Town of Thompson's Station
Board of Mayor and Aldermen
Meeting Agenda
November 12, 2019, 7:00 p.m.

Meeting Called To Order

Pledge Of Allegiance

Consent Agenda

A. Consideration Of The Minutes Of The September 10, 2019 And October 8, 2019 Regular Meetings

Documents:

ITEM A - BOMA MINUTES 9_10_2019.PDF
ITEM A - BOMA MINUTES 10_8_2019.PDF

B. One Design Review Commission Appointment

Documents:

ITEM B - DRC INTEREST FORMS.PDF
ITEM B - DRC RECOMMENDATION.PDF

C. Approval Of Resolution 2019-030 – A Resolution Of The Town Of Thompson's Station, TN To Declare Certain Property (2007 Ford Ranger) Of The Town Surplus And Give The Authority To The Town Administrator To Dispose Of Said Surplus Items.

Documents:

ITEM C - RESO 2019-030 SURPLUS PROPERTY.PDF
ITEM C - SURPLUS PROPERTY.PDF

D. Purchase Of Vehicle

Documents:

ITEM D - VEHICLE PURCHASE.PDF

E. Purchase Of A Chipper For Public Works

Documents:

ITEM E - CHIPPER PURCHASE.PDF

F. Purchase Of A Blower For Wastewater Department

Documents:

ITEM F - BLOWER PURCHASE.PDF

Public Comments-

Unfinished Business:

1. Public Hearing And Second Reading Of Ordinance 2019-008: An Ordinance To Amend Certain Provisions Of The Land Development Ordinance LDO Amendments (LDO Amend 2019-002).

Documents:

ITEM 1 - ORD 2019-008 LDO AMEND MEMO.PDF
ITEM 1 - 2019-008 ORD LDO AMEND.PDF

2. Public Hearing And Second Reading Of Ordinance 2019-009: An Ordinance Of The Town Of Thompson's Station, Tennessee, Providing That The Code Of Ordinances Of The Town Of Thompson's Station Be Amended By Adding A New Chapter To Title 16 Therein, Providing For The Installation And Maintenance Of Communications Facilities In The Public Right-Of -Way.

Documents:

ITEM 2 - ORDINANCE 2019 - 009 SMALL CELL ORDINANCE.PDF
ITEM 2 - SMALL CELL PERMIT APPLICATION.PDF
ITEM 2 - FCC-18-133A1.PDF
ITEM 2 - SMALL CELLS DEPLOYMENT GUIDELINES (PC 819) 2018.PDF

3. Participation Agreement For Critz Lane Project.

Documents:

ITEM 3 - PARTICIPATION AGREEMENT CRITZ LANE.PDF

4. Draft Sewage Agreement For Critz Lane Project.

Documents:

ITEM 4 - SEWER TAP AGREEMENT CRITZ LANE.PDF

5. First Reading Of Ordinance 2019-010: An Ordinance Of The Town Of Thompson's Station To Adopt The 2015 Edition Of The International Property Maintenance Code.

Documents:

ITEM 5 - PROPERTY MAINTENANCE ORDINANCE.PDF
ITEM 5 - IPMC 2015.PDF

New Business:

6. Approval Of Resolution 2019-026: A Resolution Of The Town Of Thompson's Station, TN To Approve A Subdivision Development Agreement With MBSC, TN Homebuilders For Phase 18 (Section 18A) Of Tollgate Village And To Authorize The Mayor To Execute Said Agreement.

Documents:

ITEM 6 - RESO 2019-026 MBSC SECTION 18A DA MEMO.PDF
ITEM 6 - RESO 2016-026.PDF
ITEM 6 - DEVELOPMENT AGREEMENT FOR TOLLGATE VILLAGE.PDF

7. Approval Of Resolution 2019-027: A Resolution Of The Town Of Thompson's Station, TN To Accept The Dedication Of Public Infrastructure Within Phase 6, Section 6A Of Bridgemore Village And Set A Maintenance Surety For A Period Of One Year.

Documents:

ITEM 7 - BV PHASE 6 SECTION 6A DED MEMO.PDF
ITEM 7 - RESO 2016-027.PDF

8. Approval Of Resolution 2019-029 For Software Contract: A Resolution Of The Town Of Thompson's Station, Tennessee Approving The Subscription Agreement With DUDE Solutions, Inc.

Documents:

ITEM 8 - PERMIT SOFTWARE MEMO.PDF
ITEM 8 - RESO 2019-029 APPROVING SUBSCRIPTION AGREEMENT WITH DUDE SOLUTIONS INC.PDF
ITEM 8 - SOW_PROPOSAL_Q-153156.PDF
ITEM 8 - ONLINE AGREEMENT_TOWN OF THOMPSONS STATION A-0000000099.PDF
ITEM 8 - SMARTGOV_PRODUCT INFORMATION.PDF
ITEM 8 - ESTIMATED PROJECT TIMELINE -- THOMPSONS STATION, TN.PDF
ITEM 8 - PLANPERMITTINGSOFTWARE_REVIEW.PDF

Announcements/Agenda Requests

Adjourn

Information Only:

Finance Report

Documents:

NOV2019 BOMA FINANCE REPORT.PDF

This meeting will be held at 7:00 p.m. at Thompson's Station Community Center
1555 Thompson's Station Road West

Town of Thompson's Station
Board of Mayor and Aldermen
Meeting Minutes
September 10, 2019 7:00 p.m.

Call to Order:
The meeting of the Board of Mayor and Aldermen of the Town of Thompson's Station was called to order at 7:00 p.m. on September 10, of 2019 at the Thompson's Station Community Center with the required quorum. Members and staff in attendance were: Mayor Corey Napier; Alderman Shaun Alexander; Alderman Brandon Bell; Alderman Ben Dilks; Alderman Brian Stover; Town Administrator Ken McLawhon; Town Planner Wendy Deats; Finance Director Steve Banks; Town Recorder/Clerk Regina Fowler and Town Attorney Andrew Mills and Kirk Vandivort.

Pledge of Allegiance:

Consent Agenda:

a. Consideration of the August 13, 2019, regular meeting minutes and b. the consideration of the appointment of Skip Beasley to the Utility Board.

Alderman Bell made a motion to approve the Consent Agenda excluding item b, consideration of a. August 13, 2019 meeting minutes. The motion was seconded and carried unanimously.

Consideration of b. The Appointment of Skip Beasley to the Utility Board.

Alderman Stover made a motion to approve the appointment of Skip Beasley to the Utility Board. The motion was seconded and passed 4-1 with a nay vote being cast by Alderman Dilks. The reason for Alderman Dilks nay vote was due to the fact that BOMA was not provided with any names or information on the other applicants and he did not agree with the selection process.

Public Comments:
Jay Franks – Pleasant Creek Investments would like to be heard tonight regarding a wastewater treatment plan however, he was told that the Utility Board will be taking up the issue next week.

Dwayne Wilson – No Comment, Walter Weller – no comment and Robert Taylor – No comment.

Ben Hailey – 2732 Critz Lane - Would like an update on the Alexander Property. Alderman Stover noted that it is in the preliminary stages. Mr. Hailey had another question and said he would contact the town Planner to address his concern.

John L. Mianhart – 2868 Americus - He was concerned that in a prior meeting a Tollgate resident stated a signed petition against Declaration Way was signed by a majority of residents. His calculations indicated only 21% of total residents signed the petition. He is in favor of the sidewalk for student safety but thinks it should be on the south side of Tollgate.

Fred McCoye - 3100 Natoma Circle - He is new to the neighborhood but thinks condemning property adjoining school could be an alternative route to be used. With new commercial development, parking is only going to get worse.
Russ Sellers – 1953 Newark Lane - He lives in a Townhouse in Tollgate. He is against the road but agrees with the sidewalk and an exit for emergency use only.

Brad Wilson – 3064 Americus Drive - He agrees that old house on property adjacent to Independence should be torn down. He thinks a sidewalk is a good idea however, the Developer's plans called for Declaration and Bransford to be connected, so he says let the Developer pay for it instead of the taxpayers.

Chris Cusick – 3037 Millerton Way - He has lived in Tollgate for two years. He thinks it ridiculous that the Town did not plan properly for infrastructure etc. He is against Declaration and Bransford being connected, he states it's uncalled for, unplanned and Tollgate should not be penalized for poor planning.

Sandra Gavin – 3037 Millerton Way She is against Declaration and Bransford being connected and thinks this will change the Tollgate dynamics drastically. A sidewalk and emergency exit are fine but would ask BOMA to think outside of the box to address this problem.

Elaine Weisberger – 2936 Americus - She is opposed to the connector road in Tollgate.

Larry Simmons – 3116 Hazelton He thanks BOMA for traffic study in Tollgate. He felt Barge did a thorough study relative to the entrance into Tollgate. He believes that Bransford to Declaration Way will be completed and he thinks it's much better for the developer to pay for it instead of taxpayers but should include two caveats; Tollgate be patrolled for speeding and BOMA to approve prior to construction of the road, should any issues arise the road be closed off.

Unfinished Business:

1. Approval of Bioclere Wastewater Treatment System in lieu of SBR System for Littlebury Development subject to finalization of Memorandum of Understanding.

   A motion was made by Alderman Bell for approval of Bioclere Wastewater Treatment System in lieu of SBR System for Littlebury Development subject to finalization of Memorandum of Understanding. The motion was seconded and carried unanimously.

2. Rescinding action on Resolution 2019-012: A Resolution to Accept a Right of Way Dedication of a Portion of Declaration Way from Williamson County Schools.

A motion was made by Alderman Stover to rescind action on Resolution 2019-012: A Resolution to Accept a Right of Way Dedication of a Portion of Declaration Way from Williamson County Schools. The motion was seconded and passed 4-1 with a nay vote being cast by Alderman Dilks. The reason for the nay vote being cast by Alderman Dilks, was after much discussion prior to this motion from the people, the people were in agreement for a pedestrian access as a consideration. The Board would look at that consideration however, Alderman Dilks doesn't trust that the majority of the Board would follow through with what was discussed. He only supports pedestrian access and does not support vehicle access.

3. Approval of Resolution 2019-012: A Resolution to Accept a Right of Way Dedication of a Portion of Declaration Way from Williamson County Schools.

   Alderman Bell made a motion to table the Approval of Resolution 2019-012: A Resolution to accept a Right of Way Dedication of a Portion of Declaration Way from Williamson County Schools. The motion was seconded and passed unanimously.

New Business:

4. First Reading Ordinance 2019-008: An Ordinance to amend certain provision of the Land Development ordinance LDO Amendments (LDO Amend 2019-002).

   Alderman Stover made a motion for Approval on first reading of Ordinance 2019-008: an ordinance to amend certain provisions of the Land Development ordinance LDO Amendments (LDO Amend 2019-002).

5. Resolution 2019-020: A Resolution to accept Federal Funds for Multi-modal connectivity (PIN 12661.01), to approve the Town's matching funds and enter into a contract with TDOT for the project.

   Alderman Alexander made a motion for approval of Resolution 2019-020: A Resolution to accept Federal Funds for Multi-modal connectivity (PIN 12661.01), to approve the Town's matching funds and enter into a contract with TDOT for the project. The motion was seconded and passed unanimously.

6. Approve Amendment to Whistle Stop Settlement Agreement with the contingency of the Mayor signing the Amendment only after the town staff approves the utility line locations within the subject area.

   Alderman Bell made a motion to approve Amendment to Whistle Stop Settlement Agreement with the contingency of the Mayor signing the

Amendment only after the town staff approved the utility line locations within the subject area. The motion was seconded and passed unanimously.

Adjournment

There being no further business, the meeting adjourned at 9:20 p.m.

Corey Napier, Mayor

Regina Fowler, Town Recorder/Clerk

Town of Thompson's Station
Board of Mayor and Aldermen
Minutes of the Meeting
October 8, 2019

Call to Order:
The meeting of the Board of Mayor and Aldermen of the Town of Thompson's Station was called to order at 7:00 p.m. on Tuesday, October 8, 2019 with the required quorum. Members and staff in attendance were: Mayor Corey Napier, Alderman Shaun Alexander; Alderman Brandon Bell; Alderman Ben Dilks; Alderman Brian Stover; Town Planner Wendy Deats; Finance Director Steve Banks; Town Attorneys Andrew Mills and Kirk Vandivort; Caryn Miller and Maintenance Supervisor Bryan King.

Pledge of Allegiance:

Consent Agenda

a. Consideration of the Minutes of the September 10, 2019 regular meeting.

The Item was pulled for discussion by Alderman Dilks who wanted some revisions to be made related to his votes. The item was tabled until the November meeting.

Public Comments:
John Meinhardt/2868 Americus Drive – He spoke against Declaration Way.

George & Gail Ross/2808 Critz Lane -The Ross's discussed with the Board that their property deed showed they owned to the center of Critz Lane.

Debra Bender/Americus Drive - Ms. Bender spoke against Declaration Way.

Bob Whitmer – Mr. Whitmer spoke in favor of accepting Declaration Way.

Unfinished Business:

1. **Consideration of Resolution 2019-012:** A Resolution to Accept a Right of Way Dedication of a Portion of Declaration Way from Williamson County Schools.

   After much discussion a motion was made by Alderman Bell to approve Resolution 2019-012 and accept it with the contingency that it would not be used for a vehicular connection and only be used as a pedestrian walkway connection. The motion was seconded. The item passed unanimously.

New Business:

1. **Approval of Resolution 2019-021:** A Resolution of the Town of Thompson's Station to amend Resolution 2018-10 related to the Right of Ways and Easements for the Critz Lane Project.

   After discussion a motion to approve Resolution 2019-021 was made by Vice-Mayor Stover and seconded. The item passed unanimously.

2. **Approval of Resolution 2019-022:** A Resolution of the Town of Thompson's Station to approve the Surveying Work necessary for the Alexander Drip Lines Project.

   After discussion a motion to approve Resolution 2019-022 was made by Alderman Bell and seconded. The item passed unanimously.

3. **Approval of Resolution 2019-023:** A Resolution of the Town of Thompson's Station to approve the Soils Testing and Mapping for the Alexander Drip Fields Project.

After discussion a motion to approve Resolution 2019-023 was made by Alderman Bell and seconded. The item passed unanimously.

4. **Approval of Resolution 2019-024:** Acceptance of a TDOT bridge grant in the amount of $151,470.00 for the replacement/rehabilitation of the Fry Road bridge crossing Murfrees Fork Creek and to grant the mayor authority to enter into a contract for the oversight and construction of the bridge. (Cost information attached)

   After discussion a motion to approve Resolution 2019-024 was made by Vice-Mayor Stover and seconded. The item passed unanimously.

5. **Approval of Resolution 2019-025:** A Resolution of the Town of Thompson's Station, Tennessee for approval of an MOU for the use and implementation of the Bioclere System by the Littlebury Development Company, LLC.

   After discussion a motion to approve Resolution 2019-025 was made by Vice-Mayor Stover and seconded. The item passed 4-1 with Alderman Dilks voting no.

6. **Approval of Bioclere Wastewater Treatment System in lieu of SBR System for Pleasant Creek Investments, LLC** subject to finalization of Memorandum of Understanding with the Town of Thompson's Station.

   After discussion a motion to approve the Bioclere Wastewater Treatment System in lieu of SBR System for Pleasant Creek Investments, LLC subject to finalization of Memorandum of Understanding with the Town of Thompson's Station was made by Vice-Mayor Stover and seconded. The item passed unanimously.

7. **First Reading of Ordinance 2019-009:** Ordinance of the Town of Thompson's Station, Tennessee, providing that the Code of Ordinances of the Town of Thompson's Station be amended by adding a new chapter to Title 16 therein, providing for the installation and maintenance of communications facilities in the public right-of-way (small cell ordinance).

   After discussion a motion to approve Ordinance 2019-009 on First Reading was made by Alderman Bell and seconded. The item passed unanimously.

Mayor Napier called for the Board to enter into Executive Session.

8. **Executive Session** – Recess from the Regular Session to enter into Executive Session to discuss potential and/or pending litigation as to Volunteer Paving Litigation, Shaw Enterprises and Potential Property Maintenance Enforcement Issues.

Mayor Napier closed the Executive Session and reopened the Regular Meeting.

9. **Potential Action as to Volunteer Paving Lawsuit.** A motion to reach a settlement in the amount of $31,205.38 with Volunteer Paving was made by Alderman Bell and seconded. The motion passed unanimously.

10. **Adjourn**

Corey Napier, Mayor

Regina Fowler, Town Clerk

Caryn Miller

From:	Tyler Ralney
Sent:	Friday, June 7, 2019 11:12 AM
To:	Jeff Risden
Cc:	Kenneth McLawhon; Caryn Miller; Corey Napier; Regina Fowler
Subject:	Fwd: Online Form Submittal: Utility Board Interest Form

---------- Forwarded message ----------
From: <noreply@civicplus.com>
Date: Fri, Jun 7, 2019 at 11:08 AM
Subject: Online Form Submittal: Utility Board Interest Form
To: <info@thompsons-station.com>, <tralney@thompsons-station.com>

DRC
~~Utility Board~~ Interest Form

First Name	Charles
Last Name	Thompson
Address1	3217 Vinemont Dr
City	Thompsons Station
State	TN
Zip	37179
E-mail Address	cbtpharmd@gmail.com
Phone Number	865-771-4321
Introduce yourself and explain your interest in participating in the Utility Board	Hello, my name is Charles "Brent" Thompson. I was born and raised in Middle Tennessee, specifically, in Dickson County. I have lived in both Spring Hill and Thompsons Station, and my family and I currently reside in the Tollgate subdivision in Thompsons Station. I must admit I do not have previous experience on a utility board, although I am looking to be of better service to my community and town. I saw the ad for a volunteer position, and I believe that I could add value to the existing board. Regarding my educational background and/or qualifications, I attended the University of Tennessee where I was a biochemistry/cellular & molecular biology major. After college, I attended pharmacy school in Memphis, Tennessee. I have practiced as a pharmacist in various roles in both

Wendy Deats

From: Tyler Rainey
Sent: Thursday, October 3, 2019 8:12 AM
To: Wendy Deats
Subject: Fwd: Online Form Submittal: DRC Interest Form

---------- Forwarded message ---------
From: <noreply@civicplus.com>
Date: Thu, Oct 3, 2019 at 6:37 AM
Subject: Online Form Submittal: DRC Interest Form
To: <info@thompsons-station.com>, <trainey@thompsons-station.com>

DRC Interest Form

First Name	Rick
Last Name	Guard
Address1	2622 country haven Dr.
City	Thompsons Station
State	TN
Zip	37179
E-mail Address	rick.guard@outlook.com
Phone Number	615.969.1819
Introduce yourself and explain your interest in participating in the DRC	My name is Rick Guard and would like to participate in the Thompsons Station Planning Commission. As a married man and father of two who lives in Thompsons Station, I have great interest in the development of town where my family lives and plays. As we lay roots in this area, I would like to serve my community and see that Thompsons Station stays a great place to live and raise a family. Thank you for your consideration and time.

DRC Members are appointed by the Board of Mayor and Alderman of Thompson's Station.

RECOMMENDATION FOR DRC COMMITTEE POSITION

DRC Committee recommendation from Mayor Napier, Rick Guard.

RESOLUTION NO. 2019 - 030

A RESOLUTION OF THE TOWN OF THOMPSON 'S STATION, TENNESSEE TO DECLARE CERTAIN PROPERTY OF THE TOWN SURPLUS AND GIVE THE AUTHORITY TO THE TOWN ADMINISTRATOR TO DISPOSE OF SAID SURPLUS ITEMS.

WHEREAS, the Town of Thompson's Station previously approved the disposal of surplus items that are nominated by the Board of Aldermen, Mayor, Town Administrator and Town Staff by Resolution 2019-019 and;

WHEREAS, the Town of Thompson's Station owns various equipment required for day to day operations and;

WHEREAS, over time some of the equipment has become worn and dilapidated and should be removed from service and;

WHEREAS, it has been acknowledged that it is in the best interest of the Town to surplus said equipment and;

WHEREAS, the 2007 Ford Ranger has been nominated as surplus. The useful life has expired and is deemed too costly for continuous repairs.

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Alderman of the Town of Thompson's Station as follows:

Hereby does authorize the Town Administrator to place the item(s) listed above as surplus property in the most advantageous way possible for the Town of Thompson’s Station.

RESOLVED AND ADOPTED this 12th day of November 2019.

_____
Corey Napier, Mayor

ATTEST:

_____
Regina Fowler, Town Recorder

APPROVED AS TO LEGALITY AND FORM:

_____
Town Attorney

Surplus Property Nomination

The Items listed below are being nominated to be removed from the Town records as surplus items.

The respondent's email address (**sbanks@thompsons-station.com**) was recorded on submission of this form.

Description of Item *

2007 Ford Ranger

Purchase Date (if known)

MM DD YYYY

07 / 17 / 2007

Original Cost (if Known - Finance Director will search if possible)

15966.00

Replacement Cost

45000.00

Reason for Dispostion *

- (●) Obsolete
- ( ) Beyond Repair
- ( ) Cannibalized (use for parts only)

Item used in what Dept? *

- ( ) Town Hall
- (●) Maintenance
- ( ) Wastewater
- ( ) Community Development
- ( ) Parks

Nominated by *

Bryan King

DRAFT

Surplus Property Nomination

The Items listed below are being nominated to be removed from the Town records as surplus items.

Your email address (**sbanks@thompsons-station.com**) will be recorded when you submit this form. Not **sbanks**? Sign out
* Required

1. **Description of Item** *

2. **Purchase Date (if known)**

   Example: December 15, 2012

3. **Original Cost (if Known - Finance Director will search if possible)**

4. **Replacement Cost**

5. **Reason for Dispostion** *
   Mark only one oval.

   - ◯ Obsolete
   - ◯ Beyond Repair
   - ◯ Cannibalized (use for parts only)

6. **Item used in what Dept?** *
   Mark only one oval.

   - ◯ Town Hall
   - ◯ Maintenance
   - ◯ Wastewater
   - ◯ Community Development
   - ◯ Parks
   - ◯ Other:

7. **Nominated by** *

A copy of your responses will be emailed to sbanks@thompsons-station.com

Town of Thompson's Station, Tennessee
AGENDA BRIEFING MEMORADUM

AGENDA DATE:	Nov. 1, 2019
SUBJECT:	Section 5-411 Purchase
PREPARED BY:	Ken McLawhon, Town Administrator
SUMMARY:	Short Summary – Public Works Vehicle

BACKGROUND:

The Fy19-20 budget has approximately $100,000.00 earmarked for the purchase of vehicles within the general fund. The budget being approved by the board allows for the expenditure of funds in the foregoing.

The need for an additional vehicle became imperative and time sensitive when a truck in the public works department was no longer functioning and slated to be surplused.

The state contract for the Ford fleet did not have any current white trucks outfitted as requested by the public works department available. It was stated to require a vehicle to be built and likely not to be available for delivery until after the holidays (first of the Year).

The state contractor for Ford trucks is designated as Murfreesboro Ford. As noted above vehicles were not in stock/available. The town became aware of a blue Ford truck outfitted as desired by the public works department.

The request was discussed and sections 5-411 and 5-402 allowed for the immediate purchase of the vehicle by the town's designated purchasing agent.

Given that the public works director was having to drive his P.O.V. on a regular basis for his official duties, it was determined to be in the town's best interest to immediately obtain this vehicle before it was also sold. The Mayor was informed, and the vehicle delivered.

The above precluded further exposure and additional liability associated with the daily use of a P.O.V. for official business. In addition to these important concerns, the matter of equity was addressed/resolved (i.e. = wear and tear on the vehicle, question of coverage/adequacy regarding potential injury of employee and/or others and the lack of utility in terms of the type of truck).

OTHER:

Attachments included.

FISCAL NOTE: The cost of $48, 297. Included the custom flat bed and associated bins/bar (MSRP $56.914 Truck only)

Go Further

ford.com

VEHICLE DESCRIPTION

SUPER DUTY

KE D56809

2019 F350 DRW 4X4 CREW CHAS
XL 179" WB CHASSIS CAB
6.7L POWER STROKE V8 DIESEL
6-SPEED AUTO TRANS

EXTERIOR
BLUE JEANS METALLIC
INTERIOR
MEDIUM EARTH GRAY VINYL

RD EQUIPMENT INCLUDED AT NO EXTRA CHARGE

R
- SOLAR-TINTED
- BLACK
- MPS -WIPER ACTIVATED
- LEARANCE LIGHTS
- OKS
- SWAY CONTROL
- TOW WIRE HARNESS
- INTERMITTENT

INTERIOR
- 60/40 REAR BENCH W/FLIP-UP /FLIP-DOWN W/ HEAD RSTRNT
- AIR COND, MANUAL FRONT
- BLACK VINYL FLOOR COVERING
- OUTSIDE TEMP DISPLAY
- PARTICULATE AIR FILTER
- TILT/TELESCOPE STR COLUMN
- UPFITTER SWITCHES
- VINYL SUN VISORS

FUNCTIONAL
- 4-WHEEL ANTI-LOCK DISC BRAKING SYSTEM
- HILL START ASSIST
- JEWEL EFFECT HEADLAMPS
- MANUAL LOCKING HUBS
- MONO BEAM COIL SPRING FRT SUSPENSION W/STAB BAR
- STABILIZER BAR, FRONT/REAR

SAFETY/SECURITY
- ADVANCETRAC WITH RSC
- BELT-MINDER CHIME
- SOS POST CRASH ALERT SYS

WARRANTY
- 3YR/36,000 BUMPER / BUMPER
- 5YR/60,000 POWERTRAIN
- 5YR/60,000 ROADSIDE ASSIST
- 5YR/100,000 DIESEL ENGINE

D ON THIS VEHICLE	(MSRP)
L EQUIPMENT/OTHER	
03/18/18TN	
ED EQUIPMENT PKG 640A	
ER STROKE V8 DIESEL	8,995.00
AUTO TRANS	NO CHARGE
LIMITED SLIP AXLE	360.00
QUIPMENT GROUP	1,125.00
NG TT MIRR-PWR/HTD	
PACKAGE	NO CHARGE
M RUNNING BOARDS	445.00
WR PACKAGE	
NIC SHIFT ON THE FLY	185.00
TES	100.00
EMISSIONS	NO CHARGE
RE AND WHEEL	350.00
BRAKE CONTROLLER	270.00
	NO CHARGE
UARDS - FRONT	75.00
LUMINUM WHEELS-17"	600.00
T OF AXLE FUEL TNK	NO CHARGE
V CAMERA & PREP KIT	415.00
PACKAGE	1,000.00
ONTROL	
EREO MP3/CLK	
CE ACTIVATED SYSTEMS	
RDER 23 0396	
GRILL ILO ARGENT XL 019	339.00

	(MSRI
PRICE INFORMATION	
BASE PRICE	$41,390.(
TOTAL OPTIONS/OTHER	14,259.(
TOTAL VEHICLE & OPTIONS/OTHER	55,649.(
DESTINATION & DELIVERY	1,295.(

MP: ONE

FINAL ASSEMBLY PLANT
KENTUCKY

THRU-OF-TRANSP
CONVOY

E016 O/T 5B

Automobile
e, and Title Fees,
nstalled
ted above

TOTAL MSRP $56,944.00

Whether you decide to lease or finance you vehicle, you'll find the choices that are righ for you. See your dealer for details or visit www.ford.com/finance.

FORD CREDIT

SPECIAL ORDER

JM071 N RB 2X 915 002460 12 07 18

Town of Thompson's Station, Tennessee
AGENDA BRIEFING MEMORADUM

AGENDA DATE:	Nov 12, 2019
SUBJECT:	Brush Chipper
PREPARED BY:	Bryan King
SUMMARY:	Purchase Brush Chipper – cost $36,283.00

BACKGROUND:

We had anticipated needing a chipper in this budget year which was included in the annual budget for Fiscal Year 2020.

Having the chipper will enable the maintenance department to better serve the residents when trees and limbs ar blown down from storms.

We have spoken with the county and received their feed back on the best route to take an dbeing that they have more experience with them, we value their opinion. Base on that, we would like to contact Vermeer company for a new 12" brush chipper. They will let us try it out first.

Recommend for approval of this item.

OTHER:

Attachments included.

FISCAL NOTE: $36,283.00 toward the FY2020 budget Capital Equipment

Phone: (615) 794-4333
Fax: (615) 794-3313
www.thompsons-station.com

1550 Thompson's Station Road W.
P.O. Box 100
Thompson's Station, TN 37179

Town of Thompson's Station
Purchase Request Form

Item: Brush Chipper **Date:** 10/31/2019

Purpose: Faster more efficient clean up after fallen limbs

Bids: (list in order of recommendation)

Company	Description	Amount
Vermeer	12" Brush Chipper (Diesel)	36,283.00
Wilder Equip	12" Morbark Chipper	36,945.00
Bobcat	12" Brush Chipper (gas)	32,196.00

Approved Amount: _____ **Budgeted item: (circle)** (Yes) **No**

Requested by (print & sign) Bryan King

Purchasing Agent Signature: _____

Town Administrator Signature: _____ Mayor Signature: _____

Town of Thompson's Station, Tennessee
AGENDA BRIEFING MEMORADUM

AGENDA DATE:	Nov 12, 2019
SUBJECT:	Blower
PREPARED BY:	Kenny Bond
SUMMARY:	Wastewater Blower – cost $13,515.00

BACKGROUND:

We anticipated equipment needs for the Fiscal Year 2020 in the Wastewater department.

We are in need of Blower for the regional plant. This is to replace the current one which is nearing the end of it's life. Upon replacement, we will send out the old one to receive quotes on refurbishing it, which will come at a much lower costs. We will then have it available as a backup.

Recommend approval of this item.

OTHER:

Attachments included.

FISCAL NOTE: $13,515.00 toward the FY2020 budget Capital Equipment - Wastewater

Phone: (615) 794-4333
Fax: (615) 794-3313
www.thompsons-station.com

1550 Thompson's Station Road W.
P.O. Box 100
Thompson's Station, TN 37179

Town of Thompson's Station
Purchase Request Form

Item: Blower: Wastewater **Date:** 10/31/2019

Purpose: Replacement needed , will take old blower and have refurbished for backup

Bids: (list in order of recommendation)

Company	Description	Amount
USA Bluebook (previous Vendor)	Roots Ram 616J Blower	13,515.00
PD Blowers	Roots Ram Blower	15,755.00

Approved Amount: _____ **Budgeted item: (circle)** (Yes) **No**

Requested by (print & sign) Kenny Bond

Purchasing Agent Signature: _____

Town Administrator Signature: _____ Mayor Signature: _____

Phone: (615) 794-4333
Fax: (615) 794-3313
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1550 Thompson's Station Road W.
P.O. Box 100
Thompson's Station, TN 37179

DATE: November 1, 2019

TO: The Board of Mayor and Aldermen (BOMA)

FROM: Wendy Deats, Town Planner

SUBJECT: **Item 1 – Ordinance 2019-008 – Land Development Ordinance Amendment (LDO Amend 2019-002)**

On June 25, 2019 the Planning Commission held a work session to discuss the proposed LDO amendments. On August 27, the Planning Commission took under consideration the proposed amendment and is recommending the following amendments to the Land Development Ordinance.

On September 10, 2019, the Board of Mayor and Aldermen passed on first reading the proposed amendment with the following addition submitted by Staff:

5.4.3 Preliminary Plat (page 147). Per discussions with the utility board, Staff has identified the need for additional information related to an approved soils map during the preliminary plat stage.

> xxviii. Tennessee Department of Conservation approved soils map(s) of the property. (Note: remaining sections will be re-lettered).

Staff also discussed additional language within the definition of "personal service" to include a statement related to the applicability of additional regulations regarding tattoo and piercing users, therefore, the following is added for review during second reading.

Personal Service: an establishment providing services, such as hair and beauty, dry cleaning and tailoring, photography studios or other similar services. These establishments may also offer retail products for the services provided. Body piercing and tattoo parlors are included in the definition of personal service, provided they are in conformity with the state licensing and regulatory requirements.

On September 24, 2019, the Planning Commission reviewed the revisions as submitted to the Board of Mayor and Aldermen and is recommending the additional changes to the LDO.

The LDO amendment was deferred to November 12, 2019 to develop some additional language on the requirements for wastewater management information which is incorporated within the Development Agreement.

In addition, the Town Engineer is recommending a standard form for as built certification in order to improve the process for as builts to be included in the LDO. This form is intended to

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provide the Town with sealed document attesting to the validity of the as builts that will be turned into the Town. Therefore, on October 22, 2019, the Planning Commission reviewed the proposed Appendix G and is recommending to the Board of Mayor and Aldermen its inclusion in the amendments.

Staff recommends that the Board of Mayor and Aldermen hold a public hearing and adopt Ordinance 2019-008 incorporating the amendments as identified in Exhibit A.

Attachments
Ordinance 2019-009
Exhibit A

ORDINANCE NO. 2019-008

AN ORDINANCE OF THE TOWN OF THOMPSON'S STATION, TENNESSEE TO AMEND CERTAIN PROVISIONS OF THE LAND DEVELOPMENT ORDINANCE (LDO AMEND 2019-002)

WHEREAS, Town Staff and the Planning Commission is recommending changes certain provisions of the Town's Land Development Ordinance ("LDO") to improve and add definitions applicable to zoning, clarify standards related to lot drainage and stormwater facilities, lighting, signage, residential development, fencing, concept plan submittal, modify automotive use standards and add a process for change of use, as well as update the Town's Developer Agreement; and

WHEREAS, the Planning Commission has reviewed these proposed changes and has recommended that the Board of Mayor and Aldermen adopt the amendments to the LDO as proposed herein; and

WHEREAS, the Board of Mayor and Aldermen has reviewed the Land Development Ordinance and has determined, based upon the recommendations of Town Staff, the Planning Commission, and the record as a whole, that the proposed amendments are consistent with the General Plan, will not have a deleterious effect on the Town, makes improvements to the LDO, and are in the best interest of the Town.

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen of the Town of Thompson's Station, Tennessee, as follows:

Section 1. That the Town of Thompson's Station's Land Development Ordinance is hereby amended by adopting the changes as set out in Exhibit A attached hereto and incorporated herein by reference. After final passage, Town Staff is directed to incorporate these changes into an updated, codified Land Development Ordinance document and said document shall constitute the zoning ordinance of the Town.

Section 2. If any section or part of the Land Development Ordinance, including any amendments thereto, is determined to be invalid for any reason, such section or part shall be deemed to be a separate and independent provision. All other sections or parts shall remain in full force and effect. If any section or part of the Land Development Ordinance is invalid in one or more of its applications, that section or part shall remain in effect for all other valid applications.

Section 3. This ordinance shall take effect immediately upon the publication of its caption in a newspaper of general circulation after final reading by the Board of Mayor and Aldermen, the public welfare requiring it.

Duly approved and adopted by the Board of Mayor and Aldermen of the Town of Thompson's Station, Tennessee, on the _____ day of _____, 2019.

_____

Corey Napier, Mayor

ATTEST:

_____
Regina Fowler, Town Recorder

Passed First Reading: September 10, 2019

Passed Second Reading: _____

Submitted to Public Hearing on the 12th day of November, 2019, at 7:00 p.m., after being advertised in the *Williamson AM* Newspaper on the ____ day of September, 2019.

Recommended for approval by the Planning Commission on the 27th day of August, 2019.

APPROVED AS TO FORM AND LEGALITY:

_____
Town Attorney

EXHIBIT "A"

Section 1.3 Definitions.
Automotive Uses: such uses that include, in whole or in part, the servicing, repairing, maintaining, storing or refueling of automobiles or any similar, motorized vehicle.

Personal Service: an establishment providing services, such as hair and beauty, dry cleaning and tailoring, photography studios or other similar services. These establishments may also offer retail products for the services provided.

Parking facilities: public or private areas assigned for parking, including at grade parking and parking structures.

Section 3.6.9 Lot Drainage.
a. Lots shall be laid out so as to provide positive drainage away from all buildings but not channelize flow across public sidewalks or other pedestrian ways. Drainage of individual lots shall be coordinate with the existing or proposed general storm drainage pattern for the area.

Section 3.10 Drainage and Storm Sewers.
3.10.2 Stormwater Facilities.

c. Accommodation of Upstream Drainage Areas
Closed conduit storm sewer systems including inlets shall be designed for a 10 year storm. The roadway spread shall be limited to eight (8) feet. A culvert or other drainage facility shall be large enough to accommodate potential run off from its entire upstream drainage area for the 10 year event, providing the 10 year discharge is not larger than 100 cfs. If the 10 year design flow is larger than 100 cfs, then the culvert shall be designed for the 100 year design flow. This shall be the design for culverts whether inside or outside the subdivision. Pipe and culverts shall have a minimum slot of 0.5% and swales shall have a minimum slope of 1%.

d. Effect on Downstream Drainage Areas.
i. Pre-development and post-development runoff rates, volumes and velocities for the two (2), ten (10), twenty-five (25) and one-hundred (100) year occurrences while providing one (1) foot of freeboard in a pond at a 100 year storm event as determined using the SCS TR 55 method . . . (all other text remains unchanged).

iv. Controlled releases of discharge from a detention basin shall include a v-notch rectangular or other weir configurations or perforated riser pipe which prevent increased damage above predevelopment conditions for storm events of two (2), ten (10) and twenty-five (25) year occurrences. The developer shall ensure that the one hundred year design can be managed safely by the detention facility, incorporating spillways as necessary. Spillways shall be placed on undisturbed earth or armored with concrete, grouted rip rap or other approved means. At the town's discretion, funds in lieu of detention may be offered as an alternative to providing onsite detention. Funds in lieu amount shall be based on the estimate cost of the eliminated on-site detention.

v. Detention facilities shall be platted in open space as perpetual drainage easements and shall be designed as amenities and maintained by the homeowner's association. Velocities in vegetated swales shall be limited to a 4 fps or less. Estimated increases in discharge velocity

shall be mitigated by energy dissipation devices as designed by the developer's engineer where required to prevent erosion. The developer shall file copies of the covenants and/or homeowners association charter and bylaws with the Town.

Section 3.12.3 Electrical and Communication Service Lines.

Section 3.14 Signage.

The construction plans shall include a signage plan. The signage shall be consistent through the entire neighborhood.

a. All traffic regulatory signage shall conform to the requirements of the MUTCD, latest edition, and shall be install within the limits of the public rights-of-way or approved access easement.
b. All street name signs and regulatory signs shall be of high intensity reflectivity.
c. The edge of the sign shall be placed a minimum of two (2) feet from the street, measured from the face of curb. The height of the sign shall be a minimum of six (6) feet tall, measured from the top of curb to the bottom of the sign.
d. The designated speed limit shall be as identified within the Subdivision Regulations for the Town of Thompson's Station.
e. The homeowner's association within the subdivision/neighborhood shall retain maintenance responsibility for all decorative signage, including regulatory signage and the sign posts.

Section 4.10 Use Residential Property Standards.

d. Single family lots shall be developed with one dwelling unit consisting of a single kitchen facility, one front access point and shall have non-restricted interior access to all portions of the structure. The front of the house shall be oriented toward the roadway unless the house is setback a minimum of 500 feet.

Section 4.11.5 Automotive Uses.

a. Automotive uses within the Community Commercial zoning district shall not be located within 3000 feet of any other automotive use.
(Note: remaining sections will be re-lettered).

Section 4.15 Fencing.

4.15.1 No wall or fence shall exceed six (6) feet in height. Prohibited materials include chain link, barb wire, or temporary materials, except as provided herein. Construction site with temporary fencing are exempt. Pre-existing house and agricultural uses may be exempt from the fencing requirements.

4.15.7 Properties that are zoned commercial or industrial may apply to the Town Planner to use chain link fencing, provided that no part of the chain link fencing is visible from any public right-of-way. Upon a written application, with accompanying plans clearly indicating where the chain link fencing is intended to be installed, from the owner of a commercially or industrially zoned property, the Town Planner or designee shall review the plan and inspect the property as necessary to determine that the chain link fencing will not be visible from any public right-of-way.

Section 5.2.3 Concept Plan.

c. Concept plan consideration. The applicant shall submit the concept plan for Town staff review. The applicant shall provide ~~one hard copy and one digital copy~~ a submittal package in accordance with the concept plan checklist. The Town Planner shall present the concept plat and his or her report and findings to the Planning Commission at its next regularly scheduled meeting after completion of the report. As the concept plan is for informational purposes only, the Planning Commission shall take no formal action with respect to a concept plan.

Section 5.2.5.c.
Land Development Ordinance states that site plan approval *"shall be valid for one (1) year from date of approval. If, in the opinion of the Town Planner substantial construction on the principal structure, including but not limited to foundations, walls, and roofs has not commenced within one (1) year, the site plan approval by the Town Planner shall expire and a new application will be required.*

Section 5.2.12.
Upon recording of the plat, lots may be sold and building permits may be issued subject to any applicable conditions. The public way improvements shall be adequate and safe for vehicular access by the prospective occupant and by police, fire and emergency equipment prior to the issuance of a building permit. The drainage infrastructure shall also be in place in accordance with the approved construction drawings to manage stormwater and protect prospective occupants from potential stormwater hazards. Before a use and occupancy permit will be granted, water sewer, street names and traffic signs must be installed.

Section 5.4.2.

e. Proposed transect community (TC) concept plan:
ix. Overlay district locations with acreages and percentage of community unit, if applicable (Section 4.5.7)
x. Any requested administrative waivers or variances.

g. utilities:
ii. Location of proposed tie-in to existing collection system (include map);
iii. Number and type of residences;
iv. Number and type of commercial or industrial development utilizing categories described in TDEC's Design Criteria for review of Sewage Works Construction Plans and Documents. If the type is not represented in the document, provide an estimate with calculations of the expected wastewater flow from the development; and
v. Phasing and type of development within each phase.

5.2.5 Site Plans.

b. Upon the receipt and review by the Town Planner, all site plans, except for a change of use, including all of the above information shall be placed upon the agenda of the next regularly scheduled meeting of the Planning Commission. . . .

A change of use request, submitted by an applicant in the form and manner as outlined herein or as later determined by the Town, shall include all applicable information as determined by the Town Planner and shall be submitted for review by the Town Planner

or his/her designee. In the event a change of use request is denied, the Town Planner shall so state the reason(s) for the denial in writing and provide a copy of the same to the applicant. Additionally, the applicant may appeal a denial to the Board of Zoning and Appeals.

5.4.3 Preliminary Plat

xxviii. Tennessee Department of Conservation approved soils map(s) of the property.
(Note: remaining sections will be re-lettered).

Development Agreement for
_____ Phase(s) _____ – Lots _____

THIS SUBDIVISION DEVELOPMENT AGREEMENT (hereinafter the "Agreement"), is made effective this the _____ day of _____**,** 20___ (hereinafter the "Effective Date"), by and between _____ with principal offices located at _____, (hereinafter the "Developer(s)"); and the Town of Thompson's Station, Tennessee, a municipality duly incorporated, organized, and existing under the laws of the State of Tennessee (hereinafter the "Town").

I. PURPOSE OF THE AGREEMENT

1. The Developer is the owner of real property located on _____ and _____ and identified as Williamson County tax map _____, parcel(s) _____. The property contains approximately _____ acres +/-, (hereinafter the "Project Site"). The Project Site is currently zoned _____ (_____).

2. The Developer desires to improve and develop the Project Site or a portion of the Project Site into a development to be known as _____, (hereinafter the "Project"), under the regulations of the Town current on the Effective Date of the approval of Preliminary Plat.

3. This Agreement is subject to Town approval of the Final Project Documents for the Project, which includes but is not limited to plat approvals (with conditions as determined by the Town), detailed construction plans and specifications, in accordance with the Town's charter, ordinances, rules, regulations, and policies (hereinafter "Town Regulations") as well as State law, and applicable sureties. The Developer and Town agree that all Final Project Documents shall be attached to this Agreement as **Collective Exhibit "A"** and incorporated herein by reference after their approvals by the Town.

4. The Developer agrees to install necessary and required public improvements (hereinafter "Public Improvements") as shown on the Final Project Documents including, but not limited to: water lines, fire hydrants, sanitary sewer and sanitary sewer lines, grading, streets, curbs, gutters, sidewalks, street name signs, traffic control devices, street lights and underground electrical power and gas utilities, as well as all other improvements designated herein, at no cost to the Town.

5. The Developer agrees to install and maintain private improvements and amenities, as applicable and as shown on the Final Project Documents, including, but not limited to: private streets and alleys, fences, walls, lakes, common open space, site lighting, storm water management systems, retention and/or detention basins, storm sewers, inlets etc., landscaping and related irrigation systems, relative to said Project, none of which shall be accepted for maintenance by the Town.

6. The Town agrees to approve the Project subject to the Developer's compliance with applicable Town Regulations and the conditions set forth herein in **Exhibit "B"**, and the Town agrees to provide customary services to the Project in accordance with the Town's Regulations after Final Acceptance, as defined herein.

II. GENERAL CONDITIONS

1. *Affidavit of Payment* - Prior to Final Acceptance, the Developer shall deliver to the Town an affidavit certifying that all subcontractors and material suppliers furnishing labor and/or material for the Public Improvements required under this Agreement have been paid in full. The Developer shall also provide a written release of any and all liens and/or security instruments, and of the right to claim liens, from all subcontractors and material suppliers furnishing labor or materials for the Public Improvements.

2. *Approval of the Final Project Documents* - The Final Project Documents, which are attached hereto as **Collective Exhibit "A"** and incorporated herein by reference, shall be stamped as approved by the Town, provided that the same are in compliance with Town Regulations. All construction relating to the Project shall be subject to inspection and approval by the Town until Final Acceptance and shall be subject to any conditions set forth on **Exhibit "B"**.

3. *Construction Activity Periods* - The Developer will not carry on or permit construction activity under this Agreement earlier than 7:00 a.m. and not later than 6:00 p.m., Monday through Saturday, and no construction activity shall occur on Sundays or holidays. Construction hours shall be enforced by the Town at the Developer's expense.

4. *Construction Standards* - The Developer shall construct the Project as shown on the approved Final Project Documents in accordance with requirements of the Town Regulations.

5. *Demolition* - The Developer agrees to secure all required permits from the necessary governmental entities, including the Town, for the demolition of structures on the Project Site. The Developer further agrees that it will haul all scrap, buildings, materials, debris, rubbish and other degradable materials to an authorized landfill and shall not bury such materials within the Project Site.

6. *Deposition of materials in street prohibited* - All construction material, including, without limitation, mud, silt, dirt, and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel or other construction material is washed, blown, or carried into an existing street, the Developer shall take immediate steps to remove such materials. If the Developer does not remove such materials after notification by the

Town, and the Town deems it necessary to clean the affected streets, the Developer agrees to reimburse the Town for all such cleaning expenses, plus an additional twenty-five percent (25%) for administrative expenses related to the same.

7. *Development Agreement Modification Fees* - The Developer agrees to pay the fee for any modifications to this Agreement in accordance with the Town schedule of fees applicable to such a modification and that are current at the time of submittal of a written request for a modification by the Developer, including, but not limited to, time extensions, addendums, or amendments.

8. *Developer's Default* - The Developer agrees that should it default in performing any of its obligations under this Agreement, and it becomes necessary to engage an attorney to file necessary legal action to enforce provisions of this Agreement or sue for any sums of money due and owing or liability arising incidental to the Agreement, Developer shall pay to the Town all reasonable attorney's fees and expenses of litigation stemming from said default.

9. *Developer's Liability* - It is expressly understood and agreed that the Town is not and could not be expected to oversee, supervise and/or direct the implementation of all construction and improvements contemplated in this Agreement. The Town is not responsible for the design of the Project or any way the suitability of the property for Project.

   a. The Town Planner or his or her designee may make periodic inspections and has the right to enforce the provisions of this Agreement and Town Regulations.
   b. The Developer now has and shall retain the responsibility to properly anticipate, survey, design and construct the Project improvements and give full assurance that same shall not adversely affect the flow of surface water from or upon any property.
   c. In providing technical assistance, plan and design review, the Town does not and shall not relieve the Developer from liability, and the Town does not accept any liability from the Developer.
   d. The Developer will provide its own Project Engineer and may not rely on the review of Town staff or its engineers with respect to the Project.
   e. Neither observations by the Town, nor inspections, tests or approvals by others shall relieve the Developer from its obligation to perform work in accordance with Town Regulations and the terms of this Agreement.

10. *Duration of Obligations* - The obligations of the Developer hereunder shall run with the Project Site until the Developer's obligations have been fully met, as determined by the Town in its sole and absolute discretion. Any party taking title to the Project Site, or any part thereof, prior to Final Acceptance shall take said real property subject to such obligations. The Developer shall not be released of its obligations under this agreement without the express, written approval of the Town.

11. *Easements* - The Developer agrees that it will grant all necessary easements and rights-of-way, as determined by the Town, across its property necessary to satisfy the requirements of this Agreement without expense to the Town and will waive any claim for damages from the Town. Any off-site easements and/or right-of-way owned by others

but required for the project must be obtained by Developer, recorded prior to approval of the Agreement, and noted on the Final Project Documents.

12. *Emergency Response* - In emergencies affecting the safety or protection of persons or the work or property at the Project Site or adjacent thereto, the Developer, without special instruction or authorization from the Town, is obligated to act to prevent threatened or eminent damage, injury, or loss.

13. *Indemnity* - Developer shall indemnify and hold the Town harmless and agrees to defend the Town and the Town employees, agents, and assigns against any and all claims that may or happen to arise out of or result from the Developer's performance or lack of performance under this Agreement, whether such claims arise out of the actions or inactions of the Developer, any subcontractor of the Developer, or anyone directly or indirectly employed by, or otherwise directly or indirectly involved with the Project at the direction of the Developer or subcontractor of the Developer. This indemnity and hold harmless agreement includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment or debris from drainage, damages resulting from the Developer changing the volume or velocity of water leaving the Developer's property and entering upon the property of others, storm water that is allegedly impounded on another property and claims under any statutes, Federal or state, relative to water, drainage and/or wetlands, and reasonable attorney's fees and costs incurred by the Town in defending itself or its employees, agents, or assigns as a result of the aforesaid causes and damages and/or enforcing this Agreement.

14. *Notice of Violation* - The Town Planner and/or Town Engineer, or his or her designee, may issue a Notice of Violation (NOV) when violations of Town, State, or Federal laws and/or regulations are observed.

    a. If the Developer has not corrected the violation identified in the NOV, then the Developer agrees that the Town acting through the Town Planner and/or Town Engineer may perform the necessary work to eliminate the violation and document all expenses incurred in performing the work. Developer shall reimburse the Town for all such expenses plus an additional reasonable administrative cost not to exceed twenty-five percent (25%).
    b. Prior to releasing any Security hereunder and as herein defined, all expenses incurred by the Town relative to the foregoing shall be paid in full by the Developer.
    c. The Town may issue a Stop Work Order (SWO) if the Developer does not promptly correct any deficiency or violation identified in the NOV in the reasonable time determined by the Town. The Developer agrees to comply with any SWO issued by the Town. If Developer fails to comply with a SWO, the Developer shall be responsible for all costs the Town incurs, including reasonable attorneys' fees, in seeking a restraining order or other injunctive relief or legal action to remedy any deficiency or violation.

15. *Ownership of Public Improvements* - The Developer shall be responsible for all Public Improvements until Final Acceptance by the Town. Developer shall have no claim, direct or implied, in the title or ownership of the Public Improvements after Final Acceptance.

The Town shall have no obligation to maintain any Public Improvements unless and until Final Acceptance of the Public Improvement(s).

16. *Permit Availability* - A copy of all required permits and Final Project Documents must be kept on the Project Site at all times. If a NPDES Storm Water Construction Permit is required by TDEC, or any other permit required by any governmental entity, a copy of the Notice of Intent and the Notice of Coverage, or equivalent documents, shall be provided to the Town Engineer prior to commencement of construction for the Project.

17. *Relocation of Existing Improvements* - The Developer shall be responsible for the cost and liability of any relocation, modification, and/or removal of utilities, streets, sidewalks, drainage and other improvements made necessary by the development of the Project, both on and off site.

18. *Right of Entry* - The Developer agrees that the Town shall have the right, but not the duty, to enter the Project Site and make emergency repairs to any public improvements when the health and safety of the public requires it, as determined by the Town in its sole and absolute discretion. The Developer will reimburse the Town for the costs incurred by the Town in making said repairs, plus an additional reasonable fee for administrative costs not to exceed twenty-five percent (25%).

19. *Safety* - The Developer shall maintain barricades, fences, guards, and flagmen as reasonably necessary to ensure the safety of all persons at or near the Project Site at all reasonable and necessary times.

20. *Stop Work Orders* - The Town Planner and/or Town Engineer may issue Stop Work Orders (SWO) to remedy and enforce the provisions of this Agreement.

21. *Termination of Agreement* – This Agreement may be terminated by the Town if the Developer fails to comply fully with the terms and conditions of this Development Agreement.

    a. The Town will give the Developer sixty (60) days written notice of the intent of the Town to terminate the Development Agreement, stating the reasons for termination, and giving the Developer a reasonable time to correct any failures in compliance, as determined by the Town.
    b. If after receiving a Notice of Termination of the Development Agreement by the Town, the Developer corrects the non-compliance within the time specified in the Notice of Termination, the Development Agreement shall remain in full force and effect.
    c. Failure by the Developer to correct the non-compliance will result in termination of the Development Agreement and collection of the Security by the Town.

    If the Town terminates the Agreement, the Developer shall cease all work on the Project except as necessary to ensure the safety of all persons. The Developer (or a subsequent Developer) may apply to the Town for approval of a new Development Agreement, which approval shall not be withheld provided that all violations of this Agreement have been remedied.

22. *Transfers of Project Ownership* - Until all obligations of the Developer under this Agreement have been fully met and satisfied, the Developer agrees that neither the Project Site nor any portion thereof will be transferred to another party without first providing the Town with a fifteen (15) calendar day written notice of when the proposed transfer is to occur and the identity of the proposed transferee, along with the appropriate contact information for the proposed transferee, including address and telephone number of the proposed transferee.

    a. If it is the proposed transferee's intention to develop the Project Site or any portion thereof in accordance with this Agreement, the Developer agrees to furnish the Town with an assumption agreement, or equivalent as determined by the Town, by which the transferee agrees to perform the obligations required under this Agreement that are applicable to the property to be acquired by the proposed transferee.

    b. Unless otherwise agreed to by the Town, the Developer will not be released from any of its obligations hereunder by such transfer and the Developer and the transferee both shall be jointly and severally liable to the Town for all obligations hereunder that are applicable to the property transferred. The proposed transferee will be required to furnish new Performance Security and Maintenance Security acceptable to the Town, as applicable and determined by the Town.

    c. If it is not the proposed transferee's intention to develop the Project Site or any portion thereof in accordance with this Agreement, the transferee must satisfy all applicable requirements of the Town, as determined by the Town, including payment of all outstanding fees, and must receive Town approval, in writing, to void this Agreement.

    d. The Developer agrees that if it transfers said property without providing the notice of transfer and assumption agreement, or equivalent, as required herein, it will be in breach of this Agreement and the Town may require that all work be stopped relative to the Project and may require payment of the Performance and Maintenance Security to assure the completion of the Project, as determined by the Town in its sole and absolute discretion.

23. *Underground Utilities* - All electrical utilities shall be installed underground unless the requirement is expressly waived by the Planning Commission.

24. *Building Permits* – The Developer understands and agrees that, if the Developer applies for a building permit from the Town, the building permit shall be subject to all Town Regulations, as well as applicable State and Federal laws and regulations, in existence at the time the building permit is applied for and obtained.

25. *Soil Dedication and Mapping*. – The Developer understands and agrees that the Developer shall dedicate one and one-half (1 and ½) times the amount of soils the Town requires for effluent wastewater disposal as determined by the number of taps to be allocated per the Final Plat. The dedication must occur at the time of approval of the Final Plat. Prior to dedication, the Developer must present the Town with an extra high intensity soil map, per Tennessee Department of Environment and Conservation standards and requirements, of the soils contemplated for dedication. All soils must meet the needs of the Town for effluent wastewater disposal, including but not limited to use

and area. In the event the Developer cannot dedicate the required amount of soils as determined herein, in whole or in part, the Developer must pay a fee in lieu of dedication as to said soils in an amount equal to one hundred percent (100%) of the value of said soils, as determined by the Town, at the time of approval of the Final Plat. Said fee shall be remitted to the Town's wastewater fund.

III. REQUIRED IMPROVEMENTS

The Developer agrees to pay the full cost of all the improvements listed below if applicable to the Project.

1. *Water System* - The Developer agrees to pay the cost of a State of Tennessee approved potable water system, including, without limitation: water mains, fire hydrants, valves, service lines, and accessories, located within the Project, and water mains, fire hydrants, valves, service lines, and accessories, located outside the Project but required to serve the Project. The Developer acknowledges that the Town does not provide water service and will not accept any water system infrastructure. The Developer agrees to bear the cost of all engineering, inspection, and laboratory costs incurred by Developer incidental to the water service system in or to the Project.

2. *Sanitary Sewer System* - The Developer agrees to pay the cost of a State of Tennessee approved sanitary sewer system as required by Town Regulations with necessary sewer mains, manholes, pump stations, force mains and service laterals in the Project, along with all necessary sewer mains, manholes, pump stations, force mains, and service laterals outside the Project but required to provide sanitary sewer service to the Project. **The Developer is approved for ____ sewer taps.** The Developer agrees to bear the cost of all engineering, inspection, and laboratory testing costs incurred by the Developer incidental to the sewer system in or to the Project, and, if the Town Engineer or his or her designee deems it necessary, to have additional work of such nature performed as directed without cost to the Town.

3. *Streets* - The Developer agrees to dedicate and improve and/or construct, at no cost to the Town, all public and/or private streets, including but not limited to: curbs, gutters, and sidewalks, located within or required by this Project to comply with Town Regulations in accordance with the Final Project Documents.

   a. In some circumstances, the Town may require the payment of an in-lieu of construction fee as an alternate to the construction of the required improvements by the Developer. The amount of any in-lieu construction fee will be one hundred and twenty-five percent (125%) of the estimated construction cost of the improvements, as determined by the Town in its sole and absolute discretion.
   b. The Developer shall furnish and install base asphalt and a final wearing surface asphalt course on all streets, public and private, in accordance with the Town Regulations and the Final Project Documents. The Developer shall make all necessary adjustments to manholes, valve boxes, and other appurtenances as required to meet finished surface grade and to repair any areas designated by the Town, as required prior to the installation of the final surface asphalt.

c. The Developer agrees to install permanent street signposts and markers at all street intersections in the Project and to install traffic control devices, signage, and striping relative to and as required for the Project. All traffic control devices, signage, and striping shall be installed as per the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) and approved by the Town Engineer.

d. The Developer agrees to pay the cost of all engineering, inspection, and laboratory costs incurred by the Developer incidental to the construction of street(s) to be constructed or improved pursuant to this Agreement, including, but not limited to: material and density testing, and, if the Town Planner or his or her designee deems it necessary, to have additional work of such nature performed as directed without cost to the Town.

4. *Streetlights* - The Developer agrees to pay the cost of installation of Street Lighting along all public roadways improved as part of the Project, with said Street Lighting determined by Town Regulations and Final Project Documents.

5. *Power Distribution Poles* – The Developer agrees to pay the full cost difference between steel electric power distribution poles and the cost of wood electric power distribution poles for the Project frontage. If the Project frontage is along both sides of the public road, the Developer agrees to pay the full cost difference between steel electric power distribution poles and the cost of wood electric power distribution poles for the Project. If the Project is only along one side of the public road, the Developer agrees to pay one-half the cost of the difference between steel electric power distribution poles and the cost of wood electric power distribution poles for the Project frontage.

6. *Gas and Electric Service* - The Developer shall install underground electric and natural gas service to the Project in accordance with Town Regulations in effect at the time of such installation.

7. *Stormwater Management System* - The Developer agrees that all storm water management systems and related facilities, including, without limitation: permanent post-construction storm water runoff management best management practices, ditch paving, bank protection, and fencing adjacent to open ditches, made necessary by the development of the Project are to be constructed and maintained by the Developer.

8. *Stormwater Pollution Prevention Plan* - The Developer agrees that it will prepare, implement, and maintain a Stormwater Pollution Prevention Plan for the Project in accordance with all Town, State, or Federal regulations, and as approved in the Final Project Documents.

9. *Best Management Practices* - The Developer agrees that it will provide all necessary best management practices (BMPs) for erosion and sediment control. BMPs to control erosion and sediment during construction, include, but are not limited to, temporary vegetation, construction exit, inlet protection, and silt fence.

a. All freshly excavated and embankment areas not covered with satisfactory vegetation shall be fertilized, mulched, seeded and/or sodded, or otherwise protected as required by the Town Engineer to prevent erosion.

b. In the event the Town Engineer determines that necessary erosion and sediment control is not being provided by the Developer, the Town Engineer may issue a Notice of Violation (NOV) to the Developer.

10. *Engineer's Certification* - The Developer shall provide the written opinion of a professional engineer, currently licensed to practice in Tennessee, attesting that the entire watershed where the Project Site is located has been reviewed, and that upon full development at the greatest allowable use density under existing zoning of all land within that watershed, the proposed development of the Project will not increase, alter, or affect the flow of surface runoff water, nor contribute to same, so as to damage, flood, or adversely affect any downstream property.

11. *Stream Buffers* - The Developer agrees to provide stream buffers along all regulated watercourses in accordance with Town Regulations and the TDEC General Construction Permit.

12. *Changes and Substitutions* - Should the Developer determine that changes or substitutions to the approved Final Project Documents may be necessary or desirable, the Developer shall notify the Town Engineer, in writing, requesting approval of the desired changes or substitutions, explaining the necessity or desirability of the proposed changes or substitutions. The request by the Developer must be accompanied by sufficient documentation, including drawings, calculations, specifications, or other materials necessary for the Town to evaluate the request. No changes are to be made in the field until express, written permission is granted by the Town Engineer.

IV. PROJECT SCHEDULE

1. *Approved Final Project Documents* – Prior to the recording of the Final Plat, the Developer shall provide to the Town electronic copies (PDF scans) of the Approved Final Project Documents (Collective Exhibit A) along with a signed acknowledgment that the documents submitted are incorporated into this Agreement by reference.

2. *Demolition Permits* - If demolition of any improvement on the Project Site is anticipated, a demolition permit from the Town must be obtained by the Developer.

3. *Certificate of Insurance* - Prior to the recording of the Final Plat, the Developer will furnish to the Town a Certificate of Insurance evidencing the required coverage and listing the Town as additional insured. The furnishing of the aforesaid insurance shall not relieve the Developer of its obligation to indemnify and hold harmless the Town in accordance with the provisions of this Agreement.

4. *Surety* - The Developer must pay all fees, furnish all required Sureties, as determined by the Town, prior to the recording of the Final Plat.

5. *Commencement of Construction* - The Developer agrees to commence construction within twenty-four (24) calendar months from the Effective Date. The failure of the Developer to commence Construction within twenty-four (24) months of the Effective Date will be

considered an expiration of the Agreement, and a new agreement shall and must be approved before any Construction may begin.

6. *Project Duration* – It is anticipated that the Developer shall substantially complete the Project on a timely schedule and in an expeditious manner, with the date of Substantial Completion to be not later than **60 months** from when the Developer commences construction of the Project.

7. *Request for Extension* - The Developer agrees that, if due to unforeseen circumstances it is unable to Substantially Complete all work included in this Agreement on or before the Substantial Completion Date specified above, it will submit a written request for extension of the Substantial Completion Date to the Town at least sixty (60) days prior to the specified date, stating the reason for its failure to complete the work as agreed, and a revised Substantial Completion Date. The Town will not unreasonably withhold approval of extensions of time where the Developer has complied with the requirements of notice to the Town and provided any required additional Security.

8. *Breach of Agreement for Time Extension* - The Developer agrees that its failure to follow the extension of time procedure provided herein shall constitute a breach of this Agreement, and the Town may take legal action, in its discretion, as described herein and as allowed by Town Regulations and applicable law.

9. *Withholding or Withdrawal of Service* - The Developer agrees that, should it fail to complete any part of the work outlined in this Agreement in a good and workmanlike manner, the Town shall reserve the right to withhold and/or withdraw all building permits and/or water and sewer service within the Project until all items of this Agreement have been fulfilled by the Developer, or as an alternative draw upon the Security to complete the work.

V. PROJECT CLOSEOUT

1. *As-Built Drawings* - Prior to Final Acceptance, the Developer shall submit as-built plans / as-built drawings of the improvements installed as part of the Project, including but not limited to: the potable water system, the sanitary sewer system, the drainage/detention/stormwater management system, landscaping, irrigations system, photometric plan, and streets including curbs and gutters and sidewalks, signed and sealed by a Design Professional, confirming that the installed improvements are in compliance with Town Regulations and the approved Final Project Documents.

2. *Letter of Completeness* – Prior to Final Acceptance, the Town shall conduct a site check visit and if appropriate issue a Letter of Completeness that the Project is ready to be considered for acceptance by the Board of Mayor and Aldermen. The Letter of Completeness does not constitute acceptance of the Project by the Town. Until Final Acceptance by the Board of Mayor and Aldermen any part of the Project is subject to correction. Developer shall comply with the Town's Dedication of Public Improvements Policy.

3. *Curbs and Gutters* - All required curbs and gutters must be completed and without defect prior to Final Acceptance of the Project. The Developer shall be responsible for repairing any latent defects and/or failures in the curbs and gutters which may occur prior to formal dedication and acceptance of the Project.

4. *Final Construction Cost* - The Developer shall furnish in writing the itemized as-built construction costs of all public improvements prior to issuance of a Letter of Completeness for the Project.

5. *Tree Mitigation/Replacement* - Prior to the issuance of a Letter of Completeness, the Developer shall submit an as-built landscaping plan that reflects the required tree mitigation and replacement as well as all revisions to the mitigation plan as approved by the Planning Commission. Tree mitigation/replacement shall be reviewed by the Town Planner.

6. *Sidewalks* - All required sidewalks shall be completed and without defect prior to acceptance of the Project. The Developer shall be responsible for repairing any latent defects in the sidewalks prior to acceptance of the Project. All references to sidewalks include required handicap ramps. Nothing herein shall be construed to require acceptance of sidewalks by the Town for a Project.

VI. SECURITY

1. *Cost Estimates* - The Developer shall furnish to the Town estimates as to quantity and cost of all public improvements relative to the Project, such estimate being set forth on **Exhibit "C"** attached hereto and incorporated herein by reference. These estimates will be used to assist the Town Engineer in establishing the amount of Security required for the Project.

2. *Security for Public Improvements* - The Developer shall provide, at the time of final plat to the Town, a Performance Security instrument in the amount which sum represents and totals to one hundred and ten percent (110%) of the estimated cost of all approved public improvements.

3. The Performance and Maintenance Security shall have an expiration date of one (1) year after the Effective Date, but **shall automatically renew** for successive one (1) year periods without effort or action by the Town until the Security is released by the Town at the time of acceptance, and the Performance and Maintenance Security documentation shall reflect the aforementioned requirements.

4. *Form of Security* - The form and substance of any Security shall be subject to the approval of the Town Attorney. A copy of the Performance Security is attached to this Agreement as **Exhibit "D"** and made a part hereof guaranteeing, to the extent of the Security, the faithful performance of this Agreement by the Developer. The Security, if a Letter of Credit, shall provide that the physical presence of a representative of the Town shall not be required for presentation and that venue and jurisdiction shall be in a court of competent jurisdiction in Williamson County, Tennessee.

5. *Notification of Non-Renewal* - Should the Issuer or Developer elect to not renew the Performance Security, written notice must be received by the Town no later than ninety (90) days prior to its expiration date, at which time the Town may draw up to the face value of the Performance Security in the Town's unfettered discretion. Failure to provide notice as herein described shall be considered a material breach of this Agreement and the Security, and the Town may institute legal proceedings as provided herein and be awarded reasonable attorney's fees and litigation costs for said legal proceedings.

6. *Maintenance Security* - The amount of the Performance Security may be reduced to a reasonable sum as determined by the Town Engineer to cover Developer's warranty obligations hereunder, thus establishing a Maintenance Security instrument. The Maintenance Security shall remain in place until the Security is released by the Town at the time of dedication and acceptance.

7. *Full Financial Responsibility* - It is understood and agreed by the Developer that the Performance Security and the Maintenance Security, subject to their limits, are to furnish Security for the Developer's obligations hereunder, but that such obligations are not limited by the amount of such Security. The Security shall remain in force until the Security is released by the Town, although the same may be reduced from time to time as provided herein. All collection expenses, court costs, attorney's fees, and administration costs incurred by the Town in connection with collection under the Security shall be paid by the Developer and such obligations are included in the amount of the Security.

8. *Right of Town to Performance Security* - The Town reserves the right to draw upon the Performance Security, in an amount deemed necessary by the Town in its sole discretion, upon failure of the Developer to comply with any obligations of Developer contained in this Agreement which arise prior to, or as a condition to, acceptance.

9. *Right of Town to Maintenance Security* - The Town reserves the right to draw upon the Maintenance Security, in an amount deemed necessary by the Town in its sole discretion, upon failure of the Developer to comply with any obligations of Developer contained in this Agreement which arise prior to, or as a condition to, acceptance.

10. *Current Project Cost* – The Developer agrees that if the Security furnished to secure the obligations of the Developer under this Agreement, due to inflation and/or rising costs, previous errors in estimation, or any other reason, is inadequate to secure such obligations at the time an extension of time is sought, the Developer will provide additional Security to bring the Security amount in line with current cost projections made by the Town Engineer.

VII. WARRANTY

1. *Warranty Period* - The Developer is required to complete the Public Improvements and all other improvements required herein and by Town Regulations relative to the Project, in accordance with the terms of this Agreement. Further, the Developer is to correct any defects or failures as directed by the Town Planner or his or her designee that occur to any such improvements within one (1) year following acceptance.

2. *Scheduled Inspections* - Prior to the expiration of the Warranty Period, Town staff may inspect the streets, curbs and gutters, sidewalks, drainage/detention/stormwater management system, landscaping, lighting, irrigation, fencing and all other required improvements to determine any defects or failures of the same.

   a. Prior to the end of the Warranty Period, the Town will perform an inspection and prepare a list of defects and/or other work that maybe required for the Town to accept the improvements for permanent maintenance. The list of defects and/or other required work will be furnished to the Developer no later than forty-five (45) days from the end of the Warranty Period.

   b. If no defects or failures are found by the Town at such inspection, or if a defect is found by the Town but same is cured prior to the end of the Warranty Period, the Town Planner or his or her designee shall recommend that the Board of Mayor and Aldermen (BOMA) accept the improvements for permanent maintenance and any remaining Maintenance Security may be released.

   Nothing herein shall be construed to impose a duty on the Town to inspect the required improvements or to relieve Developer of any liability related to these improvements.

3. *Re-Inspection* - If all deficiencies noted in the inspection have not been corrected by the Developer prior to the expiration of the Warranty Period, Town staff shall re-inspect the Project and provide an updated list of deficiencies. The Developer shall have a specified number of days, as determined by the Town, to make the remaining corrections, and the Warranty Period will be extended to allow the deficiencies to be corrected. If all corrections are not made by the Developer by the end of the time extension, the Town may demand payment on the Security and draw upon the same, and, upon collection, shall proceed to make the corrections. If and when the Developer or the Town, as the case may be, has corrected all failures and defects, the Town Planner or his or her designee shall recommend Final Acceptance by the BOMA and any remaining Maintenance Security may be released.

4. *Formal Acceptance* – Upon recommendation of the Town Planner or her designee, the BOMA may approve acceptance of the Project, including the release of the Maintenance Security, and assume full ownership and maintenance responsibility for all public improvements associated with the Project, if the BOMA determines that acceptance of the dedication of the Public Improvements by the Developer is warranted under Town Regulations and applicable State and Federal laws.

VIII. INSURANCE

1. *Comprehensive General Liability Insurance* - The Developer shall purchase and maintain comprehensive general liability and all other necessary and required insurance that shall insure against claims arising out of the Developer's performance, or non-performance, under this Agreement, whether such claims arise out of the actions or lack of action of the Developer, any subcontractor of the Developer, their employees, agents or independent contractors or anyone for whose actions or lack of action any of them may be liable, including, without limitation:

a. Claims for the personal injury, occupational illness or death of the Developer's employees, if any;
b. Claims for the personal injury, illness or death of any person other than the Developer's employees or agents;
c. Claims for injury to or destruction of tangible property, including loss of use resulting therefrom;
d. Claims for property damage or personal injury or death of any person arising out of the ownership, maintenance or use of any motor vehicle; and,
e. Claims by third parties for personal injury and property damage arising out of the Developer's failure to comply with the Developer's obligations under this Agreement.
f. Claims brought under worker's compensation; provided, however, if Developer has no employees who are eligible to be covered under worker's compensation insurance, the Developer shall not be required to furnish insurance against worker's compensation but shall require the party(s) contracting with Developer to perform work on the Project Site to furnish evidence of such insurance for the employees of same.

2. *Coverage Required* - The insurance coverage required by this Agreement shall include the coverage specified above with policy limits of not less than $1,000,000 Combined Single Limit general liability and $500,000 Combined Single Limit automobile liability per occurrence.

a. The comprehensive general liability insurance coverage shall include completed operations insurance coverage and liability insurance applicable to the Developer's obligations under this Agreement.
b. Each insurance policy shall contain a provision stating that the insurer will give the Town thirty (30) days prior written notice of its intent to cancel or materially change the policy. All such insurance shall remain in effect until the BOMA approves acceptance and releases of Security of the completed Project.
c. In addition, the Developer shall maintain completed operations insurance for at least one (1) year after the BOMA approves acceptance and release of the applicable Security.
d. The Developer shall furnish the Town with evidence of the continuation of all such insurance at the time of issuance of the notice of acceptance and release of Security.

XII. MISCELLANEOUS PROVISIONS

1. *Notices* - All notices, demands and requests required or permitted by this Agreement shall be in writing (including telecopy communications) and shall be sent by email, certified mail, or hand delivery. Any notice, demand or request which is mailed, hand delivered or sent by courier shall be deemed given for all purposes under this Agreement when delivered to the intended address.

TOWN	**DEVELOPER**	**OWNER**
Town of Thompson's Station	_____	Same

P. O Box 100 _____
Thompson's Station, TN 37179 _____

2. *Change of Address* - Any party to this Agreement may change such party's address for the purpose of notices, demands and requests required or permitted under this Agreement by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

3. *Choice of Law & Venue* - This Agreement is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles of conflicts of law) of the State of Tennessee shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof. Venue for any action arising from this Agreement shall be in a court of competent jurisdiction in Williamson County, Tennessee.

4. *Joinder of Owner* - If the Developer is not the Owner of the Project Site, the Owner shall join in this Agreement, and, by the Owner's execution of this Agreement, the Owner is jointly and severally liable for the representations, warranties, covenants, agreements and indemnities of Developer.

5. *Interpretation and Severability* - If any provision of this Agreement is held to be unlawful, invalid, or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such unlawful, invalid, or unenforceable provision was not a part of this Agreement. Furthermore, if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which rends it valid.

6. *No Waiver* - The failure of the Town to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Agreement, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

7. *Amendments and Modification* - This Agreement shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties. All legal fees, costs and expenses incurred with agreement modifications shall be at the sole expense of the Developer.

8. *Authority to Execute* – Town, Developer, and Owner each warrant and represent that the party signing this Agreement on behalf of each has authority to enter into this Agreement and to bind them, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

9. *Binding Agreement* - This Agreement is the full and complete agreement between the Town and the Developer and/or Owner(s) and supersedes all other previous agreements or representations between the parties, either written or oral, and the parties agree that the terms and provisions of this agreement is binding upon all parties to the Agreement and their respective heirs, successors, or assigns until the terms of the Agreement are fully met.

WITNESS the due execution hereof:

DEVELOPER:

_____

_____
Print Name & Title

Date:_____

OWNER (if applicable):

_____

_____
Print Name

Date:_____

TOWN OF THOMPSON'S STATION:

_____
Mayor Corey Napier

Date:_____

Exhibit "A"
Final Project Documents

Exhibit "B"
Conditions of approval established by the Board of Mayor and Aldermen, the Planning Commission (PC) and/or the Design Review Commission (DRC)

Exhibit "C"
Estimated Cost of Public Improvements

Exhibit "D"
Performance and Maintenance Security Documents
Appendix G

TOWN OF THOMPSONS STATION
AS-BUILT STATEMENT BY A REGISTERED PROFESSIONAL ENGINEER

Project Name: _____

Project Name: _____

I hereby certify that I am a registered engineer in the State of Tennessee & the construction drawings for the referenced project were prepared under my responsibility and charge. To the best of my information, knowledge, and belief, the herein referenced project has been constructed in accordance with the construction drawings and specifications, within normal construction tolerances, and in my professional opinion is in compliance with applicable laws, and will perform in accordance with the calculations that were submitted with the design. Substantial deviations from the construction drawings and performance variations are noted herewith.

_____	_____
Name	Signature
_____	_____
Company Name	Tennessee Registration Number
_____	_____
Company Address	Date
_____	
City, State Zip	
_____	
Telephone Number	

Substantial Deviations (affix seal above)

_____

_____

_____

Prior to release of the Roads Drainage, and Erosion Control Bond, Submit completed form to:

Town of Thompsons Station
P.O. Box 100
Thompson's Station, TN 37179

ORDINANCE 2019-009

AN ORDINANCE OF THE TOWN OF THOMPSON'S STATION, TENNESSEE, PROVIDING THAT THE CODE OF ORDINANCES OF THE TOWN OF THOMPSON'S STATION BE AMENDED BY ADDING A NEW CHAPTER TO TITLE 16 THEREIN, PROVIDING FOR THE INSTALLATION AND MAINTENANCE OF COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

WHEREAS, competing demands for uses of the public right-of-way require local governments to establish regulations that will preserve the integrity, safe usage and aesthetics of the right-of-way; and

WHEREAS, various types of communication facilities are among the uses seeking space in the public right-of-way; and

WHEREAS, the Town of Thompson's Station seeks to balance the need to accommodate advanced technologies in communications with regulations that provide for proper management of the right-of-way; and

WHEREAS, the Town further finds that such regulations are needed in order to protect the public health, safety and welfare.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN OF THOMPSON'S STATION, TENNESSEE, AS FOLLOWS:

SECTION 1: That Title 16 of the Code of Ordinances of the Town of Thompson's Station is hereby amended by adding a new Chapter, to be designated as Chapter 2 and to read as follows:

CHAPTER 2. WIRELESS COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY

Sec. 16-201. - Purpose and scope.

(a) *Purpose.* In accordance with Tennessee Code Annotated § 13-24-401, *et seq*., known as "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018," the purpose of this chapter is to establish policies and procedures for the placement of small wireless facilities in the public rights-of-way within the town's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the town's rights-of-way and to the town as a whole.

(b) *Intent.* In enacting this chapter, the town is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:

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

(2) Prevent the creation of visual and physical obstructions and other conditions that are

hazardous to vehicular and pedestrian traffic;

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

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

(5) Preserve the character of the neighborhoods, areas, and zones in which facilities are installed; and

(6) Facilitate rapid deployment of small wireless facilities to provide the benefits of advanced wireless services.

(c) *Conflicts with other chapters.* This chapter supersedes all chapters or parts of chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

Sec. 16-202. - Definitions.
The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Aesthetic plan* means any publicly available written resolution, regulation, policy, site plan, or approved plat establishing generally applicable aesthetic requirements within the Town or designated area within the Town. An aesthetic plan may include a provision that limits the plan's application to construction or deployment that occurs after adoption of the aesthetic plan. For purposes of this part, such a limitation is not discriminatory as long as all construction or deployment occurring after adoption, regardless of the entity constructing or deploying, is subject to the aesthetic plan;

(b) *Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services;

(c) *Applicable Codes* means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms of this chapter;

(d) *Applicant* means any person or entity who submits an application pursuant to this part;

(e) *Application* means a request submitted by an applicant to the Town of Thompson's Station:

(1) For a permit to deploy or collocate small wireless facilities in the rights-of-way; or

(2) To approve the installation or modification of a Potential Support Structure (PSS) associated with deployment or colocation of small wireless facilities in the rights-of-way;

(f) *Authority-owned PSS or Town-owned PSS* means a PSS owned or leased by the Town in the rights-of-way, including (i) a utility pole that provides lighting or traffic control functions,

including light poles, traffic signals, and structures for traffic cameras or signage; and (ii) a pole or similar structure owned/leased by the Town in the rights-of-way that supports only wireless facilities. Authority-owed PSS does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government-owned;

(g) *Town* means Town of Thompson's Station, Tennessee;

(h) *Collocate*, *collocating*, and *colocation* mean, in their respective noun and verb forms, to install, mount, maintain, modify, operate, or replace small wireless facilities on, adjacent to, or related to a PSS. "Colocation" does not include the installation of a new PSS or replacement of authority-owned PSS;

(i) *Communications facility* means the set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide communications service;

(j) *Communications service* means cable service as defined in 47 U.S.C. § 522(6), telecommunications service as defined in 47 U.S.C. § 153(53), information service as defined in 47 U.S.C. § 153(24) or wireless service;

(k) *Communications service provider* means a cable operator as defined in 47 U.S.C. § 522(5), a telecommunications carrier as defined in 47 U.S.C. § 153(51), a provider of information service as defined in 47 U.S.C. § 153(24), a video service provider as defined in § 7–59–303, or a wireless provider;

(l) *Day* means calendar day;

(m) *Fee* means a one-time, non-recurring charge;

(n) *Micro wireless facility* means a small wireless facility that:

(1) Does not exceed twenty-four inches (24″) in length, fifteen inches (15″) in width, and twelve inches (12″) in height; and

(2) The exterior antenna, if any, does not exceed eleven inches (11″) in length.

(o) *Permittee* means an applicant who has been granted a permit;

(p) *Person* means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity;

(q) *Potential support structure for a small wireless facility* or *PSS* means a pole or other structure used for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, including poles installed solely for the colocation of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at

the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to collocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part;

(r) *Rate* means a recurring charge;

(s) *Residential neighborhood* means an area within the Town's geographic boundary that is zoned or otherwise designated by the Town for general purposes as an area primarily used for single-family residences and does not include multiple commercial properties and is subject to speed limits and traffic controls consistent with residential areas;

(t) *Right-of-way or ROW* means the space, in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the Town, and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such public utility easement by the authority that are contiguous to paved roads, but excluding lands other than streets that are owned by the Town;

(u) *Right-of-way use permit or permit* means a permit for the construction or installation of wireless facilities, small wireless facilities, wireless backhaul facilities, fiber optic cable, conduit, and associated equipment necessary to install wireless facilities in the right-of-way;

(v) (1) *Small wireless facility* means a wireless facility with:

(A) An antenna that could fit within an enclosure of no more than six (6) cubic feet in volume; and

(B) Other wireless equipment in addition to the antenna that is cumulatively no more than
twenty-eight (28) cubic feet in volume, regardless of whether the facility is ground-mounted or pole-mounted. For purposes of this subdivision, "other wireless equipment" does not include an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a vertical cable run for the connection of power and other services; and

(2) "Small wireless facility" includes a micro wireless facility;

(x) Wireline backhaul facility means a communications facility used to transport communications services by wire from a wireless facility to a network;

(y) (1) *Wireless facility* means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:
(A) Equipment associated with wireless communications; and

(B) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;

(2) *Wireless facility* does not include:

(A) The structure or improvements on, under, or within which the equipment is collocated;

(B) Wireline backhaul facilities; or

(C) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna; and

(3) *Wireless facility* includes small wireless facilities.

(z) *Wireless infrastructure provider* means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or PSSs, but that is not a wireless services provider;

(aa) *Wireless provider* means a wireless infrastructure provider or a wireless services provider;

(bb) *Wireless services* means any service using licensed or unlicensed spectrum, including the use of WIFI, whether at a fixed location or mobile, provided to the public;

(cc) *Wireless services provider* means a person who provides wireless services.

Sec. 16-203. - Permitted use; application and fees.

(a) *Permitted use.* Collocation of a small wireless facility or installation of a new, replacement, or modified PSS shall be a permitted use, subject to the restrictions in this title.

(b) *Permit required.* No person may construct, install, and/or operate wireless facilities that occupy the right-of-way without first obtaining a right-of-way use permit from the Town. Any right-of-way use permit shall be reviewed, issued, and administered in a non-discriminatory manner, shall be subject to such reasonable conditions as the Town may from time to time establish for effective management of the right-of-way, and otherwise shall conform to the requirements of this chapter and applicable law.

(c) *Permit applications.* All applications for right-of-way use permits filed pursuant to this chapter shall be on a form, paper or electronic, provided by the Town. The applicant may include up to twenty (20) small wireless facilities within a single application. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

(d) *Application requirements.* The application shall be made by the wireless provider or its duly authorized representative and shall contain the following:

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

(2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, contractors and subcontractors, if any, acting on behalf of the applicant with respect to the filing of the application or who may be involved in doing any work on behalf of the applicant;

(3) A site plan for each proposed location with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the Town to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements;

(4) The location of the site(s), including the latitudinal and longitudinal coordinates of the specific location(s) of the site;

(5) Identification of any third party upon whose PSS the applicant intends to collocate and certification by the applicant that it has obtained approval from the third party;

(6) The applicant’s identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;

(7) The applicant’s certification of compliance with surety bond, insurance, or indemnification requirements (as set forth below); rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the Town imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the Town imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW;

(8) The applicant’s certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility. Those standards relevant to engineering must be certified by a

licensed professional engineer; and

(9) A statement that all wireless facilities shall comply with all applicable codes.

(e) *Approval or Denial of Application; Response Time*. The Town responds to the applications for permit per the timelines prescribed in federal law and in T.C.A. Section 13-24-409(b), as may be amended, regarding the approval or denial of applications, and the Town shall respond to applications per the specific requirements of T.C.A. Section 13-24-409(b)(3), as may be amended. The Town reserves the right to require a surcharge as indicated in T.C.A. Section 13-24-409(b)(7)(F)(i), as may be amended, for high-volume applicants.

(f) *Deployment after Permit.* An applicant must complete deployment of the applicant's small wireless facilities within nine (9) months of approval of applications for the small wireless facilities unless the Town and the applicant agree to extend the period, or a delay is caused by a lack of commercial power or communications transport facilities to the site. If an applicant fails to complete deployment within the time required pursuant to this subsection, then the Town may require that the applicant complete a new application and pay an application fee associated with the new application.

(g) *Multiple Permit Applications at Same Location.* If the Town receives multiple applications seeking to deploy or collocate small wireless facilities at the same location in an incompatible manner, then the Town may deny the later filed application, as priority for locations shall be given on a first come, first served bases and as allowed.

(h) *Bridge and/or Overpass Special Provision.* If the Applicant's site plan includes any colocation design that includes attachment of any facility or structure to a bridge or overpass, then the applicant must designate a safety contact. After the Applicant's construction is complete, the Applicant shall provide to the safety contact a licensed professional engineer's certification that the construction is consistent with the applicant's approved design, that the bridge or overpass maintains the same structural integrity as before the construction and installation process, and that during the construction and installation process neither the Applicant nor its contractors have discovered evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If such evidence is discovered during construction, then the Applicant shall provide notice of the evidence to the safety contact.

(i) *Information updates.* Except as otherwise provided herein, any amendment to information contained in a permit application shall be submitted in writing to the Town within 30 days after the change necessitating the amendment.

(j) *Application fees.* Unless otherwise provided by law, all permit applications for small wireless facility pursuant to this chapter shall be accompanied by a fee in accordance with T.C.A. § 13-24-407. This fee shall be one hundred dollars ($100.00) each for the first five (5) small wireless facilities and fifty dollars ($50.00) each for additional small wireless facilities included in a single application. There shall also be a fee of two hundred dollars ($200.00) for all first-time applicants. Applications fees shall increase by ten percent (10%) on January 1, 2020, and every five (5) years thereafter, rounded to the nearest dollar.

Sec. 16-204. - Facilities in the ROW; maximum height; other requirements.

(a) *Aesthetic Plan*. Unless otherwise determined by Town Staff, in an attempt to blend into the built environment, all small wireless facilities, new or modified utility poles, PSSs for the collocation of small wireless facilities, and associated equipment shall be consistent in size, mass, shape, and color to similar facilities and equipment in the immediate area, and its design for the PSS shall meet the adopted aesthetic plan, subject to following requirements:

(1) Collocation is recommended, when possible. Should the wireless provider not be able to collocate, the wireless provider shall provide justification in the application;

(2) When unable to match the design and color of existing utility poles/PSSs in the immediate area small wireless facilities and/or new PSSs shall be designed using stealth or camouflaging techniques, to make the installation as minimally intrusive as possible including stealth poles that are black or bronze in color, powder-coated and that do not exceed 16 inches in diameter. The Town reserves the right to require a street light on the PSS. New wooden PSSs shall be strictly prohibited;

(3) When an Applicant seeks to deploy a small wireless facility, and associated equipment, within a residential neighborhood, then the Applicant must deploy the facility in the right of way within twenty-five (25) feet of the property boundaries separating residential lots larger than 0.75 acres and within fifteen (15) feet of the property boundaries separating residential lots if lots are 0.75 acres or smaller; and

(4) New small wireless facilities, antennas, and associated equipment shall be consistent in size, mass, and color to similar facilities and equipment in the immediate area of the proposed facilities and equipment, minimizing the physical and visual impact to the community.

(b) *Compliance with Underground Facilities*. Subject to waivers as determined by the Town of Thompson's Station Planning Commission, an Applicant must comply with existing requirements to place all electric, cable, and communications facilities underground in a designated area of a ROW, as determined by the Town's zoning regulations.

(c) *Replacing an existing Town-owned PSS*. Town-owned PSS may be replaced for the collocation of small wireless facilities. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of the PSS being replaced, and must continue to be capable of
performing the same function in a comparable manner as it performed prior to replacement.

(1) When replacing a Town-owned PSS, the replacement PSS becomes the property of the Town, subject to T.C.A. § 13-24-408(g), as may be amended.

(2) The Town reserves the right to require a street light on the new PSS.

(d) *Maximum Height.* A new PSS installed or an existing PSS replaced in the ROW shall not exceed the greater of:

(1) Ten feet (10') in height above the tallest existing PSS in place as of the effective date of this part that is located within five hundred feet (500') of the new PSS in the ROW and, in residential neighborhoods, the tallest existing PSS that is located within five hundred feet (500') of the new PSS and is also located within the same residential neighborhood as the new PSS in the ROW;

(2) Fifty feet (50') above ground level; or

(3) For a PSS installed in a residential neighborhood, forty feet (40') above ground level.

(f) *Maximum Height for Small wireless facilities*. Small wireless facilities shall not extend:

(1) More than ten feet (10') above an existing PSS in place as of the effective date of this part; or

(2) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.

(g) *Construction in the rights-of-way*. All construction, installation, maintenance, and operation of wireless facilities in the right-of-way by any wireless provider shall conform to the requirements of the following publications, as from time to time amended: The Rules of Tennessee Department of Transportation Right-of-Way Division, the National Electrical Code, and the National Electrical Safety Code, as might apply.

(h) *Town of Thompson's Station Planning Commission Approval*. Unless otherwise provided in this ordinance, the Town of Thompson's Station Planning Commission approval shall be required for:

(1) Any wireless provider that seeks to construct or modify a PSS or wireless facility that is determined to not comply with the height, diameter, design, color standards and expectations set forth in subsections (a)—(g) above.

(2) New PSSs shall not be permitted to be installed in the rights-of-way in areas in which no utility poles, streetlight poles, or PSSs exist at the time of application without prior approval by the Town of Thompson's Station Planning Commission.

(i) Additional criteria regarding the location, type, and/or design of small cell facilities and utility poles shall be subject to change. All changes shall be made available to the public for 30 days prior to their effective date and compiled into a set of guidelines titled, "Town of Thompson's Station Guidelines for Wireless Communications Facilities in the Public Right-of-Way." In no case, shall any guidelines be retroactive. Facilities approved for which right-of-way use permits have been issued prior to the effective date of a new guideline shall not be affected.

Sec. 16-205. - Effect of permit.

(a) *Authority granted; no property right or other interest created.* A permit authorizes an applicant to undertake only certain activities in accordance with this chapter and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(b) *Duration.* No permit issued under this chapter shall be valid for a period longer than 12 months unless construction has commenced within that period and is thereafter diligently pursued to completion. In the event that construction begins but is inactive for more than 90 days, the permit expires.

(c) *Termination of permit.* In all other circumstances, the permit expires in 12 months.

Sec. 16-206. - Maintenance, removal, relocation or modification of small wireless facility and fiber in the ROW.

(a) *Notice.* Within 90 days following written notice from the Town, the permittee shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities and support structures within the rights-of-way whenever the Town has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Town improvement in or upon, or the operations of the Town in or upon, the rights-of-way. The Town agrees to use good faith efforts to accommodate any such disconnection, removal, relocation, change, or alteration and to assist with identifying and securing a mutually agreed upon alternative location.

(b) *Maintenance of existing facilities.* With respect to each wireless facility installed pursuant to a right-of-way use permit, permittee is hereby permitted to enter the right-of-way at any time to conduct repairs, maintenance or replacement not substantially changing the physical dimension of the wireless facility. Permittee shall comply with all rules, standards and restrictions applied by the Town to all work within the right-of-way. If required by the Town, permittee shall submit a "maintenance of traffic" plan for any work resulting in significant blockage of the right-of-way. However, no excavation or work of any kind may be performed without a permit, as provided herein, except in the event of an emergency. In the event of emergency, permittee shall attempt to provide advance written or oral notice to the public works director or other Town designee.

(c) *Removal of existing facilities.* If the permittee removes any wireless facilities, it shall notify the Town of such change within 60 days.

(d) *Damage to facilities or property.* A permittee, including any contractor or subcontractor working for a permittee, shall avoid damage to any wireless facilities and/or public or private property. If any wireless facilities and/or public or private property are damaged by permittee, including any contractor or subcontractor working for permittee, the permittee shall promptly

commence such repair and restore (to a comparable or better condition) such property within ten business days unless such time period is extended by the public works director or his designee. Permittee shall utilize the Tennessee One Call System prior to any disturbance of the rights-of-way and shall adhere to all other requirements of the Tennessee Underground Utility Damage Prevention Act.

(e) *Emergency removal or relocation of facilities.* The Town retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the Town, as the Town may determine to be necessary, appropriate or useful in response to any serious public health or safety emergency. If circumstances permit, the Town shall notify the wireless provider in writing and provide the wireless provider a reasonable opportunity to move its own wireless facilities prior to cutting or removing a wireless facility and shall notify the wireless provider after cutting or removing a wireless facility. Any removal shall be at the wireless providers sole cost. Should the wireless facility be collocated on property owned by a third-party, the Town shall rely on the third-party to remove the wireless facility and shall be provided adequate notice and time to facilitate such removal.

(f) *Abandonment of facilities.* Upon abandonment of a small wireless facility within the rights-of-way of the Town, the wireless provider shall notify the Town within 90 days. Following receipt of such notice the Town may direct the wireless provider to remove all or any portion of the small wireless facility if the Town reasonably determines that such removal will be in the best interest of the public health, safety and welfare. Should the wireless facility be collocated on property owned by a third-party, the Town shall rely on the third-party to remove the wireless facility and shall be provided adequate notice and time to facilitate such removal. Any removal shall be at the wireless providers sole cost.

(g) No application, fee, rate, and/or approval is required for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in T.C.A. § 68-101-104.

Sec. 16-207. - Public right-of-way rates—Attachment to Town-owned/leased PSSs and new PSSs installed within the public right-of-way or Town-owned/leased property.

(a) Annual rate. The rate to place a small wireless facility on a Town-owned or leased PSS in the rights-of- way shall be one hundred dollars ($100.00) per year for all Town-owned or leased PSSs in the rights-of-way. All equipment attached to a Town-owned pole shall constitute a single attachment and therefore a single use of a Town-owned PSS. Such compensation, for the first year or for any portion thereof, together with the application fee specified in this chapter shall be the sole compensation that the wireless provider shall be required to pay the Town. This rate will be due January 1 of each year of the permit.

(b) A wireless provider authorized to place a new PSS within public right-of-way on Town-owned or leased property shall pay to the Town for use of the right-of-way or property in the amount of one hundred dollars ($100.00). This rate will be due January 1 of each year of the permit.

Sec. 16-208. - Remedies; violations.

In the event a reasonable determination is made that a person has violated any provision of this chapter, or a right-of-way use permit, such person shall be provided written notice of the determination and the specific, detailed reasons therefor. Except in the case of an emergency, the person shall have 30 days to commence to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the Town, in its reasonable judgment, may extend the time period to cure, provided that the person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the Town may take all actions authorized by this chapter and/or Tennessee law and regulations.

Sec. 16-209. - General provisions.

(a) *Insurance*. Each permittee shall, at all times during the entire term of the right-of-way use permit, maintain and require each contractor and subcontractor to maintain insurance with a reputable insurance company authorized to do business in the State of Tennessee and which has an A.A. Best rating (or equivalent) no less than "A" indemnifying the Town from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, installation, operation, maintenance or removal of permittee's wireless facilities in the rights-of-way. The amounts of such coverage shall be not less than the following:

(1) *Worker's compensation and employer's liability insurance.* Tennessee statutory requirements.

(2) *Comprehensive general liability*. Commercial general liability occurrence form, including premises/operations, independent contractor's contractual liability, product/completed operations; X, C, U coverage; and personal injury coverage for limits as specified in Appendix A - Comprehensive Fees and Penalties but in no case less than $1,000,000.00 per occurrence, combined single limit and $2,000,000.00 in the aggregate.

(3) *Commercial automobile liability*. Commercial automobile liability coverage for all owned, non-owned and hired vehicles involved in operations under this article XII for limits as specified in Appendix A - Comprehensive Fees and Penalties, but in no case less than $1,000,000.00 per occurrence combined single limit each accident.

(4) *Commercial excess or umbrella liability.* Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.

The Town shall be designated as an additional insured under each of the insurance policies required by this section except worker's compensation and employer's liability insurance. Permittee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this section. Permittee shall provide the Town with at least 30 days' advance written notice of any material changes or cancellation of any required insurance policy, except for non-payment of premium of the policy coverages.

Permittee shall impose similar insurance requirements as identified in this section on its contractors and subcontractors.

(b) *Indemnification*. Each permittee, its consultant, contractor, and subcontractor, shall, at its sole cost and expense, indemnify, defend and hold harmless the Town, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the permittee, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of permittee's wireless system or wireless facilities in the rights-of-way. Each permittee shall defend any actions or proceedings against the Town in which it is claimed that personal injury, including death, or property damage was caused by the permittee's construction, installation, operation, maintenance or removal of permittee's wireless system or wireless facilities in the rights-of-way. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs and all other reasonable costs of indemnification.

(c) *As-built maps*. As the Town controls and maintains the right-of-way for the benefit of its citizens, it is the responsibility of the Town to ensure that such public right-of-way meet the highest possible public safety standards. Upon request by the Town and within 30 days of such a request, a permittee shall submit to the Engineering Department (or shall have otherwise maintained on file with the department) as-built maps and engineering specifications depicting and certifying the location of all its existing small wireless facilities within the right-of-way, provided in standard electronic or paper format in a manner established by the Town, or his or her designee. Such maps are, and shall remain, confidential documents and are exempt from public disclosure under the Tennessee Public Records Act (Tennessee Code Annotated § 10-7-101 *et seq*.) to the maximum extent of the law. After submittal of the as-built maps as required under this section, each permittee having small wireless facilities in the Town rights-of-way shall update such maps as required under this chapter upon written request by the Town.

(d) *Right to inspect*. With just and reasonable cause, the Town shall have the right to inspect all of the small wireless facilities, including aerial facilities and underground facilities, to ensure general health and safety with respect to such facilities and to determine compliance with the terms of this chapter and other applicable laws and regulations. Any permittee shall be required to cooperate with all such inspections and to provide reasonable and relevant information requested by the Town as part of the inspection.

(e) *Proprietary information.* If a person considers information it is obligated to provide to the Town under this chapter to be a business or trade secret or otherwise proprietary or confidential in nature and desires to protect the information from disclosure, then the person shall mark such information as proprietary and confidential. Subject to the requirements of the Tennessee Public Records Act (Tennessee Code Annotated § 10-7-101 *et seq*.) as amended, and other applicable law, the Town shall exercise reasonable good faith efforts to protect such proprietary and confidential information that is so marked from disclosure to the maximum extent of the law. The Town shall provide written notice to the person in the following circumstances: i) if the

Town receives a request for disclosure of such proprietary and confidential information and the Town Attorney determines that the information is or may be subject to disclosure under applicable law; or ii) if the Town Attorney determines that the information should be disclosed in relation to its enforcement of this chapter or the exercise of its police or regulatory powers. In the event the person does not obtain a protective order barring disclosure of the information from a court of competent jurisdiction within 30 days following receipt of the Town's notice, then
the Town may disclose the information without further written notice to the person.

(f) *Duty to provide information.* Within ten days of a written request from the Town, a permittee shall furnish the Town with information sufficient to demonstrate the following: that the permittee has complied with all requirements of this chapter; that all fees due to the Town in connection with the services provided and wireless facilities installed by the permittee have been properly paid by the permittee; and any other information reasonably required relating to the permittee's obligations pursuant to this chapter.

(g) *No substitute for other required permissions.* No right-of-way use permit includes, means, or is in whole or part a substitute for any other permit or authorization required by the laws and regulations of the Town for the privilege of transacting and carrying on a business within the Town or any permit or agreement for occupying any other property of the Town.

(h) *No waiver.* The failure of the Town to insist on timely performance or compliance by any permittee holding a right-of-way use permit shall not constitute a waiver of the Town's right to later insist on timely performance or compliance by that permittee or any other permittee holding such right-of-way use permit. The failure of the Town to enforce any provision of this chapter on any occasion shall not operate as a waiver or estoppel of its right to enforce any provision of this chapter on any other occasion, nor shall the failure to enforce any prior ordinance or Town Charter provision affecting the right-of-way, any wireless facilities, or any user or occupant of the right-of-way act as a waiver or estoppel against enforcement of this chapter or any other provision of applicable law.

(i) *Policies and procedures.* The Town is authorized to establish such written policies and procedures consistent with this chapter as the Town reasonably deems necessary for the implementation of this chapter.

(j) *Police powers.* The Town, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the Town under applicable federal, state and local laws and regulations.

(k) *Severability.* If any section, subsection, sentence, clause, phrase or word of this chapter is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this chapter invalid.

SECTION 2. All Prior Conflicting Ordinances Repealed; Interpretation. That upon the effective date of this ordinance, all prior ordinances and resolutions in conflict herewith be

repealed. In case of conflict between this ordinance or any part hereof, and the whole or part of any existing ordinance of the Town, the provision that establishes the higher standard shall be controlling.

SECTION 3. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

SECTION 4. Effective date; applicability. This ordinance shall take effect upon publication in a newspaper of general circulation within the Town after final reading, the public welfare requiring it.

Duly approved and adopted by the Board of Mayor and Aldermen of the Town of Thompson's Station, Tennessee.

_____
Corey Napier, Mayor

ATTEST:

_____
Town Recorder

Passed First Reading: October 8, 2019

Passed Second Reading: _____

Submitted to Public Hearing on the ____ day of _____ 2019, at 7:00 p.m., after being advertised in the *Williamson AM* Newspaper on the 28th day of October, 2019.

APPROVED AS TO FORM AND LEGALITY:

_____
Town Attorney

TENNESSEE PERMIT APPLICATION FOR PUBLIC RIGHT-OF-WAY, SMALL WIRELESS FACILITY, MICRO- WIRELESS FACILITY, POSSIBLE SUPPORT STRUCTURE ("PSS") AND/OR WIRELESS SUPPORT STRUCTURE INSTALLATION

TOWN OF THOMPSON'S STATION, TENNESSEE

(This Permit form conforms to, and incorporates the provisions of the "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018" (the "2018 Wireless Act", Tenn. Code Ann. §§ 13-24-401 – 412).)

DATE APPLICATION SUBMITTED BY APPLICANT: _____

DATE RECEIVED:_____**RECEIVED BY:** _____

NUMBER OF FACILITIES INCLUDED ON THIS APPLICATION (UP TO 20): _____

New Submission
Resubmission

APPLICANT INFORMATION	
APPLICANT NAME:	WIRELESS SERVICE PROVIDER (if different from applicant):
COMPANY CONTACT OR REP:	PHONE:
MAILING ADDRESS:	
CITY:	STATE: **TN**
ZIP:	EMAIL:
APPLICANT EMERGENCY CONTACT [Tenn. Code Ann. §13-24-409(g)(4)] name, company):	(emergency email and phone number)
APPLICANT SAFETY CONTACT FOR ATTACHMENTS TO BRIDGES OR OVERPASSES [Tenn. Code Ann. §13-24-409(j)] (name, company, address, phone number, email):	
APPLICANT TRACKING NUMBER:	
Is applicant an FCC-licensed provider of wireless services? ☐ Yes ☐ No If not, please describe:	

PROJECT INFORMATION			
NUMBER OF WIRELESS FACILITY SITES:	**Number of new PSS to be installed:**		
	Number of colocations on existing third-party PSS/on replacement of existing third-party PSS:		
	Number of colocations on existing Town-owned PSS:		
	TOTAL		

CERTIFICATIONS BY APPLICANT:

1. Applicant has obtained approvals from all third-party owners as applicable to proposed sites for the colocation of small wireless facilities or new PSS. Tenn. Code Ann. §13-24-409(g)(3)

2. Applicant agrees to pay applicable fees and rates, repair damage (if any), and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility. Tenn. Code Ann. §13-24-409(g)(4)

3. Applicant has or will comply with the Town's (i) surety bond, insurance and/or indemnification requirements; (ii) rules requiring maintenance of infrastructure deployed in ROW; (iii) rules requiring relocation or timely removal of infrastructure deployed in ROW no longer utilized; and (iv) any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any and to the extent that the Town has adopted and enacted such requirements on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW. Tenn. Code Ann. §13-24-409(g)(5)

4. The proposed site plan and design plans included with this application meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility, as certified by a licensed professional engineer. (Certification of a licensed professional engineer is attached for standards relevant to engineering.) Tenn. Code Ann. §13-24- 409(g)(6)

5. Applicant hereby agrees and covenants that should applicant, or its agents, employees, or assigns, violate any law, rule, or regulation of the Town that requires the Town to seek redress in a court of competent jurisdiction in Williamson County, Tennessee ("legal action"), then Applicant shall be liable for all fees and costs associated with said legal action, including but not limited to all court costs, attorney's fees, and discretionary costs.

