes the environmental review process by issuing a Finding of No Significant Impact (FONSI). The rules forbid the applicant from initiating any construction activities until the FONSI is issued.

98. The following sections (1) adopt changes to the rules governing facilities located in floodplains; and (2) implement procedural changes to accelerate the environmental review process. Consistent with the Commission's past practice, where other Federal agencies have assumed responsibility for environmental review of proposed facilities, such as the Bureau of Indian Affairs on Tribal lands it oversees, the Commission defers to those agencies' own NEPA practices. The FCC continues that policy in this order, and therefore the measures adopted below do not apply on Tribal lands.

1. Environmental Assessments of Facilities Located in Floodplains

99. In the *Wireless Infrastructure NPRM,* the Commission sought comment on whether to revise or eliminate § 1.1307(a)(6) of the rules, which governs environmental assessments of proposed facilities located in floodplains. Specifically, the Commission sought comment on whether to revise its rules to remove the EA requirement for ''siting in a floodplain when appropriate engineering or mitigation requirements have been met.'' The Commission recognized that many parties advocated that ''EAs . . . be eliminated for deployments on flood plains . . . if a site will be built at least one foot above the base flood elevation and a local building permit has been obtained.'' For the reasons discussed below, the FCC hereby amends this rule to eliminate the requirement for an EA if a proposed facility meets certain engineering requirements intended to mitigate environmental effects.

100. A floodplain is defined as a relatively flat lowland area adjacent to inland or coastal waters that faces a significant chance of flooding each year. Large portions of the country lie within floodplains, including areas where an estimated 10 percent of Americans live. The devastating consequences of large-scale flooding caused by natural disasters—such as Hurricanes Harvey, Irma, Maria, and Nate within the past year—starkly illustrate the potential hazards that flooding may pose to life and property in flood-prone areas. In particular, the flooding in the wake of these storms ''devastated . . . the communications networks that serve'' communities and poses concerns about ''the resilience of the communications infrastructure [and] the effectiveness of emergency communications'' in these areas.

101. To address these risks, Congress has enacted laws intended to anticipate and minimize flood risks by encouraging development outside flood-prone areas if possible and by promoting land-management policies and construction techniques that reduce or mitigate the risk of flood damage. The Commission's rule, which references Executive Order 11988, requires the submission of an EA for facilities to be constructed in a floodplain.

102. Section 1.1307(a)(6) of the Commission's rules requires a party proposing to deploy a facility such as a wireless antenna tower in a base floodplain to submit an EA. The EA requirement under this provision is triggered solely by the facility's location in a floodplain. The Commission's rules, however, do not identify the criteria an applicant must satisfy to address potential environmental effects of facilities in floodplains.

103. Informal staff guidelines available on the Commission's website state that EAs for proposed facilities located in floodplains should include

(1) a copy of the section of a Federal Emergency Management Agency (FEMA) map showing the proposed site location; and (2) a copy of the building permit issued by the local jurisdiction (or, if such a permit is unavailable, other independent verification) confirming that the proposed structure will be at least one foot above the base flood elevation of the floodplain. Thus, the primary focus of Commission review in issuing a FONSI is whether the facility is in the floodplain and, if it is, whether the proposed structure is at least one foot above the base flood elevation of that floodplain.

104. The FCC finds that a more streamlined NEPA review framework would be as effective as the existing rules in carrying out its NEPA obligations with respect to facilities located in floodplains and would more efficiently promote its infrastructure deployment goals. Specifically, as discussed below, the FCC will dispense with the existing requirement that an applicant file an EA solely due to the location of a proposed facility in a floodplain, so long as such proposed facility, including all associated equipment, is at least one foot above the base flood elevation of the floodplain. By avoiding the direct costs of preparing unnecessary EAs, as well as the costly impact of procedural delays, this change will increase providers' capacity to invest in deploying more facilities; and the time saved by skipping the time-consuming review process will enable them to accelerate such deployments. At the same time, the one-foot elevation requirement will continue to ensure that such deployments are properly sited to avoid adverse floodplain impacts.

