

ALERT

FCC Releases Draft of Wireless Infrastructure Streamlining Order

March 5, 2018

On March 1, 2018, the Federal Communications Commission (FCC) released a draft Wireless Infrastructure Streamlining Report & Order (Draft R&O) that would clarify and modify the procedures for National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) review of wireless infrastructure deployments and streamline the Tribal Nations and environmental review processes. The FCC is set to vote on the Draft R&O at its March 22, 2018 Open Commission Meeting. The Draft R&O proposes:

- Amending Commission rules to clarify that the deployment of small wireless facilities by private parties does not constitute either a “federal undertaking” within the meaning of NHPA or a “major federal action” under NEPA, meaning that neither statute’s review process would be mandated for such deployments. Small wireless facilities deployments would continue to be subject to currently applicable state and local government approval requirements.
- The FCC’s revised rule section 1.1312 would exclude small wireless facilities meeting the following conditions from the NHPA and NEPA review processes:
 - i) The facilities are mounted on structures 50 feet or less in height including their antennas 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 by more than 10 percent;
 - ii) Each antenna associated with the deployment, excluding the associated equipment fits in an

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- enclosure (or if the antenna is exposed, within an imaginary enclosure, i.e., one that would be the correct size to contain the equipment) that 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 larger than necessary for the operation of the small wireless facility;
 - iv) The facilities do not require antenna structure registration under Part 17 of the Commission's rules; and
 - v) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards
- Clarifying and making improvements to the process for Tribal participation in Section 106 historic preservation reviews. Specifically, the Draft R&O creates a timeline for initial Tribal responses to requests for siting, establishes a new procedure to address instances in which Tribal Nations fail to respond after receiving a submission packet, clarifies that applicants are not required to pay "up front" fees requested by Tribal Nations that have been invited to participate in the siting process, and clarifies the circumstances under which an applicant may be required to retain an appropriately qualified expert to perform consultant services.
 - Removing the requirement that applicants file Environmental Assessments (EAs) solely due to the location of a proposed facility in a floodplain, as long as certain conditions are met.
 - Establishing timeframes for the Commission to act on EAs. For the great majority of cases in which the EA is complete as submitted and will support a Finding of No Significant Impact (FONSI), the Draft R&O directs staff to complete review and issue a FONSI within 60 days after the EA has been placed on notice.

The Draft R&O is not final until it is voted on by the Commission at the March meeting, and the text of the item may change until that time.