NAME (Please print) TITLE

ATTACHMENTS TO APPLICATION

Please submit all the following with this completed application.

☐ Preliminary site plan with a diagram or engineering drawing depicting the design for installation of the proposed small wireless facility or modification, including requirements of Manual on Uniform Traffic Control Devices. Tenn. Code Ann. §13-24-409(g)(1) (All plans must be accompanied by the following certification by a licensed professional engineer: "The proposed site plan and design plans contained in this application meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility.") Tenn. Code Ann. §13-24-409(g)(6)

Location of each proposed site, including the latitudinal and longitudinal coordinates of the specific location of the site. Tenn. Code Ann. §13-24-409(g)(2) Identification of any third-party PSS owner upon whose PSS the applicant intends to colocate. (Certification by applicant that it has obtained required approval from the third party PSS owner is attached.) Tenn. Code Ann. §13-24-409(g)(3)

☐ Brief description of the facility to be installed at each proposed site in the Town public right-of-way.

Applicant Location Code	Applicant Site Name/Address	Approve/Deny	Permit ID Number	Comments (including specific reason for denial, if denied)

>>>FOR TOWN STAFF USE ONLY<<<

RATE AND FEE SUMMARY:

1. One-time Application Fee: $100.00 x_____(up to five (5) small wireless facilities) + $50.00 x_____(additional up to 20) =$_____ Sur

$100 x_____ = $_____

TOTAL APPLICATION FEE: = $_____
APPLICATION PAYMENT RECEIVED (date) : _____

2. Annual Rate for colocation on Authority-owned PSS (covers access to public right-of-way and colocation)

Total Number of small wireless facilities applied for:_____x $_____($100.00 max. per facility/year) = $_____

DATE REVIEWED: / /_____
REVIEWER:_____
ZONING TECHNICIAN:_____
DATE APPLICATION COMPLETE: / /_____
RECEIPT NUMBER:_____

ACTION: This Permit Application shall be processed within the timelines set forth in Tenn. Code Ann. § 13-24-409(b).

☐ APPLICATION COMPLETE ☐ APPLICATION INCOMPLETE (If incomplete for any requested site, Town must notify Applicant within thirty (30) days of receipt of Application and specifically identify missing information per site in the space below.)

NOTES: [Note when complete if initially incomplete.]

☐ APPROVE PERMIT ☐ DENY PERMIT (If denied for any requested site, Town must identify each denied site and provide written explanation of the denial in the space below.)

NOTES:

TOWN PLANNER (or designee) Date Name/Signature/Date

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

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

DECLARATORY RULING AND THIRD REPORT AND ORDER

Adopted: September 26, 2018 **Released: September 27, 2018**

By the Commission: Chairman Pai and Commissioners O'Rielly and Carr issuing separate statements; Commissioner Rosenworcel approving in part, dissenting in part and issuing a statement.

TABLE OF CONTENTS

I. INTRODUCTION

1. America is in the midst of a transition to the next generation of wireless services, known as 5G. These new services can unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country. The FCC is committed to doing our part to help ensure the United States wins the global race to 5G to the benefit of all Americans. Today's action is the next step in the FCC's ongoing efforts to remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new services. We proceed by drawing on the balanced and commonsense ideas generated by many of our state and local partners in their own small cell bills.

2. Supporting the deployment of 5G and other next-generation wireless services through smart infrastructure policy is critical. Indeed, upgrading to these new services will, in many ways, represent a more fundamental change than the transition to prior generations of wireless service. 5G can enable increased competition for a range of services—including broadband—support new healthcare and Internet of Things applications, speed the transition to life-saving connected car technologies, and create jobs. It is estimated that wireless providers will invest $275 billion[1] over the next decade in next-generation wireless infrastructure deployments, which should generate an expected three million new jobs and boost our nation's GDP by half a trillion dollars.[2] Moving quickly to enable this transition is important, as a new report forecasts that speeding 5G infrastructure deployment by even one year would unleash an additional $100 billion to the U.S. economy.[3] Removing barriers can also ensure that every community gets a fair shot at these deployments and the opportunities they enable.

3. The challenge for policymakers is that the deployment of these new networks will look different than the 3G and 4G deployments of the past. Over the last few years, providers have been increasingly looking to densify their networks with new small cell deployments that have antennas often no larger than a small backpack. From a regulatory perspective, these raise different issues than the construction of large, 200-foot towers that marked the 3G and 4G deployments of the past. Indeed, estimates predict that upwards of 80 percent of all new deployments will be small cells going forward.[4] To support advanced 4G or 5G offerings, providers must build out small cells at a faster pace and at a far greater density of deployment than before.

4. To date, regulatory obstacles have threatened the widespread deployment of these new services and, in turn, U.S. leadership in 5G. The FCC has lifted some of those barriers, including our decision in March 2018, which excluded small cells from some of the federal review procedures designed for those larger, 200-foot towers. But as the record here shows, the FCC must continue to act in partnership with our state and local leaders that are adopting forward leaning policies.

5. Many states and localities have acted to update and modernize their approaches to small cell deployments. They are working to promote deployment and balance the needs of their communities. At the same time, the record shows that problems remain. In fact, many state and local officials have urged the FCC to continue our efforts in this proceeding and adopt additional reforms. Indeed, we have

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[1] *See* Accenture Strategy, Accelerating Future Economic Value from the Wireless Industry at 2 (2018) (Accelerating Future Economic Value Report), https://www.ctia.org/news/accelerating-future-economic-value-from-the-wireless-industry, attached to Letter from Scott K. Bergmann, Senior Vice Pres., Reg. Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed July 19, 2018).

[2] *See* Accenture Strategy, Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities, (2017) http://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrantsmart-cities-accenture.pdf; attached to Letter from Scott Bergmann, Vice Pres. Reg. Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-421, (filed Jan. 13, 2017).

[3] Accelerating Future Economic Value Report at 2.

[4] Letter from John T. Scott, Counsel for Mobilitie, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2-3 (filed Sept. 12, 2018).

heard from a number of local officials that the excessive fees or other costs associated with deploying small scale wireless infrastructure in large or otherwise "must serve" cities are materially inhibiting the buildout of wireless services in their own communities.

6. We thus find that now is the appropriate time to move forward with an approach geared at the conduct that threatens to limit the deployment of 5G services. In reaching our decision today, we have benefited from the input provided by a range of stakeholders, including state and local elected officials.[5] FCC leadership spent substantial time over the course of this proceeding meeting directly with local elected officials in their jurisdictions. In light of those discussions and our consideration of the record here, we reach a decision today that does not preempt nearly any of the provisions passed in recent state-level small cell bills. We have reached a balanced, commonsense approach, rather than adopting a one-size-fits-all regime. This ensures that state and local elected officials will continue to play a key role in reviewing and promoting the deployment of wireless infrastructure in their communities.

7. Although many states and localities support our efforts, we acknowledge that there are others who advocated for different approaches.[6] We have carefully considered these views, but nevertheless find our actions here necessary and fully supported. By building on state and local ideas, today's action boosts the United States' standing in the race to 5G. According to a study submitted by Corning, our action would eliminate around $2 billion in unnecessary costs, which would stimulate around $2.4 billion of additional buildouts.[7] And that study shows that such new service would be

[5] *See, e.g.*, Letter from Brian D. Hill, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 31, 2018) ("While the FCC and the Ohio Legislature have worked to reduce the timeline for 5G deployment, the same cannot be said for all local and state governments. Regulations written in a different era continue to dictate the regulatory process for 5G infrastructure"); Letter from Maureen Davey, Commissioner, Stillwater County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 18, 2018) ("[T]he Commission's actions to lower regulatory barriers can enable more capital spending to flow to areas like ours. Reducing fees and shortening review times in urban areas, thereby lowering the cost of deployment in such areas, can promote speedier deployment across all of America."); Letter from Board of County Commissioners, Yellowstone County, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 21, 2018) ("Reducing these regulatory barriers by setting guidelines on fees, siting requirements and review timeframes, will promote investment including rural areas like ours."); Letter from Board of Commissioners, Harney County, Oregon, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 5, 2018) ("By taking action to speed and reduce the costs of deployment across the country, and create a more uniform regulatory framework, the Commission will lower the cost of deployment, enabling more investment in both urban and rural communities."); Letter from Niraj J. Antani, Ohio State Representative, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 4, 2018) ("[T]o truly expedite the small cell deployment process, broader government action is needed on more than just the state level."); Letter from Michael C. Taylor, Mayor, City of Sterling Heights, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1-2 (filed Aug. 30, 2018) ("[T]here are significant, tangible benefits to having a nation-wide rule that promotes the deployment of next-generation wireless access without concern that excessive regulation or small cell siting fees slows down the process.").

[6] *See, e.g.*, Letter from Linda Morse, Mayor, City of Manhattan, KS to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 13, 2018) (City of Manhattan, KS Sept. 13, 2018 *Ex Parte* Letter); Letter from Ronny Berdugo, Legislative Representative, League of California Cities to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 18, 2018) (Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter); Letter from Damon Connolly, Marin County Board of Supervisors to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 17, 2018) (Damon Connolly Sept. 17, 2018 *Ex Parte* Letter).

[7] *See* Letter from Thomas J. Navin, Counsel to Corning, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1, Attach. A at 2-3 (filed Sept. 5, 2018) (Corning Sept. 5, 2018 *Ex Parte* Letter).

deployed where it is needed most: 97 percent of new deployments would be in rural and suburban communities that otherwise would be on the wrong side of the digital divide.[8]

8. The FCC will keep pressing ahead to ensure that every community in the country gets a fair shot at the opportunity that next-generation wireless services can enable. As detailed in the sections that follow, we do so by taking the following steps.

9. In the Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. We thus address and reconcile this split in authorities by taking three main actions.

10. First, we express our agreement with the U.S. Courts of Appeals for the First, Second, and Tenth Circuits that the "materially inhibit" standard articulated in 1997 by the Clinton-era FCC's *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

11. Second, we note, as numerous courts and prior FCC cases have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress's limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision.[9] Namely, fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality's reasonable costs. In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. We do so to help avoid unnecessary litigation over fees.

12. Third, we focus on a subset of other, non-fee provisions of local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities, recognizing that certain reasonable aesthetic considerations do not run afoul of Sections 253 and 332. This responds in particular to many concerns we heard from state and local governments about deployments in historic districts.

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[8] *Id.*

[9] "Small Wireless Facilities," as used herein and consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

(1) The facilities—

(i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or

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

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

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

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

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

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

13. Next, we issue a Report and Order that addresses the "shot clocks" governing the review of wireless infrastructure deployments. We take three main steps in this regard. First, we create a new set of shot clocks tailored to support the deployment of Small Wireless Facilities. In particular, we read Sections 253 and 332 as allowing 60 days for reviewing the application for attachment of a Small Wireless Facility using an existing structure and 90 days for the review of an application for attachment of a small wireless facility using a new structure. Second, while we do not adopt a "deemed granted" remedy for violations of our new shot clocks, we clarify that failing to issue a decision up or down during this time period is not simply a "failure to act" within the meaning of applicable law. Rather, missing the deadline also constitutes a presumptive prohibition. We would thus expect any locality that misses the deadline to issue any necessary permits or authorizations without further delay. We also anticipate that a provider would have a strong case for quickly obtaining an injunction from a court that compels the issuance of all permits in these types of cases. Third, we clarify a number of issues that are relevant to all of the FCC's shot clocks, including the types of authorizations subject to these time periods.

II. BACKGROUND

A. Legal Background

14. In the Telecommunications Act of 1996 (the 1996 Act), Congress enacted sweeping new provisions intended to facilitate the deployment of telecommunications infrastructure. As U.S. Courts of Appeals have stated, "[t]he [1996] Act 'represents a dramatic shift in the nature of telecommunications regulation.'"[10] The Senate floor manager, Senator Larry Pressler, stated that "[t]his is the most comprehensive deregulation of the telecommunications industry in history."[11] Indeed, the purpose of the 1996 Act is to "provide for a pro-competitive, deregulatory national policy framework . . . by opening all telecommunications markets to competition."[12] The conference report on the 1996 Act similarly indicates that Congress "intended to remove all barriers to entry in the provision of telecommunications services."[13] The 1996 Act thus makes clear Congress's commitment to a competitive telecommunications marketplace unhindered by unnecessary regulations, explicitly directing the FCC to "promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[14]

15. Several provisions of the 1996 Act speak directly to Congress's determination that certain state and local regulations are unlawful. Section 253(a) provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[15] Courts have observed that Section 253 represents a "broad preemption of laws that inhibit competition."[16]

16. The Commission has issued several rulings interpreting and providing guidance regarding the language Congress used in Section 253. For instance, in the 1997 *California Payphone* decision, the Commission, under the leadership of then Chairman William Kennard, stated that, in determining whether a state or local law has the effect of prohibiting the provision of telecommunications services, it

[10] *Sprint Telephony PCS LP v. County of San Diego*, 543 F.3d 571, 575 (9th Cir. 2008) (en banc) (*County of San Diego*) (quoting *Cablevision of Boston, Inc. v. Pub. Improvement Comm'n*, 184 F.3d 88, 97 (1st Cir. 1999)).

[11] 141 Cong. Rec. S8197 (daily ed. June 12, 1995).

[12] H.R. Conf. Rep. No. 104–458, at 113 (1996), reprinted in 1996 U.S.C.C.A.N. (100 Stat. 5) 124.

[13] S. Rep. No. 104-230, at 126 (1996) (Conf. Rep.).

[14] Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996); *see also AT&T Corp. v. Iowa Utils. Bd*., 525 U.S. 366, 371 (1999) (noting that the 1996 Act "fundamentally restructures local telephone markets" to facilitate market entry); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 857-58 (1997) ("The Telecommunications Act was an unusually important legislative enactment . . . designed to promote competition.").

[15] 47 U.S.C. § 253(a).

[16] *Puerto Rico Tel. Co. v. Telecomm. Reg. Bd. of Puerto Rico*, 189 F.3d 1, 11 n.7 (1st Cir. 1999).

"consider[s] whether the ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[17]

17. Similar to Section 253, Congress specified in Section 332(c)(7) that "[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—(I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services."[18] Clause (B)(ii) of that section further provides that "[a] State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request."[19] Section 332(c)(7) generally preserves state and local authority over the "placement, construction, and modification of personal wireless service facilities" but with the important limitations described above.[20] Section 332(c)(7) also sets forth a judicial remedy, stating that "[a]ny person adversely affected by any final action or failure to act by a State or local government" that is inconsistent with the requirements of Section 332(c)(7) "may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction."[21] The provision further directs the court to "decide such action on an expedited basis."[22]

18. The Commission has previously interpreted the language Congress used and the limits it imposed on state and local authority in Section 332. For instance, in interpreting Section 332(c)(7)(B)(i)(II), the Commission has found that "a State or local government that denies an application for personal wireless service facilities siting solely because 'one or more carriers serve a given geographic market' has engaged in unlawful regulation that 'prohibits or ha[s] the effect of prohibiting the provision of personal wireless services,' within the meaning of Section 332(c)(7)(B)(i)(II)."[23] In adopting this interpretation, the Commission explained that its "construction of the provision achieves a balance that is most consistent with the relevant goals of the Communications Act" and its understanding that "[i]n promoting the construction of nationwide wireless networks by multiple carriers, Congress sought ultimately to improve service quality and lower prices for consumers."[24] The Commission also noted that an alternative interpretation would "diminish the service provided to [a wireless provider's] customers."[25]

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[17] *California Payphone Ass'n*, 12 FCC Rcd 14191, 14206, para. 31 (1997) (*California Payphone*).

[18] 47 U.S.C. § 332(c)(7)(B)(i).

[19] 47 U.S.C § 332(c)(7)(B)(ii).

[20] 47 U.S.C. § 332(c)(7)(A) (stating that, "[e]xcept as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless services facilities"). The statute defines "personal wireless services" to include CMRS, unlicensed wireless services, and common carrier wireless exchange access services. 47 U.S.C. § 332(c)(7)(C). In 2012, Congress expressly modified this preservation of local authority by enacting Section 6409(a), which requires local governments to approve certain types of facilities siting applications "[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified in substantial part as Section 332(c)(7)] . . . or any other provision of law." Spectrum Act, 47 U.S.C. § 6409(a)(1).

[21] 47 U.S.C. § 332(c)(7)(B)(v).

[22] 47 U.S.C. § 332(c)(7)(B)(v).

[23] *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994, 14016, para. 56 (2009) (*2009 Declaratory Ruling*), *aff'd*, *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012) (*City of Arlington*), *aff'd*, 569 U.S. 290 (2013).

[24] *2009 Declaratory Ruling*, 24 RCC Rcd at 14017-18, para. 61.

[25] *Id*.

19. In the *2009 Declaratory Ruling*, the Commission acted to speed the deployment of then-new 4G services and concluded that, "[g]iven the evidence of unreasonable delays [in siting decisions] and the public interest in avoiding such delays," it should offer guidance regarding the meaning of the statutory phrases "reasonable period of time" and "failure to act" "in order to clarify when an adversely affected service provider may take a dilatory State or local government to court."[26] The Commission interpreted "reasonable period of time" under Section 332(c)(7)(B)(ii) to be 90 days for processing collocation applications and 150 days for processing applications other than collocations.[27] The Commission further determined that failure to meet the applicable time frame enables an applicant to pursue judicial relief within the next 30 days.[28] In litigation involving the 90-day and 150-day time frames, the locality may attempt to "rebut the presumption that the established timeframes are reasonable."[29] If the agency fails to make such a showing, it may face "issuance of an injunction granting the application."[30] In its *2014 Wireless Infrastructure Order*,[31] the Commission clarified that the time frames under Section 332(c)(7) are presumptively reasonable and begin to run when the application is submitted, not when it is found to be complete by a siting authority.[32]

20. In 2012, Congress adopted Section 6409 of the Middle Class Tax Relief and Job Creation Act (the Spectrum Act), which provides further evidence of Congressional intent to limit state and local laws that operate as barriers to infrastructure deployment. It states that, "[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified as 47 U.S.C. § 332(c)(7)] or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station."[33] Subsection (a)(2) defines the term "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.[34] In implementing Section 6409 and in an effort to "advance[e] Congress's goal

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[26] *Id.* at 14008, para. 37; *see also id.* at 14029 (Statement of Chairman Julius Genachowski) ("[T]he rules we adopt today . . . will have an important effect in speeding up wireless carriers' ability to build new 4G networks--which will in turn expand and improve the range of wireless choices available to American consumers.").

[27] *Id.* at 14012, para. 45.

[28] *Id.* at 14005, 14012, paras. 32, 45.

[29] *Id.* at 14008-10, 14013-14, paras. 37-42, 49-50.

[30] *Id.* at 14009, para. 38; *see also City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 115 (2005) (proper remedies for Section 332(c)(7) violations include injunctions but not constitutional tort damages).

[31] Specifically, the Commission determined that once a siting application is considered complete for purposes of triggering the Section 332(c)(7) shot clocks, those shot clocks run regardless of any moratoria imposed by state or local governments, and the shot clocks apply to DAS and small-cell deployments so long as they are or will be used to provide "personal wireless services." *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report & Order, 29 FCC Rcd 12865, 12966, 12973, paras. 243, 270, (2014) (*2014 Wireless Infrastructure Order*), *aff'd*, *Montgomery County v. FCC*, 811 F.3d 121 (4th Cir. 2015) (*Montgomery County*); *see also Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330, 3339, para. 22 (2017) (*Wireless Infrastructure NPRM/NOI*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, WC Docket No. 17-84 and WT Docket No. 17-79, FCC 18-111, paras. 140-68 (rel. Aug. 3, 2018) (*Moratoria Declaratory Ruling*).

[32] *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12970, para. 258. ("Accordingly, to the extent municipalities have interpreted the clock to begin running only after a determination of completeness, that interpretation is incorrect.").

[33] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 § 6409(a)(2), 126 Stat. 156 (2012).

[34] *Id*.

of facilitating rapid deployment,"[35] the Commission adopted rules to expedite the processing of eligible facilities requests, including documentation requirements and a 60-day period for states and localities to review such requests.[36] The Commission further determined that a "deemed granted" remedy was necessary for cases in which the reviewing authority fails to issue a decision within the 60-day period in order to "ensur[e] rapid deployment of commercial and public safety wireless broadband services."[37] The Fourth Circuit, affirming that remedy, explained that "[f]unctionally, what has occurred here is that the FCC—pursuant to properly delegated Congressional authority—has preempted state regulation of wireless towers."[38]

21. Consistent with these broad federal mandates, courts have recognized that the Commission has authority to interpret Sections 253 and 332 of the Act to further elucidate what types of state and local legal requirements run afoul of the statutory parameters Congress established.[39] For instance, the Fifth Circuit affirmed the *2009 Declaratory Ruling* in *City of Arlington*. The court concluded that the Commission possessed the "authority to establish the 90– and 150–day time frames" and that its decision was not arbitrary and capricious.[40] More generally, as the agency charged with administering the Communications Act, the Commission has the authority, responsibility, and expert judgement to issue interpretations of the statutory language and to adopt implementing regulations that clarify and specify the scope and effect of the Act. Such interpretations are particularly appropriate where the statutory language is ambiguous, or the subject matter is "technical, complex, and dynamic," as it is in the Communications Act, as recognized by the Supreme Court.[41] Here, the Commission has ample experience monitoring and regulating the telecommunications sector. It is well-positioned, in light of this experience and the record in this proceeding, to issue a clarifying interpretation of Sections 253 and 332(c)(7) that accounts both for the changing needs of a dynamic wireless sector that is increasingly reliant on Small Wireless Facilities and for state and local oversight that does not materially inhibit wireless deployment.

22. The congressional and FCC decisions described above point to consistent federal action, particularly when faced with changes in technology, to ensure that our country's approach to wireless infrastructure deployment promotes buildout of the facilities needed to provide Americans with next-generation services. Consistent with that long-standing approach, in the 2017 *Wireless Infrastructure NPRM/NOI*, the Commission sought comment on whether the FCC should again update its approach to infrastructure deployment to ensure that regulations are not operating as prohibitions in violation of Congress's decisions and federal policy.[42] In August 2018, the Commission concluded that state and local moratoria on telecommunications services and facilities deployment are barred by Section 253(a).[43]

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[35] *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12872, para. 15.

[36] *Id.* at 12922, 12956-57, paras. 135, 214-15.

[37] *Id*. at 12961-62, paras. 226, 228.

[38] *Montgomery County*, 811 F.3d at 129.

[39] *See, e.g.*, *City of Arlington*, 668 F.3d at 253-54; *County of San Diego*, 543 F.3d at 578; *RT Commc'ns., Inc. v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000).

[40] *City of Arlington*, 668 F.3d at 254, 260-61.

[41] *Nat'l Cable & Telecomm. Ass'n v. Gulf Power Co.*, 534 U.S. 327, 328 (2002); *FDA v. Brown & Williamson Tobacco Corp*., 529 U.S. 120 (2000) (recognizing "agency's greater familiarity with the ever-changing facts and circumstances surrounding the subjects regulated"); s*ee also, e.g.*, *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 983-986 (2005) (Commission's interpretation of an ambiguous statutory provision overrides earlier court decisions interpreting the same provision).

[42] *See generally Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3332-39, paras. 4-22.

[43] *See generally Moratoria Declaratory Ruling*, FCC 18-111, paras. 140-68.

B. The Need for Commission Action

23. In response to the opportunities presented by offering new wireless services, and the problems facing providers that seek to deploy networks to do so, we find it necessary and appropriate to exercise our authority to interpret the Act and clarify the preemptive scope that Congress intended. The introduction of advanced wireless services has already revolutionized the way Americans communicate and transformed the U.S. economy. Indeed, the FCC's most recent wireless competition report indicates that American demand for wireless services continues to grow exponentially. It has been reported that monthly data usage per smartphone subscriber rose to an average of 3.9 gigabytes per subscriber per month, an increase of approximately 39 percent from year-end 2015 to year-end 2016.[44] As more Americans use more wireless services, demand for new technologies, coverage and capacity will necessarily increase, making it critical that the deployment of wireless infrastructure, particularly Small Wireless Facilities, not be stymied by unreasonable state and local requirements.

24. 5G wireless services, in particular, will transform the U.S. economy through increased use of high-bandwidth and low-latency applications and through the growth of the Internet of Things.[45] While the existing wireless infrastructure in the U.S. was erected primarily using macro cells with relatively large antennas and towers, wireless networks increasingly have required the deployment of small cell systems to support increased usage and capacity. We expect this trend to increase with next-generation networks, as demand continues to grow, and providers deploy 5G service across the nation.[46] It is precisely "[b]ecause providers will need to deploy large numbers of wireless cell sites to meet the country's wireless broadband needs and implement next-generation technologies" that the Commission has acknowledged "an urgent need to remove any unnecessary barriers to such deployment, whether caused by Federal law, Commission processes, local and State reviews, or otherwise."[47] As explained below, the need to site so many more 5G-capable nodes leaves providers' deployment plans and the underlying economics of those plans vulnerable to increased per site delays and costs.

25. Some states and local governments have acted to facilitate the deployment of 5G and other next-gen infrastructure, looking to bring greater connectivity to their communities through forward-looking policies. Leaders in these states are working hard to meet the needs of their communities and balance often competing interests. At the same time, outlier conduct persists. The record here suggests that the legal requirements in place in other state and local jurisdictions are materially impeding that deployment in various ways.[48] Crown Castle, for example, describes "excessive and unreasonable" "fees

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[44] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, 32 FCC Rcd 8968, 8972, para. 20 (2017) (*Twentieth Wireless Competition Report*).

[45] *See Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3331, para. 1.

[46] *See, e.g.*, Letter from Brett Haan, Principal, Deloitte Consulting, U.S., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Sept. 17, 2018) ("Significant investment in new network infrastructure is needed to deploy 5G networks at-scale in the United States. 5G's speed and coverage capabilities rely on network densification, which requires the addition of towers and small cells to the network. . . . This requires carriers to add 3 to 10 times the number of existing sites to their networks. Most of this additional infrastructure will likely be built with small cells that use lampposts, utility phones, or other structures of similar size able to host smaller, less obtrusive radios required to build a densified network." (citation omitted)); *see also* Deloitte LLP, 5G: The Chance to Lead for a Decade (2018) (Deloitte 5G Paper), *available at* https://www2.deloitte.com/content/dam/Deloitte/us/Documents/technology-media-telecommunications/us-tmt-5gdeployment-imperative.pdf.

[47] *See Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3331, para. 2.

[48] *See, e.g.,* Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 10, 2018) ("Unfortunately, many municipalities are unable, unwilling, or do not make it a priority to act on applications within the shot clock period."); Letter from Keith Buell, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Aug. 13, 2018) (Sprint Aug. 13, 2018 *Ex Parte* Letter); Letter from Katherine R. Saunders, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 21,

to access the [rights-of-way] that are completely unrelated to their maintenance or management." It also points to barriers to market entry "for independent network and telecommunications service providers," including municipalities that "restric[t] access to the [right-of-way] only to providers of commercial mobile services" or that impose "onerous zoning requirements on small cell installations when other similar [right of way] utility installations are erected with simple building permits."[49] Crown Castle is not alone in describing local regulations that slow deployment. AT&T states that localities in Maryland, California, and Massachusetts have imposed fees so high that it has had to pause or decrease deployments.[50] Likewise, AT&T states that a Texas city has refused to allow small cell placement on any structures in a right-of-way (ROW).[51] T-Mobile states that the Town of Hempstead, New York requires service providers who seek to collocate or upgrade equipment on existing towers that have been properly constructed pursuant to Class II standards to upgrade and certify these facilities under Class III standards that apply to civil and national defense and military facilities.[52] Verizon states that a Minnesota town has proposed barring construction of new poles in rights-of-way and that a Midwestern suburb where it has been trying to get approval for small cells since 2014 has no established procedures for small cell approvals.[53] Verizon states that localities in New York and Washington have required special use permits involving multiple layers of approval to locate small cells in some or all zoning districts.[54] While some localities dispute some of these characterizations, their submissions do not persuade us that there is no basis or need for the actions we take here.

26. Further, the record in this proceeding demonstrates that many local siting authorities are not complying with our existing Section 332 shot clock rules.[55] WIA states that its members routinely face lengthy delays and specifically cite localities in New Jersey, New Hampshire, and Maine as being

(Continued from previous page)
2018) ("[L]ocal permitting delays continue to stymie deployments."); Letter from Kenneth J. Simon, Crown Castle, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018); Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 30, 2018) (CTIA Aug. 30, 2018 *Ex Parte* Letter).

[49] Crown Castle Comments at 7; *see also* Letter from Kenneth J. Simon, Senior Vice President and General Counsel, Crown Castle International Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1-2 (filed Sept. 19, 2018) ("In Hillsborough, California, Crown Castle submitted applications covering 16 nodes, and was assessed $60,000 in application fees. Not only did Hillsborough go on to deny these applications, following that denial it also then sent Crown Castle an invoice for an additional $351,773 (attached as Exhibit A), most of which appears to be related to outside counsel fees—all for equipment that was not approved and has not yet been constructed.").

[50] Letter from Henry Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Aug. 6, 2018) (AT&T Aug. 6, 2018 *Ex Parte* Letter).

[51] AT&T Comments at 6-7.

[52] T-Mobile Reply Comments at 7-9; *see also* CCA Reply Comments at 12; CTIA Reply Comments at 18; WIA Reply Comments at 22-23.

[53] *See* Verizon Comments at 7.

[54] *See* Verizon Comments at 35.

[55] *See, e.g.*, T-Mobile Comments at 8 (stating that "roughly 30% of all of its recently proposed sites (including small cells) involve cases where the locality failed to act in violation of the shot clocks."). According to WIA, one of its members "reports that 70% of its applications to deploy Small Wireless Facilities in the public ROWs during a two-year period exceeded the 90-day shot clock for installation of Small Wireless Facilities on an existing utility pole, and 47% exceeded the 150-day shot clock for the construction of new towers." WIA Comments at 7. A New Jersey locality took almost five years to deny a Sprint application. *See Sprint Spectrum L.P. v. Zoning Bd. of Adjustment of the Borough of Paramus, N.J.*, 21 F. Supp. 3d 381, 383, 387 (D.N.J. 2014), *aff'd*, 606 Fed. Appx. 669 (3d Cir. 2015). Another locality took almost three years to deny a Crown Castle application to install a DAS system. *See Crown Castle NG East, Inc. v. Town of Greenburgh*, 2013 WL 3357169, *6-8 (S.D.N.Y. 2013), *aff'd*, 552 Fed. Appx. 47 (2d Cir. 2014).

problematic.[56] Similarly, AT&T identified an instance in which it took a locality in California 800 days to process an application.[57] GCI provides an example in which it took an Alaska locality nine months to decide an application.[58] T-Mobile states that a community in Colorado and one in California have lengthy pre-application processes for all small cell installations that include notification to all nearby households, a public meeting, and the preparation of a report, none of which these jurisdictions view as triggering a shot clock.[59] Similarly, Lightower provides examples of long delays in processing siting applications.[60] Finally, Crown Castle describes a case in which a "town took approximately two years and nearly twenty meetings, with constantly shifting demands, before it would even 'deem complete' Crown Castle's application."[61]

27. Our Declaratory Ruling and Third Report and Order are intended to address these issues and outlier conduct. Our conclusions are also informed by findings, reports, and recommendations from the FCC Broadband Deployment Advisory Committee (BDAC), including the Model Code for Municipalities, the Removal of State and Local Regulatory Barriers Working Group report, and the Rates and Fees Ad Hoc Working Group report, which the Commission created in 2017 to identify barriers to deployment of broadband infrastructure, many of which are addressed here.[62] We also considered input from numerous state and local officials about their concerns, and how they have approached wireless deployment, much of which we took into account here. Our action is also consistent with congressional efforts to hasten deployment, including bi-partisan legislation pending in Congress like the STREAMLINE Small Cell Deployment Act and SPEED Act. The STREAMLINE Small Cell Deployment Act proposes to streamline wireless infrastructure deployments by requiring siting agencies to act on deployment requests within specified time frames and by limiting the imposition of onerous

[56] WIA Comments at 8. WIA states that one of its "member reports that the wireless siting approval process exceeds 90 days in more than 33% of jurisdictions it surveyed and exceeds 150 days in 25% of surveyed jurisdictions." WIA Comments at 8. In some cases, WIA members have experienced delays ranging from one to three years in multiple jurisdictions—significantly longer than the 90- and 150-day time frames that the Commission established in 2009.

[57] *See* WIA Comments at 9 (citing and discussing AT&T's Comments in the 2016 Streamlining Public Notice, WT Docket No. 16-421).

[58] GCI Comments at 5-6.

[59] T-Mobile Comments at 21.

[60] Lightower submits that average processing timeframes have increased from 300 days in 2016 to approximately 570 days in 2017, much longer than the Commission's shot clocks. Lightower states that "forty-six separate jurisdictions in the last two years had taken longer than 150 days to consider applications, with twelve of those jurisdictions—representing 101 small wireless facilities—taking more than a year." Lightower Comments at 5-6. *See also* WIA Comments at 9 (citing and discussing Lightower's Comments in the 2016 Streamlining Public Notice, WT Docket No. 16-421).

[61] WIA Comments at 8 (citing and discussing Crown Castle's Comments in 2016 Streamlining Public Notice, WT Docket No. 16-421).

[62] BDAC Report of the Removal of State and Local Regulatory Barriers Working Group, https://www.fcc.gov/sites/default/files/bdac-regulatorybarriers-01232018.pdf (approved by the BDAC on January 23, 2018) (BDAC Regulatory Barriers Report); Draft Final Report of the Ad Hoc Committee on Rates and Fees to the BDAC, https://www.fcc.gov/sites/default/files/bdac-07-2627-2018-rates-fees-wg-report-07242018.pdf (July 26, 2018) (Draft BDAC Rates and Fees Report); BDAC Model Municipal Code (Harmonized), https://www.fcc.gov/sites/default/files/bdac-07-2627-2018-harmonization-wg-model-code-muni.pdf (approved July 26, 2018) (BDAC Model Municipal Code). The Draft Final Report of the Ad Hoc Committee on Rates and Fees to the BDAC was presented to the BDAC on July 26, 2018 but has not been voted by the BDAC as of the adoption of this Declaratory Ruling. Certain members of the Removal of State and Local Barriers Working Group also submitted a minority report disagreeing with certain findings in the BDAC Regulatory Barriers Report. *See* Minority Report Submitted by McAllen, TX, San Jose, CA, and New York, NY, GN Docket No. 17-83 (Jan 23, 2018); Letter from Kevin Pagan, City Attorney of McAllen to Marlene Dortch, Secretary, FCC (filed September 14, 2018).

conditions and fees.[63] The SPEED Act would similarly streamline federal permitting processes.[64] In the same vein, the Model Code for Municipalities adopts streamlined infrastructure siting requirements while other BDAC reports and recommendations emphasize the negative impact of high fees on infrastructure deployments.[65]

28. As do members of both parties of Congress and experts on the BDAC, we recognize the urgent need to streamline regulatory requirements to accelerate the deployment of wireless infrastructure for current needs and for the next generation of wireless service in 5G.[66] State government officials also have urged us to act to expedite the deployment of 5G technology, in particular, by streamlining overly burdensome regulatory processes to ensure that 5G technology will expand beyond just urban centers. These officials have expressed their belief that reducing high regulatory costs and delays in urban areas would leave more money and encourage development in rural areas.[67] "[G]etting [5G] infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources. The solution is to streamline relevant policies—allowing more modern rules for modern infrastructure."[68] State officials have acknowledged that current regulations are "outdated" and "could hinder the timely arrival of 5G throughout the country," and urged the FCC "to push for more reforms that will streamline infrastructure rules from coast to coast."[69] Although many states and localities support our efforts, we acknowledge that there are others who advocated for different approaches, arguing, among other points,

[63] *See, e.g.*, STREAMLINE Small Cell Deployment Act, S.3157, 115th Congress (2017-2018).

[64] *See, e.g.*, Streamlining Permitting to Enable Efficient Deployment of Broadband Infrastructure Act of 2017 (SPEED Act), S. 1988, 115th Cong. (2017).

[65] *See* BDAC Model Municipal Code; Draft BDAC Rates and Fees Report; BDAC Regulatory Barriers Report.

[66] *See, e.g.*, Letter from Patricia Paoletta, Counsel to Deloitte Consulting LLP, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 20, 2018) ("Deloitte noted that, as with many technology standard evolutions, the value of being a first-mover in 5G will be significant. Being first to LTE afforded the United States macroeconomic benefits, as it became a test bed for innovative mobile, social, and streaming applications. Being first to 5G can have even greater and more sustained benefits to our national economy given the network effects associated with adding billions of devices to the 5G network, enabling machine-to-machine interactions that generates data for further utilization by vertical industries").

[67] Letter from Montana State Senator Duane Ankney to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 31, 2018) (Duane Ankney July 31, 2018 *Ex Parte* Letter); Letter from Fred A. Lamphere, Butte County Sheriff, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1 (filed Sept. 11, 2018) (Fred A. Lamphere Sept. 11, 2018 *Ex Parte* Letter); Letter from Todd Nash, Susan Roberts, Paul Catstilleja, Wallowa County Board of Commissioners, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Aug. 20, 2018); Letter from Lonnie Gilbert, First Responder, National Black Growers Council Member, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 at 1 (filed Sept. 12, 2018); Letter from Jason R. Saine, North Caroline House of Representatives, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1(filed Sept. 14, 2018) (Jason R. Saine Sept. 14, 2018 *Ex Parte* Letter) (minimal regulatory standard across the United States is critical to ensure that the United States wins the race to the 5G economy).

[68] Letter from LaWana Mayfield, City Council Member, Charlotte, NC, to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 31, 2018) (LaWana Mayfield July 31, 2018 *Ex Parte* Letter); *see also* Letter from South Carolina State Representative Terry Alexander to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed August 7, 2018) ("[P]olicymakers at all levels of government must streamline complex siting stipulations that will otherwise slow down 5G buildout for small cells in particular."); Letter from Sal Pace, Pueblo County Commissioner, District 3, CO, to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 30, 2018) (Sal Pace July 30, 2018 *Ex Parte* Letter) ("[T]he FCC should ensure that localities are fully compensated for their costs . . . Such fees should be reasonable and non-discriminatory, and should ensure that localities are made whole. Lastly, the FCC should set reasonable and enforceable deadlines for localities to act on wireless permit applications. . . . The distinction between siting large macro-towers and small cells should be reflected in any rulemaking.")

[69] Letter from Dr. Carolyn A. Prince, Chairwoman, Marlboro County Council, SC, to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79, at 1 (filed July 31, 2018) (Dr. Carolyn Prince July 31, 2018 *Ex Parte* Letter)

that the FCC lacks authority to take certain actions.[70] We have carefully considered these views, but nevertheless find our actions here necessary and fully supported.

29. Accordingly, in this Declaratory Ruling and Third Report and Order, we act to reduce regulatory barriers to the deployment of wireless infrastructure and to ensure that our nation remains the leader in advanced wireless services and wireless technology.

III. DECLARATORY RULING

30. In this Declaratory Ruling, we note that a number of appellate courts have articulated different and often conflicting views regarding the scope and nature of the limits Congress imposed on state and local governments through Sections 253 and 332. In light of these diverging views, Congress's vision for a consistent, national policy framework, and the need to ensure that our approach continues to make sense in light of the relatively new trend towards the large-scale deployment of Small Wireless Facilities, we take this opportunity to clarify and update the FCC's reading of the limits Congress imposed. We do so in three main respects.

31. First, in Part III.A, we express our agreement with the views already stated by the First, Second, and Tenth Circuits that the "materially inhibit" standard articulated in 1997 by the Clinton-era FCC's *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.

32. Second, in Part III.B, we note, as numerous courts have recognized, that state and local fees and other charges associated with the deployment of wireless infrastructure can effectively prohibit the provision of service. At the same time, courts have articulated various approaches to determining the types of fees that run afoul of Congress's limits in Sections 253 and 332. We thus clarify the particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities at issue in this decision. Namely, fees are only permitted to the extent that they represent a reasonable approximation of the local government's objectively reasonable costs, and are non-discriminatory.[71] In this section, we also identify specific fee levels for the deployment of Small Wireless Facilities that presumptively comply with this standard. We do so to help avoid unnecessary litigation, while recognizing that it is the standard itself, not the particular, presumptive fee levels we articulate, that ultimately will govern whether a particular fee is allowed under Sections 253 and 332. So fees above

[70] *See, e.g.*, City of Manhattan, KS Sept. 13, 2018 *Ex Parte* Letter at 1-2; Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter at 1-2; Damon Connolly Sept. 17, 2018 *Ex Parte* Letter at 1-2.

[71] Fees charged by states or localities in connection with Small Wireless Facilities would be "compensation" for purposes of Section 253(c). This Declaratory Ruling interprets Section 253 and 332(c)(7) in the context of three categories of fees, one of which applies to all deployments of Small Wireless Facilities while the other two are specific to Small Wireless Facilities deployments inside the ROW. (1) "Event" or "one-time" fees are charges that providers pay on a non-recurring basis in connection with a one-time event, or series of events occurring within a finite period. The one-time fees addressed in this Declaratory Ruling are not specific to the ROW. For example, a provider may be required to pay fees during the application process to cover the costs related to processing an application building or construction permits, street closures, or a permitting fee, whether or not the deployment is in the ROW. (2) Recurring charges for a Small Wireless Facility's use of or attachment to property inside the ROW owned or controlled by a state or local government, such as a light pole or traffic light, is the second category of fees addressed here, and is typically paid on a per structure/per year basis. (3) Finally, ROW access fees are recurring charges that are assessed, in some instances, to compensate a state or locality for a Small Wireless Facility's access to the ROW, which includes the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property (including when such property is government-owned). A ROW access fee may be charged even if the Small Wireless Facility is not using government owned property within the ROW. AT&T Comments at 18 (describing three categories of fees); Letter from Tamara Preiss, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 11 (filed Aug. 10, 2018) (Verizon Aug. 10, 2018 *Ex Parte* Letter) (characterizing fees as recurring or non-recurring); *see also* Draft BDAC Rates and Fees Report at p. 15-16. Unless otherwise specified, a reference to "fee" or "fees" herein refers to any one of, or any combination of, these three categories of charges.

those levels would be permissible under Sections 253 and 332 to the extent a locality's actual, reasonable costs (as measured by the standard above) are higher.

33. Finally, in Part III.C, we focus on a subset of other, non-fee provisions of state and local law that could also operate as prohibitions on service. We do so in particular by addressing state and local consideration of aesthetic concerns in the deployment of Small Wireless Facilities. We note that the Small Wireless Facilities that are the subject of this Declaratory Ruling remain subject to the Commission's rules governing Radio Frequency (RF) emissions exposure.[72]

A. Overview of the Section 253 and Section 332(c)(7) Framework Relevant to Small Wireless Facilities Deployment

34. In Sections 253(a) and 332(c)(7)(B) of the Act, Congress determined that state or local requirements that prohibit or have the effect of prohibiting the provision of service are unlawful and thus preempted.[73] Section 253(a) addresses "any interstate or intrastate telecommunications service," while Section 332(c)(7)(B)(i)(II) addresses "personal wireless services."[74] Although the provisions contain identical "effect of prohibiting" language, the Commission and different courts over the years have each employed inconsistent approaches to deciding what it means for a state or local legal requirement to have the "effect of prohibiting" services under these two sections of the Act. This has caused confusion among both providers and local governments about what legal requirements are permitted under Sections 253 and 332(c)(7). For example, despite Commission decisions to the contrary construing such language under Section 253, some courts have held that a denial of a wireless siting application will "prohibit or have the effect of prohibiting" the provision of a personal wireless service under Section 332(c)(7)(B)(i)(II) only if the provider can establish that it has a significant gap in service coverage in the

[72] *See* 47 CFR §§ 1.1307, 1.1310. We disagree with commenters who oppose the Declaratory Ruling on the basis of concerns regarding RF emissions. *See, e.g.*, Comments from Judy Aizuss, Comments from Jeffrey Arndt, Comments from Jeanice Barcelo, Comments from Kristin Beatty, Comments from James M. Benster, Comments from Terrie Burns, Comments from EMF Safety Network, Comments from Kate Reese Hurd, Comments from Marilynne Martin, Comments from Lisa Mayock, Comments from Kristen Moriarty Termunde, Comments from Sage Associates, Comments from Elizabeth Shapiro, Comments from Paul Silver, Comments from Natalie Ventrice. The Commission has authority to adopt and enforce RF exposure limits, and nothing in this Declaratory Ruling changes the applicability of the Commission's existing RF emissions exposure rules. *See, e.g.,* Section 704(b) of the Telecommunications Act of 1996, Pub. L. No. 104-104 (directing Commission to "prescribe and make effective rules regarding the environmental effects of radio frequency emissions" upon completing action in then-pending rulemaking proceeding that included proposals for, *inter alia*, maximum exposure limits); 47 U.S.C. § 332(c)(7)(B)(iv) (recognizing legitimacy of FCC's existing regulations on environmental effects of RF emissions of personal wireless service facilities, by proscribing state and local regulation of such facilities on the basis of such effects, to the extent such facilities comply with Commission regulations concerning such RF emissions); 47 U.S.C. § 151 (creating the FCC "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service, . . . for the purpose of [*inter alia*] promoting safety of life and property through the use of wire and radio communications"). *See also* H.R. Rep. No. 204(I), 104th Cong., 1st Sess. 94 (1995), *reprinted in* 1996 U.S.C.C.A.N. 10, 61 (1996) (in legislative history of Section 704 of 1996 Telecommunications Act, identifying "adequate safeguards of the public health and safety" as part of a framework of uniform, nationwide RF regulations); ; *Reassessment of FCC Radiofrequency Exposure Limits and Policies*, First Report and Order, Further Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 3498, 3530-31, para. 103, n.176 (2013).

[73] 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II).

[74] *Id.* The actions in this proceeding update the FCC's approach to Sections 253 and 332 by addressing effective prohibitions that apply to the deployment of services covered by those provisions. Our interpretations in this proceeding do not provide any basis for increasing the regulation of services deployed consistent with Section 621 of the Cable Communications Policy Act of 1984.

area and a lack of feasible alternative locations for siting facilities.[75] Other courts have held that evidence of an already-occurring or complete inability to offer a telecommunications service is required to demonstrate an effective prohibition under Section 253(a).[76] Conversely, still other courts like the First, Second, and Tenth Circuits have endorsed prior Commission interpretations of what constitutes an effective prohibition under Section 253(a) and recognized that, under that analytical framework, a legal requirement can constitute an effective prohibition of services even if it is not an insurmountable barrier.[77]

35. In this Declaratory Ruling, we first reaffirm, as our definitive interpretation of the effective prohibition standard, the test we set forth in *California Payphone*, namely, that a state or local legal requirement constitutes an effective prohibition if it "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[78] We then explain how this "material inhibition" standard applies in the context of state and local fees and aesthetic requirements. In doing so, we confirm the First, Second, and Tenth Circuits' understanding that under this analytical framework, a legal requirement can "materially inhibit" the provision of services even if it is not an insurmountable barrier.[79] We also resolve the conflicting court interpretations of the

[75] Courts vary widely regarding the type of showing needed to satisfy the second part of that standard. The First, Fourth, and Seventh Circuits have imposed a "heavy burden" of proof on applicants to establish a lack of alternative feasible sites, requiring them to show "not just that *this* application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try." *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 40 (1st Cir. 2014); *accord New Cingular Wireless PCS, LLC v. Fairfax County*, 674 F.3d 270, 277 (4th Cir. 2012); *T-Mobile Northeast LLC v. Fairfax County*, 672 F.3d 259, 266-68 (4th Cir. 2012) (*en banc*); *Helcher v. Dearborn County*, 595 F.3d 710, 723 (7th Cir. 2010) (*Helcher*). The Second, Third, and Ninth Circuits have held that an applicant must show only that its proposed facilities are the "least intrusive means" for filling a coverage gap in light of the aesthetic or other values that the local authority seeks to serve. *Sprint Spectrum, LP v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999) (*Willoth*); *APT Pittsburgh Ltd. P'ship v. Penn Township*, 196 F.3d 469, 480 (3d Cir. 1999) (*APT*); *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1056-57 (9th Cir. 2014); *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995-99 (9th Cir. 2009) (*City of Anacortes*).

[76] *See, e.g.*, *County of San Diego*, 543 F.3d at 579-80; *Level 3 Commc'ns, LLC v. City of St. Louis*, 477 F.3d 528, 533-34 (8th Cir. 2007) (*City of St. Louis*).

[77] *See Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 450 F.3d 9, 18 (1st Cir. 2006) (*Municipality of Guayanilla*); *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002) (*City of White Plains*); *RT Communications v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000) ("[Section] 253(a) forbids any statute which prohibits or has 'the effect of prohibiting' entry. Nowhere does the statute require that a bar to entry be insurmountable before the FCC must preempt it.") (*RT Communications*) (*affirming Silver Star Tel. Co. Petition for Preemption and Declaratory Ruling*, 12 FCC Rcd 15639 (1997)).

[78] *California Payphone*, 12 FCC Rcd at 14206, para. 31. A number of circuit courts have cited *California Payphone* as the leading authority regarding the standard to be applied under Section 253(a). *See, e.g.*, *County of San Diego*, 543 F.3d at 578; *City of St. Louis*, 477 F.3d at 533; *Municipality of Guayanilla*, 450 F.3d at 18; *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1270 (10th Cir. 2004) (*City of Santa Fe*); *City of White Plains*, 305 F.3d at 76. Crown Castle argues that the Eighth and Ninth Circuit cited the FCC's *California Payphone* decision,but read the standard in an overly narrow fashion. *See, e.g.*, Letter from Kenneth J. Simon, Senior Vice Pres. and Gen. Counsel, Crown Castle, *et al*., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 12 (filed June 7, 2018) (Crown Castle June 7, 2018 *Ex Parte* Letter); *see also* Smart Communities Comments at 60-61 (describing circuit split). Some commenters cite selected dictionary definitions or otherwise argue for a narrow definition of "prohibit." *See, e.g.*, Smart Communities Reply at 53. But because they do not go on to dispute the validity of the *California Payphone* standard that has been employed not only by the Commission but also many courts, those arguments do not persuade us to depart from the *California Payphone* standard here.

[79] *See, e.g.*, *City of White Plains*, 305 F.3d at 76; *Municipality of Guayanilla*, 450 F.3d at 18; *see also, e.g.*, Crown Castle June 7, 2018 *Ex Parte* Letter at 12. Because the clarifications in this order should reduce uncertainty regarding the application of these provisions for state and local governments as well as stakeholders, we are not persuaded by some commenters' arguments that an expedited complaint process is required. *See, e.g.*, AT&T Comments at 28; CTIA Reply at 21. We do not address, at this time, recently-filed petitions for reconsideration of our August 2018 *Moratoria Declaratory Ruling*. *See, e.g.,* Smart Communities Petition for Reconsideration, WC

'effective prohibition' language so that continuing confusion on the meaning of Sections 253 and 332(c)(7) does not materially inhibit the critical deployments of Small Wireless Facilities and our nation's drive to deploy 5G.[80]

36. As an initial matter, we note that our Declaratory Ruling applies with equal measure to the effective prohibition standard that appears in both Sections 253(a) and 332(c)(7).[81] This ruling is consistent with the basic canon of statutory interpretation that identical words appearing in neighboring provisions of the same statute generally should be interpreted to have the same meaning.[82] Moreover, both of these provisions apply to wireless telecommunications services[83] as well as to commingled services and facilities.[84]

(Continued from previous page)
Docket No. 17-84 & WT Docket No. 17-79 (filed Sept. 4, 2018); New York City Petition for Reconsideration, WC Docket No. 17-84 & WT Docket No. 17-79 (filed Sept. 4, 2018). Nor do we address requests for clarification and/or action on other issues raised in the record beyond those expressly discussed in this order. These other issues include arguments regarding other statutory interpretations that we do not address here. *See, e.g.*, CTIA Reply at 23 (raising broader questions about the precise interplay of Section 253 and Section 332(c)(7)); Crown Castle June 7, 2018 *Ex Parte* Letter at 16-17 (raising broader questions about the scope of "legal requirements" under Section 253(a)). Consequently, this order should not be read as impliedly taking a position on those issues.

[80] *See, e.g.*, Crown Castle June 7, 2018 *Ex Parte* Letter at 11-12 (arguing that "[d]espite the Commission's efforts to define the boundaries of federal preemption under Section 253, courts have issued a number of conflicting decisions that have only served to confuse the preemption analysis sunder section 253" and that "the Commission should clarify that the *California Payphone* standard as interpreted by the First and Second Circuits is the appropriate standard going forward"); *see also* BDAC Regulatory Barriers Report at p. 9 ("The Commission should provide clarity on what actually constitutes an "excessive" fee for right-of-way access and use. The FCC should provide guidance on what constitutes a fee that is excessive and/or duplicative, and that therefore is not "fair and reasonable." The Commission should specifically clarify that "fair and reasonable" compensation for right-of way access and use implies some relation to the burden of new equipment placed in the ROW or on the local asset, or some other objective standard."). Because our decision provides clarity by addressing conflicting court decisions and reaffirming that the "materially inhibits" standard articulated in the Commission's *California Payphone* decision is the appropriate standard for determining whether a state or local law operates as an effective prohibition within the meaning of Sections 253 and 332, we reject arguments that our action will increase conflicts and lead to more litigation. *See e.g.*, Letter from Michael Dylan Brennan, Mayor, City of University Heights, Ohio, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Sept. 19, 2018) (stating that "…this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding").

[81] *See infra* Part III.A, B.

[82] *See County of San Diego*, 543 F.3d at 579 ("We see nothing suggesting that Congress intended a different meaning of the text 'prohibit or have the effect of prohibiting' in the two statutory provisions, enacted at the same time, in the same statute. * * * * * As we now hold, the legal standard is the same under either [Section 253 or 332(c)(7)]."); *see also, e.g.*, *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (citing *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (reading same term used in different parts of the same Act to have the same meaning); *Northcross v. Board of Ed. of Memphis City Schools*, 412 U.S. 427, 428 (1973) (per curiam) ("[S]imilarity of language . . . is . . . a strong indication that the two statutes should be interpreted *pari passu*"); Verizon Comments at 9-10; AT&T Reply at 3-4; Crown Castle June 7, 2018 *Ex Parte* Letter at 15.

[83] Common carrier wireless services meet the definition of "telecommunications services," and thus are within the scope of Section 253(a) of the Act. *See, e.g.*, *Moratoria Declaratory Ruling*, FCC 18-111, para 142 n.523; *see also, e.g.*, League of Minnesota Cities Comments at 11; Verizon Reply at 9-10. While some commenters cite certain distinguishing factual characteristics between wireline and wireless services, the record does not reveal why those distinctions would be material to whether wireless telecommunications services are covered by Section 253 in the first instance. *See, e.g.*, City of San Antonio *et al*. Comments, Exh. A at 13; Virginia Joint Commenters Comments at 5, Exh. A at 45-46. To the contrary, Section 253(e) expressly preserves "application of section 332(c)(3) of this title to commercial mobile service providers" notwithstanding Section 253—a provision that would be meaningless if wireless telecommunications services already fell outside the scope of Section 253. 47 U.S.C. § 253(e). For this same reason, we also reject claims that the existence of certain protections for personal wireless services in Section 332(c)(7), or the phrase "nothing in this chapter" in Section 332(c)(7)(A), demonstrate that states' or localities'

37. As explained in *California Payphone* and reaffirmed here, a state or local legal requirement will have the effect of prohibiting wireless telecommunications services if it materially inhibits the provision of such services. We clarify that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service.[85] This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service

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regulations affecting wireless telecommunications services must fall outside the scope of Section 253. *See, e.g.*, Virginia Joint Commenters Comments, Exh. A at iii, 45-46; Smart Communities Comments at 56. Even if, as some parties argue, the phrase "nothing in this chapter" could be construed as preserving state or local decisions on the placement, construction, or modification of personal wireless service facilities from preemption by other sections of the Communications Act, Section 332(c)(7)(A) goes on to make clear that such state or local decisions are *not* immune from preemption if they violate any of the standards set forth in Section 332(c)(7)(B)--including Section 332(c)(7)(B)(i)(II)'s ban of requirements that "prohibit or have the effect of prohibiting" the provision of service, which is identical to the preemption provision in Section 253(a). Thus, states and localities may charge fees and dispose of applications relating to the matters subject to Section 332(c)(7) in any manner they deem appropriate, so long as that conduct does not amount to a prohibition or effective prohibition, as interpreted in this Declaratory Ruling or otherwise run afoul of federal or state law; but because Sections 332(c)(7)(B)(i)(II) and 253(a) use identical "effective prohibition" language, the standard for what is saved and what is preempted is the same under both provisions.

[84] *See infra* para. 40 (discussing use of small cells to close coverage gaps, including voice gaps); *see also, e.g.*, *Moratoria Declaratory Ruling*, FCC 18-111, para 145 n.531; *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 425, para. 190 (2018); Letter from Andre J. Lachance, Associate General Counsel, Verizon to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 3 (filed Sept. 19, 2018) (confirming that "telecommunications services can be provided over small cells and Verizon has deployed Small Wireless Facilities in its network that provide telecommunications services."); Letter from David M. Crawford, Senior Corporate Counsel, Fed. Reg. Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 19, 2018) (stating that "small wireless facilities are a critical component of T-Mobile's network deployment plans to support both the 5G evolution of wireless services, as well as more traditional services such as mobile broadband and even voice calls. T-Mobile, for example, uses small wireless facilities to densify our network to provide better coverage and greater capacity, and to provide traditional services such as voice calls in areas where our macro site coverage is insufficient to meet demand."); Letter from Henry G. Hultquist, Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 (filed Sept. 20, 2018) ("AT&T has operated and continues to operate commercial mobile radio services as well as information services from small wireless facilities..."); *see also, e.g.*, *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d 425, 441-42 (E.D.N.Y. 2009) (finding that a restriction on advertising on newly-installed payphones was subject to Section 253(a) where the advertising was a material factor in the provider's ability to provide the payphone service itself). The fact that facilities are sometimes deployed by third parties not themselves providing covered services also does not place such deployment beyond the purview of Section 253(a) or Section 332(c)(7)(B)(i) insofar as the facilities are used by wireless service providers on a wholesale basis to provide covered services (among other things). *See, e.g.*, T-Mobile Comments at 26. Given our conclusion that neither commingling of services nor the identity of the entity engaged in the deployment activity changes the applicability of Section 253(a) or Section 332(c)(7)(B)(i)(II) where the facilities are being used for the provisioning of services within the scope of the relevant statutory provisions, we reject claims to the contrary. *See, e.g.*, Colorado Communications and Utility Alliance *et al*. Comments at 15-16; City of San Antonio *et al*. Comments, Exh. A at 12; *id*., Exh. C at 13-15. Because local jurisdictions do not have the authority to regulate these interstate services, there is no basis for local jurisdictions to conduct proceedings on the types of personal wireless services offered over particular wireless service facilities or the licensee's service area, which are matters within the Commission's licensing authority. Furthermore, local jurisdictions do not have the authority to require that providers offer certain types or levels of service, or to dictate the design of a provider's network. See 47 U.S.C. § 332(c)(3)(A); *see also Bastien v. AT&T Wireless Servs., Inc.*, 205 F.3d 983, 989 (7th Cir. 2000).

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

capabilities.[86] Under the *California Payphone* standard, a state or local legal requirement could materially inhibit service in numerous ways—not only by rendering a service provider unable to provide an existing service in a new geographic area or by restricting the entry of a new provider in providing service in a particular area, but also by materially inhibiting the introduction of new services or the improvement of existing services. Thus, an effective prohibition includes materially inhibiting additional services or improving existing services.[87]

38. Our reading of Section 253(a) and Section 332(c)(7)(B)(i)(II) reflects and supports a marketplace in which services can be offered in a multitude of ways with varied capabilities and performance characteristics consistent with the policy goals in the 1996 Act and the Communications Act. To limit Sections 253(a) and 332(c)(7)(B)(i)(II) to protecting only against coverage gaps or the like would be to ignore Congress's contemporaneously-expressed goals of "promot[ing] competition[,] . . . secur[ing] . . . higher quality services for American telecommunications consumers and encourage[ing] the rapid deployment of new telecommunications technologies."[88] In addition, as the Commission recently explained, the implementation of the Act "must factor in the fundamental objectives of the Act, including the deployment of a 'rapid, efficient . . . wire and radio communication service with adequate facilities at reasonable charges' and 'the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays[, and] efficient and

[86] *See, e.g.*, Crown Castle Comments at 54-55; Free State Foundation Comments at 12; T-Mobile Comments at 43-45; CTIA Reply at 14; WIA Reply at 26; Crown Castle June 7, 2018 *Ex Parte* Letter at 13-14; Letter from Kara Romagnino Graves, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 8-9 (filed June 27, 2018) (CTIA June 27, 2018 *Ex Parte* Letter). As T-Mobile explains, for example, a provider might need to improve "signal strength or system capacity to allow it to provide reliable service to consumers in residential and commercial buildings." T-Mobile Comments at 43; *see also, e.g.*, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket Nos. 13-238, *et al.*, Notice of Proposed Rulemaking, 28 FCC Rcd 14238, 14253, para. 38 (2013) (observing that "DAS and small cell facilities[ ] are critical to satisfying demand for ubiquitous mobile voice and broadband services"). The growing prevalence of smart phones has only accelerated the demand for wireless providers to take steps to improve their service offerings. *See, e.g.*, *Twentieth Wireless Competition Report*, 32 FCC Rcd at 9011-13, paras. 62-65.

[87] Our conclusion finds further support in our broad understanding of the statutory term "service," which, as we explained in our recent *Moratoria Declaratory Ruling*, means "any covered service a provider wishes to provide, incorporating the abilities and performance characteristics it wishes to employ, including to provide existing services more robustly, or at a higher level of quality—such as through filling a coverage gap, densification, or otherwise improving service capabilities." *Moratoria Declaratory Ruling*, FCC 18-111, para. 162 n.594; *see also Public Utility Comm'n of Texas Petition for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 3460, 3496, para. 74 (1997) (*Texas PUC Order)* (interpreting the scope of 'telecommunications services' covered by Section 253(a) and clarifying that it would be an unlawful prohibition for a state or locality to specify "the means or facilities" through which a service provider must offer service); Crown Castle June 7, 2018 *Ex Parte* Letter at 10-11 (discussing this precedent). We find this interpretation of "service" warranted not only under Section 253(a), but Section 332(c)(7)(B)(i)(II)'s reference to "services" as well.

[88] Preamble to the Telecommunications Act of 1996, Pub. Law. No. 104-104, § 202, 110 Stat. 56 (1996). Consequently, we reject arguments suggesting that the provision of some level of wireless service in the past necessarily demonstrates that there is no effective prohibition of service under the state or local legal requirements that applied during those periods or that an effective prohibition only is present if a provider can provide no covered service whatsoever. *See, e.g.*, City and County of San Francisco Comments at 25-26; Virginia Joint Commenters Comments, Exh. A at 31-33. Nor, in light of these goals, do we find it reasonable to interpret the protections of these provisions as doing nothing more than guarding against a monopoly as some suggest. *See, e.g.*, Smart Communities Comments, WC Docket No. 17-84, at 8-9 (filed June 15, 2017) cited in Smart Communities Comments at 57 n.141.

intensive use of the electromagnetic spectrum.'"[89] These provisions demonstrate that our interpretation of Section 253 and Section 332(c)(7)(B)(i)(II) is in accordance with the broader goals of the various statutes that the Commission is entrusted to administer.

39. *California Payphone* further concluded that providers must be allowed to compete in a "fair and balanced regulatory environment."[90] As reflected in decisions such as the Commission's *Texas PUC Order*, a state or local legal requirement can function as an effective prohibition either because of the resulting "financial burden" in an absolute sense, or, independently, because of a resulting competitive disparity.[91] We clarify that "[a] regulatory structure that gives an advantage to particular services or facilities has a prohibitory effect, even if there are no express barriers to entry in the state or local code; the greater the discriminatory effect, the more certain it is that entities providing service using the disfavored facilities will experience prohibition."[92] This conclusion is consistent with both Commission and judicial precedent recognizing the prohibitory effect that results from a competitor being treated materially differently than similarly-situated providers.[93] We provide our authoritative interpretation below of the circumstances in which a "financial burden," as described in the *Texas PUC Order*, constitutes an effective prohibition in the context of certain state and local fees.

40. As we explained above, we reject alternative readings of the effective prohibition language that have been adopted by some courts and used to defend local requirements that have the effect of prohibiting densification of networks. Decisions that have applied solely a "coverage gap"-based approach under Section 332(c)(7)(B)(i)(II) reflect both an unduly narrow reading of the statute and an outdated view of the marketplace.[94] Those cases, including some that formed the foundation for

[89] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, FCC 18-30, para. 62 (rel. Mar. 30, 2018) (*Wireless Infrastructure Second R&O*) (quoting 47 U.S.C. §§ 151, 309(j)(3)(A), (D)).

[90] *California Payphone*, 12 FCC Rcd at 14206, para. 31.

[91] *Texas PUC Order*, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81; *see also, e.g.*, Crown Castle June 7, 2018 *Ex Parte* at 10-11, 13.

[92] Crown Castle June 7, 2018 *Ex Parte* Letter at 13.

[93] *See, e.g.*, *Texas PUC Order*, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81; *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities*, Declaratory Ruling, 15 FCC Rcd 15168, 15173, paras. 12-13 (2000) (*Western Wireless Order*); *Pittencrieff Communications, Inc. Petition for Declaratory Ruling Regarding Preemption of the Texas Public Utility Regulatory Act of 1995*, Memorandum Opinion and Order, 13 FCC Rcd 1735, 1751-52, para. 32 (1997) (*Pittencrieff*), *aff'd*, *Cellular Telecomm. Indus. Ass'n v. FCC*, 168 F.3d 1332 (5th Cir. 1999); *City of White Plains*, 305 F.3d at 80.

[94] Smart Communities seeks clarification of whether this Declaratory Ruling is meant to say that the "coverage gap" standard followed by a number of courts should include consideration of capacity as well as coverage issues. Letter from Gerard Lavery Lederer, Counsel, Smart Communities and Special Districts Coalition, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Att. at 17 (Sept. 19, 2018) (Smart Communities Sept. 19 *Ex Parte* Letter). We are not holding that prior "coverage gap" analyses are consistent with the standards we articulate here as long as they also take into account "capacity gaps"; rather, we are articulating here the effective prohibition standard that should apply while, at the same time, noting one way in which prior approaches erred by requiring coverage gaps. Accordingly, we reject both the version of the "coverage gap" test followed by the First, Fourth, and Seventh Circuits (requiring applicants to show "not just that *this* application has been rejected but that further reasonable efforts to find another solution are so likely to be fruitless that it is a waste of time even to try") and the version endorsed by the Second, Third, and Ninth Circuits (requiring applicants to show that the proposed facilities are the "least intrusive means" for filling a coverage gap) *See supra* n. 75. We also note that some courts have expressed concern about alternative readings of the statute that would lead to extreme outcomes—either always requiring a grant under some interpretations, or never preventing a denial under other interpretations. *See, e.g.*, *Willoth*, 176 F.3d at 639-41; *APT*, 196 F.3d at 478-79; *Town of Amherst v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9, 14 (1st Cir. 1999); *AT&T Wireless PCS v. City Council of Virginia Beach*, 155 F.3d 423, 428 (4th Cir. 1998) (*City Council of Virginia Beach*); *see also, e.g.*, Greenling Comments at 2; City and County of San Francisco Reply

"coverage gap"-based analytical approaches, appear to view wireless service as if it were a single, monolithic offering provided only via traditional wireless towers.[95] By contrast, the current wireless marketplace is characterized by a wide variety of offerings with differing service characteristics and deployment strategies.[96] As Crown Castle explains, coverage gap-based approaches are "simply

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at 16. Our interpretation avoids those concerns while better reflecting the text and policy goals of the Communications Act and 1996 Act than coverage gap-based approaches ultimately adopted by those courts. Our approach ensures meaningful constraints on state and local conduct that otherwise would prohibit or have the effect of prohibiting the provision of personal wireless services. At the same time, our standard does not preclude all state and local denials of requests for the placement, construction, or modification of personal wireless service facilities, as explained below. *See infra* III.B, C.

[95] *See, e.g.*, *Willoth*, 176 F.3d at 641-44; *360 Degrees Commc'ns Co. v.Board of Supervisors of Albemarle County*, 211 F.3d 79, 86-88 & n.1 (4th Cir. 2000) (*Albemarle County*); *see also, e.g.*, ExteNet Comments at 29; T-Mobile Comments at 42; Verizon Comments at 18; WIA Comments at 38-40. Even some cases that implicitly recognize the limitations of a gap-based test fail to account for those limitations in practice when applying Section 332(c)(7)(B)(i)(II). *See, e.g.*, *Second Generation Properties v. Town of Pelham*, 313 F.3d 620, 633 n.14 (4th Cir. 2002) (discussing scenarios where a carrier has coverage but insufficient capacity to adequately handle the volume of calls or where new technology emerges and a carrier would like to use it in areas that already have coverage using prior-generation technology). Courts that have sought to identify limited set of characteristics of personal wireless services covered by the Act essentially allow actual or effective prohibition of many personal wireless services that providers wish to offer with additional or more advanced characteristics. *See, e.g.*, *Willoth*, 176 F.3d at 641-43 (drawing upon certain statutory definitions); *Cellular Tel. Co. v. Zoning Bd. of Adjustment of the Borough of Ho-Ho-Kus*, 197 F.3d 64, 70 (3d Cir. 1999) (*Borough of Ho-Ho-Kus*) (concluding that it should be up to state or local authorities to assess and weigh the benefits of differing service qualities); *Albemarle County*, 211 F.3d at 87 (citing 47 CFR §§ 22.99, 22.911(b) as noting the possibility of some 'dead spots'); *cf. USCOC of Greater Iowa, Inc. v. Zoning Bd. of Adjustment of the City of Des Moines*, 465 F.3d 817 (8th Cir. 2006) (describing as a "dubious proposition" the argument that a denial of a request to construct a tower resulting in "less than optimal" service quality could be an effective prohibition). An outcome that allows the actual or effective prohibition of some covered services is contrary to the Act. Section 253(a) applies to any state or local legal requirement that prohibits or has the effect of prohibiting any entity from providing "any" interstate or intrastate telecommunications service, 47 U.S.C. § 253(a). Similarly, Section 332(c)(7)(B)(i)(II) categorically precludes state or local regulation of the placement, construction, or modification of personal wireless service facilities that prohibits or has the effect of prohibiting the provision of personal wireless "services." 47 U.S.C. § 332(c)(7)(B)(i)(II). We find the most natural interpretation of these sections is that any service that meets the definition of "telecommunications service" or "personal wireless service" is encompassed by the language of each provision, rather than only some subset of such services or service generally. The notion that such state or local regulation permissibly could prohibit some personal wireless services, so long as others are available, is at odds with that interpretation. In addition, as we explain above, a contrary approach would fail to advance important statutory goals as well as the interpretation we adopt. Further, the approach reflected in these court decisions could involve state or local authorities "inquir[ing] into and regulat[ing] the services offered—an inquiry for which they are ill-qualified to pursue and which could only delay infrastructure deployment." Crown Castle June 7, 2018 *Ex Parte* Letter at 14. Instead, our effective prohibition analysis focuses on the service the provider wishes to provide, incorporating the capabilities and performance characteristics it wishes to employ, including facilities deployment to provide existing services more robustly, or at a better level of quality, all to offer a more robust and competitive wireless service for the benefit of the public.

[96] *See generally, e.g.*, *Twentieth Wireless Competition Report*, 32 FCC Rcd at 8968; *see also, e.g.*, T-Mobile Comments at 42-43; AT&T Reply at 4-5; CTIA Reply at 13-14; WIA Reply at 23-24; Crown Castle June 7, 2018 *Ex Parte* Letter at 15. We do not suggest that viewing wireless service as if it were a single, monolithic offering provided only via traditional wireless towers would have reflected an accurate understanding of the marketplace in the past, even if it might have been somewhat more understandable that courts held such a simplified view at that time. Rather, the current marketplace conditions highlight even more starkly the shortcomings of coverage gap-based approaches, which do not account for other characteristics and deployment strategies. *See, e.g.*, *Twentieth Wireless Competition Report*, 32 FCC Rcd at 8974-75, para. 12 (observing that "[p]roviders of mobile wireless services typically offer an array of mobile voice and data services," including "interconnected mobile voice services"); *id*. at 8997-97, paras. 42-43 (discussing various types of wireless infrastructure deployment to, among

incompatible with a world where the vast majority of new wireless builds are going to be designed to add network capacity and take advantage of new technologies, rather than plug gaps in network coverage."[97] Moreover, a critical feature of these new wireless builds is to accommodate increased in-building use of wireless services, necessitating deployment of small cells in order to ensure quality service to wireless callers within such buildings.[98]

41. Likewise, we reject the suggestion of some courts like the Eighth and Ninth Circuits that evidence of an existing or complete inability to offer a telecommunications service is required under 253(a).[99] Such an approach is contrary to the material inhibition standard of *California Payphone* and the correct recognition by courts "that a prohibition does not have to be complete or 'insurmountable'" to constitute an effective prohibition.[100] Commission precedent beginning with *California Payphone* itself makes clear that an insurmountable barrier is not required to find an effective prohibition under Section 253(a).[101] The "effectively prohibit" language must have some meaning independent of the "prohibit"

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other things, "improve spectrum efficiency for 4G and future 5G services," "to fill local coverage gaps, to densify networks and to increase local capacity").

[97] Crown Castle June 7, 2018 *Ex Parte* Letter at 15; *see also id*. at 13 ("Densification of networks will be key for augmenting the capacity of existing networks and laying the groundwork for the deployment of 5G."); *id*. at 15-16 ("When trying to maximize spectrum re-use and boost capacity, moving facilities by just a few hundred feet can mean the difference between excellent service and poor service. The FCC's rules, therefore, must account for the effect siting decisions would have on every level of service, including increasing capacity and adding new spectrum bands. Practices and decisions that prevent carriers from doing either materially prohibit the provision of telecommunications service and thus should be considered impermissible under Section 332."). Contrary approaches appear to occur in part when courts' policy balancing places more importance on broadly preserving state and local authority than is justified. *See, e.g.*, *APT*, 196 F.3d at 479; *Albemarle County*, 211 F.3d at 86; *City Council of Virginia Beach*, 155 F.3d at 429; *National Tower, LLC v. Plainville Zoning Bd. of Appeals*, 297 F.3d 14 (1st Cir. 2002); *see also, e.g.*, League of Arizona Cities *et al.* Joint Comments at 45; Smart Communities Reply at 33. As explained above, our interpretation that "telecommunications services" in Section 253(a) and "personal wireless services" in Section 332(c)(7)(B)(i)(II) are focused on the covered services that providers seek to provide —including the relevant service characteristics they seek to incorporate—not only is consistent with the text of those provisions but better reflects the broader policy goals of the Communications Act and the 1996 Act.

[98] *See* WIA Comments at 39; T-Mobile Comments at 43-44.

[99] *See, e.g.*, *County of San Diego*, 543 F.3d at 577, 579-80; *City of St. Louis*, 477 F.3d at 533-34; *see also, e.g.*, Virginia Joint Commenters Comments, Exh. A at 39-41. Although the Ninth Circuit in *County of San Diego* found that "the unambiguous text of §253(a)" precluded a prior Ninth Circuit approach that found an effective prohibition based on broad governmental discretion and the "mere possibility of prohibition," that holding is not implicated by our interpretations here. *County of San Diego*, 543 F.3d at 578; *cf. City of St. Louis*, 477 F.3d at 532. Consequently, those decisions do not preclude the Commission's interpretations here, *see, e.g.*, Verizon Reply at 7, and we reject claims to the contrary. *See, e.g.*, Smart Communities Comments at 60.

[100] *City of White Plains*, 305 F.3d at 76 (citing *RT Commc'ns*, 201 F.3d at 1268); *see also, e.g.*, *Municipality of Guayanilla*, 450 F.3d at 18 (quoting *City of White Plains*, 305 F.3d at 76 and citing *City of Santa Fe*, 380 F.3d at 1269); Crown Castle June 7, 2018 *Ex Parte* Letter at 12; Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach at 5. Indeed, the Eighth Circuit's *City of St. Louis* decision acknowledges that under Section 253 "[t]he plaintiff need not show a complete or insurmountable prohibition," even while other aspects of that decision suggest that an insurmountable barrier effectively would be required. *City of St. Louis*, 477 F.3d at 533 (citing *City of White Plains*, 305 F.3d at 76).

[101] In *California Payphone*, the Commission concluded that the ordinance at issue "does not 'prohibit' the ability of any payphone service provider to provide payphone service in the Central Business District within the meaning of section 253(a)," but went on to evaluate the possibility of an effective prohibition by considering "whether the Ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment." *California Payphone*, 12 FCC Rcd at 14205, 14206, paras. 28, 31. In the *Texas PUC Order*, the Commission found that state law build-out requirements would require "substantial financial investment" and a "comparatively high cost per loop sold" in particular areas, interfering with the

language, and we find that the interpretation of the First, Second, and Tenth Circuits reflects that principle, while being more consistent with the *California Payphone* standard than the approach of the Eighth and Ninth Circuits.[102] The reasonableness of our interpretation that 'effective prohibition' does not require a showing of an insurmountable barrier to entry is demonstrated not only by a number of circuit courts' acceptance of that view, but in the Supreme Court's own characterization of Section 253(a) as "prohibit[ing] state and local regulation that *impedes* the provision of 'telecommunications service.'"[103]

42. The Eighth and Ninth Circuits' suggestion that a provider must show an insurmountable barrier to entry in the jurisdiction imposing the relevant regulation is at odds with relevant statutory purposes and goals, as well. Section 253(a) is designed to protect "any entity" seeking to provide telecommunications services from state and local barriers to entry, and Sections 253(b) and (c) emphasize the importance of "competitively neutral" and "nondiscriminatory" treatment of providers.[104] Yet focusing on whether the carrier seeking relief faces an insurmountable barrier to entry would lead to disparities in statutory protections among providers based merely on considerations such as their access to capital and the breadth or narrowness of their entry strategies.[105] In addition, the Commission has observed in connection with Section 253: "Each local government may believe it is simply protecting the

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"statewide entry" plans that new entrants "may reasonable contemplate" in violation of Section 253(a) notwithstanding claims that the specific new entrants at issue had "'vast resources and access to capital' sufficient to meet those added costs. *Texas PUC Order*, 13 FCC Rcd at 3498, para. 78. The Commission also has expressed "great concern" about an exclusive rights-of-way access agreement that "appear[ed] to have the potential to adversely affect the provision of telecommunications services by facilities-based providers, in violation of the provision of section 253(a)." *Minnesota Order*, 14 FCC Rcd at 21700, para. 3. As another example, in the *Western Wireless Order*, the Commission stated that a "universal service fund mechanism that provides funding only to ILECs" would likely violate Section 253(a) not because it was insurmountable but because it would "effectively lower the price of ILEC-provided service relative to competitor-provided service" and thus "give customers a strong incentive to choose service from ILECs rather than competitors." *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8.

[102] We discuss specific applications of the *California Payphone* standard in the context of certain fees and non-fee regulations in the sections below; we leave others to be addressed case-by-case as they arise or otherwise are taken up by the Commission or courts in the future.

[103] *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 491 (2002) (emphasis added); *see also, e.g.*, Level 3 Communications, Petition for a Writ of Certiorari, *Level 3 Communications, LLC v. City of St. Louis*, No. 08-626, at 13 (filed Nov. 7, 2008) ("[T]he term '[p]rohibit' commonly has a less absolute meaning than that adopted below, and properly refers to actions that 'hold back,' 'hinder,' or 'obstruct.'" (quoting Random House Webster's Unabridged Dictionary 1546 (2d ed. 1998)). We thus are not compelled to interpret 'effective prohibition' to set the high bar suggested by some commenters based on other dictionary definitions. Smart Communities Petition for Reconsideration, WC Docket No. 17-84, WT Docket No. 17-79 at 7 (filed Sept. 4, 2018). Because we are unpersuaded that the statutory terminology requires us to interpret an effective prohibition as satisfied only by an insurmountable barrier to entry, we likewise reject commenters' attempts to argue that "effective prohibition" must be understood to set a higher bar by comparison to the "impairment" language in Section 251 of the Act and associated regulatory interpretations of network unbundling requirements taken from that context. *Id* at 6. In addition, commenters do not demonstrate why the statutory framework and regulatory context of network unbundling under Section 251—and the specific concerns about access by non-facilities-based providers to competitive networks underlying the court precedent they cite—is sufficiently analogous to that of Section 253 and Section 332(c)(7)(B)(i)(II) that statements from that context should inform our interpretation here. *See, e.g.*, *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. at 392. In responding to these discrete arguments raised in a petition for reconsideration of the *Moratoria Declaratory Ruling* that bear on actions we take in this order we do not thereby resolve any of the petition's arguments with respect to that order. The requests for relief raised in the petition remain pending in full.

[104] 47 U.S.C. § 253(a), (b), (c).

[105] *See, e.g.*, *Texas PUC Order*, 13 FCC Rcd at 3498, para. 78 (rejecting claims that there should be a higher bar to find an effective prohibition for providers with significant financial resources and recognizing that the effects of the relevant state requirements on a given provider could differ depending on the planned geographic scope of entry).

interests of its constituents. The telecommunications interests of constituents, however, are not only local. They are statewide, national and international as well. We believe that Congress' recognition of this fact was the genesis of its grant of preemption authority to this Commission."[106] As illustrated by our consideration of effective prohibitions flowing from state and local fees, there also can be cases where a narrow focus on whether an insurmountable barrier can be shown within the jurisdiction imposing a particular legal requirement would neglect the serious effects that flow through in other jurisdictions as a result, including harms to regional or national deployment efforts.[107]

B. State and Local Fees

43. Federal courts have long recognized that the fees charged by local governments for the deployment of communications infrastructure can run afoul of the limits Congress imposed in the effective prohibition standard embodied in Sections 253 and 332.[108] In *Municipality of Guayanilla*, for example, the First Circuit addressed whether a city could lawfully charge a 5 percent gross revenue fee. The court found that the "5% gross revenue fee would constitute a substantial increase in costs" for the provider, and that the ordinance consequently "will negatively affect [the provider's] profitability."[109] The fee, together with other requirements, thus "place a significant burden" on the provider.[110] In light of this analysis, the First Circuit agreed that the fee "'materially inhibits or limits the ability'" of the provider "'to compete in a fair and balanced legal and regulatory environment.'"[111] The court thus held that the fee does not survive scrutiny under Section 253. In doing so, the First Circuit also noted that the inquiry is not limited to the impact that a fee would have on deployment in the jurisdiction that imposes the fee. Rather, the court noted the aggregate effect of fees when totaled across all relevant jurisdictions.[112] At the same time, the First Circuit did not decide whether the fair and reasonable compensation allowed under Section 253 must be limited to cost recovery or, at the very least, related to the actual use of the ROW.[113]

44. In *City of White Plains*, the Second Circuit likewise faced a 5 percent gross revenue fee, which it found to be "[t]he most significant provision" in a franchise agreement implementing an ordinance that the court concluded effectively prohibited service in violation of Section 253.[114] While the court noted that "compensation is . . . sometimes used as a synonym for cost,"[115] it ultimately did not resolve whether fair and reasonable compensation "is limited to cost recovery, or whether it also extends to a reasonable rent," relying instead on the fact that "White Plains has not attempted to charge Verizon

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[106] *TCI Cablevision of Oakland County, Inc. Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e), and 253*, Memorandum Opinion and Order, 12 FCC Rcd 21396, 21442, para. 106 (1997) (*TCI Cablevision Order*).

[107] *See infra* Part III.B.

[108] The Commission also has recognized the potential for fees to result in an effective prohibition. *See, e.g.*, *Pittencrieff*, 13 FCC Rcd at 1751-52, para. 37 (observing that "even a neutral [universal service] contribution requirement might under some circumstances effectively prohibit an entity from offering a service").

[109] *Municipality of Guayanilla*, 450 F.3d at 18-19.

[110] *Id*. at 19.

[111] *Id*. (quoting *City of White Plains*, 305 F.3d at 76).

[112] *Municipality of Guayanilla*, 450 F.3d at 17 (looking at the aggregate cost of fees charged across jurisdictions given the interconnected nature of the service).

[113] *Id*. at 22 ("We need not decide whether fees imposed on telecommunications providers by state and local governments must be limited to cost recovery. We agree with the district court's reasoning that fees should be, at the very least, related to the actual use of rights of way and that 'the costs [of maintaining those rights of way] are an essential part of the equation.'").

[114] *City of White Plains*, 305 F.3d at 77.

[115] *Id.* In this context, the court stated that the term "compensation" is "flexible" and capable of different meanings depending on the context in which it is used. *Id.*

the fee that it seeks to charge TCG," thus failing Section 253's "competitively neutral and nondiscriminatory" standard.[116] But the court did observe that "Section 253(c) requires compensation to be reasonable essentially to prevent monopolist pricing by towns."[117]

45. In another example, the Tenth Circuit in *City of Santa Fe* addressed a $6,000 per foot fee set for Qwest's use of the ROW.[118] The court held "that the rental provisions are prohibitive because they create[d] a massive increase in cost" for Qwest.[119] The court recognized that Section 253 allows the recovery of cost-based fees, though it ultimately did not decide whether to "measure 'fair and reasonable' by the City's costs or by a 'totality of circumstances test'" applied in other courts because it determined that the fees at issue were not cost-based and "fail[ed] even the totality of the circumstances test."[120] Consequently, the fee was preempted under Section 253.

46. At the same time, the courts have adopted different approaches to analyzing whether fees run afoul of Section 253, at times failing even to articulate a particular test.[121] Among other things, courts have expressed different views on whether Section 253 limits states' and localities' fees to recovery of their costs or allows fees set in excess of that level.[122] We articulate below the Commission's interpretation of Section 253(a) and the standards we adopt for evaluating when a fee for Small Wireless Facility deployment is preempted, regardless how the fee is challenged. We also clarify that the Commission interprets Section 332(c)(7)(B)(i)(II) to have the same substantive meaning as Section 253(a).

47. *Record Evidence on Costs Associated with Small Wireless Facilities.* Keeping pace with the demands on current 4G networks and upgrading our country's wireless infrastructure to 5G require

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[116] *City of White Plains*, 305 F.3d at 79. In particular, the court concluded that "fees that exempt one competitor are inherently not 'competitively neutral,' regardless of how that competitor uses its resulting market advantage," *id.* at 80, and thus "[a]llowing White Plains to strengthen the competitive position of the incumbent service provider would run directly contrary to the pro-competitive goals of the [1996 Act]," *id.* at 79.

[117] *Id*.

[118] *City of Santa Fe*, 380 F.3d at 1270-71.

[119] *Id*. at 1271.

[120] *Id*. at 1272 (observing that "[t]he City acknowledges . . . that the rent required by the Ordinance is not limited to recovery of costs").

[121] *Compare, e.g., Municipality of Guayanilla*, 450 F.3d at 18-19 (finding that fees were significant and had the effect of prohibiting service); *City of Santa Fe*, 380 F.3d at 1271 (similar); *with, e.g.*, *Qwest v. Elephant Butte Irrigation Dist.*, 616 F. Supp. 2d 1110, 1123-24 (D.N.M. 2008) (rejecting Qwest's reliance on preceding finding of effective prohibition from quadrupled costs where the fee at issue was a penny per foot); *Qwest v. City of Portland*, 2006 WL 2679543, *15 (D. Or. 2006) (asserting with no explanation that "a registration fee of $35 and a refundable deposit of $2,000 towards processing expenses . . . could not possibly have the effect of prohibiting Qwest from providing telecommunications services").

[122] For example and as noted above, in *Municipality of Guayanilla* the First Circuit reserved judgment on whether the fair and reasonable compensation allowed under Section 253 must be limited to cost recovery or if it was sufficient if the compensation was related to the actual use of rights of way. *Municipality of Guayanilla*, 450 F.3d at 22. Other courts have found reasonable compensation to require cost-based fees. *XO Missouri v. City of Maryland Heights*, 256 F. Supp. 2d 987, 993-95 (E.D. Mo. 2003) (*City of Maryland Heights*); *Bell Atlantic–Maryland, Inc. v. Prince George's County*, 49 F. Supp. 2d 805, 818 (D. Md. 1999) (*Prince George's County*) vacated on other grounds, 212 F.3d 863 (4th Cir. 2000). Still other courts have applied a test that weighs a number of considerations when evaluating whether compensation is fair and reasonable. *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 625 (6th Cir. 2000) (*City of Dearborn*) (considering "the amount of use contemplated . . . the amount that other providers would be willing to pay . . . and the fact that TCG had agreed in earlier negotiations to a fee almost identical to what it now was challenging as unfair").

the deployment of many more Small Wireless Facilities.[123] For example, Verizon anticipates that network densification and the upgrade to 5G will require 10 to 100 times more antenna locations than currently exist. AT&T estimates that providers will deploy hundreds of thousands of wireless facilities in the next few years alone—equal to or more than the number providers have deployed in total over the last few decades.[124] Sprint, in turn, has announced plans to build at least 40,000 new small sites over the next few years.[125] A report from Accenture estimates that, overall, during the next three or four years, 300,000 small cells will need to be deployed—a total that it notes is "roughly double the number of macro cells built over the last 30 years."[126]

48. The many-fold increase in Small Wireless Facilities will magnify per-facility fees charged to providers. Per-facility fees that once may have been tolerable when providers built macro towers several miles apart now act as effective prohibitions when multiplied by each of the many Small Wireless Facilities to be deployed. Thus, a per-facility fee may affect a prohibition on 5G service or the densification needed to continue 4G service even if that same per-facility fee did not effectively prohibit previous generations of wireless service.

49. Cognizant of the changing technology and its interaction with regulations created for a previous generation of service, the *2017 Wireline Infrastructure NPRM/NOI* sought comment on whether government-imposed fees could act as a prohibition within the meaning of Section 253, and if so, what fees would qualify for 253(c)'s savings clause.[127] The *2017 Wireless Infrastructure NPRM/NOI* similarly sought comment on the scope of Sections 253 and 332(c)(7) and on any new or updated guidance the Commission should provide, potentially through a Declaratory Ruling.[128] In particular, the Commission sought comment on whether it should provide further guidance on how to interpret and apply the phrase "prohibit or have the effect of prohibiting."[129]

50. We conclude that ROW access fees, and fees for the use of government property in the ROW,[130] such as light poles, traffic lights, utility poles, and other similar property suitable for hosting

[123] *See* CTIA June 27, 2018 *Ex Parte* Letter at 6 ("[s]mall cell technology is needed to support 4G densification and 5G connectivity."); *see also* Accelerating Wireless Deployment by Removing Barriers to Infrastructure Investment, Report and Order, 32 FCC Rcd 9760, 9765, para. 12 (2017) (*2017 Pole Replacement Order*) (recognizing that Small Wireless Facilities will be increasingly necessary to support the rollout of next-generation services).

[124] *See* Verizon Comments at 3; AT&T Comments at 1.

[125] *See* Letter from Keith C. Buell, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Feb. 21, 2018).

[126] Accelerating Future Economic Value Report at 6; *see also* Deloitte 5G Paper.

[127] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3266, 3296-97, paras. 100 -101 and 3298-99, paras. 104-105 (2017).

[128] *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3360, para. 87. In addition, in 2016, the Wireless Telecommunications Bureau released a public notice seeking comment on ways to expedite the deployment of next generation wireless infrastructure, including providing guidance on application processing fees and charges for use of rights of way. *See Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*, Public Notice, 31 FCC Rcd 13360 (WTB 2016).

[129] *Wireless Infrastructure NPRM/NOI,* 32 FCC Rcd at 3362*,* para. 90.

[130] We do not find these fees to be taxes within the meaning of Section 601(c)(2) of the 1996 Act. *See, e.g.*, Smart Communities Reply at 36 (quoting the savings clause for "State or local law pertaining to taxation" in Section 601(c)(2) of the 1996 Act). It is ambiguous whether a fee charged for access to ROWs should be viewed as a tax for purposes of Section 601(c)(2) of the 1996 Act. *See, e.g.*, *City of Dallas v. FCC*, 118 F.3d 393, 397-98 (5th Cir. 1997) (distinguishing "the price paid to rent use of public right-of-ways" from a "tax" and citing similar precedent). Given that Congress clearly contemplated in Section 253(c) that states' and localities' fees for access to ROWs could be subject to preemption where they violate Section 253—or else the savings clause in that regard would be superfluous—we find the better view is that such fees do not represent a tax encompassed by Section 601(c)(2) of

Small Wireless Facilities, as well as application or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of Small Wireless Facilities inside and outside the ROW, violate Sections 253 or 332(c)(7) unless these conditions are met: (1) the fees are a reasonable approximation of the state or local government's costs,[131] (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.[132]

51. We base our interpretation on several considerations, including the text and structure of the Act as informed by legislative history, the economics of capital expenditures in the context of Small Wireless Facilities (including the manner in which capital budgets are fixed *ex ante*), and the extensive record evidence that shows the actual effects that state and local fees have in deterring wireless providers from adding to, improving, or densifying their networks and consequently the service offered over them (including, but not limited to, introducing next-generation 5G wireless service). We address each of these considerations in turn.

52. *Text and Structure.* We start our analysis with a consideration of the text and structure of Section 253. That section contains several related provisions that operate in tandem to define the roles that Congress intended the federal government, states, and localities to play in regulating the provision of telecommunications services. Section 253(a) sets forth Congress's intent to preempt state or local legal requirements that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[133] Section 253(b), in turn, makes clear Congress's intent that state "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights

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the 1996 Act. We do not address whether particular fees could be considered taxes under other statutes not administered by the FCC, but we reject the suggestion that tests courts use to determine what constitute "taxes" in the context of such other statutes should apply to the Commission's interpretation of Section 601(c)(2) here in light of the statutory context for Section 601(c)(2) in the 1996 Act and the Communications Act discussed above. *See, e.g.*, *Qwest Corp. v. City of Surprise*, 434 F.3d 1176, 1183-84 & n.3 (9th Cir. 2006) (holding that particular fees at issue there were taxes for purposes of the Tax Injunction Act and stating in dicta that had the Tax Injunction Act not applied it would agree with the conclusion of the district court that it was covered by Section 601(c)(2) of the 1996 Act); *MCI Communications Services, Inc. v. City of Eugene*, 359 F. Appx. 692, 696 (9th Cir. 2009) (asserting without analysis that the same test would apply to determine if a fee constitutes a tax under both the Tax Injunction Act and Section 601(c)(2) of the 1996 Act).

[131] By costs, we mean those costs specifically related to and caused by the deployment. These include, for instance, the costs of processing applications or permits, maintaining the ROW, and maintaining a structure within the ROW. *See Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 354 F. Supp. 2d 107, 114 (D.P.R. 2005) (*Guayanilla District Ct. Opinion*), *aff'd*, 450 F.3d 9 (1st Cir. 2006) ("fees charged by a municipality need to be related to the degree of actual use of the public rights-of way" to constitute fair and reasonable compensation under Section 253(c)).

[132] We explain above what we mean by "fees." *See supra* note 71. Contrary to some claims, we are not asserting a "general ratemaking authority." Virginia Joint Commenters Comments at 6. Our interpretations in this order bear on whether and when fees associated with Small Wireless Facility deployment have the effect of prohibiting wireless telecommunications service and thus are subject to preemption under Section 253(a), informed by the savings clause in Section 253(c). While that can implicate issues surrounding how those fees were established, it does so only to the extent needed to vindicate Congress's intent in Section 253. We do not interpret Section 253(a) or (c) to authorize the regulation or establishment of state and local fees as an exercise in itself. We likewise are not persuaded by undeveloped assertions that the Commission's interpretation of Section 253 in the context of fees would somehow violate constitutional separation of powers principles. *See, e.g.*, Virginia Joint Commenters Comments, Exh. A at 52.

[133] 47 U.S.C. § 253(a).

of consumers" are not preempted.[134] Of particular importance in the fee context, Section 253(c) reflects a considered policy judgment that "[n]othing in this section" shall prevent states and localities from recovering certain carefully delineated fees. Specifically, Section 253(c) makes clear that fees are not preempted that are "fair and reasonable" and imposed on a "competitively neutral and nondiscriminatory basis," for "use of public rights-of-way on a "nondiscriminatory basis," so long as they are "publicly disclosed" by the government.[135] Section 253(d), in turn, provides one non-exclusive mechanism by which a party can obtain a determination from the Commission of whether a specific state or local requirement is preempted under Section 253(a)—namely, by filing a petition with the Commission.[136]

53. In reviewing this statutory scheme, the Commission previously has construed Section 253(a) as "broadly limit[ing] the ability of state[s] to regulate," while the remaining subsections set forth "defined areas in which states may regulate."[137] We reaffirm this conclusion, consistent with the view of most courts to have considered the issue—namely, that Sections 253(b) and (c) make clear that certain state or local laws, regulations, and legal requirements are not preempted under the expansive scope of Section 253(a).[138] Our interpretation of Section 253(a) is informed by this statutory context,[139] and the observation of courts that when a preemption provision precedes a narrowly-tailored savings clause, it is reasonable to infer that Congress intended a broad preemptive scope.[140] We need not decide today whether Section 253(a) preempts all fees not expressly saved by Section 253(c) with respect to all types of deployments. Rather, we conclude, based on the record before us, that with respect to Small Wireless Facilities, even fees that might seem small in isolation have material and prohibitive effects on deployment,[141] particularly when considered in the aggregate given the nature and volume of anticipated Small Wireless Facility deployment.[142] Against this backdrop, and in light of significant evidence, set forth herein, that Congress intended Section 253 to preempt legal requirements that effectively prohibit service, including wireless infrastructure deployment, we view the substantive standards for fees that Congress sought to insulate from preemption in Section 253(c) as an appropriate ceiling for state and local fees that apply to the deployment of Small Wireless Facilities in public ROWs.[143]

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[134] 47 U.S.C. § 253(b).

[135] 47 U.S.C. § 253(c).

[136] 47 U.S.C. § 253(d).

[137] *Texas PUC Order*, 13 FCC Rcd at 3481, para. 44.

[138] *See, e.g., Connect America Fund; Sandwich Isles Communications, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 5878, 5881, 5885-87, paras. 8, 19-25 (2017) *(Sandwich Isles Section 253 Order)*; *Texas PUC Order*, 13 FCC Rcd at 3480-81, paras. 41-44; *Global Network Commc'ns, Inc. v. City of New York*, 562 F.3d 145, 150-51 (2d Cir. 2009); *Southwestern Bell Tel. Co. v. City of Houston*, 529 F.3d 257, 262 (5th Cir. 2008); *City of St. Louis*, 477 F.3d at 531-32 (8th Cir. 2007); *Municipality of Guayanilla*, 450 F.3d at 15-16; *City of Santa Fe*, 380 F.3d at 1269; *BellSouth Telecomm's, Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1187-89 (11th Cir. 2001). Some courts appear to have viewed Section 253(c) as an independent basis for preemption. *See, e.g., City of Dearborn*, 206 F.3d at 624 (after concluding that a franchise fee did not violate Section 253(a), going on to evaluate whether it was "fair and reasonable" under Section 253(c)). We find more persuasive the Commission and other court precedent to the contrary, which we find better adheres to the statutory language.

[139] *See, e.g.*, *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2442 (2014).

[140] *See, e.g.*, *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44-45 (1987); *City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 189-90 (2d Cir. 2010); *Frank v. Delta Airlines, Inc*., 314 F.3d 195, 199 (5th Cir. 2002); *cf. United States v. Kay*, 359 F.3d 738 (5th Cir. 2004) (justifying a broad reading of a statute given that Congress "narrowly defin[ed] exceptions and affirmative defenses against a backdrop of broad applicability").

[141] *See infra* paras. 62-63.

[142] *See, e.g.*, *Wireless Infrastructure Second R&O*, FCC 18-30, at para. 64.

[143] *See, e.g.*, Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 9-10. We therefore reject the view of those courts that have concluded that Section 253(a) necessarily requires some additional showing beyond the fact that a particular fee is not cost-based. *See, e.g.*, *Qwest v. City of Berkeley*, 433 F.3d 1253, 1257 (9th Cir. 2006) ("we

54. In addition, notwithstanding that Section 253(c) only expressly governs ROW fees, we find it appropriate to look to its substantive standards as a ceiling for other state and local fees addressed by this *Declaratory Ruling*.[144] For one, our evaluation of the material effects of fees on the deployment of Small Wireless Facilities does not differ whether the fees are for ROW access, use of government property within the ROW, or one-time application and review fees or the like—any of which drain limited capital resources that otherwise could be used for deployment—and we see no reason why the Act would tolerate a greater prohibitory effect in the case of application or review fees than for ROW fees.[145] In addition, elements of the substantive standards for ROW fees in Section 253(c) appear at least analogous to elements of the *California Payphone* standard for evaluating an effective prohibition under Section 253(a). In pertinent part, both incorporate principles focused on the legal requirements to which a provider may be fairly subject,[146] and seek to guard against competitive disparities.[147] Without resolving the precise interplay of those concepts in Section 253(c) and the *California Payphone* standard, their similarities support our use of the substantive standards of Section 253(c) to inform our evaluation of fees at issue here that are not directly governed by that provision.

55. From the foregoing analysis, we can derive the three principles that we articulate in this Declaratory Ruling about the types of fees that are preempted. As explained in more detail below, we also interpret Section 253(c)'s "fair and reasonable compensation" provision to refer to fees that represent a reasonable approximation of actual and direct costs incurred by the government, where the costs being passed on are themselves objectively reasonable.[148] Although there is precedent that "fair and reasonable" compensation could mean not only cost-based charges but also market-based charges in certain instances,[149] the statutory context persuades us to adopt a cost-based interpretation here. In particular, while the general purpose of Section 253(c) is to preserve certain state and local conduct from preemption, it includes qualifications and limitations to cabin state and local action under that savings clause in ways that ensure appropriate protections for service providers. The reasonableness of interpreting the qualifications and limitations in the Section 253(c) savings clause as designed to protect the interests of service providers is emphasized by the statutory language. The "competitively neutral and

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decline to read" prior Ninth Circuit precedent "to mean that all non-cost based fees are automatically preempted, but rather that courts must consider the substance of the particular regulation at issue"). At the same time, our interpretation does not take the broader view of the preemptive scope of Section 253 adopted by the Sixth Circuit, which interpreted Section 253(c) as an independent prohibition on conduct that is not itself prohibited by Section 253(a). *City of Dearborn*, 206 F.3d at 624.

[144] *See supra* note 71.

[145] *Cf. Cheney R. Co. v. ICC*, 902 F.2d 66, 69 (D.C. Cir. 1990) (observing that the *expressio unius* canon is a "feeble helper in an administrative setting, where Congress is presumed to have left to reasonable agency discretion questions that it has not directly resolved," and concluding there that "Congress's mandate in one context with its silence in another suggests not a prohibition but simply a decision not to mandate any solution in the second context, i.e., to leave the question to agency discretion").

[146] For ROW compensation to be saved under Section 253(c) it must be "fair and reasonable," while the *California Payphone* standard looks to whether a legal requirement "materially limits or inhibits" the ability to compete in a "fair" legal environment for a covered service. *California Payphone*, 12 FCC Rcd at 14206, para. 31.

[147] For ROW compensation to be saved under Section 253(c) it also must be "competitively neutral and nondiscriminatory," while the *California Payphone* standard also looks to whether a legal requirement "materially limits or inhibits" the ability to compete in a "balanced" legal environment for a covered service. *California Payphone*, 12 FCC Rcd at 14206, para. 31.

[148] *See infra* paras. 69-77; *see also, e.g.*, *City of Maryland Heights*, 256 F. Supp. 2d at 993-95; *Bell Atlantic–Maryland*, 49 F. Supp. 2d at 818.

[149] *See, e.g.*, *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010) (statute did not unambiguously require the SEC to interpret "fair and reasonable" to mean cost-based, and the SEC's reliance on market-based rates as "fair and reasonable" where there was competition was a reasonable interpretation).

nondiscriminatory" and public disclosure qualifications in Section 253(c) appear most naturally understood as protecting the interest of service providers from fees that otherwise would have been saved from preemption under Section 253(c) absent those qualifiers. Under the *noscitur a sociis* canon of statutory interpretation, that context persuades us that the "fair and reasonable" qualifier in Section 253(c) similarly should be understood as focused on protecting the interest of providers.[150] As discussed in greater detail below, while it might well be fair for providers to bear basic, reasonable costs of entry,[151] the record does not reveal why it would be fair or reasonable from the standpoint of protecting providers to require them to bear costs beyond that level, particularly in the context of the deployment of Small Wireless Facilities. In addition, the text of Section 253(c) provides that ROW access fees must be imposed on a "competitively neutral and nondiscriminatory basis." This means, for example, that fees charged to one provider cannot be materially higher than those charged to a competitor for similar uses.[152]

56. Other considerations support our approach, as well. By its terms, Section 253(a) preempts state or local legal requirements that "prohibit" or have the "effect of prohibiting" the provision of services, and we agree with court precedent that "[m]erely allowing the [local government] to recoup its processing costs . . . cannot in and of itself prohibit the provision of services."[153] The Commission has long understood that Section 253(a) is focused on state or local barriers to entry for the provision of service,[154] and we conclude that states and localities do not impose an unreasonable barrier to entry when they merely require providers to bear the direct and reasonable costs caused by their decision to enter the market.[155] We decline to interpret a government's recoupment of such fundamental costs of entry as having the effect of prohibiting the provision of services, nor has any commenter argued that recovery of cost by a government would prohibit service in a manner restricted by Section 253(a).[156] Reasonable state and local regulation of facilities deployment is an important predicate for a viable marketplace for

[150] *See, e.g.*, *Life Technologies Corp. v. Promega Corp.*, 137 S. Ct. 734 (2017) ("A word is given more precise content by the neighboring words with which it is associated." (internal alteration and quotation marks omitted)).