105. Comments filed by state transportation officials, infrastructure developers, and wireless carriers support its conclusion that the current floodplain-related EA filing and review process imposes excessive burdens that are not justified by offsetting benefits. The Washington State Department of Transportation points out that communications projects often ''can be located in a floodplain without having a direct or indirect impact on floodplain function,'' and accordingly, suggests that an EA should not be required routinely ''solely because an action is sited in a floodplain.'' Several infrastructure and service providers report that the vast majority of the EAs they have been required to prepare were for deployments sited in floodplains, yet the Commission staff ultimately issued FONSIs for all of them, with no need for mitigation measures or other changes. Preparation of such EAs may require consulting services that, according to some commenters, often cost thousands of dollars and several months of time.

106. Many parties argue that EAs for floodplain deployments are redundant because local zoning authorities review the same projects and grant construction permits only after confirming that they comply with floodplain-related requirements in their building codes. These parties contend that the Commission conducts no independent analysis or data-gathering, but rather simply relies on local authorities' building permits to confirm compliance with the identical floodplain-related criterion that the proposed structure will be at least one foot above the base flood elevation. In light of these considerations, many commenters argue that the Commission should revise its rules to require EAs for deployments sited in floodplains *only* if the facilities and associated equipment are *not* located at least one foot above the base flood elevation and/or have not been issued building permits confirming that they satisfy this criterion. Others contend that the Commission's floodplain EA requirement should be eliminated altogether.

107. The FCC acknowledges concerns raised by commenters about maintaining technical requirements for constructing facilities in floodplains to mitigate the risks of damage caused by hurricanes. The 2017 U.S. hurricane season highlights the critical importance of employing proper engineering and design techniques to mitigate or minimize flood-related risks, assure public safety, maintain the resiliency of communications networks, and protect the natural environment. The FCC notes that state and local zoning and construction requirements, FEMA requirements, and other relevant laws will, of course, continue to ensure that these important considerations are addressed.

108. To address both industry's efficiency concerns and the concerns expressed in the record about the potential effects of inappropriate construction in floodplains, the FCC amends § 1.1307(a)(6) to eliminate the requirement that applicants file an EA for facilities to be constructed on a flood plain, provided that the facilities, including all associated equipment, are constructed at least one foot above the base flood elevation. The FCC believes that facilities built in compliance with this new rule will ''reduce the risk of flood loss [and] minimize the impact of floods on human safety, health and welfare.'' Accordingly, provided that no other criteria trigger an EA under its rules, such projects will have no significant effects on the quality of the human environment, within the meaning of NEPA, that would require the preparation of EAs or other environmental processing.

109. The FCC concludes that this new, streamlined regulatory framework fully satisfies its obligations under NEPA and maintains regulatory oversight to ensure continued implementation of practices that protect against environmental degradation that otherwise could be caused by construction of facilities in floodplains. At the same time, the elimination of the EA-filing requirement and pre-construction environmental processing by the Commission will enable providers to build these facilities more rapidly and at lower cost. It thus will make a significant contribution towards advancing its objective of removing regulatory processes and burdens that dampen investment and hamper deployment of wireless communications infrastructure. As a result, this new framework for floodplain deployment should help promote expedited deployment of the facilities needed to bring advanced technologies and services to consumers across the country.

2. Timeframes for Commission To Act on Environmental Assessments

110. As noted above, the *Wireless Infrastructure NPRM* sought comment on ways the Commission could reduce unnecessary processing burdens by streamlining the environmental review procedures that it is required to conduct before the deployment of infrastructure is authorized. Here, the FCC commits to timeframes for reviewing and processing EAs in order to provide greater certainty and transparency to applicants, thereby facilitating broadband deployment.

111. The FCC's rules require that each filed EA be placed on public notice for a period of 30 days to allow for public input. For most towers for which an EA is submitted, the Commission issues a Finding of No Significant Impact (FONSI) approximately fifteen days after the close of the notice period. The fifteen days allows for timely informal complaints and petitions to deny to reach the reviewing staff and for administrative processing. Delays can occur if an EA is incomplete (*e.g.,* missing permits or other agency approvals), if the underlying application requires perfecting amendments, if an informal complaint or petition to deny is filed in response to the public notice, or if the staff determines additional information is needed in order to meet the Commission's NEPA obligations.

112. Industry commenters argue that NEPA compliance results in significant

delays. Some commenters complain about delays associated with EAs—which T-Mobile states may ''languish for an extended period of time—sometimes years,'' partly because the Commission is not subject to any processing timelines or dispute resolution procedures for EAs. WIA similarly argues that the environmental review process is a significant source of delay for deployment and shot clocks are needed to process EAs and to resolve environmental delays and disputes. On the other hand, American Bird Conservancy, an environmental organization, claims that industry claims are ''unfounded'' and that tower applications move through the FCC system on average within 45 days.