[151] *See infra* para. 56.

[152] *See, e.g.*, *City of White Plains*, 305 F.3d at 80.

[153] *City of Santa Fe*, 380 F.3d at 1269; *see also* Verizon Comments at 17.

[154] *See, e.g.*, *Sandwich Isles Section 253 Order*, 32 FCC Rcd at 5878, 5882-83, paras. 1, 13; *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8; *Petition of the State of Minnesota for a Declaratory Ruling regarding the Effect of Section 253 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Rights of Way*, Memorandum Opinion and Order, 14 FCC Rcd 21697, 21707, para. 18 (*Minnesota Order*); *Hyperion Order*, 14 FCC Rcd at 11070, para. 13; *Texas PUC Order*, 13 FCC Rcd at 3480, para. 41; *TCI Cablevision Order*, 12 FCC Rcd at 21399, para. 7; *California Payphone*, 12 FCC Rcd at 14209, para. 38; *see also, e.g.*, *AT&T Comm'ns of the Sw. v. City of Dallas*, 8 F. Supp. 2d 582, 593 (N.D. Tx. 1998) (*AT&T v. City of Dallas*) ("[A]ny fee that is not based on AT&T's use of City rights-of-way violates § 253(a) of the FTA as an economic barrier to entry."); Verizon Comments at 11-12; Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 7. Because we view the *California Payphone* standard as reflecting a focus on barriers to entry, we decline requests to adopt a distinct, additional standard with that as an explicit focus. *See, e.g.*, T-Mobile Comments at 35.

[155] *See, e.g.*, *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5301-03, paras. 142-45 (2011) (rejecting an approach to defining a lower bound rate for pole attachments that "would result in pole rental rates *below* incremental cost" as contrary to cost causation principles); *Investigation of Interstate Access Tariff Non-Recurring Charges*, Memorandum Opinion and Order, 2 FCC Rcd 3498, 3502, para. 34 (1987) (observing in the rate regulation context that "the public interest is best served, and a competitive marketplace is best encouraged, by policies that promote the recovery of costs from the cost-causer"). Our interpretation limiting states and localities to the recovery of a reasonable approximation of objectively reasonable cost also takes into account state and local governments' exclusive control over access to the ROW.

[156] For example, Verizon states that "[a]lthough *any* fee could be said to raise the cost of providing service," Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 9, "[t]he Commission should interpret . . . Section 253(a) to allow cost-based fees for access to public rights-of-way and structures within them, but to prohibit above-cost fees that generate revenue in excess of state and local governments' actual costs." *Id*., Attach. at 6.

communications services by protecting property rights and guarding against conflicting deployments that could harm or otherwise interfere with others' use of property.[157] By contrast, fees that recover more than the state or local costs associated with facilities deployment—or that are based on unreasonable costs, such as exorbitant consultant fees or the like—go beyond such governmental recovery of fundamental costs of entry. In addition, interpreting Section 253(a) to prohibit states and localities from recovering a reasonable approximation of reasonable costs could interfere with the ability of states to exercise the police powers reserved to them under the Tenth Amendment.[158] We therefore conclude that Section 253(a) is circumscribed to permit states and localities to recover a reasonable approximation of their costs related to the deployment of Small Wireless Facilities.

57. *Commission Precedent*. We draw further confidence in our conclusions from the Commission's *California Payphone* decision, which we reaffirm here, finding that a state or local legal requirement would violate Section 253(a) if it "materially limits or inhibits" an entity's ability to compete in a "balanced" legal environment for a covered service.[159] As explained above, fees charged by a state or locality that recover the reasonable approximation of reasonable costs do not "materially inhibit" a provider's ability to compete in a "balanced" legal environment. To the contrary, those costs enable localities to recover their necessary expenditures to provide a stable and predictable framework in which market participants can enter and compete. On the other hand, in the *Texas PUC Order* interpreting *California Payphone*, the Commission concluded that state or local legal requirements such as fees that impose a "financial burden" on providers can be effectively prohibitive.[160] As the record shows, excessive state and local governments' fees assessed on the deployment of Small Wireless Facilities in the ROW in fact materially inhibit the ability of many providers to compete in a balanced environment.[161]

58. *California Payphone* and *Texas PUC* separately support the conclusion that fees cannot be discriminatory or introduce competitive disparities, as such fees would be inconsistent with a "balanced" regulatory marketplace. Thus, fees that treat one competitor materially differently than other competitors in similar situations are themselves grounds for finding an effective prohibition—even in the case of fees that are a reasonable approximation of the actual and reasonable costs incurred by the state or locality. Indeed, the Commission has previously recognized the potential for subsidies provided to one

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[157] *See, e.g.*, *TCI Cablevision Order*, 12 FCC Rcd at 21441, para. 103; *see also, e.g.*, Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243 (1968). States' or localities' regulation premised on addressing effects of deployment besides these costs caused by facilities deployment are distinct issues, which we discuss below. *See infra* Part III.C.

[158] The Supreme Court has recognized that land use regulation can involve an exercise of police powers. *See, e.g.*, *Hodel v. Va. Surface Min. & Reclamation Ass'n, Inc.*, 452 U.S. 264, 289 (1981). As that Court observed, "[i]t would . . . be a radical departure from long-established precedent for this Court to hold that the Tenth Amendment prohibits Congress from displacing state police power laws regulating private activity." *Id*. at 292. At the same time, the Court also has held that "historic police powers of the States" are not to be preempted by federal law "unless that was the clear and manifest purpose of Congress." *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 605 (1991) (internal quotation marks omitted). As relevant here, we see no clear and manifest intent that Congress intended to preempt publicly disclosed, objectively reasonable cost-based fees imposed on a nondiscriminatory basis, particularly in light of Section 253(c).

[159] We disagree with suggestions that the Commission applied an additional and more stringent "commercial viability" test in *California Payphone*. *See, e.g.*, Crown Castle June 7, 2018 *Ex Parte* Letter at 10. Instead, the Commission was simply evaluating the Section 253 petition on its own terms, *see, e.g.*, *California Payphone*, 12 FCC Rcd at 14204, 14210, paras. 27, 41, and, without purporting to define the bounds of Section 253(a), explaining that the petitioner "ha[d] not sufficiently supported its allegation" that the provision of service at issue "would be 'impractical and uneconomic.'" *Id*. at 14210, para. 41. Confirming that this language was simply the Commission's short-hand reference to arguments put forward by the petitioner itself, and not a Commission-announced standard for applying Section 253, the Commission has not applied a "commercial viability" standard in other decisions, as these same commenters recognize. *See, e.g.*, Crown Castle June 7, 2018 *Ex Parte* Letter at 10.

[160] *Texas PUC Order*, 13 FCC Rcd at 3466, 3498-500, paras. 13, 78-81.

[161] *See infra* paras. 60-65.

competitor to distort the marketplace and create a barrier to entry in violation of Section 253(a).[162] We reaffirm that conclusion here.

59. *Legislative History*. While our interpretation follows directly from the text and structure of the Act, our conclusion finds further support in the legislative history, which reflects Congress's focus on the ability of states and localities to recover the reasonable costs they incur in maintaining the rights of way.[163] Significantly, Senator Dianne Feinstein, during the floor debate on Section 253(c), "offered examples of the types of restrictions that Congress intended to permit under Section 253(c), including [to] 'require a company to pay fees to *recover an appropriate share of the increased street repair and paving costs* that result from repeated excavation.'"[164] Representative Bart Stupak, a sponsor of the legislation, similarly explained during the debate on Section 253 that "if a company plans to run 100 miles of trenching in our streets and wires to all parts of the cities, it *imposes a different burden* on the right-of-way than a company that just wants to string a wire across two streets to a couple of buildings," making clear that the compensation described in the statute is related to the burden, or cost, from a provider's use of the ROW.[165] These statements buttress our interpretation of the text and structure of Section 253 and confirm Congress's apparent intent to craft specific safe harbors for states and localities, and to permit recovery of reasonable costs related to the ROW as "fair and reasonable compensation," while preempting fees above a reasonable approximation of cost that improperly inhibit service.[166]

60. *Capital Expenditures.* Apart from the text, structure, and legislative history of the 1996 Act, an additional, independent justification for our interpretation follows from the simple, logical premise, supported by the record, that state and local fees in one place of deployment necessarily have the effect of reducing the amount of capital that providers can use to deploy infrastructure elsewhere, whether the reduction takes place on a local, regional or national level.[167] We are persuaded that providers and infrastructure builders, like all economic actors, have a finite (though perhaps fluid)[168] amount of resources to use for the deployment of infrastructure. This does not mean that these resources are limitless, however. We conclude that fees imposed by localities, above and beyond the recovery of localities' reasonable costs, materially and improperly inhibit deployment that could have occurred elsewhere.[169] This and regulatory uncertainty created by such effectively prohibitive conduct[170] creates an

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[162] *See, e.g.*, *Western Wireless Order*, 15 FCC Rcd at 16231, para. 8.

[163] *See, e.g.*, WIA Comments, Attach. 2 at 70.

[164] WIA Comments, Attach. 2 at 70 (quoting 141 Cong. Rec. S8172 (daily ed. June 12, 1995) (statement of Sen. Feinstein, quoting letter from Office of City Attorney, City and County of San Francisco)) (emphasis added)); *see also, e.g.*, Verizon Comments at 15 (similar); *City of Maryland Heights*, 256 F. Supp. 2d at 995-96.

[165] 141 Cong. Rec. H8460-01, H8460 (daily ed. Aug. 4, 1995).

[166] We reject other comments downplaying the relevance of legislative statements by some commenters as inconsistent with the text and structure of the Act. *See, e.g.*, League of Arizona Cities *et al.* Joint Comments at 27-28; NATOA Comments, Exh. A at 26-28; Smart Communities Reply at 57-58; Cities of San Antonio et al. Reply at 20-21; *see also, e.g.*, *City of Portland v. Electric Lightwave, Inc.*, 452 F. Supp. 2d 1049, 1071-72 (D. Or. 2005).

[167] At a minimum, this analysis complements and reinforces the justifications for our interpretation provided above. While the relevant language of Section 253(a) and Section 332(c)(7)(B)(i)(II) is not limited just to Small Wireless Facilities, we proceed incrementally in our Declaratory Ruling here and address the record before us, which indicates that our interpretation of the effective prohibition standard here is particularly reasonable in the context of Small Wireless Facility deployment.

[168] For example, the precise amount of these resources might shift as a service provider encounters unexpected costs, recovers costs passed on to subscribers, or earns a profit above those costs.

[169] As Verizon observes, "[a] number of states enacted infrastructure legislation because they determined that rate relief was necessary to ensure wireless deployment," and thus could be seen as having "acknowledged that excessive fees impose a substantial barrier to the provision of service." Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 7-8. In view of the evidence in the record regarding the effect of state and local fees on capital expenditures, *see, e.g.,* Corning Sept. 5, 2018 *Ex Parte* Letter (noting that cost savings from reduced small cell attachment and application

appreciable impact on resources that materially limits plans to deploy service. This record evidence emphasizes the importance of evaluating the effect of fees on Small Wireless Facility deployment on an aggregate basis. Consistent with the First Circuit's analysis in *Municipality of Guayanilla*, the record persuades us that fees associated with Small Wireless Facility deployment lead to "a substantial increase in costs"—particularly when considered in the aggregate—thereby "plac[ing] a significant burden" on carriers and materially inhibiting their provision of service contrary to Section 253 of the Act.[171]

61. The record is replete with evidence that providers have limited capital budgets that are constrained by state and local fees.[172] As AT&T explains, "[a]ll providers have limited capital dollars to invest, funds that are quickly depleted when drained by excessive ROW fees."[173] AT&T added that "[c]ompetitive demands will force carriers to deploy small cells in the largest cities. But, when those largest cities charge excessive fees to access ROWs and municipal ROW structures, carriers' finite capital dollars are prematurely depleted, leaving less for investment in mid-level cities and smaller communities. Larger municipalities have little incentive to not overcharge, and mid-level cities and smaller

(Continued from previous page)
fees could result in $2.4 billion in capital expenditure and that 97% of this capital expenditure would go toward investments in rural and suburban areas), we disagree with arguments that fees do not affect the deployment of wireless facilities in rural and underserved areas. *See, e.g.,* Letter from Sam Liccardo, Mayor, City of San Jose, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 4 (filed Sept. 18, 2018) (City of San Jose Sept. 18, 2018 *Ex Parte* Letter) (stating that "whether or not a provider wishes to invest in a dense urban area, including underserved urban areas, or a rural area is fundamentally based on the size of the customer base and the market demand for service-not on the purported wiles of a 'must-serve' jurisdiction somehow forcing investment away from rural areas because a right of way or attachment fee is charged."); Letter from Joanne Hovis, Chief Executive Officer, Coalition for Local Internet Choice, James Baller, President, Coalition for Local Internet Choice, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 3 (filed Sept. 18, 2018) ("in lucrative areas, carriers will pay market fees for access to property just as they would any other cost of doing business. But they will not, as rational economic actors, necessarily apply new profits (created by FCC preemption) to deploying in otherwise unattractive areas.").

[170] *See, e.g.*, CTIA Comments at 32 (identifying "disparate interpretations" regarding the fees that are preempted and seeking FCC clarification to "dispel the resulting uncertainty"); Verizon Comments at 10 (similar); Letter from Cathleen A. Massey, Vice Pres.-Fed. Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, Attach. at 7 (filed Sept. 21, 2017) (seeking clarification of Section 253); BDAC Regulatory Barriers Report, p. 9 ("The FCC should provide guidance on what constitutes a fee that is excessive and/or duplicative, and that therefore is not 'fair and reasonable.' The Commission should specifically clarify that 'fair and reasonable' compensation for right-of way access and use implies some relation to the burden of new equipment placed in the ROW or on the local asset, or some other objective standard.").

[171] *Municipality of Guayanilla*, 450 F.3d at 19.

[172] *See, e.g.,* AT&T Comments at 2; Conterra Broadband et al. Comments at 6; Mobilitie Comments at 3; Sprint Comments at 17; Letter from Courtney Neville, Associate General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2-3 (filed July 16, 2018) (CCA July 16, 2018 *Ex Parte* Letter); Letter from Henry Hultquist, Vice President, Federal Regulatory, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed June 8, 2018) (AT&T June 8, 2018 *Ex Parte* Letter); Crown Castle June 7, 2018 *Ex Parte* Letter at 2; Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed June 21, 2018) (Verizon June 21, 2018 *Ex Parte* Letter); Letter from Ronald W. Del Sesto, Jr., Counsel for Uniti Fiber, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 5 (filed Oct. 30, 2017); Verizon Aug. 10, 2018 *Ex Parte* Letter, Attach. at 2-4. When developing capital budgets, companies rationally would account for anticipated revenues associated with the services that can be provided by virtue of planned facilities deployment, and the record does not reveal—nor do we see any basis to assume—that such revenues would be so great as to eliminate constraints on providers' capital budgets so as to enable full deployment notwithstanding the level of state and local fees.

[173] AT&T Aug. 6, 2018 *Ex Parte* Letter at 2.

municipalities have no ability to avoid this harm."[174] As to areas that might not be sufficiently crucial to deployment to overcome high fees, AT&T identified jurisdictions in Maryland, California, and Massachusetts where high fees have directly resulted in paused or decreased deployments.[175] Limiting localities to reasonable cost recovery will "allow[] AT&T and other providers to stretch finite capital dollars to additional communities."[176] Verizon similarly explains that "[c]apital budgets are finite. When providers are forced to spend more to deploy infrastructure in one locality, there is less money to spend in others. The leverage that some cities have to extract high fees means that other localities will not enjoy next generation wireless broadband services as quickly, if at all."[177] Sprint, too, affirms that, because "all carriers face limited capital budgets, they are forced to limit the number and pace of their deployment investments to areas where the delays and impediments are the least onerous, to the detriment of their customers and, ultimately and ironically, to the very jurisdictions that imposed obstacles in the first place."[178] Sprint gives a specific example of its deployments in two adjacent jurisdictions—the City of Los Angeles and Los Angeles County—and describes how high fees in the county prevented Sprint from activating any small cells there, while more than 500 deployments occurred in the city, which had significantly lower fees.[179] Similarly, Conterra Broadband states that "[w]hen time and capital are diverted away from actual facility installation and instead devoted to clearing regulatory roadblocks, consumers and enterprises, including local small businesses, schools and healthcare centers, suffer."[180] Based on the record, we find that fees charged by states and localities are causing *actual* delays and restrictions on deployments of Small Wireless Facilities in a number of places across the country in violation of Section 253(a).[181]

62. Our conclusion finds further support when one considers the aggregate effects of fees imposed by individual localities, including, but not limited to, the potential limiting implications for a nationwide wireless network that reaches all Americans, which is among the key objectives of the statutory provisions in the 1996 Act that we interpret here.[182] When evaluating whether fees result in an effective prohibition of service due to financial burden, we must consider the marketplace regionally and nationally and thus must consider the cumulative effects of state or local fees on service in multiple geographic areas that providers serve or potentially would serve. Where providers seek to operate on a regional or national basis, they have constrained resources for entering new markets or introducing, expanding, or improving existing services, particularly given that a provider's capital budget for a given

[174] *Id.*

[175] *Id.* (pausing or delaying deployments in Citrus Heights, CA, Oakland, CA and three Maryland counties; decreasing deployments in Lowell, MA and decreasing deployments from 98 to 25 sites in Escondido, CA).

[176] *Id*.

[177] Verizon Aug. 10, 2018 *Ex Parte* Letter at 5, Attach. at 2-4.

[178] Sprint Comments at 17.

[179] Sprint Aug. 13, 2018 *Ex Parte* Letter at 1-2.

[180] Conterra Broadband *et al*. Comments at 6; *see also* Letter from John Scott, Counsel for Mobilitie, LLC to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 ("high fees imposed by some cities hurt other cities that have reasonable fees, because they reduce capital resources that might have gone to those cities, and because they pressure other financially strapped cities not to turn away what appears to be a revenue opportunity").

[181] Letter from Kenneth J. Simon, Senior Vice President and General Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 4 (filed August 10, 2018) (Crown Castle Aug. 10, 2018 *Ex Parte* Letter).

[182] *New England Public Comms. Council Petition for Preemption Pursuant to Section 253*, Memorandum Opinion and Order, 11 FCC Rcd 19713, 19717, para. 9 (1996) (1996 Act intent of "accelerat[ing] deployment of advanced telecommunications services to all Americans by opening all telecommunications markets to competition."); *see also* Crown Castle Aug. 10, 2018 *Ex Parte* Letter at 7.

period of time is often set in advance.[183] In such cases, the resources consumed in serving one geographic area are likely to deplete the resources available for serving other areas.[184] The text of Section 253(a) is not limited by its terms only to effective prohibitions within the geographic area targeted by the state or local fee. Where a fee in a geographic area affects service outside that geographic area, the statute is most naturally read to encompass consideration of all affected areas.

63. A contrary, geographically-restrictive interpretation of Section 253(a) would exacerbate the digital divide by giving dense or wealthy states and localities that might be most critical for a provider to serve the ability to leverage their unique position to extract fees for their own benefit at the expense of regional or national deployment by decreasing the deployment resources available for less wealthy or dense jurisdictions.[185] As a result, the areas likely to be hardest hit by excessive government fees are not necessarily jurisdictions that charge those fees, but rather areas where the case for new, expanded, or improved service was more marginal to start—and whose service may no longer be economically justifiable in the near-term given the resources demanded by the "must-serve" areas. To cite some examples of harmful aggregate effects, AT&T notes that high annual recurring fees are particularly harmful because of their "continuing and compounding nature."[186] It also states that, "if, as S&P Global Market Intelligence estimates, small-cell deployments reach nearly 800,000 by 2026, a ROW fee of $1000 per year …would result in nearly $800 million annually in forgone investment." [187] Yet another commenter notes that, "[f]or a deployment that requires a vast number of small cell facilities across a metropolitan area, these fees quickly mount up to hundreds of thousands of dollars, often making deployment economically infeasible," and "far exceed[ing] any costs the locality incurs by orders of magnitude, while taking capital that would otherwise go to investment in new infrastructure."[188] Endorsing such a result would thwart the purposes underlying Section 253(a). As Crown Castle observes, "[e]ven where the fees do not result in a direct lack of service in a high-demand area like a city or urban core, the high cost of building and operating facilities in these jurisdictions consume [sic] capital and revenue that could otherwise be used to expand wireless infrastructure in higher cost areas. This impact of egregious fees is prohibitory and should be taken into account in any prohibition analysis."[189]

64. Some municipal commenters endorse a cost-based approach to "ensure that localities are fully compensated for their costs [and that] fees should be reasonable and non-discriminatory, and should ensure that localities are made whole"[190] in recognition that "getting [5G] infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources."[191] Commenters from smaller municipalities recognize that "thousands and thousands of small cells are needed for 5G… [and]

[183] *See, e.g.*, AT&T June 8, 2018 *Ex Parte* Letter at 2; Crown Castle June 7, 2018 *Ex Parte* Letter at 2; Verizon June 21, 2018 *Ex Parte* Letter at 2.

[184] *See, e.g.*, *Municipality of Guayanilla*, 450 F.3d at 17 ("Given the interconnected nature of utility services across communities and the strain that the enactment of gross revenue fees in multiple municipalities would have on PRTC's provision of services, the Commonwealth-wide estimates are relevant to determining how the ordinance affects PRTC's 'ability . . . to provide any interstate or intrastate telecommunications service'" under Section 253(a)).

[185] *See, e.g.,* Letter from Sam Liccardo, Mayor or San Jose, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, Attachment at 1-2 (filed Aug. 2, 2018) (describing payment by providers of $24 million to a Digital Inclusion Fund in order to deploy small cells in San Jose on city owned light poles).

[186] AT&T Comments at 19.

[187] AT&T Comments at 19-20.

[188] Mobilitie Comments at 3.

[189] Crown Castle Aug. 10, 2018 *Ex Parte* Letter at 2.

[190] Sal Pace July 30, 2018 *Ex Parte* Letter at 1.

[191] LaWana Mayfield July 31, 2018 *Ex Parte Letter* at 1

old regulations could hinder the timely arrival of 5G throughout the country"[192] and urge the Commission to "establish some common-sense standards insofar as it relates to fees associated with the deployment of small cells [due to] a cottage industry of consultants [] who have wrongly counseled communities to adopt excessive and arbitrary fees."[193] Representatives from non-urban areas in particular caution that, "if the investment that goes into deploying 5G on the front end is consumed by big, urban areas, it will take longer for it to flow outwards in the direction of places like Florence, [SC]."[194] "[R]educing the high regulatory costs in urban areas would leave more dollars to development in rural areas [because] most of investment capital is spent in the larger urban areas [since] the cost recovery can be made in those areas. This leaves the rural areas out."[195] We agree with these commenters, and we further agree with courts that have considered "the *cumulative effect* of future similar municipal [fees ordinances]" across a broad geographic area when evaluating the effect of a particular fee in the context of Section 253(a).[196] To the extent that other municipal commenters argue that our interpretation gives wireless providers preferential treatment compared to other users of the ROW, the record does not contain data about other users that would support such a conclusion.[197] In any event, Section 253 of the Communications Act expressly bars legal requirements that effectively prohibit telecommunications service without regard to whether it might result in preferential treatment for providers of that service.[198]

65. Applying this approach here, the record reveals that fees above a reasonable approximation of cost, even when they may not be perceived as excessive or likely to prohibit service in isolation, will have the effect of prohibiting wireless service when the aggregate effects are considered, particularly given the nature and volume of anticipated Small Wireless Facility deployment.[199] The record reveals that these effects can take several forms. In some cases, the fees in a particular jurisdiction will lead to reduced or entirely forgone deployment of Small Wireless Facilities in the near term for that

[192] Dr. Carolyn Prince July 31, 2018 *Ex Parte* Letter at 2.

[193] Letter from Ashton J. Hayward III, Mayor, Pensacola, FL to the Hon. Brendan Carr, Commissioner, WT Docket No. 17-79 at 1 (filed June 8, 2018).

[194] Representative Terry Alexander Aug. 7, 2018 *Ex Parte* Letter at 1.

[195] Senator Duane Ankney July 31, 2018 *Ex Parte* Letter at 1; *see also* Letter from Elder Alexis D. Pipkins, Sr. to the Hon. Brendan Carr, Commissioner, FCC at 1 (filed July 26, 2018) ("the race to 5G is global…instead of each city or state for itself, we should be working towards aligned, streamlined frameworks that benefit us all."); Letter from Jeffrey Bohm, Chairman of the Board of Commissioners, County of St. Clair to Brendan Carr, Commissioner, FCC, WT Docket 17-79 at 1-2 (filed August 22, 2018) ("Smaller communities, such as those located in St. Clair County would benefit from having the Commissions reduce the costly and unnecessary fee's that some larger communities place on small cells as a condition of deployment. These fees, wholly disproportionate to any cost, put communities like ours at an unfair disadvantage"); Letter from Scott Niesler, Mayor, City of Kings Mountain, to Brendan Carr, Commissioner, FCC, WT Docket 17-79 at 1-2 (filed June 4, 2018) ("the North Carolina General Assembly has enacted legislation to encourage the deployment of small cell technology to limit exorbitant fees which can siphon off capital from further expansion projects. I was encouraged to see the FCC taking similar steps to enact policies that help clear the way for the essential investment").

[196] *Guayanilla District Ct. Opinion*, 354 F. Supp. 2d at 111-12; *but see, e.g.,* Letter from Nina Beety to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 at 5 (filed Sept. 17, 2018) (Nina Beety Sept. 17, 2018 *Ex Parte* Letter) (asserting that providers artificially under-capitalize their deployment budgets to build the case for poverty).

[197] Letter from Larry Hanson, Executive Director, Georgia Municipal Association to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Sept. 17, 2018) (Georgia Municipal Association Sept. 17, 2018 *Ex Parte* Letter).

[198] 47 U.S.C. § 253(a).

[199] *See, e.g.*, *Wireless Infrastructure Second R&O*, FCC 18-30, at para. 64. In addition, although one could argue that, in theory, a sufficiently small departure from actual and reasonable costs might not have the effect of prohibiting service in a particular instance, the record does not reveal an alternative, administrable approach to evaluating fees without a cost-based focus.

jurisdiction.[200] In other cases, where it is essential for a provider to deploy in a given area, the fees charged in that geographic area can deprive providers of capital needed to deploy elsewhere, and lead to reduced or forgone near-term deployment of Small Wireless Facilities in other geographic areas.[201] In both of those scenarios the bottom-line outcome on the national development of 5G networks is the same—diminished deployment of Small Wireless Facilities critical for wireless service and building out 5G networks.[202]

66. Some have argued that our decision today regarding Sections 253 and 332 should not be applied to preempt agreements (or provisions within agreements) entered into prior to this Declaratory Ruling.[203] We note that courts have upheld the Commission's preemption of the enforcement of provisions in private agreements that conflict with our decisions[204] We therefore do not exempt existing agreements (or particular provisions contained therein) from the statutory requirements that we interpret here. That said, however, this Declaratory Ruling's effect on any particular existing agreement will depend upon all the facts and circumstances of that specific case.[205] Without examining the particular features of an agreement, including any exchanges of value that might not be reflected by looking at fee provisions alone, we cannot state that today's decision does or does not impact any particular agreement entered into before this decision.

67. *Relationship to Section 332*. While the above analysis focuses on the text and structure of the Act, legislative history, Commission orders, and case law interpreting Section 253(a), we reiterate that in the fee context, as elsewhere, the statutory phrase "prohibit or have the effect of prohibiting" in Section 332(c)(7)(B)(i)(II) has the same meaning as the phrase "prohibits or has the effect of prohibiting" in Section 253(a). As noted in the prior section, there is no evidence to suggest that Congress intended for virtually identical language to have different meanings in the two provisions.[206] Instead, we find it

[200] *See, e.g.*, AT&T June 8, 2018 *Ex Parte* Letter at 1-2; Crown Castle June 7, 2018 *Ex Parte* Letter at 2.

[201] AT&T June 8, 2018 *Ex Parte* Letter at 1-2; Crown Castle June 7, 2018 *Ex Parte* Letter at 2; Verizon June 21, 2018 *Ex Parte* Letter at 2; CCA July 16, 2018 *Ex Parte* Letter at 2-3.

[202] *See, e.g.,* Letter from Thomas J. Navin, Counsel to Corning, Inc. to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Jan 25, 2018), Attach. at 6-7 (comparing different effects on deployment between a base case and a high fee case, and estimating that pole attachment fees nationwide assuming high fees would result in 28.2M fewer premises passed, or 31 percent of the 5G Base case results, and an associated $37.9B in forgone network deployment).

[203] City of San Jose Sept. 18, 2018 *Ex Parte* Letter at 1-2.

[204] *See, e.g., Building Owners and Managers Ass'n Int'l v. FCC,* 254 F.3d 89 (D.C. Cir. 2001) (OTARD rules barring exclusivity provisions in lease agreements). As the D.C. Circuit has recognized, "[w]here the Commission has been instructed by Congress to prohibit restrictions on the provision of a regulated means of communication, it may assert jurisdiction over a party that directly furnishes those restrictions, and, in so doing, the Commission may alter property rights created under State law." *Id.* at 96; s*ee also Lansdowne on the Potomac Homeowners Ass'n v. OpenBand at Lansdowne, LLC,* 713 F.3d 187 (4th Cir. 2013).

[205] For example, the City of Los Angeles asserts that fee provisions in its agreements with providers are not prohibitory and must be examined in light of a broader exchange of value contemplated by the agreements in their entirety. Letter from Eric Garcetti, Mayor, City of Los Angeles to the Hon. Ajit Pai, Chairman, FCC, WT Docket No. 17-79 (filed Sept 18, 2018). We agree that agreements entered into before this decision will need to be examined in light of their potentially unique circumstances before a decision can be reached about whether those agreements or any particular provisions in those agreements are or are not impacted by today's FCC decision.

[206] We reject the claims of some commenters that Section 332(c)(7)(B)(i)(II) is limited exclusively to decisions on individual requests and therefore must be interpreted differently than Section 253(a). *See, e.g.*, San Francisco Comments at 24-26. Section 332(c)(7)(B)(i) explicitly applies to "regulation of the placement, construction, and modification," and it would be irrational to interpret "regulation" in that paragraph to mean something different from the term "regulation" as used in 253(a) or to find that it does not encompass generally applicable "regulations" as well as decisions on individual applications. Moreover, even assuming *arguendo* that San Francisco's position reflects the appropriate interpretation of the scope of Section 332(c)(7)(B)(i)(II), the record does not reveal why a

more reasonable to conclude that the language in both sections generally should be interpreted to have the same meaning and to reflect the same standard, including with respect to preemption of fees that could "prohibit" or have "the effect of prohibiting" the provision of covered service. Both sections were enacted to address concerns about state and local government practices that undermined providers' ability to provide covered services, and both bar state or local conduct that prohibits or has the effect of prohibiting service.

68. To be sure, Sections 253 and 332(c)(7) may relate to different categories of state and local fees. Ultimately, we need not resolve here the precise interplay between Sections 253 and 332(c)(7). It is enough for us to conclude that, collectively, Congress intended for the two provisions to cover the universe of fees charged by state and local governments in connection with the deployment of telecommunications infrastructure. Given the analogous purposes of both sections and the consistent language used by Congress, we find the phrase "prohibit or have the effect of prohibiting" in Section 332(c)(7)(B)(i)(II) should be construed as having the same meaning and governed by the same preemption standard as the identical language in Section 253(a).[207]

69. *Application of the Interpretations and Principles Established Here*. Consistent with the interpretations above, the requirement that compensation be limited to a reasonable approximation of objectively reasonable costs and be non-discriminatory applies to all state and local government fees paid in connection with a provider's use of the ROW to deploy Small Wireless Facilities including, but not limited to, fees for access to the ROW itself, and fees for the attachment to or use of property within the ROW owned or controlled by the government (*e.g.*, street lights, traffic lights, utility poles, and other infrastructure within the ROW suitable for the placement of Small Wireless Facilities). This interpretation applies with equal force to any fees reasonably related to the placement, construction, maintenance, repair, movement, modification, upgrade, replacement, or removal of Small Wireless Facilities within the ROW, including, but not limited to, application or permit fees such as siting applications, zoning variance applications, building permits, electrical permits, parking permits, or excavation permits.

70. Applying the principles established in this Declaratory Ruling, a variety of fees not reasonably tethered to costs appear to violate Sections 253(a) or 332(c)(7) in the context of Small Wireless Facility deployments.[208] For example, we agree with courts that have recognized that gross

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distinction between broadly-applicable requirements and decisions on individual requests would call for a materially different analytical approach, even if it arguably could be relevant when evaluating the application of that analytical approach to a particular preemption claim. In addition, although some commenters assert that such an interpretation "would make it virtually impossible for local governments to enforce their zoning laws with regard to wireless facility siting," they provide no meaningful explanation why that would be the case. *See, e.g.*, San Francisco Reply at 16. While some local commenters note that the savings clauses in Section 253(b) and (c) do not have express counterparts in the text of Section 332(c)(7)(B)(i), *see, e.g.*, San Francisco Comments at 26, we are not persuaded that this compels a different interpretation of the virtually identical language restricting actual or effective prohibitions of service in Section 253(a) and Section 332(c)(7)(B)(i)(II), particularly given our reliance on considerations in addition to the savings clauses themselves when interpreting the "effective prohibition" language. *See supra* paras. 57-65. We offer these interpretations both to respond to comments and in the event that some court decision could be viewed as supporting a different result.

[207] Section 253(a) expressly addresses state or local activities that prohibit or have the effect of prohibiting "any entity" from providing a telecommunications service. 47 U.S.C. § 253(a). In the *2009 Declaratory Ruling*, the Commission likewise interpreted Section 332(c)(7)(B)(i)(II) as implicated where the state or local conduct prohibits or has the effect of prohibiting the provision of personal wireless service by one entity even if another entity already is providing such service. *See 2009 Declaratory Ruling*, 24 FCC Rcd at 14016-19, paras. 56-65.

[208] We acknowledge that a fee not calculated by reference to costs might nonetheless happen to land at a level that is a reasonable approximation of objectively reasonable costs, and otherwise constitute fair and reasonable compensation as we describe herein. If all these criteria are met, the fee would not be preempted.

revenue fees generally are not based on the costs associated with an entity's use of the ROW,[209] and where that is the case, are preempted under Section 253(a). In addition, although we reject calls to preclude a state or locality's use of third party contractors or consultants, or to find all associated compensation preempted,[210] we make clear that the principles discussed herein regarding the reasonableness of cost remain applicable. Thus, fees must not only be limited to a reasonable approximation of costs, but in order to be reflected in fees, the *costs themselves* must also be reasonable. Accordingly, any unreasonably high costs, such as excessive charges by third party contractors or consultants, may not be passed on through fees even though they are an actual "cost" to the government. If a locality opts to incur unreasonable costs, Sections 253 and 332(c)(7) do not permit it to pass those costs on to providers. Fees that depart from these principles are not saved by Section 253(c), as we discuss below.

71. *Interpretation of Section 253(c) in the Context of Fees.* In this section, we turn to the interpretation of several provisions in Section 253(c), which provides that state or local action that otherwise would be subject to preemption under Section 253(a) may be permissible if it meets specified criteria. Section 253(c) expressly provides that state or local governments may require telecommunications providers to pay "fair and reasonable compensation" for use of public ROWs but requires that the amounts of any such compensation be "competitively neutral and nondiscriminatory" and "publicly disclosed."[211]

72. We interpret the ambiguous phrase "fair and reasonable compensation," within the statutory framework we outlined for Section 253, to allow state or local governments to charge fees that recover a reasonable approximation of the state or local governments' actual and reasonable costs. We conclude that an appropriate yardstick for "fair and reasonable compensation," and therefore an indicator of whether a fee violates Section 253(c), is whether it recovers a reasonable approximation of a state or local government's objectively reasonable costs of, respectively, maintaining the ROW, maintaining a structure within the ROW, or processing an application or permit.[212]

73. We disagree with arguments that "fair and reasonable compensation" in Section 253(c) should somehow be interpreted to allow state and local governments to charge "any compensation," and we give weight to BDAC comments that, "[a]s a policy matter, the Commission should recognize that local fees designed to maximize profit are barriers to deployment."[213] Several commenters argue, in

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[209] *See, e.g.*, *Municipality of Guayanilla*, 450 F.3d at 21; *City of Maryland Heights*, 256 F. Supp. 2d at 993-96; *Prince George's County*, 49 F. Supp. 2d at 818; *AT&T v. City of Dallas*, 8 F. Supp. 2d at 593; *see also, e.g.*, CTIA Comments at 30, 45; *id*. Attach. at 17; ExteNet Comments, Exh. 1 at 41; T-Mobile Comments at 7; WIA Comments at 52-53.

[210] *See, e.g.*, CCA Comments at 17-21 (asking the Commission to declare franchise fees or percentage of revenue fees outside the scope of fair and reasonable compensation and to prohibit state and localities from requiring service providers to obtain business licenses for individual cell sites). For example, although fees imposed by a state or local government calculated as a percentage of a provider's revenue are unlikely to be a reasonable approximation of cost, if such a percentage-of-revenue fee were, in fact, ultimately shown to amount to a reasonable approximation of costs, the fee would not be preempted.

[211] 47 U.S.C. § 253(c).

[212] *Guayanilla District Ct. Opinion*, 354 F. Supp. 2d at 114 ("fees charged by a municipality need to be related to the degree of actual use of the public rights-of way" to constitute fair and reasonable compensation under Section 253(c)); *New Jersey Payphone Ass'n, Inc. v. Town of West New York*, 130 F. Supp. 2d 631, 638 (D.N.J. 2001), *aff'd* 299 F. 3d 235 (3d Cir. 2002) (*New Jersey Payphone*) ("Plainly, a fee that does more than make a municipality whole is not compensatory in the literal sense, and risks becoming an economic barrier to entry.")

[213] BDAC Regulatory Barriers Report, Appendix C, p. 3 (a "[ROW] burden-oriented [fee] standard is flexible enough to suit varied localities and network architectures, would ensure that fees are not providing additional

particular, that Section 253(c)'s language must be read as permitting localities latitude to charge any fee at all[214] or a "market-based rent."[215] Many of these arguments seem to suggest that Section 253 or 332 have not previously been read to impose limits on fees, but as noted above courts have long read these provisions as imposing such limits. Still others argue that limiting the fees state and local governments may charge amounts to requiring taxpayers to subsidize private companies' use of public resources.[216] We find little support in the record, legislative history, or case law for that position.[217] Indeed, our

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revenues for other localities purposes unrelated to providing and maintaining the ROW, and would provide some basis to challenge fees that, on their face, are so high as to suggest their sole intent is to maximize revenue.")

[214] *See, e.g.*, Baltimore Comments at 15-16 (noting that local governments traditionally impose fees based on rent, and other ROW users pay market-based fees and arguing that citizens should not have to "subsidize" wireless deployments); Bellevue *et al*. Reply at 12-13 (stating that "the FCC should compensate municipalities at fair market value because any physical invasion is a taking under the Fifth Amendment, and just compensation is "typically" calculated using fair market value."); NLC Comments at 5 ("local governments, like private landlords, are entitled to collect rent for the use of their property and have a duty to their residents to assess appropriate compensation. This does not necessarily translate to restricting this compensation to just the cost of managing the asset—just as private property varies in value, so does municipal property."); Smart Communities Reply at 7-10 (stating that "fair and reasonable compensation (i.e., fair market value) is not, as some commenters contend, measured by the regulatory cost for use of a ROW or other property; rather it is measured by what it would cost the user of the ROW to purchase rights form a local property owner.").

[215] Draft BDAC Rates and Fees Report, p. 10 (listing "Local Government Perspectives").

[216] *See, e.g.*, NLC Comments, Statement of the Hon. Gary Resnick, Mayor, Wilton Manors, FL Comments at 6-7 ("preemption of local fees or rent for use of government-owned light and traffic poles, or fees for use of the right-of-way amounts to a taxpayer subsidy of wireless providers and wireless infrastructure companies. There is no corresponding benefit for such taxpayers such as requiring the broadband industry to reduce consumer rates or offer advanced services to all communities within a certain time frame."); Letter from Rondella M. Hawkins, Officer, City of Austin—Telecommunications & Regulatory Affairs, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 7, 2018) at 1. These commenters do not explain why allowing recovery of a reasonable approximation of the state or locality's objectively reasonable costs would involve a taxpayer subsidy of service providers, and we are not persuaded that our interpretation would create a subsidy.

[217] As discussed more fully above, Congress intended through Section 253 to preempt state and local governments from imposing barriers in the form of excessive fees, while also preserving state and local authority to protect specified interests through competitively neutral regulation consistent with the Act. Our interpretation of Section 253(c) is consistent with Congress's objectives. Our interpretation of "fair and reasonable compensation" in Section 253(c) is also consistent with prior Commission action limiting fees, and easing access, to other critical communications infrastructure. For example, in implementing the requirement in the Pole Attachment Act that utilities charge "just and reasonable" rates, the Commission adopted rules limiting the rates utilities can impose on cable companies for pole attachments. Based on the costs associated with building and operation of poles, the rates the Commission adopted were upheld by the Supreme Court, which found that the rates imposed were permissible and not "confiscatory" because they "provid[ed] for the recovery of fully allocated cost, including the actual cost of capital." *See FCC v. Florida Power Corp.*, 480 U.S. 245, 254 (1987). Here, based on the specific language in the separate provision of Section 253, we interpret the "effective prohibition" language, as applied to small cells, to permit state and local governments to recover only "fair and reasonable compensation" for their maintenance of ROW and government-owned structures within ROW used to host Small Wireless Facilities. Relatedly, Smart Communities errs in arguing that the Commission's Order "provides localities 60 days to provide access and sets the rate for access," making it a "classic taking." Smart Communities Sept. 19, 2018 *Ex Parte* Letter at 25. To the contrary, the Commission has not given providers any right to compel access to any particular state or local property. *Cf. Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). There may well be legitimate reasons for states and localities to deny particular placement applications, and adjudication of whether such decisions amount to an effective prohibition must be resolved on a case-by-case basis. In this regard, we note that the record in this proceeding reflects that the vast majority of local jurisdictions voluntarily accept placement of wireless, utility, and other facilities in their rights-of-way. And in any event, cost-based recovery of the type we provide here has been approved as just compensation for takings purposes in the context of such facilities. *See Alabama Power Co. v. FCC*, 311 F.3d 1357, 1368, 1370-71 (11th Cir. 2002). *See also United States v. 564.54 Acres*

approach to compensation ensures that cities are not going into the red to support or subsidize the deployment of wireless infrastructure.

74. The existence of Section 253(c) makes clear that Congress anticipated that "effective prohibitions" could result from state or local government fees, and intended through that clause to provide protections in that respect, as discussed in greater detail herein.[218] Against that backdrop, we find it unlikely that Congress would have left providers entirely at the mercy of effectively unconstrained requirements of state or local governments.[219] Our interpretation of Section 253(c), in fact, is consistent with the views of many municipal commenters, at least with respect to one-time permit or application fees, and the members of the BDAC Ad Hoc Committee on Rates and Fees, who unanimously concurred that one-time fees for municipal applications and permits, such as an electrical inspection or a building permit, should be based on the cost to the government of processing that application.[220] The Ad Hoc Committee noted that "[the] cost-based fee structure [for one-time fees] unanimously approved by the committee accommodates the different siting related costs that different localities may incur to review and process permit applications, while precluding excessive fees that impede deployment.[221] We find that the same reasoning should apply to other state and local government fees such as ROW access fees or fees for the use of government property within the ROW.[222]

75. We recognize that state and local governments incur a variety of direct and actual costs in connection with Small Wireless Facilities, such as the cost for staff to review the provider's siting application, costs associated with a provider's use of the ROW, and costs associated with maintaining the ROW itself or structures within the ROW to which Small Wireless Facilities are attached.[223] We also recognize that direct and actual costs may vary by location, scope, and extent of providers' planned deployments, such that different localities will have different fees under the interpretation set forth in this Declaratory Ruling.

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of Land, 441 U.S. 506, 513 (1979) (recognizing that alternative measure of compensation might be appropriate "with respect to public facilities such as roads or sewers").

[218] *See supra* Parts III.A, B.

[219] *See, e.g., City of White Plains*, 305 F.3d at 78-79; *Guayanilla District Ct. Opinion*, 354 F. Supp. 2d at 114. We disagree with arguments that competition between municipalities, or competition from adjacent private landowners, would be sufficient to ensure reasonable pricing in the ROW. *See e.g.*, Smart Communities Comments, Exh. 2, The Economics of Government Right of Way Fees, Declaration of Kevin Cahill, Ph.D at para. 15. We find this argument unpersuasive in view of the record evidence in this proceeding showing significant fees imposed on providers in localities across the country. *See, e.g.*, AT&T Comments at 18; Verizon Comments at 6-7; *see also* BDAC Regulatory Barriers Report, Appendix. C, p. 2.

[220] *See, e.g.,* Smart Communities Comments Cahill 2A at 2-3 (noting that "…a common model is to charge a fee that covers the costs that a municipality incurs in conducting the inspections and proceedings required to allow entry, fees that cover ongoing costs associated with inspection or expansion of facilities ..."); Colorado Comm. and Utility All. *et al.* Comments at 19 (noting that "application fees are based upon recovery of costs incurred by localities."); Draft BDAC Rates and Fees Report, p. 15-16.

[221] *See also* Draft BDAC Rates and Fees Report, p. 15-16. Although the BDAC Ad Hoc Rates and Fees Committee and municipal commenters only support a cost-based approach for one-time fees, we find no reason not to extend the same reasoning to ROW access fees or fees for the use of government property within the ROW, when all three types of fees are a legal requirement imposed by a government and pose an effective prohibition. The BDAC Rates and Fees Report did not provide a recommendation on fees for ROW access or fees for the use of government property within the ROW, and we disagree with suggestions that our ruling, which was consistent with the committee's recommendation for one-time fees, circumvents the efforts of the Ad Hoc Rates and Fees Committee. *See* Georgia Municipal Association Sept. 17, 2018 *Ex Parte* Letter at 3.

[222] *See supra* para. 50.

[223] *See*, *e.g.*, Colorado Comm. and Utility All. *et al*. Comments at 18-19 (discussing range of costs that application fees cover).

76. Because we interpret fair and reasonable compensation as a *reasonable approximation* of costs, we do not suggest that localities must use any specific accounting method to document the costs they may incur when determining the fees they charge for Small Wireless Facilities within the ROW. Moreover, in order to simplify compliance, when a locality charges both types of recurring fees identified above (i.e., for access to the ROW and for use of or attachment to property in the ROW), we see no reason for concern with how it has allocated costs between those two types of fees. It is sufficient under the statute that the total of the two recurring fees reflects the total costs involved.[224] Fees that cannot ultimately be shown by a state or locality to be a reasonable approximation of its costs, such as high fees designed to subsidize local government costs in another geographic area or accomplish some public policy objective beyond the providers' use of the ROW, are not "fair and reasonable compensation…for *use* of the public rights-of-way" under Section 253(c).[225] Likewise, we agree with both industry and municipal commenters that excessive and arbitrary consulting fees or other costs should not be recoverable as "fair and reasonable compensation,"[226] because they are not a function of the provider's "use" of the public ROW.

77. In addition to requiring that compensation be "fair and reasonable," Section 253(c) requires that it be "competitively neutral and nondiscriminatory." The Commission has previously interpreted this language to prohibit states and localities from charging fees on new entrants and not on incumbents.[227] Courts have similarly found that states and localities may not impose a range of fees on one provider but not on another[228] and even some municipal commenters acknowledge that governments should not discriminate as to the fees charged to different providers.[229] The record reflects continuing concerns from providers, however, that they face discriminatory charges.[230] We reiterate the Commission's previous determination that state and local governments may not impose fees on some providers that they do not impose on others. We would also be concerned about fees, whether one-time or recurring, related to Small Wireless Facilities, that exceed the fees for other wireless telecommunications infrastructure in similar situations, and to the extent that different fees are charged

[224] *See supra* note 71 (identifying three categories of fees charged by states and localities).

[225] 47 U.S.C. § 253(c) (emphasis added). Our interpretation is consistent with court decisions interpreting the "fair and reasonable" compensation language as requiring fees charged by municipalities relate to the degree of actual use of a public ROW. *See, e.g, Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 283 F. Supp. 2d 534, 543-44 (D.P.R. 2003); *see also Municipality of Guayanilla*, 450 F.3d at 21-24; *City of Maryland Heights*, 256 F. Supp. 2d at 984.

[226] *See* Letter from Ashton J. Hayward III, Mayor, Pensacola, FL to the Hon. Brendan Carr, Commissioner, WT Docket No. 17-79 at 1 (filed June 8, 2018); *see also*, Illinois Municipal League Comments at 2 (noting that proposed small cell legislation in Illinois allows municipalities to recover "reasonable costs incurred by the municipality in reviewing the application.").

[227] *TCI Cablevision of Oakland County*, 12 FCC Rcd. at 21443, para. 108 (1997).

[228] *City of White Plains*, 305 F.3d 80.

[229] City of Baltimore Reply at 15 ("The City does agree that rates to access the right of way by similar entities must be nondiscriminatory."). Other commenters argue that nothing in Section 253 can apply to property in the ROW. City of San Francisco Reply at 2-3, 19 (denying that San Francisco is discriminatory to different providers but also asserting that "[l]ocal government fees for use of their poles are simply beyond the purview of section 253(c)").

[230] *See, e.g.*, CFP Comments at 31-33 (noting that the City of Baltimore charges incumbent Verizon "less than $.07 per linear foot for the space that it leases in the public right-of-way" while it charges other providers "$3.33 per linear foot to lease space in the City's conduit). Some municipal commenters argue that wireless infrastructure occupies more space in the ROW. *See* Smart Communities Reply Comments at 82 ("wireless providers are placing many of those permanent facilities in the public rights-of-way, in ways that require much larger deployments. It is not discrimination to treat such different facilities differently, and to focus on their impacts"). We recognize that different uses of the ROW may warrant charging different fees, and we only find fees to be discriminatory and not competitively neutral when different amounts are charged for similar uses of the ROW.

for similar use of the public ROW.[231]

78. *Fee Levels Likely to Comply with Section 253.* Our interpretation of Section 253(a) and "fair and reasonable compensation" under Section 253(c) provides guidance for local and state fees charged with respect to one-time fees generally, and recurring fees for deployments in the ROW. Following suggestions for the Commission to "establish a presumptively reasonable 'safe harbor' for certain ROW and use fees,"[232] and to facilitate the deployment of specific types of infrastructure critical to the rollout of 5G in coming years, we identify in this section three particular types of fee scenarios and supply specific guidance on amounts that presumptively are not prohibited by Section 253. Informed by our review of information from a range of sources, we conclude that fees at or below these amounts presumptively do not constitute an effective prohibition under Section 253(a) or Section 332(c)(7), and are presumed to be "fair and reasonable compensation" under Section 253(c).

79. Based on our review of the Commission's pole attachment rate formula, which would require fees below the levels described in this paragraph, as well as small cell legislation in twenty states, local legislation from certain municipalities in states that have not passed small cell legislation, and comments in the record, we presume that the following fees would not be prohibited by Section 253 or Section 332(c)(7): (a) $500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional $100 for each Small Wireless Facility beyond five, or $1,000 for non-recurring fees for a new pole (*i.e.*, not a collocation) intended to support one or more Small Wireless Facilities; and (b) $270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW.[233]

80. By presuming that fees at or below the levels above comply with Section 253, we assume

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[231] Our interpretation is consistent with principles described by the BDAC's Ad Hoc Committee on Rates and Fees. Draft BDAC Rates and Fees Report at 5 (Jul. 24, 2018) (listing "neutral treatment and access of all technologies and communication providers based upon extent/nature of ROW use" as principle to guide evaluation of rates and fees).

[232] BDAC Regulatory Barriers Report, Appendix C, p. 3.

[233] These presumptive fee limits are based on a number of different sources of data. Many different state small cell bills, in particular, adopt similar fee limits despite their diversity of population densities and costs of living, and we expect that these presumptive fee limits will allow for recovery in excess of costs in many cases. 47 CFR § 1.1409; National Conference of State Legislatures, Mobile 5G and Small Cell Legislation, (May 7, 2018), http://www.ncsl.org/research/telecommunications-and-information-technology/mobile-5g-and-small-cell-legislation.aspx (providing description of state small cell legislation); Little Rock, Ark. Ordinance No. 21,423 (June 6, 2017); NCTA August 20, 2018 *Ex Parte* Letter, Attachment; *see also* H.R. 2365, 2018 Leg. 2d Reg. Sess. (Ariz. 2018) ($100 per facility for first 5 small cells in application; $50 annual utility attachment rate, $50 ROW access fee); H.R. 189 149th Gen. Assemb. Reg. Sess. (Del. 2017) ($100 per small wireless facility on application; fees not to exceed actual, direct and reasonable cost); S. 21320th Gen. Assemb. Reg. Sess. (Ind. 2017) ($100 per small wireless facility); H.R. 1991, 99th Gen. Assemb. 2nd Reg. Sess. (Missouri, 2018) ($100 for each facility collocated on authority pole; $150 annual fee per pole); H.R. 38 2018 Leg. Assemb. 2d Reg. Sess. (N.M. 2018) ($100 for each of first 5 small facilities in an application; $20 per pole annually; $250 per facility annually for access to ROW); S. 189, 2018 Leg. Gen. Sess. (Utah 2018) ($100 per facility to collocate on existing or replacement utility pole; $250 annual ROW fee per facility for certain attachments). *See also* Letter from Kara R. Graves, Director, Regulatory Affairs, CTIA, and D. Zachary Champ, Director, Government Affairs, WIA to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018) Attach. (listing fees in twenty state small cell legislations) (CTIA/WIA Aug. 10, 2018 *Ex Parte* Letter); Letter from Scott K. Bergmann, Sen. Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 4, 2018) at 3, Attach. (analyzing average and median recurring fee levels permitted under state legislation). These examples suggest that the fee levels we discuss above may be higher than what many states already allow and further support our finding that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253. We recognize that certain fees in a minority of state small cell bills are above the levels we presume to be allowed under Section 253. Any party may still charge fees above the levels we identify by demonstrating that the fee is a reasonable approximation of cost that itself is objectively reasonable.

that there would be almost no litigation by providers over fees set at or below these levels. Likewise, our review of the record, including the many state small cell bills passed to date, indicate that there should be only very limited circumstances in which localities can charge higher fees consistent with the requirements of Section 253. In those limited circumstances, a locality could prevail in charging fees that are above this level by showing that such fees nonetheless comply with the limits imposed by Section 253—that is, that they are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory.[234] Allowing localities to charge fees above these levels upon this showing recognizes local variances in costs.[235]

C. Other State and Local Requirements that Govern Small Facilities Deployment

81. There are also other types of state and local land-use or zoning requirements that may restrict Small Wireless Facility deployments to the degree that they have the effect of prohibiting service in violation of Sections 253 and 332. In this section, we discuss how those statutory provisions apply to requirements outside the fee context, both generally and with a particular focus on aesthetic and undergrounding requirements.

82. As discussed above, a state or local legal requirement constitutes an effective prohibition if it "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[236] Our interpretation of that standard, as set forth above, applies equally to fees and to non-fee legal requirements. And as with fees, Section 253 contains certain safe harbors that permit some legal requirements that might otherwise be preempted by Section 253(a). Section 253(b) saves state "requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.[237] And Section 253(c) preserves state and local authority to manage the public rights-of-way.[238]

83. Given the wide variety of possible legal requirements, we do not attempt here to determine which of every possible non-fee legal requirements are preempted for having the effect of prohibiting service, although our discussion of fees above should prove instructive in evaluating specific requirements. Instead, we focus on some specific types of requirements raised in the record and provide guidance on when those particular types of requirements are preempted by the statute.

84. *Aesthetics.* The *Wireless Infrastructure NPRM/NOI* sought comment on whether deployment restrictions based on aesthetic or similar factors are widespread and, if so, how Sections 253 and 332(c)(7) should be applied to them.[239] Parties describe a wide range of such requirements that allegedly restrict deployment of Small Wireless Facilities. For example, many providers criticize

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[234] Several state and local commenters express concern about the presumptively reasonable fee levels we establish, including concerns about the effect of the fee levels on existing fee-related provisions included in state and local legislation. *See e.g.*, Letter from Kent Scarlett, Exec. Director, Ohio Municipal League to Marlene H. Dortch, Secretary, FCC at 1 (filed Sept. 18, 2018); Letter from Liz Kniss, Mayor, City of Palo Alto to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 at 1 (filed Sept. 17, 2018). As stated above, while the fee levels we establish reflect our presumption regarding the level of fees that would be permissible under Section 253 and 332(c)(7), state or local fees that exceed these levels may be permissible if the fees are based on a reasonable approximation of costs and the costs themselves are objectively reasonable.

[235] We emphasize that localities may charge fees to recover their objectively reasonable costs and thus reject arguments that our approach requires localities to bear the costs of small cell deployment or applies a one-size-fits-all standard. *See, e,g.*, Letter from Mike Posey, Mayor, City of Huntington Beach, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Sept.11, 2018) (Mike Posey Sept. 11, 2018 *Ex Parte* Letter).

[236] *California Payphone*, 12 FCC Rcd at 14206, para. 31; *see supra* paras. 34-42.

[237] 47 U.S.C. § 253(b).

[238] 47 U.S.C. § 253(c).

[239] *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3362-66, paras. 90-92, 95, 97-99.

burdensome requirements to deploy facilities using "stealth" designs or other means of camouflage,[240] as well as unduly stringent mandates regarding the size of equipment, colors of paint, and other details.[241] Providers also assert that the procedures some localities use to evaluate the appearance of proposed facilities and to decide whether they comply with applicable land-use requirements are overly restrictive.[242] Many providers are particularly critical of the use of unduly vague or subjective criteria that may apply inconsistently to different providers or are only fully revealed after application, making it impossible for providers to take these requirements into account in their planning and adding to the time necessary to deploy facilities.[243] At the same time, we have heard concerns in the record about carriers deploying unsightly facilities that are significantly out of step with similar, surrounding deployments.

85. State and local governments add that many of their aesthetic restrictions are justified by factors that the providers fail to mention. They assert that their zoning requirements and their review and enforcement procedures are properly designed to, among other things, (1) ensure that the design, appearance, and other features of buildings and structures are compatible with nearby land uses; (2) manage ROW so as to ensure traffic safety and coordinate various uses; and (3) protect the integrity of

[240] *See, e.g.,* CCIA Comments at 14-15 (discussing regulations enacted by Village of Skokie, Illinois); WIA Reply Comments (WT Docket No. 16-421) at 9-10 (discussing restrictions imposed by Town of Hempstead, New York); *see also* AT&T Comments at 14-17; PTA-FLA Comments at 19; Verizon Comments at 19-20; AT&T Aug. 6, 2018 *ex parte* at 3.

[241] *See, e.g.,* CCIA Comments at 13-14 (describing regulations established by Skokie, Illinois that prescribe in detail the permissible colors of paint and their potential for reflecting light); AT&T Aug. 6, 2018 *ex parte* at 3 ("Some municipalities require carriers to paint small cell cabinets a particular color when like requirements were not imposed on similar equipment placed in the ROW by electric incumbents, competitive telephone companies, or cable companies," and asserts that it often "is highly burdensome to maintain non-factory paint schemes over years or decades, including changes to the municipal paint scheme," due to "technical constraints as well such as manufacture warranty or operating parameters, such as heat dissipation, corrosion resistance, that are inconsistent with changes in color, or finish."); AT&T Comments at 16-17 (contending that some localities "allow for a single size and configuration for small cell equipment while requiring case-by-case approval of any non-conforming equipment, even if smaller and upgraded in design and performance," and thus effectively compel "providers [to] incur the added expense of conforming their equipment designs to the approved size and configuration, even if newer equipment is smaller, to avoid the delays associated with the approval of an alternative equipment design and the risk of rejection of that design."); *id.* at 17 (some local governments "prohibit the placement of wireless facilities in and around historic properties and districts, regardless of the size of the equipment or the presence of existing more visually intrusive construction near the property or district").

[242] *See, e.g.,* Crown Castle Comments at 14-15 (criticizing San Francisco's aesthetic review procedures that discriminate against providers and criteria and referring to extended litigation); CTIA Reply Comments at 17 ("San Francisco imposes discretionary aesthetic review for wireless ROW facilities."); T-Mobile Comments at 40; *but see* San Francisco Comments at 3-7 (describing aesthetic review procedures). *See also* AT&T Comments at 13-17; Extenet Comments at 37; CTIA Comments at 21-22; Sprint Comments at 38-40; T-Mobile Comments at 8-12; Verizon Comments at 5-8.

[243] *See, e.g.,* AT&T Comments at 13-17; Sprint Comments at 38-40; T-Mobile Comments at 8-12; Verizon Comments at 5-8. WIA cites allegations that an unnamed city in California recently declined to support approval of a proposed small wireless installation, claiming that the installations do not meet "Planning and Zoning Protected Location Compatibility Standards," even though the same equipment has been deployed elsewhere in the city dozens of times, and even though the "Protected Location" standards should not apply because the proposals are not on "protected view" streets). WIA Reply Comments, WT Docket No. 16-421 at 9-10; *id.* at 8 (noting that one city changed its aesthetic standards after a proposal was filed); AT&T Comments at 17 (noting that a design approval took over a year); Virginia Joint Commenters, WT Docket No. 16-421 (state law providing discretion for zoning authority to deny application because of "aesthetics" concerns without additional guidance); Extenet Reply Comments at 13 (noting that some "local governments impose aesthetic requirements based entirely on subjective considerations that effectively give local governments latitude to block a deployment for virtually any aesthetically-based reason")

their historic, cultural, and scenic resources and their citizens' quality of life.[244]

86. Given these differing perspectives and the significant impact of aesthetic requirements on the ability to deploy infrastructure and provide service, we provide guidance on whether and in what circumstances aesthetic requirements violate the Act. This will help localities develop and implement lawful rules, enable providers to comply with these requirements, and facilitate the resolution of disputes. We conclude that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.

87. Like fees, compliance with aesthetic requirements imposes costs on providers, and the impact on their ability to provide service is just the same as the impact of fees. We therefore draw on our analysis of fees to address aesthetic requirements. We have explained above that fees that merely require providers to bear the direct and reasonable costs that their deployments impose on states and localities should not be viewed as having the effect of prohibiting service and are permissible.[245] Analogously, aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible. In assessing whether this standard has been met, aesthetic requirements that are more burdensome than those the state or locality applies to similar infrastructure deployments are not permissible, because such discriminatory application evidences that the requirements are not, in fact, reasonable and directed at remedying the impact of the wireless infrastructure deployment. For example, a minimum spacing requirement that has the effect of materially inhibiting wireless service would be considered an effective prohibition of service.

88. Finally, in order to establish that they are reasonable and reasonably directed to avoiding aesthetic harms, aesthetic requirements must be objective—*i.e.*, they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance.[246] "Secret" rules that require applicants to guess at what types of deployments will pass aesthetic muster substantially increase providers' costs without providing any public benefit or addressing any public harm. Providers cannot design or implement rational plans for deploying Small Wireless Facilities if they cannot predict in advance what aesthetic requirements they will be obligated to satisfy to obtain permission to deploy a facility at any given site.[247]

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[244] *See, e.g.,* NLC Comments, WT Docket No. 16-421 at 8-10; Smart Communities Comments, WT Docket No. 16-421 at 35-36; New York City Comments at 10-15; New Orleans Comments at 1-2, 5-8; San Francisco Comments at 3-12; CCUA Reply Comments at 5; Irvine (CA) Comments at 2; Oakland County (MI) Comments at 3-5; Florida Coalition of Local Gov'ts Reply Comments at 6-12 (justifications for undergrounding requirements); *id.* at 16-421 (justifications for municipal historic-preservation requirements); *id.* at 22-16 (justifications for aesthetics and design requirements).

[245] *See supra* paras. 55-56.

[246] Our decision to adopt this objective requirement is supported by the fact that many states have recently adopted limits on their localities' aesthetic requirements that employ the term "objective." *See, e.g.,* Letter from Scott Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 8 (filed Sept. 19, 2018) (noting requirements enacted in the states of Arizona, Delaware, Missouri, North Carolina, Ohio, and Oklahoma, that local siting requirements for small wireless facilities be "objective"); *see also* Letter from Kara R. Graves, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 8 (filed Sept. 4, 2018)

[247] Some local governments argue that, because different aesthetic concerns may apply to different neighborhoods, particularly those considered historic districts, it is not feasible for them to publish local aesthetic requirements in advance. *See, e.g.,* Letter from Mark J. Schwartz, County Manager, Arlington County, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018) (Arlington County Sept. 18 *Ex Parte* Letter); Letter from Allison Silberberg, Mayor, City of Alexandria, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (Sept. 18, 2018). We believe this concern is unfounded. As noted above, the fact that our approach here (including the publication requirement) is consistent with that already enacted in many state-level small cell bills supports the feasibility of our decision. Moreover, the aesthetic requirements to be published in advance need not

89. We appreciate that at least some localities will require some time to establish and publish aesthetics standards that are consistent with this Declaratory Ruling. Based on our review and evaluation of commenters' concerns, we anticipate that such publication should take no longer than 180 days after publication of this decision in the Federal Register.

90. *Undergrounding Requirements.* We understand that some local jurisdictions have adopted undergrounding provisions that require infrastructure to be deployed below ground based, at least in some circumstances, on the locality's aesthetic concerns. A number of providers have complained that these types of requirements amount to an effective prohibition.[248] In addressing this issue, we first reiterate that, while undergrounding requirements may well be permissible under state law as a general matter, any local authority to impose undergrounding requirements under state law does not remove such requirements from the provisions of Section 253. In this regard, we believe that a requirement that *all* wireless facilities be deployed underground would amount to an effective prohibition given the propagation characteristics of wireless signals. In this sense, we agree with the U.S. Court of Appeals for the Ninth Circuit when it observed that, "[i]f an ordinance required, for instance, that all facilities be underground and the plaintiff introduced evidence that, to operate, wireless facilities must be above ground, the ordinance would effectively prohibit it from providing services."[249] Further, a requirement that materially inhibits wireless service, even if it does not go so far as requiring that all wireless facilities be deployed underground, also would be considered an effective prohibition of service. Thus, the same criteria discussed above in the context of aesthetics generally would apply to state or local undergrounding requirements.

91. *Minimum Spacing Requirements.* Some parties complain of municipal requirements regarding the spacing of wireless installations—*i.e.*, mandating that facilities be sited at least 100, 500, or 1,000 feet, or some other minimum distance, away from other facilities, ostensibly to avoid excessive overhead "clutter" that would be visible from public areas.[250] We acknowledge that while some such requirements may violate 253(a), others may be reasonable aesthetic requirements.[251] For example, under the principle that any such requirements be reasonable and publicly available in advance, it is difficult to envision any circumstances in which a municipality could reasonably promulgate a new minimum spacing requirement that, in effect, prevents a provider from replacing its preexisting facilities or collocating new equipment on a structure already in use. Such a rule change with retroactive effect would

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prescribe in detail every specification to be mandated for each type of structure in each individual neighborhood. Localities need only set forth the objective standards and criteria that will be applied in a principled manner at a sufficiently clear level of detail as to enable providers to design and propose their deployments in a manner that complies with those standards.

[248] *See, e.g.,* AT&T Comments at 14-15; Crown Castle Comments at 54-56; T-Mobile Comments at 38; Verizon Comments at 6-8; WIA Comments at 56; CTIA Reply at 16. *But see* Chicago Comments at 15; City of Claremont (CA) Comments at 1; City of Kenmore (WA) Comments at 1; City of Mukilteo (WA) Comments at 2; Florida Coalition of Local Gov'ts Comments at 6-12; Smart Communities Comments at 74.

[249] *County of San Diego*, 543 F.3d at 580, *accord*, BDAC Model Municipal Code at 13, § 2.3.e (providing for municipal zoning authority to allow providers to deploy small wireless facilities on existing vertical structures where available in neighborhoods with undergrounding requirements, or if no technically feasible structures exist, to place vertical structures commensurate with other structures in the area).

[250] *See, e.g.,* Verizon Comments at 8 (describing requirements imposed by Buffalo Grove, Illinois); CCIA Comments at 14-15 ("These restrictions stifle technological innovation and unnecessarily burden the ability of a provider to use the best available technological to serve a particular area. For example, 5G technology will require higher band spectrum for greater network capacity, yet some millimeter wave spectrum simply cannot propagate long distances over a few thousand feet—let alone a few hundred. Therefore, a local requirement of, for example, a thousand-foot minimum separation distance between small cells would unnecessarily forestall any network provider seeking to use higher band spectrum with greater capacity when that provider needs to boost coverage in a specific area of a few hundred feet."). *See also* AT&T Comments at 15; CTIA Reply at 17.

[251] 47 U.S.C. § 253(a).

almost certainly have the effect of prohibiting service under the standards we articulate here. Therefore, such requirements should be evaluated under the same standards for aesthetic requirements as those discussed above.[252]

D. States and Localities Act in Their Regulatory Capacities When Authorizing and Setting Terms for Wireless Infrastructure Deployment in Public Rights of Way

92. We confirm that our interpretations today extend to state and local governments' terms for access to public ROW that they own or control, including areas on, below, or above public roadways, highways, streets, sidewalks, or similar property, as well as their terms for use of or attachment to government-owned property within such ROW, such as new, existing and replacement light poles, traffic lights, utility poles, and similar property suitable for hosting Small Wireless Facilities.[253] As explained below, for two alternative and independent reasons, we disagree with state and local government commenters who assert that, in providing or denying access to government-owned structures, these governmental entities function solely as "market participants" whose rights cannot be subject to federal preemption under Section 253(a) or Section 332(c)(7).[254]

93. First, this effort to differentiate between such governmental entities' "regulatory" and "proprietary" capacities in order to insulate the latter from preemption ignores a fundamental feature of the market participant doctrine.[255] As the Ninth Circuit has observed, at its core, this doctrine is "a

[252] Another type of restriction that imposes substantial burdens on providers, but does not meaningfully advance any recognized public-interest objective, is an explicit or implicit *quid pro quo* in which a municipality makes clear that it will approve a proposed deployment only on condition that the provider supply an "in-kind" service or benefit to the municipality, such as installing a communications network dedicated to the municipality's exclusive use. *See*, *e.g.*, Comcast Comments at 9-10 Verizon Comments at 7, Crown Castle Comments at 55-56. Such requirements impose costs, but rarely, if ever, yield benefits directly related to the deployment. Additionally, where such restrictions are not cost-based, they inherently have "the effect of prohibiting" service, and thus are preempted by Section 253(a). *See also* BDAC Regulatory Barriers Report, Appendix E at 1 (describing "conditions imposed that are unrelated to the project for which they were seeking ROW access" as "inordinately burdensome"); BDAC Model Municipal Code at 19, § 2.5a.(v)(F) (providing that municipal zoning authority "may not require an Applicant to perform services . . . or in-kind contributions [unrelated] to the Communications Facility or Support Structure for which approval is sought").

[253] *See supra* paras. 50-91. Some have argued that Section 224 of the Communications Act's exception of state-owned and cooperative-owned utilities from the definition of "utility," "[a]s used in this section," suggests that Congress did not intend for any other portion of the Act to apply to poles or other facilities owned by such entities. City of Mukilteo, et. al. Ex Parte Comments on the Draft Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from James Bradford Ramsay, General Counsel, NARUC to Marlene H. Dortch, Secretary, FCC, WT Docket 17-79 at 7 (filed Sept. 19, 2018). We see no basis for such a reading. Nothing in Section 253 suggests such a limited reading, nor does Section 224 indicate that other provisions of the Act do not apply. We conclude that our interpretation of effective prohibition extends to fees for all government-owned property in the ROW, including utility poles. *Compare* 47 U.S.C. § 224 *with* 47 U.S.C. § 253. We are not addressing here how our interpretations apply to access or attachments to government-owned property located outside the public ROW.

[254] *See, e.g.,* AASHTO Comments, Att. 1 (Del. DOT Comments) at 3-5; New York City Comments at 2-8; San Antonio *et al.* Comments at 14-15; Smart Communities Comments at 62-66; San Francisco Comments at 28-30; League of Arizona Cities *et al.* Comments, WT Docket No. 16-421 at 3-9; San Antonio *et al.* Comments, WT Docket No. 16-421 at 14-15. *See also Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3364-65, para. 96 (seeking comment on this issue).

[255] The market participant doctrine establishes that, unless otherwise specified by Congress, federal statutory provisions may be interpreted as preempting or superseding state and local governments' activities involving regulatory or public policy functions, but not their activities as "market participants" to serve their "purely proprietary interests," analogous to similar transactions of private parties. *Building & Construction Trades Council*

presumption about congressional intent," which "may have a different scope under different federal statutes."[256] The Supreme Court has likewise made clear that the doctrine is applicable only "[i]n the absence of any express or implied indication by Congress."[257] In contrast, where state action conflicts with express or implied federal preemption, the market participant doctrine does not apply, whether or not the state or local government attempts to impose its authority over use of public rights-of-way by permit or by lease or contract.[258] Here, both Sections 253(a) and Section 332(c)(7)(B)(i)(II) expressly address preemption, and neither carves out an exception for proprietary conduct.[259]

94. Specifically, Section 253(a) expressly preempts certain state and local "legal requirements" and makes no distinction between a state or locality's regulatory and proprietary conduct. Indeed, as the Commission has long recognized, Section 253(a)'s sweeping reference to "State [and] local statute[s] [and] regulation[s]" and "other State [and] local legal requirement[s]" demonstrates Congress's intent "to capture a broad range of state and local actions that prohibit or have the effect of prohibiting entities from providing telecommunications services."[260] Section 253(b) mentions "requirement[s]," a phrase that is even broader than that used in Section 253(a) but covers "universal service," "public safety and welfare," "continued quality of telecommunications," and "safeguard[s for the] rights of consumers." The subsection does not recognize a distinction between regulatory and proprietary. Section 253(c), which expressly insulates from preemption certain state and local government activities, refers in relevant part to "manag[ing] the public rights-of-way" and "requir[ing] fair and reasonable compensation," while eliding any distinction between regulatory and proprietary action in either context. The Commission has previously observed that Section 253(c) "makes explicit a local government's continuing authority to issue construction permits regulating how and when construction is conducted on roads and other public

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v. Associated Builders & Contractors, 507 U.S. 218, 229, 231 (1993) (*Boston Harbor*); *see also Wisconsin Dept. of Industry, Labor, and Human Relations v. Gould, Inc.*, 475 U.S. 282, 289 (1986) (*Gould*).

[256] *See*, *e.g.*, *Engine Mfrs. Ass'n v. South Coast Air Quality Mgmt. Distr.,* 498 F.3d 1031, 1042 (9th Cir. 2007); *Johnson v. Rancho Santiago Comm. College*, 623 F.3d 1011, 1022 (9th Cir. 2010).

[257] *See Boston Harbor*, 507 U.S. at 231.

[258] *See American Trucking Ass'n v. City of Los Angeles,* 569 U.S. 641, 650 (2013) (*American Trucking*).

[259] At a minimum, we conclude that Congress's language has not unambiguously pointed to such a distinction. *See* Letter from Tamara Preiss, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Aug. 23, 2018) (Verizon Aug. 23, 2018 *Ex Parte* Letter). Furthermore, we contrast these statutes with those that do not expressly or impliedly preempt proprietary conduct. *Compare*, *e.g.*, *American Trucking*, 569 U.S. 641 (finding that FAA Authorization Act of 1994's provision that "State [or local government] may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property" expressly preempted the terms of a standard-form concession agreement drafted to govern the relationship between the Port of Los Angeles and any trucking company seeking to operate on the premises), *and Gould*, 475 U.S. at 289 (finding that NLRA preempted a state law barring state contracts with companies with disfavored labor practices because the state scheme was inconsistent with the federal scheme), *with Boston Harbor*, 507 U.S. at 224-32. In *Boston Harbor*, the Supreme Court observed that the NLRA contained no express preemption provision or implied preemption scheme and consequently held:

> In the absence of any express or implied indication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and where analogous private conduct would be permitted, this Court will not infer such a restriction.

Id. (internal citations omitted).

[260] *See Minnesota Order*, 14 FCC Rcd at 21707, para. 18. We find these principles to be equally applicable to our interpretation of the meaning of "regulation[s]" referred to under Section 332(c)(7)(B) insofar as such actions impermissibly "prohibit or have the effect of prohibiting the provision of personal wireless services." *Supra* paras. 34-42.

rights-of-way."[261] We conclude here that, as a general matter, "manage[ment]" of the ROW includes any conduct that bears on access to and use of those ROW, notwithstanding any attempts to characterize such conduct as proprietary.[262] This reading, coupled with Section 253(c)'s narrow scope, suggests that Congress's omission of a blanket proprietary exception to preemption was intentional, and thus, that such conduct can be preempted under Section 253(a). We therefore construe Section 253(c)'s requirements, including the requirement that compensation be "fair and reasonable," as applying equally to charges imposed via contracts and other arrangements between a state or local government and a party engaged in wireless facility deployment.[263] This interpretation is consistent with Section 253(a)'s reference to "State or local legal requirement[s]," which the Commission has consistently construed to include such agreements.[264] In light of the foregoing, whatever the force of the market participant doctrine in other contexts,[265] we believe the language, legislative history, and purpose of Sections 253(a) and (c) are incompatible with the application of this doctrine in this context. We observe once more that "[o]ur conclusion that Congress intended this language to be interpreted broadly is reinforced by the scope of section 253(d)," which "directs the Commission to preempt any statute, regulation, or legal requirement *permitted* or imposed by a state or local government if it contravenes sections 253(a) or (b). A more restrictive interpretation of the term 'other legal requirements' easily could permit state and local restrictions on competition to escape preemption based solely on the way in which [state] action was structured. We do not believe that Congress intended this result."[266]

95. Similarly, and as discussed elsewhere,[267] we interpret Section 332(c)(7)(B)(ii)'s references to "any request[s] for authorization to place, construct, or modify personal wireless service facilities" broadly, consistent with Congressional intent. As described below, we find that "any" is unqualifiedly broad, and that "request" encompasses anything required to secure all authorizations necessary for the deployment of personal wireless services infrastructure. In particular, we find that Section 332(c)(7) includes authorizations relating to access to a ROW, including but not limited to the

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[261] *See Minnesota Order*, 14 FCC Rcd at 21728-29, para. 60, quoting H. R. Rep. No. 104-204, U.S. Congressional & Administrative News, March 1996, vol.1, Legislative History section at 41 (1996).

[262] Indeed, to permit otherwise could limit the utility of ROW access for telecommunications service providers and thus conflict with the overarching preemption scheme set up by Section 253(a), for which 253(b) and 253(c) are exceptions. By construing "manage[ment]" of a ROW to include some proprietary behaviors, we mean to suggest that conduct taken in a proprietary capacity is likewise subject to 253(c)'s general limitations, including the requirement that any compensation charged in such capacity be "fair and reasonable."

[263] *Cf. Minnesota Order*, 14 FCC Rcd at 21729-30, para. 61-62 (internal citations omitted) ("Moreover, Minnesota has not shown that the compensation required for access to the right-of-way is 'fair and reasonable.' The compensation appears to reflect the value of the exclusivity inherent in the Agreement [which provides the developer with exclusive physical access, for at least ten years, to longitudinal rights-of-way along Minnesota's interstate freeway system] rather than fair and reasonable charges for access to the right-of-way. Nor has Minnesota shown that the Agreement provides for 'use of public rights-of-way on a nondiscriminatory basis.'")

[264] *Cf.* Crown Castle June 7, 2018 *Ex Parte* Letter at 17 n.83 ("Section 253(c), which carves out ROW management, would hardly be necessary if all ROW decisions were proprietary and shielded from the statute's sweep.").

[265] We acknowledge that the Commission previously concluded that "Section 6409(a) applies only to State and local governments acting in their role as land use regulators" and found that "this conclusion is consistent with judicial decisions holding that Sections 253 and 332(c)(7) of the Communications Act do not preempt 'non regulatory decisions[.]'" *See 2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12964-65, paras. 237-240. To the extent necessary, we clarify here that the actions and analysis there were limited in scope given the different statutory scheme and record in that proceeding, which did not, at the time, suggest a need to "further elaborate as to how this principle should apply to any particular circumstance" (there, in connection with application of Section 6409(a)). Here, in contrast, as described herein, we find that further elucidation by the Commission is needed.

[266] *Minnesota Order*, 14 FCC Rcd at 21707, para. 18 (internal citations omitted) (emphasis omitted).

[267] *See infra* Part IV.C.1 (Authorizations Subject to the "Reasonable Period of Time" Provision of Section 332(c)(7)(B)(ii)).

"place[ment], construct[ion], or modif[ication]" of facilities on government-owned property, for the purpose of providing "personal wireless service." We observe that this result, too, is consistent with Commission precedent such as the *Minnesota Order*, which involved a contract that provided exclusive access to a ROW. As but one example, to have limited that holding to exclude government-owned property within the ROW even if the carrier needed access to that property would have the effect of diluting or completely defeating the purpose of Section 332(c)(7).[268]

96. Second, and in the alternative, even if Section 253(a) and Section 332(c)(7) were to permit leeway for states and localities acting in their proprietary role, the examples in the record would be excepted because they involve states and localities fulfilling regulatory objectives.[269] In the proprietary context, "a State acts as a 'market participant with no interest in setting policy.'"[270] We contrast state and local governments' purely proprietary actions with states and localities acting with respect to managing or controlling access to property within public ROW, or to decisions about where facilities that will provide personal wireless service to the public may be sited. As several commenters point out, courts have recognized that states and localities "hold the public streets and sidewalks in trust for the public" and "manage public ROW in their regulatory capacities."[271] These decisions could be based on a number of regulatory objectives, such as aesthetics or public safety and welfare, some of which, as we note elsewhere, would fall within the preemption scheme envisioned by Congress. In these situations, the state or locality's role seems to us to be indistinguishable from its function and objectives as a regulator.[272] To

[268] *See also infra* para. 134-36 and cases cited therein. Precedent that may appear to reach a different result can be distinguished in that it resolves disputes arising under Section 332 and/or 253(a) without analyzing the scope of Section 253(c). Furthermore, those situations did not involve government-owned property or structures within a public ROW. *See*, *e.g.*, *Sprint Spectrum L.P. v. Mills*, 283 F.3d 404, 420-21 (2d Cir. 2002) (declining to find preemption under Section 332 applicable to terms of a school rooftop lease); *Omnipoint Commc'ns, Inc. v. City of Huntington Beach*, 738 F.3d 192, 195-96, 200-01 (9th Cir. 2013) (declining to find preemption under Section 332 applicable to restrictions on lease of parkland).

[269] In this regard, also relevant to our interpretations here is courts' admonition that government activities that are characterized as transactions but in reality are "tantamount to regulation" are subject to preemption, *Gould*, 475 U.S. at 289, and that government action disguised as private action may not be relied on as a pretext to advance regulatory objectives. *See*, *e.g.*, *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d 425, 441-42 (E.D.N.Y. 2009) (finding that a restriction on advertising on newly-installed payphones was subject to section 253(a) where the advertising was a material factor in the provider's ability to provide the payphone service itself).

[270] *See*, *e.g.*, *Chamber of Commerce of U.S. v. Brown*, 554 U.S. 60, 70 (2008).

[271] *See* Verizon Comments at 26-28 & n.85; T-Mobile Comments at 50 & n.210 and cases cited therein.

[272] Indeed, the Commission has long recognized that, in enacting Sections 253(c) and 332(c)(7), Congress affirmatively protected the ability of state and local governments to carry out their responsibilities for maintaining, managing, and regulating the use of ROW and structures therein for the benefit of the public. *TCI Cablevision Order,* 12 FCC Rcd at 21441, para. 103 (1997) ("We recognize that section 253(c) preserves the authority of state and local governments to manage public rights-of-way. Local governments must be allowed to perform the range of vital tasks necessary to preserve the physical integrity of streets and highways, to control the orderly flow of vehicles and pedestrians, to manage gas, water, cable (both electric and cable television), and telephone facilities that crisscross the streets and public rights-of-way."); *Moratoria Declaratory Ruling*, FCC 18-111, para. 142 (same); *Classic Telephone, Inc. Petition for Preemption, Declaratory Ruling, and Injunctive Relief*, Memorandum Opinion and Order, 11 FCC Rcd 13082, 13103, para. 39 (1996) (same). We find these situations to be distinguishable from those where a state or locality might be engaged in a discrete, *bona fide* transaction involving sales or purchases of services that do not otherwise violate the law or interfere with a preemption scheme. *Compare*, *e.g.*, *Cardinal Towing & Auto Repair, Inc., v. City of Bedford*, 180 F.3d 686, 691, 693-94 (5th Cir. 1999) (declining to find that the FAA Authorization Act of 1994, as amended by the ICC Termination Act of 1995, preempted an ordinance and contract specifications that were designed only to procure services that a municipality itself needed, not to regulate the conduct of others), *with NextG Networks of N.Y., Inc. v. City of New York*, 2004 WL 2884308 (N.D.N.Y., Dec. 10, 2004) (crediting allegations that a city's actions, such as issuing a request for proposal and implementing a general franchising scheme, were not of a purely proprietary nature, but rather, were taken in pursuit of a regulatory objective or policy). This action could include, for example, procurement of services for the state or locality, or a

the extent that there is some distinction, the temptation to blend the two roles for purposes of insulating conduct from federal preemption cannot be underestimated in light of the overarching statutory objective that telecommunications service and personal wireless services be deployed without material impediments.

97. Our interpretation of both provisions finds ample support in the record of this proceeding. Specifically, commenters explain that public ROW and government-owned structures within such ROW are frequently relied upon to supply services for the benefit of the public, and are often the best-situated locations for the deployment of wireless facilities.[273] However, the record is also replete with examples of states and localities refusing to allow access to such ROW or structures, or imposing onerous terms and conditions for such access.[274] These examples extend far beyond governments' treatment of single structures;[275] indeed, in some cases it has been suggested that states or localities are using their proprietary roles to effectuate a general municipal policy disfavoring wireless deployment in public ROW.[276] We believe that Section 253(c) is properly construed to suggest that Congress did not intend to permit states and localities to rely on their ownership of property within the ROW as a pretext to advance regulatory objectives that prohibit or have the effect of prohibiting the provision of covered services, and thus that such conduct is preempted.[277] Our interpretations here are intended to facilitate the implementation of the scheme Congress intended and to provide greater regulatory certainty to states, municipalities, and regulated parties about what conduct is preempted under Section 253(a). Should factual questions arise about whether a state or locality is engaged in such behavior, Section 253(d) affords state and local governments and private parties an avenue for specific preemption challenges.

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contract for employment services between a state or locality and one of its employees. We do not intend to reach these scenarios with our interpretations today.

[273] *See, e.g.,* Verizon Aug. 23, 2018 *Ex Parte* Letter at 4-5.

[274] *See supra* para. 25.

[275] *Cf. Sprint Spectrum L.P. v. Mills*, 283 F.3d 404.

[276] *See NextG Networks of N.Y., Inc. v. City of New York*, 2004 WL 2884308; *Coastal Communications Service v. City of New York*, 658 F. Supp. 2d at 441-42.

[277] We contrast this instance to others in which we either declined to act or responded to requests for action with respect to specific disputes. *See*, *e.g.*, *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12964-65, paras. 237-240; *Continental Airlines Petition for Declaratory Ruling Regarding the Over-the-Air Reception Devices (OTARD) Rules*, Memorandum Opinion and Order, 21 FCC Rcd 13201, 13220, para. 43 (2006) (observing, in the context of a different statutory and regulatory scheme, that "[g]iven that the Commission intended to preempt restrictions [regarding restrictions on Continental's use of its Wi-Fi antenna] in private lease agreements, however, Massport would be preempted even if it is acting in a private capacity with regard to its lease agreement with Continental."); *Sandwich Isles Section 253 Order*, 32 FCC Rcd at 5883, para. 14 (rejecting argument that argument that Section 253(a) is inapplicable where it would affect the state's ability to "deal[] with its real estate interests . . . as it sees fit," such as by granting access to "rights-of-way over land that it owns); *Minnesota Order*, 14 FCC Rcd at 21706-08, paras. 17-19; *cf*. *Amigo.Net Petition for Declaratory Ruling*, Memorandum Opinion and Order, 17 FCC Rcd 10964, 10967 (WCB 2002) (Section 253 did not apply to carrier's provision of network capacity to government entities exclusively for such entities' internal use); *T-Mobile West Corp. v. Crow*, 2009 WL 5128562 (D. Ariz., Dec. 17, 2009) (Section 332(c)(7) did not apply to contract for deployment of wireless facilities and services for use on state university campus). We clarify here that such prior instances are not to be construed as a concession that Congress did not make preemption available, or that the Commission lacked the authority to support parties' attempts to avail themselves of relief offered under preemption schemes, when confronted with instances in which a state or locality is relying on its proprietary role to skirt federal regulatory reach. Indeed, these instances demonstrate the opposite—that preemption is available to effectuate Congressional intent—and merely illustrate application of this principle. Also, we do not find it necessary to await specific disputes in the form of Section 253(d) petitions to offer these interpretations. In the alternative and as an independent means to support the interpretations here, we clarify that we intend for our views to guide how preemption should apply in fact-specific scenarios.

E. Responses to Challenges to Our Interpretive Authority and Other Arguments

98. We reject claims that we lack authority to issue authoritative interpretations of Sections 253 and 332(c)(7) in this Declaratory Ruling. As explained above, we act here pursuant to our broad authority to interpret key provisions of the Communications Act, consistent with our exercise of that interpretive authority in the past.[278] In this instance, we find that issuing a Declaratory Ruling is necessary to remove what the record reveals is substantial uncertainty and to reduce the number and complexity of legal controversies regarding certain fee and non-fee state and local legal requirements in connection with Small Wireless Facility infrastructure. We thus exercise our authority in this Declaratory Ruling to interpret Section 253 and Section 332(c)(7) and explain how those provisions apply in the specific scenarios at issue here.[279]

99. Nothing in Sections 253 or 332(c)(7) purports to limit the exercise of our general interpretive authority.[280] Congress's inclusion of preemption provisions in Section 253(d) and Section 332(c)(7)(B)(v) does not limit the Commission's ability pursuant to other sections of the Act to construe and provide its authoritative interpretation as to the meaning of those provisions.[281] Any preemption under Section 253 and/or Section 332(c)(7)(B) that subsequently occurs will proceed in accordance with the enforcement mechanisms available in each context. But whatever enforcement mechanisms may be available to preempt specific state and local requirements, nothing in Section 253 or Section 332(c)(7) prevents the Commission from declaring that a category of state or local laws is inconsistent with Section 253(a) or Section 332(c)(7)(B)(i)(II) because it prohibits or has the effect of prohibiting the relevant covered service.[282]

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[278] *See, e.g.*, *Moratoria Declaratory Ruling*, FCC 18-111, paras. 161-68; *2009 Declaratory Ruling*, 24 FCC Rcd at 14001, para. 23.

[279] Targeted interpretations of the statute like those we adopt here fall far short of a "federal regulatory program dictating the scope and policies involved in local land use" that some commenters fear. League of Minnesota Cities Comments at 9.

[280] We also reject claims that Section 601(c)(1) of the 1996 Act constrains our interpretation of these provisions. *See, e.g.*, NARUC Reply at 3; Smart Communities Reply at 33, 35-36. That provision guards against implied preemption, while Section 253 and Section 332(c)(7)(B) both expressly restrict state and local activities. *See, e.g.*, *Texas PUC Order*, 13 FCC Rcd at 3485-86, para. 51. Courts also have read that provision narrowly. *See, e.g.*, *In re FCC 11-161*, 753 F.3d 1015, 1120 (10th Cir. 2014); *Qwest Corp. v. Minnesota Pub. Utilities Comm'n*, 684 F.3d 721, 730-31 (8th Cir. 2012); *Farina v. Nokia Inc.*, 625 F.3d 97, 131 (3d Cir. 2010). Although the Ninth Circuit in *County of San Diego* asserted that there is a presumption that express preemption provisions should be read narrowly, and that the presumption would apply to the interpretation of Section 253(a), *County of San Diego*, 543 F.3d at 548, the cited precedent applies that presumption where "the State regulates in an area where there is no history of significant federal presence." *Air Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n*, 410 F.3d 492, 496 (9th Cir. 2005). Whatever the applicability of such a presumption more generally, there is a substantial history of federal involvement here, particularly insofar as interstate telecommunications services and wireless services are implicated. *See, e.g.*, *Ting v. AT&T*, 319 F.3d 1126, 1136 (9th Cir. 2003); *Ivy Broadcasting Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 490–92 (2d Cir. 1968); 47 U.S.C., Title III.

[281] *See, e.g.*, California PUC Comments at 11; Verizon Comments at 31-33; CTIA Reply at 22-23; WIA Reply at 16-18. We thus reject claims to the contrary. *See, e.g.*, City of New York Comments at 8; Virginia Joint Commenters Comments, Exh. A at 41-44; City of New York Reply at 1-2; NATOA Reply at 9-10; Smart Communities Reply at 34. Indeed, the Fifth Circuit upheld just such an exercise of authority with respect to the interpretation of Section 332(c)(7) in the past. *See generally City of Arlington*, 668 F.3d at 249-54. While some commenters assert that the questions addressed by the Commission in the order underlying the Fifth Circuit's *City of Arlington* decision are somehow more straightforward than our interpretations here, they do not meaningfully explain why that is the case, instead seemingly contemplating that the Commission would address a wider, more general range of circumstances than we actually do here. *See, e.g.*, Virginia Joint Commenters Comments, Exh. A at 44-45.

[282] Consequently, we reject claims that relying on our general interpretative authority to interpret Section 253 and Section 332(c)(7) would render any provisions of the Act mere surplusage, *see, e.g.*, Smart Communities Reply at 34-35, or would somehow "usurp the role of the judiciary." Washington State Cities Reply at 14. We likewise

100. Although some commenters contend in general terms that differences in judicial approaches to Section 253 are limited and thus there is little need for Commission guidance,[283] the interpretations we offer in this Declaratory Ruling are intended to help address certain specific scenarios that have caused significant uncertainty and legal controversy, irrespective of the degree to which this uncertainty has been reflected in court decisions. We also reject claims that a Supreme Court brief joined by the Commission demonstrates that there is no need for the interpretations in this Declaratory Ruling.[284] To the contrary, that brief observed that some potential interpretations of certain court decisions "would create a serious conflict with the Commission's understanding of Section 253(a), and [] would undermine the federal competition policies that the provision seeks to advance."[285] The brief also noted that, if warranted, "the Commission can restore uniformity by issuing authoritative rulings on the application of Section 253(a) to particular types of state and local requirements."[286] Rather than cutting against the need for, or desirability of, the interpretations we offer in this Declaratory Ruling, the brief instead presaged them.[287]

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reject other arguments insofar as they purport to treat Section 253(d)'s provision for preemption as more specific than, or otherwise controlling over, other Communications Act provisions enabling the Commission to authoritatively interpret the Act. *See, e.g.*, Virginia Joint Commenters Comments, Exh. A at 43. To the contrary, "[t]he specific controls but only within its self-described scope." *Nat'l Cable & Telecomm. Ass'n v. Gulf Power*, 534 U.S. 327, 336 (2002). In addition, concerns that the Commission might interpret Section 253(c) in a manner that would render it a nullity or in a manner divorced from relevant context—things we do not do here—bear on the reasonableness of a given interpretation and not on the existence of interpretive authority in the first instance, as some contend. *See, e.g.*, Virginia Joint Commenters Comments, Exh. A at 43-44.

[283] *See, e.g.*, City of San Antonio *et al*. Comments, Exh. B at 26-27; Fairfax County Comments at 20; Smart Communities Comments at 61. Some commenters assert that there are reasonable, material reliance interests arising from past court interpretations that would counsel against our interpretations in this order because "localities and providers have adjusted to the tests within their circuits" and "reflected those standards in local law." Smart Communities Comments, WT Docket No. 16-141 at 67 (filed Mar. 8, 2017) cited in City of Austin Comments at 2 n.3. Arguments such as these, however, merely underscore the regulatory patchwork that inhibits the development of a robust nationwide telecommunications and private wireless service as envisioned by Congress. By offering interpretations of the relevant statutes here, we intend, thereby, to eliminate potential regional regulatory disparities flowing from differing interpretations of those provisions. *See, e.g.*, WIA Reply at 19-20.

[284] *See* City of San Antonio *et al*. Comments, Exh. B at 27 (citing Brief for the United States as Amicus Curiae, *Level 3 Commc'ns v. City of St. Louis*, Nos. 08-626, 08-759 at 9, 11 (filed May 28, 2009) (Amicus Brief)).

[285] Amicus Brief at 12-13. The brief also identified other specific areas of concern with those cases. *See, e.g.*, *id*. at 13 ("The court appears to have accorded inordinate significance to Level 3's inability to 'state with specificity what additional services it might have provided' if it were not required to pay St. Louis's license fee. That specific failure of proof—which the court of appeals seems to have regarded as emblematic of broader evidentiary deficiencies in Level 3's case—is not central to a proper Section 253(a) inquiry." (citation omitted)); *id*. at 14 ("Portions of the Ninth Circuit's decision, moreover, could be read to suggest that a Section 253 plaintiff must show effective preclusion—rather than simply material interference—in order to prevail. As discussed above, limiting the preemptive reach of Section 253(a) to legal requirements that completely preclude entry would frustrate the policy of open competition that Section 253 was intended to promote." (citation omitted)).

[286] *Id*. at 18.

[287] Contrary to some claims, the need for these clarifications also is not undercut by prior determinations that advanced telecommunications capability is being deployed in a reasonable and timely fashion to all Americans. *See, e.g.*, Letter from Nancy Werner, General Counsel, NATOA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 21, 2018) (NATOA June 21, 2018 *Ex Parte* Letter) (citing *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 33 FCC Rcd 1660, 1707-08, para. 94 (2018) (*2018 Broadband Deployment Report*)). These commenters do not explain why the distinct standard for evaluating deployment of advanced telecommunications capability, *see 2018 Broadband Deployment Report*, 33 FCC Rcd at 1663-76, paras. 9-39, should bear on the application of Section 253 or Section 332(c)(7). Further, as the Commission itself observed, "[a] finding that deployment of advanced

101. Our interpretations of Sections 253 and Section 332(c)(7) are likewise not at odds with the Tenth Amendment and constitutional precedent, as some commenters contend.[288] In particular, our interpretations do not directly "compel the states to administer federal regulatory programs or pass legislation."[289] The outcome of violations of Section 253(a) or Section 332(c)(7)(B) of the Act are no more than a consequence of "the limits Congress already imposed on State and local governments" through its enactment of Section 332(c)(7).[290]

102. We also reject the suggestion that the limits Section 253 places on state and local ROW fees and management will unconstitutionally interfere with the relationship between a state and its political subdivisions.[291] As relevant to our interpretations here, it is not clear, at first blush, that such concerns would be implicated.[292] Because state and local legal requirements can be written and structured in myriad ways, and challenges to such state or local activities could be framed in broad or narrow terms, we decline to resolve such questions here, divorced from any specific context.

IV. THIRD REPORT AND ORDER

103. In this Third Report and Order, we address the application of shot clocks to state and local review of wireless infrastructure deployments. We do so by taking action in three main areas. First, we adopt a new set of shot clocks tailored to support the deployment Small Wireless Facilities. Second, we adopt a specific remedy that applies to violations of these new Small Wireless Facility shot clocks, which we expect will operate to significantly reduce the need for litigation over missed shot clocks. Third, we clarify a number of issues that are relevant to all of the FCC's shot clocks, including the types of authorizations subject to these time periods.

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telecommunications capability is reasonable and timely in no way suggests that we should let up in our efforts to foster greater deployment." *Id*. at 1664, para. 13.

[288] *See, e.g.*, City of San Antonio *et al*. Comments, Exh. A at 28; Smart Communities Comments at 77-78; Smart Communities Reply at 48-50; NATOA June 21, 2018 *Ex Parte* Letter at 3.

[289] *Montgomery County*, 811 F.3d at 128; *see Printz v. United States*, 521 U.S. 898 (1997) (*Printz*); *New York v. United States*, 505 U.S. 144 (1992) (*New York*). These provisions preempting state law thus do not "compel the States to enact or administer a federal regulatory program," *Printz*, 521 U.S. at 900, or "dictate what a state . . . may or may not do." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1478 (2018) (*Murphy*).

[290] *2009 Declaratory Ruling*, 24 FCC Rcd at 14002, para. 25. The Communications Act establishes its own framework for oversight of wireless facility deployment—one that is largely deregulatory, *see, e.g.*, *Wireless Infrastructure Second R&O*, FCC 18-30, at para. 63; *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1480-81, para. 182 (1994)—and it is reasonable to expect state and local governments electing to act in that area to do so only in a manner consistent with the Act's framework. *See, e.g.*, *Murphy*, 138 S. Ct. at 1470-71, 1480. Thus, the application of Section 253 and Section 332(c)(7)(B) is clearly distinguishable from the statute the Supreme Court struck down in *Murphy*, which did not involve a preemption scheme but nonetheless prohibited state authorization of sports gambling. *Id*. at 1481. The application here is also clearly distinguishable from the statute in *Printz*, which mandated states to run background checks on handgun purchases, *Printz*, 521 U.S. at 904–05, and the statute in *New York*, which required states to enact state laws that provide for the disposal of radioactive waste or else take title to such waste. *New York*, 505 U.S. at 151–52.

[291] *See, e.g.*, City of New York Comments at 9-10; Smart Communities Comments at 78.; *see also, e.g.*, *Nixon v. Mo. Mun. League*, 541 U.S. 125, 134 (2004) (identifying Tenth Amendment issues with the application of Section 253 where that application would implicate "state or local governmental self-regulation (or regulation of political inferiors)").

[292] For example, where a state or local law or other legal requirement simply sets forth particular fees to be paid, or where the legal requirement at issue is simply an exercise of discretion that governing law grants the state or local government, it is not clear that preemption would unconstitutionally interfere with the relationship between a state and its political subdivisions.

A. New Shot Clocks for Small Wireless Facility Deployments

104. In 2009, the Commission concluded that we should use shot clocks to define a presumptive "reasonable period of time" beyond which state or local inaction on wireless infrastructure siting applications would constitute a "failure to act" within the meaning of Section 332.[293] We adopted a 90-day clock for reviewing collocation applications and a 150-day clock for reviewing siting applications other than collocations. The record here suggests that our two existing Section 332 shot clocks have increased the efficiency of deploying wireless infrastructure. Many localities already process wireless siting applications in less time than required by those shot clocks, and a number of states have enacted laws requiring that collocation applications be processed in 60 days or less.[294] Some siting agencies acknowledge that they have worked to gain efficiencies in processing siting applications and welcome the addition of new shot clocks tailored to the deployment of small scale facilities.[295] Given siting agencies' increased experience with existing shot clocks, the greater need for rapid siting of Small Wireless Facilities nationwide, and the lower burden siting of these facilities places on siting agencies in many cases, we take this opportunity to update our approach to speed the deployment of Small Wireless Facilities.[296]

1. Two New Section 332 Shot Clocks for Deployment of Small Wireless Facilities

105. In this section, using authority confirmed in *City of Arlington*, we adopt two new Section 332 shot clocks for Small Wireless Facilities—60 days for review of an application for collocation of Small Wireless Facilities using a preexisting structure and 90 days for review of an application for attachment of Small Wireless Facilities using a new structure. These new Section 332 shot clocks carefully balance the well-established authority that states and local authorities have over review of wireless siting applications with the requirements of Section 332(c)(7)(ii) to exercise that authority "within a reasonable period of time… taking into account the nature and scope of the request."[297] Further, our decision is consistent with the BDAC's Model Code for Municipalities' recommended timeframes, which utilize this same 60-day and 90-day framework for collocation of Small Wireless Facilities and new structures[298] and are similar to shot clocks enacted in state level small cell bills and the real world

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[293] *2009 Declaratory Ruling*, 24 FCC Rcd at 13994.

[294] *See infra* para. 106.

[295] Chicago Comments at 7 ("[T]he City has worked to achieve efficient processing times even for applications where no federal deadline exists."); New Orleans Comments at 3 ("City supports the concept proposed by the Commission . . . to establish . . . more narrowly defined classes of deployments, with distinct reasonable times frames for action within each class.").

[296] *See* LaWana Mayfield July 31, 2018 *Ex Parte* Letter at 2 ("However, getting this infrastructure out in a timely manner can be a challenge that involves considerable time and financial resources. The solution is to streamline relevant policies—allowing more modern rules for modern infrastructure."); Letter from John Richard C. King, House of Representatives, South Carolina, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed Aug. 27, 2018) ("A patchwork system of town-to-town, state-to-state rules slows the approval of small cell installations and delays the deployment of 5G. We need a national framework with guardrails to streamline the path forward to our wireless future"); Letter from Andy Thompson, State Representative, Ohio House District 95, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Aug. 24, 2018) ("In order for 5G to arrive as quickly and as effectively as possible, relevant infrastructure regulations must be streamlined. It makes very little sense for rules designed for 100-foot cell towers to govern the path to deployment for modern equipment called small cells that can fit into a pizza box."); Letter from Todd Nash, Wallowa County Board of Commissioners, Oregon, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 2 (filed Sept. 10, 2018) (FCC should streamline regulatory processes by, for example, tightening the deadlines for states and localities to approve new network facilities).

[297] 47 U.S.C. § 332(c)(7)(ii).

[298] The BDAC Model Municipal Code recommended, for certain types of facilities, shot clocks of 60 days for collocations and 90 days for new constructions on applications for siting Small Wireless Facilities. BDAC Model

experience of many municipalities which further supports the reasonableness of our approach.[299] Our actions will modernize the framework for wireless facility siting by taking into consideration that states and localities should be able to address the siting of Small Wireless Facilities in a more expedited review period than needed for larger facilities.[300]

106. We find compelling reasons to establish a new presumptively reasonable Section 332 shot clock of 60 days for collocations of Small Wireless Facilities on existing structures. The record demonstrates the need for, and reasonableness of, expediting the siting review of these collocations.[301] Notwithstanding the implementation of the current shot clocks, more streamlined procedures are both reasonable and necessary to provide greater predictability for siting applications nationwide for the deployment of Small Wireless Facilities. The two current Section 332 shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the existing Section 332 shot clocks were adopted nine years ago. Since 2009, localities have gained significant experience processing wireless siting applications.[302] Indeed, many localities already process wireless siting applications in less than the required time[303] and several

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Municipal Code at §§ 2.2, 2.3, 3.2a(i)(B). Our approach utilizes the same timeframes set forth in the Model Municipal Code, and we disagree with comments that it is inconsistent with or ignores the work of the BDAC. GMA September 17 *Ex Parte* Letter at 4-5.

[299] For instance, while the City of Chicago opposes the shot clocks adopted here, we note that the City has also stated that, "[d]espite th[e] complex review process, involving many utilities and other entities, CDOT on average processed small cell applications last year in 55 days." Letter from Edward N. Siskel, Corp. Counsel, Dept. of Law, City of Chicago, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 19, 2018).

[300] Just like the shot clocks originally established in 2009—later affirmed by the Fifth Circuit and the Supreme Court—the shot clocks framework in this Third Report and Order are no more than an interpretation of "the limits Congress already imposed on State and local governments" through its enactment of Section 332(c)(7). *2009 Declaratory Ruling*, 24 FCC Rcd at 14002, para. 25. *See also City of Arlington*, 668 F.3d at 259. As explained in the *2009 Declaratory Ruling*, the shot clocks derived from Section 332(c)(7) "will not preempt State or local governments from reviewing applications for personal wireless service facilities placement, construction, or modification," and they "will continue to decide the outcome of personal wireless service facility siting applications pursuant to the authority Congress reserved to them in Section 332(c)(7)(A)." *2009 Declaratory Ruling*, 24 FCC Rcd at 14002, para. 25.

[301] CTIA Comments, WT Docket No. 16-421, at 33 (filed Mar. 8, 2017); Letter from Juan Huizar, City Manager of the City of Pleasanton, TX, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 1 (filed June 4, 2018) (describing the firsthand benefit of small cells and noting that communications infrastructure is a critical component of local growth); Letter from Sara Blackhurst, President, Action 22, to the Hon. Brendan Carr, Commissioner, FCC, WT Docket No. 17-79, at 2 (filed May 18, 2018) (Action 22 *Ex Parte*)("While we understand the need for relevant federal rules and protections appropriate for larger wireless infrastructure, we feel these same rules are not well-suited for smaller wireless facilities and risk slowing deployment in communities that need connectivity now."); Letter from Maurita Coley Flippin, President and CEO, MMTC, to the Hon. Ajit Pai, Chairman, FCC, WT Docket No. 17-79 at 2 (filed Sept. 5, 2018) (encourages the Commission to remove unnecessary barriers such as unreasonable delays so deployment can proceed expeditiously); Fred A. Lamphere Sept. 11, 2018 *Ex Parte* Letter at 1 (It is critical that the Commission continue to remove barriers to building new wireless infrastructure such as by setting reasonable timelines to review applications).

[302] T-Mobile Comments at 20; Crown Castle Reply at 5 (noting that the adoption of similar time frames by several states for small cell siting review confirms their reasonableness, and the Commission should apply these deadlines on a nationwide basis).

[303] Alaska Dep't of Natural Resources Comments at 2 ("[W]e are currently meeting or exceeding the proposed timeframe of the 'Shot Clock.'"); *see also* CTIA Aug. 30, 2018 *Ex Parte* Letter at 5 ("Eleven states—Delaware, Florida, Indiana, Kansas, Missouri, North Carolina, Rhode Island, Tennessee, Texas, Utah, and Virginia—recently adopted small cell legislation that includes 45-day or 60-day shot clocks for small cell collocations."); Jason R. Saine Sept. 14, 2018 *Ex Parte* Letter.

jurisdictions require by law that collocation applications be processed in 60 days or less.[304] With the passage of time, siting agencies have become more efficient in processing siting applications.[305] These facts demonstrate that a shorter, 60-day shot clock for processing collocation applications for Small Wireless Facilities is reasonable.[306]

107. As we found in 2009, collocation applications are generally easier to process than new construction because the community impact is likely to be smaller.[307] In particular, the addition of an antenna to an existing tower or other structure is unlikely to have a significant visual impact on the community.[308] The size of Small Wireless Facilities poses little or no risk of adverse effects on the environment or historic preservation.[309] Indeed, many jurisdictions do not require public hearings for approval of such attachments, underscoring their belief that such attachments do not implicate complex issues requiring a more searching review.[310]

108. Further, we find no reason to believe that applying a 60-day time frame for Small Wireless Facility collocations under Section 332 creates confusion with collocations that fall within the scope of "eligible facilities requests" under Section 6409 of the Spectrum Act, which are also subject to a 60-day review.[311] The type of facilities at issue here are distinctly different and the definition of a Small Wireless Facility is clear. Further, siting authorities are required to process Section 6409 applications involving the swap out of certain equipment in 60 days, and we see no meaningful difference in processing these applications than processing Section 332 collocation applications in 60 days. There is

[304] North Carolina requires its local governments to decide collocation applications within 45 days of submission of a complete application. N.C. Gen. Stat. Ann. § 153A-349.53(a2). The same 45-day shot clock applies to certain collocations in Florida. Fla. Stat. Ann. § 365.172(13)(a)(1), (d)(1). In New Hampshire, applications for collocation or modification of wireless facilities generally have to be decided within 45 days (subject to some exceptions under certain circumstances) or the application is deemed approved. N.H. Rev. Stat. Ann. § 12-K:10. Wisconsin requires local governments to decide within 45 days of receiving complete applications for collocation on existing support structure that does not involve substantial modification, or the application will be deemed approved, unless the local government and applicant agree to an extension. Wis. Stat. Ann. § 66.0404(3)(c). Local governments in Indiana have 45 days to decide complete collocation applications, unless an extension is allowed under the statute. Ind. Code Ann. § 8-1-32.3-22. Minnesota requires any zoning application, including both collocation and non-collocation applications, to be processed in 60 days. Minn. Stat. § 15.99, subd. 2(a). By not requiring hearings, collocation applications in these states can be processed in a timely manner.

[305] Chicago Comments at 7 ("[T]he City has worked to achieve efficient processing times even for applications where no federal deadline exists."); New Orleans Comments at 3 ("City supports the concept proposed by the Commission . . . to establish . . . more narrowly defined classes of deployments, with distinct reasonable times frames for action within each class."); Action 22 *Ex Parte* at 2 ("While we understand the need for relevant federal rules and protections appropriate for larger wireless infrastructure, we feel these same rules are not well-suited for smaller wireless facilities and risk slowing deployment in communities that need connectivity now.").

[306] CCA Comments at 11-14; T-Mobile Comments at 20; Incompas Reply at 9; Sprint Comments at 45-47 (noting that Florida, Indiana, Kansas, Texas and Virginia all have passed small cell legislation that requires small cell application attachments to be acted upon in 60 days); T-Mobile Comments at 18 (arguing that the Commission should accelerate the Section 332 shot clocks for all sites to 60 days for collocations, including small cells).

[307] *2009 Declaratory Ruling*, 24 FCC Rcd at 14012, para. 40.

[308] TIA Comments at 4.

[309] *Wireless Infrastructure Second R&O*, FCC 18-30 at para. 42 (citing Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR Part 1, Appx. B, § VI (Collocation NPA)); *see also* 47 CFR § 1.1306(c)(1) (excluding certain wireless facilities from NEPA review).

[310] *2009 Declaratory Ruling*, 24 FCC Rcd at 14012, para. 46.

[311] DESHPO Comments at 2 ("opposes the application of separate time limits for review of facility deployments not covered by the Spectrum Act, as it would lead to confusion within the process for all parties involved (Applicants/Carrier, Consultants, SHPO)").

no reason to apply different time periods (60 vs. 90 days) to what is essentially the same review: modification of an existing structure to accommodate new equipment.[312] Finally, adopting a 60-day shot clock will encourage service providers to collocate rather than opting to build new siting structures which has numerous advantages.[313]

109. Some municipalities argue that smaller facilities are neither objectively "small" nor less obtrusive than larger facilities.[314] Others contend that shorter shot clocks for a broad category of "smaller" facilities are too restrictive,[315] and would fail to take into account the varied and unique climate, historic architecture, infrastructure, and volume of siting applications that municipalities face.[316] We take those considerations into account by clearly defining the category of "Small Wireless Facility" in our rules and allowing siting agencies to rebut the presumptive reasonableness of the shot clocks based upon the actual circumstances they face. For similar reasons, we disagree that establishing shorter shot clocks for smaller facilities would impair states' and localities' authority to regulate local rights of way.[317]

110. While some commenters argue that additional shot clock classifications would make the siting process needlessly more complex without any proven benefits,[318] any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process.[319] We

[312] CTIA Aug. 30, 2018 *Ex Parte* Letter at 6.

[313] Letter from Richard Rossi, Senior Vice President, General Counsel, American Tower, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79, at 3 (filed Aug. 10, 2018) ("The reason to encourage collocation is straightforward, it is faster, cheaper, more environmentally sound, and less disruptive than building new structures.").

[314] League of Az Cities and Towns Comments at 13, 29 (arguing that many small cells or micro cells can be taller and more visually intrusive than macro cells).

[315] *See, e.g.,* Letter from Geoffrey C. Beckwith, Executive Director & CEO, Mass. Municipal. Assoc., Boston, MA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, (filed Sept. 11, 2018) (Geoffrey C. Beckwith Sept. 11, 2018 *Ex Parte* Letter); Mike Posey Sept. 11, 2018 *Ex Parte* Letter; Letter from John A. Barbish, Mayor, City of Wickliffe, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 13, 2018); Letter from Pauline Russo Cutter, Mayor, City of San Leandro, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 12, 2018); Letter from Ed Waage, Mayor, City of Pismo Beach, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from Scott A. Hancock, Executive Director, MML, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Sept. 18, 2018); Letter from Leon Towarnicki, City Manager, Martinsville, VA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018); Letter from Thomas Aujero Small, Mayor, City of Culver City, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1 (filed Sept. 18, 2018).

[316] Philadelphia Comments at 4-5 (arguing that shorter shot clocks should not be implemented because "cities are already resource constrained and any further attempt to further limit the current time periods for review of applications will seriously and adversely affect public safety as well as diminish the proper role, under our federalist system, of state and local governments in regulating local rights of way"); Smart Communities Comments, Docket 16-421, at 13 (filed Mar. 8, 2017) (included by reference by Austin's Comments); Alaska Dept. of Trans. Comments at 2. *See, e.g.,* TX Hist. Comm. Comments at 2 (current shot clocks are appropriate and that further shortening these shot clocks is not warranted); Arlington, TX Comments at 2; Letter from William Tomko, Mayor of Chagrin Falls, OH, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 1-2 (filed Sept. 17, 2018); Nina Beety Sept. 17, 2018 *Ex Parte* Letter; Georgia Municipal Association Sept. 17, 2018 *Ex Parte* Letter at 4.

[317] League of Az Cities and Towns *et al.* Comments at 26-27, 29-35; Cities of San Antonio *et. al* Comments at 8; Philadelphia Comments at 4.

[318] T-Mobile Comments at 22; Florida Coalition Comments at 9 (creating new shot clocks would result in "too many 'shot clocks' and both the industry and local governments would be confused as to which shot clock applied to what application").

[319] While several parties proposed additional shot clock categories, we believe that the any benefit from a closer tailoring of categories to circumstances is not outweighed by the administrative burden on siting authorities and

also reject the assertion that revising the period of time to review siting decisions would amount to a nationwide land use code for wireless siting.[320] Our approach is consistent with the Model Code for Municipalities that recognizes that the shot clocks that we are adopting for the review of Small Wireless Facility deployment applications correctly balance the needs of local siting agencies and wireless service providers.[321] Our balance of the relevant considerations is informed by our experience with the previously adopted shot clocks, the record in this proceeding, and our predictive judgment about the effectiveness of actions taken here to promote the provision of personal wireless services.

111. For similar reasons as set forth above, we also find it reasonable to establish a new 90 day Section 332 shot clock for new construction of Small Wireless Facilities. Ninety days is a presumptively reasonable period of time for localities to review such siting applications. Small Wireless Facilities have far less visual and other impact than the facilities we considered in 2009, and should accordingly require less time to review.[322] Indeed, some state and local governments have already adopted 60-day maximum reasonable periods of time for review of *all* small cell siting applications, and, even in the absence of such maximum requirements, several are already reviewing and approving small-cell siting applications within 60 days or less after filing.[323] Numerous industry commenters advocated a 90-day shot clock for all non-collocation deployments.[324] Based on this record, we find it reasonable to conclude that review of an application to deploy a Small Wireless Facility using a new structure warrants more review time than a mere collocation, but less than the construction of a macro tower.[325] For the reasons explained below, we

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providers to manage these categories. *See* TX Hist. Comm. Comments at 2 (stating that it "could support a shorter review period for new structures less than fifty (50) feet tall, or where structures are located within or adjacent to existing utility rights-of-way (but not transportation rights-of-way) with existing utility structures taller than the proposed telecommunications structure"); Georgia Dept. of Trans. Comments at 2 (stating that time frames based on the zoning area are reasonable).

[320] Cities of San Antonio *et. al* Comments, Exh. A at 17-18. In the same vein, the Florida Department of Transportation contends that "[p]ermit review times should comply with state statutes," especially if the industry insists on being treated similarly as other utilities. AASHTO Comments, Attach. at 13 (Florida Dept. of Trans. Comments); *see also* Alaska Dept. of Trans. Comments at 2; TX Dept. of Trans. Comments at 2 (explaining that variations in topography, weather, government interests, and state and local political structure counsel against standardized nationwide shot clocks). The Maryland Department of Transportation is concerned about the shortened shot clocks proposed because they would conflict with a Maryland law that requires a 90-day comment period in considering wireless siting applications and because certain applications can be complex and necessitate longer review periods. AASHTO Comments, Attach. at 40 (MD Dept. of Trans. Comments).

[321] BDAC Model Municipal Code at § 3.2a(i)(B).

[322] CTIA Comments, Attach. 1 at 38.

[323] T-Mobile Comments at 19-20 (stating that some states already have adopted more expedited time frames to lower siting barriers and speed deployment, which demonstrates the reasonableness of the proposed 60-day and 90-day revised shot clocks); Incompas Reply at 9 (stating that there is no basis for differing time-periods for similarly-situated small cell installation requests, and the lack of harmonization could discourage the use of a more efficient infrastructure); CCA Comments at 14 n.52 (citing CCA Streamlining Reply at 7-8 that in Houston, Texas, the review process for small cell deployments "usually takes 2 weeks, but no more than 30 days to process and complete the site review. In Kenton County, Kentucky, the maximum time permitted to act upon new facility siting requests is 60 days. Louisville, Kentucky generally processes small cell siting requests within 30 days, and Matthews, North Carolina generally processes wireless siting applications within 10 days").

[324] CTIA Reply at 3 (stating that the Commission should shorten the shot clocks to 90 days for new facilities); CTIA Comments at 11-12 (asserting that the existing 150-day review period for new wireless sites should be shortened to 90 days); Crown Castle Comments at 29 (stating that a 90-day shot clock for new facilities is appropriate for macro cells and small cells alike, to the extent such applications require review under Section 332 at all); ExteNet Comments at 8 (asserting that the Commission should accelerate the shot clock for all other non-collocation applications, including those for new DNS poles, from 150 days to 90 days); WIA Reply at 2.

[325] CCUA argues that the new shot clocks would force siting authorities to deny applications when they find that applications are incomplete. Letter from Kenneth S. Fellman, Counsel, CCUA, to Marlene H. Dortch, Secretary,

also specify today a provision that will initially reset these two new shot clocks in the event that a locality receives a materially incomplete application.

112. Finally, we note that our 60- and 90-day approach is similar to that in pending legislation that has bipartisan congressional support, and is consistent with the Model Code for Municipalities. Specifically, the draft STREAMLINE Small Cell Deployment Act, would apply a 60-day shot clock to collocation of small personal wireless service facilities and a 90-day shot clock to any other action relating to small personal wireless service facilities.[326] Further, the Model Code for Municipalities recommended by the FCC's Broadband Deployment Advisory Committee also utilizes this same 60-day and 90-day framework for collocation of Small Wireless Facilities and new structures.[327]

2. Batched Applications for Small Wireless Facilities

113. Given the way in which Small Wireless Facilities are likely to be deployed, in large numbers as part of a system meant to cover a particular area, we anticipate that some applicants will submit "batched" applications: multiple separate applications filed at the same time, each for one or more sites *or* a single application covering multiple sites.[328] In the *Wireless Infrastructure NPRM/NOI*, the Commission asked whether batched applications should be subject to either longer or shorter shot clocks than would apply if each component of the batch were submitted separately.[329] Industry commenters contend that the shot clock applicable to a batch or a class of applications should be no longer than that applicable to an individual application of the same class.[330] On the other hand, several commenters, contend that batched applications have often been proposed in historic districts and historic buildings (areas that require a more complex review process), and given the complexities associated with reviews of that type, they urge the Commission not to apply shorter shot clocks to batched applications.[331] Some localities also argue that a single, national shot clock for batched applications would fail to account for unique local circumstances.[332]

114. We see no reason why the shot clocks for batched applications to deploy Small Wireless Facilities should be longer than those that apply to individual applications because, in many cases, the batching of such applications has advantages in terms of administrative efficiency that could actually

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FCC, WT Docket No. 17-79 et al., at 3 (filed Sept. 18, 2018) (Kenneth S. Fellman Sept. 18, 2018 *Ex Parte* Letter). We disagree that this would be the outcome in such an instance because, as explained below, siting authorities can toll the shot clocks upon a finding of incompleteness.

[326] STREAMLINE Small Cell Deployment Act, S. 3157, 115th Cong. (2018).

[327] BDAC Model Municipal Code at § 3.2a(i)(B),

[328] We define either scenario as "batching" for the purpose of our discussion here.

[329] *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3338, para. 18; *see also Mobilitie PN*, 31 FCC Rcd at 13371.

[330] *See, e.g.,* Extenet Comments at 10-11 ("The Commission should not adopt a longer shot clock for batches of multiple DNS applications."); Sprint Comments, Docket No. 16-421, at 43-44 (filed Mar. 8, 2017); CCA Comments at 16 ("The FCC also should ensure that batch applications are not saddled with a longer shot clock than those afforded to individual siting applications . . . ."); Verizon Comments at 42 ("The same 60-day shot clock should apply to applications proposing multiple facilities—so called 'batch applications.'"); Crown Castle Comments at 30 ("Crown Castle also does not support altering the deadline for 'batches' of requests."); T-Mobile Comments at 22-23 ("[A]n application that batches together similar numbers of small cells of like character and in proximity to one another should also be able to be reviewed within the same time frame . . . ."); CTIA Comments at 17 ("There is, however, no need for the Commission to establish different shot clocks for batch processing of similar facilities . . . .").

[331] San Antonio Comments, Exh. A at 17, 19-20; *see also* Smart Communities Comments, Docket No. 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin's Comments).

[332] Cities of San Antonio *et al*. Comments, Exh. A at 17, 19-20; *see also* Smart Communities Comments, Docket 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin's Comments).

make review easier.[333] Our decision flows from our current Section 332 shot clock policy. Under our two existing Section 332 shot clocks, if an applicant files multiple siting applications on the same day for the same type of facilities, each application is subject to the same number of review days by the siting agency.[334] These multiple siting applications are equivalent to a batched application and therefore the shot clocks for batching should follow the same rules as if the applications were filed separately. Accordingly, when applications to deploy Small Wireless Facilities are filed in batches, the shot clock that applies to the batch is the same one that would apply had the applicant submitted individual applications. Should an applicant file a single application for a batch that includes both collocated and new construction of Small Wireless Facilities, the longer 90-day shot clock will apply, to ensure that the siting authority has adequate time to review the new construction sites.

115. We recognize the concerns raised by parties arguing for a longer time period for at least some batched applications, but conclude that a separate rule is not necessary to address these concerns. Under our approach, in extraordinary cases, a siting authority, as discussed below, can rebut the presumption of reasonableness of the applicable shot clock period where a batch application causes legitimate overload on the siting authority's resources.[335] Thus, contrary to some localities' arguments,[336] our approach provides for a certain degree of flexibility to account for exceptional circumstances. In addition, consistent with, and for the same reasons as our conclusion below that Section 332 does not permit states and localities to prohibit applicants from requesting multiple types of approvals simultaneously,[337] we find that Section 332(c)(7)(B)(ii) similarly does not allow states and localities to refuse to accept batches of applications to deploy Small Wireless Facilities.

B. New Remedy for Violations of the Small Wireless Facilities Shot Clocks

116. In adopting these new shot clocks for Small Wireless Facility applications, we also provide an additional remedy that we expect will substantially reduce the likelihood that applicants will need to pursue additional and costly relief in court at the expiration of those time periods.

117. At the outset, and for the reasons the Commission articulated when it adopted the 2009 shot clocks, we determine that the failure of a state or local government to issue a decision on a Small Wireless Facility siting application within the presumptively reasonable time periods above will constitute a "failure to act" within the meaning of Section 332(c)(7)(B)(v). Therefore, a provider is, at a minimum, entitled to the same process and remedies available for a failure to act within the new Small Wireless Facility shot clocks as they have been under the FCC's 2009 shot clocks. But we also add an additional remedy for our new Small Wireless Facility shot clocks.

118. State or local inaction by the end of the Small Wireless Facility shot clock will function not only as a Section 332(c)(7)(B)(v) failure to act but also amount to a presumptive prohibition on the provision of personal wireless services within the meaning of Section 332(c)(7)(B)(i)(II). Accordingly, we would expect the state or local government to issue all necessary permits without further delay. In cases where such action is not taken, we assume, for the reasons discussed below, that the applicant

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[333] *See, e.g.,* Sprint Comments, Docket No. 16-421, at 43-44 (filed Mar. 8, 2017); Verizon Comments at 42; CTIA Comments at 17.

[334] WIA Comments at 27 ("Merely bundling similar sites into a single batched application should not provide a locality with more time to review a single batched application than to process the same applications if submitted individually.").

[335] *See infra* paras. 117, 119. *See* Letter from Nina Beety, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 17, 2018); Letter from Dave Ruller, City Manager, City of Kent, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 2 (filed Sept. 18, 2018).

[336] Cities of San Antonio *et al*. Comments, Exh. A at 17, 19-20; *see also* Smart Communities Comments, Docket 16-421, at 47 (filed Mar. 8, 2017) (referenced by Austin's Comments).

[337] *See infra* para. 144.

would have a straightforward case for obtaining expedited relief in court.[338]

119. As discussed in the Declaratory Ruling, a regulation under Section 332(c)(7)(B)(i)(II) constitutes an effective prohibition if it materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.[339] Missing shot clock deadlines would thus presumptively have the effect of unlawfully prohibiting service in that such failure to act can be expected to materially limit or inhibit the introduction of new services or the improvement of existing services.[340] Thus, when a siting authority misses the applicable shot clock deadline, the applicant may commence suit in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II), in addition to a violation of Section 332(c)(7)(B)(ii), as discussed above. The siting authority then will have an opportunity to rebut the presumption of effective prohibition by demonstrating that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services.

120. Given the seriousness of failure to act within a reasonable period of time, we expect, as noted above, siting authorities to issue without any further delay all necessary authorizations when notified by the applicant that they have missed the shot clock deadline, absent extraordinary circumstances. Where the siting authority nevertheless fails to issue all necessary authorizations and litigation is commenced based on violations of Sections 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii), we expect that applicants and other aggrieved parties will likely pursue equitable judicial remedies.[341] Given the relatively low burden on state and local authorities of simply acting—one way or the other—within the Small Wireless Facility shot clocks, we think that applicants would have a relatively low hurdle to clear in establishing a right to expedited judicial relief. Indeed, for violations of Section 332(c)(7)(B), courts commonly have based the decision whether to award preliminary and permanent injunctive relief on several factors. As courts have concluded, preliminary and permanent injunctions fulfill Congressional intent that action on applications be timely and that courts consider violations of Section 332(c)(7)(B) on an expedited basis.[342] In addition, courts have observed that "[a]lthough Congress in the Telecommunications Act left intact some of local zoning boards' authority under state law," they should not be owed deference on issues relating to Section 332(c)(7)(B)(ii), meaning that "in the majority of cases the proper remedy for a zoning board decision that violates the Act will be an order. . . instructing the board to authorize construction."[343] Such relief also is supported where few or no issues remain to be decided, and those that remain can be addressed by a court.[344]

121. Consistent with those sensible considerations reflected in prior precedent, we expect that

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[338] Where we discuss litigation here, we refer, for convenience, to "the applicant" or the like, since that is normally the party that pursues such litigation. But we reiterate that under the Act, "[a]ny person adversely affected by" the siting authority's failure to act could pursue such litigation. 47 U.S.C. § 332(c)(7)(B)(v).

[339] *See supra* paras. 34-42.

[340] *Id.*

[341] *See, e.g.*, *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12978, para. 284.

[342] *See, e.g.*, *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 41 (1st Cir. 2014) (addressing claimed violation of Section 332(c)(7)(B)(i)(II) of the Act); *Nat'l Tower, LLC v. Plainville Zoning Bd. of Appeals*, 297 F.3d 14, 21-22 (1st Cir. 2002) (*Nat'l Tower*) (same); *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 497 (2d Cir. 1999) (addressing violation of Section 332(c)(7)(B)(v) of the Act); *AT&T Mobility Servs., LLC v. Vill. of Corrales*, 127 F. Supp. 3d 1169, 1175-76 (D.N.M. 2015) (addressing violation of Section 332(c)(7)(B)(i)(II)); *Bell Atl. Mobile of Rochester v. Town of Irondequoit*, 848 F. Supp. 2d 391, 403 (W.D.N.Y. 2012) (addressing violation of Section 332(c)(7)(B)(ii)); *New Cingular Wireless PCS, LLC v. City of Manchester*, 2014 WL 79932, *8 (D.N.H. Feb. 28, 2014) (addressing violation of Section 332(c)(7)(B)(i)(II)).

[343] *See, e.g.*, *Nat'l Tower*, 297 F.3d at 21-22; *AT&T Mobility*, 127 F. Supp. 3d at 1176.

[344] *See, e.g.*, *Green Mountain Realty*, 750 F.3d at 41-42; *Nat'l Tower*, 297 F.3d at 24-25; *Cellular Tel. Co.*, 166 F.3d at 497; *Bell Atl. Mobile*, 848 F. Supp. 2d at 403; *New Cingular Wireless PCS*, 2014 WL 79932, *8.

courts will typically find expedited and preliminary and permanent injunctive relief warranted for violations of Sections 332(c)(7)(B)(i)(II) and 332(c)(7)(B)(ii) of the Act when addressing the circumstances discussed in this Order. Prior findings that preliminary and permanent injunctive relief best advances Congress's intent in assuring speedy resolution of issues encompassed by Section 332(c)(7)(B) appear equally true in the case of deployments of Small Wireless Facilities covered by our interpretation of Section 332(c)(7)(B)(ii) in this Third Report and Order.[345] Although some courts, in deciding whether an injunction is the appropriate form of relief, have considered whether a siting authority's delay resulted from bad faith or involved other abusive conduct,[346] we do not read the trend in court precedent overall to treat such considerations as more than relevant (as opposed to indispensable) to an injunction. We believe that this approach is sensible because guarding against barriers to the deployment of personal wireless facilities not only advances the goal of Section 332(c)(7)(B) but also policies set out elsewhere in the Communications Act and 1996 Act, as the Commission recently has recognized in the case of Small Wireless Facilities.[347] This is so whether or not these barriers stem from bad faith. Nor do we anticipate that there would be unresolved issues implicating the siting authority's expertise and therefore requiring remand in most instances.

122. In light of the more detailed interpretations that we adopt here regarding reasonable time frames for siting authority action on specific categories of requests—including guidance regarding circumstances in which longer time frames nonetheless can be reasonable—we expect that litigation generally will involve issues that can be resolved entirely by the relevant court. Thus, as the Commission has stated in the past, "in the case of a failure to act within the reasonable time frames set forth in our rules, and absent some compelling need for additional time to review the application, we believe that it would also be appropriate for the courts to treat such circumstances as significant factors weighing in favor of [injunctive] relief."[348] We therefore caution those involved in potential future disputes in this area against placing too much weight on the Commission's recognition that a siting authority's failure to act within the associated timeline might not always result in a preliminary or permanent injunction under the Section 332(c)(7)(B) framework while placing too little weight on the Commission's recognition that policies established by federal communications laws are advanced by streamlining the process for deploying wireless facilities.

123. We anticipate that the traditional requirements for awarding preliminary or permanent injunctive relief would likely be satisfied in most cases and in most jurisdictions where a violation of 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii) is found. Typically, courts require movants to establish the following elements of preliminary or permanent injunctive relief: (1) actual success on the merits for permanent injunctive relief and likelihood of success on the merits for preliminary injunctive relief, (2) continuing irreparable injury, (3) the absence of an adequate remedy at law, (4) the injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party, and (5) award of injunctive relief would not be adverse to the public interest.[349] Actual success on the merits would be

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[345] *See Green Mountain Realty Corp.*, 750 F.3d at 41 (reasoning that remand to the siting authority "would not be in accordance with the text or spirit of the Telecommunications Act); *Cellular Tel. Co*, 166 F.3d at 497 (noting "that injunctive relief best serves the TCA's stated goal of expediting resolution" of cases brought under 47 U.S.C. § 332(c)(7)(B)(v)).

[346] *See, e.g.*, *Nat'l Tower*, 297 F.3d at 23; *Up State Tower Co. v. Town of Kiantone*, 718 Fed. Appx. 29, 32 (2d Cir. 2017) (Summary Order).

[347] *See, e.g.*, *Wireless Infrastructure Second R&O*, FCC 18-30 at para. 62; *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3332, para. 5.

[348] *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12978, para, 284.

[349] *Pub. Serv. Tel. Co. v. Georgia Pub. Serv. Comm'n*, 755 F. Supp. 2d 1263, 1273 (N.D. Ga.), *aff'd*, 404 F. App'x 439 (11th Cir. 2010); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004); *Nat. Res. Def. Council v. Texaco Ref. & Mktg., Inc.*, 906 F.2d 934, 941 (3d Cir. 1990); *Randolph v. Rodgers*, 170 F.3d 850, 857 (8th Cir. 1999); *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007); *Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998); *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 914–15 (1st Cir. 1989).

demonstrated when an applicant prevails in its failure-to-act or effective prohibition case; likelihood of success would be demonstrated because, as discussed, missing the shot clocks, depending on the type of deployment, presumptively prohibits the provision of personal wireless services and/or violates Section 332(c)(7)(B)(ii)'s requirement to act within a reasonable period of time.[350] Continuing irreparable injury likely would be found because remand to the siting authority "would serve no useful purpose" and would further delay the applicant's ability to provide personal wireless service to the public in the area where deployment is proposed, as some courts have previously determined.[351] There also would be no adequate remedy at law because applicants "have a federal statutory right to participate in a local [personal wireless services] market free from municipally-imposed barriers to entry," and money damages cannot directly substitute for this right.[352] The public interest and the balance of harms also would likely favor the award of a preliminary or permanent injunction because the purpose of Section 332(c)(7) is to encourage the rapid deployment of personal wireless facilities while preserving, within bounds, the authority of states and localities to regulate the deployment of such facilities, and the public would benefit if further delays in the deployment of such facilities—which a remand would certainly cause—are prevented.[353] We also expect that the harm to the siting authority would be minimal because the only right of which it would be deprived by a preliminary or permanent injunction is the right to act on the siting application beyond a reasonable time period,[354] a right that "is not legally cognizable, because under [Sections 332(c)(7)(B)(i)(II) and 332(c)(7)(B)(ii)], the [siting authority] has no right to exercise this power."[355] Thus, in the context of Small Wireless Facilities, we expect that the most appropriate remedy in typical cases involving a violation of Sections 332(c)(7)(B)(i)(II) and/or 332(c)(7)(B)(ii) is the award of injunctive relief in the form of an order to issue all necessary authorizations.[356]

124. Our approach advances Section 332(c)(7)(B)(v)'s provision that certain siting disputes, including those involving a siting authority's failure to act, shall be heard and decided by a court of competent jurisdiction on an expedited basis. The framework reflected in this Order will provide the courts with substantive guiding principles in adjudicating Section 332(c)(7)(B)(v) cases, but it will not dictate the result or the remedy appropriate for any particular case; the determination of those issues will remain within the courts' domain.[357] This accords with the Fifth Circuit's recognition in *City of Arlington*

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Note that the standards for permanent injunctive relief differ in some respects among the circuits and the states. For example, "most courts do not consider the public interest element in deciding whether to issue a permanent injunction, though the Third Circuit has held otherwise." *Klay*, 376 F.3d at 1097. Courts in the Second Circuit consider only irreparable harm and success on the merits. *Omnipoint Commc'ns, Inc. v. Vill. of Tarrytown Planning Bd.*, 302 F. Supp. 2d 205, 225 (S.D.N.Y. 2004). The Third and Fifth Circuits have precedents holding that irreparable harm is not an essential element of a permanent injunction. *See Roe v. Operation Rescue*, 919 F.2d 857, 873 n. 8 (3d Cir. 1990); *Lewis v. S. S. Baune*, 534 F.2d 1115, 1123–24 (5th Cir. 1976). For the sake of completeness, our analysis discusses all of the elements that have been used in decided cases.

[350] *See New Jersey Payphone*, 130 F. Supp. 2d at 640.

[351] *See Vill. of Tarrytown Planning Bd.*, 302 F. Supp. 2d at 225–26 (quoting *Nextel Partners, Inc. v. Town of Amherst, N.Y.,* 251 F. Supp. 2d 1187, 1201 (W.D.N.Y. 2003)); *see Upstate Cellular Network v. City of Auburn*, 257 F. Supp. 3d 309, 318 (N.D.N.Y. 2017).

[352] *New Jersey Payphone*, 130 F. Supp. 2d at 641.

[353] *City of Arlington*, 668 F.3d at 234.

[354] *Contra* 47 U.S.C. 332(c)(7)(B)(ii).

[355] *New Jersey Payphone*, 130 F. Supp. 2d at 641.

[356] *See Cellular Tel. Co*, 166 F.3d at 496. While our discussion here focused on cases that apply the permanent injunction standard, we have the same view regarding relief under the preliminary injunction standard when a locality fails to act within the applicable shot clock periods. *See, e.g.*, *Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 22 (2008) (discussing the standard for preliminary injunctive relief).

[357] Several commenters support this position, urging the Commission to reaffirm that adversely affected applicants must seek redress from the courts. *See, e.g.,* League of Ar Cities and Towns *et al*. Comments at 14-21; Philadelphia

that the Act could be read "as establishing a framework in which a wireless service provider must seek a remedy for a state or local government's unreasonable delay in ruling on a wireless siting application in a court of competent jurisdiction while simultaneously allowing the FCC to issue an interpretation of § 332(c)(7)(B)(ii) that would guide courts' determinations of disputes under that provision."[358]

125. The guidance provided here should reduce the need for, and complexity of, case-by-case litigation and reduce the likelihood of vastly different timing across various jurisdictions for the same type of deployment.[359] This clarification, along with the other actions we take in this Third Report and Order, should streamline the courts' decision-making process and reduce the possibility of inconsistent rulings. Consequently, we believe that our approach helps facilitate courts' ability to "hear and decide such [lawsuits] on an expedited basis," as the statute requires.[360]

126. Reducing the likelihood of litigation and expediting litigation where it cannot be avoided should significantly reduce the costs associated with wireless infrastructure deployment. For instance, WIA states that if one of its members were to challenge every shot clock violation it has encountered, it would be mired in lawsuits with forty-six localities.[361] And this issue is likely to be compounded given the expected densification of wireless networks. Estimates indicate that deployments of small cells could reach up to 150,000 in 2018 and nearly 800,000 by 2026.[362] If, for example, 30 percent (based on T-Mobile's experience[363]) of these expected deployments are not acted upon within the applicable shot clock

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Comments at 2; Philadelphia Reply at 4-6; City of San Antonio *et al*. Comments, Exh. B at 14-15; San Francisco Comments at 16-17; Colorado Munis Comments at 7; CWA Reply at 5; Fairfax County Comments at 12-15; AASHTO Comments at 20-21, 23 (ID Dept. of Trans. Comments); NATOA Comments, Attach. 3 at 53-55; NLC Comments at 3-4; Smart Communities Comments at 39-43. Our interpretation thus preserves a meaningful role for courts under Section 332(c)(7)(B)(v), contrary to the concern some commenters expressed with particular focus on alternative proposals we do not adopt, such as a deemed granted remedy. *See, e.g.*, Colorado Comm. and Utility All. *et al*. Comments at 6-7; League of Az Cities and Towns *et al*. Comments at 14-23; Philadelphia Comments at 2; Baltimore Reply at 11; City of San Antonio *et al*. Reply at 2; San Francisco Reply at 6; League of Az Cities and Towns *et al*. Reply at 2-3. In addition, our interpretation of Section 332(c)(7)(B)(ii) does not result in a regime in which the Commission could be seen as implicitly issuing local land use permits, a concern that states and localities raised regarding an absolute deemed granted remedy, because applicants are still required to petition a court for relief, which may include an injunction directing siting authorities to grant the application. *See* Alexandria Comments at 2; Baltimore Reply at 10; Philadelphia Reply at 8; Smart Cities Coal Comments at ii, 4, 39.

[358] *City of Arlington*, 668 F.3d at 250.

[359] The likelihood of non-uniform or inconsistent rulings on what time frames are reasonable or what circumstances could rebut the presumptive reasonableness of the shot clock periods stems from the intrinsic ambiguity of the phrase "reasonable period of time," which makes it susceptible of varying constructions. *See City of Arlington*, 668 F.3d at 255 (noting "that the phrase 'a reasonable period of time,' as it is used in § 332(c)(7)(B)(ii), is inherently ambiguous"); *Capital Network System, Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994) ("Because 'just,' 'unjust,' 'reasonable,' and 'unreasonable' are ambiguous statutory terms, this court owes substantial deference to the interpretation the Commission accords them."). *See also* Lightower Comments at 3 ("The lack of consistent guidance regarding statutory interpretation is creating uncertainty at the state and local level, with many local jurisdictions seeming to simply make it up as they go. Differences in the federal courts are only exacerbating the patchwork of interpretations at the state and local level.").

[360] 47 U.S.C. § 332(c)(7)(B)(v).

[361] WIA Comments at 16.

[362] *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, 31 FCC Rcd 13360, 13363-64 (2016) (citing S&P Global Market Intelligence, John Fletcher, Small Cell and Tower Projections through 2026, SNL Kagan Wireless Investor (Sept. 27, 2016)).

[363] T-Mobile Comments at 8.

period, that would translate to 45,000 violations in 2018 and 240,000 violations in 2026.[364] These sheer numbers would render it practically impossible to commence Section 332(c)(7)(B)(v) cases for all violations, and litigation costs for such cases likely would be prohibitive and could virtually bar providers from deploying wireless facilities.[365]

127. Our updated interpretation of Section 332(c)(7) for Small Wireless Facilities effectively balances the interest of wireless service providers to have siting applications granted in a timely and streamlined manner[366] and the interest of localities to protect public safety and welfare and preserve their authority over the permitting process.[367] Our specialized deployment categories, in conjunction with the acknowledgement that in rare instances, it may legitimately take longer to act, recognize that the siting process is complex and handled in many different ways under various states' and localities' long-established codes. Further, our approach tempers localities' concerns about the inflexibility of the *Wireless Infrastructure NPRM/NOI*'s deemed granted proposal because the new remedy we adopt here accounts for the breadth of potentially unforeseen circumstances that individual localities may face and the possibility that additional review time may be needed in truly exceptional circumstances.[368] We further find that our interpretive framework will not be unduly burdensome on localities because a number of states have already adopted even more stringent deemed granted remedies.[369]

128. At the same time, there may be merit in the argument made by some commenters that the FCC has the authority to adopt a deemed granted remedy.[370] Nonetheless, we do not find it necessary to decide that issue today, as we are confident that the rules and interpretations adopted here will provide substantial relief, effectively avert unnecessary litigation, allow for expeditious resolution of siting applications, and strike the appropriate balance between relevant policy considerations and statutory

[364] These numbers would escalate under WIA's estimate that 70 percent of small cell deployment applications exceed the applicable shot clock. WIA Comments at 7.

[365] *See* CTIA Comments at 9 (explaining that, "[p]articularly for small cells, the expense of litigation can rarely be justified); WIA Comments at 16 (quoting and discussing Lightower's Comments in 2016 Streamlining Public Notice); T-Mobile Comment, Attach. A at 8.

[366] *See, e.g.,* AT&T Comments at 26; CCA Comments at 7, 9, 11-12; CCA Reply at 5-6, 8; Cityscape Consultants Comments at 1; CompTIA Comments at 3; CIC Comments at 17-18; Crown Castle Comments at 23-28; Crown Castle Reply at 3; CTIA Comments at 7-9, Attach. 1 at 5, 39-43, Attach. 2 at 3, 23-24; GCI Comments at 5-9; Lightower Comments at 7, 18-19; Samsung Comments at 6; T-Mobile Comments at 13, 16, Attach. A at 25; WIA Comments at 15-17.

[367] *See, e.g.,* Arizona Munis Comments at 23; Arizona Munis Reply at 8-9; Baltimore Reply at 10; Lansing Comments at 2; Philadelphia Reply at 9-12; Torrance Comments at 1-2; CPUC Comments at 14; CWA Reply at 5; Minnesota Munis Comments at 9; *but see* CTIA Reply at 9.

[368] *See, e.g.,* Chicago Comments at 2 (contending that wireless facilities siting entails fact-specific scenarios); AASHTO Comments, Attach. at 40 (MD Dept. of Trans. SHA Comments) (describing the complexity of reviewing proposed deployments on rights-of-way); AASHTO Comments, Attach. at 51 (Wyoming DOT Comments); Baltimore Reply at 11; Philadelphia Comments at 4; Alexandria Comments at 6; Mukilteo Comments at 1; Alaska Dept. of Trans. Comments at 2; Alaska SHPO Reply at 1.

[369] *See* Fla. Stat. Ann. § 365.172(13)(d)(3.b); Ariz. Rev. Stat. Ann. § 9-594(C) (3); 53 Pa. Stat. Ann. § 11702.4; Cal. Gov't Code § 65964.1; Va. Code Ann. § 15.2-2232; Va. Code Ann. § 15.2-2316.4; Va. Code Ann. § 56-484.29; Va. Code Ann. § 56-484.28; Ky. Rev. Stat. Ann. § 100.987; N.H. Rev. Stat. Ann. § 12-K:10; Wis. Stat. Ann. § 66.0404; Kan. Stat. Ann. § 66-2019(h)(3); Del. Code Ann. tit. 17, § 1609; Iowa Code Ann. § 8C.7A(3)(c)(2); Iowa Code Ann. § 8C.4(4)(5); Iowa Code Ann. § 8C.5; Mich. Comp. Laws Ann. § 125.3514. *See also* CCA Reply at 9.

[370] *See, e.g.*, CTIA Comments at 10-11; T-Mobile Comments at 15-18, Verizon Comments at 37, 39-41, WIA Comments at 17-20.

objectives[371] guiding our analysis.[372]

129. We expect that our decision here will result in localities addressing applications within the applicable shot clocks in a far greater number of cases. Moreover, we expect that the limited instances in which a locality does not issue a decision within that time period will result in an increase in cases where the locality then issues all needed permits. In what we expect would then be only a few cases where litigation commences, our decision makes clear the burden that localities would need to clear in those circumstances.[373] Our updated interpretation of Section 332 for Small Wireless Facilities will help courts to decide failure-to-act cases expeditiously and avoid delays in reaching final dispositions.[374] Placing this burden on the siting authority should address the concerns raised by supporters of a deemed granted remedy—that filing suit in court to resolve a siting dispute is burdensome and expensive on applicants, the judicial system, and citizens—because our interpretations should expedite the courts'

[371] *City of Arlington*, 668 F.3d at 234 (noting that the purpose of Section 332(c)(7) is to balance the competing interests to preserve the traditional role of state and local governments in land use and zoning regulation and the rapid development of new telecommunications technologies).

[372] *See supra* paras. 119-20 (explaining how the remedy strikes the proper balance between competing interests). Because our approach to shot clocks involves our interpretation of Section 332(c)(7)(B)(ii) and the consequences that flow from that—and does not rely on Section 253 of the Act—we need not, and thus do not, resolve disputes about the potential use of Section 253 in this specific context, such as whether it could serve as authority for a deemed granted or similar remedy. *See, e.g.*, San Francisco Comments at 9-10; CPUC Comments at 10; Smart Communities Comments at 4-11, 21; Smart Communities Reply at 78-79; League of Az Cities and Towns *et al*. Reply at 4; Alexandria Comments at 5; Irvine Comments at 5; Minnesota Cities Comments at 11-13; Philadelphia Reply at 2, 7; Fairfax County Comments at 17; Greenlining Reply at 4; NRUC Reply at 3-5; NATOA June 21, 2018 *Ex Parte* Letter. To the extent that commenters raise arguments regarding the proper interpretation of "prohibit or have the effect of prohibiting" under Section 253 or the scope of Section 253, these issues are discussed in the Declaratory Ruling, *see supra* paras. 34-42.

[373] *See* App Association Comments at 9; CCI Comments at 6-8; Conterra Comments at 14-17; ExteNet Comments at 13; T-Mobile Comments at 17; Quintillion Reply at 6; Verizon Comments at 8-18; WIA Comments at 9-10. WIA contends that adoption of a deemed granted remedy is needed because various courts faced with shot clock claims have failed to provide meaningful remedies, citing as an example a case in which the court held that the town failed to act within the shot clock period but then declined to issue an injunction directing the siting agency to grant the application. WIA Comments at 16-17. However, a number of cases involving violations of the "reasonable period of time" requirement of Section 332(c)(7)(B)(ii)—decided either before or after the promulgation of the Commission's Section 332(c)(7)(B)(ii) shot clocks—have concluded with an award of injunctive relief. *See, e.g.*, *Upstate Cellular Network*, 257 F. Supp. 3d at 318 (concluding that the siting authority's failure to act within the 150-day shot clock was unreasonable and awarding a permanent injunction in favor of the applicant); *Am. Towers, Inc. v. Wilson County*, No. 3:10-CV-1196, 2014 WL 28953, at *13–14 (M.D. Tenn. Jan. 2, 2014) (finding that the county failed to act within a reasonable period of time, as required under Section 332(c)(7)(B)(ii), and granting an injunction directing the county to approve the applications and issue all necessary authorizations for the applicant to build and operate the proposed tower); *Cincinnati Bell Wireless, LLC v. Brown County*, Ohio, No. 1:04-CV-733, 2005 WL 1629824, at *4–5 (S.D. Ohio July 6, 2005) (finding that the county failed to act within a reasonable period of time under Section 332(c)(7)(B)(ii) and awarding injunctive relief). *But see Up State Tower Co. v. Town of Kiantone*, 718 Fed. Appx. 29 (2d Cir. 2017) (declining to reverse district court's refusal to issue injunction compelling immediate grant of application). Courts have also held "that injunctive relief best serves the TCA's stated goal of expediting resolution of" cases brought under Section 332(c)(7)(B)(v). *Cellular Tel. Co.*, 166 F.3d at 497; *Brehmer v. Planning Bd. of Town of Wellfleet*, 238 F.3d 117, 121 (1st Cir. 2001). Under these circumstances, we do not agree with WIA that courts have failed to provide meaningful remedies to such an extent as would require the adoption of a deemed granted remedy.

[374] *Zoning Bd. of Adjustment of the Borough of Paramus, N.J.*, 21 F. Supp. 3d at 383, 387 (more than four-and-a-half years for Sprint to prevail in court), *aff'd*, 606 F. App'x 669 (3d Cir. 2015); *Vill. of Corrales*, 127 F. Supp. 3d 1169 (nineteen months from complaint to grant of summary judgment); *Orange County–Poughkeepsie Ltd. P'ship v. Town of E. Fishkill*, 84 F. Supp. 3d 274, 293 (S.D.N.Y.), *aff'd sub nom.*, *Orange County–County Poughkeepsie Ltd. P'ship v. Town of E. Fishkill*, 632 F. App'x 1 (2d Cir. 2015) (seventeen months from complaint to grant of summary judgment).

decision-making process.

130. We find that the more specific deployment categories and shot clocks, which presumptively represent the reasonable period within which to act, will prevent the outcome proponents of a deemed granted remedy seek to avoid: that siting agencies would be forced to reject applications because they would be unable to review the applications within the prescribed shot clock period.[375] Because the more specific deployment categories and shot clocks inherently account for the nature and scope of a variety of deployment applications, our new approach should ensure that siting agencies have adequate time to process and decide applications and will minimize the risk that localities will fail to act within the established shot clock periods. Further, in cases where a siting authority misses the deadline, the opportunity to demonstrate exceptional circumstances provides an effective and flexible way for siting agencies to justify their inaction if genuinely warranted. Our overall framework, therefore, should prevent situations in which a siting authority would feel compelled to summarily deny an application instead of evaluating its merits within the applicable shot clock period.[376] We also note that if the approach we take in this Order proves insufficient in addressing the issues it is intended to resolve, we may again consider adopting a deemed granted remedy in the future.

131. Some commenters also recommend that the Commission issue a list of "Best Practices" or "Recommended Practices."[377] The joint comments filed by NATOA and other government associations suggest the "development of an informal dispute resolution process to remove parties from an adversarial relationship to a partnership process designed to bring about the best result for all involved" and the development of "a mediation program which could help facilitate negotiations for deployments for parties who seem to have reached a point of intractability."[378] Although we do not at this time adopt these proposals, we note that the steps taken in this order are intended to facilitate cooperation between parties to reach mutually agreed upon solutions. For example, as explained below, mutual agreement between the parties will toll the running of the shot clock period, thereby allowing parties to resolve disagreements in a collaborative, instead of an adversarial, setting.[379]

C. Clarification of Issues Related to All Section 332 Shot Clocks

1. Authorizations Subject to the "Reasonable Period of Time" Provision of Section 332(c)(7)(B)(ii)

132. As indicated above, Section 332(c)(7)(B)(ii) requires state and local governments to act "within a reasonable period of time" on "any request for authorization to place, construct, or modify personal wireless service facilities."[380] Neither the *2009 Declaratory Ruling* nor the *2014 Wireless Infrastructure Order* addressed the specific types of authorizations subject to this requirement. Industry commenters contend that the shot clocks should apply to all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment.[381] Local siting authorities, on the other hand, argue that a broad application of Section 332 will harm public safety and welfare by not

[375] Baltimore Reply at 12; Mukilteo Comments at 1; Cities of San Antonio *et al*. Reply at 10; Washington Munis Comments, Attach. 1 at 8-9; *but see* CTIA Reply at 9.

[376] We also note that a summary denial of a deployment application is not permitted under Section 332(c)(7)(B)(iii), which requires the siting authority to base denials on "substantial evidence contained in a written record."

[377] KS Rep. Sloan Comments at 2; Nokia Comments at 10.

[378] NATOA *et al*. Comments at 16-17.

[379] *See infra* paras. 145-46.

[380] *See* 47 U.S.C. § 332(c)(7)(B)(ii).

[381] *See, e.g.,* CTIA Comments at 15; CTIA Reply at 10; Mobilitie Comments at 6-7; WIA Comments at 24; WIA Reply at 13; T-Mobile Comments at 21-22; CCA Reply at 9; Sprint June 18 *Ex Parte* at 3.

giving them enough time to evaluate whether a proposed deployment endangers the public.[382] They assert that building and encroachment permits should not be subsumed within the shot clocks because these permits incorporate essential health and safety reviews.[383] After carefully considering these arguments, we find that "any request for authorization to place, construct, or modify personal wireless service facilities" under Section 332(c)(7)(B)(ii) means all authorizations necessary for the deployment of personal wireless services infrastructure. This interpretation finds support in the record and is consistent with the courts' interpretation of this provision and the text and purpose of the Act.

133. The starting point for statutory interpretation is the text of the statute,[384] and here, the statute is written broadly, applying to "any" request for authorization to place, construct, or modify personal wireless service facilities. The expansive modifier "any" typically has been interpreted to mean "one or some indiscriminately of whatever kind," unless Congress "add[ed] any language limiting the breadth of that word."[385] The title of Section 332(c)(7) ("Preservation of local zoning authority") does not restrict the applicability of this section to zoning permits in light of the clear text of Section 332(c)(7)(B)(ii).[386] The text encompasses not only requests for authorization to *place* personal wireless service facilities, e.g., zoning requests, but also requests for authorization to *construct* or *modify* personal wireless service facilities. These activities typically require more than just zoning permits. For example, in many instances, localities require building permits, road closure permits, and the like to make construction or modification possible.[387] Accordingly, the fact that the title standing alone could be read

[382] League of Az Cities and Towns *et al*. Reply at 21-22. *See also* Arlington County, Sept. 18 *Ex Parte* Letter at 1-2 (asserting that it is infeasible to have the shot clock encompass all steps related the small cell siting process because there is no single application to get ROW access, public notice, lease negotiations, road closures, etc.; because these are separate processes involving different departments; and because the timeline in some instances will depend on the applicant, or the required information may interrelate in a manner that makes doing them all at once infeasible); Letter from Robert McBain, Mayor, Piedmont, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 3 (filed Sept. 18, 2018).

[383] League of Az Cities and Towns *et al*. Reply at 21-22.

[384] *Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 11233 (1996); *2002 Biennial Regulatory Review*, Report, 18 FCC Rcd 4726, 4731–32 (2003); *Perrin v. United States*, 444 U.S. 37, 42 (1979) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning."); *Communications Assistance for Law Enf't Act & Broadband Access & Servs.*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 14989, 14992–93, para. 9 (2005) (interpreting an ambiguous statute by considering the "structure and history of the relevant provisions, including Congress's stated purposes" in order to "faithfully implement[] Congress's intent"); *Cohen v. JP Morgan Chase & Co.*, 498 F.3d 111, 116 (2d Cir. 2007) (using legislative history "to identify Congress's clear intent"); *Arnold v. United Parcel Serv., Inc.*, 136 F.3d 854, 858 (1st Cir. 1998) (same).

[385] *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster's Third New International Dictionary 97 (1976)); *HUD v. Rucker*, 535 U.S. 125, 131 (2002).

[386] *See Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528–29 (1947) ("[H]eadings and titles are not meant to take the place of the detailed provisions of the text."). Our conclusion is also consistent with our interpretation that Sections 253 and 332(c)(7) apply to fees for all applications related to a Small Wireless Facility. *See supra* para. 50.

[387] *See, e.g.,* Virginia Joint Commenters Comments at 21-22 (stating that deployment of personal wireless facilities generally requires excavation and building permits); San Francisco Comments at 4-7, 12, 20-22 (describing the permitting process in San Francisco, the layers of multi-departmental review involved, and the required authorizations before certain personal wireless facilities can be constructed); Smart Cities Coal. Comments at 33-34 (describing several authorizations necessary to deploy personal wireless facilities depending on the location, e.g., public rights-of-way and other public properties, of the proposed site and the size of the proposed facility).

to limit Section 332(c)(7) to zoning decisions does not overcome the specific language of Section 332(c)(7)(B)(ii), which explicitly applies to a variety of authorizations.[388]

134. The purpose of the statute also supports a broad interpretation. As noted above, the Supreme Court has stated that the 1996 Act was enacted "to promote competition and higher quality in American telecommunications services and to encourage the rapid deployment of new telecommunications technologies" by, *inter alia*, reducing "the impediments imposed by local governments upon the installation of facilities for wireless communications, such as antenna towers."[389] A narrow reading of the scope of Section 332 would frustrate that purpose by allowing local governments to erect impediments to the deployment of personal wireless services facilities by using or creating other forms of authorizations outside of the scope of Section 332(c)(7)(B)(ii).[390] This is especially true in jurisdictions requiring multi-departmental siting review or multiple authorizations.[391]

135. In addition, our interpretation remains faithful to the purpose of Section 332(c)(7) to balance Congress's competing desires to preserve the traditional role of state and local governments in regulating land use and zoning, while encouraging the rapid development of new telecommunications technologies.[392] Under our interpretation, states and localities retain their authority over personal wireless facilities deployment. At the same time, deployment will be kept on track by ensuring that the entire approval process necessary for deployment is completed within a reasonable period of time, as defined by the shot clocks addressed in this Third Report and Order.

136. A number of courts have either explicitly or implicitly adopted the same view, that all necessary permits are subject to Section 332. For example, in *Cox Communications PCS, L.P. v. San Marcos*, the court considered an excavation permit application as falling within the parameters of Section 332.[393] In *USCOC of Greater Missouri, LLC v. County of Franklin*, the Eighth Circuit reasoned that "[t]he issuance of the requisite building permits" for the construction of a personal wireless services facility arises under Section 332(c)(7).[394] In *Ogden Fire Co. No. 1 v. Upper Chichester Township*, the Third Circuit affirmed the district court's order compelling the township to issue a building permit for the

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[388] *See Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528-29 (1947). If the title of Section 332(c)(7) were to control the interpretation of the text, it would render superfluous the provision of Section 332(c)(7)(B)(ii) that applies to "authorization to . . . construct, or modify personal wireless service facilities" and give effect only to the provision that applies to "authorization to place . . . personal wireless service facilities." This result would "flout[] the rule that 'a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous.'" *Clark v. Rameker*, 134 S. Ct. 2242, 2248 (2014) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)).

[389] *City of Rancho Palos Verdes v. Abrams*, 544 U.S. at 115 (internal quotation marks and citations omitted).

[390] For example, if we were to interpret Section 332(c)(7)(B)(ii) to cover only zoning permits, states and localities could delay their consideration of other permits (e.g., building, electrical, road closure or other permits) to thwart the proposed deployment.

[391] *See, e.g.*, Virginia Joint Commenters Comments at 21-22; San Francisco Comments at 4-7, 12, 20-22; Smart Communities Comments at 33-34; CTIA Comments at 15 (stating that some jurisdictions "impose multiple, sequential stages of review"); WIA Comments at 24 (noting that "[m]any jurisdictions grant the application within the shot clock period only to stall on issuing the building permit"); Verizon Comments at 6 (stating that "[a] large Southwestern city requires applicants to obtain separate and sequential approvals from three different governmental bodies before it will consider issuing a temporary license agreement to access city rights-of-way"); Sprint June 18 *Ex Parte* at 3 (noting that "after a land-use permit or attachment permit is received, many localities still require electric permits, road closure permits, aesthetic approval, and other types of reviews that can extend the time required for final permission well beyond just the initial approval.").

[392] *City of Arlington*, 668 F.3d at 234.

[393] *Cox Commc'ns PCS, L.P. v. San Marcos*, 204 F. Supp. 2d 1272 (S.D. Cal. 2002).

[394] *USCOC of Greater Mo., LLC v. County of Franklin*, 636 F.3d 927, 931-32 (8th Cir. 2011).

construction of a wireless facility after finding that the township had violated Section 332(c)(7).[395] In *Upstate Cellular Network v. Auburn*, the court directed the city to approve the application, including site plan approval by the planning board, granting a variance by the zoning authority, and "any other municipal approval or permission required by the City of Auburn and its boards or officers, including but not limited to, a building permit."[396] And in *PI Telecom Infrastructure V, LLC v. Georgetown–Scott County Planning Commission*, the court ordered that the locality grant "any and all permits necessary for the construction of the proposed wireless facility."[397] Our interpretation is also consistent with judicial precedents involving challenges under Section 332(c)(7)(B) to denials by a wide variety of governmental entities, many of which involved variances,[398] special use/conditional use permits,[399] land disturbing activity and excavation permits,[400] building permits,[401] and a state department of education permit to install an antenna at a high school.[402] Notably, a lot of cases have involved local agencies that are separate and distinct from the local zoning authority,[403] confirming that Section 332(c)(7)(B) is not limited in application to decisions of zoning authorities. Our interpretation also reflects the examples in the record where providers are required to obtain other types of authorizations besides zoning permits before they can "place, construct, or modify personal wireless service facilities."[404]

137. We reject the argument that this interpretation of Section 332 will harm the public because it would "mean that building and safety officials would have potentially only a few days to

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[395] *Ogden Fire Co. No. 1 v. Upper Chichester TP.*, 504 F.3d 370, 395-96 (3d Cir. 2007).

[396] *Upstate Cellular Network*, 257 F. Supp. 3d at 319.

[397] *PI Telecom Infrastructure V, LLC v. Georgetown–Scott County Planning Commission*, 234 F. Supp. 3d 856, 872 (E.D. Ky. 2017). *Accord T-Mobile Ne. LLC v. Lowell*, Civil Action No. 11–11551–NMG, 2012 WL 6681890, *6-7, *11 (D. Mass. Nov. 27, 2012) (directing the zoning board "to issue all permits and approvals necessary for the construction of the plaintiffs' proposed telecommunications facility"); *New Par v. Franklin County Bd. of Zoning Appeals*, No. 2:09–cv–1048, 2010 WL 3603645, *4 (S.D. Ohio Sept. 10, 2010) (enjoining the zoning board to "grant the application and issue all permits required for the construction of the" proposed wireless facility).

[398] *See, e.g., New Par v. City of Saginaw*, 161 F. Supp. 2d 759, 760 (E.D. Mich. 2001), *aff'd*, 301 F.3d 390 (6th Cir. 2002)

[399] *See, e.g., Virginia Metronet, Inc. v. Bd. of Sup'rs of James City County*, 984 F. Supp. 966, 968 (E.D. Va. 1998); *Cellular Tel. Co.*, 166 F.3d at 491; *T-Mobile Cent., LLC v. Unified Gov't of Wyandotte County*, 546 F.3d 1299, 1303 (10th Cir. 2008); *City of Anacortes*, 572 F.3d at 989; *Helcher*, 595 F.3d at 713-14; *AT&T Wireless Servs. of California LLC v. City of Carlsbad*, 308 F. Supp. 2d 1148, 1152 (S.D. Cal. 2003); *PrimeCo Pers. Commc'ns L.P. v. City of Mequon*, 242 F. Supp. 2d 567, 570 (E.D. Wis.), *aff'd*, 352 F.3d 1147 (7th Cir. 2003); *Preferred Sites, LLC v. Troup County*, 296 F.3d 1210, 1212 (11th Cir. 2002).

[400] *See, e.g., Tennessee ex rel. Wireless Income Properties, LLC v. City of Chattanooga*, 403 F.3d 392, 394 (6th Cir. 2005); *Cox Commc'ns PCS, L.P. v. San Marcos*, 204 F. Supp. 2d 1272 (S.D. Cal. 2002).

[401] *See, e.g., Upstate Cellular Network,* 257 F. Supp. 3d at 319; *Ogden Fire Co. No. 1 v. Upper Chichester Twp.*, 504 F.3d 370, 395-96 (3rd Cir. 2007).

[402] *Sprint Spectrum, L.P. v. Mills*, 65 F. Supp. 2d 148, 150 (S.D.N.Y. 1999), *aff'd*, 283 F.3d 404 (2d Cir. 2002).

[403] *See, e.g., Tennessee ex rel. Wireless Income Props., LLC v. City of Chattanooga*, 403 F.3d 392, 394 (6th Cir. 2005) (city public works department); *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 720 (9th Cir. 2009) (city public works director, city planning commission, and city council); *Sprint Spectrum, L.P. v. Mills*, 65 F. Supp. 2d at 150 (New York State Department of Education).

[404] *See, e.g.,* Virginia Joint Commenters Comments at 21-22 (stating that deployment of personal wireless facilities generally requires excavation and building permits); San Francisco Comments at 4-7, 12, 20-22 (describing the permitting process in San Francisco, the layers of multi-departmental review involved, and the required authorizations before certain personal wireless facilities can be constructed); Smart Communities Comments at 33-34 (describing several authorizations necessary to deploy personal wireless facilities depending on the location, e.g., public rights-of-way and other public properties, of the proposed site and the size of the proposed facility).

evaluate whether a proposed deployment endangers the public."[405] Building and safety officials will be subject to the same applicable shot clock as all other siting authorities involved in processing the siting application, with the amount of time allowed varying in the rare case where officials are unable to meet the shot clock because of exceptional circumstances.

2. Codification of Section 332 Shot Clocks

138. In addition to establishing two new Section 332 shot clocks for Small Wireless Facilities, we take this opportunity to codify our two existing Section 332 shot clocks for siting applications that do not involve Small Wireless Facilities. In the *2009 Declaratory Ruling*, the Commission found that 90 days is a reasonable time frame for processing collocation applications and 150 days is a reasonable time frame to process applications other than collocations.[406] Since these Section 332 shot clocks were adopted as part of a declaratory ruling, they were not codified in our rules. In the *Wireless Infrastructure NPRM/NOI*, the Commission sought comment on whether to modify these shot clocks.[407] We find no need to modify them here and will continue to use these shot clocks for processing Section 332 siting applications that do not involve Small Wireless Facilities.[408] We do, though, codify these two existing shot clocks in our rules alongside the two newly-adopted shot clocks so that all interested parties can readily find the shot clock requirements in one place.[409]

139. While some commenters argue for a 60-day shot clock for all collocation categories,[410] we conclude that we should retain the existing 90-day shot clock for collocations not involving Small Wireless Facilities. Collocations that do not involve Small Wireless Facilities include deployments of

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[405] League of Az Cities and Towns *et al*. Reply at 21-22.

[406] *2009 Declaratory Ruling*, 24 FCC Rcd at 14012-013, paras. 45, 48.

[407] *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3332-33, 3334, 3337-38, paras. 6, 9, 17-19.

[408] Chicago Comments at 2 (supporting maintaining existing shot clocks); Bellevue *et al*. Comments at 13-14 (supporting maintaining existing shot clocks).

[409] We also adopt a non-substantive modification to our existing rules. We redesignate the rule adopted in 2014 to codify the Commission's implementation of the 2012 Spectrum Act, formerly designated as section 1.40001, as section 1.6100, and we move the text of that rule from Part 1, Subpart CC, to the same Subpart as the new rules promulgated in this Third Report and Order (Part 1, Subpart U). This recognizes that both sets of requirements pertain to "State and local government regulation of the placement, construction, and modification of personal wireless service facilities" (the caption of new Subpart U). The reference in paragraph (a) of that preexisting rule to 47 U.S.C. § 1455 has been consolidated with new rule section 1.6001 to reflect that all rules in Subpart U, collectively, implement both § 332(c)(7) and § 1455. With those non-substantive exceptions, the text of the 2014 rule has not been changed in any way. Contrary to the suggestion submitted by the Washington Joint Counties, *see* Letter from W. Scott Snyder et al., Counsel for the Washington Cities of Bremerton, Mountlake Terrace, Kirkland, Redmond, Issaquah, Lake Stevens, Richland, and Mukilteo, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 6-7 (filed June 19, 2018), this change is not substantive and does not require advance notice. We find that "we have good cause to reorganize and renumber our rules in this fashion without expressly seeking comment on this change, and we conclude that public comment is unnecessary because no substantive changes are being made. Moreover, the delay engendered by a round of comment would be contrary to the public interest." *See 2017 Pole Replacement Order*, 32 FCC Rcd at 9770, para. 26; *see also* 5 U.S.C. §553(b)(B) (notice not required "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

[410] CCIA Comments at 10; CCA Comments at 13-14; CCA Reply at 6 (arguing for 30-day shot clock for collocations and a 60-to-75-day shot clock for all other siting applications); WIA Reply at 21. *See also* Letter from Jill Canfield, NTCA Vice President Legal & Industry and Assistant General Counsel, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 19, 2018) (stating that NTCA supports a revised interpretation of the phrase "reasonable period of time" as found in Section 332(c) (7)(B)(ii) of the Communications Act as applicable to small cell facilities and that sixty days for collocations and 90 days for all other small cell siting applications should provide local officials sufficient time for review of requests to install small cell facilities in public rights-of-way).

larger antennas and other equipment that may require additional time for localities to review and process.[411] For similar reasons, we maintain the existing 150-day shot clock for new construction applications that are not for Small Wireless Facilities. While some industry commenters such as WIA, Samsung, and Crown Castle argue for a 90-day shot clock for macro cells and small cells alike, we agree with commenters such as the City of New Orleans that there is a significant difference between the review of applications for a single 175-foot tower versus the review of a Small Wireless Facility with much smaller dimensions.[412]

3. Collocations on Structures Not Previously Zoned for Wireless Use

140. Wireless industry commenters assert that they should be able to take advantage of the Section 332 collocation shot clock even when collocating on structures that have not previously been approved for wireless use.[413] Siting agencies respond that the wireless industry is effectively seeking to have both the collocation definition and a reduced shot clock apply to sites that have never been approved by the local government as suitable for wireless facility deployment.[414] We take this opportunity to clarify that for purposes of the Section 332 shot clocks, attachment of facilities to existing structures constitutes collocation, regardless whether the structure or the location has previously been zoned for wireless facilities. As the Commission stated in the *2009 Declaratory Ruling*, "an application is a request for collocation if it does not involve a 'substantial increase in the size of a tower' as defined in the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas."[415] The definition of "[c]ollocation" in the NPA provides for the "mounting or installation of an antenna on an existing tower, *building or structure* for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, *whether or not there is an existing antenna on the structure.*"[416] The NPA's definition of collocation explicitly encompasses collocations on structures and buildings that have not yet been zoned for wireless use. To interpret the NPA any other way would be unduly narrow and there is no persuasive reason to accept a narrower interpretation. This is particularly true given that the NPA definition of collocation stands in direct contrast with the definition of collocation in the

[411] *Wireless Infrastructure Second R&O*, FCC 18-30 at paras. 74-76.

[412] New Orleans Comments at 2-3; Samsung Comments at 4-5 (arguing that the Commission should reduce the shot clock applicable to new construction from 150 days to 90 days); Crown Castle Comments at 29 (stating that a 90-day shot clock for new facilities is appropriate for macro cells and small cells alike, to the extent such applications require review under Section 332 at all); TX Hist. Comm. Comments at 2 (arguing that the reasonable periods of time that the FCC proposed in 2009, 90 days for collocation applications and 150 days for other applications appear to be appropriate); WIA Comments at 20-23; WIA Reply at 11 (arguing for a 90-day shot clock for applications involving substantial modifications, including tower extensions; and a 120-day shot clock for applications for all other facilities, including new macro sites); CTIA Reply at 3 (stating that the Commission should shorten the shot clocks to 90 days for new facilities).

[413] AT&T Comments at 10; AT&T Reply at 9; Verizon Reply at 32; WIA Comments at 22; ExteNet Comments at 9.

[414] Bellevue *et al.* Reply at 6-7 (arguing that the Commission has rejected this argument twice and instead determined that a collocation occurs when a wireless facility is attached to an existing infrastructure that houses wireless communications facilities; San Francisco Reply at 7-8 (arguing that under Commission definitions, a utility pole is neither an existing base station nor a tower; thus, the Commission simply cannot find that adding wireless facilities to utility pole that has not previously been used for wireless facilities is an eligible facilities request). *See, e.g.*, Letter from Bonnie Michael, City Council President, Worthington, OH, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 18, 2018); Letter from Jill Boudreau, Mayor, Mount Vernon, WA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 18, 2018).

[415] *2009 Declaratory Ruling*, 24 FCC Rcd at 14012, para 46.

[416] 47 CFR Part 1, App. B, NPA, Subsection C, Definitions.

Spectrum Act, pursuant to which facilities only fall within the scope of an "eligible facilities request" if they are attached to towers or base stations that have already been zoned for wireless use.[417]

4. When Shot Clocks Start and Incomplete Applications

141. In the *2014 Wireless Infrastructure Order*, the Commission clarified, among other things, that a shot clock begins to run when an application is first submitted, not when the application is deemed complete.[418] The clock can be paused, however, if the locality notifies the applicant within 30 days that the application is incomplete.[419] The locality may pause the clock again if it provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.[420] In the *Wireless Infrastructure NPRM/NOI*, the Commission sought comment on these determinations.[421] Localities contend that the shot clock period should not begin until the application is deemed complete.[422] Industry commenters argue that the review period for incompleteness should be decreased from 30 days to 15 days.[423]

142. With the limited exception described in the next paragraph, we find no cause or basis in the record to alter the Commission's prior determinations, and we now codify them in our rules. Codified rules, easily accessible to applicants and localities alike, should provide helpful clarity. The complaints by states and localities about the sufficiency of some of the applications they receive are adequately addressed by our current policy, particularly as amended below, which preserves the states' and localities' ability to pause review when they find an application to be incomplete.[424] We do not find it necessary at this point to shorten our 30-day initial review period for completeness because, as was the case when this review period was adopted in the *2009 Declaratory Ruling*, it remains consistent with review periods for completeness under existing state wireless infrastructure deployment statutes[425] and still "gives State and local governments sufficient time for reviewing applications for completeness, while protecting applicants

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[417] *See* 47 CFR § 1.40001(b)(3), (4), (5) (definitions of eligible facilities request, eligible support structure, and existing). Each of these definitions refers to facilities that have already been approved under local zoning or siting processes.

[418] *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12970, at para. 258.

[419] *2009 Declaratory Ruling*, 24 FCC Rcd at 14014, paras. 52-53 (providing that the "timeframes do not include the time that applicants take to respond to State and local governments' requests for additional information").

[420] *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12970, para. 259.

[421] *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3338, para. 20.

[422] *See, e.g.*, Maine DOT Comments at 2-3; Philadelphia Comments at 6; League of Az Cities and Towns *et al.* at 4, 8-9; Letter from Barbara Coler, Chair, Marin Telecommunications Agency, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 2 (filed Sept. 4, 2018) (Barbara Coler Sept. 4, 2018 *Ex Parte* Letter); Letter from Sam Liccardo, Mayor, San Jose, CA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al., at 5 (filed Sept. 18, 2018).

[423] Verizon Comments at 43. *See* Sprint June 18 *Ex Parte* at 2 (asserting that the shot clocks should begin to run when the application is complete and that a siting authority should review the application for completeness within the first 15 days of receipt or it would waive the right to object on that basis).

[424] *See, e.g.*, Barbara Coler Sept. 4, 2018 *Ex Parte* Letter at 2 (the pace of installation may be affected by incomplete applications); Kenneth S. Fellman Sept. 18, 2018 *Ex Parte* Letter at 3 (not uncommon to find documents not properly prepared and not in compliance with relevant regulations).

[425] Most states have a 30-day review period for incompleteness. *See, e.g.*, Colo. Rev. Stat. Ann. § 29-27-403; Ga. Code Ann. § 36-66B-5; Iowa Code Ann. § 8C.4; Kan. Stat. Ann. § 66-2019; Minn. Stat. Ann. § 237.163(3c)(b); 53 Pa. Stat. Ann. § 11702.4(b)(1); Cal. Gov't Code § 65943. A minority of states have adopted either a longer or shorter review period for incompleteness, ranging from 5 days to 45 days. *See* N.C. Gen. Stat. Ann. § 153A-349.53 (45 days); Wash. Rev. Code Ann. § 36.70B.070 (28 days); N.H. Rev. Stat. Ann. § 12-K:10 (15 days); Del. Code Ann. tit. 17, § 1609 (14 days); Va. Code Ann. §§ 15.2-2316.4; 56-484.28; 56-484.29 (10 days); Wis. Stat. Ann. § 66.0404(3) (5 days).

from a last minute decision that an application should be denied as incomplete."[426]

143. However, for applications to deploy Small Wireless Facilities, we implement a modified tolling system designed to help ensure that providers are submitting complete applications on day one. This step accounts for the fact that the shot clocks applicable to such applications are shorter than those established in the *2009 Declaratory Ruling* and, because of which, there may instances where the prevailing tolling rules would further shorten the shot clocks to such an extent that it might be impossible for siting authorities to act on the application.[427] For Small Wireless Facilities applications, the siting authority has 10 days from the submission of the application to determine whether the application is incomplete. The shot clock then resets once the applicant submits the supplemental information requested by the siting authority. Thus, for example, for an application to collocate Small Wireless Facilities, once the applicant submits the supplemental information in response to a siting authority's timely request, the shot clock resets, effectively giving the siting authority an additional 60 days to act on the Small Wireless Facilities collocation application. For subsequent determinations of incompleteness, the tolling rules that apply to non-Small Wireless Facilities would apply—that is, the shot clock would toll if the siting authority provides written notice within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information.

144. As noted above, multiple authorizations may be required before a deployment is allowed to move forward. For instance, a locality may require a zoning permit, a building permit, an electrical permit, a road closure permit, and an architectural or engineering permit for an applicant to place, construct, or modify its proposed personal wireless service facilities.[428] All of these permits are subject to Section 332's requirement to act within a reasonable period of time, and thus all are subject to the shot clocks we adopt or codify here.

145. We also find that mandatory pre-application procedures and requirements do not toll the shot clocks.[429] Industry commenters claim that some localities impose burdensome pre-application requirements before they will start the shot clock.[430] Localities counter that in many instances, applicants submit applications that are incomplete in material respects, that pre-application interactions smooth the application process, and that many of their pre-application requirements go to important health and safety matters.[431] We conclude that the ability to toll a shot clock when an application is found incomplete or by

[426] *2009 Declaratory Ruling*, 24 FCC Rcd at 14014-15, para. 53.

[427] *See, e.g.*, Geoffrey C. Beckwith Sept. 11, 2018 *Ex Parte* Letter at 1; Letter from Brad Cole, Executive Director, Illinois Municipal League, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 et al. at 1 (filed Sept. 14, 2018); Ronny Berdugo Sept. 18, 2018 *Ex Parte* Letter at 2.

[428] *See* Sprint June 18 *Ex Parte* at 3; *cf.* Virginia Joint Commenters Comments at 21-22; San Francisco Comments at 4-7, 12, 20-22; CTIA Comments at 15 ("The Commission should declare that the shot clocks apply to the entire local review process.").

[429] *Wireless Infrastructure NPRM/NOI*, 32 FCC Rcd at 3338, para. 20.

[430] *See, e.g.*, CCA Reply at 7 (noting also that some localities unreasonably request additional information after submission that is either already provided or of unreasonable scope); GCI Comments at 8-9; WIA Comments at 24; Crown Castle Comments at 21-22; CTIA Reply at 21; CIC Comments at 18; WIA Reply at 14; Conterra Comments at 2-3; Crown Castle Comments at 30-31; CTIA Comments at 15; ExteNet Comments at 4, 15-16; Mobilitie Comments at 6; T-Mobile Comments at 21-22; Verizon Comment at 42-43; AT&T Comments at 26.

[431] *See, e.g.*, Philadelphia Reply at 9 (arguing that shot clocks should not run until a complete application with a full set of engineering drawings showing the placement, size and weight of the equipment, and a fully detailed structural analysis is submitted, to assess the safety of proposed installations); Philadelphia Comments at 6; League of Az Cities and Towns *et al*. Comments at 4 (arguing that the shot clock should not begin until after an application has been "duly filed," because "some applicants believe the shot clock commences to run no matter how they submit their request, or how inadequate their submittal may be"); Colorado Comm. and Utility All. *et al*. Comments at 14 (explaining that the pre-application meetings are intended "to give prospective applicants an opportunity to discuss code and regulatory provisions with local government staff, and gain a better understanding of the process that will be followed, in order to increase the probability that once an application is filed, it can proceed smoothly to final decision"); Smart

mutual agreement by the applicant and the siting authority should be adequate to address these concerns. Much like a requirement to file applications one after another, requiring pre-application review would allow for a complete circumvention of the shot clocks by significantly delaying their start date. An application is not ruled on within "a reasonable period of time after the request is duly filed" if the state or locality takes the full ordinary review period after having delayed the filing in the first instance due to required pre-application review. Indeed, requiring a pre-application review before an application may be filed is similar to imposing a moratorium, which the Commission has made clear does not stop the shot clocks from running.[432] Therefore, we conclude that if an applicant proffers an application, but a state or locality refuses to accept it until a pre-application review has been completed,[433] the shot clock begins to run when the application is proffered. In other words, the request is "duly filed" at that time,[434] notwithstanding the locality's refusal to accept it.

146. That said, we encourage *voluntary* pre-application discussions, which may well be useful to both parties. The record indicates that such meetings can clarify key aspects of the application review process, especially with respect to large submissions or applicants new to a particular locality's processes, and may speed the pace of review.[435] To the extent that an applicant voluntarily engages in a pre-application review to smooth the way for its filing, the shot clock will begin when an application is filed, presumably after the pre-application review has concluded.

147. We also reiterate, consistent with the *2009 Declaratory Ruling*, that the remedies granted under Section 332(c)(7)(B)(v) are independent of, and in addition to, any remedies that may be available under state or local law.[436] Thus, where a state or locality has established its own shot clocks, an applicant may pursue any remedies granted under state or local law in cases where the siting authority fails to act within those shot clocks.[437] However, the applicant must wait until the Commission shot clock period has expired to bring suit for a "failure to act" under Section 332(c)(7)(B)(v).[438]

V. PROCEDURAL MATTERS

148. *Final Regulatory Flexibility Analysis*. With respect to this Third Report and Order, a Final Regulatory Flexibility Analysis (FRFA) is contained in Appendix C. As required by Section 603 of

(Continued from previous page)
Communities Comments at 15, 35 (pre-application procedures "may translate into faster consideration of individual applications over the longer term, as providers and communities alike, gain a better understanding of what is required of them, and providers submit applications that are tailored to community requirements"); UT Dept. of Trans. Comments at 5 ("The purpose of the pre-application access meeting is to help the entity or person with the application and provide information concerning the requirements contained in the rule."); CCUA *at al*. Reply at 6 ("[Pre-application meetings] provide an opportunity for informal discussion between prospective applicants and the local jurisdiction. Pre-application meetings serve to educate, answer questions, clarify process issues, and ultimately result in a more efficient process from application filing to final action."); AASHTO Comments, Attach. at 3 (GA Dept. of Trans. contending that pre-application procedures "should be encouraged and separated from an 'official' "application submittal"); League of Az Cities and Towns *et al*. Comments at 5-7 (providing examples of incomplete applications).

[432] *2014 Wireless Infrastructure Order*, 29 FCC Rcd at 12971, at para. 265.

[433] *See, e.g*., CCA Reply at 7; GCI Comments at 8-9; WIA Comments at 24; Crown Castle Comments at 21-22; CTIA Reply at 21; CIC Comments at 18; WIA Reply at 14; Conterra Comments at 2-3; Crown Castle Comments at 30-31; CTIA Comments at 15; ExteNet Comments at 4, 15-16; Mobilitie Comments at 6; T-Mobile Comments at 21-22; Verizon Comment at 42-43; AT&T Comments at 26.

[434] 47 U.S.C. § 332(c)(7)(B)(ii).

[435] *See* CCUA *et al*. Comments at 14; Smart Communities Comments at 15, 35; UT Dept. of Trans. Comments at 5; CCUA *et al*. Reply at 6; Mukilteo Reply, Docket No. WC 17-84, at 1 (filed July 10, 2017).

[436] *2009 Declaratory Ruling*, 24 FCC Rcd at 14013-14, para. 50.

[437] *2009 Declaratory Ruling*, 24 FCC Rcd at 14013-14, para. 50.

[438] 47 U.S.C. § 332(c)(7)(B)(v).

the Regulatory Flexibility Act, the Commission has prepared a FRFA of the expected impact on small entities of the requirements adopted in this Third Report and Order. The Commission will send a copy of the Third Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

149. *Paperwork Reduction Act*. This Third Report and Order does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

150. *Congressional Review Act*. The Commission will send a copy of this Declaratory Ruling and Third Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. § 801(a)(1)(A).

VI. ORDERING CLAUSES

151. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i)-(j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 157, 201, 253, 301, 303, 309, 319, 332, that this Declaratory Ruling and Third Report and Order in WT Docket No. 17-79 IS hereby ADOPTED.

152. IT IS FURTHER ORDERED that Part 1 of the Commission's Rules is AMENDED as set forth in Appendix A, and that these changes SHALL BE EFFECTIVE 90 days after publication in the Federal Register.

153. IT IS FURTHER ORDERED that this Third Report and Order SHALL BE effective 90 days after its publication in the Federal Register. The Declaratory Ruling and the obligations set forth therein ARE EFFECTIVE on the same day that this Third Report and Order becomes effective. It is our intention in adopting the foregoing Declaratory Ruling and these rule changes that, if any provision of the Declaratory Ruling or the rules, or the application thereof to any person or circumstance, is held to be unlawful, the remaining portions of such Declaratory Ruling and the rules not deemed unlawful, and the application of such Declaratory Ruling and the rules to other person or circumstances, shall remain in effect to the fullest extent permitted by law.

154. IT IS FURTHER ORDERED that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of this Declaratory Ruling and Third Report and Order will commence on the date that a summary of this Declaratory Ruling and Third Report and Order is published in the Federal Register.

155. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Declaratory Ruling and Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

156. IT IS FURTHER ORDERED that this Declaratory Ruling and Third Report and Order SHALL BE sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

Streamlining State and Local Review of Wireless Facility Siting Applications

Part 1—Practice and Procedure

1. Add subpart U to Part 1 of Title 47 to read as follows:

Subpart U—State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities

§ 1.6001 Purpose.

This subpart implements 47 U.S.C. 332(c)(7) and 1455.

§ 1.6002 Definitions.

Terms used in this subpart have the following meanings:

(a) *Action* or *to act* on a siting application means a siting authority's grant of a siting application or issuance of a written decision denying a siting application.

(b) *Antenna*, consistent with section 1.1320(d), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator, mobile station, or device authorized under part 15 of this title.

(c) *Antenna equipment*, consistent with section 1.1320(d), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

(d) *Antenna facility* means an antenna and associated antenna equipment.

(e) *Applicant* means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

(f) *Authorization* means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

(g) *Collocation*, consistent with section 1.1320(d) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, Appendix B of this part, section I.B, means—

(1) Mounting or installing an antenna facility on a pre-existing structure, and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

(3) The definition of "collocation" in paragraph (b)(2) of section 1.6100 applies to the term as used in that section.

(h) *Deployment* means placement, construction, or modification of a personal wireless service facility.

(i) *Facility* or *personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

(j) *Siting application* or *application* means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

(k) *Siting authority* means a State government, local government, or instrumentality of a State government or local government, including any official or organizational unit thereof, whose authorization is necessary prior to the deployment of personal wireless service facilities.

(l) *Small wireless facilities*, consistent with section 1.1312(e)(2), are facilities that meet each of the following conditions:

(1) The facilities—

(i) are mounted on structures 50 feet or less in height including their antennas as defined in section 1.1320(d), or

(ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or

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

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

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

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

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

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

(m) *Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

Terms not specifically defined in this section or elsewhere in this subpart have the meanings defined in Part 1 of Title 47 and the Communications Act of 1934, 47 U.S.C. 151 *et seq*.

§ 1.6003 Reasonable periods of time to act on siting applications

(a) *Timely action required.* A siting authority that fails to act on a siting application on or before the shot clock date for the application, as defined in paragraph (e) of this section, is presumed not to have acted within a reasonable period of time.

(b) *Shot clock period*. The shot clock period for a siting application is the sum of—

(1) the number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to paragraph (c) of this section, plus

(2) the number of days of the tolling period, if any, pursuant to paragraph (d) of this section.

(c) *Presumptively reasonable periods of time*.

(1) The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the categories set forth below:

(i) Review of an application to collocate a Small Wireless Facility using an existing structure: 60 days.

(ii) Review of an application to collocate a facility other than a Small Wireless Facility using an existing structure: 90 days.

(iii) Review of an application to deploy a Small Wireless Facility using a new structure: 90 days.

(iv) Review of an application to deploy a facility other than a Small Wireless Facility using a new structure: 150 days.

(2) *Batching*.

(i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either paragraph (c)(1)(i) or paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

(ii) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within paragraph (c)(1)(i) and deployments that fall within paragraph (c)(1)(iii) of this section, then the presumptively reasonable period of time for the application as a whole is 90 days.

(iii) Siting authorities may not refuse to accept applications under paragraphs (c)(2)(i) and (c)(2)(ii).

(d) *Tolling period*. Unless a written agreement between the applicant and the siting authority provides otherwise, the tolling period for an application (if any) is as set forth below.

(1) *For an initial application to deploy Small Wireless Facilities, if the siting authority notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and clearly and specifically identifies the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information,* the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the siting authority to render the application complete.

(2) *For all other initial applications,* the tolling period shall be the number of days from –

(i) The day after the date when the siting authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(2)(i) is effectuated on or before the 30th day after the date when the application was submitted; or

(3) *For resubmitted applications following a notice of deficiency*, the tolling period shall be the number of days from—

(i) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under paragraph (d)(1) or paragraph (d)(2) of this section, until

(ii) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete,

(iii) But only if the notice pursuant to paragraph (d)(3)(i) is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under paragraph (d)(1) or paragraph (d)(2) of this section.

(e) *Shot clock date*. The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to paragraph (b) of this section and including any pre-application period asserted by the siting authority; *provided*, that if the date calculated in this manner is a "holiday" as defined in section 1.4(e)(1) or a legal holiday within the relevant State or local jurisdiction, the shot clock date is the next business day after such date. The term "business day" means any day as defined in section 1.4(e)(2) and any day that is not a legal holiday as defined by the State or local jurisdiction.

3. Redesignate § 1.40001 as § 1.6100, remove and reserve paragraph (a) of newly redesignated § 1.6100, and revise paragraph (b)(7)(vi) of newly redesignated § 1.6100 by changing "1.40001(b)(7)(i)(iv)" to "1.6100(b)(7)(i)-(iv)."

4. Remove subpart CC.

APPENDIX B

Comments and Reply Comments

Comments

5G Americas
Aaron Rosenzweig
ACT | The App Association
Advisory Council on Historic Preservation
Advisors to the International EMF Scientist Appeal
African American Mayors Association
Agua Caliente Band of Cahuilla Indians Tribal Historic Preservation Office
Alaska Department of Transportation & Public Facilities
Alaska Native Health Board
Alaska Office of History and Archaeology
Alexandra Ansell
American Association of State Highway and Transportation Officials
American Bird Conservancy
American Cable Association
American Petroleum Institute
American Public Power Association
Angela Fox
Arctic Slope Regional Corporation
Arizona State Parks & Trails, State Historic Preservation Office
Arkansas SHPO
Arnold A. McMahon
Association of American Railroads
AT&T
B. Golomb
Bad River Band of Lake Superior Tribe of Chippewa Indians
Benjamin L. Yousef
BioInitiative Working Group
Blue Lake Rancheria
Board of County Road Commissioners of the County of Oakland
Bristol Bay Area Health Corporation
Cahuilla Band of Indians
California Office of Historic Preservation, Department of Parks and Recreation
California Public Utilities Commission
Cape Cod Bird Club, Inc.
Catawba Indian Nation Tribal Historic Preservation Office
Charter Communications, Inc.
Cheyenne River Sioux Tribe Cultural Preservation Office
Chickasaw Nation
Chippewa Cree Tribe
Choctaw Nation of Oklahoma
Chuck Matzker
Cindy Li
Cindy Russell
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee
Citizen Potawatomi Nation
Citizens Against Government Waste

City and County of San Francisco
City of Alexandria, Virginia; Arlington County, Virginia; and Henrico County, Virginia
City of Arlington, Texas
City of Austin, Texas
City of Bellevue, City of Bothell, City of Burien, City of Ellensburg, City of Gig Harbor, City of Kirkland, City of Mountlake Terrace, City of Mukilteo, City of Normandy Park, City of Puyallup, City of Redmond, and City of Walla Walla
City of Chicago
City of Claremont (Tony Ramos, City Manager)
City of Eden Prairie, MN
City of Houston
City of Irvine, California
City of Kenmore, Washington, and David Baker, Vice-Chair, National League of Cities Information Technology and Communications Committee
City of Lansing, Michigan
City of Mukilteo
City of New Orleans, Louisiana
City of New York
City of Philadelphia
City of Springfield, Oregon
Cityscape Consultants, Inc.
Coalition for American Heritage, Society for American Archaeology, American Cultural Resources Association, Society for Historical Archaeology, and American Anthropological Association
Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC), City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey Access Group (JAG), and Colorado Municipal League (CML)
Colorado River Indian Tribes
Colorado State Historic Preservation Office
Comcast Corporation
Commissioner Sal Pace, Pueblo Board of County Commissioners
Community Associations Institute
Competitive Carriers Association
CompTIA (The Computing Technology Industry Association)
Computer & Communications Industry Association (CCIA)
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Umatilla Indian Reservation Cultural Resources Protection Program
Consumer Technology Association
Conterra Broadband Services, Southern Light, LLC, and Uniti Group, Inc.
Critical Infrastructure Coalition
Crow Creek Sioux Tribe
Crown Castle
CTIA
CTIA and Wireless Infrastructure Association
David Roetman, Minnehaha County GOP Chairman
Defenders of Wildlife
Department of Arkansas Heritage (Arkansas Historic Preservation Program)
DuPage Mayors and Managers Conference
East Bay Municipal Utility District
Eastern Shawnee Tribe of Oklahoma
Edward Czelada
Elijah Mondy
Elizabeth Doonan

Ellen Marks
EMF Safety Network, Ecological Options Network
Environmental Health Trust
ExteNet Systems, Inc.
Fairfax County, Virginia
FibAire Communications, LLC d/b/a AireBeam
Florida Coalition of Local Governments
Fond du Lac Band of Lake Superior Chippewa
Forest County Potawatomi Community of Wisconsin
Fort Belknap Indian Community
Free State Foundation
General Communication, Inc.
Georgia Department of Transportation
Georgia Historic Preservation Division
Georgia Municipal Association, Inc.
Gila River Indian Community
Greywale Advisors
History Colorado (Colorado State Historic Preservation Office)
Hongwei Dong
Hualapai Department of Cultural Resources
Illinois Department of Transportation
Illinois Municipal League
INCOMPAS
Information Technology and Innovation Foundation
International Telecommunications Users Group
Jack Li
Jackie Cale
Jerry Day
Joel M. Moskowitz, Ph.D.
Jonathan Mirin
Joyce Barrett
Karen Li
Karen Spencer
Karon Gubbrud
Kate Kheel
Kaw Nation
Kevin Mottus
Keweenaw Bay Indian Community
Kialegee Tribal Town
League of Arizona Cities and Towns, League of California Cities, and League of Oregon Cities
League of Minnesota Cities
Leo Cashman
Lower Brule Sioux Tribe
Li Sun
Lightower Fiber Networks
Lisbeth Britt
Lower Brule Sioux Tribe
Maine Department of Transportation
Marty Feffer
Mary Whisenand, Iowa Governor's Commission on Community Action Agencies
Mashantucket (Western) Pequot Tribe
Mashpee Wampanoag Tribe

Matthew Goulet
Mayor Patrick Furey, City of Torrance, California
McLean Citizens Association
Miami Tribe of Oklahoma
Missouri State Historic Preservation Office
Mobile Future
Mobilitie, LLC
Mohegan Tribe of Indians of Connecticut
Montana State Historic Preservation Office
Monte R. Lee and Company
Muckleshoot Indian Tribe
Muscogee (Creek) Nation
National Association of Tower Erectors (NATE)
National Association of Tribal Historic Preservation Officers
National Black Caucus of State Legislators
National Conference of State Historic Preservation Officers
National Congress of American Indians
National Congress of American Indians, National Association of Tribal Historic Preservation Officers, and United South and Eastern Tribes Sovereignty Protection Fund
National Congress of American Indians and United South and Eastern Tribes Sovereignty Protection Fund
National League of Cities
National League of Cities, United States Conference of Mayors, International Municipal Lawyers Association, Government Finance Officers Association, National Association of Counties, National Association of Regional Councils, National Association of Towns and Townships, and National Association of Telecommunications Officers and Advisors
National Tribal Telecommunications Association
National Trust for Historic Preservation
Native Public Media
NATOA
Natural Resources Defense Council
Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission
Naveen Albert
NCTA—The Internet & Television Association
nepsa solutions LLC
New Mexico Department of Cultural Affairs, Historic Preservation Division
Nez Perce Tribe
Nina Beety
Nokia
North Carolina State Historic Preservation Office
Northern Cheyenne Tribal Historic Preservation Office
NTCA—The Rural Broadband Association
Office of Historic Preservation for the Mashantucket Pequot Tribal Nation of Connecticut
Ohio State Historic Preservation Office
Oklahoma History Center State Historic Preservation Office
Olemara Peters
Omaha Tribe of Nebraska
ONE Media, LLC
Oregon State Historic Preservation Office
Osage Nation
Otoe-Missouria Tribe
Pala Band of Mission Indians

Patrick Wronkiewicz
Pechanga Band of Luiseno Indians
Pennsylvania State Historic Preservation Office
Prairie Island Indian Community
PTA-FLA, Inc .
Pueblo of Laguna
Pueblo of Pojoaque
Pueblo of Tesuque
Puerto Rico State Historic Preservation Office
Quad Cities Cable Communications Commission
Quapaw Tribe of Oklahoma
R Street Institute
Rebecca Carol Smith
Red Cliff Band of Lake Superior Chippewa
Representative Tom Sloan, State of Kansas House of Representatives
Representatives Anna G. Eshoo, Frank Pallone, Jr., and Raul Ruiz, U.S. House of Representatives
Rhode Island Historical Preservation and Heritage Commission
Rosebud Sioux Tribe Tribal Historic Preservation Cultural Resource Management Office
Ronald M. Powell, Ph.D.
S. Quick
Sacred Wind Communications, Inc.
Samsung Electronics America, Inc.
Santa Clara Pueblo
Sault Ste. Marie Tribe of Chippewa Indians
SCAN NATOA, Inc.
Seminole Nation of Oklahoma
Seminole Tribe of Florida
Senator Duane Ankney, Montana State Senate
Shawnee Tribe
Sisseton Wahpeton Oyate
Skokomish Indian Tribe Tribal Historic Preservation Office
Skull Valley Band of Goshute
Smart Communities and Special Districts Coalition
Soula Culver
Sprint
Standing Rock Sioux Tribe
Starry, Inc.
State of Washington Department of Archaeology & Historic Preservation
Sue Present
Swinomish Indian Tribal Community
Table Mountain Rancheria Tribal Government Office
Tanana Chiefs Conference
Telecommunications Industry Association
Texas Department of Transportation
Texas Historical Commission
Thlopthlocco Tribal Town
T-Mobile USA, Inc.
Tonkawa Tribe of Oklahoma
Triangle Communication System, Inc.
Twenty-Nine Palms Band of Mission Indians
United Keetoowah Band of Cherokee Indians In Oklahoma
Utah Department of Transportation

Ute Mountain Ute Tribe
Utilities Technology Council
Verizon
Wampanoag Tribe of Gay Head (Aquinnah)
WEC Energy Group, Inc.
Wei Shen
Wei-Ching Lee, MD, California Medical Association Delegate of Los Angeles County
Winnebago Tribe of Nebraska
Wireless Infrastructure Association
Wireless Internet Service Providers Association
Xcel Energy Services Inc.

Reply Comments
Alaska State Historic Preservation Office
American Cable Association
American Public Power Association
Association of American Railroads
California Public Utilities Commission
Catherine Kleiber
Chippewa Cree Tribe
Cities of San Antonio, Texas; Eugene, Oregon; Bowie, Maryland; Huntsville, Alabama; and Knoxville, Tennessee
City of Baltimore, Maryland
City of New York
City of Philadelphia
Colorado Communications and Utility Alliance (CCUA), Rainier Communications Commission (RCC), City of Seattle, Washington, City of Tacoma, Washington, King County, Washington, Jersey Access Group (JAG), and Colorado Municipal League (CML)
Comcast Corporation
Communications Workers of America
Competitive Carriers Association
Consumer Technology Association
Conterra Broadband Services, Southern Light, LLC, and Uniti Group Inc.
Critical Infrastructure Coalition
CTIA
Dan Kleiber
Enterprise Wireless Alliance
Environmental Health Trust
ExteNet Systems, Inc.
Florida Coalition of Local Governments
Confederated Tribes of Grand Ronde Community of Oregon Historic Preservation Department
INCOMPAS
Irregulators
League of Arizona Cities and Towns, League of California Cities, and League of Oregon Cities
National Association of Regulatory Utility Commissioners
National Association of Telecommunications Officers and Advisors, National League of Cities, National Association of Towns and Townships, National Association of Regional Councils, United States Conference of Mayors, and Government Finance Officers Association
National Congress of American Indians, United South and Eastern Tribes Sovereignty Protection Fund, and National Association of Tribal Historic Preservation Officers
National Organization of Black Elected Legislative (NOBEL) Women
National Rural Electric Cooperative Association

Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission
NCTA—The Internet & Television Association
Pueblo of Acoma
Puerto Rico Telephone Company, Inc., d/b/a Claro
Quintillion Networks, LLC, and Quintillion Subsea Operations, LLC
Rebecca Carol Smith
SDN Communications
Skyway Towers, LLC
SmallCellSite.Com
Smart Communities and Special Districts Coalition
Sue Present
The Greenlining Institute
T-Mobile USA, Inc.
Triangle Communication System, Inc.
United States Conference of Mayors
Verizon
Washington, D.C. Office of the Chief Technology Officer
Wireless Internet Service Providers Association
Xcel Energy Services Inc.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*NPRM*), released in April 2017.[2] The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are addressed below in Section B. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for and Objectives of the Rules

2. In the *Third Report and Order*, the Commission continues its efforts to promote the timely buildout of wireless infrastructure across the country by eliminating regulatory impediments that unnecessarily delay bringing personal wireless services to consumers. The record shows that lengthy delays in approving siting applications by siting agencies has been a persistent problem.[4] With this in mind, the *Third Report and Order* establishes and codifies specific rules concerning the amount of time siting agencies may take to review and approve certain categories of wireless infrastructure siting applications. More specifically, the Commission addresses its Section 332 shot clock rules for infrastructure applications which will be presumed reasonable under the Communications Act. As an initial matter, the Commission establishes two new shot clocks for Small Wireless Facilities applications. For collocation of Small Wireless Facilities on preexisting structures, the Commission adopts a 60-day shot clock which applies to both individual and batched applications. For applications associated with Small Wireless Facilities new construction we adopt a 90-day shot clock for both individual and batched applications.[5] The Commission also codifies two existing Section 332 shot clocks for all other Non-Small Wireless Facilities that were established in the *2009 Declaratory Ruling* without codification.[6]These existing shot clocks require 90-days for processing of all other Non-Small Wireless Facilities collocation applications, and 150-days for processing of all other Non-Small Wireless Facilities applications other than collocations.

3. The *Third Report and Order* addresses other issues related to both the existing and new shot clocks. In particular we address the specific types of authorizations subject to the "Reasonable Period of Time" provisions of Section 332(c)(7)(B)(ii), finding that "any request for authorization to place, construct, or modify personal wireless service facilities" under Section 332(c)(7)(B)(ii) means all authorizations a locality may require, and to all aspects of and steps in the siting process, including license or franchise agreements to access ROW, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, aesthetic approvals, and other authorizations needed for deployment of personal wireless services infrastructure.[7] The Commission also addresses collocation on structures not previously zoned for wireless use,[8] when the four Section 332 shot clocks begin to run,[9]

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment*, Notice of Proposed Rulemaking, 32 FCC Rcd 3330 (2017).

[3] *See* 5 U.S.C. § 604.

[4] *See supra* paras. 23-9.

[5] *See supra* paras. 111-12.

[6] *See supra* paras. 138-39; *2009 Declaratory Ruling*.

[7] *See supra* paras. 132-37.

[8] *See supra* para. 140.

the impact of incomplete applications on our Section 332 shot clocks,[10] and how state imposed shot clocks remedies effect the Commission's Section 332 shot clocks remedies.[11]

4. The Commission discusses the appropriate judicial remedy that applicants may pursue in cases where a siting authority fails to act within the applicable shot clock period.[12] In those situations, applicants may commence an action in a court of competent jurisdiction alleging a violation of Section 332(c)(7)(B)(i)(II) and seek injunctive relief granting the application. Notwithstanding the availability of a judicial remedy if a shot clock deadline is missed, the Commission recognizes that the Section 332 time frames might not be met in exceptional circumstances and has refined its interpretation of the circumstances when a period of time longer than the relevant shot clock would nonetheless be a reasonable period of time for action by a siting agency.[13] In addition, a siting authority that is subject to a court action for missing an applicable shot clock deadline has the opportunity to demonstrate that the failure to act was reasonable under the circumstances and, therefore, did not materially limit or inhibit the applicant from introducing new services or improving existing services thereby rebutting the effective prohibition presumption.