113. The FCC concludes that providing applicants with greater time certainty will benefit both applicants and the public that relies on their services, and will hasten deployment. In particular, for the great majority of cases in which the EA is complete as submitted and will support a FONSI, the FCC directs its staff to complete review and to issue the FONSI within 60 days from placement on notice, either by publication of a public notice or posting on the website (hereafter ''on notice''). The FCC concludes that this time period is reasonable and generally attainable for several reasons. First, staff currently completes review and processing of approximately 75 percent of EAs within 60 days, with most of the remainder completed within 90 days. The FCC is aware of no reason that the 60-day period for review and processing cannot be extended to all EAs that are complete as submitted, in the absence of public objections or substantive concerns. At the same time, the FCC believes a 60-day window is necessary in order to accommodate the 30-day notice period, additional time for timely objections to reach the reviewing staff, and administrative processing. The FCC also notes that 60 days is less than the three-month period that CEQ recommends as an outer boundary for agencies to complete their internal processing of EAs. To the extent current practice is to complete review and processing in less than 60 days, this action is not intended to prolong the review process.

114. Specifically, to accomplish this goal, the FCC directs it staff to review an EA for completion and adequacy to support a FONSI within 20 days from the date it is placed on notice. This review is necessary to determine whether the EA is missing information that is necessary to demonstrate whether the facility would significantly affect the environment for any of the reasons specified in § 1.1307(a) and (b) or that is otherwise required under the Commission's rules. Assuming the EA is complete and would substantively support a FONSI without requiring additional information, staff shall notify the applicant that, barring filing of an informal complaint or petition to deny, the bureau will issue a FONSI within 60 days from placement on notice. This process is in keeping with its obligations under NEPA to review and analyze potential environmental impacts of proposed actions, and to make FONSIs available to the public.

115. If, however, the EA is missing necessary information or if staff determines that it needs to consider additional information to make an informed determination, staff will notify the applicant of the additional information needed within 30 days after the EA is placed on notice. The additional period of up to 10 days beyond the initial 20-day review period will give staff an opportunity to prepare a request for more information. Where the missing information is not of a nature that is likely to affect the public's ability to comment on environmental impacts, then consistent with current practice, the application will not again be placed on notice. In such cases, staff is directed to complete the review and issue a FONSI, if warranted, within 30 days after the missing information is provided or 60 days after the initial notice, whichever is later.

116. Where information is missing that may affect the public's ability to comment on significant environmental impacts, the application will again be placed on notice when that information is received. In addition, Commission staff may identify reasons that a proposal may have a significant environmental impact outside of those the applicant is affirmatively required to consider under the Commission's rules, and in such cases, the applicant's provision of information or amendment of its application to address the concern will ordinarily require additional public notice. Under these circumstances, a new 60-day period for review and processing will begin upon publication of the additional notice.

117. Where an informal complaint or petition to deny is filed against an application containing an EA, the Commission's rules afford the applicant an opportunity to respond and the petitioner or objector an opportunity to reply. In such cases, the staff will endeavor to resolve the contested proceeding within 90 days after the relevant pleading cycle has been completed, or the FCC otherwise has received all information that the FCC has requested from the applicant.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Civil rights, Claims, Communications common carriers, Cuba, Drug abuse, Environmental impact statements, Equal access to justice, Equal employment opportunity, Federal buildings and facilities, Government employees, Income taxes, Indemnity payments, Individuals with disabilities, Investigations, Lawyers, Metric system, Penalties, Radio, Reporting and recordkeeping requirements, Telecommunications, Television, Wages.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 151, 154(i), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455, unless otherwise noted.

■ 2. Section 1.1307(a)(6) is revised to read as follows:

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

(a) * * *

(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.

* * * * *

■ 3. Section 1.1312 is amended by revising paragraph (e) to read as follows:

§ 1.1312 Facilities for which no preconstruction authorization is required.