5. The rules adopted in the *Third Report and Order* will accelerate the deployment of wireless infrastructure needed for the mobile wireless services of the future, while preserving the fundamental role of localities in this process. Under the Commission's new rules, localities will maintain control over the placement, construction and modification of personal wireless facilities, while at the same time the Commission's new process will streamline the review of wireless siting applications.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. Only one party—the Smart Communities and Special Districts Coalition—filed comments specifically addressing the rules and policies proposed in the IRFA. They argue that any shortening or alteration of the Commission's existing shot clocks or the adoption of a deemed granted remedy will adversely affect small local governments, special districts, property owners, small developers, and others by placing their siting applications behind wireless provider siting applications.[14] Subsequently, NATOA filed comments concerning the draft FRFA.[15] NATOA argues that the new shot clocks impose burdens on local governments and particularly those with limited resources. NATOA asserts that the new shot clocks will spur more deployment applications than localities currently process.

7. These arguments, however, fail to acknowledge that Section 332 shot clocks have been in place for years and reflect Congressional intent as seen in the statutory language of Section 332. The record in this proceeding demonstrates the need for, and reasonableness of, expediting the siting review of certain facility deployments.[16] More streamlined procedures are both reasonable and necessary to provide greater predictability. The current shot clocks do not reflect the evolution of the application review process and evidence that localities can complete reviews more quickly than was the case when the original shot clocks were adopted nine years ago. Localities have gained significant experience processing wireless siting applications and several jurisdictions already have in place laws that require

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[9] *See supra* paras. 141-46.

[10] *Id*.

[11] *See supra* para. 147.

[12] *See supra* paras. **Error! Reference source not found.**-131.

[13] *See supra* para. 127.

[14] Smart Communities Comments at 81; *see also* Letter from Gerard Lavery Lederer, Counsel, Smart Communities, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, *Ex Parte* Submission at 33 (filed Sept. 19, 2018).

[15] Letter from Nancy Werner, NATOA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 4-5 (filed Sept. 19, 2018).

[16] *See supra* para. 106.

applications to be processed in less time than the Commission's new shot clocks. With the passage of time, sitting agencies have become more efficient in processing siting applications and this, in turn, should reduce any economic burden the Commission's new shot clock provisions have on them.

8. The Commission has carefully considered the impact of its new shot clocks on siting authorities and has established shot clocks that take into consideration the nature and scope of siting requests by establishing shot clocks of different lengths of time that depend on the nature of the siting request at issue.[17] The length of these shot clocks is based in part on the need to ensure that local governments have ample time to take any steps needed to protect public safety and welfare and to process other pending utility applications.[18] Since local siting authorities have gained experience in processing siting requests in an expedited fashion, they should be able to comply with the Commission's new shot clocks.

9. The Commission has taken into consideration the concerns of the Smart Communities and Special Districts Coalition and NATOA. It has established shot clocks that will not favor wireless providers over other applicants with pending siting applications. Further, instead of adopting a deemed granted remedy that would grant a siting application when a shot clock lapses without a decision on the merits, the Commission provides guidance as to the appropriate judicial remedy that applicants may pursue and examples of exceptional circumstance where a siting authority may be justified in needing additional time to review a siting application then the applicable shot clock allows.[19] Under this approach, the applicant may seek injunctive relief as long as several minimum requirements are met. The siting authority, however, can rebut the presumptive reasonableness of the applicable shot clock under certain circumstances. The circumstances under which a sitting authority might have to do this will be rare. Under this carefully crafted approach, the interests of siting applicants, siting authorities, and citizens are protected.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

10. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[20]

11. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

12. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[21] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[22] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[23] A "small business

[17] *See supra* paras. 105-112.

[18] *Id*.

[19] *See supra* paras. 116-131.

[20] 5 U.S.C. § 604(a)(3).

[21] *See* 5 U.S.C. § 604(a)(3).

[22] 5 U.S.C. § 601(6).

[23] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an

concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[24]

13. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[25] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[26] These types of small businesses represent 99.9 percent of all businesses in the United States which translates to 28.8 million businesses.[27]

14. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[28] Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).[29]

15. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[30] U.S. Census Bureau data from the 2012 Census of Governments[31] indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[32] Of this number there were

(Continued from previous page)
agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[24] 15 U.S.C. § 632.

[25] *See* 5 U.S.C. § 601(3)-(6).

[26] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 1—What is a small business?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

[27] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

[28] 5 U.S.C. § 601(4).

[29] Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than $100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of $50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of $100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. *See* http://nccs.urban.org/sites/all/nccs-archive/html//tablewiz/tw.php where the report showing this data can be generated by selecting the following data fields: Report: "The Number and Finances of All Registered 501(c) Nonprofits"; Show: "Registered Nonprofits"; By: "Total Revenue Level (years 1995, Aug to 2016, Aug)"; and For: "2016, Aug" then selecting "Show Results".

[30] 5 U.S.C. § 601(5).

[31] *See* 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Program Description Census of Government *https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#.*

[32] *See* U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

37, 132 General purpose governments (county[33], municipal and town or township[34]) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts[35] and special districts[36]) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.[37] Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."[38].

16. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.[39] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[40] For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.[41] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[42] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications

[33] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01. There were 2,114 county governments with populations less than 50,000.

[34] *See* U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States—States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

[35] *See* U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. There were 12,184 independent school districts with enrollment populations less than 50,000.

[36] *See* U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01. The U.S. Census Bureau data did not provide a population breakout for special district governments.

[37] *See* U.S. Census Bureau, 2012 Census of Governments, **C**ounty Governments by Population-Size Group and State: 2012 - United States-States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

[38] *Id.*

[39] U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Carriers (Except Satellite)," *See* https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&typib&id=ib.en./ECN.NAICS2012.517210.

[40] 13 CFR § 121.201, NAICS Code 517210.

[41] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5*, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[42] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

carriers (except satellite) are small entities.

17. The Commission's own data—available in its Universal Licensing System—indicate that, as of May 17, 2018, there are 264 Cellular licensees that will be affected by our actions.[43] The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.[44] Of this total, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[45] Thus, using available data, we estimate that the majority of wireless firms can be considered small.

18. *Personal Radio Services.* Personal radio services provide short-range, low-power radio for personal communications, radio signaling, and business communications not provided for in other services. Personal radio services include services operating in spectrum licensed under Part 95 of our rules.[46] These services include Citizen Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service.[47] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. All such entities in this category are wireless, therefore we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which the SBA's small entity size standard is defined as those entities employing 1,500 or fewer persons.[48] For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.[49] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[50] Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. We note however that many of the licensees in this category are individuals and not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities that may be affected by our actions in this proceeding.

19. *Public Safety Radio Licensees.* Public Safety Radio Pool licensees as a general matter, include police, fire, local government, forestry conservation, highway maintenance, and emergency

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[43] *See* http://wireless.fcc.gov/uls. For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

[44] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[45] *See id*.

[46] 47 CFR Part 90.

[47] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR Part 95.

[48] 13 CFR § 121.201, NAICS Code 517312.

[49] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5*, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[50] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

medical services.[51] Because of the vast array of public safety licensees, the Commission has not developed a small business size standard specifically applicable to public safety licensees. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engaged in radiotelephone communications. The appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees. [52] For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.[53] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[54] Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. With respect to local governments, in particular, since many governmental entities comprise the licensees for these services, we include under public safety services the number of government entities affected. According to Commission records, there are a total of approximately 133,870 licenses within these services.[55] There are 3,121 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of March 29, 2017.[56] We estimate that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

20. *Private Land Mobile Radio Licensees*. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) which encompasses business entities engag*ed in radiotelephone communications.*[57] The appropriate size standard for this category under SBA rules is that such a business

[51] *See* subparts A and B of Part 90 of the Commission's Rules, 47 CFR §§ 90.1-90.22. Police licensees serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees are comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include state, county, or municipal entities that use radio for official purposes. State departments of conservation and private forest organizations comprise forestry service licensees that set up communications networks among fire lookout towers and ground crews. State and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Additional licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

[52] *See* 13 CFR § 121.201, NAICS Code 517210.

[53] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[54] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[55] This figure was derived from Commission licensing records as of June 27, 2008. Licensing numbers change daily. We do not expect this number to be significantly smaller as of the date of this order. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of public safety licensees that have less than 1,500 employees.

[56] Based on an FCC Universal Licensing System search of March 29, 2017. Search parameters: Radio Service = PA—Public Safety 4940-4990 MHz Band; Authorization Type = Regular; Status = Active.

[57] U.S. Census Bureau, 2012 NAICS Definitions, "517210 Wireless Telecommunications Carriers (Except Satellite)," *See* https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210 (last visited Mar. 6, 2018).

is small if it has 1,500 or fewer employees.[58] For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.[59] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[60] Thus under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

21. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users.[61] Of this number there are a total of 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz, which is the range affected by the *Third Report and Order*.[62] The Commission does not require PLMR licensees to disclose information about number of employees, and does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission however believes that a substantial number of PLMR licensees may be small entities despite the lack of specific information.

22. *Multiple Address Systems***.** Entities using Multiple Address Systems (MAS) spectrum, in general, fall into two categories: (1) those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, Profit-based Spectrum use, the size standards established by the Commission define "small entity" for MAS licensees as an entity that has average annual gross revenues of less than $15 million over the three previous calendar years.[63] A "Very small business" is defined as an entity that, together with its affiliates, has average annual gross revenues of not more than $3 million over the preceding three calendar years.[64] The SBA has approved these definitions.[65] The majority of MAS operators are licensed in bands where the Commission has implemented a geographic area licensing approach that requires the use of competitive bidding procedures to resolve mutually exclusive applications.

23. The Commission's licensing database indicates that, as of April 16, 2010, there were a total of 11,653 site-based MAS station authorizations. Of these, 58 authorizations were associated with common carrier service. In addition, the Commission's licensing database indicates that, as of April 16, 2010, there were a total of 3,330 Economic Area market area MAS authorizations. The Commission's licensing database also indicates that, as of April 16, 2010, of the 11,653 total MAS station authorizations, 10,773 authorizations were for private radio service. In 2001, an auction for 5,104 MAS

[58] *See* 13 CFR § 121.201, NAICS Code 517210.

[59] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[60] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[61] This figure was derived from Commission licensing records as of September 19, 2016. Licensing numbers change on a daily basis. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of PLMR licensees that have fewer than 1,500 employees.

[62] This figure was derived from Commission licensing records as of August 16, 2013. Licensing numbers change daily. We do not expect this number to be significantly smaller as of the date of this order. This does not indicate the number of licensees, as licensees may hold multiple licenses. There is no information currently available about the number of licensees that have fewer than 1,500 employees.

[63] *See Amendment of the Commission's Rules Regarding Multiple Address Systems*, Report and Order, 15 FCC Rcd 11956, 12008 para. 123 (2000).

[64] *Id*.

[65] *See* Letter from Aida Alvarez, Administrator, Small Business Administration, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (June 4, 1999).

licenses in 176 EAs was conducted.[66] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

24. With respect to the second category, Internal Private Spectrum use consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the definition developed by the SBA would be more appropriate than the Commission's definition. The closest applicable definition of a small entity is the "Wireless Telecommunications Carriers (except Satellite)" definition under the SBA rules.[67] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[68] For this category, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.[69] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[70] Thus under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by our action can be considered small.

25. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high-speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[71]

26. *BRS* - In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[72] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent

[66] *See Multiple Address Systems Spectrum Auction Closes*, Public Notice, 16 FCC Rcd 21011 (2001).

[67] 13 CFR § 121.201, NAICS Code 517210.

[68] *Id*.

[69] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[70] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[71] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[72] 47 CFR § 21.961(b)(1).

BRS licensees do not meet the small business size standard).[73] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

27. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[74] The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.[75] Auction 86 concluded in 2009 with the sale of 61 licenses.[76] Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

28. *EBS* - The Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.[77] The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees.[78] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[79] Of this total, 3,083 operated with fewer than 1,000 employees.[80] Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census Bureau data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational

[73] 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard of 1500 or fewer employees.

[74] *Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86*, Public Notice, 24 FCC Rcd 8277 (2009).

[75] *Id.* at 8296 para. 73.

[76] *Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period*, Public Notice, 24 FCC Rcd 13572 (2009).

[77] U.S. Census Bureau, 2017 NAICS Definitions, "517311 Wired Telecommunications Carriers,", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2017.

[78] *See* 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICs code as 517311 for Wired Telecommunications Carriers. *See*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[79] *See* U.S. Census Bureau, *2012 Economic Census of the United States,* Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

[80] *Id.*

institutions and school districts, which are by statute defined as small businesses.[81]

29. *Location and Monitoring Service (LMS)*. LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined a "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $15 million.[82] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not to exceed $3 million.[83] These definitions have been approved by the SBA.[84] An auction for LMS licenses commenced on February 23, 1999 and closed on March 5, 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

30. *Television Broadcasting*. This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound."[85] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[86] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: those having $38.5 million or less in annual receipts.[87] The 2012 Economic Census reports that 751 firms in this category operated in that year.[88] Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more.[89] Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

31. The Commission has estimated the number of licensed commercial television stations to be 1,377.[90] Of this total, 1,258 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 384.[91] Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how

[81] The term "small entity" within SBREFA applies to small organizations (non-profits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6).

[82] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, Second Report and Order, 13 FCC Rcd 15182, 15192 para. 20 (1998); *see also* 47 CFR § 90.1103.

[83] *Id*.

[84] *See* Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Feb. 22, 1999).

[85] U.S. Census Bureau, 2017 NAICS Definitions, "515120 Television Broadcasting," https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515120&search=2017+NAICS+Search&search=2017.

[86] *Id*.

[87] 13 CFR § 121.201; 2012 NAICS Code 515120.

[88] U.S. Census Bureau, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515120 Television Broadcasting). https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515120.

[89] *Id*.

[90] *Broadcast Station Totals as of* June 30, 2018, Press Release (MB, rel. Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals Press Release), https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf.

[91] *Id*.

many such stations would qualify as small entities. There are also 2,300 low power television stations, including Class A stations (LPTV) and 3,681 TV translator stations.[92] Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

32. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included.[93] Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

33. *Radio Stations.* This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources."[94] The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts.[95] Economic Census data for 2012 show that 2,849 radio station firms operated during that year.[96] Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more.[97] Therefore, based on the SBA's size standard the majority of such entities are small entities.

34. According to Commission staff review of the BIA/Kelsey, LLC's Publications, Inc. Media Access Pro Radio Database (BIA) as of January 2018, about 11,261 (or about 99.92 percent) of 11,270 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition.[98] The Commission has estimated the number of licensed commercial AM radio stations to be 4,633 stations and the number of commercial FM radio stations to be 6,738, for a total number of 11,371.[99] We note, that the Commission has also estimated the number of licensed NCE radio stations to be 4,128.[100] Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

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[92] *Id.*

[93] *See* 13 CFR § 21.103(a)(1) "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both."

[94] U.S. Census Bureau, 2017 NAICS Definitions, "515112 Radio Stations," https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017.

[95] 13 CFR § 121.201, NAICS Code 515112.

[96] U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* NAICS Code 515112, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515112.

[97] *Id.*

[98] BIA/Kelsey, MEDIA Access Pro Database (viewed Jan. 26, 2018).

[99] Broadcast Station Totals as of June 30, 2018, Press Release (MB Jul. 3, 2018) (June 30, 2018 Broadcast Station Totals), https://docs.fcc.gov/public/attachments/DOC-352168A1.pdf.

[100] *Id.*

35. We also note, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included.[101] The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a "small business," an entity may not be dominant in its field of operation.[102] We further note, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

36. *FM Translator Stations and Low Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICS Code as licensees of radio stations.[103] This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public.[104] Programming may originate in their own studio, from an affiliated network, or from external sources.[105] The SBA has established a small business size standard which consists of all radio stations whose annual receipts are $38.5 million dollars or less.[106] U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year.[107] Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more.[108] Therefore, based on the SBA's size standard, we conclude that the majority of FM Translator Stations and Low Power FM Stations are small.

37. *Multichannel Video Distribution and Data Service (MVDDS)*. MVDDS is a terrestrial fixed microwave service operating in the 12.2-12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[109] These definitions were approved by the SBA.[110] On January 27, 2004, the Commission

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[101] 13 CFR § 121.103(a)(1). "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both."

[102] 13 CFR § 121.102(b).

[103] *See*, U.S. Census Bureau, 2017 NAICS Definitions, "515112 Radio Stations," https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515112&search=2017+NAICS+Search&search=2017.

[104] *Id.*

[105] *Id*.

[106] 13 CFR § 121.201, NAICS code 515112.

[107] U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ4, *Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* NAICS Code 515112, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515112.

[108] *Id.*

[109] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers,*

completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[111] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[112]

38. *Satellite Telecommunications.* This category comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[113] Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules.[114] For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year.[115] Of this total, 299 firms had annual receipts of less than $25 million.[116] Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

39. *All Other Telecommunications.* The **"**All Other Telecommunications" category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[117] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[118] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[119] The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of $32.5 million or less.[120] For this category, U.S. Census data for 2012 show that there

(Continued from previous page)
Ltd. to Provide A Fixed Service in the 12.2–12.7 GHz Band, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

[110] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (Feb. 13, 2002).

[111] *See* "*Multichannel Video Distribution and Data Service Spectrum Auction Closes; Winning Bidders Announced*," Public Notice, 19 FCC Rcd 1834 (2004).

[112] *See* "*Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63*," Public Notice, 20 FCC Rcd 19807 (2005).

[113] U.S. Census Bureau, 2017 NAICS Definitions, "517410 Satellite Telecommunications," https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017.

[114] 13 CFR § 121.201, NAICS Code 517410.

[115] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS Code 517410, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517410.

[116] *Id.*

[117] *See* U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code "517919 All Other Telecommunications", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017.

[118] *Id.*

[119] *Id*.

[120] 13 CFR § 121.201, NAICS Code 517919.

were 1,442 firms that operated for the entire year.[121] Of these firms, a total of 1,400 had gross annual receipts of less than $25 million and 42 firms had annual receipts of $25 million to $49, 999,999.[122] Thus, a majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

40. *Fixed Microwave Services*. Microwave services include common carrier,[123] private-operational fixed,[124] and broadcast auxiliary radio services.[125] They also include the Local Multipoint Distribution Service (LMDS),[126] the Digital Electronic Message Service (DEMS),[127] the 39 GHz Service (39 GHz),[128] the 24 GHz Service,[129] and the Millimeter Wave Service[130] where licensees can choose between common carrier and non-common carrier status.[131] At present, there are approximately 66,680 common carrier fixed licensees, 69,360 private and public safety operational-fixed licensees, 20,150 broadcast auxiliary radio licensees, 411 LMDS licenses, 33 24 GHz DEMS licenses, 777 39 GHz licenses, and five 24 GHz licenses, and 467 Millimeter Wave licenses in the microwave services.[132] The Commission has not yet defined a small business size standard for microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.[133] U.S. Census Bureau data for 2012, show that there were 967 firms in this category that operated for the entire year.[134] Of this total, 955 had employment of 999 or fewer, and 12 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

41. The Commission notes that the number of firms does not necessarily track the number of

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[121] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012*, NAICS code 517919, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919.

[122] *Id*.

[123] *See* 47 CFR Part 101, Subpart I.

[124] Persons eligible under parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[125] *See* 47 CFR Parts 74, 78 (governing Auxiliary Microwave Service) Available to licensees of broadcast stations, cable operators, and to broadcast and cable network entities. Auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes TV pickup and CARS pickup, which relay signals from a remote location back to the studio.

[126] *See* 47 CFR §§ 101, 1001-101, 1017.

[127] *See* 47 CFR §§ 101, 101.501-101.538.

[128] *See* 47 CFR Part 101, Subpart N (reserved for Competitive bidding procedures for the 38.6-40 GHz Band).

[129] *See id.*

[130] *See* 47 CFR §§ 101, 101.1501-101.1527.

[131] *See* 47 CFR §§ 101.533, 101.1017.

[132] These statistics are based on a review of the Universal Licensing System on September 22, 2015.

[133] 13 CFR § 121.201.

[134] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, *Information: Subject Series, "Estab and Firm Size: Employment Size of Firms for the U.S.: 2012* NAICS Code 517210, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

licensees. The Commission also notes that it does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. The Commission estimates however, that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

42. *Non-Licensee Owners of Towers and Other Infrastructure*. Although at one time most communications towers were owned by the licensee using the tower to provide communications service, many towers are now owned by third-party businesses that do not provide communications services themselves but lease space on their towers to other companies that provide communications services. The Commission's rules require that any entity, including a non-licensee, proposing to construct a tower over 200 feet in height or within the glide slope of an airport must register the tower with the Commission's Antenna Structure Registration ("ASR") system and comply with applicable rules regarding review for impact on the environment and historic properties.

43. As of March 1, 2017, the ASR database includes approximately 122,157 registration records reflecting a "Constructed" status and 13,987 registration records reflecting a "Granted, Not Constructed" status. These figures include both towers registered to licensees and towers registered to non-licensee tower owners. The Commission does not keep information from which we can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers.[135] Regarding towers that do not require ASR registration, we do not collect information as to the number of such towers in use and therefore cannot estimate the number of tower owners that would be subject to the rules on which we seek comment. Moreover, the SBA has not developed a size standard for small businesses in the category "Tower Owners." Therefore, we are unable to determine the number of non-licensee tower owners that are small entities. We believe, however, that when all entities owning 10 or fewer towers and leasing space for collocation are included, non-licensee tower owners number in the thousands. In addition, there may be other non-licensee owners of other wireless infrastructure, including Distributed Antenna Systems (DAS) and small cells that might be affected by the measures on which we seek comment. We do not have any basis for estimating the number of such non-licensee owners that are small entities.

44. The closest applicable SBA category is All Other Telecommunications, and the appropriate size standard consists of all such firms with gross annual receipts of $32.5 million or less.[136] For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year.[137] Of these firms, a total of 1,400 had gross annual receipts of less than $25 million and 15 firms had annual receipts of $25 million to $49, 999,999.[138] Thus, under this SBA size standard a majority of the firms potentially affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

45. The *Third Report and Order* does not establish any reporting, recordkeeping, or other

[135] We note, however, that approximately 13,000 towers are registered to 10 cellular carriers with 1,000 or more employees.

[136] 13 CFR § 121.201, NAICS Code 517919.

[137] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012,* NAICS code 517919, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517919.

[138] *Id*.

compliance requirements for companies involved in wireless infrastructure deployment.[139] In addition to not adopting any reporting, recordkeeping or other compliance requirements, the Commission takes significant steps to reduce regulatory impediments to infrastructure deployment and, therefore, to spur the growth of personal wireless services. Under the Commission's approach, small entities as well as large companies will be assured that their deployment requests will be acted upon within a reasonable period of time and, if their applications are not addressed within the established time frames, applicants may seek injunctive relief granting their siting applications. The Commission, therefore, has taken concrete steps to relieve companies of all sizes of uncertainly and has eliminated unnecessary delays.

46. The *Third Report and Order* also does not impose any reporting or recordkeeping requirements on state and local governments. While some commenters argue that additional shot clock classifications would make the siting process needlessly complex without any proven benefits, the Commission concludes that any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process.[140] The Commission's actions are consistent with the statutory language of Section 332 and therefore reflect Congressional intent. Further, siting agencies have become more efficient in processing siting applications and will be able to take advantage of these efficiencies in meeting the new shot clocks. As a result, the additional shot clocks that the Commission adopts will foster the deployment of the latest wireless technology and serve consumer interests.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[141]

48. The steps taken by the Commission in the *Third Report and Order* eliminate regulatory burdens for small entities as well as large companies that are involved with the deployment of person wireless services infrastructure. By establishing shot clocks and guidance on injunctive relief for personal wireless services infrastructure deployments, the Commission has standardized and streamlined the permitting process. These changes will significantly minimize the economic burden of the siting process on all entities, including small entities, involved in deploying personal wireless services infrastructure. The record shows that permitting delays imposes significant economic and financial burdens on companies with pending wireless infrastructure permits. Eliminating permitting delays will remove the associated cost burdens and enabling significant public interest benefits by speeding up the deployment of personal wireless services and infrastructure. In addition, siting agencies will be able to utilize the efficiencies that they have gained over the years processing siting applications to minimize financial impacts.

49. The Commission considered but did not adopt proposals by commenters to issue "Best Practices" or "Recommended Practices,"[142] and to develop an informal dispute resolution process and

[139] *See supra* para. 144.

[140] *See supra* para. 110.

[141] 5 U.S.C. § 603(c)(1)-(4).

[142] KS Rep. Sloan Comments at 2; Nokia Comments at 10.

mediation program, [143] noting that the steps taken in the *Third Report and Order* address the concerns underlying these proposals to facilitate cooperation between parties to reach mutually agreed upon solutions.[144] The Commission anticipates that the changes it has made to the permitting process will provide significant efficiencies in the deployment of personal wireless services facilities and this in turn will benefit all companies, but particularly small entities, that may not have the resources and economies of scale of larger entities to navigate the permitting process. By adopting these changes, the Commission will continue to fulfill its statutory responsibilities, while reducing the burden on small entities by removing unnecessary impediments to the rapid deployment of personal wireless services facilities and infrastructure across the country.

Report to Congress

50. The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[145] In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Report and Order* and FRFA (or summaries thereof) also will be published in the *Federal Register*. [146]

[143] NATOA *et al*. Comments at 16-17.

[144] *See supra* para. 131.

[145] 5 U.S.C. § 801(a)(1)(A).

[146] 5 U.S.C. § 604(b).

STATEMENT OF
CHAIRMAN AJIT PAI

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* WT Docket No. 17-79*; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Docket No. 17-84

Perhaps the defining characteristic of the communications sector over the past decade is that the world is going wireless. The smartphone's introduction in 2007 may have seemed an interesting novelty to some at the time, but it was a precursor of a transformative change in how consumers access and use the Internet. 4G LTE was a key driver in that change.

Today, a new transition is at hand as we enter the era of 5G. At the FCC, we're working hard to ensure that the United States leads the world in developing this next generation of wireless connectivity so that American consumers and our nation's economy enjoy the immense benefits that 5G will bring.

Spectrum policy of course features prominently in our 5G strategy. We're pushing a lot more spectrum into the commercial marketplace. On November 14, for example, our 28 GHz band spectrum auction will begin, and after it ends, our 24 GHz band spectrum auction will start. And in 2019, we plan to auction off three additional spectrum bands.

But all the spectrum in the world won't matter if we don't have the infrastructure needed to carry 5G traffic. New physical infrastructure is vital for success here. That's because 5G networks will depend less on a few large towers and more on numerous small cell deployments—deployments that for the most part don't exist today.

But installing small cells isn't easy, too often because of regulations. There are layers of (sometimes unnecessary and unreasonable) rules that can prevent widespread deployment. At the federal level, we acted earlier this year to modernize our regulations and make our own review process for wireless infrastructure 5G fast. And many states and localities have similarly taken positive steps to reform their own laws and increase the likelihood that their citizens will be able to benefit from 5G networks.

But as this *Order* makes clear, there are outliers that are unreasonably standing in the way of wireless infrastructure deployment. So today, we address regulatory barriers at the local level that are inconsistent with federal law. For instance, big-city taxes on 5G slow down deployment there and also jeopardize the construction of 5G networks in suburbs and rural America. So today, we find that all fees must be non-discriminatory and cost-based. And when a municipality fails to act promptly on applications, it can slow down deployment in many other localities. So we mandate shot clocks for local government review of small wireless infrastructure deployments.

I commend Commissioner Carr for his leadership in developing this *Order*. He worked closely with many state and local officials to understand their needs and to study the policies that have worked at the state and local level. It should therefore come as no surprise that this *Order* has won significant support from mayors, local officials, and state legislators.

To be sure, there are some local governments that don't like this *Order*. They would like to continue extracting as much money as possible in fees from the private sector and forcing companies to navigate a maze of regulatory hurdles in order to deploy wireless infrastructure. But these actions are not only unlawful, they're also short-sighted. They slow the construction of 5G networks and will delay if not prevent the benefits of 5G from reaching American consumers. And let's also be clear about one thing: When you raise the cost of deploying wireless infrastructure, it is those who live in areas where the

investment case is the most marginal—rural areas or lower-income urban areas—who are most at risk of losing out. And I don't want 5G to widen the digital divide; I want 5G to help close that divide.

In conclusion, I'd like to again thank Commissioner Carr for leading this effort and his staff for their diligent work. And I'm grateful to the hardworking staff across the agency who have put many hours into this *Order*. In particular, thanks to Jonathan Campbell, Stacy Ferraro, Garnet Hanly, Leon Jackler, Eli Johnson, Jonathan Lechter, Kate Matraves, Betsy McIntyre, Darrel Pae, Jennifer Salhus, Dana Shaffer, Jiaming Shang, David Sieradzki, Michael Smith, Don Stockdale, Cecilia Sulhoff, Patrick Sun, Suzanne Tetreault, and Joseph Wyer from the Wireless Telecommunications Bureau; Matt Collins, Adam Copeland, Dan Kahn, Deborah Salons, and John Visclosky from the Wireline Competition Bureau; Chana Wilkerson from the Office of Communications Business Opportunities; and Ashley Boizelle, David Horowitz, Tom Johnson, Marcus Maher, Bill Richardson, and Anjali Singh from the Office of General Counsel.

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* WT Docket No. 17-79*; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Docket No. 17-84

I enthusiastically support the intent of today's item and the vast majority of its content, as it will lower the barriers that some localities place to infrastructure siting. By tackling exorbitant fees, ridiculous practices, and prolonged delays, we are taking the necessary steps to expedite deployment and make it more cost efficient. Collectively, these provisions will help facilitate the deployment of 5G and enable providers to expand services throughout our nation, with ultimate beneficiaries being the American people.

While this is a tremendous step in the right direction, there are some things that could have been done to improve the situation further. For instance, the agreement reached by all parties in the 1996 Telecommunications Act was that states and localities would have no role over radio frequency emission issues, could not regulate based on the aesthetics of towers and antennas, and were prohibited from imposing any moratoriums on processing wireless siting applications. State and localities did not honor this agreement and the courts have sadly enabled their efforts via harmful and wrongly decided cases. Accordingly, I would have preferred that the aesthetics related provisions in the item be deleted, but I will have to swallow it recognizing that I can't get the rest without it. At the very least, I do appreciate that, at my request, it was clarified that the aesthetic requirements, which must be published in advance, must be objective.

I am also concerned that by setting application and recurring fees that are presumed to be reasonable, the Commission is inviting localities to adopt these rates, even if they are not cost based. Providers should be explicitly provided the right to challenge these rates if they believe they are not cost based. Even if not stated, I hope that providers will challenge unreasonable rates. I thank my colleagues for agreeing to my edits that the application fee presumption applies to all non-recurring costs, not just the application fee.

Further, I think there should be a process and standards in place if a locality decides that it needs more time to review batched applications. Objective criteria are needed regarding what are considered "exceptional circumstances" or "exceptional cases" warranting a longer review period for batch processing, when localities need to inform the applicant that they need more time, how this notification will occur, and how much time they will get. For instance, the item appears to excuse a locality that does not act within the shot clocks for any application if there are "extraordinary circumstances," but there are no parameters on what circumstances we are envisioning. Is a lack of adequate staff or having processing rules or policies in place a sufficient excuse? Such things should be determined upfront, as opposed to allowing courts to decide such matters. Without further clarity, I fear that we may be creating unnecessary loopholes, resulting in further delay.

Finally, I would have liked today's item to be broader and cover the remaining infrastructure issues in the record. First, the Commission's new interpretation of sections 253 and 332 applies beyond small cells. While our focus has been on these newer technologies, there needs to be a recognition that macro towers will continue to play a crucial role in wireless networks. One tower provider states that "[m]acro cell sites will continue to be a central component of wireless infrastructure . . . ," because 80 [percent] of the population lives in suburban or rural areas where "macro sites are the most efficient way

to transmit wireless signals."[1] Further, many of the interpretations in today's item apply not only to these macro towers, but also to other telecommunications services, including those provided by traditional wireline carriers and potentially cable companies.

Second, the Commission needs to close loopholes in section 6409 that some localities have been exploiting. While these rules pertaining to the modification of existing structures are clear, some localities are trying to undermine Congress's intent and our actions. For instance, localities are refusing ancillary permissions, such as building or highway permits, to slow down or prevent siting; using the localities' concealment and aesthetic additions to increase the size of the facility or requiring that poles be replaced with stealth infrastructure for the purpose of excluding facilities from section 6409; placing improper conditions on permits; and forcing providers to sign agreements that waive their rights under section 6409. And, I have been told that some are claiming that section 6409 does not apply to their siting processes. This must stop. I appreciate the Chairman's firm commitment to my request for an additional item to address such matters, and I expect that it will be coming in the very near future.

Third, there is a need to harmonize our rules regarding compound expansion. Currently, an entity seeking to replace a structure is allowed to expand the facility's footprint by 30 feet, but if the same entity seeks to expand the tower area to hold new equipment associated with a collocation, a new review is needed. It doesn't make sense that these situations are treated differently. And while we are at it, the Commission should also harmonize its shot clocks and remedies. These issues should also be added to any future item.

Lastly, the Commission also must finish its review of the comments filed in response to the twilight towers notice, make the revisions to the program comment, and submit it to Advisory Council on Historic Preservation for their review and vote. These towers are eligible, yet not permitted, to hold an estimated 6,500 collocations that will be needed for next-generation services and FirstNet. It is time to bring this embarrassment, which started in 2001, to an end.

Not only do I thank the Chairman for agreeing to additional infrastructure items, but I also thank the Chairman and Commissioner Carr for implementing several of my edits to the item today. Besides those already mentioned, they include applying the aesthetic criteria, including that any requirements must be reasonable, objective, and published in advance, to undergrounding; stating that undergrounding requirements that apply to some, but not all facilities, will be considered an effective prohibition if they materially inhibit wireless service; and adding similar language to the minimum spacing section of the item. Further, the minimum spacing requirements will not apply to replacement facilities or prevent collocations on existing structures. Additionally, localities claiming that an application is incomplete will need to specifically state what rule requires the submission of the missing information.

With this, I approve.

[1] American Tower Ex Parte Letter, WT Docket No. 17-79, n.6 (Aug. 10, 2018).

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* WT Docket No. 17-79*; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Docket No. 17-84

The United States is on the cusp of a major upgrade in wireless technology to 5G. The WALL STREET JOURNAL has called it transformative from a technological and economic perspective. And they're right. Winning the global race to 5G—seeing this new platform deployed in the U.S. first—is about economic leadership for the next decade. Those are the stakes, and here's how we know it.

Think back ten years ago when we were on the cusp of upgrading from 3G to 4G. Think about the largest stocks and some of the biggest drivers of our economy. It was big banks and big oil. Fast forward to today: U.S.-based technology companies, from FAANG (Facebook, Apple, Amazon, Netflix, and Google) down to the latest startup, have transformed our economy and our lives.

Think about your own life. A decade ago, catching a ride across town involved calling a phone number, waiting 20 minutes for a cab to arrive, and paying rates that were inaccessible to many people. Today, we have Lyft, Uber, Via, and other options.

A decade ago, sending money meant going to a brick-and-mortar bank, standing in that rope line, getting frustrated when that pen leashed to the table was out of ink (again!), and ultimately conducting your transaction with a teller. Now, with Square, Venmo, and other apps you can send money or deposit checks from anywhere, 24 hours a day.

A decade ago, taking a road trip across the country meant walking into your local AAA office, telling them the stops along your way, and waiting for them to print out a TripTik booklet filled with maps that you would unfold as you drove down the highway. Now, with Google Maps and other apps you get real-time updates and directions right on your smartphone.

American companies led the way in developing these 4G innovations. But it's not by chance or luck that the United States is the world's tech and innovation hub. We have the strongest wireless economy in the world because we won the race to 4G. No country had faster 4G deployment and more intense investment than we did. Winning the race to 4G added $100 billion to our GDP. It led to $125 billion in revenue for U.S. companies that could have gone abroad. It grew wireless jobs in the U.S. by 84 percent. And our world-leading 4G networks now support today's $950 billion app economy. That history should remind policymakers at all levels of government exactly what is at stake. 5G is about our leadership for the next decade.

And being first matters. It determines whether capital will flow here, whether innovators will start their new businesses here, and whether the economy that benefits is the one here. Or as Deloitte put it: "First-adopter countries . . . could sustain more than a decade of competitive advantage."

We're not the only country that wants to be first to 5G. One of our biggest competitors is China. They view 5G as a chance to flip the script. They want to lead the tech sector for the next decade. And they are moving aggressively to deploy the infrastructure needed for 5G.

Since 2015, China has deployed 350,000 cell sites. We've built fewer than 30,000. Right now, China is deploying 460 cell sites a day. That is twelve times our pace. We have to be honest about this infrastructure challenge. The time for empty statements about carrots and sticks is over. We need a concrete plan to close the gap with China and win the race to 5G.

We take this challenge seriously at the FCC. And we are getting the government out of the way, so that the private sector can invest and compete.

In March, we held that small cells should be treated differently than large, 200-foot towers. And we're already seeing results. That decision cut $1.5 billion in red tape, and one provider reports that it is now clearing small cells for construction at six times the pace as before.

So we're making progress in closing the infrastructure gap with China. But hurdles remain. We've heard from dozens of mayors, local officials, and state lawmakers who get what 5G means—they understand the economic opportunity that comes with it. But they worry that the billions in investment needed to deploy these networks will be consumed by the high fees and long delays imposed by big, "must-serve" cities. They worry that, without federal action, they may not see 5G. I'd like to read from a few of the many comments I've received over the last few months.

Duane Ankney is a retired coal miner from Montana with a handlebar mustache that would be the envy of nearly any hipster today. But more relevantly, he's a Member of the Montana State Legislature and chairs its Energy and Telecommunications Committee. He writes: "Where I see the problem is, that most of investment capital is spent in the larger urban areas. This is primarily due to the high regulatory cost and the cost recovery [that] can be made in those areas. This leaves the rural areas out."

Mary Whisenand, an Iowa commissioner, writes: "With 99 counties in Iowa, we understand the need to streamline the network buildout process so it's not just the big cities that get 5G but also our small towns. If companies are tied up with delays and high fees, it's going to take that much longer for each and every Iowan to see the next generation of connectivity."

Ashton Hayward, the Mayor of Pensacola, Florida, writes: "[E]xcessive and arbitrary fees . . . result[] in nothing more than telecom providers being required to spend limited investment dollars on fees as opposed to spending those limited resources on the type of high-speed infrastructure that is so important in our community."

And the entire board of commissioners from a more rural area in Michigan writes: "Smaller communities such as those located in St. Clair County would benefit by having the [FCC] reduce the costly and unnecessary fees that some larger communities place on small cells as a condition of deployment. These fees, wholly disproportionate to any cost, put communities like ours at an unfair disadvantage. By making small cell deployment less expensive, the FCC will send a clear message that all communities, regardless of size, should share in the benefits of this crucial new technology."

They're right. When I think about success—when I think about winning the race to 5G—the finish line is not the moment we see next-gen deployments in New York or San Francisco. Success can only be achieved when all Americans, no matter where they live, have a fair shot at fast, affordable broadband.

So today, we build on the smart infrastructure policies championed by state and local leaders. We ensure that no city is subsidizing 5G. We prevent excessive fees that would threaten 5G deployment. And we update our shot clocks to account for new small cell deployments. I want to thank Commissioner Rosenworcel for improving the new shot clocks with edits that protect municipalities from providers that submit incomplete applications and provide localities with more time to adjust their operations. Her ideas improved this portion of the order.

More broadly, our decision today has benefited from the diverse views expressed by a range of stakeholders. On the local government side, I met with mayors, city planners, and other officials in their home communities and learned from their perspectives. They pushed back on the proposed "deemed

granted" remedy, on regulating rents on their property outside of rights-of-way, and on limits to reasonable aesthetic reviews. They reminded me that they're the ones that get pulled aside at the grocery store when an unsightly small cell goes up. Their views carried the day on all of those points. And our approach respects the compromises reached in state legislatures around the country by not preempting nearly any of the provisions in the 20 state level small cells bills.

This is a balanced approach that will help speed the deployment of 5G. Right now, there is a cottage industry of consultants spurring lawsuits and disputes in courtrooms and city halls around the country over the scope of Sections 253 and 332. With this decision, we provide clear and updated guidance, which will eliminate the uncertainty inspiring much of that litigation.

Some have also argued that we unduly limit local aesthetic reviews. But allowing reasonable aesthetic reviews—and thus only preventing unreasonable ones—does not strike me as a claim worth lodging.

And some have asked whether this reform will make a real difference in speeding 5G deployment and closing the digital divide. The answer is yes. It will cut $2 billion in red tape. That's about $8,000 in savings per small cell. Cutting these costs changes the prospects for communities that might otherwise get left behind. It will stimulate $2.4 billion in new small cell deployments. That will cover 1.8 million more homes and businesses—97% of which are in rural and suburban communities. That is more broadband for more Americans.

* * *

In closing, I want to thank my colleagues for working to put these ideas in place. I want to thank Chairman Pai for his leadership in removing these regulatory barriers. And I want to recognize the exceptionally hard-working team at the FCC that helped lead this effort, including, in the Wireless Telecommunications Bureau, Donald Stockdale, Suzanne Tetrault, Garnet Hanly, Jonathan Campbell, Stacy Ferraro, Leon Jackler, Eli Johnson, Jonathan Lechter, Marcus Maher, Betsy McIntyre, Darrel Pae, Jennifer Salhus, Jiaming Shang, and David Sieradzki. I also want to thank the team in the Office of General Counsel, including Tom Johnson, Ashley Boizelle, Bill Richardson, and Anjali Singh.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
APPROVING IN PART, DISSENTING IN PART

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* WT Docket No. 17-79*; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WC Docket No. 17-84

A few years ago, in a speech at a University of Colorado event, I called on the Federal Communications Commission to start a proceeding on wireless infrastructure reform. I suggested that if we want broad economic growth and widespread mobile opportunity, we need to avoid unnecessary delays in the state and local approval process. That's because they can slow deployment.

I believed that then. I still believe it now.

So when the FCC kicked off a rulemaking on wireless infrastructure last year, I had hopes. I hoped we could provide a way to encourage streamlined service deployment nationwide. I hoped we could acknowledge that we have a long tradition of local control in this country but also recognize more uniform policies across the country will help us in the global race to build the next generation of wireless service, known as 5G. Above all, I hoped we could speed infrastructure deployment by recognizing the best way to do so is to treat cities and states as our partners.

In one respect, today's order is consistent with that vision. We shorten the time frames permitted under the law for state and local review of the deployment of small cells—an essential part of 5G networks. I think this is the right thing to do because the shot clocks we have now were designed in an earlier era for much bigger wireless facilities. At the same time, we retain the right of state and local authorities to pursue court remedies under Section 332 of the Communications Act. This strikes an appropriate balance. I appreciate that my colleagues were willing to work with me to ensure that localities have time to update their processes to accommodate these new deadlines and that they are not unfairly prejudiced by incomplete applications. I support this aspect of today's order.

But in the remainder of this decision, my hopes did not pan out. Instead of working with our state and local partners to speed the way to 5G deployment, we cut them out. We tell them that going forward Washington will make choices for them—about which fees are permissible and which are not, about what aesthetic choices are viable and which are not, with complete disregard for the fact that these infrastructure decisions do not work the same in New York, New York and New York, Iowa. So it comes down to this: three unelected officials on this dais are telling state and local leaders all across the country what they can and cannot do in their own backyards. This is extraordinary federal overreach.

I do not believe the law permits Washington to run roughshod over state and local authority like this and I worry the litigation that follows will only slow our 5G future. For starters, the Tenth Amendment reserves powers to the states that are not expressly granted to the federal government. In other words, the constitution sets up a system of dual sovereignty that informs all of our laws. To this end, Section 253 balances the interests of state and local authorities with this agency's responsibility to expand the reach of communications service. While Section 253(a) is concerned with state and local requirements that may prohibit or effectively prohibit service, Section 253(d) permits preemption only on a case-by-case basis after notice and comment. We do not do that here. Moreover, the assertion that fees above cost or local aesthetic requirements in a single city are tantamount to a service prohibition elsewhere stretches the statute beyond what Congress intended and legal precedent affords.

In addition, this decision irresponsibly interferes with existing agreements and ongoing deployment across the country. There are thousands of cities and towns with agreements for infrastructure deployment—including 5G wireless facilities—that were negotiated in good faith. So

many of them could be torn apart by our actions here. If we want to encourage investment, upending commitments made in binding contracts is a curious way to go.

Take San Jose, California. Earlier this year it entered into agreements with three providers for the largest small cell-driven broadband deployment of any city in the United States. These partnerships would lead to 4,000 small cells on city-owned light poles and more than $500 million of private sector investment. Or take Little Rock, Arkansas, where local reforms to the permitting process have put it on course to become one of the first cities to benefit from 5G service. Or take Troy, Ohio. This town of under 26,000 spent time and energy to develop streamlined procedures to govern the placement, installation, and maintenance of small cell facilities in the community. Or take Austin, Texas. It has been experimenting with smart city initiatives to improve transportation and housing availability. As part of this broader effort, it started a pilot project to deploy small cells and has secured agreements with multiple providers.

This declaratory ruling has the power to undermine these agreements—and countless more just like them. In fact, too many municipalities to count—from Omaha to Overland Park, Cincinnati to Chicago and Los Angeles to Louisville—have called on the FCC to halt this federal invasion of local authority. The National Governors Association and National Conference of State Legislatures have asked us to stop before doing this damage. This sentiment is shared by the United States Conference of Mayors, National League of Cities, National Association of Counties, and Government Finance Officers Association. In other words, every major state and municipal organization has expressed concern about how Washington is seeking to assert national control over local infrastructure choices and stripping local elected officials and the citizens they represent of a voice in the process.

Yet cities and states are told to not worry because with these national policies wireless providers will save as much as $2 billion in costs which will spur deployment in rural areas. But comb through the text of this decision. You will not find a single commitment made to providing more service in remote communities. Look for any statements made to Wall Street. Not one wireless carrier has said that this action will result in a change in its capital expenditures in rural areas. As Ronald Reagan famously said, "trust but verify." You can try to find it here, but there is no verification. That's because the hard economics of rural deployment do not change with this decision. Moreover, the asserted $2 billion in cost savings represents no more than 1 percent of investment needed for next-generation networks.

It didn't have to be this way. So let me offer three ideas to consider going forward.

First, we need to acknowledge we have a history of local control in this country but also recognize that more uniform policies can help us be first to the future. Here's an idea: Let's flip the script and build a new framework. We can start with developing model codes for small cell and 5G deployment—but we need to make sure they are supported by a wide range of industry and state and local officials. Then we need to review every policy and program—from universal service to grants and low-cost loans at the Department of Commerce, Department of Agriculture, and Department of Transportation and build in incentives to use these models. In the process, we can create a more common set of practices nationwide. But to do so, we would use carrots instead of sticks.

Second, this agency needs to own up to the impact of our trade policies on 5G deployment. In this decision we go on at length about the cost of local review but are eerily silent when it comes to the consequences of new national tariffs on network deployment. As a result of our escalating trade war with China, by the end of this year we will have a 25 percent duty on antennas, switches, and routers—the essential network facilities needed for 5G deployment. That's a real cost and there is no doubt it will diminish our ability to lead the world in the deployment of 5G.

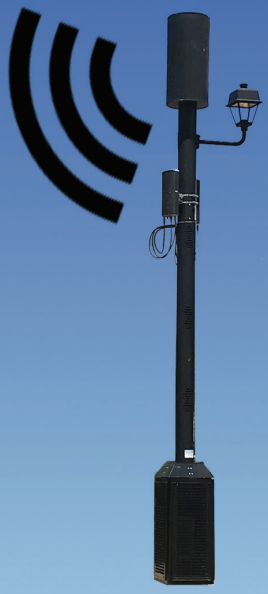
Finally, in this decision the FCC treats the challenge of small cell deployment with a bias toward more regulation from Washington rather than more creative marketplace solutions. But what if instead we focused our efforts on correcting the market failure at issue? What if instead of micromanaging costs we fostered competition? One innovative way to do this involves dusting off our 20-year old over-the-air-reception-device rules, or OTARD rules.

Let me explain. The FCC's OTARD rules were designed to protect homeowners and renters from laws that restricted their ability to set up television and broadcast antennas on private property. In most cases they accomplished this by providing a right to install equipment on property you control—and this equipment for video reception was roughly the size of a pizza box.

Today OTARD rules do not contemplate 5G deployment and small cells. But we could change that by clarifying our rules. If we did, a lot of benefits would follow. By creating more siting options for small cells, we would put competitive pressure on public rights-of-way, which could bring down fees through competition instead of the government ratemaking my colleagues offer here. Moreover, this approach would create more opportunities for rural deployment by giving providers more siting and backhaul options and creating new use cases for signal boosters. Add this up and you get more competitive, more ubiquitous, and less costly 5G deployment.

We don't explore these market-based alternatives in today's decision. We don't say a thing about the real costs that tariffs impose on our efforts at 5G leadership. And we don't consider creative incentive-based systems to foster deployment, especially in rural areas.

But above all we neglect the opportunity to recognize what is fundamental: if we want to speed the way for 5G service we need to work with cities and states across the country because they are our partners. For this reason, in critical part, I dissent.



Small Cells

Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018

Public Chapter 819

"Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018"

Chapter 819 of the Public Acts of 2018. Enacted on April 24, 2018.

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Section 1

Summary of Public Chapter 819

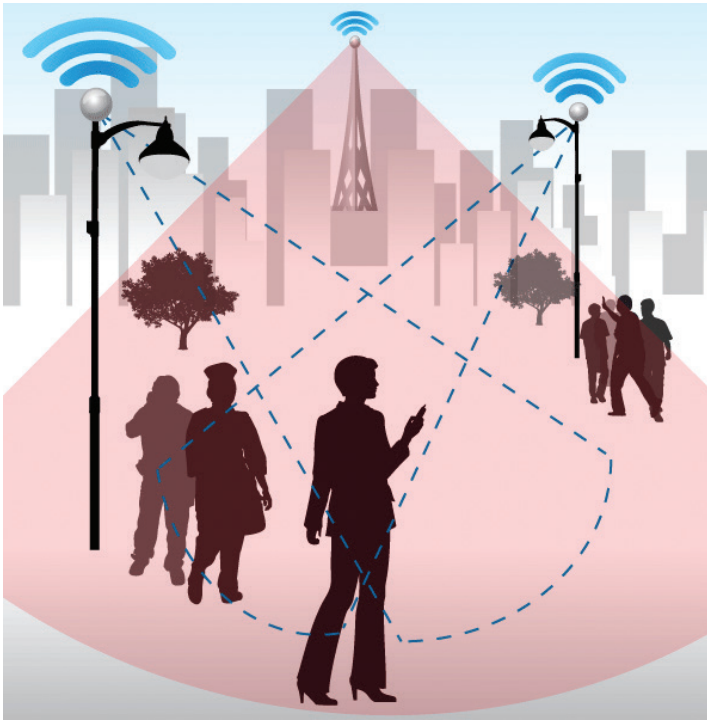
Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

General Overview

A man and a woman approach each other on a city sidewalk, both are talking on their cell phones. As they meet, they pass three others waiting at a bus stop – all three persons are on their phones. One is talking to a contractor about a kitchen remodeling project. Another is busy reviewing social media feeds. The third, a foodie, is updating her blog. A car passes, carrying a mother and her two children. One child holds her mom's laptop and streams cartoons, while the other child plays video games on his tablet and listens to music streaming on his phone. In the front seat, mom is scanning the real-time directions being delivered over her phone in an effort to determine whether she should turn at the end of this block or the next. Inside the businesses and restaurant that line this city street, the employees and customers are also making use of their phones, laptops, and tablets. A single city street, many people consuming vast amounts of data simultaneously. This situation exists on any city street, in any city and on any day.

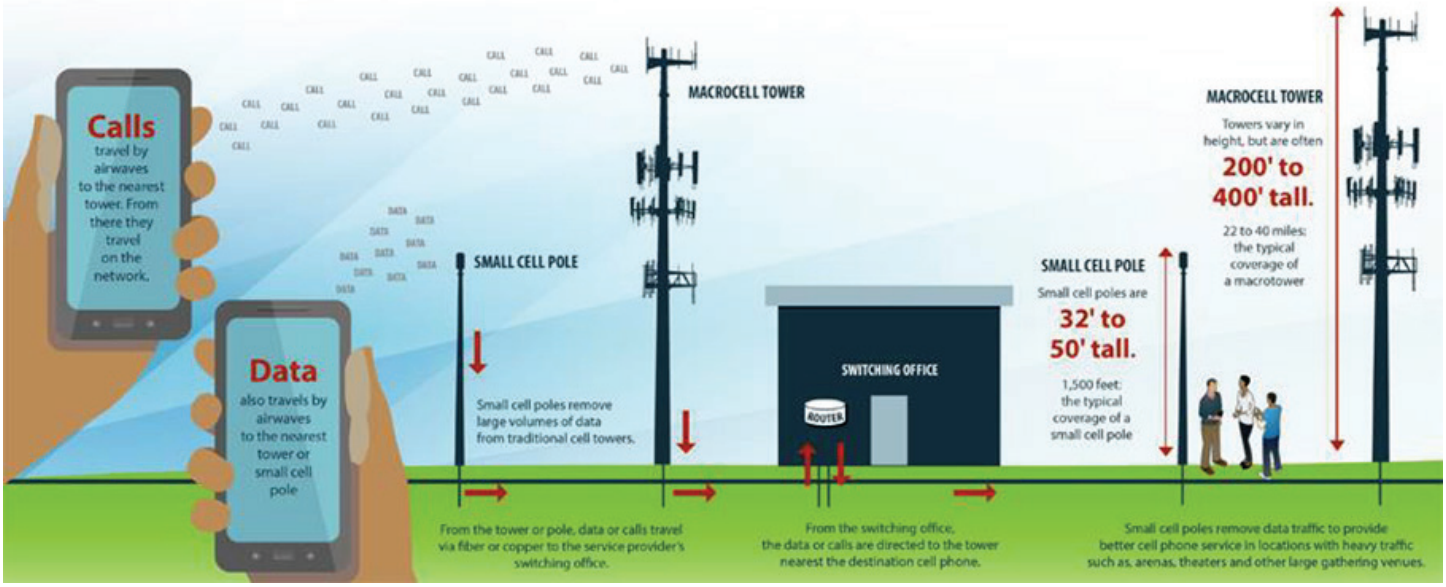
As a result of the proliferation of wireless-dependent devices, an exponential growth in the amount of data consumed by the average user and consumers' demand for immediate and unencumbered access to multiple platforms and functions simultaneously, the wireless industry finds itself approaching a capacity crisis.

Having determined that the existing array of tall and unsightly cell towers deployed across this country is incapable of handling the current demand, and that the construction of tens of thousands more cell towers is an expensive, insufficient and untenable remedy, the wireless

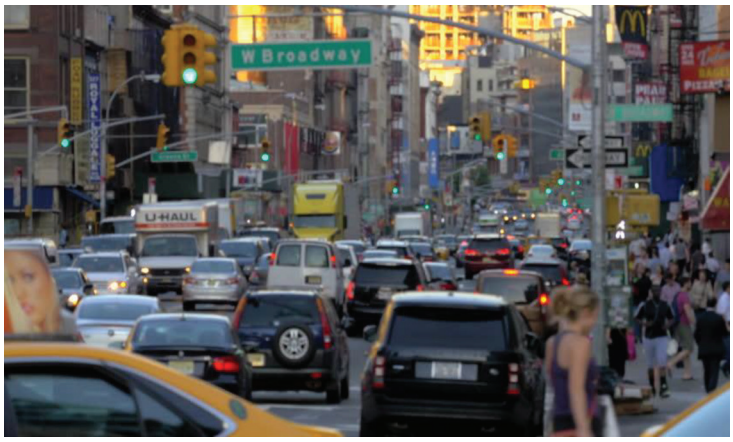


industry has decided that small cells are the immediate answer to its capacity problems.

In short, small cells are short range cell facilities that work in conjunction with a provider's existing larger cell tower infrastructure to expand its network and to strategically add localized capacity to areas where its customers experience inadequate or inconsistent coverage. Unlike cell towers that require a fairly significant footprint, these small cells are being deployed on existing public and privately-owned structures, such as street lights, electric poles, buildings and billboards.



Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819



In 2018, the cellular industry in Tennessee followed its peers in some 34 states and pursued state legislation seeking to create a uniform framework to facilitate the deployment of small cells in communities across the state. In addition to this authority, the legislation sought to create a framework for local approval, to institute uniform fees and rates as well as to establish parameters for local governance of small cell facilities deployed within the right of way.

In making its case for the legislation, the industry offered three primary arguments.

First, the industry noted the current predicament regarding capacity and the adverse impact lack of capacity would have on the free flow of commerce and information, economic activity and on consumers use and enjoyment of existing technology.

Second, the industry asserted that an immediate solution was required to mitigate the adverse impacts associated with inadequate wireless capacity.

Third, the industry argued that the current process of gaining the approval of up to 345 cities and 95 county governments – each with its own unique set of standards for approval, varying fees and rate structures, and requirements governing use of a right of way – was impractical and inconsistent with the industry's desire to deploy small cells in an expeditious manner.

While most cities were willing to consider the imposition of a uniform statewide process, municipal officials were very concerned about the potential loss of control of activities in the right of way and the threat to public safety and order posed by such a loss.

City officials were also concerned that the unencumbered deployment of small cells would harm the character and aesthetic appeal of their communities that they and residents had invested resources and energy in establishing, protecting and promoting. Lastly, municipal officials wanted to ensure that local taxpayers were justly compensated for the private use of publicly-owned spaces and infrastructure.

Small Cell Legislation Considered in 34 States

Arizona	*Nebraska*
California (veto)	**New Mexico**
Colorado	*New York*
Connecticut	**North Carolina**
Delaware	**Ohio** (2x)
Florida	**Oklahoma**
Georgia	*Pennsylvania*
Hawaii	**Rhode Island**
Illinois	*South Carolina*
Indiana	**Tennessee**
Iowa	**Texas** (challenge)
Kansas	**Utah**
Maine	**Vermont**
Maryland	**Virginia**
Michigan	*Washington*
Minnesota	*West Virginia*
Missouri	*Wisconsin*

* **Bold** = passed, *Italics* = pending

Industry Arguments for Legislation

- Lack of capacity affecting commerce and use by consumers
- An immediate solution is needed to mitigate capacity challenges
- Current process of local approval in all 345 cities and 95 counties is impractical and too burdensome

Municipal Government Concerns

- Control of Rights-of-Way
- Safety
- Protecting character and aesthetics
- Taxpayer compensation

Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

On April 24, 2018, Tennessee Governor Bill Haslam signed the "Competitive Wireless Broadband Investment, Deployment and Safety Act of 2018," which was enacted as Public Chapter 819, Acts of 2018. The provisions of this Act reflect the result of months-long negotiations between the wireless industry and the bill's sponsors and representatives of local government, municipal electric providers, electric cooperatives and the cable industry. While this Act reflects the agreement reached between the parties, it is an imperfect solution that required compromise. That said, the Act addresses municipal concerns in a manner that safeguards municipal interests.

The Act creates a framework by which wireless providers are able to deploy small wireless facilities (small cells) throughout the state.

Again, a small cell functions as an element of a larger interconnected network, which serves to take the demand load off a single, large cell tower, thereby increasing the provider's wireless capacity within a localized area.

The Act provides that small cells may be deployed on a "Potential Support Structure" (PSS), pursuant to a city's approval. The new law defines a PSS as an electric pole, light pole, traffic signal or sign. The PSS may be city-owned or belong to a third party.

A small cell may be deployed in any one of three methods. First, the small cell may be physically attached, or collocated, to an existing pole or sign. Second, the small cell may be incorporated into the design of a new pole that replaces the existing pole, referred to as either a modified PSS or replacement PSS. Third, the provider may install a new pole in a location in which there is not currently a pole and the small cell may either be attached to or incorporated into its design.

The Act does not grant unfettered authority to deploy small cells. Cities are permitted to promulgate limits, permitting requirements, zoning requirements, approval policies or processes regulating the deployment of small cells within their jurisdictional boundaries. However, any limits, requirements, policies or processes may not be more restrictive or in excess of what is permitted under the new law. In the event of a conflict between a city's limits, requirements, or policies, and the new law, the provisions of the new law generally prevail. However, the law includes several exceptions to this general declaration.

Statewide Legislation

The Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018:

- Uniform application process
- Uniform timeline for decisions
- Uniform fees and rates
- Uniform requirements and application

Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

The **effective date of the Act** varies based upon the timing and disposition of applications seeking to deploy small cells. Any applications to either install a new small cell or to collocate a small cell on an existing or modified pole that had been submitted prior to April 24, 2018, must be approved or denied within either 90 days of the effective date or 90 days from the date the application was submitted, whichever is later.

The clocks begins to run on July 1, 2018 for any application submitted between April 24, 2018 and July 1, 2018. Once the clock has begun, the timing of the consideration shall be carried out pursuant to the time lines established under the new law.

Any application submitted on or after July 1, 2018, will be considered pursuant to the time line detailed in the new law and the clock will begin on the date the application is submitted.

A city must implement processes and requirements consistent with the law and render decisions in accordance with the new law. If a city fails to abide by the new law, then a provider may seek relief in chancery court.

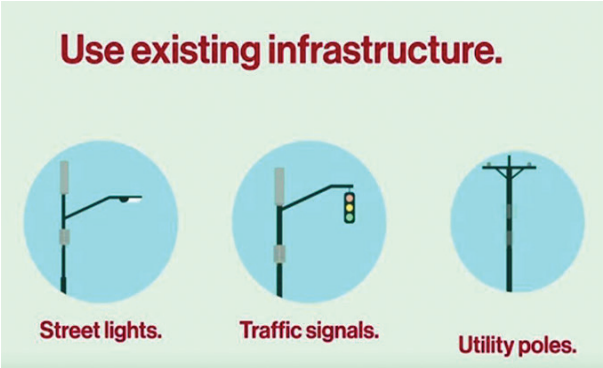
When an application may be required

A city may require that prior to deploying a small cell facility, installing of a new or modified PSS, or replacement of its own PSS, a provider must first submit a complete application, pay all application fees and secure the approval of the municipality. The same is true if the provider is seeking to completely replace its own small cell facility with a larger small cell facility. Once deployed, the small cell provider must continue to pay the required annual rate and abide by the requirements of the Act.

However, there are certain situations or conditions under which a municipality may not require a small cell provider to file an application, gain approval, or to pay any rate or fee. If a provider is conducting regular maintenance, making repairs or replacing parts or components on the applicant's own small wireless facilities, then no application, approval, permits or fee may be required. Likewise, if a provider is replacing its own small cell facility with another that is either the same size as the existing facility or smaller than the qualifying dimensions of a small wireless facility, then no application, approval, rate or fee may be required.

In addition, a city may not require a provider to complete an application, obtain approval or to pay any rate or fee for installing a micro wireless facility on a strand of wire that is strung between two poles holding small cells.

Finally, a city may not condition the approval of a small cell on a provider agreeing to enter into an access agreement or site license agreement.



The Act provides that small cells may be deployed on a "Potential Support Structure" (PSS), pursuant to a city's approval. The new law defines a PSS as an electric pole, light pole, traffic signal or sign.

Uniform Application, Process and Fees

The Act establishes a uniform statewide requirements concerning application for deployment of small cells, which include time lines. These time lines are not static but rather are dependent upon decisions made by either the city or a provider. In addition to the application requirements and time lines, this process also introduces an application fee schedule.

Application Permitted

- Deploying a small cell
- Installing new or modified PSS
- Provider replacing own PSS

Application Not Permitted

- Provider making repairs, replacing parts on own cell
- Provider replacing own cell with same or smaller
- Installing micor wireless facility

What a city may require in an application

A city may require a small cell provider to disclose its identifying information and that of the owner of the small cell, if different, as well as an emergency contact.

In addition, a city may also require a small cell provider to identify the location of the proposed site and to submit a preliminary site plan with a diagram or engineering drawing. A city may also require a provider to certify that its proposed site plan and design meets or exceeds all applicable engineering, materials, electrical and safety standards, including standards related to structural integrity and weight-bearing capacity. In an instance in which certification of standards related to engineering is required, then such certification may be required to be made by licensed professional engineer.

The city may also require the provider to certify that it agrees to pay all rates and fees and to comply with all applicable requirements governing the rights of way, including the maintenance of facilities, the removal of inactive facilities and the timely repair, removal or relocation of facilities in an emergency.

A provider may be required to certify that it has complied with any requirements concerning indemnification, a surety bond or insurance relating to the deployment of a small cell.

If a provider is seeking to attach its small cell facility to a pole or structure that is owned by a third party, then a city may require the provider to identify the third party and to certify that it has obtained the third party's approval to attach.

The application process

A city is not required to establish or implement an application process. However, a municipality may elect to implement an application process and to require a provider seeking to deploy a small cell within its corporate boundaries to file an application and to obtain approval prior to installing a new, modified or replacement small cell, consistent with the Act. Any city that elects to establish and require such application must ensure its processes and requirements are consistent with the new law.

A single application made by a provider may include application for up to 20 individual requests for deployment of a small cell. In the event that a single application seeks approval for multiple facilities, then the municipality must evaluate and make a determination with respect to status or treatment each individual requests. A city may not deny all requests included within a single application simply because one of the requests merits denial. Similarly, a city may not delay all requests contained within a single application simply because it seeks a conference concerning one or more of the requested deployments. In short, each individual request for deployment stands on its own. Thus, the decision concerning the applicability of the 60-day decision deadline is to be made with respect to each individual request.

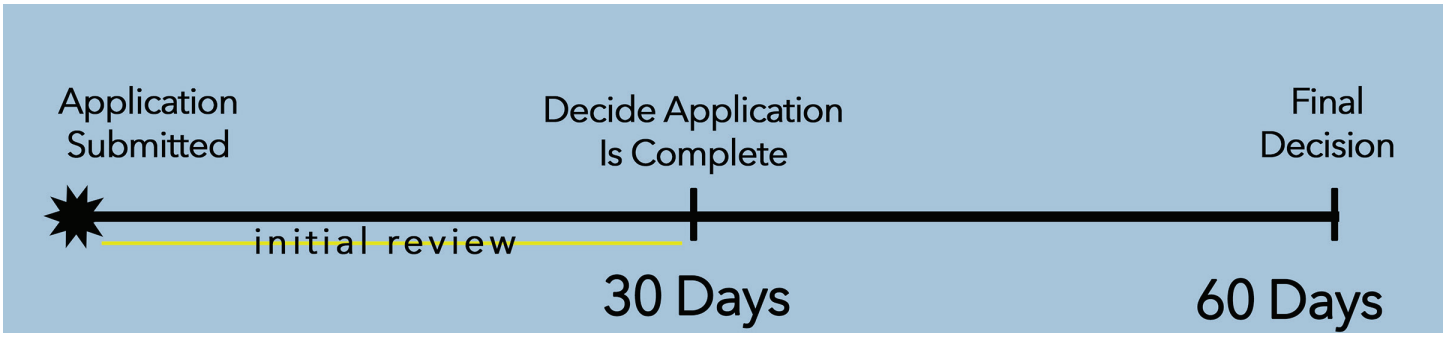
If a municipality denies a request to deploy a small cell, then the municipality must provide a written explanation of the denial to the provider. Upon receipt of such a denial, a provider may submit a revised application. In turn, a city must complete its review of a revised application. Such a review is limited to only those items encompassed in the initial denial or changes that were not contained in the original application.

If a municipality approves an application, then the provider has up to **nine months to complete deployment.** If a provider fails to complete deployment for any reason other than the absence of either commercial power or a communications transport facility, then the city may require the provider to restart the application process.

Application Requirements

- Application Permitted
- Application Contents
- Time Limits (Shot Clock)
- Fees

Application Time Line

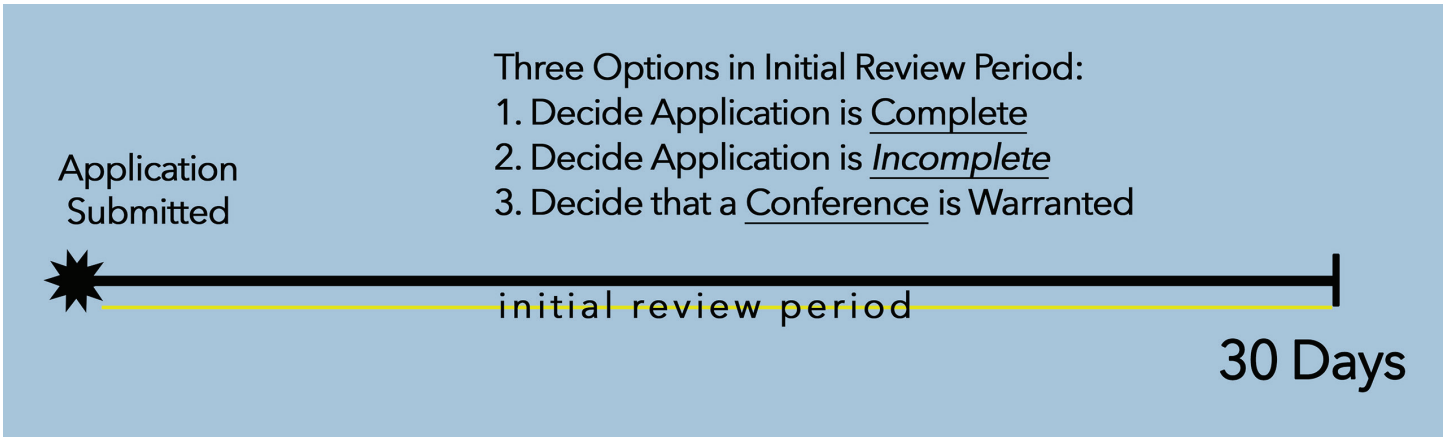


A municipality must complete its initial review of an application within 30 days of its receipt and determine whether it will approve or deny the application within 60 days of its receipt.

Generally, a municipality must complete its initial review of an application within 30 days of its receipt and determine whether it will approve or deny the application within 60 days of its receipt. However, there are a myriad of circumstances and decisions that would stop the clock from ticking (toll the time) on the 60-day decision deadline and alter the timing of an application's consideration.

The first decisions a city must make with regard to an application occurs during the **initial review period,** which commences upon receipt and concludes 30 days thereafter. During this initial 30-day period, a municipality must decide whether the individual requests for deployment included within an application are complete or whether any individual requests warrant a conference.

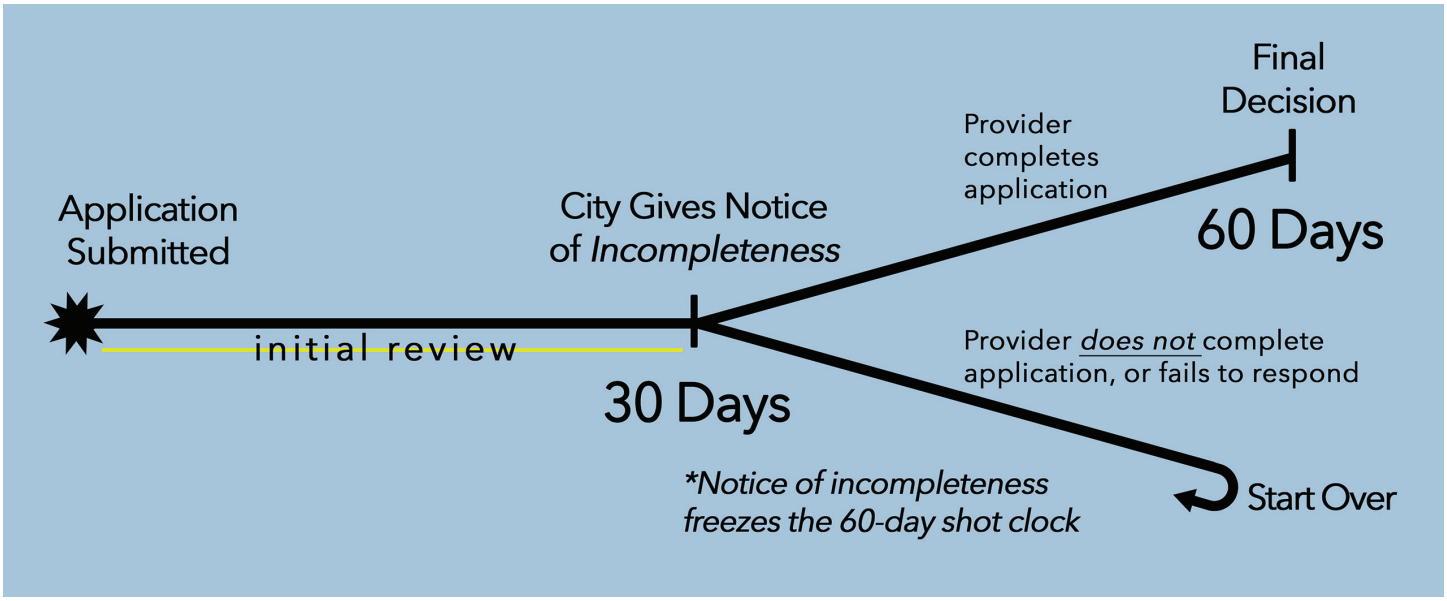
Initial Review Period



During this initial 30-day period, a municipality must decide whether the individual requests for deployment included within an application are complete or whether any individual request is incomplete and warrants a conference.

If a city determines the **application is incomplete,** then the city must notify the provider of its incompleteness. The provider has 30 days from receipt of such notification to provide the additional information. During the 30-day period in which the city is awaiting additional information, the clock stops ticking on the 60-day final decision period. If the additional information is provided within the 30-days allotted and the application otherwise satisfies the requirements, then the 60-day clock resumes ticking. However, if the provider fails to provide all information or fails to respond within this 30-day period, then the application may be denied and the provider may be required to begin the process again, including payment of another application fee.

Application is Incomplete



If a city determines the application is incomplete, then the city must notify the provider of its incompleteness. The provider has 30 days from receipt of such notification to provide the additional information. During the 30-day period in which the city is awaiting additional information, the clock stops ticking on the 60-day final decision period. If the additional information is provided within the 30-days allotted and the application otherwise satisfies the requirements, then the 60-day clock resumes ticking.

If a **single application includes requests for multiple deployments,** then a city must also decide, within the initial 30-day period, whether each individual request for deployment is complete or whether any of the individual requests warrant a conference.

Assume a single application included 10 individual requests for deployment of small cells. Further assume that the city determined that four of the individual requests were complete and satisfied all requirements, while four required additional information, and a conference was warranted on an additional two requests. The city would be required to separate the 10 individual requests into three separate groupings. In which case, the four that were complete should be separated and allowed to move on towards the 60-day final decision deadline. The four that were incomplete should be separated and the provider notified of their incompleteness. The final two should be separated into a third grouping and the process and time line governing a conference should be initiated.

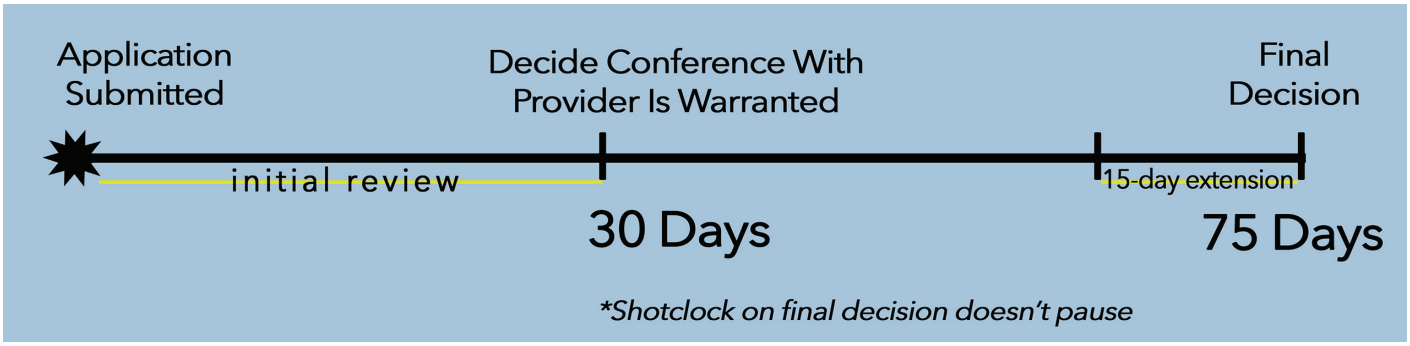
A city must also use this initial 30-day review period to review the application in order to determine whether a **conference with the provider** is warranted. Under the Act, a conference with the provider is warranted if a city determines that it has concerns about the safety of a proposed deployment. A conference may also be warranted if the city discovers two or more providers have requested deployments at or near the same location. A city may also initiate a conference to alert the provider to the fact that a proposed deployment may be affected by planned construction or projects in the area.

Moreover, a city might initiate a conference if it believes that an alternative design might allow for the colocation of a small cell on existing infrastructure rather than requiring the installation of a new pole. Finally, a conference is warranted if the city would like the provider to consider an alternative design that would allow for the inclusion of additional elements or features that would benefit the city. While these specific reasons are detailed in the new law, the law also provides that these are not the only justifications for a conference.

Once a city has notified a provider of its request for a conference, then the 60-days allowed for a final decision is automatically extended to 75 days. The city must permit the conference to be conducted via telephone, if requested, and the clock does not stop on the 75-day period while the conference is being arranged or conducted.

Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

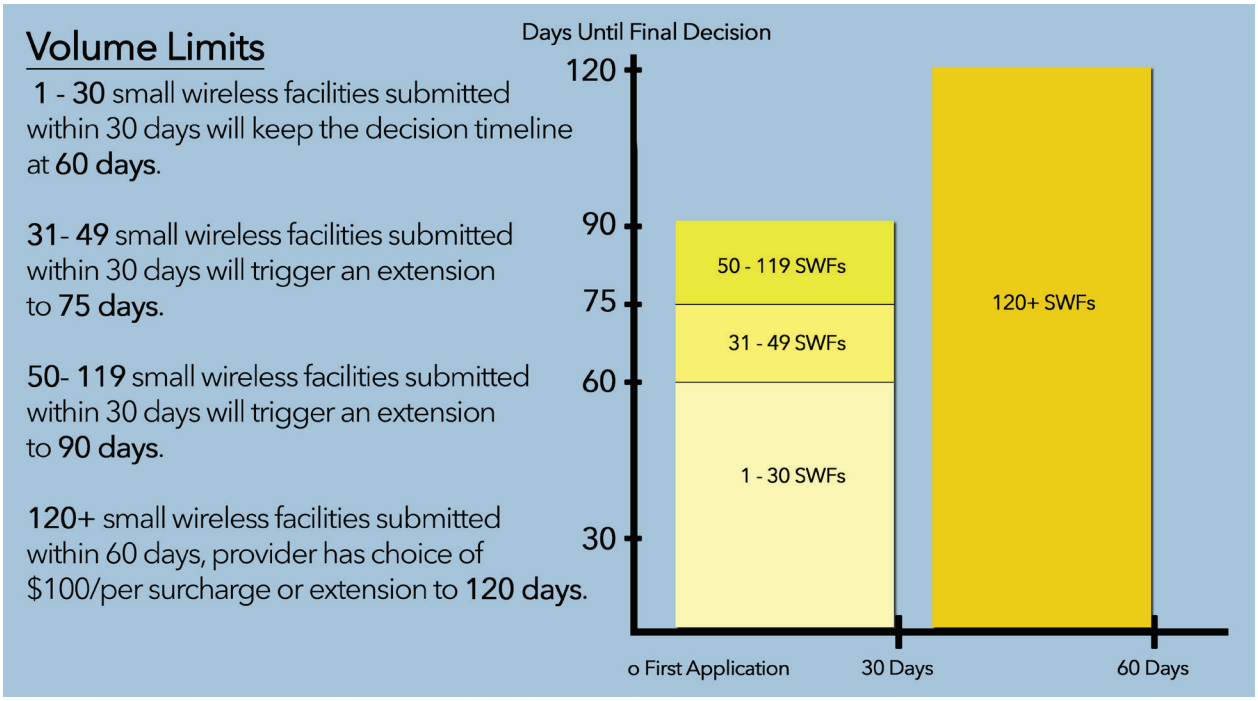
Conference with Provider



Once a city has notified a provider of its request for a conference, then the 60-days allowed for a final decision is automatically extended to 75 days. The city must permit the conference to be conducted via telephone, if requested, and the clock does not stop on the 75-day period while the conference is being arranged or conducted.

The new law includes **volume limits** that, if exceeded, also alter the 60-day decision time line. If any provider submits applications seeking to deploy 31-49 small cells within the same city in any 30-day period, then the 60-day decision period is extended to 75 days. Similarly, if any provider submits 50 or more individual applications seeking to deploy small cells within the same city in any 30-day period, then the 60-day decision period is extended to 90 days. These extensions may not be further extended, unless both the city and the provider agree to such an extension.

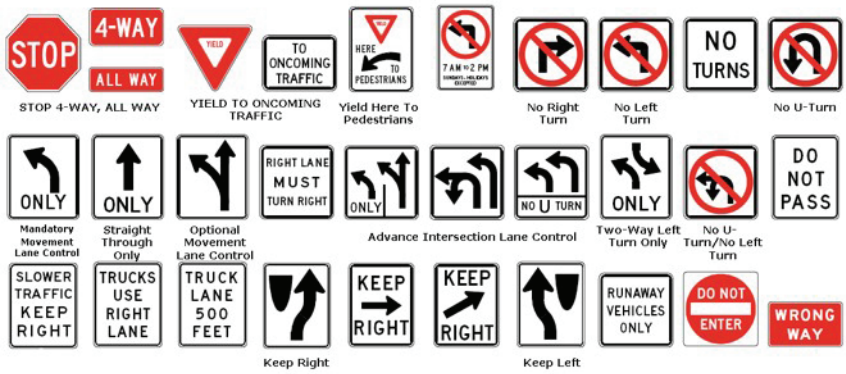
Additionally, the 60-day decision period may be extended if any provider submits applications for consideration that include more than 120 small cells to the same city within any 60-day period. In the event that the 120 small cell request limit is reached, then the city may notify the provider that it must pay a surcharge of $100 per individual small cell within five days to have the specified small cells considered within the applicable time line. If the surcharge is not paid within five days, then the city may extend the 60-day decision deadline to 120 days.



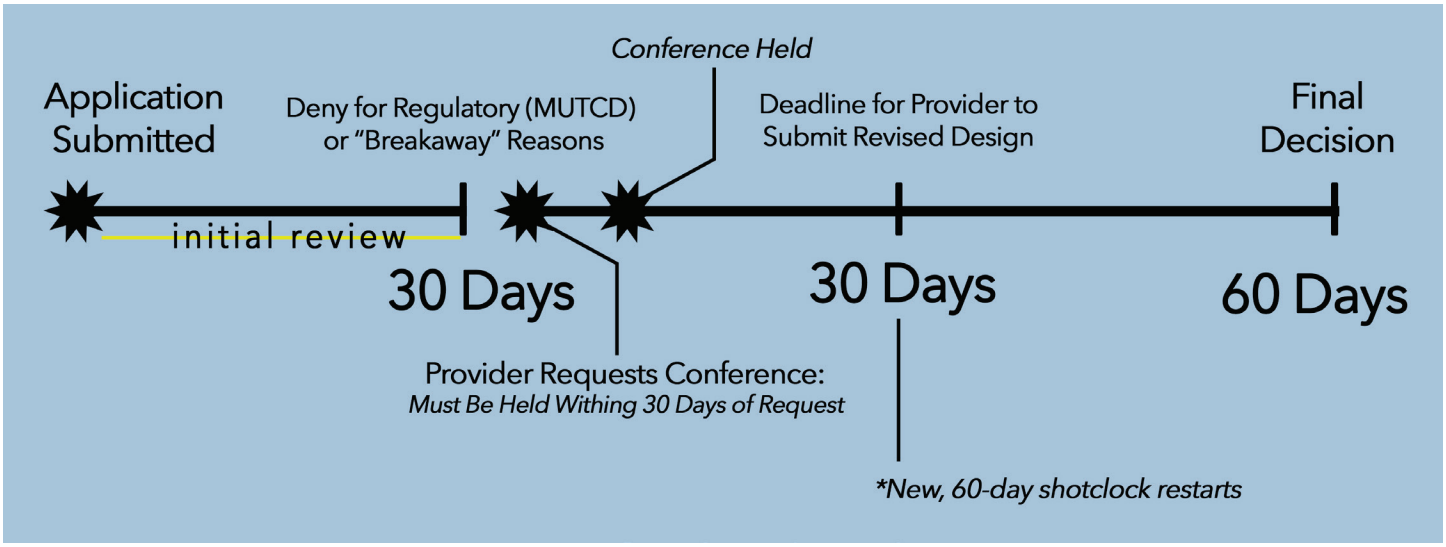
The new law includes volume limits that, if exceeded, also alter the 60-day decision time line.

Volume Thresholds Triggering Timeline Extensions

There is one last circumstance under which the 60-day decision deadline may be extended. In the event that a small cell application proposes deployment **related to a regulatory sign,** as identified in the Manual of Uniform Traffic Control Devices (MUTCD), **or any sign subject to requirements for breakaway support**, then the city may deny the application. If a provider's application is denied on this basis, then the provider may request a conference for the purpose of considering an alternative design. Such a conference must be held within 30 days of the provider's request. The provider must submit a revised design and respond to the city's concerns within 30 days following the conference. Once the city is in receipt of the provider's revised design, then the 60-day clock begins to click on a final decision regarding the revised application.



Conference Held - New 60-day Shotclock Restarts



If a small cell application proposes the use of a regulatory sign, then the city may deny the application. The provider may request a conference to consider an alternative design. Once the city is in receipt of the provider's revised design, then the 60-day clock begins to click on a final decision.

Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

Application Fees

The new law permits a city to charge an application fee for each individual application filed. These fees are in addition to and do not limit any other fees a city may charge related to its operation in the right of way, including fees related to work or traffic permits.

Fees Permitted

A city may collect a one-time special application fee of $200 for the first application a provider files in the city. Additionally, a city may charge up to $100 for the first five request for deployment of a small cell included in each application and up to $50 each for any additional requests included in a single application. Beginning January 1, 2020 and every five year interval after that, the maximum allowable application fee will increase by 10 percent.

Fees Not Permitted

A city may only collect these fees when a provider files an application seeking to deploy a small cell facility or to install a new or modified PSS. A provider is not subject to such fees when it is performing regular maintenance, making repairs or replacing parts or components on its own small cell. In addition, a provider is not subject to the application fees when it is replacing its own small cell with another that is the same size or smaller.

Application Fees

- City may elect to assess fee
- One-time $200
- Each depolyment subject to fee
- Maxium fee per application:
  - $100 - first 5 small cells
  - $50 - 6-20 small cells

Fees Permitted

- Collocate small cell
- Install Modified PSS
- Install New PSS

Fees Not Permitted

- Maintenance, repairs, replacing components
- Replacing own small cell - same or smaller
- Install micro cell

Rights-of-Way

A city's ability to maintain control of its rights of way, protect facilities within its right of way, to ensure the public's interest and to promote the safety of pedestrians and the motoring public was a significant concern to city officials.

Under the Act, a city may not use its policies and requirements to restrict small cell providers' access to the rights of way or to effectively prohibit the deployment of small cells in the right of way. Additionally, a provider may not be required to enter into an **exclusive franchise agreement, site license agreement or access agreement** as a condition of deploying small cells within its right of way.

However, the Act establishes **parameters concerning local governance of providers' use of rights of way.** Cities are permitted to require providers to obtain the same work and traffic permits required of other entities performing construction in the right of way and to charge the same fees for such permits.

A city may ensure that any small cell is constructed and maintained in a manner that does not impair the free flow of pedestrian or automobile traffic, including but not limited to the **enforcement of any policies or requirements relating to the Americans with Disabilities Act.**

In addition, cities may require providers to construct or place facilities in such a way as to not preclude the use of the right of way by other operators and to abide by the same **vegetation control requirements** as required of other entities maintaining facilities in the right of way.

Moreover, a city may enforce any requirement or safety regulations concerning **breakaway sign supports**, provided those requirements and regulations are applied to others operating in its rights of way.

Furthermore, a city may require a provider to maintain any small cell in proper working order or to remove the small cell when it is creating a hazard or is no longer in operation. Similarly, a city may require a provider to repair any small cell that is damaged or to relocate a small cell in the event of construction or an emergency.

Summary of the *Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018* – Public Chapter 819

Lots larger than .75 acres

If the provider is seeking to deploy a small cell within a residential neighborhood, then the city may require the provider to deploy the small cell in the right of way within 25 feet of the property boundary of lots larger than .75 acres (pictured above) and within 15 feet of the boundary if lots are .75 acres or smaller. (pictured below)

In the event that the provider causes damage to city streets or to facilities owned by the city or another entity operating in the right of way, then the provider may be required to repair the damage. Moreover, a city may require a provider to secure insurance or a surety bond or to provide indemnification for any claims arising from the provider's negligence so long as such requirements are required of others operating in the right of way.

If the provider is seeking to deploy **a small cell within a residential neighborhood**, then the city may require the provider to deploy the small cell in the right of way within 25 feet of the property boundary of lots larger than .75 acres and within 15 feet of the boundary if lots are .75 acres or smaller.

In addition to the regulation of rights of way, the Act permits municipalities to require providers to comply with **undergrounding requirements,** provided certain criteria are satisfied. First, any regulations or requirements must be in place at the time the provider submits an application, in order to be applicable. Second, the regulations may not prohibit or preclude the deployment of small cells, if they otherwise comply with the regulations and an aesthetic plan. Third, any underground regulation must afford a provider the opportunity to seek a waiver of the requirements for the placement of small cells in the area.

The Act also permits cities to restrict deployment of a small cell in any **public utility easement** that is not contiguous with a paved road or alley on which vehicles travel or when the easement is located along the rear of a residential lot. Cities may also restrict deployment of small cells in a public utility easement that is located in an area where telephone or electric poles are prohibited.

Lots Smaller than .75 Acres

Historic Areas

The Act protects a city's ability to require compliance with **concealment measures** within duly designated historic areas. If a city imposes such requirements, then it may provide general guidance regarding preferred designs of such concealment measures.

However, any concealment measures must be reasonable, technology neutral, and cannot prohibit or reduce the functionality of small cells. In the event that the preferred designs are found to reduce the functionality of the small cell or are otherwise unworkable, then the city may initiate a conference for the purpose of considering additional design alternatives.

In addition, cities may continue to enforce historic preservation zoning regulations as well as several federal provisions related to historic zoning.

Aesthetic Plan

Another principal concern consistently expressed by municipal officials was the fear of losing the ability to protect the look and character of their city streets, neighborhoods, downtowns, historic areas and other special developments under the small cells legislation. The Act affords municipalities the ability to adopt and enforce limits or requirements throughout the city, or within a portion of the city, for the purposes of preserving and promoting the desired aesthetics. Under the Act, this is accomplished, in large part, through the adoption and implementation of an aesthetic plan.

Despite the implication, an "Aesthetic Plan" is not necessarily any singular, overarching document. Rather, it is a general term that is defined under the small cells law to include any written resolution, regulation, policy, site plan or approved plat that imposes any aesthetic restrictions or requirements. Additionally, the new law provides that such restrictions or requirements are only valid if they apply to any providers operating within the affected area. In other words, a written regulation would not qualify as an aesthetic plan if it only applied to small cell providers but not utility operators. Similarly, a policy would not qualify as an aesthetic plan if it applied to one small cell provider but not others. Moreover, an aesthetic plan is not valid if the requirements have the effect of precluding the deployment of any small cells.

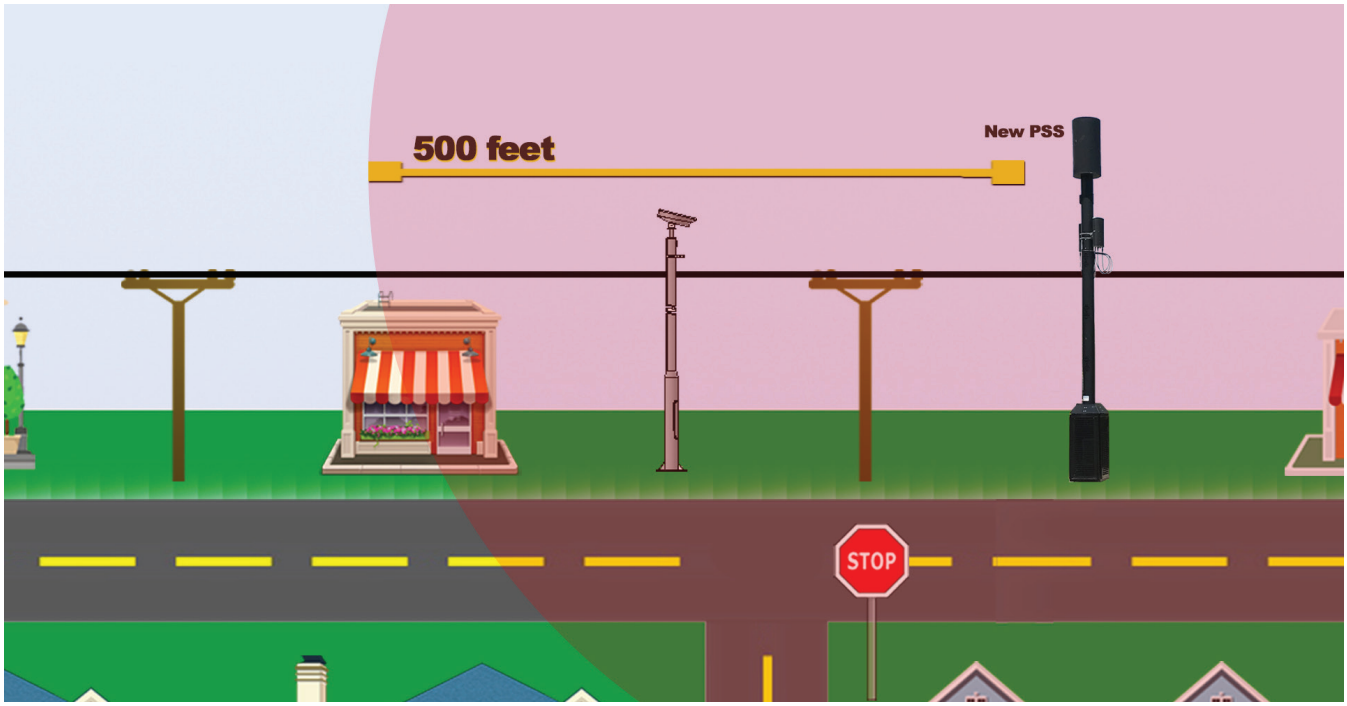
The Act provides that an aesthetic plan is an allowable exception to the general requirements of the new law. Therefore, in the event that any provision of the new small cells law is in conflict with a city's aesthetic plan, then the city's aesthetic plan prevails and providers must comply with its requirements. Again, the only disqualifying factors that would negate this exception would be if such requirements or conditions were not applied to all types of providers and operators within the covered area or if such requirements or conditions precluded the deployment of small cells altogether.

The Act affords municipalities the ability to adopt and enforce limits or requirements throughout the city, or within a portion of the city, for the purposes of preserving and promoting the desired aesthetics.

The Act includes no specific criteria regarding either the nature of or the specific elements that may be restricted or required, pursuant to an aesthetic plan. As such, a municipality's requirements concerning the color or design of street lights would constitute an aesthetic plan, provided such requirements applied to all street lights in the designated area. A city's regulations governing the locating of above-ground structures on a sidewalk would also constitute an aesthetic plan. Additionally, if the site plan for a development limited the height or number of vertical structures permitted within the area or required all utilities to be buried underground, then these elements of the site plan would also constitute an aesthetic plan.

The inclusion of an exception to the general requirements of the new small cells law, allowing for the implementation and enforcement of aesthetic plans, affords municipalities a means to continue to preserve the character of their city and to promote the desired aesthetics throughout their community.

Existing Pole within 500 ft.



Under the law, a new or modified PSS is permitted to be up to 50 feet tall, unless there is an existing pole or sign within 500 feet of the proposed location for the new or modified pole that rises more than 40 feet above the ground.

Potential Support Structures (PSS) and Small Cells

The Act allows providers the option of deploying a small cell on either a pole, sign or other qualifying structure, referred to as a potential support structure, or PSS. Generally, a PSS may be a pole supporting a traffic signal, a light pole, an electric pole or telephone pole. A PSS may also be a wayfinder sign or directional sign. It should be noted that while any sign classified as a regulatory sign under the MUTCD may qualify as a PSS, the new law assigns unique standards and processes for such signs. A PSS may also be a bridge, overpass, building or similar structure. However, a large cell tower, water tower or billboard may not qualify as a PSS.

There are **three means by which a provider may choose to deploy a small cell** – collocation on an existing PSS, collocation on a new PSS that replaces an existing PSS and is designed to incorporate a small cell within its structure, or the instillation of a new PSS where one does not currently exist.

While a city's approval is required before a provider may deploy a small cell, a city may not dictate or alter the design of a provider's network by either mandating the location of small cells, imposing a minimum separation distance between small cells, or requiring small cells to be attached to a specific PSS or type of PSS, unless the proposed deployment encompasses a regulatory sign, a sign subject to breakaway support requirements, or a pole with a mast arm that is routinely removed.

The new law generally prohibits a city from restricting the size, height, appearance or placement of a small cell or the collocation of a small cell on a PSS. However, this does not mean that a provider can deploy small cells at will. Despite the general prohibition, there are some uniform standards that apply. Additionally, the new law includes exceptions to this general prohibition that afford a city an opportunity to achieve its' desired outcome. Some of these opportunities are described below.

Lastly, the Act institutes **a standard rate for deploying or collocating a small cell.** Municipalities are free to assess a provider an annual rate for each small cell deployed on a municipally-owned street light, traffic signal, sign or utility pole. However, a city may not establish an annual rate in excess of $100. Moreover, a city is prohibited from creating and levying a new tax or fee that exceeds the cost-based fees allowed for use of the right of way under existing law.

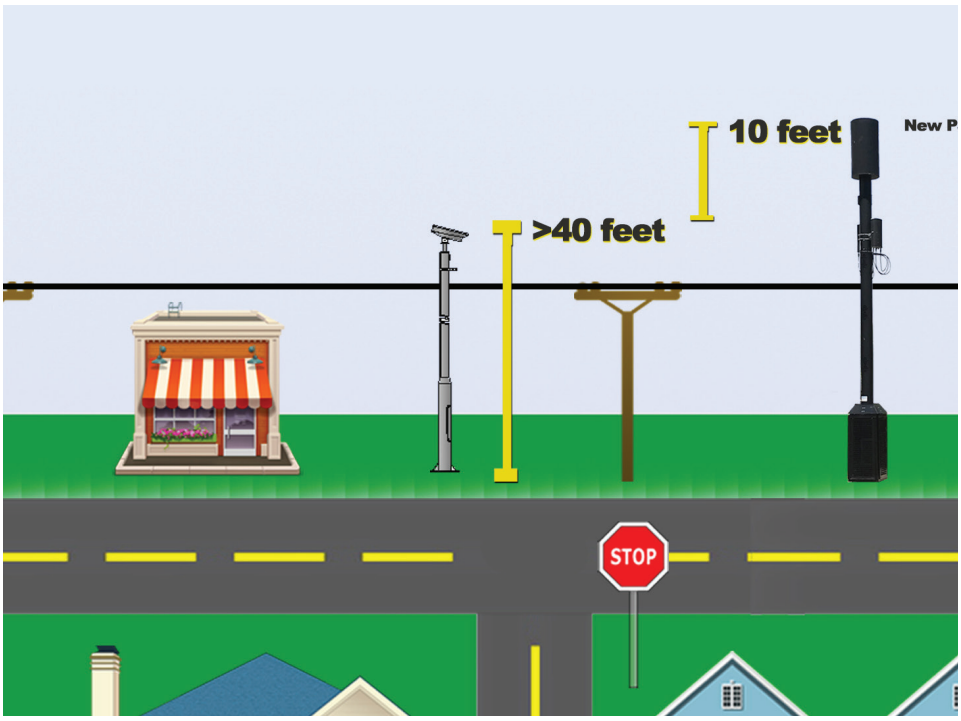
Existing pole is greater than 40 ft.

If the proposed location of the new or modified PSS lies within a residential neighborhood, then the height is limited to 40 feet above the ground, unless there is an existing pole or sign located in the same neighborhood and within 500 feet of the proposed location that rises more than 30 feet above the ground. (pictured above) In such a case, the new or modified pole may reach a height of 10 feet above this pole or sign. (pictured below)

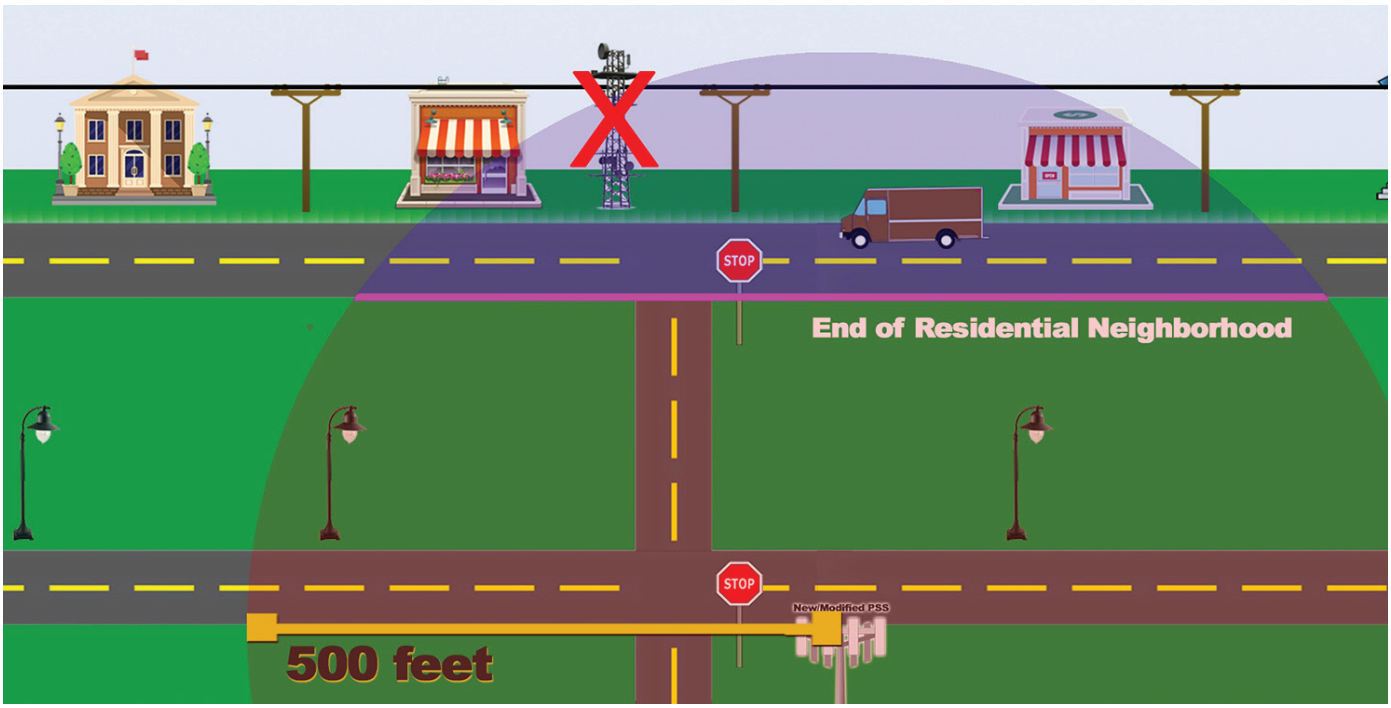
Size of Small Cell

Although a city may not regulate the size of a small cell, the new law establishes a standard size that must be observed. A small cell includes two primary components. The first component includes wireless equipment, which the law says must be cumulatively limited to 28 cubic feet or less in volume. The second component is the antenna, which must fit within an enclosure that is no more than six cubic feet in volume. In addition to these two elements, a provider will likely deploy several related components in association with a small cell, such as an electric meter, cut-off switch, vertical power cables or grounding equipment. These associated elements are not included in the definition of a small cell and are; therefore, outside of the standard size restriction established under the Act.

New or modified PSS may reach a height of 10 feet above existing pole or sign.



500 ft. radius is limited to existing structures within residential neighborhood.



Height of a PSS or Small Cell

While the Act prohibits a city from restricting the height of a new or modified PSS, the Act includes uniform height provisions for a new pole or sign installed to host a small cell or a modified pole or sign installed as a replacement for an existing pole or sign, on which a small cell is to be hosted. Under the law, a new or modified PSS is permitted to be up to 50 feet tall, unless there is an existing pole or sign within 500 feet of the proposed location for the new or modified pole that rises more than 40 feet above the ground. In such a case, the new or modified PSS may reach a height of 10 feet above this pole or sign.

However, if the proposed location of the new or modified PSS lies within a residential neighborhood, then the height is limited to 40 feet above the ground, unless there is an existing pole or sign located in the same neighborhood and within 500 feet of the proposed location that rises more than 30 feet above the ground. In such a case, the new or modified pole may reach a height of 10 feet above this pole or sign.

In addition to the height limits for a new or modified PSS, the new law also imposes a height limit for any small cell and its antenna. A small cell and its antenna may not reach higher than 10 feet above the allowable height for a new or modified PSS in that same location.

Notwithstanding the prohibition on a city setting a height limit or the provisions establishing a uniform height limit, the new law provides **exceptions to the standard height limit.** First, a PSS or small cell may exceed the standard height limit, if the city's zoning regulations allow for taller structures in the area or if approved pursuant to a zoning appeal. Second, the law permits a city to regulate the height of either a new or modified PSS or small cell through the application of an aesthetic plan.

While a city may not regulate the appearance of a PSS, a provider may be required to ensure that the appearance of any new or modified PSS is consistent with the design of the pole or sign being replaced. Moreover, the appearance of a new or modified pole may also be regulated by a requirement imposed under an aesthetic plan or as a result of a conference.

Although the new law forbids a city from dictating the placement of a PSS, limiting the distance between a PSS or requiring the collocation of a small cell on a specific PSS, it permits a city to attempt to accomplish these objectives through either the implementation of an aesthetic plan or by means of a conference. Additionally, the law permits a city to deny a request for deployment of a small cell on a **regulatory sign** or on a pole with a **mast arm that is routinely removed.**

Installing an approved new or modified PSS

A provider has up to **9 months from the date an application is approved to install a small cell.** This time period may only be extended by mutual agreement of the parties or if the selected location lacks either commercial power or communications transport facilities. If the provider has not completed installation of a small cell within the allotted 9 months and no extension has been granted, then a city may require the applicant to complete a new application and pay an additional application fee.

Once an approved new or modified PSS has been installed, the PSS becomes the property of the city. Understandably, this fact sparked a number of questions and concerns. On one hand, a city has an interest in maintaining control of public infrastructure for operational purposes. The city also has an obligation to ensure that taxpayers are kept whole for any investment in infrastructure that is subsequently removed and replaced. As such, it makes sense for a city to assume ownership of any pole or sign that is installed within its right of way and that has such a profound impact upon safety.

On the other hand, this proposition raised serious concerns regarding a potential threat to public safety and associated liability should the new or modified PSS experience a structural or mechanical failure. Additionally, cities were concerned about the potential costs associated with repairing or removing a pole or sign that incorporated a provider's technology in the event that it ceased operating or was damaged in some way.

Clearly, these questions and concerns had to be addressed prior to enactment. Consequently, the Act includes **several provisions intended to mitigate any potential risks associated with a city assuming ownership of any new or modified pole** installed pursuant to this grant of authority.

First, a provider may be required to certify that it has secured a surety bond, insurance or indemnification associated with deployment of a small cell on a new or modified PSS, upon making application. Moreover, the provider may also be required to certify that the proposed site and design meets or exceeds all applicable engineering, materials, electrical and safety standards related to the structural integrity and weight-bearing capacity of the small cell and associated PSS, upon making application. If after reviewing an application a city still has concerns about the impact the deployment may have on the motorists or pedestrians, then it may initiate a conference.

Second, the new law provides that upon approval of an application seeking deployment of a PSS by means of the installation of either a new or modified PSS, a city may also require the provider to provide a professional engineer's certification that the new or modified PSS has been suc-

design submitted and that satisfies all applicable safety and engineering standards. A city does not assume ownership of a new or modified pole or sign until such time as the provider makes any necessary improvements to secure such certification.

Third, any PSS that replaces an existing pole or sign and is designed to incorporate a small cell within its structure must continue to perform the same functions as the pole or sign being replaced. For example, if a provider's application to remove an existing traffic signal and replace it with a new pole that incorporates a small cell within its structure, then that new pole must also continue to function as a traffic signal. Similarly, if the pole being replaced is used for lighting, a provider may be required to provide lighting on the new pole that is equivalent to the quality and standards of the lighting included on the pole being replaced. No replacement pole shall become the property of the city until the city has conducted an inspection and determined that the replacement pole maintains the functionality of the pole being replaced and, in the case of light pole, the lighting is of the same quality and standards as included on the pole being replaced.

Fourth, any provider seeking to deploy a small cell on a **bridge or overpass** may be required to provide a professional engineer's certification that the small cell was deployed consistent with the submitted design, that the bridge or overpass maintains the same structural integrity as before the installation, and that during the installation process neither the provider nor its contractors discovered evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If the provider or contractor discovers such evidence, then the provider must provide notice to the city.

Fifth, when making application, a provider may be also required to certify that it will repair all damage to its facilities or any damage incurred by other parties in association with its deployment of a small cell or PSS. Additionally, the provider may be required to certify that it will comply with any regulations governing the removal of inoperable or damaged facilities within the right of way as well as requirements concerning the relocation of facilities in the event of an emergency, upon making application. Finally, if the provider proposes to replace an existing pole or sign with a new pole that incorporates a small cell within its structure, then the provider may be required to indicate on its application whether it will assume responsibility for maintenance and repairs in case of damage to the facility or structure, or whether it will allow the city to replace its damaged PSS with a pole of the city's choosing and to require the provider to remove and dispose of the associated small cell.

Finally, the new law allows a city to reject an application to collocate a small cell on a sign designated as a "regulatory sign" under the MUTCD, infrastructure subject to requirements for breakaway support, or a pole with a mast arm that is routinely removed.

A **regulatory sign** includes stop signs, signs denoting parking or loading zones, speed limit signs, school crossing signs, signs denoting maximum weight limits and a host of other such signs. If a city rejects an application seeking to collocate a small cell on **infrastructure that is subject to breakaway support requirements** or a regulatory sign to replace such a sign with a modified PSS, then the provider may seek reconsideration of the design, through a conference. While the city is obligated to convene the conference and to consider any new designs submitted, it is under no obligation to approve the new designs.

The process for rejecting an application to collocate a small cell on a traffic signal or utility pole with a **mast arm that is routinely removed** to accommodate frequent events is less involved. Qualifying poles must be identified and included on a list of such PSSs that is posted to the city' website prior to the date on which the application is submitted.

TACIR Report

The Act requires the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to prepare and submit a report to the House Business and Utilities Committee and the Senate Commerce and Insurance Committee by January 1, 2021.

The report is to include the commission's findings with respect to the new law's impact on deployment of broadband. The report is to also include an analysis of the fiscal impact on authorities resulting from the administrative process required under the new law. The report must also identify the best practices from the perspective of cities and providers as well as best practices in other states. Additionally, the report must identify opportunities to advance the quality of transportation in Tennessee by utilizing technological applications, sometimes referred to as "smart transportation applications," that are supported by small cells. Finally, the report is to include any recommended changes to the Act.

"Competitive Wireless Broadband Investment,
Deployment, and Safety Act of 2018"
Chapter 819 of the Public Acts of 2018.

Section 2

Text of the Act
Public Chapter 819

State of Tennessee

PUBLIC CHAPTER NO. 819

HOUSE BILL NO. 2279

By Representatives Lamberth, Sargent, Casada, Marsh, Holsclaw, Wirgau, Hawk, Hazlewood, Johnson, Calfee, Crawford, Timothy Hill, Towns, Hardaway, Gilmore, Powell, Beck, Tillis, Sparks, Jernigan, Carr, Jones, Byrd, Goins, Love, Mitchell, Powers, Zachary, Cameron Sexton, Miller, Eldridge, Coley, Matthew Hill, Ramsey, Williams, Favors, Reedy, Kumar, Dawn White, McCormick, Camper, Thompson, Kevin Brooks, Van Huss, Whitson, Cooper, Weaver, Carter, Matheny, Littleton, Howell, Gant, Lynn, Rudd, Terry, Stewart, Jerry Sexton, Hicks, Akbari, Parkinson, Sanderson, Forgety, Mark White

Substituted for: Senate Bill No. 2504

By Senators Ketron, Johnson, Gresham, Lundberg, Green, Yager, Niceley, Swann, Tate

AN ACT to amend Tennessee Code Annotated, Title 13, relative to enacting the Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018.

WHEREAS, Tennessee has benefitted from its long-standing policy of encouraging investment in technologically advanced infrastructure that delivers access to information and connectivity between citizens; and

WHEREAS, this policy has included, in Tennessee Code Annotated, Title 65, a broad and technology neutral grant of access to deploy infrastructure along the streets, highways, and public works of the cities, counties, and the state, which is not intended to be limited by this act; and

WHEREAS, such access has been granted subject to certain local powers but free from local taxation or other fees or charges in excess of cost recovery; and

WHEREAS, Tennessee's economy depends upon the ability of Tennesseans to utilize robust and mobile connectivity to transact business and pursue education; and

WHEREAS, robust and mobile connectivity affords Tennesseans opportunities to be engaged in the civic and political activities of local and state government; and

WHEREAS, Tennessee's law enforcement, first responders, and healthcare providers can use wireless and mobile applications to protect the public's safety and well-being; and

WHEREAS, Tennessee's ability to remain a leader in automotive production, research, and development will be enhanced by rapid deployment of the 5G wireless connectivity that will be critical for safe operation of autonomous vehicles and for numerous smart transportation systems; and

WHEREAS, all of these factors provide a compelling basis for the General Assembly to set aside obstacles and discriminatory policies that may slow deployment of new infrastructure and improvements to existing networks for the purpose of supporting emerging wireless technologies and ensuring that Tennessee networks can keep up with the growing data demands of Tennesseans; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 24, is amended by adding the following new part:

13-24-401. Short title.

This part shall be known and may be cited as the "Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018."

13-24-402. Part definitions.

As used in this part:

(1) "Aesthetic plan" means any publicly available written resolution, regulation, policy, site plan, or approved plat establishing generally applicable aesthetic requirements within the authority or designated area within the authority. An aesthetic plan may include a provision that limits the plan's application to construction or deployment that occurs after adoption of the aesthetic plan. For purposes of this part, such a limitation is not discriminatory as long as all construction or deployment occurring after adoption, regardless of the entity constructing or deploying, is subject to the aesthetic plan;

(2) "Applicant" means any person who submits an application pursuant to this part;

(3) "Application" means a request submitted by an applicant to an authority:

(A) For a permit to deploy or colocate small wireless facilities in the ROW; or

(B) To approve the installation or modification of a PSS associated with deployment or colocation of small wireless facilities in the ROW;

(4)

(A) "Authority" means:

(i) Within a municipal boundary, the municipality, regardless of whether such municipality is a metropolitan government;

(ii) Within a county and outside a municipal boundary, the county; or

(iii) Upon state-owned property, the state;

(B) "Authority" does not include a government-owned electric, gas, water, or wastewater utility that is a division of, or affiliated with, a municipality, metropolitan government, or county for any purpose of this part, and the decision of the utility regarding a request to attach to or modify the plant, facilities, or equipment owned by the utility shall not be governed by this part;

(5) "Authority-owned PSS" means a PSS owned by an authority but does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is investor-owned, cooperatively-owned, or government owned;

(6) "Colocate," "colocating", and "colocation" mean, in their respective noun and verb forms, to install, mount, main maintain, modify, operate, or replace small wireless facilities on, adjacent to, or related to a PSS. "Colocation" does not include the installation of a new PSS or replacement of authority-owned PSS;

(7) "Communications facility" means the set of equipment and network components, including wires and cables and associated facilities, used by a communications service provider to provide communications service;

(8)"Communications service" means cable service as defined in 47 U.S.C. § 522(6), telecommunications service as defined in 47 U.S.C. § 153(53), information service as defined in 47 U.S.C. § 153(24) or wireless service;

(9) "Communications service provider" means a cable operator as defined in 47 U.S.C. § 522(5), a telecommunications carrier as defined in 47 U.S.C. § 153(51), a provider of information service as defined in 47 U.S.C. § 153(24), a video service provider as defined in § 7-59-303, or a wireless provider;

(10) "Fee" means a one-time, nonrecurring charge;

(11) "Historic district" means a property or area zoned as a historic district or zone pursuant to § 13-7-404;

(12) "Local authority" means an authority that is either a municipality, regardless of whether the municipality is a metropolitan government, or a county, and does not include an authority that is the state;

(13) "Micro wireless facility" means a small wireless facility that:

(A) Does not exceed twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height; and

(B) The exterior antenna, if any, does not exceed eleven inches (11") in length;

(14) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority;

(15) "Potential support structure for a small wireless facility" or "PSS" means a pole or other structure used for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, including poles in stalled solely for the colocation of a small wireless facility. When "PSS" is modified by the term "new," then "new PSS" means a PSS that does not exist at the time the application is submitted, including, but not limited to, a PSS that will replace an existing pole. The fact that a structure is a PSS does not alone authorize an applicant to collocate on, modify, or replace the PSS until an application is approved and all requirements are satisfied pursuant to this part;

(16) "Rate" means a recurring charge;

(17) "Residential neighborhood" means an area within a local authority's geographic boundary that is zoned or other wise designated by the local authority for general purposes as an area primarily used for single-family residences and does not include multiple commercial properties and is subject to speed limits and traffic controls consistent with residential areas;

(18) "Right-of-way" or "ROW" means the space, in, upon, above, along, across, and over all public streets, high ways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of the authority, and any unrestricted public utility easement established, dedicated, platted, improved, or devoted for utility purpos- and accepted as such public utility easement by the authority, but excluding lands other than streets that are owned by the authority;

(19)

(A) "Small wireless facility" means a wireless facility with:

(i) An antenna that could fit within an enclosure of no more than six (6) cubic feet in volume; and

(ii) Other wireless equipment in addition to the antenna that is cumulatively no more than twenty-eight (28) cubic feet in volume, regardless of whether the facility is ground-mounted or pole-mounted. For purposes of this subdivision"other wireless equipment" does not include an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a vertical cable run for the connection of power and other services; and

(B) "Small wireless facility" includes a micro wireless facility;

(20) "Wireline backhaul facility" means a communications facility used to transport communications services by wire from a wireless facility to a network;

(21)

(A) "Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including: and

(i) Equipment associated with wireless communications;

(ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;

(B) "Wireless facility" does not include:

(i) The structure or improvements on, under, or within which the equipment is colocated;

(ii) Wireline backhaul facilities; or

(iii) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna; and

(C) "Wireless facility" includes small wireless facilities;

(22) “Wireless provider” means a person who provides wireless service; and

(23) “Wireless services” means any service using licensed or unlicensed spectrum, including the use of WiFi, whether at a fixed location or mobile, provided to the public.

13-24-403. Construction and applicability of part.

(a) This part shall be construed to maximize investment in wireless connectivity across the state by creating a uniform and predictable framework that limits local obstacles to deployment of small wireless facilities in the ROW and to encourage, where feasible, shared use of public infrastructure and colocation in a manner that is the most technology neutral and nondiscriminatory.

(b) This part does not apply to:

(1) Deployment of infrastructure outside of the ROW; or

(2) Taller towers or monopoles traditionally used to provide wireless services that are governed by §§ 13-24-304 and 13-24-305.

13-24-404. Local option and local preemption.

(a) Nothing in this part requires any local authority to promulgate any limits, permitting requirements, zoning requirements, approval policies, or any process to obtain permission to deploy small wireless facilities. However, any local authority that promulgates limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities shall not impose limits, requirements, policies, or processes that are:

(1) More restrictive than requirements, policies, or processes set forth in this part;

(2) In excess of that which is granted by this part; or

(3) Otherwise in conflict with this part.

(b) Any local authority limits, requirements, policies, or processes that are more restrictive, in conflict with, or in excess of that which is granted by this part are void, regardless of the date on which the requirement, policy, or process was enacted or became law.

(c) For colocation of small wireless facilities in the ROW that is within the jurisdiction of a local authority that does not require an application and does not require work permits for deployment of infrastructure within the ROW, an applicant shall provide notice of the colocation by providing the materials set forth in § 13-24-409(g) to the office of the county mayor and the chief administrative officer of the county highway department, if the colocation is in the unincorporated area, or the city, if the colocation is in an incorporated area.

13-24-405. Existing law unaffected.

This part does not:

(1) Create regulatory jurisdiction for any subdivision of the state regarding communications services that does not exist under applicable law, regardless of the technology used to deliver the services;

(2) Restrict access granted by§ 65-21-201 or expand access authorized under§ 54-16-112;

(3) Authorize the creation of local taxation in the form of ROW taxes, rates, or fees that exceed the cost-based fees authorized under existing law, except that the specific fees or rates established pursuant to this part do not exceed cost;

(4) Alter or exempt any entity from the franchising requirements for providing video services or cable services set forth in title 7, chapter 59;

(5) Apply to any segment of the statewide P25 interoperable communications system governed by § 4-3-2018;

(6) Alter the requirements or exempt any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any facility pursuant to title 54, chapter 5, part 8, or other similar generally applicable requirement imposed on entities who deploy infrastructure in ROW;

(7) Prohibit a local authority from the nondiscriminatory enforcement of breakaway sign post requirements and safety restrictions generally imposed for all structures within a ROW;

(8) Prohibit a local authority from the nondiscriminatory enforcement of vegetation control requirements that are imposed upon entities that deploy infrastructure in a ROW for the purpose of limiting the chances of damage or injury as a result of infrastructure that is obscured from view due to vegetation; or

(9) Prohibit a local authority from the nondiscriminatory enforcement of generally applicable local rules regarding removal of unsafe, abandoned, or inoperable obstructions in a ROW.

13-24-406. Prohibited activities.

An authority shall not:

(1) Enter into an exclusive arrangement with any person for use of a ROW for the construction, operation, market ing, or maintenance of small wireless facilities;

(2) Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other entities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in a ROW;

(3) Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in a ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in a ROW may be applied to prohibit an applicant's deployment of a new PSS in a ROW; or

(4) Except as provided in this part or otherwise specifically authorized by state law, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

13-24-407. Uniform local authority fees for deployment of small wireless facilities; exceptions.

(a) The following are the maximum fees and rates that may be charged to an applicant by a local authority for deployment of a small wireless facility:

(1) The maximum application fee is one hundred dollars ($100) each for the first five (5) small wireless facilities and fifty dollars ($50.00) each for additional small wireless facilities included in a single application. A local authority may also require an additional fee of two hundred dollars ($200) on the first application an applicant files following the effective date of this act to offset the local authority's initial costs of preparing to comply with this part. Beginning on January 1, 2020, and at each five-year interval thereafter, the maximum application fees established in this section must increase in an amount of ten percent (10%), rounded to the nearest dollar; and

(2) The maximum annual rate for colocation of a small wireless facility on a local authority-owned PSS is $100.

(b) In addition to the maximum fees and rates described in subsection (a), a local authority shall not require applicants:

(1) To pay fees or reimburse costs for the services or assistance provided to the authority by a consultant or third party retained by the authority relative to deployment of small wireless facilities; or

(2) To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own facilities. In no event shall replacement of a PSS constitute regular maintenance.

(c) This section does not prohibit an authority from requiring generally applicable work or traffic permits, or from collecting the same applicable fees for such permits, for deployment of a small wireless facility or new PSS as long as the work or traffic permits are issued and associated fees are charged on the same basis as other construction activity in a ROW.

(d) This section does not prohibit an authority from retaining any consultant or third party when the fees and costs for the consultant or third party are paid by the authority, using the authority's own funds, rather than requiring applicants to reimburse or pay for the consultants or third parties.

(e)

(1) Except for the application fees, permit fees, and colocation rates set out in this section, no local authority shall require additional rates or fees of any kind, including, but not limited to, rental fees, access fees, or site license fees for the initial deploy ment or the continuing presence of a small wireless facility.

(2) No local authority shall require approval, or any applications, fees, or rates, for:

(A) Routine maintenance of a small wireless facility, which maintenance does not require the installation of a new PSS or the replacement of a PSS;

(B) The replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility" in § 13-24-402; or

(C) The installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in§ 68-101-104.

(3) No local authority shall require execution of any access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

(4) A local authority shall not directly or indirectly require an applicant to perform services for the authority or provide goods to the authority such as in kind contributions to the authority, including, but not limited to, reserving fiber, conduit, or pole space for the authority in exchange for deployment of small wireless facilities. The prohibition in this subdivision (e)(4) does not preclude the approval of an application to collocate a small cell in which the applicant chooses, in its sole discretion, a design that accommodates other functions or attributes of benefit to the authority.

13-24-408. Uniform local authority requirements for deployment and maintenance of small wireless facilities; exceptions.

(a)

(1) No local authority shall restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities, or prohibit colocation on PSSs, except a local authority shall require that:

(A) A new PSS installed or an existing PSS replaced in the ROW not exceed the greater of:

(i) Ten feet (10') in height above the tallest existing PSS in place as of the effective date of this part that is located within five hundred feet (500') of the new PSS in the ROW and, in residential neighborhoods, the tallest existing PSS that is located within five hundred feet (500') of the new PSS and is also located within the same residential neighborhood as the new PSS in the ROW;

(ii) Fifty feet (50') above ground level; or

(iii) For a PSS installed in a residential neighborhood, forty feet (40') above ground level.

(B) Small wireless facilities deployed in the ROW after the effective date of this part shall not extend:

(i) More than ten feet (10') above an existing PSS in place as of the effective date of this part; or

(ii) On a new PSS, ten feet (10') above the height permitted for a new PSS under this section.

(C) Nothing in this part applies to or restricts the ability of an electric distributor or its agent or designated party to change the height of a utility pole used for electric distribution, regardless of whether a small wireless facility iscolocated on the utility pole. This section does not authorize a wireless provider to install or replace a PSS above the height restrictions in subdivision (a)(1)(A).

(2) An applicant may construct, modify, and maintain a PSS or small wireless facility that exceeds the height limits set out in subdivision (a)(1) only if approved under the local authority's generally applicable zoning regulations that expressly allow for the taller structures or if approved pursuant to a zoning appeal.

(b) A local authority may require an applicant to comply with a local authority's nondiscriminatory requirements for placing all electric, cable, and communications facilities underground in a designated area of a ROW if the local authority:

(1) Has required all electric, communications, and cable facilities, other than authority-owned PSSs and attach ments, to be placed underground prior to the date on which the application is submitted;

(2) Does not prohibit the replacement of authority-owned PSSs in the designated area when the design for the new PSS meets the authority's design aesthetic plan for the area and all other applicable criteria provided for in this part; and

(3) Permits applicants to seek a waiver of the underground requirements for the placement of a new PSS to support small wireless facilities and the approval or nonapproval of the waivers are decided in a nondiscriminatory manner:

(c)

(1) Except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. §1.1307(a)(4) or any subsequently enacted similar regulations, a local authority may require reasonable, nondiscriminatory, and technology neutral design or concealment measures in a historic district if:

(A) The design or concealment measures do not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility, and the local authority permits alternative design or concealment measures that are reasonably similar; and

(B) The design or concealment measures are not considered a part of the small wireless facility for pur poses of the size conditions contained in the definition of "small wireless facility" in § 13-24-402.

(2) Nothing in this section limits a local authority's enforcement of historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966 codified in 54 U.S.C. § 300101 et seq., and the regulations adopted and amended from time to time to implement those laws.

(d) No local authority shall require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network. No local authority shall limit the placement of small wireless facilities by imposing minimum separation distances for small wireless facilities or the structures on which the facilities are colocated. The prohibitions in this subsection (d) do not preclude a local authority from providing general guidance regarding preferred designs or from requesting consideration of design alter natives in accordance with the process set forth in § 13-24-409(b).

(e) A local authority may prohibit colocation on local authority-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events, including, but not limited to, regularly scheduled street festivals or parades. To qualify for the exception set out in this subsection (e), an authority must publish a list of the PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to an application. A local authority may grant a waiver to allow colocation on a PSS designated under this subsection (e) if an applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements of this part.

(f) An applicant may replace an existing local authority-owned PSS when colocating a small wireless facility. When replacing a PSS, any replacement PSS must reasonably conform to the design aesthetics of the PSS being replaced, and must continue to be capable of performing the same function in a comparable manner as it performed prior to replacement.

(g) When replacing a local authority-owned PSS, the replacement PSS becomes the property of the local authority and maintenance and repair obligations are as follows:

(1) For local authority-owned PSSs used for lighting, a local authority may require the applicant to provide lighting on the replacement PSS. Both the PSS and the lighting shall become the property of the local authority only upon completion of the local authority's inspection of the new PSS to ensure it is in working condition and that any lighting is equivalent to the quality and standards of the lighting on the PSS prior to replacement. After satisfactory inspection, the local authority's ownership shall include responsibility for electricity and ordinary maintenance, but the local authority shall not be responsible for electric power, maintenance or repair of the small wireless facility collocated on the local authority-owned PSS; and

(2) When the applicant's design for replacing a local authority-owned PSS substantially alters the PSS, then the applicant shall indicate in its application whether the applicant will manage maintenance and repairs in case of damage or whether the applicant agrees that, if the PSS is damaged and requires repair, then the local authority may replace the PSS without regard to the alterations and require the applicant to perform any work necessary to remove or dispose of the small wireless facility. If the applicant assumes the responsibility for repair, then the applicant is entitled

to a right of subrogation with regard to local authority insurance coverage or any recovery obtained from third parties liable for the damage.

(h) A local authority may conduct periodic training sessions or seminars for the purpose of sharing local information relevant to deployment of small wireless facilities and best practices. Applicants must make a good faith effort to participate in the opportunities.

13-24-409. Uniform application procedures for local authorities.

(a) A local authority may require an applicant to seek permission by application to colocate a small wireless facility or install a new or modified PSS associated with a small wireless facility and obtain one (1) or more work permits, as long as the work permits are of general applicability and do not apply exclusively to wireless facilities.

(b) If a local authority requires an applicant to seek permission pursuant to subsection (a), the authority must comply with the following:

(1) A local authority shall allow an applicant to include up to twenty (20) small wireless facilities within a single application;

(2) A local authority shall, within thirty (30) days of rece1v1ng an application, determine whether an application is complete and notify the applicant. If an application is incomplete, a local authority must specifically identify the missing information in writing when the applicant is notified;

(3)

(A) Within thirty (30) days of rece1v1ng an application, a local authority may notify an applicant of the need for a conference with the applicant to assist the local authority in understanding or evaluating the applicant's design with regard to one (1) or more small wireless facilities contained in its application.

(B) For an application containing multiple small wireless facilities, the local authority shall specify the specific small wireless facilities for which conference is needed, and the sixty-day period for reviewing the application must be extended to seventy-five (75) days as provided in subdivision (b)(7).

(C)The local authority is responsible for scheduling the conference and shall permit the applicant to attend telephonically. The seventy-five-day period is not tolled while the conference is scheduled unless the applicant agrees to an additional extension of the review period.

(D) Issues that may be addressed by the conference include, but are not limited to:

(i) Safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety-related alterations to the design;

(ii) Potential of conflict with another applicant's application for the same or a nearby location;

(iii) Impact of planned construction or other public works projects at or near the location identified by the application; and

(iv) Alternative design options that may enable colocation on an existing PSS instead of deployment of a new PSS or opportunities and potential benefits of alternative design that would incorporate other features or elements of benefit to the local authority. However, the existence of alternatives does not constitute a basis for denial of an application that otherwise satisfies all generally applicable standards for construction in the ROW and the requirements established by this part;

(4) A local authority shall process all applications on a nondiscriminatory basis;

(5) Except when extension of the review period is allowed by this section, a local authority shall approve or deny all small wireless facilities within an application within sixty (60) days of receipt of the application. For those applications seeking permission to deploy or colocate multiple small wireless facilities, the local authority shall deny permission only as to those small wireless facilities for which the application does not demonstrate compliance with all generally applicable ROW standards imposed on entities entitled to place infrastructure in the ROW and the requirements established by this part. A local authority shall not deny permission solely on the basis that the small wireless facility was contained in the same application as other small wireless facilities that are not approved;

(6) Any application or any portion of an application that is not approved or denied within sixty (60) days is deemed approved, unless the sixty-day period has been extended consistent with this section. If the period has been extended, then the date on which approval will be deemed to occur is also extended to the same date of the applicable extension;

(7) Except as otherwise provided in this subdivision (7), a local authority shall not extend the sixty-day period to provide for additional or supplemental review by additional departments or designees. The sixty (60) day review period may be tolled or extended only as follows:

(A) The sixty-day period is tolled if a local authority sends notice to the applicant that the application is incomplete within thirty (30) days after the initial application is filed, but this tolling ceases once additional or supplemental information is provided to the local authority. If supplemental information is not received within thirty (30) days of the date on which notice of incompleteness is sent by the authority, then the application may be denied and a new application required;

(B) The local authority and the applicant may mutually agree to toll the sixty-day period;

(C) The sixty-day review period is extended to seventy-five (75) days upon timely notice by the authority of the need for a conference as provided in subdivision (b)(3), but the seventy-five-day period must not be further extended for applications under subdivision (b)(7)(D) or (E);

(D) If an applicant submits applications to the same local authority seeking permission to deploy or colocate more than thirty (30), but fewer than fifty (50), small wireless facilities within any thirty-day period, then the local authority may upon notice to the applicant extend the sixty-day period for reviewing the applications to seventy-five (75) days, but the seventy-five-day period shall not be further extended for a conference as provided in subdivision (b)(7)(C);

(E) If an applicant submits applications to the same local authority seeking permission to deploy or colocate fifty (50) or more small wireless facilities within any thirty-day period, then the local authority may, upon notice to the applicant, extend the period for reviewing the applications to ninety (90) days, but the ninety-day period must not be further extended for a conference as provided in subdivision (b)(7)(C);

(F) If an applicant submits applications to the same local authority seeking permission to deploy or colocate more than one hundred twenty (120) small wireless facilities within any sixty-day period, then the local authority may issue notice to the applicant that the authority requires the applicant to select from the following two (2) options for high-volume applicants:

(i) Pay a surcharge to maintain the same review time period that would be otherwise applicable. The surcharge is in addition to the ordinary application fee provided in § 13-24-407. The surcharge is one hundred dollars ($100) for each small wireless facility that the applicant elects to have reviewed using the otherwise applicable review period and the applicant shall submit its list identifying the specific small wireless facilities it elects to have reviewed in the ordinarily applicable period with its surcharge payment within five (5) days of receiving the local authority's notice that applications have been received, triggering the election of either a surcharge or extension of the review time period described in (b)(7), (C), (D), or (E); or

(ii) If no identifying list is provided or if payment of a surcharge is not made within the applicable time period, or, for those small wireless facilities not timely identified and for which no surcharge is timely paid, the ordinarily applicable review period shall be extended to one hundred-twenty (120) days;

(G) If an applicant submits an application in which the proposed design will affect in any manner a regulatory sign, as defined by the Manual on Uniform Traffic Control Devices, or any sign subject to a requirement for break away supports, then the local authority may reject the application. If an application is rejected on that basis, however, the local authority shall permit the applicant to seek reconsideration of its design. If the applicant requests reconsideration, then the local authority shall provide the opportunity for the applicant to schedule a conference to discuss the local authority's specific concerns within thirty (30) days of the reconsideration request. The applicant must submit a revised design or otherwise respond to the local authority's concerns within thirty (30) days of the conference, and upon receipt of the revised design or response, the local authority shall approve or deny the application within sixty (60) days, and the local authority has complete discretion to approve or deny the application in a nondiscriminatory manner;

(8) If a local authority denies an application, it shall provide written explanation of this denial at the same time the local authority issues the denial.

(c) A local authority shall not deny an application unless the applicant has failed to satisfy this part or has failed to submit a design that complies with the generally applicable requirements that the local authority imposes on a nondiscriminatory basis upon entities deploying or constructing infrastructure in a ROW.

(d) Contemporaneous with an approval of an application in which the design includes replacement or construction of a new or replacement PSS, a local authority may notify the applicant of the further requirement that the applicant shall provide a professional engineer's certification that the installation of the new or replacement PSS has been com-

pleted consistent with the approved design as well as all generally applicable safety and engineering standards.

(e) After denial of an application, if an applicant provides a revised application that cures deficiencies identified by the lo-cal authority within thirty (30) days of the denial, then no additional application fee shall be required. A local authority shall approve or deny the revised application within thirty (30) days from the time the revised application is submitted to the authority. Any subsequent review of an application by a local government must be limited to the deficiencies cited in the denial or deficiencies that relate to changes in the revised application and that were not contained in the original application;

(f) A local authority shall not, either expressly or de facto, discontinue its application process or prohibit deployment under the terms of this part prior to adoption of any application process; and

(g) A local authority shall not require applicants to provide any information not listed in this subsection (g). A local authority may require the following information to be provided in an application:

(1) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the local authority to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design require ments, including the requirements of the Manual on Uniform Traffic Control Devices;

(2) The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;

(3) Identification of any third party upon whose PSS the applicant intends to colocate and certification by the applicant that it has obtained approval from the third party;

(4) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;

(5) The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and

(6) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight bearing capacity of the PSS and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer.

(h) An applicant must complete deployment of the applicant's small wireless facilities within nine (9) months of approval of applications for the small wireless facilities unless the local authority and the applicant agree to extend the period, or a delay is caused by a lack of commercial power or communications transport facilities to the site. If an applicant fails to complete deployment within the time required pursuant to this subsection (h), then the local authority may require that the applicant complete a new application and pay an application fee.

(i) If a local authority receives multiple applications seeking to deploy or colocate small wireless facilities at the same location in an incompatible manner, then the local authority may deny the later filed application.

(j) A local authority may require the applicant to designate a safety contact for any colocation design that includes attachment of any facility or structure to a bridge or overpass. After the applicant's construction is complete, the applicant shall provide to the safety contact a licensed professional engineer's certification that the construction is consistent with the applicant's approved design, that the bridge or overpass maintains the same structural integrity as before the construction and installation process, and that during the construction and installation process neither the applicant nor its contractors have discovered evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If such evidence is discovered during construction, then the applicant shall provide notice of the evidence to the safety contact.

(k)The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this part does not authorize the provision of any communications service or the installation, placement, maintenance or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in a right of way.

13-24-410. Provisions applicable solely to the state as an authority.

Notwithstanding any other provision in this part to the contrary, the deployment of small wireless facilities in state ROW is subject to the provisions of this section, as follows:

(1) In those instances in which an applicant seeks to deploy a small wireless facility or new PSS within a state ROW under the control of the department of transportation or to colocate on state-owned PSSs that are subject to oversight by the department of transportation, an application must be made to the department of transportation;

(2)

(A) The department of transportation may charge an applicant an application fee of one hundred dollars ($100) for each application to deploy small wireless facilities in a state ROW up to a maximum of five (5) small wireless facilities. The department may charge an additional fee in the amount of fifty dollars ($50) for each additional small wireless facility included in a single application. Beginning on January 1, 2020, and at each five-year interval thereafter, the application fees established in this subdivision (2)(A) shall increase by the amount of ten percent (10%);

(B) The department of transportation shall not require a permit or charge an application fee for routine maintenance or replacement of a small wireless facility in a state ROW unless the maintenance or replacement requires the installation of a new PSS or the replacement of a PSS or the maintenance or replacement activity will require disturbance of the highway pavement or shoulders;

(C) The department of transportation may impose inspection costs in the same manner such costs are imposed with respect to other entities that deploy infrastructure in a state ROW; and

(D) The department of transportation may require the applicant to provide a surety bond in the same manner as a surety bond is required with respect to other entities that deploy infrastructure in a state ROW;

(3) The application shall conform to the department of transportation's generally applicable rules or policies applicable to those entities that the department of transportation permits to deploy infrastructure in a state ROW;

(4) The department of transportation shall endeavor, when feasible in its discretion, to comply with the timetable for review of applications by local authorities set out in § 13-24-409, but the department of transportation shall have discretion to extend the time for review and shall provide notice to the applicant of additional time needed. No application to the department of transportation shall be deemed approved until the application is affirmatively acted upon;

(5) Until the department of transportation promulgates rules for the deployment of small wireless facilities as set forth in subdivision (8), the department of transportation shall accept applications to deploy small wireless facilities in a state ROW and shall consider each application on a case-by-case basis and shall, in its complete discretion, grant or deny such applications;

(6) Nothing in this part precludes the department of transportation from exercising any regulatory power or conducting any action necessary to comply with 23 USC§ 131 and§ 54-21-116 relating to the regulation of billboards or to satisfy any requirements of federal funding established by state and federal law.

(7) To ensure that this part does not impose new costs significant enough to outweigh the benefits of small wireless facilities, the department of transportation shall not be required to reimburse the costs of relocation of small wireless facilities from a state ROW, notwithstanding any decision the department of transportation may make to exercise its discretionary authority under § 54-5-804 to reimburse other owners of utility facilities for relocation costs arising from a highway construction project;

(8) The department of transportation shall promulgate rules or establish agency policies applicable to deployment of small wireless facilities within state ROW and the colocation of small wireless facilities on state-owned PSS in state ROW, including, but not limited to, the establishment of an annual rate for the colocation of a small wireless facility on state-owned PSS in a state ROW. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5; and

(9) Nothing in this act restricts the department of transportation from the management of a state ROW or a state-owned PSS in a state ROW as otherwise established by law.

13-24-411. Authority powers preserved.

Consistent with the limitations in this part, an authority may require applicants to:

(1) Follow generally applicable and nondiscriminatory requirements for entities that deploy infrastructure or perform construction in a ROW:

(A) Requiring structures and facilities placed within a ROW to be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;

(B) Requiring compliance with Americans with Disabilities Act Accessibility Guidelines (ADAAG) standards adopted by the authority to achieve compliance with the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.), including Public Rights-of-Way Accessibility Guidelines (PROWAG) if adopted by the authority;

(C) Requiring compliance with measures necessary for public safety; and

(D) Prohibiting obstruction of the legal use of a ROW by utilities;

(2) Follow an aesthetic plan established by the authority for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure in a ROW, except that an authority shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and an authority shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan. Not withstanding this subdivision (2), in residential neighborhoods, an authority may impose generally applicable standards hat limit deployment or colocation of small wireless facilities in public utility easements when the easements are:

(A) Not contiguous with paved roads or alleys on which vehicles are permitted;

(B) Located along the rear of residential lots; and

(C) Subject to a generally applicable restriction that no electric distribution or telephone utility poles are permitted to be deployed;

(3) In residential neighborhoods, deploy new PSS in a ROW to be located within twenty-five feet (25') from the property boundaries separating residential lots larger than three-quarters of an acre in size and may require new PSS deployed in a ROW to be located within fifteen feet (15') from the property boundaries separating residential lots three quarters of an acre in size or smaller;

(4) Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public road ways or to other utility facilities placed in a ROW based on generally applicable and nondiscriminatory requirements im posed by the authority; and

(5) Require maintenance or relocation of infrastructure deployed in the ROW; timely removal of infrastructure no longer utilized; and insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the authority applies such requirements generally to entities entitled to deploy infrastructure in ROW based on generally applicable and nondiscriminatory requirements imposed by the authority.

13-24-412. Private right of action.

Any party aggrieved by the failure of an authority to act in accordance with this part may seek remedy in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility, unless the claim seeks a remedy against the state, in which case the claim must be brought in the chancery court of Davidson County. The court may order an appropriate remedy to address any action inconsistent with this part.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3.

(a)The Tennessee Advisory Commission on Intergovernmental Relations shall study and prepare a report on the impact of this act, including:

(1) The impact on deployment of broadband;

(2) The fiscal impact on authorities resulting from the administrative process required by this act;

(3) Best practices from the perspective of applicants and authorities;

(4) Best practices in other states and identify opportunities to advance the quality of transportation in this state by utilizing technological applications, sometimes referred to as "smart transportation applications," that are supported by small wireless facilities; and

(5) Recommendations for changes to this act based on the study's findings.

(b) The report must be delivered to the chairs of the house business and utilities committee of the house of representatives and commerce and labor committee of the senate by January 1, 2021.

SECTION 4.

(a) All applications to deploy or colocate small wireless facilities that are pending on the date this act becomes law shall be granted or denied consistent with the substantive requirements of this act within either ninety (90) days of the effective date of this act or ninety (90) days from the date such applications were originally submitted, whichever is later.

(b) For all applications submitted after the effective date of this act but before July 1, 2018, the applicable review periods shall not begin to run until July 1, 2018. Beginning on July 1, 2018 and thereafter, the review periods established herein shall be calculated consistent with the actual date such applications are filed.

SECTION 5. Except for the review periods established in Section 1 in § 13-24-409, all other provisions of this act shall take effect upon becoming a law, the public welfare requiring it.

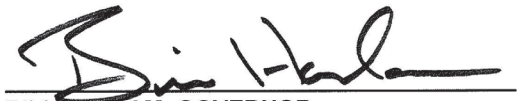
HOUSE BILL NO. 2279

PASSED: April 12, 2018

BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

RANDY MCNALLY
SPEAKER OF THE SENATE

APPROVED this 24th day of April 2018



BILL HASLAM, GOVERNOR

"Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018"
Chapter 819 of the Public Acts of 2018.

Section 3

Section-by-Section Summary of Public Chapter 819

13-24-402 Key Definitions

Aesthetic Plan - Any written resolution, regulation, policy, site plan or approved plat that is publically available and establishes generally applicable aesthetic requirements within the boundaries of a municipality or metropolitan government or a designated area within the boundaries of a municipality or metropolitan government. An aesthetic plan may include language that limits its applicability to construction or deployment that occurs after adoption of the aesthetic plan. Limiting the applicability to construction or deployment that occurs after adoption of the aesthetic plan is not discriminatory as long as all construction and deployment occurring after adoption is subject to the plan.

Applicant - Any person who submits and application for deployment or colocation of small wireless facilities.

Authority - The municipality or metropolitan government within a municipal boundary. The definition does not include a government-owned electric, gas, water or wastewater utility that is a part of or affiliated with a municipality or metropolitan government. The decision of a utility related to a request to attach to or modify the plant, facilities or equipment owned by the utility is not governed by this legislation.

Authority-owned PSS - a PSS owned by a municipality or metropolitan government but does not include a PSS owned by a distributor of electric power, regardless of whether an electric distributor is owned by investors, a cooperative or a governmental entity.

Colocate, colocation, and collocating - mean to install, mount, maintain, modify, operate or replace a small wireless facility on, adjacent to, or related to a PSS.

Micro wireless facility - a small cell that does not exceed 24 inches in length and 15 inches in width and 12 inches in height with an exterior antenna, if there is one, which does not exceed 11 inches in length.

Potential support structure for a small wireless facility or PSS - a pole or other structure used for wireline communications, electric distribution, lighting, traffic control, signage or any similar function, including poles installed solely for the colocation of small cells. "New PSS" means a PSS that does not exist at the time application is made and includes, but is not limited to, a PSS that will replace an existing pole. An applicant must file and application, have it approved and satisfy all the requirements of this part being authorized to collocate on, modify, or replace a PSS.

Residential neighborhood - an area with a municipality or metropolitan government's boundaries that is zoned or designated by the municipality or metropolitan government as an area primarily used for single-family residences and not multiple commercial properties. Ten area must have speed limits and traffic controls consistent with residential areas.

Right-of-way or ROW - The space in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of a municipality or metropolitan government, and any unrestricted utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such by the municipality or metropolitan government. Only applies to streets.

Small wireless facility- a wireless facility with an antenna that can fit within an enclosure of no more than 6 cubic feet in volume and other wireless equipment that is cumulatively no more than 28 cubic feet in volume, whether ground-mounted or pole-mounted. "Other wireless equipment" does not include electric meters, concealment elements, telecommunication demarcation boxes, grounding equipment, power transfer switches, cut-off switches, or a vertical cable run for the connection of power and other services.

13-24-403 Construction and applicability of part

The language in this legislation does not apply to deployment of infrastructure outside of the ROW or cellphone towers or monopoles governed by T.C.A. §§ 13-24-304 and 13-24-305.

13-24-404 Local Option and Local Preemption

Municipalities and metropolitan governments **are permitted** to promulgate limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities. Municipalities and metropolitan governments **shall not** impose limits, requirements, policies, or processes that are:

(1) More restrictive than requirements, policies, or processes set forth in the legislation;
(2) In excess of what is granted in the legislation; or
(3) Otherwise in conflict with the legislation.

Any limits, requirements, policies or processes put in place by municipalities and metropolitan governments that are more restrictive, conflict with, or in excess of what is granted by the legislation are void, regardless of the date enacted or the date the requirement, policy, or process became law.

When a municipality or metropolitan government does not require an application or work permits for deployment of infrastructure within the ROW, an applicant **must provide** notice of the colocation to the chief administrative officer of the city. The notice must include:

1. A preliminary site plan with a diagram or engineering drawing showing the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices;
2. The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;
3. Identification of any third party upon whose PSS the applicant intends to colocate and certification by the applicant that it has obtained approval from the third party;
4. The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;
5. The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
6. The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight bearing capacity of the PSS and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer.

13-24-405 Existing Law Unaffected

1. Municipalities and metropolitan governments **are not** permitted to create regulatory jurisdiction over communication services that does not exist under current law; and
2. Municipalities and metropolitan governments are not permitted to restrict access to ROWs granted by T.C.A. § 65-21-201 (related to telephone lines) or expand access authorized pursuant to T.C.A. § 54-16-112 (related to underground fiber optic cable);
3. Municipalities and metropolitan governments **are not** permitted to create a local tax in the form of ROW taxes, rates or fees that exceed the cost-based fees authorized under existing law;
4. This legislation **does not alter or exempt** any entity from the franchising requirement for providing video services or cable services set out in T.C.A., Title 7, Chapter 59.
5. This legislation **does not alter the requirements or exempt** any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any other facility pursuant to T.C.A., Title 54, Chapter 5, Part 8 (utility relocation due to highway construction, expansion or improvement) or other similar generally applicable requirements imposed on entities who deploy infrastructure in the ROW.
6. Municipalities and metropolitan governments **are permitted** to enforce non-discriminatory breakaway sign post requirement and safety regulations generally imposed for all structures within a ROW;
7. Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory vegetation control requirements upon entities that deploy infrastructure in the ROW. Must be for the purpose of limiting the chance of any damage or injury that might result from infrastructure being obscured by vegetation; and
8. Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory generally applicable local rules related to removal of unsafe, abandoned, or inoperable obstructions in the ROW.

13-24-406 Prohibited activities

Municipalities and metropolitan governments **are not** permitted to:

1. Enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells;
2. Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other utilities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in the ROW;
3. Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in the ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in the ROW may be applied to prohibit an applicant's deployment of a new PSS in the ROW; and
4. Except as otherwise provided in state law or through this legislation, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

13-24-407 Uniform local authority fees for deployment of small wireless facilities; exceptions

Municipalities and metropolitan governments **are permitted** to assess an applicant:

1. A maximum application fee of $100 each for the first 5 small wireless facilities and $50 each for additional small wireless facilities in a single application.
2. An additional fee of $200 for the first application an applicant files following the effective date of this act.
3. Beginning January 1, 2020 and every 5 year interval after that, a maximum application fee that that is 10% more than what was previously permitted.
4. The maximum annual rate for colocation of a small wireless facility on a municipal or metropolitan government-owned PSS is $100;
5. The same fees that other entities performing construction in ROW are assessed for generally applicable work and traffic permits.

Municipalities and metropolitan governments **are not permitted** to require applicants:

1. To pay fees or reimbursement costs for services and assistance related to the deployment of small wireless facilities, provided by consultants or third parties to the municipality or metropolitan government. Consultants and third parties may be retained, but the fees and costs for the consultants must be paid by the using the funds of the municipality or metropolitan government;
2. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
3. To pay any rental fees, access fees or site license fees for the initial deployment and continuing presence of a small wireless facility, aside from the application fees, permit fees and colocation rates set in this section;
4. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
5. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
6. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104;
7. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW; or
8. To perform services directly or indirectly for the municipality or metropolitan government or provide in-kind donations, such as reserving fiber, conduit, or pole space for the municipality or metropolitan government in exchange for deployment of small wireless facilities. However, a municipality or metropolitan government **is permitted** to approve an application to colocate where the applicant chooses, in its sole discretion, a design that accommodates other functions or attributes of benefit to the municipality or metropolitan government.

Municipalities and metropolitan governments **are permitted** to require applicants to obtain generally applicable work or traffic permits and pay the same applicable fees for

these permits, for deployment of a small wireless facility or new PSS, as long as the permits and fees are required of other providers undertaking construction in the ROW.

13-24-408 Uniform local authority requirements for the deployment and maintenance of small wireless facilities; exceptions.

Municipalities and metropolitan governments **are not permitted *to***:

1. Restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities or prohibit colocation on PSSs, **except that municipalities and metropolitan governments shall require:**

   (A) A new PSS installed or an existing PSS replaced in the ROW not to exceed the greater of:

   (a) 10 ft in height above the tallest PSS in place as of the effective date of this part, that is located within 500 ft. of the new PSS in the ROW;

   (b) The tallest existing PSS that is located within 500 ft. of the new PSS and is also located in the same residential area;

   (c) 50 ft above ground level; or

   (d) 40 ft. above ground level in residential neighborhoods.

   (B) Municipalities and metropolitan governments ***may also require*** that a small wireless facility deployed in the ROW after the effective date of this part shall not extend:

   (a) More than 10 ft. above an existing PSS in place as of the effective date of this part; or

   (b) On a new PSS, 10 ft. above the height permitted for a new PSS under this section.

Municipalities and metropolitan governments **are permitted** to require an applicant to comply with undergrounding requirements in the ROW when:

1. The municipality or metropolitan government has required all electric, communications, and cable facilities, other than municipal or metropolitan government-owned PSSs and attachments to be placed underground prior to the date upon which the application is submitted;
2. The municipality or metropolitan government does not prohibit the replacement of municipal or metropolitan government -owned PSSs in the designated area when the design for the new PSS meets the governmental entity's design aesthetic plan and all other applicable criteria in this part; and
3. The applicant can seek a waiver of the undergrounding requirements for the placement of a new PSS to support small wireless facilities and the approval or lack thereof is nondiscriminatory.

With few limitations, municipalities and metropolitan governments **are permitted** to require reasonable, nondiscriminatory and technology neutral design and concealment measures in historic districts if:

1. The design or concealment measure does not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility and the municipality or metropolitan government permits alternative design and concealment measures that are reasonably similar; and
2. The design or concealment measures are not considered part of the small wireless facility for purposes of meeting the size requirements in the definition of "small wireless facility."

Municipalities and metropolitan governments **are still authorized** to enforce historic preservation zoning regulations and several federal provisions related to historic zoning.

Municipalities and metropolitan governments **are not permitted** to require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network.

Municipalities and metropolitan governments **are not permitted** to limit the placement of small wireless facilities by imposing minimum separation requirements for small wireless facilities or the structures on which the facilities are collocated.

Municipalities and metropolitan governments **are permitted** to provide general guidance regarding preferred designs and may request consideration of design alternatives in accordance with the conference process set out in 13-24-409(b).

Municipalities and metropolitan governments **are permitted** to prohibit colocation on governmental entity-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events. In order to qualify for this exception, a municipality or metropolitan government must publish a list of such PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to application. A governmental entity may grant a waiver to allow colocation on these PPS, if the applicant demon-

strates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements.

Municipalities and metropolitan governments **are required** to take ownership of replacement PSS. Maintenance and repair obligations for the replacement PSS are as follows:

For municipality or metropolitan government-owned PSS that was used for lighting, the municipality or metropolitan government **can require** the lighting to be included on the replacement PSS and then both the PSS and the lighting become property of the governmental entity, after an inspection is completed of the new PSS to ensure that it is in working condition and any lighting is equivalent to the quality and standards of lighting on the PSS prior to replacement. The municipality or metropolitan government becomes responsible for the electricity and ordinary maintenance of the PSS after a satisfactory inspection, but is not responsible for providing electricity to or the maintenance or repair of the small wireless facility collocated on the governmental entity's PSS.

Municipalities and metropolitan governments ***may*** conduct periodic training sessions or seminars relevant to the deployment of small wireless facilities and best practices. Requires applicants to make a good faith effort to participate in sessions.

13-24-409 Uniform application procedures for local authorities.

Municipalities and metropolitan governments **are permitted** to require applicants to seek permission, through an application, to collocate a small wireless facility or install a new or modified PSS associated with a small wireless facility and obtain 1 or more generally applicable work permit. The applications are to be processed on a nondiscriminatory basis.

When a municipality or metropolitan government requires an application to be submitted, the governmental entity **must:**

1. Allow the applicant to include up to 20 small wireless facilities in a single application;
2. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government ***must*** tell the applicant specifically what is missing in writing at the time the applicant is notified.
3. Notify the applicant within 30 days of receiving an application if there is a need to have a conference related to the design of one or more small wireless facilities in an application. Issues that may be addressed by the conference include:
   (1) safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety- related alterations to the design;
   (2) potential of conflict with another applicant's application for the same or a nearby location;
   (3) impact of planned construction or other public works projects at or near the location identified by the application;
   (4) alternative design options that may enable colocation on existing PSS instead of deployment of new PSS or opportunities and potential benefits of alternatives design that would incorporate other features or elements of benefit to the municipality or metropolitan government. The fact that alternatives exist does not constitute the basis for denial of an application that otherwise satisfies all requirements of this legislation and generally applicable standards for construction in the ROW.
4. If there are multiple small wireless facilities within an application, specify which ones about which they need to conference. The time frame for review of these applications shall be extended from 60 days to 75 days. The municipality or metropolitan government **must** schedule the conference and allow the applicant to attend via telephone. The 75 day period is not tolled while for the conference, unless the applicant agrees to an extension. However, there shall not be an additional extension past the 75 days if the applicant also submits applications for deployment or colocation of more than 30 small wireless facilities within 30 days with the same municipality or metropolitan government. The time frame for review is capped at 75, unless the parties each agree to an extension.
5. Approve or deny all applications for deployment or colocation of small wireless facilities within 60 days, unless an extension is authorized under this part. A municipality or metropolitan government is only permitted to deny an application when the application fails to demonstrate compliance with all generally applicable requirements that the governmental entity imposes on all entities entitled to deploy infrastructure in the ROW and the requirements set out in this legislation.
6. The municipality or metropolitan government **is not permitted** to deny an entire application because some of the small wireless facilities contained therein do not meet the requirements. If the application or a portion of it is not approved or denied within 60 days,

it is deemed approved, unless it has been extended pursuant to the language in this section.

7. The 60 day review period **can only be extended or tolled** when:

   (a) The municipality or metropolitan government sends notice to an applicant that the application is incomplete, within 30 days of the initial filing; however, the tolling ceases once the additional information is provided to the municipality or metropolitan government. The governmental entity is permitted to deny an application and require a new supplication to be filed, if the missing information is not provided within 30 days of the date that the notice was provided.

   (b) The parties agree to toll the 60 days;

   (c) A conference is requested and the time frame is extended to 75 days as mentioned above;

   (d) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 30 and fewer than 50 small wireless facilities within any 30 day period. The review period is extended to 75 days, but cannot be further extended for a conference.

   (e) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate 50 or more small wireless facilities within any 30 day period. The review period is extended to 90 days, but cannot be further extend ed for a conference.

   (f) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 120 small wireless facilities within any 60 day period. When this happens, the governmental entity is permitted to send notice to the applicant that the applicant can either pay a surcharge of $100 per small wireless facility to the entity within 5 days of receiving the notice to have specifically identified small wireless facilities reviewed within the applicable time frame. If no small wireless facilities are specifically identified or the surcharge is not paid within the 5 day period, the municipality or metropolitan government has 120 days to review these applications.

If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government ***may deny*** the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

If a municipality or metropolitan government denies an application, a written explanation of a denial **must be provided** at the same time that the application is denied.

At the time an application is approved and the design includes the replacement or construction of a new PSS, a municipality or metropolitan government **may require** the applicant to provide a professional engineer's certification that the installation of the new PSS is consistent with the approved design as well as all generally applicable safety and engineering standards.

An applicant **may provide** a revised application after a denial. If the revised application cures the deficiencies identified in the denied application and the revised application is filed within 30 days of the denial, the applicant **cannot be assessed** an additional application fee. The revised application is to be approved or denied within 30 days of being submitted. The municipality or metropolitan government is required to limit the review the revised application to the deficiencies cited in the denial or deficiencies related to changes on the revised application that were not contained in the original application.

A municipality or metropolitan government is not permitted to discontinue its application process or prohibit deployment under the terms of this part until an application process is put in place.

A municipality or metropolitan government may only require an applicant to provide the following information in an application:

(a) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices;

(b) The location of the site, including the latitude and longitudinal coordinates of the specific location of the site;

(c) Identification of any third party upon whose PSS the applicant intends to collocate and certification by the applicant that it has obtained approval fromthe third party;

(d) The applicant's identifying information and the

identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of emergency related to the small wireless facility;

(e) The applicant's certification of compliance with surety bond, insurance or indemnification requirements, rules requiring maintenance of infrastructure deployed in ROW, requiring relocation or timely removal of infrastructure in ROW no longer utilized, and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the municipality or metropolitan government imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and

(f) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility. Requires the standards relevant to engineering to be certified by a licensed professional engineer.

If an applicant does not complete deployment within 9 months of an application being approved, the municipality or metropolitan government **may require** the applicant to complete a new application and pay an additional application fee, unless the parties agree to an extension or the deployment is delayed because of a lack of commercial power or communications transport facilities to the site. When a municipality or metropolitan government receives multiple applications for deployment or colocation of small wireless facilities at the same location in an incompatible manner, the governmental entity **may deny** the later filed application.

A municipality or metropolitan government **may designate** a safety contact for any colocation design that includes attachment of any facility or structure to a bridge or overpass. After the applicant's construction is complete, the applicant shall provide to such contact a licensed professional engineer's certification that the construction is consistent with the applicant's approved design, that the bridge or overpass maintains the same structural integrity as before the construction and installation process, and that during the construction and installation process neither the applicant nor its contractors have discovered evidence of damage to or deterioration of the bridge or overpass that compromises its structural integrity. If such evidence is discovered during construction, the applicant is required to provide notice of the evidence to the safety contact.

13-24-410 Provisions applicable solely to the state as an authority *(OMITTED)*

13-24-411 Authority powers preserved.

Municipalities and metropolitan governments **may require** an applicant to:

1. Follow generally applicable and nondiscriminatory requirements that structures and facilities placed within a ROW must be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;
2. Comply with ADAAG standards adopted to achieve compliance with the ADA, including PROWAG, if adopted, any other measures necessary for public safety;
3. Prohibit obstruction of the legal use of the ROW by utilities;
4. Follow an aesthetic plan established by the municipality or metropolitan government for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure a ROW, except that a municipality or metropolitan government shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and a governmental entity shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan.
5. Limit deployment or colocation of small wireless facilities in public utility easements when the easements are:
   (a) Not contiguous with paved roads or alleys on which vehicles are permitted;
   (b) Located along the rear of residential lots; and
   (c) In an area where no electric distribution or telephone utility poles are permitted to be deployed
6. In a residential neighborhood, deploy new PSS in a ROW to be located within twenty five feet (25') from the property boundaries separating residential

lots larger than three-quarters of an acre in size and require new PSS deployed in a ROW to be located within fifteen feet (15') from the property boundaries separating residential lots three quarters of an acre in size or smaller.

7. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
8. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or metropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

13-24-412 Private right of action.

Any party aggrieved by the failure of an authority to act in accordance with this part may seek relief in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility. The court may order appropriate relief to address a violation of this legislation.

Effective Date

Except for T.C.A. § 13-24-409 that contains the review periods, all other provisions of the legislation were effective April 24, 2018.

All applications to deploy or collocate that **were pending** on the effective date of the legislation (April 24, 2018) must be approved or denied in a manner that is consistent with the substantive requirements of the legislation, within either 90 days of the effective date of the legislation or 90 days from the date the application was originally submitted, whichever is later.

For all applications **submitted after** the effective date of the legislation (April 24, 2018) but **before July 1, 2018,** the applicable review periods begin to run on July 1, 2018.

For all applications submitted **on or after July 1, 2018**, the review periods will begin to run on the date the application was filed.

"Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018"
Chapter 819 of the Public Acts of 2018.

Section 4

Quick Reference Guide

(Alphabetical Order)

Aesthetics Plan

Definitions: Aesthetic Plan - Any written resolution, regulation, policy, site plan or approved plat that is publically available and establishes generally applicable aesthetic requirements within the boundaries of a municipality or metropolitan government or a designated area within the boundaries of a municipality or metropolitan government. An aesthetic plan may include language that limits its applicability to construction or deployment that occurs after adoption of the aesthetic plan. Limiting the applicability to construction or deployment that occurs after adoption of the aesthetic plan is not discriminatory as long as all construction and deployment occurring after adoption is subject to the plan.

T.C.A. § 13-24-411- Municipalities and metropolitan governments **may require** an applicant to:

1. Follow an aesthetic plan established by the municipality or metropolitan government for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure a ROW, except that a municipality or metropolitan government shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and a governmental entity shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan.

T.C.A. § 13-24-411- Municipalities and metropolitan governments **are not permitted** to require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network.

Application Requirements

T.C.A. § 13-24-407- Municipalities and metropolitan governments **are not permitted** to require applicants:

1. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
2. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
3. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
4. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104;
5. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW; or

T.C.A. § 13-24-407- When a municipality or metropolitan government requires an application to be submitted, the governmental entity must:

1. Allow the applicant to include up to 20 small wireless facilities in a single application;
2. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government **must** tell the applicant specifically what is missing in writing at the time the applicant is notified.

T.C.A. § 13-24-409- If a municipality or metropolitan government denies an application, a written explanation of a denial must be provided at the same time that the application is denied.

T.C.A. § 13-24-409- At the time an application is approved and the design includes the replacement or construction of a new PSS, a municipality or metropolitan government may require the applicant to provide a professional engineer's certification that the installation of the new PSS is consistent with the approved design as well as all generally applicable safety and engineering standards.

T.C.A. § 13-24-409- An applicant may provide a revised application after a denial. If the revised application cures the deficiencies identified in the denied application and the revised application is filed within 30 days of the denial, the applicant cannot be assessed an additional application fee. The revised application is to be approved or denied within 30 days of being submitted. The municipality or metropolitan government is required to limit the review the revised application to the deficiencies cited in the denial or deficiencies related to changes on the revised application that

were not contained in the original application.

T.C.A. § 13-24-409- A municipality or metropolitan government **is not permitted** to discontinue its application process or prohibit deployment under the terms of this part until an application process is put in place.

T.C.A. § 13-24-409- A municipality or metropolitan government may only require an applicant to provide the following information in an application:

(a) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices;
(b) The location of the site, including the latitude and longitudinal coordinates of the specific location of the site;
(c) Identification of any third party upon whose PSS the applicant intends to collocate and certification by the applicant that it has obtained approval from the third party;
(d) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of emergency related to the small wireless facility;
(e) The applicant's certification of compliance with surety bond, insurance or indemnification requirements, rules requiring maintenance of infrastructure deployed in ROW, requiring relocation or timely removal of infrastructure in ROW no longer utilized, and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the municipality or metropolitan government imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
(f) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility. Requires the standards relevant to engineering to be certified by a licensed professional engineer.

Concealment

T.C.A. § 13-24-408- With few limitations, municipalities and metropolitan governments are **permitted** to require reasonable, nondiscriminatory and technology neutral design and concealment measures in historic districts if:

1. The design or concealment measure does not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility and the municipality or metropolitan government permits alternative design and concealment measures that are reasonably similar; and
2. The design or concealment measures are not considered part of the small wireless facility for purposes of meeting the size requirements in the definition of "small wireless facility."

T.C.A. § 13-24-408- Municipalities and metropolitan governments **are still authorized** to enforce historic preservation zoning regulations and several federal provisions related to historic zoning.

T.C.A. § 13-24-408- Municipalities and metropolitan governments **are permitted** to provide general guidance regarding preferred designs and may request consideration of design alternatives in accordance with the conference process set out in 13-24-409(b).

Distance Requirement

T.C.A. § 13-24-408 - Municipalities and metropolitan governments **are not permitted** to limit the placement of small wireless facilities by imposing minimum separation requirements for small wireless facilities or the structures on which the facilities are collocated.

Effective Date

Except for T.C.A. § 13-24-409 that contains the review periods, all other provisions of the legislation were effective April 24, 2018.

All applications to deploy or collocate that **were pending** on the effective date of the legislation (April 24, 2018) must be approved or denied in a manner that is consistent with the substantive requirements of the legislation, within either 90 days of the effective date of the legislation or 90

days from the date the application was originally submitted, whichever is later.

For all applications **submitted after** the effective date of the legislation (April 24, 2018) **but before July 1, 2018,** the applicable review periods begin to run on July 1, 2018.

For all applications submitted **on or after July 1, 2018**, the review periods will begin to run on the date the application was filed.

Exclusive Agreements

T.C.A. § 13-24-406- Municipalities and metropolitan governments **are not** permitted to enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells.

General Limitations

T.C.A. § 13-24-404- Municipalities and metropolitan governments **are permitted** to promulgate limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities. Municipalities and metropolitan governments **shall not** impose limits, requirements, policies, or processes that are:

1. More restrictive than requirements, policies, or processes set forth in the legislation;
2. In excess of what is granted in the legislation; or
3. Otherwise in conflict with the legislation.

Fees and Rates

T.C.A. § 13-24-407- Municipalities and metropolitan governments **are permitted** to assess an applicant:

1. A maximum application fee of $100 each for the first 5 small wireless facilities and $50 each for additional small wireless facilities in a single application.
2. An additional fee of $200 for the first application an applicant files following the effective date of this act.
3. Beginning January 1, 2020 and every 5 year interval after that, a maximum application fee that that is 10% more than what was previously permitted.
4. (4) The maximum annual rate for colocation of a small wireless facility on a municipal or metropolitan government-owned PSS is $100;
5. The same fees that other entities performing construction in ROW are assessed for generally applicable work and traffic permits.

T.C.A. § 13-24-407- Municipalities and metropolitan governments **are not permitted** to require applicants:

1. To pay fees or reimbursement costs for services and assistance related to the deployment of small wireless facilities, provided by consultants or third parties to the municipality or metropolitan government. Consultants and third parties may be retained, but the fees and costs for the consultants must be paid by the using the funds of the municipality or metropolitan government;
2. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
3. To pay any rental fees, access fees or site license fees for the initial deployment and continuing presence of a small wireless facility, aside from the application fees, permit fees and colocation rates set in this section;
4. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
5. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
6. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104; or
7. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

General Limitations

T.C.A. § 13-24-404- Municipalities and metropolitan governments **are permitted** to promulgate limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities. Municipalities and metropolitan governments **shall not** impose limits, requirements, policies, or processes that are:

1. More restrictive than requirements, policies, or processes set forth in the legislation;
2. In excess of what is granted in the legislation; or
3. Otherwise in conflict with the legislation.

In-kind Donations
T.C.A. § 13-24-407- Municipalities and metropolitan governments **<u>are not permitted</u>** to require an applicant to perform services directly or indirectly for the municipality or metropolitan government or provide in-kind donations, such as reserving fiber, conduit, or pole space for the municipality or metropolitan government in exchange for deployment of small wireless facilities.

Legal Action
T.C.A. § 13-24-412- Any party aggrieved by the failure of an authority to act in accordance with this part may seek relief in the chancery court for the county in which the applicant attempted to deploy or has deployed a small wireless facility. The court may order appropriate relief to address a violation of this legislation.

Mast Arm
T.C.A. § 13-24-408- Municipalities and metropolitan governments **<u>are permitted</u>** to prohibit colocation on governmental entity-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events. In order to qualify for this exception, a municipality or metropolitan government must publish a list of such PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to application. A governmental entity may grant a waiver to allow colocation on these PPS, if the applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements.

Multiple Applications for the Same Location
T.C.A. § 13-24-409- When a municipality or metropolitan government receives multiple applications for deployment or colocation of small wireless facilities at the same location in an incompatible manner, the governmental entity ***may deny*** the later filed application.

Notice
T.C.A. § 13-24-404 - When a municipality or metropolitan government does not require an application or work permits for deployment of infrastructure within the ROW, an applicant must provide notice of the colocation to the chief administrative officer of the city. The notice must include:

1. A preliminary site plan with a diagram or engineering drawing showing the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices;
2. The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;
3. Identification of any third party upon whose PSS the applicant intends to colocate and certification by the applicant that it has obtained approval from the third party;
4. The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;
5. The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
6. The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight bearing capacity of the PSS and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer.

Ownership, Maintenance, and Repair
T.C.A. § 13-24-408- Municipalities and metropolitan governments **<u>are required</u>** to take ownership of replacement PSS. Maintenance and repair obligations for the replacement PSS are as follows:

T.C.A. § 13-24-408- For municipality or metropolitan government-owned PSS that was used for lighting, the municipality or metropolitan government **<u>can require</u>** the light-

ing to be included on the replacement PSS and then both the PSS and the lighting become property of the governmental entity, after an inspection is completed of the new PSS to ensure that it is in working condition and any lighting is equivalent to the quality and standards of lighting on the PSS prior to replacement. The municipality or metropolitan government becomes responsible for the electricity and ordinary maintenance of the PSS after a satisfactory inspection, but is not responsible for providing electricity to or the maintenance or repair of the small wireless facility collocated on the governmental entity's PSS.

T.C.A. § 13-24-411- Municipalities and metropolitan governments **may require** an applicant to:

1. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
2. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or metropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

Pole Height

T.C.A. § 13-24-408 - Municipalities and metropolitan governments **are not permitted** to:

1. Restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities or prohibit colocation on PSSs, **except that municipalities and metropolitan governments shall require**:
   (A) A new PSS installed or an existing PSS replaced in the ROW not to exceed the greater of:
      (a) 10 ft in height above the tallest PSS in place as of the effective date of this part, that is located within 500 ft. of the new PSS in the ROW;
      (b) The tallest existing PSS that is located within 500 ft. of the new PSS and is also located in the same residential area;
      (c) 50 ft above ground level; or
      (d) 40 ft. above ground level in residential neighborhoods.

   (B) Municipalities and metropolitan governments may also require that a small wireless facility deployed in the ROW after the effective date of this part shall not extend:
      (a) More than 10 ft. above an existing PSS in place as of the effective date of this part; or
      (b) On a new PSS, 10 ft. above the height permitted for a new PSS under this sec tion.

Public Utility Easement

T.C.A. § 13-24-411- Municipalities and metropolitan governments **may require** an applicant to limit deployment or colocation of small wireless facilities in public utility easements when the easements are:
   (a) Not contiguous with paved roads or alleys on which vehicles are permitted;
   (b) Located along the rear of residential lots; and
   (c) In an area where no electric distribution or telephone utility poles are permit ted to be deployed.

ROW

Definition: ***Right-of-way or ROW*** - The space in, upon, above, along, across, and over all public streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skywalks under the control of a municipality or metropolitan government, and any unrestricted utility easement established, dedicated, platted, improved, or devoted for utility purposes and accepted as such by the municipality or metropolitan government. Only applies to streets.

T.C.A. § 13-24-405 - Municipalities and metropolitan governments **are not** permitted to restrict access to ROWs granted by T.C.A. § 65-21-201 (related to telephone lines) or expand access authorized pursuant to T.C.A. § 54-16-112 (related to underground fiber optic cable);

T.C.A. § 13-24-405 - Municipalities and metropolitan governments **are not** permitted to create a local tax in the form of ROW taxes, rates or fees that exceed the cost-based fees authorized under existing law;

T.C.A. § 13-24-405- This legislation **does not alter or exempt** any entity from the franchising requirement for providing video services or cable services set out in T.C.A., Title 7, Chapter 59.

T.C.A. § 13-24-405- This legislation **does not alter the requirements or exempt** any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any other facility pursuant to T.C.A., Title 54, Chapter 5, Part 8 (utility relocation due to highway construction, expansion or improvement) or other similar generally applicable requirements imposed on entities who deploy infrastructure in the ROW.

T.C.A. § 13-24-405 - Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory vegetation control requirements upon entities that deploy infrastructure in the ROW. Must be for the purpose of limiting the chance of any damage or injury that might result from infrastructure being obscured by vegetation; and

T.C.A. § 13-24-405 - Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory generally applicable local rules related to removal of unsafe, abandoned, or inoperable obstructions in the ROW.

T.C.A. § 13-24-406- Municipalities and metropolitan governments **are not** permitted to:

1. Enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells;
2. Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other utilities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in the ROW;
3. Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in the ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in the ROW may be applied to prohibit an applicant's deployment of a new PSS in the ROW; and
4. Except as otherwise provided in state law or through this legislation, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

T.C.A. § 13-24-411 - Municipalities and metropolitan governments **may require** an applicant to:

1. Follow generally applicable and nondiscriminatory requirements that structures and facilities placed within a ROW must be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;
2. Comply with ADAAG standards adopted to achieve compliance with the ADA, including PROWAG, if adopted, any other measures necessary for public safety;
3. Prohibit obstruction of the legal use of the ROW by utilities;

T.C.A. § 13-24-411 - Municipalities and metropolitan governments **may require** an applicant to deploy new PSS in a residential neighborhood, in a ROW to be located within twenty five feet (25') from the property boundaries separating residential lots larger than three-quarters of an acre in size and require new PSS deployed in a ROW to be located within fifteen feet (15') from the property boundaries separating residential lots three quarters of an acre in size or smaller.

T.C.A. § 13-24-411- Municipalities and metropolitan governments **may require** an applicant to:

3. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
4. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or metropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

T.C.A. § 13-24-411- Municipalities and metropolitan governments **may require** an applicant to limit deployment or colocation of small wireless facilities in public utility easements when the easements are:

(d) Not contiguous with paved roads or alleys on which vehicles are permitted;

(e) Located along the rear of residential lots; and

(f) In an area where no electric distribution or telephone utility poles are permitted to be deployed.

Shot Clock

T.C.A. § 13-24-409 - When a municipality or metropolitan government requires an application to be submitted, the governmental entity must:

3. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government **must** tell the applicant specifically what is missing in writing at the time the applicant is notified.
4. Notify the applicant within 30 days of receiving an application if there is a need to have a conference related to the design of one or more small wireless facilities in an application. Issues that may be addressed by the conference include:
   (1) safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety-related alterations to the design;
   (2) potential of conflict with another applicant's application for the same or a nearby location;
   (3) impact of planned construction or other public works projects at or near the location identified by the application;
   (4) alternative design options that may enable colocation on existing PSS instead of deployment of new PSS or opportunities and potential benefits of alternatives design that would incorporate other features or elements of benefit to the municipality or metropolitan government. The fact that alternatives exist does not constitute the basis for denial of an application that otherwise satisfies all requirements of this legislation and generally applicable standards for construction in the ROW.
5. If there are multiple small wireless facilities within an application, specify which ones about which they need to conference. The time frame for review of these applications shall be extended from 60 days to 75 days. The municipality or metropolitan government **must** schedule the conference and allow the applicant to attend via telephone. The 75 day period is not tolled while for the conference, unless the applicant agrees to an extension. However, there shall not be an additional extension past the 75 days if the applicant also submits applications for deployment or colocation of more than 30 small wireless facilities within 30 days with the same municipality or metropolitan government. The time frame for review is capped at 75, unless the parties each agree to an extension.
6. Approve or deny all applications for deployment or colocation of small wireless facilities within 60 days, unless an extension is authorized under this part. A municipality or metropolitan government is only permitted to deny an application when the application fails to demonstrate compliance with all generally applicable requirements that the governmental entity imposes on all entities entitled to deploy infrastructure in the ROW and the requirements set out in this legislation.
7. The municipality or metropolitan government **is not permitted** to deny an entire application because some of the small wireless facilities contained therein do not meet the requirements. If the application or a portion of it is not approved or denied within 60 days, it is deemed approved, unless it has been extended pursuant to the language in this section.
8. The 60 day review period can only be extended or tolled when:
   (a) The municipality or metropolitan government sends notice to an applicant that the application is incomplete, within 30 days of the initial filing; however, the tolling ceases once the additional information is provided to the municipality or metropolitan government. The governmental entity **is permitted** to deny an application and require a new supplication to be filed, if the missing information is not provided within 30 days of the date that the notice was provided.
   (b) The parties agree to toll the 60 days;
   (c) A conference is requested and the time frame is extended to 75 days as mentioned above;
   (d) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 30 and fewer than 50 small wireless facilities within any 30 day period. The review period is extended to 75 days, but cannot be further extended for a conference.
   (e) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate 50 or more small wireless facilities within any 30 day period. The review period is extended to 90 days, but cannot be further extended for a conference.
   (f) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 120 small wireless facilities within any 60 day period. When this happens, the governmental entity is permitted to send notice to the applicant that the applicant can either pay a sur-

charge of $100 per small wireless facility to the entity within 5 days of receiving the notice to have specifically identified small wireless facilities reviewed within the applicable time frame. If no small wireless facilities are specifically identified or the surcharge is not paid within the 5 day period, the municipality or metropolitan government has 120 days to review these applications.

T.C.A. § 13-24-409 - If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government may deny the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

Signs

T.C.A. § 13-24-405 - Municipalities and metropolitan governments **are permitted** to enforce non-discriminatory breakaway sign post requirement and safety regulations generally imposed for all structures within a ROW.

T.C.A. § 13-24-409 - If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government may deny the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

Timeframe for Deployment

T.C.A. § 13-24-409- If an applicant does not complete deployment within 9 months of an application being approved, the municipality or metropolitan government **may require** the applicant to complete a new application and pay an additional application fee, unless the parties agree to an extension or the deployment is delayed because of a lack of commercial power or communications transport facilities to the site.

Undergrounding

T.C.A. § 13-24-408 - Municipalities and metropolitan governments **are permitted** to require an applicant to comply with undergrounding requirements in the ROW when:

1. The municipality or metropolitan government has required all electric, communications, and cable facilities, other than municipal or metropolitan government-owned PSSs and attachments to be placed underground prior to the date upon which the application is submitted;
2. The municipality or metropolitan government does not prohibit the replacement of municipal or metropolitan government -owned PSSs in the designated area when the design for the new PSS meets the governmental entity's design aesthetic plan and all other applicable criteria in this part; and
3. The applicant can seek a waiver of the undergrounding requirements for the placement of a new PSS to support small wireless facilities and the approval or lack thereof is nondiscriminatory.

Work Permits

T.C.A. § 13-24-407 - Municipalities and metropolitan governments **are permitted** to require applicants to obtain generally applicable work or traffic permits and pay the same applicable fees for these permits, for deployment of a small wireless facility or new PSS, as long as the permits and fees are required of other providers undertaking construction in the ROW.

"Competitive Wireless Broadband Investment, Deployment, and Safety Act of 2018"
Chapter 819 of the Public Acts of 2018.

Section 5

"May" or "May Not" Quick Reference Guide

Aesthetics Plan
May:
T.C.A. § 13-24-411 - Municipalities and metropolitan governments **may require** an applicant to:

1. Follow an aesthetic plan established by the municipality or metropolitan government for a defined area, neighborhood, or zone by complying with generally applicable and nondiscriminatory standards on all entities entitled to deploy infrastructure a ROW, except that a municipality or metropolitan government shall not apply standards in a manner that precludes all deployment of small wireless facilities or precludes deployment of small wireless facilities as a permitted use pursuant to zoning requirements and a governmental entity shall provide detailed explanation of any denial based on the failure of the design to conform to the aesthetic plan.

May Not:
T.C.A. § 13-24-411 - Municipalities and metropolitan governments **are not permitted** to require network design for small wireless facilities, including mandating the selection of any specific PSS or category of PSS to which an applicant must attach any part of its network.

Application Requirements
May or Must:
T.C.A. § 13-24-407 - When a municipality or metropolitan government requires an application to be submitted, the governmental entity **must:**

1. Allow the applicant to include up to 20 small wireless facilities in a single application;
2. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government must tell the applicant specifically what is missing in writing at the time the applicant is notified.

T.C.A. § 13-24-409 - If a municipality or metropolitan government denies an application, a written explanation of a denial **must** be provided at the same time that the application is denied.

T.C.A. § 13-24-409 - At the time an application is approved and the design includes the replacement or construction of a new PSS, a municipality or metropolitan government **may require** the applicant to provide a professional engineer's certification that the installation of the new PSS is consistent with the approved design as well as all generally applicable safety and engineering standards.

T.C.A. § 13-24-409 - A municipality or metropolitan government **may only** require an applicant to provide the following information in an application:

(a) A preliminary site plan with a diagram or engineering drawing depicting the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices;
(b) The location of the site, including the latitude and longitudinal coordinates of the specific location of the site;
(c) Identification of any third party upon whose PSS the applicant intends to collocate and certification by the applicant that it has obtained approval from the third party;
(d) The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of emergency related to the small wireless facility;
(e) The applicant's certification of compliance with surety bond, insurance or indemnification requirements, rules requiring maintenance of infrastructure deployed in ROW, requiring relocation or timely removal of infrastructure in ROW no longer utilized, and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the municipality or metropolitan government imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
(f) The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight-bearing capacity of the PSS and small wireless facility. Requires the standards relevant to engineering to be certified by a licensed professional engineer.

May Not:

T.C.A. § 13-24-407- Municipalities and metropolitan governments **are not permitted** to require applicants:

1. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
2. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
3. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
4. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104;
5. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW; or

T.C.A. § 13-24-409 - An applicant may provide a revised application after a denial. If the revised application cures the deficiencies identified in the denied application and the revised application is filed within 30 days of the denial, the applicant **cannot be** assessed an additional application fee. The revised application is to be approved or denied within 30 days of being submitted. The municipality or metropolitan government is required to limit the review the revised application to the deficiencies cited in the denial or deficiencies related to changes on the revised application that were not contained in the original application.

T.C.A. § 13-24-409 - A municipality or metropolitan government **is not permitted** to discontinue its application process or prohibit deployment under the terms of this part until an application process is put in place.

Concealment

May:

T.C.A. § 13-24-408 - With few limitations, municipalities and metropolitan governments **are permitted** to require reasonable, nondiscriminatory and technology neutral design and concealment measures in historic districts if:

1. The design or concealment measure does not have the effect of prohibiting any applicant's technology or substantially reducing the functionality of the small wireless facility and the municipality or metropolitan government permits alternative design and concealment measures that are reasonably similar; and
2. The design or concealment measures are not considered part of the small wireless facility for purposes of meeting the size requirements in the definition of "small wireless facility."

T.C.A. § 13-24-408 - Municipalities and metropolitan governments **are still authorized** to enforce historic preservation zoning regulations and several federal provisions related to historic zoning.

T.C.A. § 13-24-408 - Municipalities and metropolitan governments **are permitted** to provide general guidance regarding preferred designs and may request consideration of design alternatives in accordance with the conference process set out in 13-24-409(b).

Distance Requirement

May Not:

T.C.A. § 13-24-408 - Municipalities and metropolitan governments are not permitted to limit the placement of small wireless facilities by imposing minimum separation requirements for small wireless facilities or the structures on which the facilities are collocated.

Exclusive Agreements

May Not:

T.C.A. § 13-24-406 - Municipalities and metropolitan governments are not permitted to enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells.

Fees and Rates

May:

T.C.A. § 13-24-407 - Municipalities and metropolitan governments **are permitted** to assess an applicant:

1. A maximum application fee of $100 each for the first 5 small wireless facilities and $50 each for additional small wireless facilities in a single application.
2. An additional fee of $200 for the first application an applicant files following the effective date of this act.
3. Beginning January 1, 2020 and every 5 year interval after that, a maximum application fee that that is 10% more than what was previously permitted.
4. The maximum annual rate for colocation of a small wireless facility on a municipal or metropolitan govern-

ment-owned PSS is $100;
5. The same fees that other entities performing construction in ROW are assessed for generally applicable work and traffic permits.

May Not:
T.C.A. § 13-24-407 - Municipalities and metropolitan governments **are not permitted** to require applicants:
1. To pay fees or reimbursement costs for services and assistance related to the deployment of small wireless facilities, provided by consultants or third parties to the municipality or metropolitan government. Consultants and third parties may be retained, but the fees and costs for the consultants must be paid by the using the funds of the municipality or metropolitan government;
2. To file additional applications or permits for regular maintenance, replacement of, or repairs made to an applicant's own small wireless facilities; however replacement of a PSS does not constitute regular maintenance.
3. To pay any rental fees, access fees or site license fees for the initial deployment and continuing presence of a small wireless facility, aside from the application fees, permit fees and colocation rates set in this section;
4. To receive approval or file an application or pay any rate or fee for routine maintenance of a small wireless facility, when a new PSS is not being installed or a PSS being replaced;
5. To receive approval or file an application or pay any rate or fee for the replacement of a small wireless facility with another small wireless facility that is the same size or smaller than the size conditions set out in the definition of "small wireless facility";
6. To receive approval or file an application or pay any rate or fee for the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is suspended on cables that are strung between existing PSSs, in compliance with the National Electrical Safety Code as set out in § 68-101-104; or
7. To execute an access agreement or site license agreement as a condition of deployment of a small wireless facility in a ROW.

General Limitations
May/ May Not:
T.C.A. § 13-24-404 - Municipalities and metropolitan governments **are permitted** to promulgate limits, permitting requirements, zoning requirements, approval policies, or processes relative to deployment of small wireless facilities. Municipalities and metropolitan governments shall not impose limits, requirements, policies, or processes that are:
1. More restrictive than requirements, policies, or processes set forth in the legislation;
2. In excess of what is granted in the legislation; or
3. Otherwise in conflict with the legislation.

In-kind Donations
May Not:
T.C.A. § 13-24-407 - A municipality or metropolitan government **is not permitted** to require an applicant to perform services directly or indirectly for the municipality or metropolitan government or provide in-kind donations, such as reserving fiber, conduit, or pole space for the municipality or metropolitan government in exchange for deployment of small wireless facilities.

May:
T.C.A. § 13-24-407- A municipality or metropolitan government **is permitted** to approve an application to colocate where the applicant chooses, in its sole discretion, a design that accommodates other functions or attributes of benefit to the municipality or metropolitan government.

Mast Arm
May:
T.C.A. § 13-24-408- Municipalities and metropolitan governments **are permitted** to prohibit colocation on governmental entity-owned PSSs that are identified as PSSs the mast arms of which are routinely removed to accommodate frequent events. In order to qualify for this exception, a municipality or metropolitan government must publish a list of such PSSs on its website and may prohibit colocation only if the PSS has been designated and published as an exception prior to application. A governmental entity may grant a waiver to allow colocation on these PPS, if the applicant demonstrates that its design for colocation will not interfere with the operation of the PSS and otherwise meets all other requirements.

Multiple Applications for the Same Location
May:
T.C.A. § 13-24-409 - When a municipality or metropolitan government receives multiple applications for deployment or colocation of small wireless facilities at the same location in an incompatible manner, the governmental entity **may deny** the later filed application.

Notice
Must:

T.C.A. § 13-24-404 - When a municipality or metropolitan government does not require an application or work permits for deployment of infrastructure within the ROW, an applicant **must provide** notice of the colocation to the chief administrative officer of the city. The notice must include:

1. A preliminary site plan with a diagram or engineering drawing showing the design for installation of the small wireless facility with sufficient detail for the municipality or metropolitan government to determine that the design of the installation and any new PSS or any modification of a PSS is consistent with all generally applicable safety and design requirements, including the requirements of the Manual on Uniform Traffic Control Devices;
2. The location of the site, including the latitudinal and longitudinal coordinates of the specific location of the site;
3. Identification of any third party upon whose PSS the applicant intends to colocate and certification by the applicant that it has obtained approval from the third party;
4. The applicant's identifying information and the identifying information of the owner of the small wireless facility and certification by the applicant or the owner that such person agrees to pay applicable fees and rates, repair damage, and comply with all nondiscriminatory and generally applicable ROW requirements for deployment of any associated infrastructure that is not a small wireless facility and the contact information for the party that will respond in the event of an emergency related to the small wireless facility;
5. The applicant's certification of compliance with surety bond, insurance, or indemnification requirements; rules requiring maintenance of infrastructure deployed in ROW; rule requiring relocation or timely removal of infrastructure in ROW no longer utilized; and any rules requiring relocation or repair procedures for infrastructure in ROW under emergency conditions, if any, that the local authority imposes on a general and non-discriminatory basis upon entities that are entitled to deploy infrastructure in the ROW; and
6. The applicant's certification that the proposed site plan and design plans meet or exceed all applicable engineering, materials, electrical, and safety standards, including all standards related to the structural integrity and weight bearing capacity of the PSS and small wireless facility. Those standards relevant to engineering must be certified by a licensed professional engineer.

Ownership, Maintenance, and Repair
Must:

T.C.A. § 13-24-408- Municipalities and metropolitan governments ***are required*** to take ownership of replacement PSS. Maintenance and repair obligations for the replacement PSS are as follows:

May:

T.C.A. § 13-24-408 - For municipality or metropolitan government-owned PSS that was used for lighting, the municipality or metropolitan government **may require** the lighting to be included on the replacement PSS and then both the PSS and the lighting become property of the governmental entity, after an inspection is completed of the new PSS to ensure that it is in working condition and any lighting is equivalent to the quality and standards of lighting on the PSS prior to replacement. The municipality or metropolitan government becomes responsible for the electricity and ordinary maintenance of the PSS after a satisfactory inspection, but is not responsible for providing electricity to or the maintenance or repair of the small wireless facility collocated on the governmental entity's PSS.

T.C.A. § 13-24-411 - Municipalities and metropolitan governments **may require** an applicant to:

1. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
2. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or metropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

Pole Height
May Not and Must:

T.C.A. § 13-24-408 - Municipalities and metropolitan governments **are not permitted** to:

1. Restrict the size, height, or otherwise regulate the appearance or placement of small wireless facilities or prohibit colocation on PSSs, **except that municipalities and metropolitan governments shall require:**
   (A) A new PSS installed or an existing PSS replaced in the ROW not to exceed the greater of:

(a) 10 ft in height above the tallest PSS in place as of the effective date of this part, that is located within 500 ft. of the new PSS in the ROW;

(b) The tallest existing PSS that is located within 500 ft. of the new PSS and is also located in the same residential area;

(c) 50 ft above ground level; or

(d) 40 ft. above ground level in residential neighborhoods.

(B) Municipalities and metropolitan governments may also require that a small wireless facility de ployed in the ROW after the effective date of this part shall not extend:

(a) More than 10 ft. above an existing PSS in place as of the effective date of this part; or

(b) On a new PSS, 10 ft. above the height permitted for a new PSS under this section.

Public Utility Easement
May:

T.C.A. § 13-24-411 - Municipalities and metropolitan governments **may require** an applicant to limit deployment or co-location of small wireless facilities in public utility easements when the easements are:

(a) Not contiguous with paved roads or alleys on which vehicles are permitted;

(b) Located along the rear of residential lots; and

(c) In an area where no electric distribution or telephone utility poles are permitted to be deployed.

ROW
May:

T.C.A. § 13-24-405 - This legislation **does not alter or exempt** any entity from the franchising requirement for providing video services or cable services set out in T.C.A., Title 7, Chapter 59.

T.C.A. § 13-24-405 - This legislation **does not alter the requirements or exempt** any entity from the requirements to relocate facilities, including any PSS, small wireless facility, or other related infrastructure, to the same extent as any other facility pursuant to T.C.A., Title 54, Chapter 5, Part 8 (utility relocation due to highway construction, expansion or improvement) or other similar generally applicable requirements imposed on entities who deploy infrastructure in the ROW.

T.C.A. § 13-24-405 - Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory vegetation control requirements upon entities that deploy infrastructure in the ROW. Must be for the purpose of limiting the chance of any damage or injury that might result from infrastructure being obscured by vegetation; and

T.C.A. § 13-24-405- Municipalities and metropolitan governments **are permitted** to enforce nondiscriminatory generally applicable local rules related to removal of unsafe, abandoned, or inoperable obstructions in the ROW.

T.C.A. § 13-24-411 -Municipalities and metropolitan governments ***may require*** an applicant to:

1. Follow generally applicable and nondiscriminatory requirements that structures and facilities placed within a ROW must be constructed and maintained as not to obstruct or hinder the usual travel upon pedestrian or automotive travel ways;
2. Comply with ADAAG standards adopted to achieve compliance with the ADA, including PROWAG, if adopted, any other measures necessary for public safety;
3. (3) Prohibit obstruction of the legal use of the ROW by utilities;

T.C.A. § 13-24-411 - Municipalities and metropolitan governments **may require** an applicant to deploy new PSS in a residential neighborhood, in a ROW to be located within twenty five feet (25') from the property boundaries separating residential lots larger than three-quarters of an acre in size and require new PSS deployed in a ROW to be located within fifteen feet (15') from the property boundaries separating residential lots three quarters of an acre in size or smaller.

T.C.A. § 13-24-411- Municipalities and metropolitan governments **may require** an applicant to:

3. Repair damage caused by entities entitled to deploy infrastructure in a ROW, including damage to public roadways or to other utility facilities placed in a ROW, as long as the requirement is generally applicable and nondiscriminatory; and
4. Require maintenance or relocation of infrastructure deployed in the ROW, timely removal of infrastructure no longer utilized, and require insurance, surety bonds, or indemnification for claims arising from the applicant's negligence to the same extent the municipality or met-

ropolitan government applies all such requirements generally to entities entitled to deploy infrastructure in ROW.

T.C.A. § 13-24-411 - Municipalities and metropolitan governments **may require** an applicant to limit deployment or colocation of small wireless facilities in public utility easements when the easements are:

(d) Not contiguous with paved roads or alleys on which vehicles are permitted;
(e) Located along the rear of residential lots; and
(f) In an area where no electric distribution or telephone utility poles are permit ted to be deployed.

May Not:

T.C.A. § 13-24-405 - Municipalities and metropolitan governments **are not** permitted to restrict access to ROWs granted by T.C.A. § 65-21-201 (related to telephone lines) or expand access authorized pursuant to T.C.A. § 54-16-112 (related to underground fiber optic cable);

T.C.A. § 13-24-405 - Municipalities and metropolitan governments **are not** permitted to create a local tax in the form of ROW taxes, rates or fees that exceed the cost-based fees authorized under existing law;

T.C.A. § 13-24-406 - Municipalities and metropolitan governments **are not** permitted to:

1. Enter into exclusive franchise agreements for use of a ROW for construction, operation, marketing, or maintenance of small wireless cells;
2. Discriminate by prohibiting an applicant from making any type of installation that is generally permitted when performed by other utilities entitled to deploy infrastructure in a ROW or by imposing any maintenance or repair obligations not generally applicable to all entities entitled to deploy infrastructure in the ROW;
3. Impose discriminatory prohibitions against deploying a new PSS for small wireless facilities in the ROW. Only requirements imposed generally to other entities entitled to deploy infrastructure in the ROW may be applied to prohibit an applicant's deployment of a new PSS in the ROW; and
4. Except as otherwise provided in state law or through this legislation, adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by state or local law to operate in a ROW; regulate any communications services; or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a ROW.

Shot Clock

Must:

T.C.A. § 13-24-409 - When a municipality or metropolitan government requires an application to be submitted, the governmental entity **must:**

3. Determine whether an application is complete and notify the applicant is it is not within 30 days of receiving it. The municipality or metropolitan government must tell the applicant specifically what is missing in writing at the time the applicant is notified.
4. Notify the applicant within 30 days of receiving an application if there is a need to have a conference related to the design of one or more small wireless facilities in an application. Issues that may be addressed by the conference include:
   (1) safety considerations not adequately addressed by the application or regarding which the local authority proposes additional safety-related alterations to the design;
   (2) potential of conflict with another applicant's application for the same or a nearby location;
   (3) impact of planned construction or other public works projects at or near the location identified by the application;
   (4) alternative design options that may enable colocation on existing PSS instead of deployment of new PSS or opportunities and potential benefits of alternatives design that would incorporate oth er features or elements of benefit to the municipality or metropolitan government. The fact that alternatives exist does not constitute the basis for denial of an application that otherwise satisfies all requirements of this legislation and generally appli cable standards for construction in the ROW.
5. If there are multiple small wireless facilities within an application, specify which ones about which they need to conference. The time frame for review of these applications shall be extended from 60 days to 75 days. The municipality or metropolitan government **must** schedule the conference and allow the applicant to attend via telephone. The 75 day period is not tolled while for the conference, unless the applicant agrees to an extension. However, there shall not be an additional extension past the 75 days if the applicant also submits applications for deployment or colocation of more than 30 small wire-

less facilities within 30 days with the same municipality or metropolitan government. The time frame for review is capped at 75, unless the parties each agree to an extension.

6. Approve or deny all applications for deployment or colocation of small wireless facilities within 60 days, unless an extension is authorized under this part. A municipality or metropolitan government is only permitted to deny an application when the application fails to demonstrate compliance with all generally applicable requirements that the governmental entity imposes on all entities entitled to deploy infrastructure in the ROW and the requirements set out in this legislation.
7. The 60 day review period **may only** be extended or tolled when:
   (a) The municipality or metropolitan government sennotice to an applicant that the application is in complete, within 30 days of the initial filing; however, the tolling ceases once the additional information is provided to the municipality or metropolitan government. The governmental entity **is permitted** to deny an application and require a new supplication to be filed, if the missing information is not provided within 30 days of the date that the notice was provided.
   (b) The parties agree to toll the 60 days;
   (c) A conference is requested and the time frame is extended to 75 days as mentioned above;
   (d) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 30 and fewer than 50 small wireless facilities within any 30 day period. The review period is extended to 75 days, but cannot be further extended for a conference.
   (e) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate 50 or more small wireless facilities within any 30 day period. The review period is extended to 90 days, but cannot be further extended for a conference.
   (f) An applicant submits applications to the same municipality or metropolitan government seeking to deploy or collocate more than 120 small wireless facilities within any 60 day period. When this happens, the governmental entity is permitted to send notice to the applicant that the applicant can either pay a surcharge of $100 per small wireless facility to the entity within 5 days of receiving the notice to have specifically identified small wireless facilities reviewed within the applicable time frame. If no small wireless facilities are specifically identified or the surcharge is not paid within the 5 day period, the municipality or metropolitan government has 120 days to review these applications.

T.C.A. § 13-24-409 - If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government **may deny** the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

May Not:

T.C.A. § 13-24-409 - The municipality or metropolitan government **is not permitted** to deny an entire application because some of the small wireless facilities contained therein do not meet the requirements. If the application or a portion of it is not approved or denied within 60 days, it is deemed approved, unless it has been extended pursuant to the language in this section.

Signs

May:

T.C.A. § 13-24-405- Municipalities and metropolitan governments **are permitted** to enforce non-discriminatory breakaway sign post requirement and safety regulations generally imposed for all structures within a ROW.

T.C.A. § 13-24-409 - If an applicant submits an application that includes a proposed design that will affect a regulatory sign (as defined by the Manual on Uniform Traffic Control Devices) or any sign subject to a requirement for breakaway supports, the municipality or metropolitan government **may deny** the application. If an application is denied on this basis, the applicant has the right to seek reconsideration of the design, through a conference. The conference is to be held within 30 days of the request for a conference. The applicant must submit a revised design and respond to the concerns of the governmental entity within 30 days of the conference. Once the revised deign and response is received, the governmental entity has 60 days to approve or deny the application. The decision must be nondiscriminatory.

Timeframe for Deployment
May:
T.C.A. § 13-24-409- If an applicant does not complete deployment within 9 months of an application being approved, the municipality or metropolitan government **may require** the applicant to complete a new application and pay an additional application fee, unless the parties agree to an extension or the deployment is delayed because of a lack of commercial power or communications transport facilities to the site.

Undergrounding
May:
T.C.A. § 13-24-408 - Municipalities and metropolitan governments **are permitted** to require an applicant to comply with undergrounding requirements in the ROW when:

1. The municipality or metropolitan government has required all electric, communications, and cable facilities, other than municipal or metropolitan government-owned PSSs and attachments to be placed underground prior to the date upon which the application is submitted;
2. The municipality or metropolitan government does not prohibit the replacement of municipal or metropolitan government -owned PSSs in the designated area when the design for the new PSS meets the governmental entity's design aesthetic plan and all other applicable criteria in this part; and
3. The applicant can seek a waiver of the undergrounding requirements for the placement of a new PSS to support small wireless facilities and the approval or lack thereof is nondiscriminatory.

Work Permits
May:
T.C.A. § 13-24-407- Municipalities and metropolitan governments are permitted to require applicants to obtain generally applicable work or traffic permits and pay the same applicable fees for these permits, for deployment of a small wireless facility or new PSS, as long as the permits and fees are required of other providers undertaking construction in the ROW.

PARTICIPATION AGREEMENT
FOR
PUBLIC INFRASTRUCTURE IMPROVEMENT CONSTRUCTION

THIS AGREEMENT is entered into the ___ day of _____, 2019, by and between Evans North, LLC, a Tennessee limited liability company ("**Evans North**"), Amber Lane Development, LLC, a Tennessee limited liability company, ("**Amber Lane**"), Byrd D. Cain, Jr. ("**Cain**") and the Town of Thompson Station, a municipal corporation duly formed of the laws of the State of Tennessee (the "**Town**") with respect to roadway infrastructure improvements to Critz Lane.

WHEREAS, on July 24, 2018, Evans North received conditional preliminary approval from the Town's Planning Commission for the Preliminary Plat for Phases 14-17 of the Fields of Canterbury Subdivision (the "Fields of Canterbury Phases 14-17") located on real property on Critz Lane (Tax Map 145, Parcel 6.05) currently owned by Evans North (the "Evans North Property"), and

WHEREAS, Amber Lane has submitted a proposed Preliminary Plat (the "Avenue Downs Preliminary Plat") to the Town's Planning Commission for a 69 lot subdivision (the "Avenue Downs Subdivision") located on real property on Critz Lane (Tax Map 145, Parcels 6.03 and 6.04) currently owned by Cain (the "Cain Property"), and

WHEREAS, in order to obtain approval from the Town's Planning Commission for the Avenue Downs Preliminary Plat, the Town will have to allocate 69 sewer taps to the Avenue Downs Subdivision; and

WHEREAS, in order to permit the Town to allocate 69 sewer taps to the Avenue Downs Subdivision, Evans North, Station Hill, LLC, Alexander Property, LLC ("Alexander Property"), Amber Lane and the Town will enter into a Sewer Tap Agreement substantially in the form attached hereto as Exhibit 1 (the "Sewer Agreement"); and

WHEREAS, the Town has proposed to construct certain public infrastructure improvements to Critz Lane to address the current traffic utilizing Critz Lane and the additional traffic that will utilize Critz Lane following the development of the Fields of Canterbury subdivision, the Avenue Downs Subdivision, and the future development of other properties along Critz Lane (the "Road Project"); and

WHEREAS, Evans North and Amber Lane have agreed to provide financial and other assistance to the Town in connection with the Road Project in accordance with the terms of this Agreement; and

WHEREAS, the construction of the Road Project will be undertaken in the three (3) phases as shown on Exhibit 2, with the first phase work to be the construction to be undertaken by Evans North at its sole cost in compliance with the Fields of Canterbury Construction Plans and the construction to be undertaken by Amber Lane at its sole cost in compliance with Avenue Downs Construction Plans, and the second and third phases to be constructed by the Town in compliance with Final Plans (as defined below); and

WHEREAS, prior to Town undertaking the construction of the Road Project, (i) Evans North has obtained approval from the Town of the construction plans for all public improvements for the portion of the Fields of Canterbury Phases 14-17 shown on Exhibit 3 (the "Fields of Canterbury Construction Plans"), in order to construct the portion of Lioncrest Lane in the location shown on Exhibit 3 to provide a connection between Section 13 of the Fields of Canterbury Subdivision and Critz Lane for use as an alternative route while Critz Lane is closed during the construction of the Road Project, (ii) Amber Lane must obtain approval from the Town's Planning Commission for the Avenue Downs Preliminary Plat and approval from the Town of the construction plans for all public improvements for Avenue Downs Subdivision, Section 1 shown on Exhibit 4 (the "Avenue Downs Construction Plans"), in order to construct the portions of Avenue Downs Drive and Otterham Drive in the location shown on Exhibit 4 to provide a connection between Clayton Arnold Road and Critz Lane for use as an alternative route while Critz Lane is closed during the construction of the Road Project, (iii) Evans North must obtain approval from the Town's Planning Commission of a reduction of the tree replacement requirements for the Fields of Canterbury Phases 14-17 as shown on Exhibit 5 (the "Phases 14-17 Tree Reduction"); (iv) Alexander Property must obtain approval from the Town's Planning Commission of a reduction of the tree replacement requirements for the future phases of the Fields of Canterbury Subdivision located on the Alexander Property Subdivision as shown on Exhibit 6 (the "Alexander Property Tree Reduction"); (v) Evans North must dedicate or convey to the Town, at no cost to the Town, the portions of the Evans North Property required for the Road Project; and (vi) Cain or Amber Lane must dedicate or convey to the Town, at no cost to the Town, the portions of the Cain Property required for the Road Project

WHEREAS, Evans North has retained Ragan Smith to prepare complete plans and specifications for the construction of the Road Project and Ragan Smith has prepared the plans and specifications (the "Initial Road Project Plans"); and

WHEREAS, the Initial Plans provide that the Road Project will be located upon the existing right of way of Critz Lane, on portions of the Evans North Property, on portions of the Cain Property, and on portions of the property on Critz Lane (Tax Map 145, Parcel 6.00) currently owned by Thomas M. Evans, Jr. (the "Evans Property"); and

WHEREAS, prior to commencement of construction of the Road Project, the Town, will complete the final plans and specifications and bid documents for the Road Project (the "Final Road Project Plans") and the Town will construct the road improvements for the Road Project in accordance with the Final Road Project Plans; and

WHEREAS, the completion of the Road Project and the provision of such public infrastructure improvements will benefit both parties and the general community of the Town; and

WHEREAS, the parties would like to work together to provide such public infrastructure improvements.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Following the execution of this Agreement and the Sewer Agreement by all the

applicable parties, (i) the Town will allocate the 69 sewer taps to Amber Lane in accordance with the Sewer Agreement and (ii) the Town's Planning Commission shall proceed to consider and approve the Avenue Downs Preliminary Plat. Following the approval of the Avenue Downs Preliminary Plat, Amber Lane shall submit to the Town the Avenue Downs Construction Plans for approval by the Town. The Avenue Downs Construction Plans shall provide for the connection of Avenue Downs Drive to the existing alignment of Critz Lane. The Town will be responsible for the costs of any adjustments to the intersection of Avenue Downs Drive and Critz Lane required by the Final Road Project Plans. Within ten (10) days following the approval of the Avenue Downs Construction Plans by the Town, Amber Lane shall pay to the Town the sum of Two Hundred Thousand and No/100 Dollars ($200,000.00) (the "Avenue Downs Contribution").

2. Following the execution of this Agreement and the Sewer Agreement by all the applicable parties, Evans North shall provide the most recent version of the Initial Road Project Plans to the Town. The Town shall be responsible for all additional engineering cost to revise the Initial Road Project Plans into the Final Road Project Plans. Evans North shall be entitled to deduct the cost of the Initial Road Project Plan in the amount not to exceed Fifty Five Thousand and No/100 Dollars ($55,000.00) from the Evans North Contribution described in Section 5.