* * * * *

(e) Paragraphs (a) through (d) of this section shall not apply:

(1) To the construction of mobile stations; or

(2) Where the deployment of facilities meets the following conditions:

(i) The facilities are mounted on structures 50 feet or less in height including their antennas as defined in § 1.1320(d), or the facilities are mounted on structures no more than 10 percent taller than other adjacent structures, or the facilities 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;

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

(iii) 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; and

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

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

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

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2018–08886 Filed 5–2–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17–264; FCC 18–41]

Obligations Relating to Submission of FCC Form 2100, Schedule G, Used To Report TV Stations' Ancillary or Supplementary Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) revises of its rules to relieve certain digital television stations of an annual reporting obligation relating to the provision of ancillary or supplementary services.

DATES: These rule revisions are effective on May 3, 2018.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Raelynn Remy of the Policy Division, Media Bureau at *Raelynn.Remy@fcc.gov,* or (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 18–41, adopted on April 12, 2018. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *https://ecfsapi.fcc.gov/file/041366 7409173/FCC-18-41A1.pdf.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Report and Order (Order), we adopt our proposal to revise § 73.624(g) of the Commission's rules to require only those digital television (DTV) broadcast stations that actually provided feeable ancillary or supplementary services during the relevant reporting period to submit Form 2100, Schedule G to the Commission.[1]

2. Section 336 of the Communications Act of 1934, as amended (Act), authorizes DTV stations to offer ancillary or supplementary services in addition to their free, over-the-air television service.[2] Section 336(e) of the Act directs the Commission to establish a fee program for any such services for which the payment of a subscription fee is required, or for which the licensee receives compensation from a third party in return for transmitting material furnished by that party,[3] otherwise known as ''feeable'' ancillary or supplementary services. Under § 336(e)(4), the Commission must advise Congress annually on ''the amounts collected pursuant to [the fee] program.''

3. To carry out its mandate, the Commission in 1998 adopted rules that: (i) Set the fee for feeable ancillary or supplementary services at five percent of the gross revenues received from the provision of those services; and (ii) require all DTV licensees and permittees annually to file Schedule G, which is used to report information about their use of the DTV bitstream to provide such services. Such stations must submit Schedule G every year even if they provided no ancillary or supplementary services during the relevant reporting period. Failure to file the form ''regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions.''

4. In October 2017, the Commission issued a Notice of Proposed Rulemaking (NPRM) proposing to modify § 73.624(g)(2) to require only those DTV stations that provide feeable ancillary or supplementary services to submit Schedule G on an annual basis. The following month, the Media Bureau, on its own motion, waived the December 1, 2017 deadline for the filing of Schedule G by DTV stations that received no revenues from such services during the reporting period ending September 30, 2017, pending Commission action on the proposal to eliminate the § 73.264(g)(2) reporting obligation. In response to the NPRM, we received no opposition to the proposed revisions to § 73.624(g).

5. We adopt our proposal to modify § 73.624(g)(2) of the Commission's rules to require only those DTV stations that provide feeable ancillary or supplementary services during the relevant reporting period to submit Schedule G.[4] We find persuasive commenters' unanimous assertions that requiring all DTV stations to file this form, regardless of whether they have provided ancillary or supplementary services or received revenue from those services, imposes unnecessary regulatory burdens and wastes resources. The record has not shown there will be any impact on our ability to discharge our statutory obligations by modifying our rules as proposed. Requiring the submission of Schedule G only by DTV stations that have provided feeable ancillary or supplementary services will continue to provide the Commission with the necessary information to assess and collect the required fees[5] and to fulfill its reporting obligation to Congress.[6] Stations that

[1] 47 CFR 73.624(g)(2); 82 FR 56574. In addition to proposing the rule revisions adopted in this Order, the NPRM (see 82 FR 56574 (Nov. 29, 2017)) also sought comment on possible revisions to § 73.3580 of the Commission's rules concerning public notice of broadcast applications. We will address issues relating to § 73.3580 at a later date.

[2] 47 U.S.C. 336.

[3] Such compensation excludes advertising revenues used to support broadcasting for which a subscription fee is not required.

[4] As proposed in the NPRM, we also revise Schedule G to conform to the rule amendments adopted herein.

[5] For example, requiring DTV stations that have provided feeable ancillary or supplementary services to file Schedule G will allow us to continue to assure that a portion of the value of the public spectrum resource made available for commercial use is recovered for the public benefit and to avoid unjust enrichment of the station.

[6] The Commission fulfills its reporting obligation by providing the required information in the *Video Competition Report,* which identifies the total reported revenues from ancillary or supplementary services and the amount of fees collected by the Commission.