3. Following the execution of this Agreement and the Sewer Agreement by all the applicable parties, Evans North shall submit to the Planning Commission the revised preliminary plat for Fields of Canterbury Phases 14-17 showing the Phases 14-17 Tree Reduction. Within ten (10) days following the approval of the Phases 14-17 Tree Reduction by the Planning Commission, Evans North shall pay to the Town the sum of One Hundred Sixty Two Thousand Five Hundred and No/100 Dollars ($162,500.00) (the "Phases 14-17 Tree Contribution"). In the event the Planning Commission fails to approve the Phases 14-17 Tree Reduction, Evans North shall not be obligated to make the Phases 14-17 Tree Contribution, however Evans North shall make all reasonable efforts to obtain approval of the same.

4. Following the execution of this Agreement and the Sewer Agreement by all the applicable parties, Evans North shall submit to the Planning Commission the preliminary plat for Alexander Property Subdivision showing the Alexander Property Tree Reduction. Within ten (10) days following the approval of the Alexander Property Tree Reduction by the Planning Commission, Evans North shall pay to the Town the sum of One Hundred Sixty-Two Thousand Five Hundred and No/100 Dollars ($162,500.00) (the "Alexander Property Tree Contribution"). In the event the Planning Commission fails to approve the Alexander Property Tree Reduction, Evans North shall not be obligated to make the Alexander Property Tree Contribution.

5. Evans North has obtained approval from the Town of the Fields of Canterbury Construction Plans and a grading permit for improvements shown on the approved Fields of Canterbury Construction Plan. Evans North has commenced construction of the road improvement shown on the Fields of Canterbury Construction Plans. The Fields of Canterbury Construction Plans provide for the connection of Lioncrest Lane to the existing alignment of Critz Lane. Within ten (10) days following the approval of this Agreement by the Board of Mayor and Aldermen of the Town pursuant to Section 18, Evans North shall pay to the Town the sum of Two Hundred Thousand and No/100 Dollars ($200,000.00) (the "Evans North Contribution"), minus the amount provided in Section 2.

6. Amber Lane shall commence construction of the road improvement shown on the Avenue Downs Construction Plans as approved by the Town within thirty (30) days of the issuance by the Town of a grading permit for such road improvements. Amber Lane shall complete construction of the road improvement shown on the Avenue Downs Construction Plans as approved by the Town within 300 days of the commencement of construction, (the "Avenue Downs Completion Deadline"). The Town may grant reasonable extensions on the Avenue Downs Completion Deadline due to weather and time of year, said extension shall not be unreasonably withheld.

7. Evans North shall complete construction of the road improvement shown on the Fields of Canterbury Construction Plans as approved by the Town within 300 days of the commencement of construction, (the "Fields of Canterbury Completion Deadline"). The Town may grant reasonable extensions on the Fields of Canterbury Completion Deadline due to weather and time of year, said extension shall not be unreasonably withheld.

8. Within thirty (30) days following the approval of this Agreement by the Board of Mayor and Aldermen of the Town pursuant to Section 18, Evans North shall execute and deliver to the Town the right-of-way easement in the form attached hereto as Exhibit 7 in order for the Town to engage in Phase II and III of the Road Project as defined herein..

9. Within thirty (30) days following the approval of this Agreement by the Board of Mayor and Aldermen of the Town pursuant to Section 18, Amber Lane shall execute and deliver to the Town the right-of-way easement in the form attached hereto as Exhibit 8 in order for the Town to engage in Phase II and III of the Road Project as defined herein.

10. Evans North agrees that the Town shall be permitted to utilize the portions of Lioncrest Lane in the location shown on Exhibit 3 to provide an alternative route between Section 13 of the Fields of Canterbury Subdivision and Critz Lane during the construction of the Road Project. Said utilization shall not be an explicit or implicit act or acquiescence by the Town that the Town is accepting dedication of said portion of Lioncrest Lane. Evans North shall be responsible for maintaining Lioncrest Lane to applicable standards and later dedicating the same to the Town once the Road Project is complete.

11. Amber Lane agrees that the Town shall be permitted to utilize the portions of Avenue Downs Drive and Otterham Drive in the location shown on Exhibit 4 to provide an alternative route between Clayton Arnold Road and Critz Lane during the construction of the Road Project. Said utilization shall not be an explicit or implicit act or acquiescence by the Town that the Town is accepting dedication of said portion of Avenue Downs Drive and Otterham Drive. Amber lane shall be responsible for maintaining Avenue Downs Drive and Otterham Drive to applicable standards and later dedicating the same to the Town once the Road Project is complete.

12. After Amber Lane and Evans North complete their respective road improvements as outlined in section 6 and 7 above ("Phase I"), the Town shall commence the Final Road Project Plans ("Phase II and III").The proposed right of way for Critz Lane as shown on the Final Road Project Plans shall be consistent with the proposed right of way for Critz Lane as shown on the Initial Road Project Plans. Any revisions to the proposed right of way for Critz Lane as

shown on the Final Road Project Plans must be approved by Evans North and Amber Lane, with said approval not unreasonably withheld. The Town shall advertise the Road Projects for bids within sixty (60) days of completion of Phase I. Unless the bids are more than fifteen percent (15%) over the estimated project cost as determined by the Town's engineers (the "Estimated Project Cost"), the Town agrees to award and approve the construction contract for the Road Project within thirty (30) days after bid opening, provided that the bids meet all requirements under applicable law and project specifications and the Town concludes that it is in the best interests of the Town to award a bid. In the event all bids submitted are more than fifteen percent (15%) over the Estimated Project Cost as determined by the Town's engineers, or no bids meet the requirements, specifications, and is not in the Town best interests, the Town may elect, in its sole discretion, to reject all bids, amend the Final Road Project Plans and rebid, provided that Road Project shall be rebid within sixty (60) days after all bids are rejected and the Town shall award the contract within thirty (30) days after the second bid opening, provided that the second round of bids is not more than fifteen percent (15%) over the Estimated Project Cost as determined by the Town's engineers and that the bids meet all requirements under applicable law and project specifications and the Town concludes that it is in the best interests of the Town to award a bid. Except for the amounts payable by Evans North and Amber Lane pursuant to this agreement, the Town shall be responsible for all the costs of the Road Project and Evans North and Amber Lance shall have no further responsibility for the Road Project.

13. The Town shall (i) commence construction of the second phase of the Road Project (Phase II) after Amber Lane and Evans North complete Phase I, (ii) commence construction of the third phase of the Road Project (Phase III) after completion of Phase II and (iii) substantially complete construction of the Road Project on or before May 30, 2021 (the "Completion Deadline") or at such earlier time as is practicable.

14. Evans North's commitments contained in this Agreement shall satisfy any and all requirements for improvements to Critz Lane that were recommended in the traffic study for Fields of Canterbury Phases 14-17 and the Alexander Property Subdivision. Amber Lane's commitments contained in this Agreement shall satisfy any and all requirements for improvements to Critz Lane that were recommended in the traffic study for Avenue Downs.

15. Prior to the Completion Deadline, Evans North shall be permitted, if all rules and regulations of the Town are met, to obtain (i) preliminary and/ or final subdivision plat approval, (ii) any building permits and (iii) certificate of occupancies for homes located within the Fields of Canterbury Phases 14-17 and the Alexander Property Subdivision. Prior to the Completion Deadline, Amber Lane shall be permitted, if all rules and regulations of the Town are met, to obtain (i) preliminary and/ or final subdivision plat approval, (ii) any building permits and (iii) certificate of occupancies for homes located within Avenue Downs Subdivision.

16. Any deadlines specified in this Agreement shall in all cases be subject to extensions for a period of time equal to the delay in completion caused as a result of Excusable Delay. As used herein, the term "Excusable Delay" shall mean any delay in performance under this Agreement due to strikes, lockouts, or other labor or industrial disturbance, civil disturbance, future order of any government, court or regulatory body claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, lightning, earthquake, fire, hurricane, tornado, flood, washout, explosion, unusually inclement weather, moratorium or other unusual delay in

obtaining necessary governmental permits or approvals (with the party subject to the deadline using commercially reasonable efforts to obtain the same) or any other cause whatsoever beyond the reasonable control of the party subject to the deadline (excluding financial inability to perform) to the extent that in each case of Excusable Delay, the party subject to the deadline has notified the other parties to this Agreement in writing within thirty (30) days after the occurrence of each Excusable Delay event and has specified in detail the circumstances constituting Excusable Delay and the anticipated number of days by which performance is delayed as a result thereof. The parties agree to work towards the Completion Deadline with all due haste but understand that delays are generally inevitable.

17. This Agreement shall not be effective until the Board of Mayor and Aldermen of the Town have adopted a Resolution authorizing this Agreement.

18. This Agreement may be modified, altered, amended, canceled or terminated only by the express, written agreement of all the parties hereto.

19. The terms, conditions, covenants, agreements and easements contained herein shall be binding on and inure to the benefit of Evans North, Amber Lane, Cain, and the Town, and their respective heirs, successors and assigns. Any references to the Evans North, Amber Lane, Cain, and the Town shall be deemed to mean and include their respective heirs, successors and assigns as though they had been original parties to this Agreement.

20. The invalidation of any one or more of the provisions of this Agreement or any part thereof by judgment of any court of competent jurisdiction shall not in any way affect the validity of any other such provisions of the Agreement but the same shall remain in full force and effect.

21. This Agreement and the Sewer Agreement constitutes the complete and entire agreement among the parties related to the transactions contemplated herein constitute the final, complete, and entire understanding of such parties and supersede all prior agreements and negotiations with respect to the matters herein or therein contained.

22. All captions, headings, paragraph and subparagraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement. All references to particular paragraphs and subparagraphs by number refer to the paragraph or subparagraph so numbered in this Agreement.

23. Nothing contained herein or in any other document shall be deemed to render the Town, Evans North, Amber Lane and Cain partners or venturers for any purpose

24. All schedules and exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.

25. If any date specified in this Agreement for the performance of an obligation, the giving of a notice or the expiration of a time period falls on a day other than a business day, then this Agreement shall be automatically revised so that such date falls on the next occurring business day.

26. The invalidation of any one or more of the provisions of this Agreement or any part thereof by judgment of any court of competent jurisdiction shall not in any way affect the validity of any other such provisions of the Agreement but the same shall remain in full force and effect.

27. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. Venue for all matters arising under this Agreement shall be in the courts of Williamson County, Tennessee, and the parties hereto hereby consent to the jurisdiction of such courts for any such legal proceeding.

[Signature Page Attached Hereto]

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed by their duly authorized officers on the day and year first above written.

TOWN:

The Town of Thompson Station

By: _____
Name:_____
Title:_____

EVANS NORTH:

Evans North, LLC, a Tennessee limited liability company

By: _____
Name:_____
Title:_____

AMBER LANE:

Amber Lane Development, LLC, a Tennessee limited liability company

By: _____
Name:_____
Title:_____

CAIN:

_____
Byrd D. Cain, Jr.

Exhibit 1

Copy of Sewer Agreement

Exhibit 2

Road Project Phasing Plans

Exhibit 3

Drawing of Fields of Canterbury Phases 14-17

Exhibit 4

Drawing of Avenue Downs Phase 1

Exhibit 5

Drawing of Phases 14-17 Tree Reduction

Exhibit 6

Drawing of Alexander Property Tree Reduction

Exhibit 7

Form of Evans North Right of Way Dedication

Exhibit 8

Form of Amber Lane Right of Way Dedication

SEWER TAP AGREEMENT

THIS AGREEMENT is entered into this __ day of _____, 2019, by and between Evans North, LLC, a Tennessee limited liability company ("**Evans North**"), Station Hill, LLC, a Tennessee limited liability company ("**Station Hill**"), Alexander Property, LLC. a Tennessee limited liability company ("**Alexander Property**"), Amber Lane Development, LLC, a Tennessee limited liability company, ("**Amber Lane**") and the Town of Thompson Station, a municipal corporation duly formed of the laws of the State of Tennessee (the "**Town**") with respect to sewer taps for the Avenue Downs Subdivision.

WHEREAS, Evans North, Station Hill, Alexander Property, and Hood Development (collectively, the "Tap Owners") currently have acquired from the Town in excess of sixty-nine (69) sewer taps for units within the developments being developed by the Tap Owners (the "Available Taps"); and

WHEREAS, Amber Lane has previously submitted a proposed Preliminary Plat to the Town's Planning Commission for a 69 lot subdivision (the "Avenue Downs Subdivision") located on real property on Critz Lane (Tax Map 145, Parcels 6.03 and 6.04), and

WHEREAS, in order to obtain approval from the Town's Planning Commission for the Preliminary Plat for the Avenue Downs Subdivision, the Town will have to allocate 69 sewer taps to the Avenue Downs Subdivision; and

WHEREAS, due to concerns regarding whether the Town's wastewater system has capacity in excess of the capacity committed to approved developments within the Town, including the developments owned by the Tap Owners, the Town has been unwilling and/or unable to allocate the necessary taps to the Avenue Downs Subdivision; and

WHEREAS, in order to permit Evans North, Amber Lane, and the Town to proceed with the execution of a Participation Agreement for Public Infrastructure Improvement Construction regarding the construction of public infrastructure improvements to Critz Lane, the Tap Owners are willing to defer the use of 69 of the Available Taps in accordance with the terms and conditions of this Agreement; and

WHEREAS, on July 23, 2019, the Board of Mayor and Aldermen of the Town authorized the Mayor to execute a contract with W & O Construction Co., Inc. for the installation of a subsurface dispersal system on the Station Hill property (the "Drip Field Project") in order to increase the wastewater effluent disposal capacity of the Town's Regional Wastewater Treatment Plant; and

WHEREAS, the Town, Station Hill, Alexander Property, and Evans North have agreed to enter into certain easement agreements in order to permit the development of the Drip Field Project; and

WHEREAS, the Town and Whistle Stop Farms, LLC have entered into a Settlement Agreement, effective November 9, 2018 (the "Settlement Agreement"), which provides that the Town will make sewer capacity available in the Town's Regional Wastewater Treatment Facility

(the "Facility") to the all of the 343 lots in the Whistle Stop Farms development on or before December 31, 2022 (the "Whistle Stop Commitment").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. ALLOCATION OF AND PAYMENT FOR SEWER TAPS.

A. The Tap Owners agrees to defer the use of 69 of the Available Taps until such time as the taps are restored to the Tap Owners pursuant to Section II of this Agreement.

B. Amber Lane shall pay the Town for the costs for 69 taps within sixty (60) days of the Effective Date.

C. Upon receipt of payment for the sewer taps from Amber Lane, the Town will allocate the sixty-nine (69) aforementioned sewer taps to the Avenue Downs Subdivision.

D. In the event less than sixty-nine (69) sewer taps are utilized by Amber Lane for the Avenue Downs Subdivision, the unused taps shall be transferred back to the Tap Owners for no additional consideration.

II. RESTORATION OF SEWER TAPS:

A. The Town agrees that the Town shall restore the sixty-nine (69) sewer taps to the Tap Owners immediately following the Town's satisfaction of the Whistle Stop Commitment, however Tap Owners, by May 31, 2023, shall make payment of associated tap fees or vesting of capacity shall not occur.

B. The Town agrees to make Diligent, Good-Faith Efforts (as defined in the Settlement Agreement), subject to delays for Force Majeure Events (as defined in the Settlement Agreement), to satisfy the Whistle Stop Commitment on or before December 31, 2022.

C. The Town agrees that until such time as the sixty-nine (69) sewer taps are restored to the Tap Owners, the Tap Owners shall be the first in line after the Whistle Stop Commitment (i.e. the Town shall reserve the next sixty-nine (69) sewer taps available for the Tap Owners). Said reservation of taps shall expire on May 31, 2023. After the Town has reserved the sixty-nine (69) sewer taps for the Tap Owners, no provision or aspect of this agreement shall limit the Town from allocating and/or reserving sewer taps to other entities at any point in time.

III. EASEMENTS.

A. Station Hill agrees to grant to the Town the necessary easements across Station Hill's property in order to permit the Town to construct the Drip Field Project (the "Drip Field Easement"). The form of the Drip Field Easement is attached hereto as Exhibit 1. The Town and Station Hill will execute the Drip Field Easement

within ten (10) days of Station Hill's receipt of the Station Hill Sewer Line Notice (as described below).

B. Within ten (10) days after the Effective Date (as defined below) the Town will notify Station Hill in writing of the approved route for the sanitary sewer line that will serve the Station Hill Property (the "Station Hill Sewer Line Notice"). Station Hill shall then prepare the legal description for the sewer easement which will be attached to the sewer easement to be granted to Station Hill by the Town (the "Station Hill Sewer Easement"). The form of the Station Hill Sewer Easement is attached hereto as Exhibit 2. The Town and Station Hill will execute the Station Hill Sewer Easement within ten (10) days of the completion of the legal descriptions for the Station Hill Sewer Easement.

C. The Town agrees to grant to the Alexander Property the necessary easements across the Town's property in order to permit the Alexander Property to construct sewer lines across the portion of the Town's property located between the property owned by Evans North's and the property owned by Alexander Property (the "Alexander Property Sewer Easement"). The form of the Alexander Property Sewer Easement is attached hereto as Exhibit 3. The Town and Alexander Property will execute the Alexander Property Sewer Easement within ten (10) days of the Effective Date.

IV. MISCELLANEOUS.

A. The parties hereto acknowledge and agree that this Agreement is conditioned upon approval of a Resolution authorizing this Agreement by the Board of Mayor and Aldermen of the Town.

B. The "Effective Date" of this Agreement shall be the effective date of the Resolution authorizing this Agreement by the Board of Mayor and Aldermen of the Town.

C. This Agreement may be modified, altered, amended, canceled or terminated only by the express, written agreement of the parties hereto.

D. The terms, conditions, covenants, and agreements contained herein shall be binding on and inure to the benefit of the Tap Owners, Amber Lane, and the Town, and their respective heirs, successors and assigns. Any references to the Tap Owners, Amber Lane, and the Town shall be deemed to mean and include their respective heirs, successors and assigns as though they had been original parties to this Agreement.

E. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. Venue for all matters arising under this Agreement shall be in the courts of Williamson County, Tennessee, and the parties hereto hereby consent to the jurisdiction of such courts for any such legal proceedings.

[Signature Page Attached Hereto]

IN WITNESS WHEREOF, the parties hereby have caused this Agreement to be executed by their duly authorized officers on the day and year first above written.

TOWN:
The Town of Thompson Station

By:_____
Name:_____
Title:_____

EVANS NORTH:

Evans North, LLC, a Tennessee limited liability company

By:_____
Name:_____
Title:_____

STATION HILL:

Station Hill, LLC, a Tennessee limited liability company

By: _____
Name:_____
Title:_____

ALEXANDER PROPERTY:

Alexander Property, LLC. a Tennessee limited liability company

By: _____
Name:_____
Title:_____

AMBER LANE:

Amber Lane Development, LLC, a Tennessee limited liability company

By:_____
Name:_____
Title:_____

Exhibit 1

Form of the Drip Field Easement

Exhibit 2

Form of the Station Hill Sewer Easement

Exhibit 3

Form of the Alexander Property Sewer Easement

ORDINANCE NUMBER 2019-010

An ordinance adopting the 2015 edition of the International Property Maintenance Code establishing the minimum regulations governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use, and the condemnation of buildings and structures unfit for human occupancy and use and the demolition of such structures; known as the Property Maintenance Code.

Be it Ordained by the Board of Mayor and Aldermen of the Town of Thompson's Station, Tennessee as follows:

Section 1. That a certain document, a copy of which is on file in the office of the Town Recorder of the Town of Thompson's Station, being marked and designated as the International Property Maintenance Code, 2015 edition, as published by the International Code Council, Inc., be and is hereby adopted as the Property Maintenance Code of the Town of Thompson's Station, in the State of Tennessee; for the control of buildings and structures as herein provided; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code are hereby referred to, adopted, and made a part thereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this ordinance.

Section 2. The following sections are hereby revised:

Section 101.1. Insert: Town of Thompson's Station
Section 103.5. Insert: Schedule of fees.
Section 111.2. Delete and substitute the following: The Board of Appeals shall consist three members of the Town's Planning Commission appointed by the Mayor.
Section 111.2.1 Delete and substitute the following: The Mayor shall appoint two (2) members of the Planning Commission to serve as an alternate member who shall be called by the board chairman to hear appeals during the absence or disqualification of a member.
Section 112.4. Insert: $50.00 and $1,000.00.
Section 302.2. Delete.
Section 302.4. Delete.
Section 302.5. Delete.
Section 302.8. Delete.
Section 302.9. Delete.
Section 303. Delete.
Section 304.3. Delete.
Section 304.12. Delete.
Section 304.13. Delete.
Section 304.13.2. Delete.
Section 304.14. Delete.

Section 304.15. Delete: Section 702.3; Insert: *International Building Code*.
Section 305. Delete.
Section 307. Delete.
Chapter 4. Delete.
Chapter 5. Delete.
Chapter 6. Delete.
Chapter 7. Delete.

Section 3. That any ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. Nothing in this ordinance or in the Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 5. Penalties. Any person who shall violate a provision of the building and property maintenance code of the city, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Such fines shall be $50.00 per day of violation, and shall hereafter be cited as the Town of Thompson's Station general penalty clause. Each day of violation after due notice has been served shall be deemed as a separate offense.

Section 6. That the Town Recorder shall certify to the adoption of this ordinance, and cause the same to be published as required by law; and this ordinance shall take effect and be in force from and after its approval as required by law.

_____
Corey Napier, Mayor

ATTEST:

_____
Regina Fowler, Town Recorder

Passed First Reading: _____

Passed Second Reading: _____

Submitted to Public Hearing on the ____ day of _____, 2019, at 7:00 p.m., after being advertised in the *Williamson AM* Newspaper on the ____ day of _____, 2019.

APPROVED AS TO FORM AND LEGALITY:

_____
Town Attorney

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2015 International Property Maintenance Code®

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PREFACE

Introduction

Internationally, code officials recognize the need for a modern, up-to-date property maintenance code governing the maintenance of existing buildings. The *International Property Maintenance Code*®, in this 2015 edition, is designed to meet this need through model code regulations that contain clear and specific property maintenance requirements with required property improvement provisions.

This 2015 edition is fully compatible with all of the *International Codes*® (I-Codes®) published by the International Code Council (ICC)®, including the *International Building Code*®, *International Energy Conservation Code*®, *International Existing Building Code*®, *International Fire Code*®, *International Fuel Gas Code*®, *International Green Construction Code*® , *International Mechanical Code*®, ICC *Performance Code*®, *International Plumbing Code*®, *International Private Sewage Disposal Code*®, *International Residential Code*®, *International Swimming Pool and Spa Code*™, *International Wildland-Urban Interface Code*® and *International Zoning Code*®.

The *International Property Maintenance Code* requirements provide many benefits, among which is the model code development process that offers an international forum for code officials and other interested parties to discuss performance and prescriptive code requirements. This forum provides an excellent arena to debate proposed revisions. This model code also encourages international consistency in the application of provisions.

Development

The first edition of the *International Property Maintenance Code* (1998) was the culmination of an effort initiated in 1996 by a code development committee appointed by ICC and consisting of representatives of the three statutory members of the International Code Council at that time, including: Building Officials and Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO) and Southern Building Code Congress International (SBCCI). The committee drafted a comprehensive set of regulations for existing buildings that was consistent with the existing model property maintenance codes at the time. This 2015 edition presents the code as originally issued, with changes reflected through the previous 2012 edition and further changes developed through the ICC Code Development Process through 2013. A new edition of the code is promulgated every 3 years.

This code is founded on principles intended to establish provisions consistent with the scope of a property maintenance code that adequately protects public health, safety and welfare; provisions that do not unnecessarily increase construction costs; provisions that do not restrict the use of new materials, products or methods of construction; and provisions that do not give preferential treatment to particular types or classes of materials, products or methods of construction.

Adoption

The International Code Council maintains a copyright in all of its codes and standards. Maintaining copyright allows ICC to fund its mission through sales of books, in both print and electronic formats. The *International Property Maintenance Code* is designed for adoption and use by jurisdictions that recognize and acknowledge the ICC's copyright in the code, and further acknowledge the substantial shared value of the public/private partnership for code development between jurisdictions and the ICC.

The ICC also recognizes the need for jurisdictions to make laws available to the public. All ICC codes and ICC standards, along with the laws of many jurisdictions, are available for free in a non-downloadable form on the ICC's website. Jurisdictions should contact the ICC at adoptions@iccsafe.org to learn how to adopt and distribute laws based on the *International Property Maintenance Code* in a manner that provides necessary access, while maintaining the ICC's copyright.

Maintenance

The *International Property Maintenance Code* is kept up to date through the review of proposed changes submitted by code enforcing officials, industry representatives, design professionals and other interested parties. Proposed changes are carefully considered through an open code development process in which all interested and affected parties may participate.

The contents of this work are subject to change through both the code development cycles and the governmental body that enacts the code into law. For more information regarding the code development process, contact the Codes and Standards Development Department of the International Code Council.

While the development procedure of the *International Property Maintenance Code* ensures the highest degree of care, the ICC, its members and those participating in the development of this code do not accept any liability resulting from compliance or noncompliance with the provisions because the ICC does not have the power or authority to police or enforce compliance with the contents of this code. Only the governmental body that enacts the code into law has such authority.

Code Development Committee Responsibilities (Letter Designations in Front of Section Numbers

In each code development cycle, proposed changes to this code are considered at the Committee Action Hearings by the International Property Maintenance/Zoning Code Development Committee, whose action constitutes a recommendation to the voting membership for final action on the proposed changes. Proposed changes to a code section having a number beginning with a letter in brackets are considered by a different code development committee. For example, proposed changes to code sections that have the letter [F] in front of them (e.g., [F] 704.1) are considered by the International Fire Code Development Committee at the Committee Action Hearings.

The content of sections in this code that begin with a letter designation is maintained by another code development committee in accordance with the following:

[A] = Administrative Code Development Committee;

[F] = International Fire Code Development Committee;

[P] = International Plumbing Code Development Committee;

[BE] = IBC – Means of Egress Code Development Committee; and

[BG] = IBC – General Code Development Committee.

For the development of the 2018 edition of the I-Codes, there will be three groups of code development committees and they will meet in separate years. Note that these are tentative groupings.

Group A Codes (Heard in 2015, Code Change Proposals Deadline: January 12, 2015)	Group B Codes (Heard in 2016, Code Change Proposals Deadline: January 11, 2016)	Group C Codes (Heard in 2017, Code Change Proposals Deadline: January 11, 2017)
International Building Code – Fire Safety (Chapters 7, 8, 9, 14, 26) – Means of Egress (Chapters 10, 11, Appendix E) – General (Chapters 2-6, 12, 27-33, Appendices A, B, C, D, K)	Administrative Provisions (Chapter 1 of all codes except IRC and IECC, administrative updates to currently referenced standards, and designated definitions)	International Green Construction Code
International Fuel Gas Code	International Building Code – Structural (Chapters 15-25, Appendices F, G, H, I, J, L, M)	
International Existing Building Code	International Energy Conservation Code	
International Mechanical Code	International Fire Code	
International Plumbing Code	International Residential Code – IRC-B (Chapters 1-10, Appendices E, F, H, J, K, L M, O, R, S, T, U)	
International Private Sewage Disposal Code	International Wildland-Urban Interface Code	
International Property Maintenance Code		
International Residential Code – IRC-Mechanical (Chapters 12-24) – IRC-Plumbing (Chapter 25-33, Appendices G, I, N, P)		
International Swimming Pool and Spa Code		
International Zoning Code		

Note: Proposed changes to the ICC Performance Code will be heard by the Code Development Committee noted in brackets [ ] in the text of the code.

Code change proposals submitted for code sections that have a letter designation in front of them will be heard by the respective committee responsible for such code sections. Because different committees hold code development hearings in different years, it is possible that some proposals for this code will be heard by committees in both the 2015 (Group A) and the 2016 (Group B) code development cycles.

For instance, every section of Chapter 1 of this code is designated as the responsibility of the Administrative Code Development Committee, and that committee is part of the Group B portion of the hearings. This committee will hold its code development hearings in 2016 to consider all code change proposals for Chapter 1 of this code and proposals for Chapter 1 of all I-Codes except the *International Energy Conservation Code*, *International Residential Code* and ICC *Performance Code*. Therefore, any proposals received for Chapter 1 of this code will be assigned to the Administrative Code Development Committee for consideration in 2016.

It is very important that anyone submitting code change proposals understand which code development committee is responsible for the section of the code that is the subject of the code change proposal. For further information on the code development committee responsibilities, please visit the ICC website at www.iccsafe.org/scoping.

Marginal Markings

Solid vertical lines in the margins within the body of the code indicate a technical change from the requirements of the 2012 edition. Deletion indicators in the form of an arrow (➡) are provided in the margin where an entire section, paragraph, exception or table has been deleted or an item in a list of items or a table has been deleted.

A single asterisk [*] placed in the margin indicates that text or a table has been relocated within the code. A double asterisk [**] placed in the margin indicates that the text or table immediately

following it has been relocated there from elsewhere in the code. The following table indicates such relocations in the 2015 edition of the *International Property Maintenance Code*.

2015 LOCATION	2012 LOCATION
None	None

Italicized Terms

Selected terms set forth in Chapter 2, Definitions, are italicized where they appear in code text. Such terms are not italicized where the definition set forth in Chapter 2 does not impart the intended meaning in the use of the term. The terms selected have definitions that the user should read carefully to facilitate better understanding of the code.

EFFECTIVE USE OF THE INTERNATIONAL PROPERTY MAINTENANCE CODE

The *International Property Maintenance Code* (IPMC) is a model code that regulates the minimum maintenance requirements for existing buildings.

The IPMC is a maintenance document intended to establish minimum maintenance standards for basic equipment, light, ventilation, heating, sanitation and fire safety. Responsibility is fixed among owners, operators and occupants for code compliance. The IPMC provides for the regulation and safe use of existing structures in the interest of the social and economic welfare of the community.

Arrangement and Format of the 2015 IPMC

Before applying the requirements of the IPMC it is beneficial to understand its arrangement and format. The IPMC, like other codes published by ICC, is arranged and organized to follow sequential steps that generally occur during an inspection. The IPMC is divided into eight different parts:

Chapters	Subjects
1	Administration
2	Definitions
3	General Requirements
4	Light, Ventilation and Occupancy Limitations
5	Plumbing Facilities and Fixture Requirements
6	Mechanical and Electrical Requirements
7	Fire Safety Requirements
8	Referenced Standards

The following is a chapter-by-chapter synopsis of the scope and intent of the provisions of the *International Property Maintenance Code:*

Chapter 1 Scope and Administration. This chapter contains provisions for the application, enforcement and administration of subsequent requirements of the code. In addition to establishing the scope of the code, Chapter 1 identifies which buildings and structures come under its purview. Chapter 1 is largely concerned with maintaining "due process of law" in enforcing the property maintenance criteria contained in the body of the code. Only through careful observation of the administrative provisions can the building official reasonably expect to demonstrate that "equal protection under the law" has been provided.

Chapter 2 Definitions. All terms that are defined in the code are listed alphabetically in Chapter 2. While a defined term may be used in one chapter or another, the meaning provided in Chapter 2 is applicable throughout the code.

Where understanding of a term's definition is especially key to or necessary for understanding of a particular code provision, the term is shown in italics wherever it appears in the code. This is true only for those terms that have a meaning that is unique to the code. In other words, the generally understood meaning of a term or phrase might not be sufficient or consistent with the meaning prescribed by the code; therefore, it is essential that the code-defined meaning be known.

Guidance is provided regarding tense, gender and plurality of defined terms as well as terms not defined in this code.

Chapter 3 General Requirements. Chapter 3, "General Requirements," is broad in scope. It includes a variety of requirements for the exterior property areas as well as the interior and exterior elements of the structure. This chapter provides requirements that are intended to maintain a minimum level of safety and sanitation for both the general public and the occupants of a structure, and to maintain a building's structural and weather-resistance performance. Chapter 3 provides specific criteria for regulating the installation and maintenance of specific building components; maintenance requirements for vacant structures and land; requirements regulating the safety, sanitation and appearance of the interior and exterior of structures and all exterior property areas; accessory structures; vehicle storage regulations and establishes who is responsible for complying with the chapter's provisions. This chapter also contains the requirements for swimming pools, spas and hot tubs and the requirements for protective barriers and gates in these barriers. Chapter 3 establishes the responsible parties for exterminating insects and rodents, and maintaining sanitary conditions in all types of occupancies.

Chapter 4 Light, Ventilation and Occupancy Limitations. The purpose of Chapter 4 is to set forth these requirements in the code and to establish the minimum environment for occupiable and habitable buildings, by establishing the minimum criteria for light and ventilation and identifies occupancy limitations including minimum room width and area, minimum ceiling height and restrictions to prevent overcrowding. This chapter also provides for alternative arrangements of windows and other devices to comply with the requirements for light and ventilation and prohibits certain room arrangements and occupancy uses.

Chapter 5 Plumbing Facilities and Fixture Requirements. Chapter 5 establishes the minimum criteria for the installation, maintenance and location of plumbing systems and facilities, including the water supply system, water heating appliances, sewage disposal system and related plumbing fixtures.

Sanitary and clean conditions in occupied buildings are dependent upon certain basic plumbing principles, including providing potable water to a building, providing the basic fixtures to effectively utilize that water and properly removing waste from the building. Chapter 5 establishes the minimum criteria to verify that these principles are maintained throughout the life of a building.

Chapter 6 Mechanical and Electrical Requirements. The purpose of Chapter 6 is to establish minimum performance requirements for heating, electrical and mechanical facilities and to establish minimum standards for the safety of these facilities.

This chapter establishes minimum criteria for the installation and maintenance of the following: heating and air-conditioning equipment, appliances and their supporting systems; water heating equipment, appliances and systems; cooking equipment and appliances; ventilation and exhaust equipment; gas and liquid fuel distribution piping and components; fireplaces and solid fuel-burning appliances; chimneys and vents; electrical services; lighting fixtures; electrical receptacle outlets; electrical distribution system equipment, devices and wiring; and elevators, escalators and dumbwaiters.

Chapter 7 Fire Safety Requirements. The purpose of Chapter 7 is to address those fire hazards that arise as the result of a building's occupancy. It also provides minimum requirements for fire safety issues that are most likely to arise in older buildings.

This chapter contains requirements for means of egress in existing buildings, including path of travel, required egress width, means of egress doors and emergency escape openings.

Chapter 7 establishes the minimum requirements for fire safety facilities and fire protection systems, as these are essential fire safety systems.

Chapter 8 Referenced Standards. The code contains numerous references to standards that are used to regulate materials and methods of construction. Chapter 8 contains a comprehensive list of all standards that are referenced in the code. The standards are part of the code to the extent of the reference to the standard. Compliance with the referenced standard is necessary for compliance with this code. By providing specifically adopted standards, the construction and installation requirements necessary for compliance with the code can be readily determined. The basis for code compliance is, therefore, established and available on an equal basis to the code official, contractor, designer and owner.

Chapter 8 is organized in a manner that makes it easy to locate specific standards. It lists all of the referenced standards, alphabetically, by acronym of the promulgating agency of the standard. Each agency's standards are then listed in either alphabetical or numeric order based upon the standard identification. The list also contains the title of the standard; the edition (date) of the standard referenced; any addenda included as part of the ICC adoption; and the section or sections of this code that reference the standard.

LEGISLATION

Jurisdictions wishing to adopt the 2015 *International Property Maintenance Code* as an enforceable regulation governing existing structures and premises should ensure that certain factual information is included in the adopting legislation at the time adoption is being considered by the appropriate governmental body. The following sample adoption legislation addresses several key elements, including the information required for insertion into the code text.

SAMPLE LEGISLATION FOR ADOPTION OF THE *INTERNATIONAL PROPERTY MAINTENANCE CODE* ORDINANCE NO._____

A**[N] [ORDINANCE/STATUTE/REGULATION]** of the **[JURISDICTION]** adopting the 2015 edition of the *International Property Maintenance Code*, regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures in the **[JURISDICTION]**; providing for the issuance of permits and collection of fees therefor; repealing **[ORDINANCE/STATUTE/REGULATION]** No. _____ of the **[JURISDICTION]** and all other ordinances or parts of laws in conflict therewith.

The **[GOVERNING BODY]** of the **[JURISDICTION]** does ordain as follows:

Section 1. That a certain document, three (3) copies of which are on file in the office of the **[TITLE OF JURISDICTION'S KEEPER OF RECORDS]** of **[NAME OF JURISDICTION]**, being marked and designated as the *International Property Maintenance Code*, 2015 edition, as published by the International Code Council, be and is hereby adopted as the Property Maintenance Code of the **[JURISDICTION]**, in the State of **[STATE NAME]** for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the office of the **[JURISDICTION]** are hereby referred to, adopted, and made a part hereof, as if fully set out in this legislation, with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this ordinance.

Section 2. The following sections are hereby revised:

Section 101.1. Insert: **[NAME OF JURISDICTION]**

Section 103.5. Insert: **[APPROPRIATE SCHEDULE]**

Section 112.4. Insert: **[DOLLAR AMOUNT IN TWO LOCATIONS]**

Section 302.4. Insert: **[HEIGHT IN INCHES]**

Section 304.14. Insert: **[DATES IN TWO LOCATIONS]**

Section 602.3. Insert: **[DATES IN TWO LOCATIONS]**

Section 602.4. Insert: **[DATES IN TWO LOCATIONS]**

Section 3. That **[ORDINANCE/STATUTE/REGULATION]** No. _____ of **[JURISDICTION]** entitled **[FILL IN HERE THE COMPLETE TITLE OF THE LEGISLATION OR LAWS IN EFFECT AT THE PRESENT TIME SO THAT THEY WILL BE REPEALED BY DEFINITE MENTION]** and all other ordinances or parts of laws in conflict herewith are hereby repealed.

Section 4. That if any section, subsection, sentence, clause or phrase of this legislation is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The **[GOVERNING BODY]** hereby declares that it would have passed this law, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 5. That nothing in this legislation or in the Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired

or existing, under any act or ordinance hereby repealed as cited in Section 3 of this law; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this legislation.

Section 6. That the **[JURISDICTION'S KEEPER OF RECORDS]** is hereby ordered and directed to cause this legislation to be published. (An additional provision may be required to direct the number of times the legislation is to be published and to specify that it is to be in a newspaper in general circulation. Posting may also be required.)

Section 7. That this law and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect **[TIME PERIOD]** from and after the date of its final passage and adoption.

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CHAPTER 1
SCOPE AND ADMINISTRATION

PART 1 — SCOPE AND APPLICATION

SECTION 101
GENERAL

[A] 101.1 Title. These regulations shall be known as the *International Property Maintenance Code* of **[NAME OF JURISDICTION]**, hereinafter referred to as "this code."

[A] 101.2 Scope. The provisions of this code shall apply to all existing residential and nonresidential structures and all existing *premises* and constitute minimum requirements and standards for *premises*, structures, equipment and facilities for light, *ventilation*, space, heating, sanitation, protection from the elements, a reasonable level of safety from fire and other hazards, and for a reasonable level of sanitary maintenance; the responsibility of *owners*, an owner's authorized agent, *operator*s and *occupants*; the *occupancy* of existing structures and *premises*, and for administration, enforcement and penalties.

[A] 101.3 Intent. This code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare insofar as they are affected by the continued *occupancy* and maintenance of structures and *premises*. Existing structures and *premises* that do not comply with these provisions shall be altered or repaired to provide a minimum level of health and safety as required herein.

[A] 101.4 Severability. If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 102
APPLICABILITY

[A] 102.1 General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall govern. Where differences occur between provisions of this code and the referenced standards, the provisions of this code shall apply. Where, in a specific case, different sections of this code specify different requirements, the most restrictive shall govern.

[A] 102.2 Maintenance. Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or *premises* was constructed, altered or repaired shall be maintained in good working order. No *owner*, owner's authorized agent, *operator* or *occupant* shall cause any service, facility, equipment or utility that is required under this section to be removed from, shut off from or discontinued for any occupied dwelling, except for such temporary interruption as necessary while repairs or alterations are in progress. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the *owner* or the *owner's* authorized agent shall be responsible for the maintenance of buildings, structures and *premises*.

[A] 102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of *occupancy*, shall be done in accordance with the procedures and provisions of the *International Building Code, International Existing Building Code, International Energy Conservation Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Residential Code, International Plumbing Code* and NFPA 70. Nothing in this code shall be construed to cancel, modify or set aside any provision of the *International Zoning Code*.

[A] 102.4 Existing remedies. The provisions in this code shall not be construed to abolish or impair existing remedies of the jurisdiction or its officers or agencies relating to the removal or demolition of any structure that is dangerous, unsafe and insanitary.

[A] 102.5 Workmanship. Repairs, maintenance work, alterations or installations that are caused directly or indirectly by the enforcement of this code shall be executed and installed in a *workmanlike* manner and installed in accordance with the manufacturer's instructions.

[A] 102.6 Historic buildings. The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings where such buildings or structures are judged by the *code official* to be safe and in the public interest of health, safety and welfare.

[A] 102.7 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 8 and considered part of the requirements of this code to the prescribed extent of each such reference and as further regulated in Sections 102.7.1 and 102.7.2.

Exception: Where enforcement of a code provision would violate the conditions of the listing of the equipment or appliance, the conditions of the listing shall apply.

[A] 102.7.1 Conflicts. Where conflicts occur between provisions of this code and the referenced standards, the provisions of this code shall apply.

[A] 102.7.2 Provisions in referenced codes and standards. Where the extent of the reference to a referenced code or standard includes subject matter that is within the scope of this code, the provisions of this code, as applicable, shall take precedence over the provisions in the referenced code or standard.

[A] 102.8 Requirements not covered by code. Requirements necessary for the strength, stability or proper operation of an existing fixture, structure or equipment, or for the pub-

lic safety, health and general welfare, not specifically covered by this code, shall be determined by the *code official*.

[A] 102.9 Application of references. References to chapter or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such chapter, section or provision of this code.

[A] 102.10 Other laws. The provisions of this code shall not be deemed to nullify any provisions of local, state or federal law.

PART 2 — ADMINISTRATION AND ENFORCEMENT

SECTION 103
DEPARTMENT OF PROPERTY MAINTENANCE INSPECTION

[A] 103.1 General. The department of property maintenance inspection is hereby created and the executive official in charge thereof shall be known as the *code official*.

[A] 103.2 Appointment. The *code official* shall be appointed by the chief appointing authority of the jurisdiction.

[A] 103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the *code official* shall have the authority to appoint a deputy(s). Such employees shall have powers as delegated by the *code official*.

[A] 103.4 Liability. The *code official,* member of the board of appeals or employee charged with the enforcement of this code, while acting for the jurisdiction, in good faith and without malice in the discharge of the duties required by this code or other pertinent law or ordinance, shall not thereby be rendered civilly or criminally liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of an act or by reason of an act or omission in the discharge of official duties.

[A] 103.4.1 Legal defense. Any suit or criminal complaint instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in an action, suit or proceeding that is instituted in pursuance of the provisions of this code.

[A] 103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be as indicated in the following schedule.

[JURISDICTION TO INSERT APPROPRIATE SCHEDULE.]

SECTION 104
DUTIES AND POWERS OF THE CODE OFFICIAL

[A] 104.1 General. The *code official* is hereby authorized and directed to enforce the provisions of this code. The *code official* shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

[A] 104.2 Inspections. The *code official* shall make all of the required inspections, or shall accept reports of inspection by *approved* agencies or individuals. Reports of such inspections shall be in writing and be certified by a responsible officer of such *approved* agency or by the responsible individual. The *code official* is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the appointing authority.

[A] 104.3 Right of entry. Where it is necessary to make an inspection to enforce the provisions of this code, or whenever the *code official* has reasonable cause to believe that there exists in a *structure* or upon a *premises* a condition in violation of this code, the *code official* is authorized to enter the structure or *premises* at reasonable times to inspect or perform the duties imposed by this code, provided that if such *structure* or *premises* is occupied the *code official* shall present credentials to the *occupant* and request entry. If such structure or *premises* is unoccupied, the *code official* shall first make a reasonable effort to locate the *owner*, owner's authorized agent or other person having charge or control of the *structure* or *premises* and request entry. If entry is refused, the *code official* shall have recourse to the remedies provided by law to secure entry.

[A] 104.4 Identification. The *code official* shall carry proper identification when inspecting *structure*s or *premises* in the performance of duties under this code.

[A] 104.5 Notices and orders. The *code official* shall issue all necessary notices or orders to ensure compliance with this code.

[A] 104.6 Department records. The *code official* shall keep official records of all business and activities of the department specified in the provisions of this code. Such records shall be retained in the official records for the period required for retention of public records.

SECTION 105
APPROVAL

[A] 105.1 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the *code official* shall have the authority to grant modifications for individual cases upon application of the *owner* or *owner*'s authorized agent, provided the *code official* shall first find that special individual reason makes the strict letter of this code impractical, the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the department files.

[A] 105.2 Alternative materials, methods and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any method of construction not specifically prescribed by this code, provided

that any such alternative has been *approved*. An alternative material or method of construction shall be *approved* where the *code official* finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety. Where the alternative material, design or method of construction is not *approved*, the *code official* shall respond in writing, stating the reasons the alternative was not *approved*.

[A] 105.3 Required testing. Whenever there is insufficient evidence of compliance with the provisions of this code or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the *code official* shall have the authority to require tests to be made as evidence of compliance at no expense to the jurisdiction.

[A] 105.3.1 Test methods. Test methods shall be as specified in this code or by other recognized test standards. In the absence of recognized and accepted test methods, the *code official* shall be permitted to approve appropriate testing procedures performed by an *approved* agency.

[A] 105.3.2 Test reports. Reports of tests shall be retained by the *code official* for the period required for retention of public records.

[A] 105.4 Used material and equipment. The use of used materials that meet the requirements of this code for new materials is permitted. Materials, equipment and devices shall not be reused unless such elements are in good repair or have been reconditioned and tested where necessary, placed in good and proper working condition and *approved* by the *code official*.

[A] 105.5 Approved materials and equipment. Materials, equipment and devices *approved* by the *code official* shall be constructed and installed in accordance with such approval.

[A] 105.6 Research reports. Supporting data, where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from *approved* sources.

SECTION 106
VIOLATIONS

[A] 106.1 Unlawful acts. It shall be unlawful for a person, firm or corporation to be in conflict with or in violation of any of the provisions of this code.

[A] 106.2 Notice of violation. The *code official* shall serve a notice of violation or order in accordance with Section 107.

[A] 106.3 Prosecution of violation. Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a misdemeanor or civil infraction as determined by the local municipality, and the violation shall be deemed a *strict liability offense*. If the notice of violation is not complied with, the *code official* shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful *occupancy* of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the authority having jurisdiction on such *premises* shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

[A] 106.4 Violation penalties. Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

[A] 106.5 Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal *occupancy* of a building, structure or *premises*, or to stop an illegal act, conduct, business or utilization of the building, structure or *premises*.

SECTION 107
NOTICES AND ORDERS

[A] 107.1 Notice to person responsible. Whenever the *code official* determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 107.2 and 107.3 to the person responsible for the violation as specified in this code. Notices for condemnation procedures shall also comply with Section 108.3.

[A] 107.2 Form. Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the *dwelling unit* or structure into compliance with the provisions of this code.
5. Inform the property *owner* or owner's authorized agent of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

[A] 107.3 Method of service. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

[A] 107.4 Unauthorized tampering. Signs, tags or seals posted or affixed by the *code official* shall not be mutilated, destroyed or tampered with, or removed without authorization from the *code official*.

[A] 107.5 Penalties. Penalties for noncompliance with orders and notices shall be as set forth in Section 106.4.

[A] 107.6 Transfer of ownership. It shall be unlawful for the *owner* of any *dwelling unit* or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such *dwelling unit* or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such *owner* or the owner's authorized agent shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the *code official* and shall furnish to the *code official* a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

SECTION 108
UNSAFE STRUCTURES AND EQUIPMENT

[A] 108.1 General. When a structure or equipment is found by the *code official* to be unsafe, or when a structure is found unfit for human *occupancy*, or is found unlawful, such structure shall be *condemned* pursuant to the provisions of this code.

[A] 108.1.1 Unsafe structures. An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the *occupants* of the structure by not providing minimum safeguards to protect or warn *occupants* in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation, that partial or complete collapse is possible.

[A] 108.1.2 Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment on the *premises* or within the structure which is in such disrepair or condition that such equipment is a hazard to life, health, property or safety of the public or *occupants* of the *premises* or structure.

[A] 108.1.3 Structure unfit for human occupancy. A structure is unfit for human *occupancy* whenever the *code official* finds that such structure is unsafe, unlawful or, because of the degree to which the structure is in disrepair or lacks maintenance, is insanitary, vermin or rat infested, contains filth and contamination, or lacks *ventilation*, illumination, sanitary or heating facilities or other essential equipment required by this code, or because the location of the structure constitutes a hazard to the *occupants* of the structure or to the public.

[A] 108.1.4 Unlawful structure. An unlawful structure is one found in whole or in part to be occupied by more persons than permitted under this code, or was erected, altered or occupied contrary to law.

[A] 108.1.5 Dangerous structure or premises. For the purpose of this code, any structure or *premises* that has any or all of the conditions or defects described below shall be considered dangerous:

1. Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the *approved* building or fire code of the jurisdiction as related to the requirements for existing buildings.
2. The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress.
3. Any portion of a building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, *deterioration*, *neglect*, abandonment, vandalism or by any other cause to such an extent that it is likely to partially or completely collapse, or to become *detached* or dislodged.
4. Any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof that is not of sufficient strength or stability, or is not so *anchored*, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value.
5. The building or structure, or part of the building or structure, because of dilapidation, *deterioration*, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way.
6. The building or structure, or any portion thereof, is clearly unsafe for its use and *occupancy*.
7. The building or structure is *neglected*, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children who might play in the building or structure to their danger, becomes a harbor for vagrants, criminals or immoral persons, or enables persons to resort to the building or structure for committing a nuisance or an unlawful act.
8. Any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the *approved* building or fire code of the jurisdiction, or of any law or ordinance to such an extent as to present either a substantial risk of fire, building collapse or any other threat to life and safety.

9. A building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, *ventilation*, mechanical or plumbing system, or otherwise, is determined by the *code official* to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.
10. Any building or structure, because of a lack of sufficient or proper fire-resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the *code official* to be a threat to life or health.
11. Any portion of a building remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned so as to constitute such building or portion thereof as an attractive nuisance or hazard to the public.

[A] 108.2 Closing of vacant structures. If the structure is vacant and unfit for human habitation and *occupancy*, and is not in danger of structural collapse, the *code official* is authorized to post a placard of condemnation on the *premises* and order the structure closed up so as not to be an attractive nuisance. Upon failure of the *owner* or owner's authorized agent to close up the *premises* within the time specified in the order, the *code official* shall cause the *premises* to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate and shall be collected by any other legal resource.

[A] 108.2.1 Authority to disconnect service utilities. The *code official* shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 102.7 in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without approval. The *code official* shall notify the serving utility and, whenever possible, the *owner* or owner's authorized agent and *occupant* of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnection the *owner*, owner's authorized agent or *occupant* of the building structure or service system shall be notified in writing as soon as practical thereafter.

[A] 108.3 Notice. Whenever the *code official* has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the *owner*, owner's authorized agent or the person or persons responsible for the structure or equipment in accordance with Section 107.3. If the notice pertains to equipment, it shall be placed on the condemned equipment. The notice shall be in the form prescribed in Section 107.2.

[A] 108.4 Placarding. Upon failure of the *owner*, owner's authorized agent or person responsible to comply with the notice provisions within the time given, the *code official* shall post on the *premises* or on defective equipment a placard bearing the word "Condemned" and a statement of the penalties provided for occupying the *premises*, operating the equipment or removing the placard.

[A] 108.4.1 Placard removal. The *code official* shall remove the condemnation placard whenever the defect or defects upon which the condemnation and placarding action were based have been eliminated. Any person who defaces or removes a condemnation placard without the approval of the *code official* shall be subject to the penalties provided by this code.

[A] 108.5 Prohibited occupancy. Any occupied structure condemned and placarded by the *code official* shall be vacated as ordered by the *code official*. Any person who shall occupy a placarded *premises* or shall operate placarded equipment, and any *owner*, owner's authorized agent or person responsible for the *premises* who shall let anyone occupy a placarded *premises* or operate placarded equipment shall be liable for the penalties provided by this code.

[A] 108.6 Abatement methods. The *owner*, owner's authorized agent, *operator* or *occupant* of a building, *premises* or equipment deemed unsafe by the *code official* shall abate or cause to be abated or corrected such unsafe conditions either by repair, rehabilitation, demolition or other *approved* corrective action.

[A] 108.7 Record. The *code official* shall cause a report to be filed on an unsafe condition. The report shall state the *occupancy* of the structure and the nature of the unsafe condition.

SECTION 109
EMERGENCY MEASURES

[A] 109.1 Imminent danger. When, in the opinion of the *code official*, there is *imminent danger* of failure or collapse of a building or structure that endangers life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the structure, or when there is actual or potential danger to the building *occupants* or those in the proximity of any structure because of explosives, explosive fumes or vapors or the presence of toxic fumes, gases or materials, or operation of defective or dangerous equipment, the *code official* is hereby authorized and empowered to order and require the *occupants* to vacate the *premises* forthwith. The *code official* shall cause to be posted at each entrance to such structure a notice reading as follows: "This *Structure* Is Unsafe and Its *Occupancy* Has Been Prohibited by the *Code Official*." It shall be unlawful for any person to enter such structure except for the purpose of securing the structure, making the required repairs, removing the hazardous condition or of demolishing the same.

[A] 109.2 Temporary safeguards. Notwithstanding other provisions of this code, whenever, in the opinion of the *code official*, there is *imminent danger* due to an unsafe condition, the *code official* shall order the necessary work to be done,

including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the *code official* deems necessary to meet such emergency.

[A] 109.3 Closing streets. When necessary for public safety, the *code official* shall temporarily close structures and close, or order the authority having jurisdiction to close, sidewalks, streets, *public ways* and places adjacent to unsafe structures, and prohibit the same from being utilized.

[A] 109.4 Emergency repairs. For the purposes of this section, the *code official* shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

[A] 109.5 Costs of emergency repairs. Costs incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the *owner* of the *premises* or owner's authorized agent where the unsafe structure is or was located for the recovery of such costs.

[A] 109.6 Hearing. Any person ordered to take emergency measures shall comply with such order forthwith. Any affected person shall thereafter, upon petition directed to the appeals board, be afforded a hearing as described in this code.

SECTION 110
DEMOLITION

[A] 110.1 General. The *code official* shall order the *owner* or owner's authorized agent of any *premises* upon which is located any structure, which in the *code official's* or owner's authorized agent judgment after review is so deteriorated or dilapidated or has become so out of repair as to be dangerous, unsafe, insanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the *owner's* option; or where there has been a cessation of normal construction of any structure for a period of more than two years, the *code official* shall order the *owner* or owner's authorized agent to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless *approved* by the building official.

[A] 110.2 Notices and orders. Notices and orders shall comply with Section 107.

[A] 110.3 Failure to comply. If the *owner* of a *premises* or owner's authorized agent fails to comply with a demolition order within the time prescribed, the *code official* shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

[A] 110.4 Salvage materials. When any structure has been ordered demolished and removed, the governing body or other designated officer under said contract or arrangement aforesaid shall have the right to sell the salvage and valuable materials. The net proceeds of such sale, after deducting the expenses of such demolition and removal, shall be promptly remitted with a report of such sale or transaction, including the items of expense and the amounts deducted, for the person who is entitled thereto, subject to any order of a court. If such a surplus does not remain to be turned over, the report shall so state.

SECTION 111
MEANS OF APPEAL

[A] 111.1 Application for appeal. Any person directly affected by a decision of the *code official* or a notice or order issued under this code shall have the right to appeal to the board of appeals, provided that a written application for appeal is filed within 20 days after the day the decision, notice or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

[A] 111.2 Membership of board. The board of appeals shall consist of not less than three members who are qualified by experience and training to pass on matters pertaining to property maintenance and who are not employees of the jurisdiction. The *code official* shall be an ex-officio member but shall have no vote on any matter before the board. The board shall be appointed by the chief appointing authority, and shall serve staggered and overlapping terms.

[A] 111.2.1 Alternate members. The chief appointing authority shall appoint not less than two alternate members who shall be called by the board chairman to hear appeals during the absence or disqualification of a member. Alternate members shall possess the qualifications required for board membership.

[A] 111.2.2 Chairman. The board shall annually select one of its members to serve as chairman.

[A] 111.2.3 Disqualification of member. A member shall not hear an appeal in which that member has a personal, professional or financial interest.

[A] 111.2.4 Secretary. The chief administrative officer shall designate a qualified person to serve as secretary to the board. The secretary shall file a detailed record of all proceedings in the office of the chief administrative officer.

[A] 111.2.5 Compensation of members. Compensation of members shall be determined by law.

[A] 111.3 Notice of meeting. The board shall meet upon notice from the chairman, within 20 days of the filing of an appeal, or at stated periodic meetings.

[A] 111.4 Open hearing. Hearings before the board shall be open to the public. The appellant, the appellant's representa-

tive, the *code official* and any person whose interests are affected shall be given an opportunity to be heard. A quorum shall consist of a minumum of two-thirds of the board membership.

[A] 111.4.1 Procedure. The board shall adopt and make available to the public through the secretary procedures under which a hearing will be conducted. The procedures shall not require compliance with strict rules of evidence, but shall mandate that only relevant information be received.

[A] 111.5 Postponed hearing. When the full board is not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing.

[A] 111.6 Board decision. The board shall modify or reverse the decision of the *code official* only by a concurring vote of a majority of the total number of appointed board members.

[A] 111.6.1 Records and copies. The decision of the board shall be recorded. Copies shall be furnished to the appellant and to the *code official*.

[A] 111.6.2 Administration. The *code official* shall take immediate action in accordance with the decision of the board.

[A] 111.7 Court review. Any person, whether or not a previous party of the appeal, shall have the right to apply to the appropriate court for a writ of certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the chief administrative officer.

[A] 111.8 Stays of enforcement. Appeals of notice and orders (other than *Imminent Danger* notices) shall stay the enforcement of the notice and order until the appeal is heard by the appeals board.

SECTION 112
STOP WORK ORDER

[A] 112.1 Authority. Whenever the *code official* finds any work regulated by this code being performed in a manner contrary to the provisions of this code or in a dangerous or unsafe manner, the *code official* is authorized to issue a stop work order.

[A] 112.2 Issuance. A stop work order shall be in writing and shall be given to the *owner* of the property, to the *owner's* authorized agent, or to the person doing the work. Upon issuance of a stop work order, the cited work shall immediately cease. The stop work order shall state the reason for the order and the conditions under which the cited work is authorized to resume.

[A] 112.3 Emergencies. Where an emergency exists, the *code official* shall not be required to give a written notice prior to stopping the work.

[A] 112.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than **[AMOUNT]** dollars or more than **[AMOUNT]** dollars.

CHAPTER 2
DEFINITIONS

SECTION 201
GENERAL

201.1 Scope. Unless otherwise expressly stated, the following terms shall, for the purposes of this code, have the meanings shown in this chapter.

201.2 Interchangeability. Words stated in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the *International Building Code, International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Residential Code, International Zoning Code* or NFPA 70, such terms shall have the meanings ascribed to them as stated in those codes.

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

201.5 Parts. Whenever the words "*dwelling unit,*" "dwelling," "*premises,*" "building," "*rooming house,*" "*rooming unit,*" "*housekeeping unit*" or "story" are stated in this code, they shall be construed as though they were followed by the words "or any part thereof."

SECTION 202
GENERAL DEFINITIONS

ANCHORED. Secured in a manner that provides positive connection.

[A] APPROVED. Acceptable to the *code official.*

BASEMENT. That portion of a building which is partly or completely below grade.

BATHROOM. A room containing plumbing fixtures including a bathtub or shower.

BEDROOM. Any room or space used or intended to be used for sleeping purposes in either a dwelling or *sleeping unit.*

[A] CODE OFFICIAL. The official who is charged with the administration and enforcement of this code, or any duly authorized representative.

CONDEMN. To adjudge unfit for *occupancy.*

COST OF SUCH DEMOLITION OR EMERGENCY REPAIRS. The costs shall include the actual costs of the demolition or repair of the structure less revenues obtained if salvage was conducted prior to demolition or repair. Costs shall include, but not be limited to, expenses incurred or necessitated related to demolition or emergency repairs, such as asbestos survey and abatement if necessary; costs of inspectors, testing agencies or experts retained relative to the demolition or emergency repairs; costs of testing; surveys for other materials that are controlled or regulated from being dumped in a landfill; title searches; mailing(s); postings; recording; and attorney fees expended for recovering of the cost of emergency repairs or to obtain or enforce an order of demolition made by a *code official*, the governing body or board of appeals.

DETACHED. When a structural element is physically disconnected from another and that connection is necessary to provide a positive connection.

DETERIORATION. To weaken, disintegrate, corrode, rust or decay and lose effectiveness.

[BG] DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

[Z] EASEMENT. That portion of land or property reserved for present or future use by a person or agency other than the legal fee *owner*(s) of the property. The *easement* shall be permitted to be for use under, on or above a said lot or lots.

EQUIPMENT SUPPORT. Those structural members or assemblies of members or manufactured elements, including braces, frames, lugs, snuggers, hangers or saddles, that transmit gravity load, lateral load and operating load between the equipment and the structure.

EXTERIOR PROPERTY. The open space on the *premises* and on adjoining property under the control of *owners* or *operators* of such *premises*.

GARBAGE. The animal or vegetable waste resulting from the handling, preparation, cooking and consumption of food.

[BE] GUARD. A building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

[BG] HABITABLE SPACE. Space in a structure for living, sleeping, eating or cooking. *Bathrooms*, *toilet rooms*, closets, halls, storage or utility spaces, and similar areas are not considered *habitable spaces*.

HISTORIC BUILDING. Any building or structure that is one or more of the following:

1. Listed or certified as eligible for listing, by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places, in the National Register of Historic Places.
2. Designated as historic under an applicable state or local law.

3. Certified as a contributing resource within a National Register or state or locally designated historic district.

HOUSEKEEPING UNIT. A room or group of rooms forming a single *habitable space* equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower.

IMMINENT DANGER. A condition which could cause serious or life-threatening injury or death at any time.

INFESTATION. The presence, within or contiguous to, a structure or *premises* of insects, rats, vermin or other pests.

INOPERABLE MOTOR VEHICLE. A vehicle which cannot be driven upon the public streets for reason including but not limited to being unlicensed, wrecked, abandoned, in a state of disrepair, or incapable of being moved under its own power.

[A] LABELED. Equipment, materials or products to which have been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-*labeled* items and whose labeling indicates either that the equipment, material or product meets identified standards or has been tested and found suitable for a specified purpose.

LET FOR OCCUPANCY or LET. To permit, provide or offer possession or *occupancy* of a dwelling, *dwelling unit*, *rooming unit*, building, premise or structure by a person who is or is not the legal *owner* of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

NEGLECT. The lack of proper maintenance for a building or *structure*.

[A] OCCUPANCY. The purpose for which a building or portion thereof is utilized or occupied.

OCCUPANT. Any individual living or sleeping in a building, or having possession of a space within a building.

OPENABLE AREA. That part of a window, skylight or door which is available for unobstructed *ventilation* and which opens directly to the outdoors.

OPERATOR. Any person who has charge, care or control of a structure or *premises* which is let or offered for *occupancy*.

[A] OWNER. Any person, agent, *operator*, firm or corporation having legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

PERSON. An individual, corporation, partnership or any other group acting as a unit.

PEST ELIMINATION. The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that serve as their food or water; by other *approved pest elimination* methods.

[A] PREMISES. A lot, plot or parcel of land, *easement* or *public way*, including any structures thereon.

[A] PUBLIC WAY. Any street, alley or similar parcel of land essentially unobstructed from the ground to the sky, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

ROOMING HOUSE. A building arranged or occupied for lodging, with or without meals, for compensation and not occupied as a one- or two-family dwelling.

ROOMING UNIT. Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

RUBBISH. Combustible and noncombustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, *yard* trimmings, tin cans, metals, mineral matter, glass, crockery and dust and other similar materials.

[BG] SLEEPING UNIT. A room or space in which people sleep, which can also include permanent provisions for living, eating and either sanitation or kitchen facilities, but not both. Such rooms and spaces that are also part of a *dwelling unit* are not *sleeping units*.

STRICT LIABILITY OFFENSE. An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove that the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do.

[A] STRUCTURE. That which is built or constructed or a portion thereof.

TENANT. A person, corporation, partnership or group, whether or not the legal *owner* of record, occupying a building or portion thereof as a unit.

TOILET ROOM. A room containing a water closet or urinal but not a bathtub or shower.

ULTIMATE DEFORMATION. The deformation at which failure occurs and which shall be deemed to occur if the sustainable load reduces to 80 percent or less of the maximum strength.

[M] VENTILATION. The natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

WORKMANLIKE. Executed in a skilled manner; e.g., generally plumb, level, square, in line, undamaged and without marring adjacent work.

[Z] YARD. An open space on the same lot with a structure.

CHAPTER 3
GENERAL REQUIREMENTS

SECTION 301
GENERAL

301.1 Scope. The provisions of this chapter shall govern the minimum conditions and the responsibilities of persons for maintenance of structures, equipment and *exterior property*.

301.2 Responsibility. The *owner* of the *premises* shall maintain the structures and *exterior property* in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy *premises* that are not in a sanitary and safe condition and that do not comply with the requirements of this chapter. *Occupants* of a *dwelling unit, rooming unit* or *housekeeping unit* are responsible for keeping in a clean, sanitary and safe condition that part of the *dwelling unit, rooming unit, housekeeping unit* or *premises* which they occupy and control.

301.3 Vacant structures and land. Vacant structures and *premises* thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.

SECTION 302
EXTERIOR PROPERTY AREAS

302.1 Sanitation. *Exterior property* and *premises* shall be maintained in a clean, safe and sanitary condition. The *occupant* shall keep that part of the *exterior property* that such *occupant* occupies or controls in a clean and sanitary condition.

302.2 Grading and drainage. *Premises* shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon, or within any structure located thereon.

Exception: *Approved* retention areas and reservoirs.

302.3 Sidewalks and driveways. Sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.

302.4 Weeds. *Premises* and *exterior property* shall be maintained free from weeds or plant growth in excess of **[JURISDICTION TO INSERT HEIGHT IN INCHES]**. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens.

Upon failure of the *owner* or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 106.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the *owner* or agent responsible for the property.

302.5 Rodent harborage. Structures and *exterior property* shall be kept free from rodent harborage and *infestation*. Where rodents are found, they shall be promptly exterminated by *approved* processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.

302.6 Exhaust vents. Pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another *tenant*.

302.7 Accessory structures. Accessory structures, including *detached* garages, fences and walls, shall be maintained structurally sound and in good repair.

302.8 Motor vehicles. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle shall be parked, kept or stored on any *premises*, and no vehicle shall at any time be in a state of major disassembly, disrepair, or in the process of being stripped or dismantled. Painting of vehicles is prohibited unless conducted inside an *approved* spray booth.

Exception: A vehicle of any type is permitted to undergo major overhaul, including body work, provided that such work is performed inside a structure or similarly enclosed area designed and *approved* for such purposes.

302.9 Defacement of property. No person shall willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any private or public property by placing thereon any marking, carving or graffiti.

It shall be the responsibility of the *owner* to restore said surface to an *approved* state of maintenance and repair.

SECTION 303
SWIMMING POOLS, SPAS AND HOT TUBS

303.1 Swimming pools. Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.

303.2 Enclosures. Private swimming pools, hot tubs and spas, containing water more than 24 inches (610 mm) in depth shall be completely surrounded by a fence or barrier not less than 48 inches (1219 mm) in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is not less than 54 inches (1372 mm) above the bottom of the

gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches (152 mm) from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

Exception: Spas or hot tubs with a safety cover that complies with ASTM F 1346 shall be exempt from the provisions of this section.

SECTION 304
EXTERIOR STRUCTURE

304.1 General. The exterior of a structure shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

304.1.1 Unsafe conditions. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the *International Building Code* or the *International Existing Building Code* as required for existing buildings:

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;
2. The *anchorage* of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;
3. Structures or components thereof that have reached their limit state;
4. Siding and masonry joints including joints between the building envelope and the perimeter of windows, doors and skylights are not maintained, weather resistant or water tight;
5. Structural members that have evidence of *deterioration* or that are not capable of safely supporting all nominal loads and load effects;
6. Foundation systems that are not firmly supported by footings, are not plumb and free from open cracks and breaks, are not properly *anchored* or are not capable of supporting all nominal loads and resisting all load effects;
7. Exterior walls that are not *anchored* to supporting and supported elements or are not plumb and free of holes, cracks or breaks and loose or rotting materials, are not properly *anchored* or are not capable of supporting all nominal loads and resisting all load effects;
8. Roofing or roofing components that have defects that admit rain, roof surfaces with inadequate drainage, or any portion of the roof framing that is not in good repair with signs of *deterioration*, fatigue or without proper anchorage and incapable of supporting all nominal loads and resisting all load effects;
9. Flooring and flooring components with defects that affect serviceability or flooring components that show signs of *deterioration* or fatigue, are not properly *anchored* or are incapable of supporting all nominal loads and resisting all load effects;
10. Veneer, cornices, belt courses, corbels, trim, wall facings and similar decorative features not properly anchored or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects;
11. Overhang extensions or projections including, but not limited to, trash chutes, canopies, marquees, signs, awnings, fire escapes, standpipes and exhaust ducts not properly *anchored* or that are *anchored* with connections not capable of supporting all nominal loads and resisting all load effects;
12. Exterior stairs, decks, porches, balconies and all similar appurtenances attached thereto, including *guard*s and handrails, are not structurally sound, not properly *anchored* or that are *anchored* with connections not capable of supporting all nominal loads and resisting all load effects; or
13. Chimneys, cooling towers, smokestacks and similar appurtenances not structurally sound or not properly *anchored*, or that are anchored with connections not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. Where substantiated otherwise by an *approved* method.
2. Demolition of unsafe conditions shall be permitted where *approved* by the *code official*.

304.2 Protective treatment. Exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. Siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights, shall be maintained weather resistant and water tight. Metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion, and surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.

[F] 304.3 Premises identification. Buildings shall have *approved* address numbers placed in a position to be plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be not less than 4 inches (102 mm) in height with a minimum stroke width of 0.5 inch (12.7 mm).

304.4 Structural members. Structural members shall be maintained free from *deterioration*, and shall be capable of safely supporting the imposed dead and live loads.

304.5 Foundation walls. Foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.

304.6 Exterior walls. Exterior walls shall be free from holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent *deterioration*.

304.7 Roofs and drainage. The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or *deterioration* in the walls or interior portion of the structure. Roof drains, gutters and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance.

304.8 Decorative features. Cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

304.9 Overhang extensions. Overhang extensions including, but not limited to, canopies, marquees, signs, metal awnings, fire escapes, standpipes and exhaust ducts shall be maintained in good repair and be properly *anchored* so as to be kept in a sound condition. Where required, all exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

304.10 Stairways, decks, porches and balconies. Every exterior stairway, deck, porch and balcony, and all appurtenances attached thereto, shall be maintained structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

304.11 Chimneys and towers. Chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained structurally safe and sound, and in good repair. Exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

304.12 Handrails and guards. Every handrail and *guard* shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

304.13 Window, skylight and door frames. Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.

304.13.1 Glazing. Glazing materials shall be maintained free from cracks and holes.

304.13.2 Openable windows. Every window, other than a fixed window, shall be easily openable and capable of being held in position by window hardware.

304.14 Insect screens. During the period from **[DATE]** to **[DATE]**, every door, window and other outside opening required for *ventilation* of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with *approved* tightly fitting screens of minimum 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other *approved* means, such as air curtains or insect repellent fans, are employed.

304.15 Doors. Exterior doors, door assemblies, operator systems if provided, and hardware shall be maintained in good condition. Locks at all entrances to dwelling units and sleeping units shall tightly secure the door. Locks on means of egress doors shall be in accordance with Section 702.3.

304.16 Basement hatchways. Every *basement* hatchway shall be maintained to prevent the entrance of rodents, rain and surface drainage water.

304.17 Guards for basement windows. Every *basement* window that is openable shall be supplied with rodent shields, storm windows or other *approved* protection against the entry of rodents.

304.18 Building security. Doors, windows or hatchways for *dwelling units*, room units or *housekeeping units* shall be provided with devices designed to provide security for the *occupant*s and property within.

304.18.1 Doors. Doors providing access to a *dwelling unit*, *rooming unit* or *housekeeping unit* that is rented, leased or let shall be equipped with a deadbolt lock designed to be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort and shall have a minimum lock throw of 1 inch (25 mm). Such deadbolt locks shall be installed according to the manufacturer's specifications and maintained in good working order. For the purpose of this section, a sliding bolt shall not be considered an acceptable deadbolt lock.

304.18.2 Windows. Operable windows located in whole or in part within 6 feet (1828 mm) above ground level or a walking surface below that provide access to a *dwelling unit*, *rooming unit* or *housekeeping unit* that is rented, leased or let shall be equipped with a window sash locking device.

304.18.3 Basement hatchways. *Basement* hatchways that provide access to a *dwelling unit*, *rooming unit* or *housekeeping unit* that is rented, leased or let shall be equipped with devices that secure the units from unauthorized entry.

304.19 Gates. Exterior gates, gate assemblies, operator systems if provided, and hardware shall be maintained in good condition. Latches at all entrances shall tightly secure the gates.

SECTION 305
INTERIOR STRUCTURE

305.1 General. The interior of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition. *Occupants* shall keep that part of

the structure that they occupy or control in a clean and sanitary condition. Every *owner* of a structure containing a *rooming house*, *housekeeping units*, a hotel, a dormitory, two or more *dwelling unit*s or two or more nonresidential occupancies, shall maintain, in a clean and sanitary condition, the shared or public areas of the structure and *exterior property*.

305.1.1 Unsafe conditions. The following conditions shall be determined as unsafe and shall be repaired or replaced to comply with the *International Building Code* or the *International Existing Building Code* as required for existing buildings:

1. The nominal strength of any structural member is exceeded by nominal loads, the load effects or the required strength;
2. The anchorage of the floor or roof to walls or columns, and of walls and columns to foundations is not capable of resisting all nominal loads or load effects;
3. Structures or components thereof that have reached their limit state;
4. Structural members are incapable of supporting nominal loads and load effects;
5. Stairs, landings, balconies and all similar walking surfaces, including *guards* and handrails, are not structurally sound, not properly *anchored* or are *anchored* with connections not capable of supporting all nominal loads and resisting all load effects;
6. Foundation systems that are not firmly supported by footings are not plumb and free from open cracks and breaks, are not properly *anchored* or are not capable of supporting all nominal loads and resisting all load effects.

Exceptions:

1. Where substantiated otherwise by an *approved* method.
2. Demolition of unsafe conditions shall be permitted when *approved* by the *code official*.

305.2 Structural members. Structural members shall be maintained structurally sound, and be capable of supporting the imposed loads.

305.3 Interior surfaces. Interior surfaces, including windows and doors, shall be maintained in good, clean and sanitary condition. Peeling, chipping, flaking or abraded paint shall be repaired, removed or covered. Cracked or loose plaster, decayed wood and other defective surface conditions shall be corrected.

305.4 Stairs and walking surfaces. Every stair, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.

305.5 Handrails and guards. Every handrail and *guard* shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

305.6 Interior doors. Every interior door shall fit reasonably well within its frame and shall be capable of being opened and closed by being properly and securely attached to jambs, headers or tracks as intended by the manufacturer of the attachment hardware.

SECTION 306
COMPONENT SERVICEABILITY

306.1 General. The components of a structure and equipment therein shall be maintained in good repair, structurally sound and in a sanitary condition.

306.1.1 Unsafe conditions. Where any of the following conditions cause the component or system to be beyond its limit state, the component or system shall be determined as unsafe and shall be repaired or replaced to comply with the *International Building Code* or the *International Existing Building Code* as required for existing buildings:

1. Soils that have been subjected to any of the following conditions:
   1.1. Collapse of footing or foundation system;
   1.2. Damage to footing, foundation, concrete or other structural element due to soil expansion;
   1.3. Adverse effects to the design strength of footing, foundation, concrete or other structural element due to a chemical reaction from the soil;
   1.4. Inadequate soil as determined by a geotechnical investigation;
   1.5. Where the allowable bearing capacity of the soil is in doubt; or
   1.6. Adverse effects to the footing, foundation, concrete or other structural element due to the ground water table.
2. Concrete that has been subjected to any of the following conditions:
   2.1. *Deterioration*;
   2.2. *Ultimate deformation*;
   2.3. Fractures;
   2.4. Fissures;
   2.5. Spalling;
   2.6. Exposed reinforcement; or
   2.7. *Detached*, dislodged or failing connections.
3. Aluminum that has been subjected to any of the following conditions:
   3.1. *Deterioration*;
   3.2. Corrosion;
   3.3. Elastic deformation;
   3.4. *Ultimate deformation*;
   3.5. Stress or strain cracks;
   3.6. Joint fatigue; or
   3.7. *Detached*, dislodged or failing connections.

4. Masonry that has been subjected to any of the following conditions:
   4.1. *Deterioration;*
   4.2. *Ultimate deformation;*
   4.3. Fractures in masonry or mortar joints;
   4.4. Fissures in masonry or mortar joints;
   4.5. Spalling;
   4.6. Exposed reinforcement; or
   4.7. *Detached,* dislodged or failing connections.
5. Steel that has been subjected to any of the following conditions:
   5.1. *Deterioration;*
   5.2. Elastic deformation;
   5.3. *Ultimate deformation;*
   5.4. Metal fatigue; or
   5.5. *Detached,* dislodged or failing connections.
6. Wood that has been subjected to any of the following conditions:
   6.1. *Ultimate deformation;*
   6.2. *Deterioration;*
   6.3. Damage from insects, rodents and other vermin;
   6.4. Fire damage beyond charring;
   6.5. Significant splits and checks;
   6.6. Horizontal shear cracks;
   6.7. Vertical shear cracks;
   6.8. Inadequate support;
   6.9. *Detached,* dislodged or failing connections; or
   6.10. Excessive cutting and notching.

Exceptions:

1. Where substantiated otherwise by an *approved* method.
2. Demolition of unsafe conditions shall be permitted where *approved* by the *code official.*

SECTION 307
HANDRAILS AND GUARDRAILS

307.1 General. Every exterior and interior flight of stairs having more than four risers shall have a handrail on one side of the stair and every open portion of a stair, landing, balcony, porch, deck, ramp or other walking surface that is more than 30 inches (762 mm) above the floor or grade below shall have *guards.* Handrails shall be not less than 30 inches (762 mm) in height or more than 42 inches (1067 mm) in height measured vertically above the nosing of the tread or above the finished floor of the landing or walking surfaces. *Guards* shall be not less than 30 inches (762 mm) in height above the floor of the landing, balcony, porch, deck, or ramp or other walking surface.

Exception: *Guards* shall not be required where exempted by the adopted building code.

SECTION 308
RUBBISH AND GARBAGE

308.1 Accumulation of rubbish or garbage. *Exterior property* and *premises,* and the interior of every structure, shall be free from any accumulation of *rubbish* or garbage.

308.2 Disposal of rubbish. Every *occupant* of a structure shall dispose of all *rubbish* in a clean and sanitary manner by placing such *rubbish* in *approved* containers.

308.2.1 Rubbish storage facilities. The *owner* of every occupied *premises* shall supply *approved* covered containers for *rubbish,* and the *owner* of the *premises* shall be responsible for the removal of *rubbish.*

308.2.2 Refrigerators. Refrigerators and similar equipment not in operation shall not be discarded, abandoned or stored on *premises* without first removing the doors.

308.3 Disposal of garbage. Every *occupant* of a structure shall dispose of garbage in a clean and sanitary manner by placing such garbage in an *approved* garbage disposal facility or *approved* garbage containers.

308.3.1 Garbage facilities. The *owner* of every dwelling shall supply one of the following: an *approved* mechanical food waste grinder in each *dwelling unit;* an *approved* incinerator unit in the structure available to the *occupants* in each *dwelling unit;* or an *approved* leakproof, covered, outside garbage container.

308.3.2 Containers. The *operator* of every establishment producing garbage shall provide, and at all times cause to be utilized, *approved* leakproof containers provided with close-fitting covers for the storage of such materials until removed from the *premises* for disposal.

SECTION 309
PEST ELIMINATION

309.1 Infestation. Structures shall be kept free from insect and rodent *infestation.* Structures in which insects or rodents are found shall be promptly exterminated by *approved* processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to prevent reinfestation.

309.2 Owner. The *owner* of any structure shall be responsible for pest elimination within the structure prior to renting or leasing the structure.

309.3 Single occupant. The *occupant* of a one-family dwelling or of a single-*tenant* nonresidential structure shall be responsible for pest elimination on the *premises.*

309.4 Multiple occupancy. The *owner* of a structure containing two or more *dwelling units,* a multiple *occupancy,* a

rooming house or a nonresidential structure shall be responsible for pest elimination in the public or shared areas of the structure and *exterior property*. If *infestation* is caused by failure of an *occupant* to prevent such *infestation* in the area occupied, the *occupant* and *owner* shall be responsible for pest elimination.

309.5 Occupant. The *occupant* of any structure shall be responsible for the continued rodent and pest-free condition of the structure.

Exception: Where the *infestations* are caused by defects in the structure, the *owner* shall be responsible for pest elimination.

CHAPTER 4
LIGHT, VENTILATION AND OCCUPANCY LIMITATIONS

SECTION 401
GENERAL

401.1 Scope. The provisions of this chapter shall govern the minimum conditions and standards for light, *ventilation* and space for occupying a structure.

401.2 Responsibility. The *owner* of the structure shall provide and maintain light, *ventilation* and space conditions in compliance with these requirements. A person shall not occupy as *owner-occupant*, or permit another person to occupy, any *premises* that do not comply with the requirements of this chapter.

401.3 Alternative devices. In lieu of the means for natural light and *ventilation* herein prescribed, artificial light or mechanical *ventilation* complying with the *International Building Code* shall be permitted.

SECTION 402
LIGHT

402.1 Habitable spaces. Every *habitable space* shall have not less than one window of *approved* size facing directly to the outdoors or to a court. The minimum total glazed area for every *habitable space* shall be 8 percent of the floor area of such room. Wherever walls or other portions of a structure face a window of any room and such obstructions are located less than 3 feet (914 mm) from the window and extend to a level above that of the ceiling of the room, such window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

Exception: Where natural light for rooms or spaces without exterior glazing areas is provided through an adjoining room, the unobstructed opening to the adjoining room shall be not less than 8 percent of the floor area of the interior room or space, but a minimum of 25 square feet (2.33 m^2). The exterior glazing area shall be based on the total floor area being served.

402.2 Common halls and stairways. Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be lighted at all times with not less than a 60-watt standard incandescent light bulb for each 200 square feet (19 m^2) of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet (9144 mm). In other than residential occupancies, means of egress, including exterior means of egress, stairways shall be illuminated at all times the building space served by the means of egress is occupied with not less than 1 footcandle (11 lux) at floors, landings and treads.

402.3 Other spaces. All other spaces shall be provided with natural or artificial light sufficient to permit the maintenance of sanitary conditions, and the safe *occupancy* of the space and utilization of the appliances, equipment and fixtures.

SECTION 403
VENTILATION

403.1 Habitable spaces. Every *habitable space* shall have not less than one openable window. The total openable area of the window in every room shall be equal to not less than 45 percent of the minimum glazed area required in Section 402.1.

Exception: Where rooms and spaces without openings to the outdoors are ventilated through an adjoining room, the unobstructed opening to the adjoining room shall be not less than 8 percent of the floor area of the interior room or space, but not less than 25 square feet (2.33 m^2). The *ventilation* openings to the outdoors shall be based on a total floor area being ventilated.

403.2 Bathrooms and toilet rooms. Every *bathroom* and *toilet room* shall comply with the *ventilation* requirements for *habitable spaces* as required by Section 403.1, except that a window shall not be required in such spaces equipped with a mechanical *ventilation* system. Air exhausted by a mechanical *ventilation* system from a *bathroom* or *toilet room* shall discharge to the outdoors and shall not be recirculated.

403.3 Cooking facilities. Unless *approved* through the certificate of *occupancy*, cooking shall not be permitted in any *rooming unit* or dormitory unit, and a cooking facility or appliance shall not be permitted to be present in the *rooming unit* or dormitory unit.

Exceptions:

1. Where specifically *approved* in writing by the *code official*.
2. Devices such as coffee pots and microwave ovens shall not be considered cooking appliances.

403.4 Process ventilation. Where injurious, toxic, irritating or noxious fumes, gases, dusts or mists are generated, a local exhaust *ventilation* system shall be provided to remove the contaminating agent at the source. Air shall be exhausted to the exterior and not be recirculated to any space.

403.5 Clothes dryer exhaust. Clothes dryer exhaust systems shall be independent of all other systems and shall be exhausted outside the structure in accordance with the manufacturer's instructions.

Exception: Listed and *labeled* condensing (ductless) clothes dryers.

SECTION 404
OCCUPANCY LIMITATIONS

404.1 Privacy. *Dwelling units*, hotel units, *housekeeping units*, *rooming units* and dormitory units shall be arranged to provide privacy and be separate from other adjoining spaces.

404.2 Minimum room widths. A habitable room, other than a kitchen, shall be not less than 7 feet (2134 mm) in any plan dimension. Kitchens shall have a minimum clear passageway of 3 feet (914 mm) between counterfronts and appliances or counterfronts and walls.

404.3 Minimum ceiling heights. *Habitable spaces*, hallways, corridors, laundry areas, *bathrooms*, *toilet rooms* and habitable *basement* areas shall have a minimum clear ceiling height of 7 feet (2134 mm).

Exceptions:

1. In one- and two-family dwellings, beams or girders spaced not less than 4 feet (1219 mm) on center and projecting a maximum of 6 inches (152 mm) below the required ceiling height.
2. *Basement* rooms in one- and two-family dwellings occupied exclusively for laundry, study or recreation purposes, having a minimum ceiling height of 6 feet 8 inches (2033 mm) with a minimum clear height of 6 feet 4 inches (1932 mm) under beams, girders, ducts and similar obstructions.
3. Rooms occupied exclusively for sleeping, study or similar purposes and having a sloped ceiling over all or part of the room, with a minimum clear ceiling height of 7 feet (2134 mm) over not less than one-third of the required minimum floor area. In calculating the floor area of such rooms, only those portions of the floor area with a minimum clear ceiling height of 5 feet (1524 mm) shall be included.

404.4 Bedroom and living room requirements. Every *bedroom* and living room shall comply with the requirements of Sections 404.4.1 through 404.4.5.

404.4.1 Room area. Every living room shall contain not less than 120 square feet (11.2 m^2) and every bedroom shall contain not less than 70 square feet (6.5 m^2) and every bedroom occupied by more than one person shall contain not less than 50 square feet (4.6 m^2) of floor area for each occupant thereof.

404.4.2 Access from bedrooms. *Bedrooms* shall not constitute the only means of access to other *bedrooms* or *habitable spaces* and shall not serve as the only means of egress from other *habitable spaces*.

Exception: Units that contain fewer than two *bedrooms*.

404.4.3 Water closet accessibility. Every *bedroom* shall have access to not less than one water closet and one lavatory without passing through another *bedroom*. Every *bedroom* in a *dwelling unit* shall have access to not less than one water closet and lavatory located in the same story as the *bedroom* or an adjacent story.

404.4.4 Prohibited occupancy. Kitchens and nonhabitable spaces shall not be used for sleeping purposes.

404.4.5 Other requirements. *Bedrooms* shall comply with the applicable provisions of this code including, but not limited to, the light, *ventilation*, room area, ceiling height and room width requirements of this chapter; the plumbing facilities and water-heating facilities requirements of Chapter 5; the heating facilities and electrical receptacle requirements of Chapter 6; and the smoke detector and emergency escape requirements of Chapter 7.

404.5 Overcrowding. Dwelling units shall not be occupied by more occupants than permitted by the minimum area requirements of Table 404.5.

TABLE 404.5
MINIMUM AREA REQUIREMENTS

SPACE	MINIMUM AREA IN SQUARE FEET		
	1-2 occupants	3-5 occupants	6 or more occupants
Living room[a, b]	120	120	150
Dining room[a, b]	No requirement	80	100
Bedrooms	Shall comply with Section 404.4.1		

For SI: 1 square foot = 0.0929 m^2.

a. See Section 404.5.2 for combined living room/dining room spaces.

b. See Section 404.5.1 for limitations on determining the minimum occupancy area for sleeping purposes.

404.5.1 Sleeping area. The minimum occupancy area required by Table 404.5 shall not be included as a sleeping area in determining the minimum occupancy area for sleeping purposes. Sleeping areas shall comply with Section 404.4.

404.5.2 Combined spaces. Combined living room and dining room spaces shall comply with the requirements of Table 404.5 if the total area is equal to that required for separate rooms and if the space is located so as to function as a combination living room/dining room.

404.6 Efficiency unit. Nothing in this section shall prohibit an efficiency living unit from meeting the following requirements:

1. A unit occupied by not more than one occupant shall have a minimum clear floor area of 120 square feet (11.2 m^2). A unit occupied by not more than two *occupants* shall have a minimum clear floor area of 220 square feet (20.4 m^2). A unit occupied by three *occupants* shall have a minimum clear floor area of 320 square feet (29.7 m^2). These required areas shall be exclusive of the areas required by Items 2 and 3.
2. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a minimum clear working space of 30 inches (762 mm) in front. Light and *ventilation* conforming to this code shall be provided.
3. The unit shall be provided with a separate *bathroom* containing a water closet, lavatory and bathtub or shower.
4. The maximum number of *occupants* shall be three.

404.7 Food preparation. All spaces to be occupied for food preparation purposes shall contain suitable space and equipment to store, prepare and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage.

CHAPTER 5
PLUMBING FACILITIES AND FIXTURE REQUIREMENTS

SECTION 501
GENERAL

501.1 Scope. The provisions of this chapter shall govern the minimum plumbing systems, facilities and plumbing fixtures to be provided.

501.2 Responsibility. The *owner* of the structure shall provide and maintain such plumbing facilities and plumbing fixtures in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any structure or *premises* that does not comply with the requirements of this chapter.

SECTION 502
REQUIRED FACILITIES

[P] 502.1 Dwelling units. Every *dwelling unit* shall contain its own bathtub or shower, lavatory, water closet and kitchen sink that shall be maintained in a sanitary, safe working condition. The lavatory shall be placed in the same room as the water closet or located in close proximity to the door leading directly into the room in which such water closet is located. A kitchen sink shall not be used as a substitute for the required lavatory.

[P] 502.2 Rooming houses. Not less than one water closet, lavatory and bathtub or shower shall be supplied for each four *rooming units*.

[P] 502.3 Hotels. Where private water closets, lavatories and baths are not provided, one water closet, one lavatory and one bathtub or shower having access from a public hallway shall be provided for each 10 *occupants.*

[P] 502.4 Employees' facilities. Not less than one water closet, one lavatory and one drinking facility shall be available to employees.

[P] 502.4.1 Drinking facilities. Drinking facilities shall be a drinking fountain, water cooler, bottled water cooler or disposable cups next to a sink or water dispenser. Drinking facilities shall not be located in *toilet rooms* or *bathrooms*.

[P] 502.5 Public toilet facilities. Public toilet facilities shall be maintained in a safe, sanitary and working condition in accordance with the *International Plumbing Code*. Except for periodic maintenance or cleaning, public access and use shall be provided to the toilet facilities at all times during *occupancy* of the *premises.*

SECTION 503
TOILET ROOMS

[P] 503.1 Privacy. *Toilet rooms* and *bathrooms* shall provide privacy and shall not constitute the only passageway to a hall or other space, or to the exterior. A door and interior locking device shall be provided for all common or shared *bathrooms* and *toilet rooms* in a multiple dwelling.

[P] 503.2 Location. *Toilet rooms* and *bathrooms* serving hotel units, *rooming units* or dormitory units or *housekeeping units*, shall have access by traversing not more than one flight of stairs and shall have access from a common hall or passageway.

[P] 503.3 Location of employee toilet facilities. Toilet facilities shall have access from within the employees' working area. The required toilet facilities shall be located not more than one story above or below the employees' working area and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m). Employee facilities shall either be separate facilities or combined employee and public facilities.

Exception: Facilities that are required for employees in storage structures or kiosks, which are located in adjacent structures under the same ownership, lease or control, shall not exceed a travel distance of 500 feet (152 m) from the employees' regular working area to the facilities.

[P] 503.4 Floor surface. In other than *dwelling units*, every *toilet room* floor shall be maintained to be a smooth, hard, nonabsorbent surface to permit such floor to be easily kept in a clean and sanitary condition.

SECTION 504
PLUMBING SYSTEMS AND FIXTURES

[P] 504.1 General. Plumbing fixtures shall be properly installed and maintained in working order, and shall be kept free from obstructions, leaks and defects and be capable of performing the function for which such plumbing fixtures are designed. Plumbing fixtures shall be maintained in a safe, sanitary and functional condition.

[P] 504.2 Fixture clearances. Plumbing fixtures shall have adequate clearances for usage and cleaning.

[P] 504.3 Plumbing system hazards. Where it is found that a plumbing system in a structure constitutes a hazard to the *occupants* or the structure by reason of inadequate service, inadequate venting, cross connection, backsiphonage, improper installation, *deterioration* or damage or for similar reasons, the *code official* shall require the defects to be corrected to eliminate the hazard.

SECTION 505
WATER SYSTEM

505.1 General. Every sink, lavatory, bathtub or shower, drinking fountain, water closet or other plumbing fixture shall be properly connected to either a public water system or to an *approved* private water system. Kitchen sinks, lavatories, laundry facilities, bathtubs and showers shall be supplied

with hot or tempered and cold running water in accordance with the *International Plumbing Code*.

[P] 505.2 Contamination. The water supply shall be maintained free from contamination, and all water inlets for plumbing fixtures shall be located above the flood-level rim of the fixture. Shampoo basin faucets, janitor sink faucets and other hose bibs or faucets to which hoses are attached and left in place, shall be protected by an approved atmospheric-type vacuum breaker or an approved permanently attached hose connection vacuum breaker.

505.3 Supply. The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices and appurtenances in sufficient volume and at pressures adequate to enable the fixtures to function properly, safely, and free from defects and leaks.

505.4 Water heating facilities. Water heating facilities shall be properly installed, maintained and capable of providing an adequate amount of water to be drawn at every required sink, lavatory, bathtub, shower and laundry facility at a minimum temperature of 110°F (43°C). A gas-burning water heater shall not be located in any *bathroom*, *toilet room*, *bedroom* or other occupied room normally kept closed, unless adequate combustion air is provided. An *approved* combination temperature and pressure-relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

SECTION 506
SANITARY DRAINAGE SYSTEM

[P] 506.1 General. Plumbing fixtures shall be properly connected to either a public sewer system or to an *approved* private sewage disposal system.

[P] 506.2 Maintenance. Every plumbing stack, vent, waste and sewer line shall function properly and be kept free from obstructions, leaks and defects.

[P] 506.3 Grease interceptors. Grease interceptors and automatic grease removal devices shall be maintained in accordance with this code and the manufacturer's installation instructions. Grease interceptors and automatic grease removal devices shall be regularly serviced and cleaned to prevent the discharge of oil, grease, and other substances harmful or hazardous to the building drainage system, the public sewer, the private sewage disposal system or the sewage treatment plant or processes. Records of maintenance, cleaning and repairs shall be available for inspection by the code official.

SECTION 507
STORM DRAINAGE

[P] 507.1 General. Drainage of roofs and paved areas, *yards* and courts, and other open areas on the *premises* shall not be discharged in a manner that creates a public nuisance.

CHAPTER 6
MECHANICAL AND ELECTRICAL REQUIREMENTS

SECTION 601
GENERAL

601.1 Scope. The provisions of this chapter shall govern the minimum mechanical and electrical facilities and equipment to be provided.

601.2 Responsibility. The *owner* of the structure shall provide and maintain mechanical and electrical facilities and equipment in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any *premises* that does not comply with the requirements of this chapter.

SECTION 602
HEATING FACILITIES

602.1 Facilities required. Heating facilities shall be provided in structures as required by this section.

602.2 Residential occupancies. Dwellings shall be provided with heating facilities capable of maintaining a room temperature of 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms* based on the winter outdoor design temperature for the locality indicated in Appendix D of the *International Plumbing Code*. Cooking appliances shall not be used, nor shall portable unvented fuel-burning space heaters be used, as a means to provide required heating.

Exception: In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.

602.3 Heat supply. Every *owner* and *operator* of any building who rents, leases or lets one or more *dwelling units* or *sleeping units* on terms, either expressed or implied, to furnish heat to the *occupants* thereof shall supply heat during the period from **[DATE]** to **[DATE]** to maintain a minimum temperature of 68°F (20°C) in all habitable rooms, *bathrooms* and *toilet rooms*.

Exceptions:

1. When the outdoor temperature is below the winter outdoor design temperature for the locality, maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity. The winter outdoor design temperature for the locality shall be as indicated in Appendix D of the *International Plumbing Code*.
2. In areas where the average monthly temperature is above 30°F (-1°C), a minimum temperature of 65°F (18°C) shall be maintained.

602.4 Occupiable work spaces. Indoor occupiable work spaces shall be supplied with heat during the period from **[DATE]** to **[DATE]** to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

602.5 Room temperature measurement. The required room temperatures shall be measured 3 feet (914 mm) above the floor near the center of the room and 2 feet (610 mm) inward from the center of each exterior wall.

SECTION 603
MECHANICAL EQUIPMENT

603.1 Mechanical appliances. Mechanical appliances, fireplaces, solid fuel-burning appliances, cooking appliances and water heating appliances shall be properly installed and maintained in a safe working condition, and shall be capable of performing the intended function.

603.2 Removal of combustion products. Fuel-burning equipment and appliances shall be connected to an *approved* chimney or vent.

Exception: Fuel-burning equipment and appliances that are *labeled* for unvented operation.

603.3 Clearances. Required clearances to combustible materials shall be maintained.

603.4 Safety controls. Safety controls for fuel-burning equipment shall be maintained in effective operation.

603.5 Combustion air. A supply of air for complete combustion of the fuel and for *ventilation* of the space containing the fuel-burning equipment shall be provided for the fuel-burning equipment.

603.6 Energy conservation devices. Devices intended to reduce fuel consumption by attachment to a fuel-burning appliance, to the fuel supply line thereto, or to the vent outlet or vent piping therefrom, shall not be installed unless *labeled* for such purpose and the installation is specifically *approved*.

SECTION 604
ELECTRICAL FACILITIES

604.1 Facilities required. Every occupied building shall be provided with an electrical system in compliance with the requirements of this section and Section 605.

604.2 Service. The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with NFPA 70. *Dwelling units* shall be served by a three-wire, 120/240 volt, single-phase electrical service having a minimum rating of 60 amperes.

604.3 Electrical system hazards. Where it is found that the electrical system in a structure constitutes a hazard to the *occupants* or the structure by reason of inadequate service, improper fusing, insufficient receptacle and lighting outlets, improper wiring or installation, *deterioration* or damage, or for similar reasons, the *code official* shall require the defects to be corrected to eliminate the hazard.

604.3.1 Abatement of electrical hazards associated with water exposure. The provisions of this section shall govern the repair and replacement of electrical systems and equipment that have been exposed to water.

604.3.1.1 Electrical equipment. Electrical distribution equipment, motor circuits, power equipment, transformers, wire, cable, flexible cords, wiring devices, ground fault circuit interrupters, surge protectors, molded case circuit breakers, low-voltage fuses, luminaires, ballasts, motors and electronic control, signaling and communication equipment that have been exposed to water shall be replaced in accordance with the provisions of the *International Building Code*.

Exception: The following equipment shall be allowed to be repaired where an inspection report from the equipment manufacturer or *approved* manufacturer's representative indicates that the equipment has not sustained damage that requires replacement:

1. Enclosed switches, rated a maximum of 600 volts or less;
2. Busway, rated a maximum of 600 volts;
3. Panelboards, rated a maximum of 600 volts;
4. Switchboards, rated a maximum of 600 volts;
5. Fire pump controllers, rated a maximum of 600 volts;
6. Manual and magnetic motor controllers;
7. Motor control centers;
8. Alternating current high-voltage circuit breakers;
9. Low-voltage power circuit breakers;
10. Protective relays, meters and current transformers;
11. Low- and medium-voltage switchgear;
12. Liquid-filled transformers;
13. Cast-resin transformers;
14. Wire or cable that is suitable for wet locations and whose ends have not been exposed to water;
15. Wire or cable, not containing fillers, that is suitable for wet locations and whose ends have not been exposed to water;
16. Luminaires that are listed as submersible;
17. Motors;
18. Electronic control, signaling and communication equipment.

604.3.2 Abatement of electrical hazards associated with fire exposure. The provisions of this section shall govern the repair and replacement of electrical systems and equipment that have been exposed to fire.

604.3.2.1 Electrical equipment. Electrical switches, receptacles and fixtures, including furnace, water heating, security system and power distribution circuits, that have been exposed to fire, shall be replaced in accordance with the provisions of the *International Building Code*.

Exception: Electrical switches, receptacles and fixtures that shall be allowed to be repaired where an inspection report from the equipment manufacturer or *approved* manufacturer's representative indicates that the equipment has not sustained damage that requires replacement.

SECTION 605
ELECTRICAL EQUIPMENT

605.1 Installation. Electrical equipment, wiring and appliances shall be properly installed and maintained in a safe and *approved* manner.

605.2 Receptacles. Every *habitable space* in a dwelling shall contain not less than two separate and remote receptacle outlets. Every laundry area shall contain not less than one grounding-type receptacle or a receptacle with a ground fault circuit interrupter. Every *bathroom* shall contain not less than one receptacle. Any new *bathroom* receptacle outlet shall have ground fault circuit interrupter protection. All receptacle outlets shall have the appropriate faceplate cover for the location.

605.3 Luminaires. Every public hall, interior stairway, *toilet room*, kitchen, *bathroom*, laundry room, boiler room and furnace room shall contain not less than one electric luminaire. Pool and spa luminaires over 15 V shall have ground fault circuit interrupter protection.

605.4 Wiring. Flexible cords shall not be used for permanent wiring, or for running through doors, windows, or cabinets, or concealed within walls, floors, or ceilings.

SECTION 606
ELEVATORS, ESCALATORS AND DUMBWAITERS

606.1 General. Elevators, dumbwaiters and escalators shall be maintained in compliance with ASME A17.1. The most current certificate of inspection shall be on display at all times within the elevator or attached to the escalator or dumb-

waiter, be available for public inspection in the office of the building *operator* or be posted in a publicly conspicuous location *approved* by the *code official*. The inspection and tests shall be performed at not less than the periodic intervals listed in ASME A17.1, Appendix N, except where otherwise specified by the authority having jurisdiction.

606.2 Elevators. In buildings equipped with passenger elevators, not less than one elevator shall be maintained in operation at all times when the building is occupied.

Exception: Buildings equipped with only one elevator shall be permitted to have the elevator temporarily out of service for testing or servicing.

SECTION 607
DUCT SYSTEMS

607.1 General. Duct systems shall be maintained free of obstructions and shall be capable of performing the required function.

CHAPTER 7

FIRE SAFETY REQUIREMENTS

SECTION 701
GENERAL

701.1 Scope. The provisions of this chapter shall govern the minimum conditions and standards for fire safety relating to structures and exterior *premises*, including fire safety facilities and equipment to be provided.

701.2 Responsibility. The *owner* of the *premises* shall provide and maintain such fire safety facilities and equipment in compliance with these requirements. A person shall not occupy as *owner-occupant* or permit another person to occupy any *premises* that do not comply with the requirements of this chapter.

SECTION 702
MEANS OF EGRESS

[F] 702.1 General. A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the *public way*. Means of egress shall comply with the *International Fire Code.*

[F] 702.2 Aisles. The required width of aisles in accordance with the *International Fire Code* shall be unobstructed.

[F] 702.3 Locked doors. Means of egress doors shall be readily openable from the side from which egress is to be made without the need for keys, special knowledge or effort, except where the door hardware conforms to that permitted by the *International Building Code*.

[F] 702.4 Emergency escape openings. Required emergency escape openings shall be maintained in accordance with the code in effect at the time of construction, and the following. Required emergency escape and rescue openings shall be operational from the inside of the room without the use of keys or tools. Bars, grilles, grates or similar devices are permitted to be placed over emergency escape and rescue openings provided the minimum net clear opening size complies with the code that was in effect at the time of construction and such devices shall be releasable or removable from the inside without the use of a key, tool or force greater than that which is required for normal operation of the escape and rescue opening.

SECTION 703
FIRE-RESISTANCE RATINGS

[F] 703.1 Fire-resistance-rated assemblies. The required fire-resistance rating of fire-resistance-rated walls, fire stops, shaft enclosures, partitions and floors shall be maintained.

[F] 703.2 Opening protectives. Required opening protectives shall be maintained in an operative condition. Fire and smokestop doors shall be maintained in operable condition. Fire doors and smoke barrier doors shall not be blocked or obstructed or otherwise made inoperable.

SECTION 704
FIRE PROTECTION SYSTEMS

[F] 704.1 General. Systems, devices and equipment to detect a fire, actuate an alarm, or suppress or control a fire or any combination thereof shall be maintained in an operable condition at all times in accordance with the *International Fire Code*.

[F] 704.1.1 Automatic sprinkler systems. Inspection, testing and maintenance of automatic sprinkler systems shall be in accordance with NFPA 25.

[F] 704.1.2 Fire department connection. Where the fire department connection is not visible to approaching fire apparatus, the fire department connection shall be indicated by an *approved* sign mounted on the street front or on the side of the building. Such sign shall have the letters "FDC" not less than 6 inches (152 mm) high and words in letters not less than 2 inches (51 mm) high or an arrow to indicate the location. Such signs shall be subject to the approval of the fire code official.

[F] 704.2 Single- and multiple-station smoke alarms. Single- and multiple-station smoke alarms shall be installed in existing Group I-1 and R occupancies in accordance with Sections 704.2.1 through 704.2.3.

[F] 704.2.1 Where required. Existing Group I-1 and R occupancies shall be provided with single-station smoke alarms in accordance with Sections 704.2.1.1 through 704.2.1.4. Interconnection and power sources shall be in accordance with Sections 704.2.2 and 704.2.3.

Exceptions:

1. Where the code that was in effect at the time of construction required smoke alarms and smoke alarms complying with those requirements are already provided.
2. Where smoke alarms have been installed in occupancies and dwellings that were not required to have them at the time of construction, additional smoke alarms shall not be required provided that the existing smoke alarms comply with requirements that were in effect at the time of installation.
3. Where smoke detectors connected to a fire alarm system have been installed as a substitute for smoke alarms.

[F] 704.2.1.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

1. In sleeping areas.
2. In every room in the path of the *means of egress* from the sleeping area to the door leading from the *sleeping unit*.

3. In each story within the *sleeping unit*, including basements. For *sleeping units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

[F] 704.2.1.2 Groups R-2, R-3, R-4 and I-1. Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4 and I-1 regardless of *occupant load* at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
2. In each room used for sleeping purposes.
3. In each story within a *dwelling unit*, including *basements* but not including crawl spaces and uninhabitable attics. In *dwellings* or *dwelling units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

[F] 704.2.1.3 Installation near cooking appliances. Smoke alarms shall not be installed in the following locations unless this would prevent placement of a smoke alarm in a location required by Section 704.2.1.1 or 704.2.1.2.

1. Ionization smoke alarms shall not be installed less than 20 feet (6096 m) horizontally from a permanently installed cooking appliance.
2. Ionization smoke alarms with an alarm-silencing switch shall not be installed less than 10 feet (3048 mm) horizontally from a permanently installed cooking appliance.
3. Photoelectric smoke alarms shall not be installed less than 6 feet (1829 mm) horizontally from a permanently installed cooking appliance.

[F] 704.2.1.4 Installation near bathrooms. Smoke alarms shall be installed not less than 3 feet (914 mm) horizontally from the door or opening of a bathroom that contains a bathtub or shower unless this would prevent placement of a smoke alarm required by Section 704.2.1.1 or 704.2.1.2.

[F] 704.2.2 Interconnection. Where more than one smoke alarm is required to be installed within an individual *dwelling* or *sleeping unit*, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. Physical interconnection of smoke alarms shall not be required where listed wireless alarms are installed and all alarms sound upon activation of one alarm. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

Exceptions:

1. Interconnection is not required in buildings that are not undergoing *alterations*, repairs or construction of any kind.
2. Smoke alarms in existing areas are not required to be interconnected where *alterations* or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available that could provide access for interconnection without the removal of interior finishes.

[F] 704.2.3 Power source. Single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms with integral strobes that are not equipped with battery backup shall be connected to an emergency electrical system. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

Exceptions:

1. Smoke alarms are permitted to be solely battery operated in existing buildings where no construction is taking place.
2. Smoke alarms are permitted to be solely battery operated in buildings that are not served from a commercial power source.
3. Smoke alarms are permitted to be solely battery operated in existing areas of buildings undergoing *alterations* or repairs that do not result in the removal of interior walls or ceiling finishes exposing the structure, unless there is an attic, crawl space or *basement* available that could provide access for building wiring without the removal of interior finishes.

[F] 704.2.4 Smoke detection system. Smoke detectors listed in accordance with UL 268 and provided as part of the building's fire alarm system shall be an acceptable alternative to single- and multiple-station smoke alarms and shall comply with the following:

1. The fire alarm system shall comply with all applicable requirements in Section 907 of the *International Fire Code*.
2. Activation of a smoke detector in a dwelling or sleeping unit shall initiate alarm notification in the *dwelling* or *sleeping unit* in accordance with Section 907.5.2 of the *International Fire Code*.
3. Activation of a smoke detector in a *dwelling* or *sleeping unit* shall not activate alarm notification appliances outside of the *dwelling* or *sleeping unit*, provided that a supervisory signal is generated and monitored in accordance with Section 907.6.5 of the *International Fire Code*.

CHAPTER 8
REFERENCED STANDARDS

This chapter lists the standards that are referenced in various sections of this document. The standards are listed herein by the promulgating agency of the standard, the standard identification, the effective date and title and the section or sections of this document that reference the standard. The application of the referenced standards shall be as specified in Section 102.7.

ASME

American Society of Mechanical Engineers
Three Park Avenue
New York, NY 10016-5990

Standard reference number	Title	Referenced in code section number
ASME A17.1/CSA B44—2013	Safety Code for Elevators and Escalators	606.1

ASTM

ASTM International
100 Barr Harbor Drive
West Conshohocken, PA 19428-2959

Standard reference number	Title	Referenced in code section number
F 1346—91 (2010)	Performance Specifications for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs	303.2

ICC

International Code Council
500 New Jersey Avenue, NW
6th Floor
Washington, DC 20001

Standard reference number	Title	Referenced in code section number
IBC—15	International Building Code®	102.3, 201.3, 401.3, 702.3
IEBC—15	International Existing Building Code®	305.1.1, 306.1.1
IFC—15	International Fire Code®	201.3, 604.3.1.1, 604.3.2.1, 702.1, 702.2, 704.1, 704.2
IFGC—15	International Fuel Gas Code®	102.3
IMC—15	International Mechanical Code®	102.3, 201.3
IPC—15	International Plumbing Code®	201.3, 505.1, 602.2, 602.3
IRC—15	International Residential Code®	201.3
IZC—15	International Zoning Code®	102.3, 201.3

NFPA

National Fire Protection Association
1 Batterymarch Park
Quincy, MA 02269

Standard reference number	Title	Referenced in code section number
25—14	Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems	704.1.1
70—14	National Electrical Code	102.4, 201.3, 604.2

APPENDIX A
BOARDING STANDARD

The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

A101
GENERAL

A101.1 General. Windows and doors shall be boarded in an *approved* manner to prevent entry by unauthorized persons and shall be painted to correspond to the color of the existing structure.

A102
MATERIALS

A102.1 Boarding sheet material. Boarding sheet material shall be minimum $^1/_2$-inch-thick (12.7 mm) wood structural panels complying with the *International Building Code*.

A102.2 Boarding framing material. Boarding framing material shall be minimum nominal 2-inch by 4-inch (51 mm by 102 mm) solid sawn lumber complying with the *International Building Code*.

A102.3 Boarding fasteners. Boarding fasteners shall be minimum $^3/_8$-inch-diameter (9.5 mm) carriage bolts of such a length as required to penetrate the assembly and as required to adequately attach the washers and nuts. Washers and nuts shall comply with the *International Building Code*.

A103
INSTALLATION

A103.1 Boarding installation. The boarding installation shall be in accordance with Figures A103.1(1) and A103.1(2) and Sections A103.2 through A103.5.

A103.2 Boarding sheet material. The boarding sheet material shall be cut to fit the door or window opening neatly or shall be cut to provide an equal overlap at the perimeter of the door or window.

A103.3 Windows. The window shall be opened to allow the carriage bolt to pass through or the window sash shall be removed and stored. The 2-inch by 4-inch (51 mm by 102 mm) strong back framing material shall be cut minimum 2 inches (51 mm) wider than the window opening and shall be placed on the inside of the window opening 6 inches (152 mm) minimum above the bottom and below the top of the window opening. The framing and boarding shall be predrilled. The assembly shall be aligned and the bolts, washers and nuts shall be installed and secured.

A103.4 Door walls. The door opening shall be framed with minimum 2-inch by 4-inch (51 mm by 102 mm) framing material secured at the entire perimeter and vertical members at a maximum of 24 inches (610 mm) on center. Blocking shall also be secured at a maximum of 48 inches (1219 mm) on center vertically. Boarding sheet material shall be secured with screws and nails alternating every 6 inches (152 mm) on center.

A103.5 Doors. Doors shall be secured by the same method as for windows or door openings. One door to the structure shall be available for authorized entry and shall be secured and locked in an *approved* manner.

A104
REFERENCED STANDARD

IBC—12	International Building Code	A102.1, A102.2, A102.3

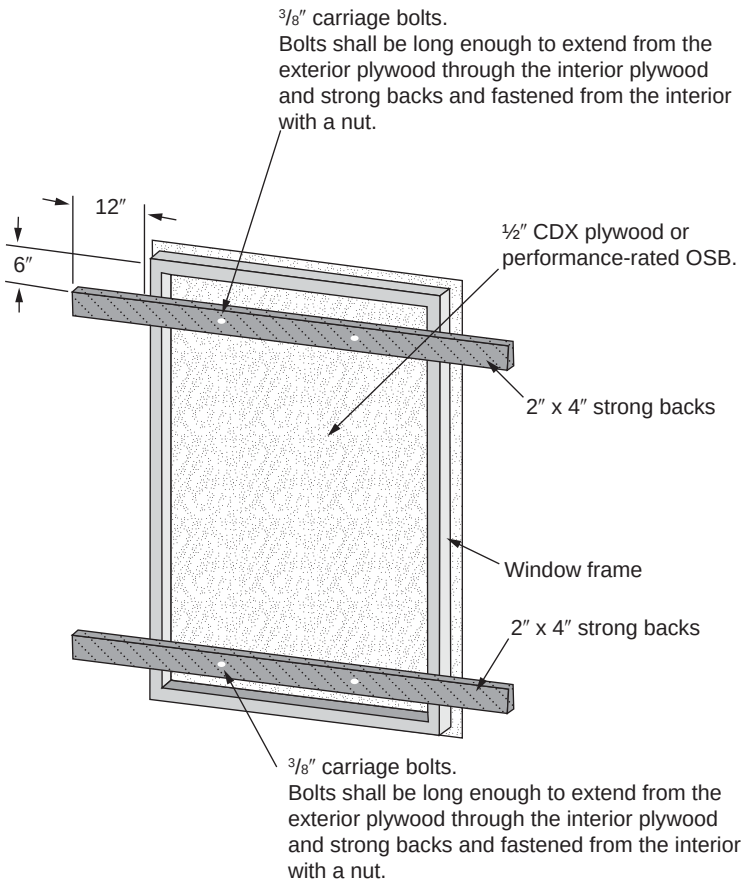

FIGURE A103.1(1)
BOARDING OF DOOR OR WINDOW

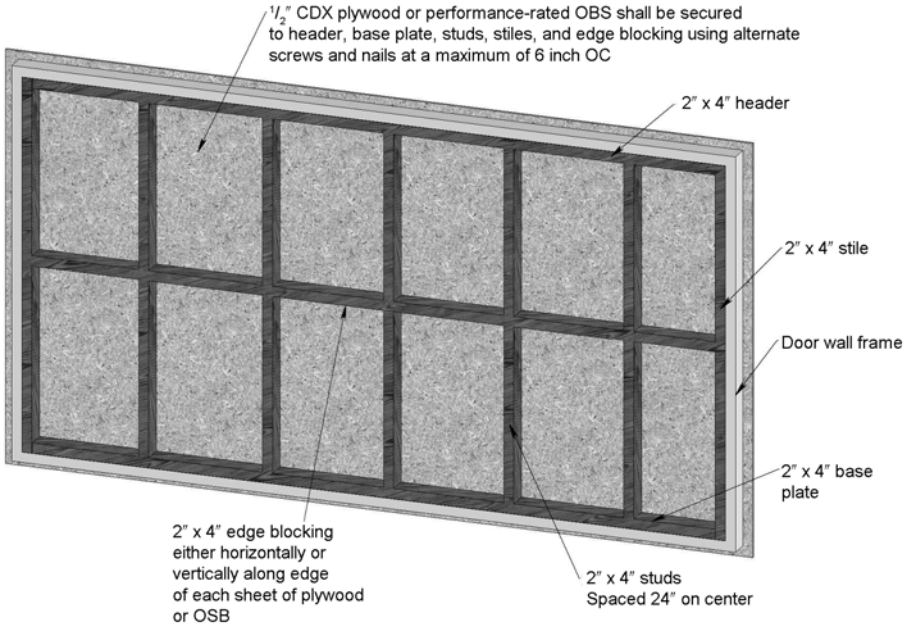

FIGURE A103.1(2)
BOARDING OF DOOR WALL

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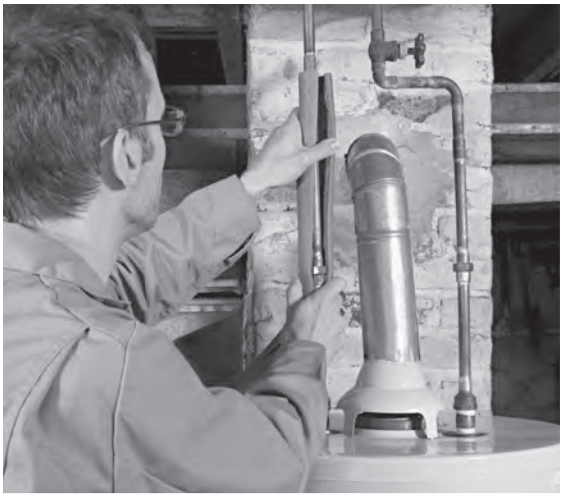


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P.O. Box 100
Thompson's Station, TN 37179

DATE: November 1, 2019

TO: The Board of Mayor and Aldermen (BOMA)

FROM: Wendy Deats, Town Planner

SUBJECT: **Item 6 – Resolution 2019-026 – MBSC Development Agreement for Phase 18, Section 18A in Tollgate Village**

On March 27, 2018, the Planning Commission approved the preliminary plat for phase 18 of Tollgate Village for the subdivision of 1.92 acres of land into eight lots with the following contingencies:

1. Prior to the submittal of a final plat, a development agreement shall be approved and executed between the Town and the Developer.
2. Prior to the submittal of a final plat, the secondary access shall be completed and open to traffic.
3. Prior to the submittal of a final plat, all sewer approvals necessary for the project shall be obtained.

On September 25, 2018, the Planning Commission approved the final plat for Section 18A for three lots with the following contingencies:

1. Prior to the recordation of the final plat, the plats with all remaining open space shall be recorded.
2. Prior to the recordation of the final plat, the development agreement for phase 18 shall be approved and executed between the Town and the developer.
3. Prior to recordation of the final plat, a surety shall be submitted to the Town in the amount of $16,500 for sewer with automatic renewal.
4. As built drawings shall be required for the drainage and sewer system with a letter from the Design Engineer that they are constructed per the approved drawings and functioning as intended.

The developer has reviewed and signed the development agreement provided by Staff. Therefore, Staff recommends the Board of Mayor and Aldermen approve the resolution to accept the Development Agreement for Phase 18, Section 18A within Tollgate Village.

Attachments
Resolution 2019-026
Development Agreement

RESOLUTION NO. 2019-026

A RESOLUTION OF THE TOWN OF THOMPSON'S STATION, TENNESSEE TO APPROVE A SUBDIVISION DEVELOPMENT AGREEMENT WITH MBSC, TN HOMEBUILDERS FOR PHASE 18 (SECTION 18A) OF TOLLGATE VILLAGE AND TO AUTHORIZE THE MAYOR TO EXECUTE SAID AGREEMENT.

WHEREAS, MBSC, TN Homebuilders ("Developer") is developing Phase 18, Section 18A of Tollgate Village and has received plat approval for such phase;

WHEREAS, the Town's Land Development Ordinance requires the Developer to enter into a Subdivision Development Agreement with the Town prior to the commencement of construction; and

WHEREAS, the Board of Mayor and Aldermen have determined that it is in the best interest of the Town to approve the attached Subdivision Development Agreement with Developer to allow for the continued development of Phase 18 (Section 18A) of Tollgate Village.

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the Town of Thompson's Station as follows:

That the Subdivision Development Agreement attached hereto as Exhibit A and incorporated herein by reference, is approved and the Mayor is hereby authorized to execute said agreement on behalf of the Town.

RESOLVED AND ADOPTED this 12th day of November, 2019.

_____
Corey Napier, Mayor

ATTEST:

_____
Regina Fowler, Town Recorder

APPROVED AS TO LEGALITY AND FORM:

_____
Town Attorney

Development Agreement for Tollgate Village
Phase(s) 18, Section 18A – Lots 3401-3403

THIS SUBDIVISION DEVELOPMENT AGREEMENT (hereinafter the "Agreement"), is made effective this the 14th day of October, 2019 (hereinafter the "Effective Date"), by and between **MBSC, TN Homebuilders** with principal offices located at 312 Gay Street, Suite 200 Knoxville, TN 37902, (hereinafter the "Developer(s)"); and the Town of Thompson's Station, Tennessee, a municipality duly incorporated, organized, and existing under the laws of the State of Tennessee (hereinafter the "Town").

I. PURPOSE OF THE AGREEMENT

1. The Developer is the owner of real property located at the northeast corner of Americus Drive and Tollgate Boulevard and identified as Williamson County tax map 132, parcel(s) 1.10. The property contains approximately .72 acres +/-, (hereinafter the "Project Site"). The Project Site is currently zoned D3 (High Intensity Residential).

2. The Developer desires to improve and develop the Project Site or a portion of the Project Site into a development to be known as Tollgate Village Section 18A, (hereinafter the "Project"), under the regulations of the Town current on the Effective Date of the approval of Preliminary Plat.

3. This Agreement is subject to Town approval of the Final Project Documents for the Project, which includes but is not limited to plat approvals (with conditions as determined by the Town), detailed construction plans and specifications, in accordance with the Town's charter, ordinances, rules, regulations, and policies (hereinafter "Town Regulations") as well as State law, and applicable sureties. The Developer and Town agree that all Final Project Documents shall be attached to this Agreement as **Collective Exhibit "A"** and incorporated herein by reference after their approvals by the Town.

4. The Developer agrees to install necessary and required public improvements (hereinafter "Public Improvements") as shown on the Final Project Documents including, but not limited to: water lines, fire hydrants, sanitary sewer and sanitary sewer lines, grading, streets, curbs, gutters, sidewalks, street name signs, traffic control devices, street lights and underground electrical power and gas utilities, as well as all other improvements designated herein, at no cost to the Town.

5. The Developer agrees to install and maintain private improvements and amenities, as applicable and as shown on the Final Project Documents, including, but not limited to: private streets and alleys, fences, walls, lakes, common open space, site lighting, storm water management systems, retention and/or detention basins, storm sewers, inlets etc., landscaping and related irrigation systems, relative to said Project, none of which shall be accepted for maintenance by the Town.

9. The Town agrees to approve the Project subject to the Developer's compliance with applicable Town Regulations and the conditions set forth herein in **Exhibit "B"**, and the Town agrees to provide customary services to the Project in accordance with the Town's Regulations after Final Acceptance, as defined herein.

II. GENERAL CONDITIONS

1. *Affidavit of Payment* - Prior to Final Acceptance, the Developer shall deliver to the Town an affidavit certifying that all subcontractors and material suppliers furnishing labor and/or material for the Public Improvements required under this Agreement have been paid in full. The Developer shall also provide a written release of any and all liens and/or security instruments, and of the right to claim liens, from all subcontractors and material suppliers furnishing labor or materials for the Public Improvements.

2. *Approval of the Final Project Documents* - The Final Project Documents, which are attached hereto as **Collective Exhibit "A"** and incorporated herein by reference, shall be stamped as approved by the Town, provided that the same are in compliance with Town Regulations. All construction relating to the Project shall be subject to inspection and approval by the Town until Final Acceptance and shall be subject to any conditions set forth on **Exhibit "B"**.

3. *Construction Activity Periods* - The Developer will not carry on or permit construction activity under this Agreement earlier than 7:00 a.m. and not later than 6:00 p.m., Monday through Saturday, and no construction activity shall occur on Sundays or holidays. Construction hours shall be enforced by the Town at the Developer's expense.

4. *Construction Standards* - The Developer shall construct the Project as shown on the approved Final Project Documents in accordance with requirements of the Town Regulations.

5. *Demolition* - The Developer agrees to secure all required permits from the necessary governmental entities, including the Town, for the demolition of structures on the Project Site. The Developer further agrees that it will haul all scrap, buildings, materials, debris, rubbish and other degradable materials to an authorized landfill and shall not bury such materials within the Project Site.

6. *Deposition of materials in street prohibited* - All construction material, including, without limitation, mud, silt, dirt, and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel or other construction material is washed, blown, or carried into an existing street, the Developer shall take immediate steps to remove such materials. If the Developer does not remove such materials after notification by the Town, and the Town deems it necessary to clean the affected streets, the Developer agrees to reimburse the Town for all such cleaning expenses, plus an additional twenty-five percent (25%) for administrative expenses related to the same.

7. *Development Agreement Modification Fees* - The Developer agrees to pay the fee for any modifications to this Agreement in accordance with the Town schedule of fees applicable to such a modification and that are current at the time of submittal of a written request for a modification by the Developer, including, but not limited to, time extensions, addendums, or amendments.

8. *Developer's Default* - The Developer agrees that should it default in performing any of its obligations under this Agreement, and it becomes necessary to engage an attorney to file necessary legal action to enforce provisions of this Agreement or sue for any sums of money due and owing or liability arising incidental to the Agreement, Developer shall pay to the Town all reasonable attorney's fees and expenses of litigation stemming from said default.

9. *Developer's Liability* - It is expressly understood and agreed that the Town is not and could not be expected to oversee, supervise and/or direct the implementation of all construction and

improvements contemplated in this Agreement. The Town is not responsible for the design of the Project or any way the suitability of the property for Project.

a. The Town Planner or his or her designee may make periodic inspections and has the right to enforce the provisions of this Agreement and Town Regulations.
b. The Developer now has and shall retain the responsibility to properly anticipate, survey, design and construct the Project improvements and give full assurance that same shall not adversely affect the flow of surface water from or upon any property.
c. In providing technical assistance, plan and design review, the Town does not and shall not relieve the Developer from liability, and the Town does not accept any liability from the Developer.
d. The Developer will provide its own Project Engineer and may not rely on the review of Town staff or its engineers with respect to the Project.
e. Neither observations by the Town, nor inspections, tests or approvals by others shall relieve the Developer from its obligation to perform work in accordance with Town Regulations and the terms of this Agreement.

10. *Duration of Obligations* - The obligations of the Developer hereunder shall run with the Project Site until the Developer's obligations have been fully met, as determined by the Town in its sole and absolute discretion. Any party taking title to the Project Site, or any part thereof, prior to Final Acceptance shall take said real property subject to such obligations. The Developer shall not be released of its obligations under this agreement without the express, written approval of the Town.

11. *Easements* - The Developer agrees that it will grant all necessary easements and rights-of-way, as determined by the Town, across its property necessary to satisfy the requirements of this Agreement without expense to the Town and will waive any claim for damages from the Town. Any off-site easements and/or right-of-way owned by others but required for the project must be obtained by Developer, recorded prior to approval of the Agreement, and noted on the Final Project Documents.

12. *Emergency Response* - In emergencies affecting the safety or protection of persons or the work or property at the Project Site or adjacent thereto, the Developer, without special instruction or authorization from the Town, is obligated to act to prevent threatened or eminent damage, injury, or loss.

13. *Indemnity* - Developer shall indemnify and hold the Town harmless and agrees to defend the Town and the Town employees, agents, and assigns against any and all claims that may or happen to arise out of or result from the Developer's performance or lack of performance under this Agreement, whether such claims arise out of the actions or inactions of the Developer, any subcontractor of the Developer, or anyone directly or indirectly employed by, or otherwise directly or indirectly involved with the Project at the direction of the Developer or subcontractor of the Developer. This indemnity and hold harmless agreement includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment or debris from drainage, damages resulting from the Developer changing the volume or velocity of water leaving the Developer's property and entering upon the property of others, storm water that is allegedly impounded on another property and claims under any statutes, Federal or state, relative to water, drainage and/or wetlands, and reasonable attorney's fees and costs incurred by

the Town in defending itself or its employees, agents, or assigns as a result of the aforesaid causes and damages and/or enforcing this Agreement.

14. *Notice of Violation* - The Town Planner and/or Town Engineer, or his or her designee, may issue a Notice of Violation (NOV) when violations of Town, State, or Federal laws and/or regulations are observed.

    a. If the Developer has not corrected the violation identified in the NOV, then the Developer agrees that the Town acting through the Town Planner and/or Town Engineer may perform the necessary work to eliminate the violation and document all expenses incurred in performing the work. Developer shall reimburse the Town for all such expenses plus an additional reasonable administrative cost not to exceed twenty-five percent (25%).
    b. Prior to releasing any Security hereunder and as herein defined, all expenses incurred by the Town relative to the foregoing shall be paid in full by the Developer.
    c. The Town may issue a Stop Work Order (SWO) if the Developer does not promptly correct any deficiency or violation identified in the NOV in the reasonable time determined by the Town. The Developer agrees to comply with any SWO issued by the Town. If Developer fails to comply with a SWO, the Developer shall be responsible for all costs the Town incurs, including reasonable attorneys' fees, in seeking a restraining order or other injunctive relief or legal action to remedy any deficiency or violation.

15. *Ownership of Public Improvements* - The Developer shall be responsible for all Public Improvements until Final Acceptance by the Town. Developer shall have no claim, direct or implied, in the title or ownership of the Public Improvements after Final Acceptance. The Town shall have no obligation to maintain any Public Improvements unless and until Final Acceptance of the Public Improvement(s).

16. *Permit Availability* - A copy of all required permits and Final Project Documents must be kept on the Project Site at all times. If a NPDES Storm Water Construction Permit is required by TDEC, or any other permit required by any governmental entity, a copy of the Notice of Intent and the Notice of Coverage, or equivalent documents, shall be provided to the Town Engineer prior to commencement of construction for the Project.

17. *Relocation of Existing Improvements* - The Developer shall be responsible for the cost and liability of any relocation, modification, and/or removal of utilities, streets, sidewalks, drainage and other improvements made necessary by the development of the Project, both on and off site.

18. *Right of Entry* - The Developer agrees that the Town shall have the right, but not the duty, to enter the Project Site and make emergency repairs to any public improvements when the health and safety of the public requires it, as determined by the Town in its sole and absolute discretion. The Developer will reimburse the Town for the costs incurred by the Town in making said repairs, plus an additional reasonable fee for administrative costs not to exceed twenty-five percent (25%).

19. *Safety* - The Developer shall maintain barricades, fences, guards, and flagmen as reasonably necessary to ensure the safety of all persons at or near the Project Site at all reasonable and necessary times.

20. *Stop Work Orders* - The Town Planner and/or Town Engineer may issue Stop Work Orders (SWO) to remedy and enforce the provisions of this Agreement.

21. *Termination of Agreement* – This Agreement may be terminated by the Town if the Developer fails to comply fully with the terms and conditions of this Development Agreement.

    a. The Town will give the Developer sixty (60) days written notice of the intent of the Town to terminate the Development Agreement, stating the reasons for termination, and giving the Developer a reasonable time to correct any failures in compliance, as determined by the Town.
    b. If after receiving a Notice of Termination of the Development Agreement by the Town, the Developer corrects the non-compliance within the time specified in the Notice of Termination, the Development Agreement shall remain in full force and effect.
    c. Failure by the Developer to correct the non-compliance will result in termination of the Development Agreement and collection of the Security by the Town.

    If the Town terminates the Agreement, the Developer shall cease all work on the Project except as necessary to ensure the safety of all persons. The Developer (or a subsequent Developer) may apply to the Town for approval of a new Development Agreement, which approval shall not be withheld provided that all violations of this Agreement have been remedied.

22. *Transfers of Project Ownership* - Until all obligations of the Developer under this Agreement have been fully met and satisfied, the Developer agrees that neither the Project Site nor any portion thereof will be transferred to another party without first providing the Town with a fifteen (15) calendar day written notice of when the proposed transfer is to occur and the identity of the proposed transferee, along with the appropriate contact information for the proposed transferee, including address and telephone number of the proposed transferee.

    a. If it is the proposed transferee's intention to develop the Project Site or any portion thereof in accordance with this Agreement, the Developer agrees to furnish the Town with an assumption agreement, or equivalent as determined by the Town, by which the transferee agrees to perform the obligations required under this Agreement that are applicable to the property to be acquired by the proposed transferee.

    b. Unless otherwise agreed to by the Town, the Developer will not be released from any of its obligations hereunder by such transfer and the Developer and the transferee both shall be jointly and severally liable to the Town for all obligations hereunder that are applicable to the property transferred. The proposed transferee will be required to furnish new Performance Security and Maintenance Security acceptable to the Town, as applicable and determined by the Town.

    c. If it is not the proposed transferee's intention to develop the Project Site or any portion thereof in accordance with this Agreement, the transferee must satisfy all applicable requirements of the Town, as determined by the Town, including payment of all outstanding fees, and must receive Town approval, in writing, to void this Agreement.

    d. The Developer agrees that if it transfers said property without providing the notice of transfer and assumption agreement, or equivalent, as required herein, it will be in breach of this Agreement and the Town may require that all work be stopped relative to the Project and

may require payment of the Performance and Maintenance Security to assure the completion of the Project, as determined by the Town in its sole and absolute discretion.

23. *Underground Utilities* - All electrical utilities shall be installed underground unless the requirement is expressly waived by the Planning Commission.

24. *Building Permits* – The Developer understands and agrees that, if the Developer applies for a building permit from the Town, the building permit shall be subject to all Town Regulations, as well as applicable State and Federal laws and regulations, in existence at the time the building permit is applied for and obtained.

25. *SoilMap(s)* – The Developer shall be required to generate, at Developer's sole expense, and submit to the Town extra high intensity soil map(s) approved by the Tennessee Department of Environment and Conservation ("TDEC") for the entire property proposed to be developed in order to identify drip disposal areas for Town use. The soil map(s) must be generated following all applicable TDEC guidelines, rules, and regulations. The soil map(s) must be submitted to the Town at the time the Developer submits the Preliminary Plat. Failure to submit the required soil map(s) will result in the Town rejecting said Preliminary Plat.

III. REQUIRED IMPROVEMENTS

The Developer agrees to pay the full cost of all the improvements listed below if applicable to the Project.

1. *Water System* - The Developer agrees to pay the cost of a State of Tennessee approved potable water system, including, without limitation: water mains, fire hydrants, valves, service lines, and accessories, located within the Project, and water mains, fire hydrants, valves, service lines, and accessories, located outside the Project but required to serve the Project. The Developer acknowledges that the Town does not provide water service and will not accept any water system infrastructure. The Developer agrees to bear the cost of all engineering, inspection, and laboratory costs incurred by Developer incidental to the water service system in or to the Project.

2. *Sanitary Sewer System* - The Developer agrees to pay the cost of a State of Tennessee approved sanitary sewer system as required by Town Regulations with necessary sewer mains, manholes, pump stations, force mains and service laterals in the Project, along with all necessary sewer mains, manholes, pump stations, force mains, and service laterals outside the Project but required to provide sanitary sewer service to the Project. **The Developer is approved for three sewer taps.** The Developer agrees to bear the cost of all engineering, inspection, and laboratory testing costs incurred by the Developer incidental to the sewer system in or to the Project, and, if the Town Engineer or his or her designee deems it necessary, to have additional work of such nature performed as directed without cost to the Town.

3. *Streets* - The Developer agrees to dedicate and improve and/or construct, at no cost to the Town, all public and/or private streets, including but not limited to: curbs, gutters, and sidewalks, located within or required by this Project to comply with Town Regulations in accordance with the Final Project Documents.

    a. In some circumstances, the Town may require the payment of an in-lieu of construction fee as an alternate to the construction of the required improvements by the Developer. The amount of any in-lieu construction fee will be one hundred and twenty-five percent (125%) of the

estimated construction cost of the improvements, as determined by the Town in its sole and absolute discretion.

b. The Developer shall furnish and install base asphalt and a final wearing surface asphalt course on all streets, public and private, in accordance with the Town Regulations and the Final Project Documents. The Developer shall make all necessary adjustments to manholes, valve boxes, and other appurtenances as required to meet finished surface grade and to repair any areas designated by the Town, as required prior to the installation of the final surface asphalt.

c. The Developer agrees to install permanent street signposts and markers at all street intersections in the Project and to install traffic control devices, signage, and striping relative to and as required for the Project. All traffic control devices, signage, and striping shall be installed as per the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD) and approved by the Town Engineer.

d. The Developer agrees to pay the cost of all engineering, inspection, and laboratory costs incurred by the Developer incidental to the construction of street(s) to be constructed or improved pursuant to this Agreement, including, but not limited to: material and density testing, and, if the Town Planner or his or her designee deems it necessary, to have additional work of such nature performed as directed without cost to the Town.

4. *Streetlights* - The Developer agrees to pay the cost of installation of Street Lighting along all public roadways improved as part of the Project, with said Street Lighting determined by Town Regulations and Final Project Documents.

5. *Power Distribution Poles* – The Developer agrees to pay the full cost difference between steel electric power distribution poles and the cost of wood electric power distribution poles for the Project frontage. If the Project frontage is along both sides of the public road, the Developer agrees to pay the full cost difference between steel electric power distribution poles and the cost of wood electric power distribution poles for the Project. If the Project is only along one side of the public road, the Developer agrees to pay one-half the cost of the difference between steel electric power distribution poles and the cost of wood electric power distribution poles for the Project frontage.

6. *Gas and Electric Service* - The Developer shall install underground electric and natural gas service to the Project in accordance with Town Regulations in effect at the time of such installation.

7. *Stormwater Management System* - The Developer agrees that all storm water management systems and related facilities, including, without limitation: permanent post-construction storm water runoff management best management practices, ditch paving, bank protection, and fencing adjacent to open ditches, made necessary by the development of the Project are to be constructed and maintained by the Developer.

8. *Stormwater Pollution Prevention Plan* - The Developer agrees that it will prepare, implement, and maintain a Stormwater Pollution Prevention Plan for the Project in accordance with all Town, State, or Federal regulations, and as approved in the Final Project Documents.

9. *Best Management Practices* - The Developer agrees that it will provide all necessary best management practices (BMPs) for erosion and sediment control. BMPs to control erosion and sediment during construction, include, but are not limited to, temporary vegetation, construction exit, inlet protection, and silt fence.

a. All freshly excavated and embankment areas not covered with satisfactory vegetation shall be fertilized, mulched, seeded and/or sodded, or otherwise protected as required by the Town Engineer to prevent erosion.
b. In the event the Town Engineer determines that necessary erosion and sediment control is not being provided by the Developer, the Town Engineer may issue a Notice of Violation (NOV) to the Developer.

10. *Engineer's Certification* - The Developer shall provide the written opinion of a professional engineer, currently licensed to practice in Tennessee, attesting that the entire watershed where the Project Site is located has been reviewed, and that upon full development at the greatest allowable use density under existing zoning of all land within that watershed, the proposed development of the Project will not increase, alter, or affect the flow of surface runoff water, nor contribute to same, so as to damage, flood, or adversely affect any downstream property.

11. *Stream Buffers* - The Developer agrees to provide stream buffers along all regulated watercourses in accordance with Town Regulations and the TDEC General Construction Permit.

12. *Changes and Substitutions* - Should the Developer determine that changes or substitutions to the approved Final Project Documents may be necessary or desirable, the Developer shall notify the Town Engineer, in writing, requesting approval of the desired changes or substitutions, explaining the necessity or desirability of the proposed changes or substitutions. The request by the Developer must be accompanied by sufficient documentation, including drawings, calculations, specifications, or other materials necessary for the Town to evaluate the request. No changes are to be made in the field until express, written permission is granted by the Town Engineer.

IV. PROJECT SCHEDULE

1. *Approved Final Project Documents* – Prior to the recording of the Final Plat, the Developer shall provide to the Town electronic copies (PDF scans) of the Approved Final Project Documents (Collective Exhibit A) along with a signed acknowledgment that the documents submitted are incorporated into this Agreement by reference.

2. *Demolition Permits* - If demolition of any improvement on the Project Site is anticipated, a demolition permit from the Town must be obtained by the Developer.

3. *Certificate of Insurance* - Prior to the recording of the Final Plat, the Developer will furnish to the Town a Certificate of Insurance evidencing the required coverage and listing the Town as additional insured. The furnishing of the aforesaid insurance shall not relieve the Developer of its obligation to indemnify and hold harmless the Town in accordance with the provisions of this Agreement.

4. *Surety* - The Developer must pay all fees, furnish all required Sureties, as determined by the Town, prior to the recording of the Final Plat.

5. *Commencement of Construction* - The Developer agrees to commence construction within twenty-four (24) calendar months from the Effective Date. The failure of the Developer to commence Construction within twenty-four (24) months of the Effective Date will be considered an expiration of the Agreement, and a new agreement shall and must be approved before any Construction may begin.

6. *Project Duration* – It is anticipated that the Developer shall substantially complete the Project on a timely schedule and in an expeditious manner, with the date of Substantial Completion to be not later than **60 months** from when the Developer commences construction of the Project.

7. *Request for Extension* - The Developer agrees that, if due to unforeseen circumstances it is unable to Substantially Complete all work included in this Agreement on or before the Substantial Completion Date specified above, it will submit a written request for extension of the Substantial Completion Date to the Town at least sixty (60) days prior to the specified date, stating the reason for its failure to complete the work as agreed, and a revised Substantial Completion Date. The Town will not unreasonably withhold approval of extensions of time where the Developer has complied with the requirements of notice to the Town and provided any required additional Security.

8. *Breach of Agreement for Time Extension* - The Developer agrees that its failure to follow the extension of time procedure provided herein shall constitute a breach of this Agreement, and the Town may take legal action, in its discretion, as described herein and as allowed by Town Regulations and applicable law.

9. *Withholding or Withdrawal of Service* - The Developer agrees that, should it fail to complete any part of the work outlined in this Agreement in a good and workmanlike manner, the Town shall reserve the right to withhold and/or withdraw all building permits and/or water and sewer service within the Project until all items of this Agreement have been fulfilled by the Developer, or as an alternative draw upon the Security to complete the work.

V. PROJECT CLOSEOUT

1. *As-Built Drawings* - Prior to Final Acceptance, the Developer shall submit as-built plans / as-built drawings of the improvements installed as part of the Project, including but not limited to: the potable water system, the sanitary sewer system, the drainage/detention/stormwater management system, landscaping, irrigations system, photometric plan, and streets including curbs and gutters and sidewalks, signed and sealed by a Design Professional, confirming that the installed improvements are in compliance with Town Regulations and the approved Final Project Documents.

2. *Letter of Completeness* – Prior to Final Acceptance, the Town shall conduct a site check visit and if appropriate issue a Letter of Completeness that the Project is ready to be considered for acceptance by the Board of Mayor and Aldermen. The Letter of Completeness does not constitute acceptance of the Project by the Town. Until Final Acceptance by the Board of Mayor and Aldermen any part of the Project is subject to correction. Developer shall comply with the Town's Dedication of Public Improvements Policy.

3. *Curbs and Gutters* - All required curbs and gutters must be completed and without defect prior to Final Acceptance of the Project. The Developer shall be responsible for repairing any latent defects and/or failures in the curbs and gutters which may occur prior to formal dedication and acceptance of the Project.

4. *Final Construction Cost* - The Developer shall furnish in writing the itemized as-built construction costs of all public improvements prior to issuance of a Letter of Completeness for the Project.

5. *Tree Mitigation/Replacement* - Prior to the issuance of a Letter of Completeness, the Developer shall submit an as-built landscaping plan that reflects the required tree mitigation and replacement as well as all revisions to the mitigation plan as approved by the Planning Commission. Tree mitigation/replacement shall be reviewed by the Town Planner.

6. *Sidewalks* - All required sidewalks shall be completed and without defect prior to acceptance of the Project. The Developer shall be responsible for repairing any latent defects in the sidewalks prior to acceptance of the Project. All references to sidewalks include required handicap ramps. Nothing herein shall be construed to require acceptance of sidewalks by the Town for a Project.

VI. SECURITY

1. *Cost Estimates* - The Developer shall furnish to the Town estimates as to quantity and cost of all public improvements relative to the Project, such estimate being set forth on **Exhibit "C"** attached hereto and incorporated herein by reference. These estimates will be used to assist the Town Engineer in establishing the amount of Security required for the Project.

2. *Security for Public Improvements* - The Developer shall provide, at the time of final plat to the Town, a Performance Security instrument in the amount which sum represents and totals to one hundred and ten percent (110%) of the estimated cost of all approved public improvements.

3. The Performance and Maintenance Security shall have an expiration date of one (1) year after the Effective Date, but **shall automatically renew** for successive one (1) year periods without effort or action by the Town until the Security is released by the Town at the time of acceptance, and the Performance and Maintenance Security documentation shall reflect the aforementioned requirements.

4. *Form of Security* - The form and substance of any Security shall be subject to the approval of the Town Attorney. A copy of the Performance Security is attached to this Agreement as **Exhibit "D"** and made a part hereof guaranteeing, to the extent of the Security, the faithful performance of this Agreement by the Developer. The Security, if a Letter of Credit, shall provide that the physical presence of a representative of the Town shall not be required for presentation and that venue and jurisdiction shall be in a court of competent jurisdiction in Williamson County, Tennessee.

5. *Notification of Non-Renewal* - Should the Issuer or Developer elect to not renew the Performance Security, written notice must be received by the Town no later than ninety (90) days prior to its expiration date, at which time the Town may draw up to the face value of the Performance Security in the Town's unfettered discretion. Failure to provide notice as herein described shall be considered a material breach of this Agreement and the Security, and the Town may institute legal proceedings as provided herein and be awarded reasonable attorney's fees and litigation costs for said legal proceedings.

6. *Maintenance Security* - The amount of the Performance Security may be reduced to a reasonable sum as determined by the Town Engineer to cover Developer's warranty obligations hereunder, thus establishing a Maintenance Security instrument. The Maintenance Security shall remain in place until the Security is released by the Town at the time of dedication and acceptance.

7. *Full Financial Responsibility* - It is understood and agreed by the Developer that the Performance Security and the Maintenance Security, subject to their limits, are to furnish Security for the

Developer's obligations hereunder, but that such obligations are not limited by the amount of such Security. The Security shall remain in force until the Security is released by the Town, although the same may be reduced from time to time as provided herein. All collection expenses, court costs, attorney's fees, and administration costs incurred by the Town in connection with collection under the Security shall be paid by the Developer and such obligations are included in the amount of the Security.

8. *Right of Town to Performance Security* - The Town reserves the right to draw upon the Performance Security, in an amount deemed necessary by the Town in its sole discretion, upon failure of the Developer to comply with any obligations of Developer contained in this Agreement which arise prior to, or as a condition to, acceptance.

9. *Right of Town to Maintenance Security* - The Town reserves the right to draw upon the Maintenance Security, in an amount deemed necessary by the Town in its sole discretion, upon failure of the Developer to comply with any obligations of Developer contained in this Agreement which arise prior to, or as a condition to, acceptance.

10. *Current Project Cost* – The Developer agrees that if the Security furnished to secure the obligations of the Developer under this Agreement, due to inflation and/or rising costs, previous errors in estimation, or any other reason, is inadequate to secure such obligations at the time an extension of time is sought, the Developer will provide additional Security to bring the Security amount in line with current cost projections made by the Town Engineer.

VII. WARRANTY

1. *Warranty Period* - The Developer is required to complete the Public Improvements and all other improvements required herein and by Town Regulations relative to the Project, in accordance with the terms of this Agreement. Further, the Developer is to correct any defects or failures as directed by the Town Planner or his or her designee that occur to any such improvements within one (1) year following acceptance.

2. *Scheduled Inspections* - Prior to the expiration of the Warranty Period, Town staff may inspect the streets, curbs and gutters, sidewalks, drainage/detention/stormwater management system, landscaping, lighting, irrigation, fencing and all other required improvements to determine any defects or failures of the same.

   a. Prior to the end of the Warranty Period, the Town will perform an inspection and prepare a list of defects and/or other work that maybe required for the Town to accept the improvements for permanent maintenance. The list of defects and/or other required work will be furnished to the Developer no later than forty-five (45) days from the end of the Warranty Period.

   b. If no defects or failures are found by the Town at such inspection, or if a defect is found by the Town but same is cured prior to the end of the Warranty Period, the Town Planner or his or her designee shall recommend that the Board of Mayor and Aldermen (BOMA) accept the improvements for permanent maintenance and any remaining Maintenance Security may be released.

Nothing herein shall be construed to impose a duty on the Town to inspect the required improvements or to relieve Developer of any liability related to these improvements.

3. *Re-Inspection* - If all deficiencies noted in the inspection have not been corrected by the Developer prior to the expiration of the Warranty Period, Town staff shall re-inspect the Project and provide an updated list of deficiencies. The Developer shall have a specified number of days, as determined by the Town, to make the remaining corrections, and the Warranty Period will be extended to allow the deficiencies to be corrected. If all corrections are not made by the Developer by the end of the time extension, the Town may demand payment on the Security and draw upon the same, and, upon collection, shall proceed to make the corrections. If and when the Developer or the Town, as the case may be, has corrected all failures and defects, the Town Planner or his or her designee shall recommend Final Acceptance by the BOMA and any remaining Maintenance Security may be released.

4. *Formal Acceptance* – Upon recommendation of the Town Planner or her designee, the BOMA may approve acceptance of the Project, including the release of the Maintenance Security, and assume full ownership and maintenance responsibility for all public improvements associated with the Project, if the BOMA determines that acceptance of the dedication of the Public Improvements by the Developer is warranted under Town Regulations and applicable State and Federal laws.

VIII. INSURANCE

1. *Comprehensive General Liability Insurance* - The Developer shall purchase and maintain comprehensive general liability and all other necessary and required insurance that shall insure against claims arising out of the Developer's performance, or non-performance, under this Agreement, whether such claims arise out of the actions or lack of action of the Developer, any subcontractor of the Developer, their employees, agents or independent contractors or anyone for whose actions or lack of action any of them may be liable, including, without limitation:

   a. Claims for the personal injury, occupational illness or death of the Developer's employees, if any;
   b. Claims for the personal injury, illness or death of any person other than the Developer's employees or agents;
   c. Claims for injury to or destruction of tangible property, including loss of use resulting therefrom;
   d. Claims for property damage or personal injury or death of any person arising out of the ownership, maintenance or use of any motor vehicle; and,
   e. Claims by third parties for personal injury and property damage arising out of the Developer's failure to comply with the Developer's obligations under this Agreement.
   f. Claims brought under worker's compensation; provided, however, if Developer has no employees who are eligible to be covered under worker's compensation insurance, the Developer shall not be required to furnish insurance against worker's compensation but shall require the party(s) contracting with Developer to perform work on the Project Site to furnish evidence of such insurance for the employees of same.

2. *Coverage Required* - The insurance coverage required by this Agreement shall include the coverage specified above with policy limits of not less than $1,000,000 Combined Single Limit general liability and $500,000 Combined Single Limit automobile liability per occurrence.

   a. The comprehensive general liability insurance coverage shall include completed operations insurance coverage and liability insurance applicable to the Developer's obligations under this Agreement.

b. Each insurance policy shall contain a provision stating that the insurer will give the Town thirty (30) days prior written notice of its intent to cancel or materially change the policy. All such insurance shall remain in effect until the BOMA approves acceptance and releases of Security of the completed Project.

c. In addition, the Developer shall maintain completed operations insurance for at least one (1) year after the BOMA approves acceptance and release of the applicable Security.

d. The Developer shall furnish the Town with evidence of the continuation of all such insurance at the time of issuance of the notice of acceptance and release of Security.

XII. MISCELLANEOUS PROVISIONS

1. *Notices* - All notices, demands and requests required or permitted by this Agreement shall be in writing (including telecopy communications) and shall be sent by email, certified mail, or hand delivery. Any notice, demand or request which is mailed, hand delivered or sent by courier shall be deemed given for all purposes under this Agreement when delivered to the intended address.

TOWN	**DEVELOPER**	**OWNER**
Town of Thompson's Station P. O Box 100 Thompson's Station, TN 37179	MBSC TN Homebuilders, LLC 312 South Gay Street, Suite 200 Knoxville, TN 37902	Same

2. *Change of Address* - Any party to this Agreement may change such party's address for the purpose of notices, demands and requests required or permitted under this Agreement by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

3. *Choice of Law & Venue* - This Agreement is being executed and delivered and is intended to be performed in the State of Tennessee, and the laws (without regard to principles of conflicts of law) of the State of Tennessee shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof. Venue for any action arising from this Agreement shall be in a court of competent jurisdiction in Williamson County, Tennessee.

4. *Joinder of Owner* - If the Developer is not the Owner of the Project Site, the Owner shall join in this Agreement, and, by the Owner's execution of this Agreement, the Owner is jointly and severally liable for the representations, warranties, covenants, agreements and indemnities of Developer.

5. *Interpretation and Severability* - If any provision of this Agreement is held to be unlawful, invalid, or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such unlawful, invalid, or unenforceable provision was not a part of this Agreement. Furthermore, if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which rends it valid.

6. *No Waiver* - The failure of the Town to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Agreement, or to exercise any right herein conferred, in

any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

7. *Amendments and Modification* - This Agreement shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties. All legal fees, costs and expenses incurred with agreement modifications shall be at the sole expense of the Developer.

8. *Authority to Execute* – Town, Developer, and Owner each warrant and represent that the party signing this Agreement on behalf of each has authority to enter into this Agreement and to bind them, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

9. *Binding Agreement* - This Agreement is the full and complete agreement between the Town and the Developer and/or Owner(s) and supersedes all other previous agreements or representations between the parties, either written or oral, and the parties agree that the terms and provisions of this agreement is binding upon all parties to the Agreement and their respective heirs, successors, or assigns until the terms of the Agreement are fully met.

WITNESS the due execution hereof:

DEVELOPER:

_____

Brant Enderle, Manager

Print Name & Title

Date: 10/1/2019

OWNER (if applicable):

_____

_____

Print Name

Date:_____

TOWN OF THOMPSON'S STATION:

_____

Mayor Corey Napier

Date:_____

Exhibit "A"

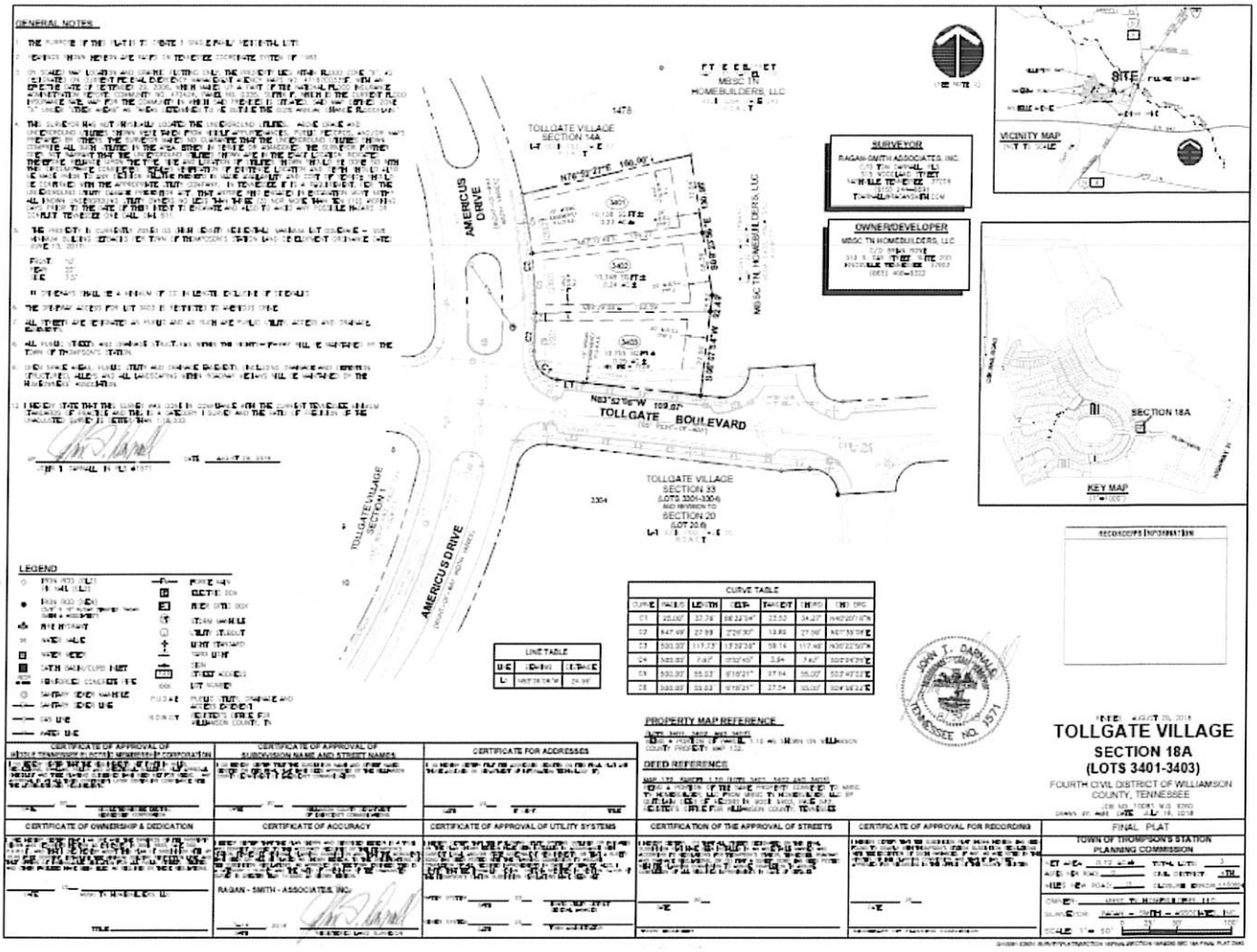
GENERAL NOTES
SURVEYOR
OWNER/DEVELOPER
VICINITY MAP
SITE
KEY MAP
SECTION 18A
TOLLGATE BOULEVARD
AMERICUS DRIVE
TOLLGATE VILLAGE SECTION 14A
TOLLGATE VILLAGE SECTION 20
LEGEND
CURVE TABLE
LINE TABLE
PROPERTY MAP REFERENCE
DEED REFERENCE
TOLLGATE VILLAGE
SECTION 18A
(LOTS 3401-3403)
FOURTH CIVIL DISTRICT OF WILLIAMSON COUNTY, TENNESSEE
CERTIFICATE OF APPROVAL OF
CERTIFICATE FOR ADDRESSES
CERTIFICATE OF OWNERSHIP & DEDICATION
CERTIFICATE OF ACCURACY
CERTIFICATE OF APPROVAL OF UTILITY SYSTEMS
CERTIFICATION OF THE APPROVAL OF STREETS
CERTIFICATE OF APPROVAL FOR RECORDING
FINAL PLAT
TOWN OF THOMPSON'S STATION PLANNING COMMISSION

Exhibit "B"

Phone: (615) 794-4333
Fax: (615) 794-3313
www.thompsons-station.com

1550 Thompson's Station Road W.
P.O. Box 100
Thompson's Station, TN 37179

PLANNING COMMISSION ACTION FORM

September 26, 2018

Ragan Smith & Associates
Attn: Tom Darnell
315 Woodland Street
Nashville, TN 37206

Request: **Tollgate Village, Section 18A, Residential --** (File: FP 2018-016)

At the September 25, 2018 Planning Commission meeting, the request for a final plat to create three single-family lots was approved with the following contingencies:

1. Prior to the recordation of the final plat, the plats with all remaining open space shall be recorded.
2. Prior to the recordation of the final plat, the development agreement for phase 18 shall be approved and executed between the Town and the developer.
3. Prior to recordation of the final plat, a surety shall be submitted to the Town in the amount of $16,500 for sewer with automatic renewal.
4. As built drawings shall be required for the drainage and sewer system with a letter from the Design Engineer that they are constructed per the approved drawings and functioning as intended.

Exhibit "C"

Estimated Cost of Public Improvements

WOMBLE, LLC.
GRADING / UTILITIES / EROSION CONTROL
184-A Molly Walton Drive
Hendersonville TN 37075
Ph: 615-822-3944 Fax: 615-822-3945

10/4/2019

Attn: Brian Rowe
MBSC
312 S Gay Street, Suite 202
Knoxville TN 37902

RE: Tollgate Section 18A proposal.

Provide materials and installation of sewer line, per attached Town Approved Plans.

TOTAL $ 65,000.00

NOTES:

The above pricing does not include grading.

Sincerely,

Peyton Womble

Peyton Womble
Womble LLC
615/642-5618

Exhibit "D"

IRREVOCABLE STANDY LETTER OF CREDIT – MUST COMPLY WITH ALL TERMS OF § 5.2.10(c) OF LAND DEVELOPMENT ORDINANCE

Date: October 15, 2018

Irrevocable Letter of Credit #: 251
Amount: $16,500.00
Applicant/Developer: MBSC TN Homebuilder, LLC

TO: The Town of Thompson's Station, Tennessee

We, Triumph Bank, hereby issue in your favor this irrevocable Letter of Credit, which is available by payment as set forth herein for MBSC TN Homebuilder, LLC.

The amount of this Letter of Credit is $16,500.00 (Sixteen Thousand Five Hundred and 00/100 dollars). This amount may be reduced only by written approval of the Town of Thompson's Station ("Town").

This Letter of Credit is available by payment of your draft at sight drawn accompanied by this original Letter of Credit and a statement from the Town, on Town letterhead, that MBSC TN Homebuilder, LLC has failed to comply with its obligations related to completion and maintenance of the sewer in Section 18A of Tollgate Village S/D, or under its Development Agreement with the Town.

In the event of a partial draw by the Town, the date and amount of such draw shall be noted on the original Letter of Credit and such original shall be returned to the Town.

This Letter of Credit is valid for one calendar year from the above date and shall be automatically renewed for successive one-year periods unless we notify the Town in writing, at least 90 days prior to the expiration date, of our intention not to renew. Such notice shall be construed as default and grant the Town the right to draw the full amount (or unused balance) of the Letter of Credit.

Presentation of this Letter of Credit for payment may be made by Town at Triumph Bank, 278 Franklin Road, Suite 100, Brentwood, TN 37027, Williamson County, Tennessee. Any litigation with regard to this Letter of Credit shall be held in Williamson County, Tennessee.

Drafts drawn and negotiated in conformity with this Letter of Credit will be duly honored on presentation. Except as expressly provided herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce, as revised, and applicable laws of the State of Tennessee.

TRIUMPH BANK

By: _____

William C. Menkel
Executive Vice President

Phone: (615) 794-4333
Fax: (615) 794-3313
www.thompsons-station.com

1550 Thompson's Station Road W.
P.O. Box 100
Thompson's Station, TN 37179

MEMORANDUM

DATE: October 29, 2019

TO: Board of Mayor and Aldermen (BOMA)

FROM: Wendy Deats, Town Planner

SUBJECT: Item 7 - Bridgemore Phase 6, Section 6A Road Dedication and Surety Reduction

---

The developer of the Bridgemore Village subdivision has requested the Town's acceptance of all infrastructure within Phase 6, Section 6A in the development. This section consists of development consists of 21 single family lots. Improvement within this section are fully complete including final topcoat of pavement.

If accepted, the Town would be assuming responsibility for all public infrastructure within the development including storm drains, roadways, and wastewater facilities.

The development has been evaluated and the following maintenance surety amounts are being recommended:

Roads, Drainage, and Erosion Control	$15,300
Wastewater Collection System	$11,700

These amounts will be held in place for one year to ensure infrastructure is performing as expected. Engineering certification and as-built documents have been received as required by the Town's Dedication Policy.

BOMA Action:

Approve the request for acceptance of the public infrastructure and set maintenance surety amounts as recommended.

RESOLUTION NO. 2019-027

A RESOLUTION OF THE TOWN OF THOMPSON'S STATION, TENNESSEE TO ACCEPT THE DEDICATION OF PUBLIC INFRASTRUCTURE WITHIN PHASE 6, SECTION 6A OF BRIDGEMORE VILLAGE AND SET A MAINTENANCE SURETY FOR A PERIOD OF ONE YEAR.

WHEREAS, Blueprint Properties, LLC ("Developer") has completed Phase 6, Section 6A of Bridgemore Village and is requesting the Town accept their dedication of the public infrastructure for such section;

WHEREAS, the Town's Land Development Ordinance requires the acceptance of streets, and other public improvements for public maintenance, except utilities, shall be action of the Board of Mayor and Aldermen; and

WHEREAS, the Town's Land Development Ordinance requires that the developer shall be required to maintain all improvements for one year after acceptance of the public improvements by the Town and a maintenance surety will be required for a period of one year; and

WHEREAS, the Board of Mayor and Aldermen have determined that it is in the best interest of the Town to accept the public infrastructure as shown in the attached recorded plat for Phase 6, Section 6A of Bridgemore Village.

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the Town of Thompson's Station as follows:

That the public infrastructure within Section 6A (see attached plat hereto as Exhibit A and incorporated herein by reference), is accepted and a surety shall be set for a period of one year.

RESOLVED AND ADOPTED this 12th day of November, 2019.

_____
Corey Napier, Mayor

ATTEST:

_____
Regina Fowler, Town Recorder

APPROVED AS TO LEGALITY AND FORM:

_____
Town Attorney

Phone: (615) 794-4333
Fax: (615) 794-3313
www.thompsons-station.com

1550 Thompson's Station Road W.
P.O. Box 100
Thompson's Station, TN 37179

DATE: November 1, 2019

TO: The Board of Mayor and Aldermen (BOMA)

FROM: Tyler Rainey, IT Coordinator

SUBJECT: **Approval of Proposal for the SmartGov Permit software**

INTRODUCTION: The growth of the Town in recent years has required personnel expansions to the Planning/Zoning and Building Codes Departments. Continued growth requires the updating of paper-based processes with the implementation of a digital system to track/review developments, permits and code inspections.

BACKGROUND: The Town currently uses paper-based processes for plan review, permit applications, code enforcement and inspections. All applications must be submitted either in person or by mail during regular office hours. Inspection requests are made through a website form and inspectors are given daily printed inspection sheets where they record the inspection results. Builders must either call in or locate the pass/fail sticker on-site to determine the status of their inspection. Plan reviews are done on full-size construction documents and when revisions are necessary, the plans must be picked up, revised, reprinted and dropped off again. Full plan sets must also be delivered to and reviewed by Civil Engineers, Sewer Operators, Codes Officials, etc.

DISCUSSION: With the current system, many of the processes associated with the life-cycle of a permit are redundant and require excessive staff time to complete. Paper plan reviews not only take additional time to hand-write and deliver but also lack the ability to track the progress of a permit or development in a way that is accessible for all employees and contractors. This not only is an inefficient use of staff time, but it also does not provide a desirable level of customer service.

After consulting with planning & zoning employees and Town codes officials, several requirements for a permit software system were determined. These include:

- Cloud-based to allow 24/7 customer and employee access from multiple locations.
- Contractor portal to allow builders to submit, review and track permits online.
- Customizable workflows that can accommodate our specific permitting and reviewing processes and track projects from plan submittal to Certificate of Occupancy.
- Mobile device access to allow town officials to conduct building and code enforcement inspections while out in the field from a tablet or mobile phone. Results can automatically be sent electronically to contractors.
- Merchant connector portal to allow online payments of permit/inspection fees by contractors.

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Fax: (615) 794-3313
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1550 Thompson's Station Road W.
P.O. Box 100
Thompson's Station, TN 37179

- Electronic Plan Review to streamline the reviewing process.
- GIS Integration to allow permits/inspections/codes enforcement issues to be tracked by location and/or attribute feature.
- Code Enforcement module that allows each step taken in a codes enforcement case to be tracked and recorded.
- Reporting features that automatically send customized emails on a regular basis for building and financial reports.

Based on these requirements, Town Staff conducted interviews and demos with multiple permit software companies used by local municipalities. The vendors were narrowed down to the top three candidates that met our requirements and additional presentations were made to provide insight into implementation, process management, training and support, and overall functionality of the software being presented. The SmartGov software provided by Dude Solutions was unanimously chosen as the recommended software solution.

FINANCIAL SECTION: The 2019-2020 Town Budget includes $100,000.00 for Municipal Software Upgrades under Capital Improvements. The first year's subscription cost ($11,312.25) and the one-time implementation costs ($23,280.00) are included in the $34,592.25 quote with the first annual renewal due one-year from the date the software is in service at a cost of $15,083.00.

Staff recommends that the Board of Mayor and Aldermen approve the execution of a contract with Dude Solutions for purchasing a subscription for the SmartGov Permit Software.

Attachments
Resolution 2019-029
SmartGov Proposal/SOW
Online Subscription Agreement
Software Product Information
Sample Implementation Timeline
Permit Software Review Spreadsheet

RESOLUTION NO. 2019-029

A RESOLUTION OF THE TOWN OF THOMPSON'S STATION, TENNESSEE APPROVING THE SUBSCRIPTION AGREEMENT WITH DUDE SOLUTIONS, INC.

WHEREAS, the Town has a need for a SmartGov Professional Services; and

WHEREAS, SmartGov streamlines permitting, planning/zoning, inspections, code enforcement, and business licensing providing efficiencies in said areas; and

WHEREAS, the Board of Mayor and Aldermen has determined that it is in the best interest of the Town to approve the proposed subscription agreement and corresponding statement of work from Dude Solutions, Inc.

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the Town of Thompson's Station as follows:

That the subscription agreement, and corresponding statement of work, is hereby approved, and the Mayor is authorized to execute said agreement on behalf of the Town.

RESOLVED AND ADOPTED this 12th day of November 2019.

_____

Corey Napier, Mayor

ATTEST:

_____

Town Recorder

APPROVED AS TO LEGALITY AND FORM:

_____

Town Attorney

Dude Solutions

Software for Smarter Operations

PREPARED FOR

Town of Thompson's Station

Tyler Rainey
IT Managment
1550 Thompson's Station Road West
Thompson's Station, TN 37179

PREPARED BY

Dude Solutions, Inc.

PUBLISHED ON

October 08, 2019

This SOW has been defined to leverage DSI's experience, while optimizing the use of resources, thereby maximizing cost efficiencies on behalf of Client.

Based on our current understanding of the complexity and scope of this effort and the expected involvement of the DSI team resources, the current estimated Fixed Price for this engagement is shown in the Investment table. This estimated cost breakdown is as follows:

Pricing is based on...

Solutions - Subscription	
SmartGov Public Portal	
SmartGov User License	
SmartGov Connector Parcel	
SmartGov Connector BlueBeam	
Subscription Term: 12 months 3 months included at no additional cost	**Subtotal:** $11,312.25

Implementation & Services	
Portal Configuration	
Fees Configuration (Pages)	
Onsite Training 2 day Package	
Project Management	
Parcel Connector Configuration	
Department Types / General Configuration	
Digital Mark-up Tool Connector Configuration	
	Subtotal: $23,280.00
Total Initial Investment	**$34,592.25 USD**

Pricing for the First Renewal Term is estimated at: $15,083

The above level of effort and associated pricing is based on the SMARTGOV package selected by Town of Thompson's Station and is subject to change based on defined client requirements that may be discovered during project delivery. Any identified project scope or requirements changes will be addressed via DSI Change Control Authorization ("CCA") process.

Introduction

Dude Solutions, Inc. ("DSI") is pleased to submit this Statement of Work ("SOW") to Town of Thompson's Station for SmartGov Professional Services. SmartGov streamlines permitting, planning/zoning, Inspections, code enforcement, and business licensing, providing efficiency for your jurisdiction and enhanced customer service for your citizens. The package Town of Thompson's Station has chosen for implementation of SmartGov will be implemented using proven processes and methodologies managed by an experienced project manager dedicated to delivering a successful project.

DSI looks forward to the opportunity to deliver these services and the ever-lasting development of a strong business partnership.

Definitions

In addition to the terms defined elsewhere in this SOW, the following terms have the following meanings:

"Change Control Authorization" or "CCA" means any request by the client to modify the scope of work, schedule, or costs will require preparation of a Change Control Authorization ("CCA" or "change order") form detailing the work to be performed, as well as the associated costs and schedule impact. Additional work will be performed only after both parties have duly executed the CCA. Scope of work changes will impact the project schedule which will be updated to reflect such changes upon CCA approval.

"Closing Phase" means the phase that represents the completion of a project where all metrics are finalized, all deliverables are complete and accepted by client, and all remaining billing/invoicing takes place prior to project closure and acceptance.

"Deliverable Acceptance Form" means the form that is a standard PMO form used for client to agree to accept a deliverable as complete and final.

"Escort" means the client provided resource/person to take Dude Solutions, Inc. ("DSI") resources around client facilities and provide access to restricted areas agreeable between client and DSI as needed.

"Executing Phase" means the phase of the project where deliverables are developed and completed.

"Fixed Price/Fixed Fee/Fixed Price Project" means the project pricing includes all services, tasks, and expenses associated with the client project.

"Monitoring and Controlling Phase" means the phase for measuring project progression and performance and ensuring that everything happening aligns with the project management plan.

"Onsite Services Completion" means onsite services have been completed and when necessary, the Deliverable Acceptance form will be used to document the completion of deliverables provided during the onsite services visit.

"Orientation Call" or "Project Kick-Off Call" means the call/meeting which begins the project and proper expectations are set between DSI and the client.

"Output Documents" standard or custom documents generated from SmartGov "e.g. permits, Certificates of Occupancy, violation letters, business licenses, receipts"

"Orientation Call Completion" means the Orientation Call or Project Kick-Off Call has been completed and the project has begun and proper expectations have been set between DSI and the client.

"Professional Services or Services" means professional, technical, consulting and/or other services.

"Project Completion" means the project completion occurs when all deliverables of the project have been completed and accepted by the client via the Project Completion Acceptance Form.

"Project Completion Acceptance Form" means the form that is a standard PMO form used for client to agree to accept a project as complete and final.

"Project Management Methodology" means the manner and process used to deliver services projects.

"Project Management Office" or "PMO" means the office that provides the oversight and standardized processes to consistently deliver projects in a concise, consistent, and standardized manner. The PMO manages and maintains the processes and standard templates utilized to manage DSI projects.

"SmartGov Modules" means the Permitting Module (permits for all departments), the code Enforcement Module, the Business Licensing Module, and the Recurring Inspection module.

"Software Component Configuration" means the components within the software have been configured per client specifications.

"Statement of Work Acceptance" means the signing and accepting of the terms of the Statement of Work document by client.

"Support Engagement" means the point in the project where implementation services end and product support begins.

"System Configuration Completion" means the configuration items within the software have been configured per client specifications.

"System Level Configuration Items" standard configurable items that are applied across departments and case templates.

"Training Completion" means the onsite or virtual training has been completed and when necessary, the Deliverable Acceptance form will be used to document the completion of deliverables provided for completion of the onsite or virtual training services.

"User Acceptance Testing – UAT" means that after the system is configured the client will have an opportunity to perform user level testing based on client developed test scripts. DSI will correct issues as documented and presented during this process.

Project Scope and Approach

Implementation Process Overview

In order to successfully implement the SmartGov application, DSI will work with Town of Thompson's Station to understand requirements necessary to configure and set up the SmartGov application to streamline processes related to permitting, planning/zoning, inspections, code enforcement and business licensing for your jurisdiction and citizens. Once the Town of Thompson's Station has reviewed, and approved these requirements and processes, DSI will configure and setup the application to support the Town of Thompson's Station's unique business rules.

Following the configuration and modeling work, DSI will train the Town of Thompson's Station's team using its jurisdiction-specific configuration. After training, DSI will work with Town of Thompson's Station to test the work performed and provide the necessary updates to successfully implement the solution. The system will then be ready to go live in production. If the Town of Thompson's Station purchases "Go-Live Support" packages, DSI will provide support for the period of time defined in the statement of work.

Customer Implementation Engagement Sessions ("CIES")

Client project team representatives and DSI project team representatives will dedicate time to meet in person or via teleconference to maintain communication and conduct coordination of project activities and tasks.

Deliverables

Dude Solutions will provide the following task deliverables:

- Project Management Meeting Schedule
- Data Migration and Technical Design Meeting Schedule
- Configuration Meeting Schedule
- Meeting notes or recordings for all scheduled meetings

The client will provide the following resources or task deliverables:

- A complete project team roster, including email addresses, phone numbers, and roles / titles
- Necessary communication / information to allow all project schedules to be finalized
- Timely response to task-related emails or phone calls to enable on-time completion of all assignments
- A minimum of 24-hour notice if all minimum required members for any scheduled meeting cannot attend the meeting. This will allow the meeting coordinator sufficient time to cancel or re-schedule the meeting as necessary

Assumptions and Constraints

- Initial proposed meeting plans from DSI will reflect the minimum recommended frequency, duration, participants (by job title or role), topics, and action items to address the full SOW
- Final meeting plan will be approved by the client key sponsor(s)
- Coordination and integration of the PM meeting, data migration, technical design meeting, and configuration meeting will align with the scope of the project, client organizational structure, and assigned resources
- The Client will provide dedicated knowledgeable technical resource available for questions

- The Client will provide a dedicated knowledgeable resource for mapping analysis
- The Client will provide read only access and screen shots for various permits/case types to provide context to DSI data migration specialists
- The Client will provide resources for validation throughout the process
- Client will provide side-by-side data entry for 2 weeks prior to go-live
- Response time for questions is one business day
- DSI may require up to 3 backups of data for each database throughout the process

Planning, Initial Set Up & System Level Configuration

Configuration begins with planning and analysis necessary to establish the overall configuration approach. After planning, and once the approach is documented and agreed to, DSI will set up the SmartGov environments to support implementation. DSI implementation specialists begin configuration with system level items or items that apply generally across all departments and types of configuration items.

Setup of environments to support SmartGov implementation and configuration of core items in each SmartGov module that are specific to Town of Thompson's Station 's requirements. These core items are defined/ configured at the client level [i.e. these are configurable items that will be standard or shared across all departments and configuration types].

Deliverables

Dude Solutions will provide the following task deliverables:

- A Configuration Plan document that includes:
  - Identified current and future state business processes to be supported by the final product via the configuration work effort
  - Recommended approach to configuration that supports the identified business processes and activities
  - Configuration details for all permit, inspection, license, and code enforcement types to be configured in SmartGov. All templates required for creating the configuration types will be created in SmartGov based on requirements gathered in meetings with the client
- SmartGov Environments to support the implementation process including:
  - Configuration (Dude Solution access only for configuration)
  - Validation (client has access for testing, can be refreshed with configuration copy upon request)
  - Training
- Weekly configuration status reports (in PDF format) generated from the client specific configuration instance of SmartGov. These reports serve as the primary source to demonstrate core configuration elements, status, and needs
- Jurisdiction configuration, per Configuration Plan, to include as needed:
  - Parcel and/or address information management
  - Contact information management
  - Contractor license information management
  - Receipt/transaction information management
  - Inspection scheduling information management
  - Configurable screen display settings

- User configuration per Configuration Plan, to include as needed:
    - Individual User Rights
    - Available Departments
    - Available Distribution Groups
    - Available Inspection Qualifications
    - Available Security Groups
- Job configuration per Configuration Plan, to include as needed:
    - Default list of available queued jobs
    - Queued job parameters
- Administrative & shared configuration rules per Configuration Plan, to include as needed:
    - Administrative processing rules where available in the configurable Jurisdiction Values list
    - Standard status options for cases, submittal items, workflow steps, step actions, inspection types, inspection actions, accounts, and intervals
    - Standard expiration rules
    - Standard online processing rules [for the portal]
    - Standard reports available across all case types

Assumptions and Constraints

- The Configuration Plan will be based on information delivered to, or collected by, the DSI Implementation Specialist within a specified time frame established at the project kick-off
    - During the development of the Configuration Plan, the client provides representatives for all work units with work activity to be supported by the final delivered product
- Client will provide access to the appropriate leaders and/or subject matter experts to ensure meaningful engagement at all required meetings and to ensure on-time completion of assigned action items
- Client will provide access/links to any public, or private, web sites or operating systems, if needed, to gather complete business requirements
- The Configuration Plan can meet client requirements and can be fully executed within existing product design in all modules
- The Configuration instance will be solely owned by the DSI Implementation team and serves as the primary source for the final delivered product design
- The Validation instance will be sole source used by the client to complete all assigned configuration UAT tasks
- The Training instance will be used solely by members of the client project team to assist in understanding SmartGov functionality. It will contain default data sets and serves as a temporary "sand box" for assigned users.
- The client will designate one person on their project team to serve as the final decision-maker for all system level configuration elements. These are configured settings that are shared across SmartGov modules, and/or are settings common to all departments / divisions / users

- When configuration tasks, or related work effort, requires information to be submitted to the DSI Implementation team in a specific file format or within specified parameters, the client is able to comply with these stated requirements
    - Note: If the client cannot provide information in the DSI standard format, the assigned Project Manager will determine if a formal Change Request or additional contracted SOW is needed to provide assistance in developing or converting the information into the desired format

Module Case / Department Types

SmartGov implementation activities include the set up of case templates in one or more of these modules: Permitting, Licensing, Code Enforcement and Recurring Inspections. These case templates must be used to create records in SmartGov in each module. Your DSI Implementation Specialist will provide specific information about the minimum required elements to be configured for the case templates in each module; these required case template elements do vary by module.

Deliverables

Dude Solutions will provide the following task deliverables:

- Case template baseline elements, per the Configuration Plan, to include as needed:
    - Case record reference information
    - Template specific expiration, renewal or interval rules
    - Template specific default submittal list
    - Template specific details (custom attributes) that are required for any of the following: application intake, workflow step completion, inspection completion, fee calculation, or mandatory regulatory reporting
    - Template specific default workflow steps for Admin, Review, and Final work lists
    - Template specific default inspection list
    - Template specific list screens such as Bonds, Fixtures, Valuations, Violations, Citations, Lien, or Items
- Once baseline case template configuration is completed, any expanded configuration beyond baseline must be discussed during Configuration Meetings with the Implementation Specialist and approved by the assigned PM. Expanded configuration elements, if approved, may include
    - Non-essential custom attributes
    - Work step dependencies and due dates
    - Step actions and Inspection actions
    - Default Parent-Child case linkages
    - Workflow cycling feature
    - Template specific tab appearance
    - Standard note types and note codes
    - Standard condition types and conditions
    - Standard code references
    - Template specific report links

The client will provide the following resources or task deliverables:

- Specific lists of all types of applications, forms, or other documents that describe all services to be supported by SmartGov at the time of project "Go Live"
    - This list should be inclusive of all in-scope departments
    - This list should conform to requested formatting and scope instructions, as communicated by DSI
- A PDF or Word version of all customer-facing documents (forms, letters, cards, etc.) expected to be generated by SmartGov
- A publicly accessible URL, or electronic copies of reference information, that provide all pertinent state, county or local regulatory information that are known to impact business operations to be supported by SmartGov
- A fully approved version of the template validation workbook
- Approval via email or other written correspondence of any other identified forms, as requested by the Implementation Specialist

Assumptions and Constraints

- The scoped number of department templates for this SOW are 17 types. If the number of department types identified during the configuration work effort exceed the number of types scoped for this SOW, the additional types may be introduced into the scope of the project via the DSI CCA process once signed and approved by the DSI Project Manager and the client Project Manager.
- Case template configuration will be completed within existing product design in each module.
- DSI will configure each application or request type in the SmartGov module that best supports the associated workflow. The primary goal of configuration of case templates is to optimize SmartGov capability
    - Note: This assumption means that recommended case template configuration may or may not align with current internal customer naming convention or legacy system design
- The total number of case templates to be configured across all modules will be stated in the Configuration Plan. This total may vary from the initial sales order, where applicable, if approved by the DSI Project Manager
- A complete list of case templates to be configured across all modules will be approved by the client key sponsor, or their delegate, no later than the third Configuration Meeting
- Baseline configuration for case templates identified in the Configuration Plan will be completed before any expanded template configuration work will be done
- Baseline configuration for case templates listed in the Configuration Plan will support the end-to-end work steps that correspond to each default SmartGov Process State in the applicable module.
- If case templates or department types are identified during the configuration work effort, that are not documented in the original Configuration Plan or exceed the number of types scoped for this SOW, the additional templates or types may be introduced into the scope of the project via the DSI CCA process once signed and approved by the DSI Project Manager and the client Project Manager.
- Super Admin training will include how to maintain or update case templates

Financial Setup and Fees Pages

Configuration of GL Accounts and Fee Codes as needed to support financial transactions for any business activity to be supported by SmartGov.

Deliverables

Dude Solutions will provide the following task deliverables:

- A weekly Fee List Report that reflects all configured active fees and their associated GL Accounts
- Configuration of permitting module fee codes necessary to support all configured case templates
- Configuration of Licensing module fee codes necessary to support all configured case templates
- Configuration of Code Enforcement module fee codes necessary to support all configured case templates
- Configuration of Recurring Inspection module fee codes necessary to support all configured case templates
- Configuration of other fee codes required to support routine transaction activity including NSF ("Non-Sufficient Funds") fees, administrative fees, fines, regulated surcharges, convenience fees, and the like
- Configuration of fast track fees, deferred fees, and tax exempt fees within current product design.
- Configuration of the timing during the workflow process that each fee will be assessed and may have payment applied against the fee within current product design
- Configuration elements as needed to support online [SmartGov portal] payments
- Setup and definition of Fees Pages

The client will provide the following resources or task deliverables:

- A copy of all current fee schedules for all in-scope departments and business functions
- A current list of GL Accounts
- The last two monthly or quarterly relative financial reports
- A copy of any other operating document that contains pertinent information regarding any assessed charges, surcharges, potential fines, etc
- Contact information for one or more subject matter experts in the appropriate finance departments. This is to facilitate efficient information gathering from both operating and finance departments / divisions

Assumptions and Constraints

- All fee codes will be configured within existing product design
- A GL Account list approved / authorized by the client's finance department is provided to the DSI Implementation Specialist. This GL Account list will be limited to accounts associated to fee codes to be configured in SmartGov
- GL Accounts and Fee Codes will be configured with product design parameters
- All configured fee codes will be derived from documented fee schedules or comparable client documentation provided to the DSI Implementation Specialist. Updated fee schedules or related documents that are provided after the initial versions may be incorporated into the final configuration if there is no adverse impact on the project schedule
- Fee codes will be configured to optimize SmartGov capability, and therefore may not be identical to legacy system fees
- Determination of the specific fee codes to be defaulted within each module case template will be determined by the designated client project team member
- Validation of case templates will include validation of fee code functionality
- User security rights will address fee code management within current product capability
- Super Admin training will include instructions for maintenance of GL Accounts and configured fee codes

Portal Configuration Setup

Configuration of required elements to enable in-scope functionality associated with the SmartGov online portal, as stated in the Configuration Plan.

Deliverables

Dude Solutions will provide the following task deliverables:

- A Portal Validation site to demonstrate and test Portal configuration
- Information regarding Portal set up options
- A Portal set up workbook template

The client will provide the following resources or task deliverables:

- A fully completed and approved Portal Set up workbook
- Any written content to be visible in portal that is not configurable
- Resources to test Portal configuration

Assumptions and Constraints

- The client will be responsible for taking steps to integrate the SmartGov portal into existing online sites
- Online payments will not be enabled without also purchasing the Merchant Services connector
- The client will be able to determine the level of online integration with their business processes, within existing product design
- Portal configuration will occur along with configuration of module case templates.
- Validation tasks will include distinct tasks to approve Portal set up
- Portal user security will be defined using existing product functionality
- Super Admin training will include information about options for the client to maintain / update portal configuration

Parcel Connector Setup

The parcel connector is an optional feature that is used to keep the parcel repository in SmartGov up to date. Parcel data that is typically maintained in a county assessor's system is used as the primary reference for modules in the SmartGov application. Parcel profile information, such as Parcel Number, Site Addresses, Current Owner, Legal Description, Section, Township, Range, Quarter, Subdivision, Block, Lot, and Neighborhood, is accommodated in standard data fields. Additional attribute data may also be stored in our custom detail area. Additionally, if the associated latitude and longitude data is available, those coordinates can be added to the parcel record to allow users to geographically locate information on the map.

Deliverables

Dude Solutions will provide the following task deliverables:

- A tested, working parcel connector along with a list of unresolvable errors to be addressed

Assumptions and Constraints

- Parcel Connector required fields supplied

Digital Markup Tool Setup

Configuration to support electronic plan review utilizing Bluebeam Prime Studio.

Deliverables

- Enable the Bluebeam connector
- Configure selected permit types to allow electronic plan review
- Configure specified submittal requirements for the electronic plan review process
- Instruction on the configuration and use of the Bluebeam integration

Assumptions and Constraints

- Electronic plan review is only available in the Permitting module
- Only .PDF files are eligible for electronic plan review
- Training in the use of Bluebeam software will not be included
- Client is responsible for any 3rd party licenses to be acquired for the connector

Standard Reports (70 Reports Included)

DSI will provide the client reports (reports and output documents) that includes 70 standard reports. Normal modifications to these reports to entail updating client specific information and logos not related to data output.

- Custom Reports: SmartGov comes with 70 standard reports and output documents. Using tools in SmartGov, client staff can add the client's logo and modify header and footer information.

Deliverables

- 70 standard reports

Assumption and Constraints

- Modification to standard reports will be related to Client branding and logos

Post Go-Live Support

DSI will provide the client with "Post Go-Live Support" which includes additional training, configuration support, reporting assistance, transaction based support, and work with the client on basic production related issues or questions for utilizing the system.

Deliverables

Provide production related post go-live support for 30 days after go-live date.

Assumptions and Constraints

- System configuration and all implementation tasks have been completed and client is using the SmartGov system in production

User Acceptance Testing "UAT"

DSI will work with the client to conduct User Acceptance Testing ("UAT") upon the completion of configuration and development tasks to confirm SmartGov functionality using the client's UAT Test scripts, developed by the client. The client will execute their test scripts and communicate the results of the test scenario as either pass or fail. DSI will review the UAT test log for issues and will assign these issues to the appropriate resource for resolution. DSI will have up to ten (10) days to correct any functional item that fails a test, or provide a mutually acceptable written explanation of when the failed item will be corrected. In the event a bug is identified, the bug issue will be assigned to the DSI Engineering Team for assessment. DSI Engineering will then provide an estimated time frame for resolution. The client has the right to conduct additional UAT Testing for items within project scope.

Deliverables

DSI will provide the following task deliverables

- SmartGov Validation environment ready for system User Acceptance Testing
- Review any discrepancies found by the client during UAT Testing
- Correct any functional item that fails a test within 10 days, or provide a mutually acceptable written explanation of when DSI will correct the failed item
- Identified software bugs will be addressed by DSI Engineering for assessment. DSI Engineering will then provide an estimated time frame for resolution
- Provide tools for documenting UAT test scripts in the UAT testing Plan and issue tracking log as needed, client may use their own UAT Testing Plan document if available

The client will provide the following resources or task deliverables

- Create a User Acceptance Test Plan with scenario based test scripts to include end-to-end system and client business process functionality, system workflow, system configuration, data migration, interfaces, reports, etc
- Execute UAT Testing Plan
- Track and document test results
- Written acceptance of System User Acceptance Testing complete via the DSI Deliverable Acceptance Form

Assumptions and Constraints

- The client will develop a UAT Test Plan
- The client will provide resources for User Acceptance Testing throughout the process
- The client will track and document test results in a mutually agreed format
- DSI will provide resources to address discrepancies

Upon successful completion of UAT Testing, Client will sign a DSI Deliverable Acceptance form, provided by the DSI Project Manager, to document their acceptance of UAT Testing and acknowledgement that UAT Testing has been completed successfully

Project Management / Engagement Management

The Project Manager's primary goal is to deliver the project within defined constraints through planning, scheduling, and controlling those activities required to achieve the project's objectives and meet customer expectations. The Project Manager strives to deliver on schedule, within budget, within scope, and at the desired performance level.

DSI assigns a professional Project Manager and/or a professional Engagement Manager for every consulting engagement. DSI's Project Management Office ("PMO") and Project Management Methodology provides Project Managers with a formal framework that is used in initiating, planning, managing (executing, monitoring, and controlling), and closing DSI's customer projects. DSI's Project Manager will have the primary responsibility for coordinating all activities for this SOW including scheduling resources, confirming project activities and that all project deliverable and defined activities are executed within the scope of this SOW. DSI's Project Manager will serve as the single point of contact for the project related to this SOW.

DSI's Project Management Methodology provides a defined set of phases and deliverables per Project Management Institute Best Practices which include a series of planning phase activities, including initial alignment meetings to prepare for the kickoff meeting to enable all project participants to understand the project scope, project plan, and objectives. The project kickoff meeting will allow all participants to be introduced, review and understand the delivery methodology, define team roles and responsibilities, review the communications and risk management plans, review documentation templates, review the SOW and project schedule. The Executing phase allows DSI Project Managers to direct and manage project progress through task execution, distribute project related information per the Communications plan, Quality Assurance per the SOW guidelines, project team development and coaching, and checkpoint meetings to review project progress during each work week, and weekly status meetings. The Monitoring and Controlling phase provides the DSI PM with the toolset to manage the triple constraint triangle of scope, cost, and schedule through integrated change control, quality assurance, deliverable validation, risk monitoring and control, performance monitoring to plan and schedule, and initiating corrective action measures. In the Closing phase, the Project Manager will verify product and deliverable acceptance, perform final financial audits, lessons learned, project archive delivery and updates, and formal project completion acceptance from the customer.

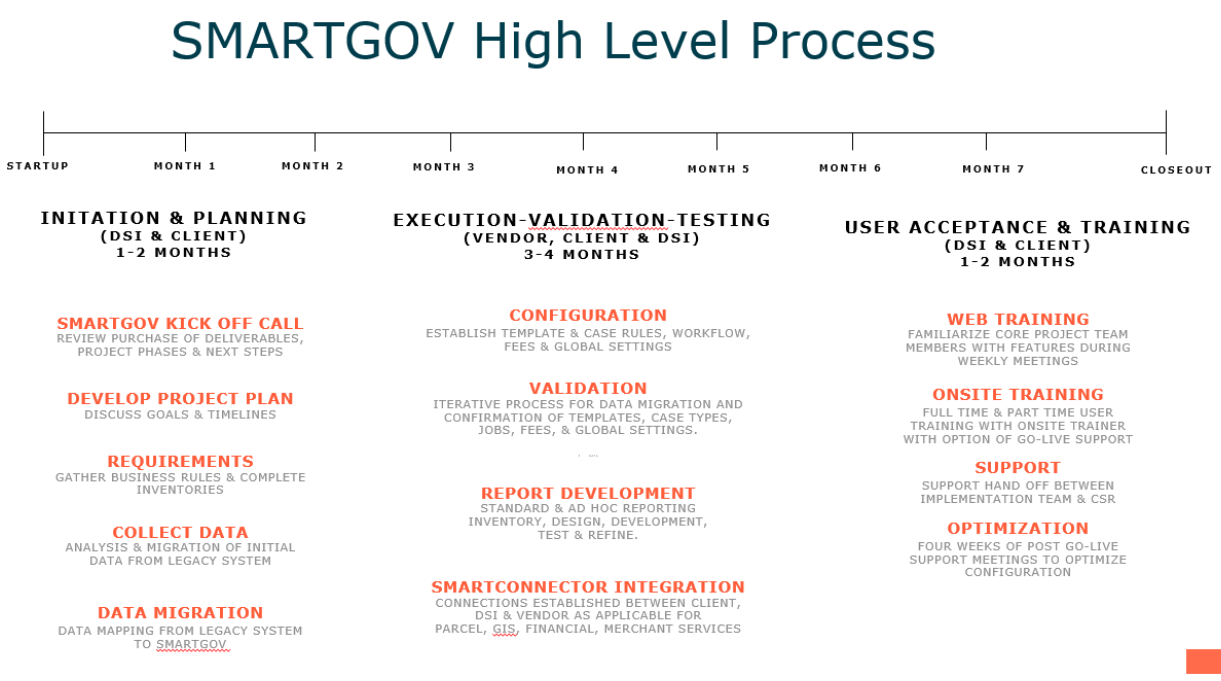
Project Management activities include:

- Project planning and kickoff meetings
- Project schedule developed per SOW tasks, deliverables, and resource assignments
- Status reporting and status meeting
- Continuously communicating, planning, and scheduling updates
- Schedule and budget monitoring, and scope management
- Risk Management planning to continuously identify, analyze, and mitigate risks
- Action Item and decision tracking, as well as resolving and escalating issues
- Quality Control
- Change control management
- DSI project resource management
- Work product completion and deliverable acceptance management
- Project Completion Acceptance execution

Project Timeline

DSI anticipates commencing this project on a mutually agreeable start date upon receipt of an executed SOW acceptance page ("Acceptance") found at the conclusion of this document. Within two weeks of the Orientation Call, the DSI Project Manager will schedule a mutually agreeable date and time for the project kick-off meeting. As a deliverable of the kick-off meeting, the DSI Project Manager will develop a project schedule to be shared with the clients' project manager for review and agreement. As a deliverable of the kick-off meeting, the DSI Project Manager will develop a project schedule to be shared with the clients' project manager for review and agreement.

The following generic process will be followed for the implementation of this project. Below is a depiction of the generic process the DSI Project Manager/Engagement Manager will follow for the implementation, DSI reserves the right to modify this process to reflect the scope of this project.



Professional Services Invoicing / Billing

Invoicing Terms

DSI will generate project invoices when the above product codes are completed for the value of the product code as shown in the Investment table.

Travel Expenses

Travel expenses are inclusive in Dude Solutions pricing for your project.

DSI understands there are extenuating circumstances that require a change in scheduling. DSI will make every attempt to accommodate cancellation/rescheduling requests on an as-needed basis. Rescheduling requests will be subject to resource availability and every attempt will be made to meet requested timeframes and timelines, however, no guarantee can be made for requested dates or times. Client accepts that DSI will reschedule based upon our resources' next availability that meets the project duration requirement to complete the scope of work.

Cancellation Policy

Cancellation and Rescheduling requests will be managed per the below policy:

Cancellation/Rescheduling Fees: In the event that the Client requests to reschedule their onsite work date(s), Client must reschedule 14 days in advance of the scheduled onsite work. Any requests for rescheduling onsite work within the 14-day window prior to the scheduled onsite date, will require the Client to reimburse DSI the full cost of any **Cancellation Fees** and **Re-booking Fees** incurred.

Definitions:

- **Cancellation Fees:** Any actual fees incurred by DSI from its travel providers which are the result of the Client canceling work for scheduled date(s) which are not immediately rescheduled, including, but not limited to fees charged for airfare, train, rental car, and hotel.
- **Re-booking Fees:** Any change fees associated with changing travel arrangements to accommodate a rescheduled date requested by Client including, but not limited to, any difference in reasonable travel costs (airfare increase, hotel increase, rental car increase) incurred when re-booking for requested dates.
- **Force Majeure:** Client will not be held liable for Cancellation or Re-booking Fees incurred by DSI as a result of an act of God, such as an earthquake, hurricane, tornado, flooding, winter super storm, winter weather that shuts down a facility, or other natural disaster, or in the case of war, action of foreign enemies, terrorist activities, labor dispute or strike, government sanction, blockage, embargo, or failure of electrical service within a facility's power grid.

DSI Project Team Roles and Responsibilities

The roles listed below comprise the DSI team supporting this project. The team brings a wealth of experience and knowledge that will provide you with the highest caliber of expertise, thought leadership, and project management. *Due to the size and scope of the project, one person may play multiple roles, to be determined by* DSI *as appropriate.*

- **Senior Technical Consultant:** The Senior Technical Consultant ("STC") will develop and deploy the solution and ensure that it meets the business requirements for the project. The STC's goal is to deliver a responsive system that complies with the functional specification. The STC defines, designs, and implements the features or products that meet the client's functional expectations.

- **Implementation Specialist:** The Implementation Consultants ("IS") primary role is to provide project implementation support by setting up a client's account, performing system configuration as defined in the scope of the project, creating/modifying templates as defined in the scope of the project, and creating or modifying standard or custom reports as defined in the scope of the project or requirements discovered during requirements gathering sessions.
- **Project Manager / Engagement Manager:** The Project Manager's ("Project Manager" or "PM") / Engagement Manager's ("Engagement Manager" or "EM") primary role is to deliver the project within the project's defined constraints through planning, scheduling, monitoring progress, controlling scope, and managing client expectations. The PM/EM manages the process to release the correct product on schedule and within budget.

Project Assumptions and Constraints

DSI has made the following general assumptions in this SOW to derive the estimated cost for this project. It is the responsibility of Town of Thompson's Station to validate these assumptions and responsibilities before signing the Acceptance. Deviations from these assumptions may impact DSI's ability to successfully complete the project and will be addressed via a CCA process, as appropriate. Any changes in scope, schedule, or costs will be documented via the CCA process, whether there is a cost impact or not. Zero dollar CCA's will be used as mutual agreement documentation for scope and schedule changes.

Project Assumptions

- Client business stakeholders must be available for onsite visits and working phone conversations.
- DSI resources will be onsite as planned and scheduled.
- Prerequisite data gathering, related to an orientation call or requirements gathering session onsite, must be completed prior to scheduled onsite or orientation call date in order to maximize onsite consulting time and resource productivity.
- DSI is not responsible for delays caused by missing data or other configuration information that is required to be available prior to the onsite visit. Having the requested data and configuration information available prior to the onsite visit may minimize delays so progress can be made quickly.
- Regarding requested enhancements or new feature development, the request will be fully documented and delivered to the DSI software engineering team for review for product inclusion, definition, development, prioritization, and sprint release development and confirmation.

General, Administrative, and Cost

- DSI must be in receipt of this SOW, signed by an authorized Client representative, prior to initiation of services including orientation calls or onsite visits.
- As applicable, designated deliverables must be approved in writing using the *DSI Deliverable Acceptance form*.

- Upon satisfactory completion of project, Client must provide project sign-off using the *DSI Project Completion Acceptance form*.
- DSI is not responsible for delays caused by Client, its contractors, or any third party vendors or third party service providers.
- All project documentation will be prepared in DSI standard format in Microsoft Word, Excel, PowerPoint, Project, Visio, and/or PDF.
- This document could include technical inaccuracies and/or typographical errors.
- **Any request** by Town of Thompson's Station to modify the scope of work, schedule, or costs will require preparation of a CCA form detailing the work to be performed, as well as the associated costs. Additional work will be performed only after both parties have duly executed the CCA. Scope of work changes will impact the project schedule which will be updated to reflect such changes upon CCA approval.
- All on-site work will be conducted at Client's physical location. As required, appropriate Client personnel will be made available either at that location or via alternate means (e.g., conference call) for in-person meetings, tours, and ad-hoc meetings with appropriate personnel for additional fact finding, data gathering, and reiteration demos.

Client's Support

- Client will provide the needed input, resources, and documentation to support the tasks contained herein.
- Client will assign a project manager/leader to coordinate activities, reviews, and the collection of information in support of this project and to act as a point of contact.
- Client team members will be identified and be part of the decision-making process as it relates to changes in process, applications, technology, etc.
- Client will provide assistance in the development of functional requirements and will confirm those requirements meet the project's overall business objective.
- Client business and technical staff must be available for team workshops, requirements gathering, data gathering, and/or consulting sessions.
- Client will be responsible for scheduling and coordinating all meetings and interviews involving other teams, departments, jurisdictions, management teams, or other necessary resources required for the success of this project.
- Client will provide access to resources in a manner consistent with the proposed schedule and provide suitable designees in the absence of required resources.
- Client will provide adequate working facilities (i.e., desk, computer, telephone, contractor identification, access badge, parking pass, etc.) for DSI to perform any portion of this project that must be conducted at Client's facility and access to all applicable software, databases, tools, and systems at their facilities.
- Client will ensure that the consultant(s) are granted access to the facilities and/or systems required to conduct the necessary work defined in this SOW.

- Client will provide a knowledgeable Escort for data gathering, requirements gathering, tours, and access to restricted personnel as necessary.
- A minimum of 24-hour notice if all minimum required members for any scheduled meeting cannot attend the meeting. This will allow the meeting coordinator sufficient time to cancel or re-schedule the meeting.
- Advance notice if there is to be any additional incurred travel expenses above and beyond the contract. DSI will confirm approval of all travel dates and expenses in email from the appropriate project sponsors prior to being on site.

Client Engagement Responsibilities

The below table demonstrates the anticipated client engagement responsibilities and level of effort involvement to ensure the success of the project.

Role	Time (% FTE)	Responsibilities
Implementation Project Lead	30-40%	• Serve as primary Person of Contact • Work with Dude PM to plan and schedule client resources • Manage the scope of the paid services in SOW • Coordinate Client staff assignments • Manage Client activities to meet schedule commitments • Mitigate all implementation risks • Define requirement/layouts of reports purchased • Identify requirements for any connectors purchased • Sign-off on completion of all implementation services delivered
Subject Matter Experts (Multiple)	40-60%	• Attend Implementation/configuration meetings • Define and provide input into configuration • Attend User Acceptance and validation Training • Validate data and configuration • Develop UAT Test Scripts

IT Lead	5-10%	• Manage infrastructure changes to support SmartGov • Provide the data to be migrated from systems • Mitigate any technical issues • Coordinate technical assignments required to implement • SMARTConnectors, including GIS and parcel data
Data Validator / UAT Testing	20-30%	• Validate all data migrated • Comprehend the data in the prior system and how it translates to Community Development • Verify the data that was validated • Participate in UAT Testing, execute test scripts and provide feedback
System Administrator	10-15%	• Manage SmartGov Configuration • Create user accounts • Handle user access/privileges • Reset passwords • Supervise organization information changes • Regulate system values • Customize attributes • Generate ad hoc reports • Support internal usage of SmartGov
Training Coordinator	10%	• Manage data within SmartGov, specifically: • Accreditations • Task lists • Training Tracks • Assessments • Training Items • Training Location (conference room, off-site, etc.)
User	Case-by-Case	• Participate in SmartGov training • Participate in UAT Testing, execute Test Scripts

Change Control Authorization Process

In order to maintain a positive relationship with our clients and to complete all services and deliverables of a project on a timely basis, all facets of the project must be agreed upon, and any changes to the project must be requested and evaluated for impacts. Change control is an essential mechanism to monitor and document all project changes and deviations from the original scope and objectives of the project. All project changes must be requested via the project CCA process. The basic steps for a change are:

- The client team or DSI team discovers a need to change the project.
- The authorized client project manager or DSI Project Manager is notified and a CCA is initiated.
- The written project change request is reviewed by all necessary parties and either accepted or rejected.
- If rejected, the change request is maintained in the project file for reference purposes.
- If the written change request is accepted, then:
    - All necessary signatures are recorded on the change request
    - All affected documentation is revised to reflect the change(s)
    - Any adjustments to schedule, scope, and/or cost are made to the overall project plan
    - Signatures are required for all change requests
- Copies of the official approved and signed CCA are forwarded to the customer project manager and DSI Project Manager for the documentation archive. DSI will forward a copy to the Project Accounting Team in the office to update the project information and budget (if necessary).

Change Control Authorizations Process Steps

Step	Type	Description
1	Request	A request is made for a change to the agreed upon scope baseline. The request may be internally or externally generated, must be formally written and communicated to the project manager, and may have been prompted by any number of reasons or events.
2	Evaluate	The project manager facilitates an evaluation to confirm that the requested change is in fact a change to the agreed upon scope baseline. If so, the project manager implements the request as described below.
3	Assess	If the request is in fact a change to the scope baseline, the project manager assesses the impact on project schedule, budget and work products, using a similar approach as the original project planning process, utilizing team member expertise as needed.

4	Document	The project manager documents the project impact and other critical information in a CCA form. A summary of the change is recorded in a change order log. This log is required, and is a very useful tracking tool, and is included in the project status report.
5	Decide	The change order is presented to the project's governing authority, typically a steering committee, stakeholder's, or equivalent. In some cases, the project may have a separate change management board to process change requests. The governing authority decides whether or not to implement the change, and obtains approval for any needed additional resources (if it does not itself have the authority to authorize resource changes).
6	Incorporate	The project manager incorporates changes into the project's scope baseline in the form of such artifacts as contracts, statements of work, project plans, requirements and design documents per the approved CCA document.
7	Implement	The project team implements the changes.

Project Terms and Conditions

Statement of Work ("SOW") is entered into by and between Dude Solutions, Inc. ("DSI") and Town of Thompson's Station pursuant to and subject to the project terms and conditions ("Project Terms and Conditions") specified below.

- A SOW must be signed by an authorized representative of and who has full authority to bind Client before the scheduling and delivery of any software, software support, and the commencement of Professional Services. In addition, the terms of the DSI Online Subscription Agreement (http://dudesolutions.com/terms) shall apply with the terms of the SOW taking precedence in the event of a conflict. Acceptance by electronic signature is considered a valid and legally binding form of receipt.
- Invoicing terms are Net 30. Invoices unpaid by Client after 30 days of the invoice date will bear interest at the lower of either (a) the rate of 1.5% per month calculated monthly or (b) the highest rate permitted by applicable law.
- All applicable taxes and freight are the responsibility of Client and will appear on invoices as actual cost.
- All orders are subject to credit approval.
- DSI reserves the right to require that overdue Client accounts be paid to current for all prior DSI completed projects before a new SOW can be executed.
- SOW must be accepted and signed by Client within 60 days after which DSI reserves the right to adjust or requote the engagement.
- Employment and Subcontractors. DSI and Client agree that the employees of each may possess technical abilities that are in great demand and further agree that each party has incurred substantial expense in recruiting and training such employees and would incur even greater expense if required to replace any such employee. Therefore, DSI and Client each agree not to recruit or employ, either directly or indirectly, a present employee of the other during the term of this SOW between them, and for two (2) years following termination of this SOW. Client further agrees that during the term of this SOW and for six (6) months following the termination of this SOW, it will not, without DSI's prior written consent,

engage any subcontractor which DSI utilizes to provide the services contemplated under the SOW should that be the case.

- Warranties on Services and Work Product:
  - DSI warrants that the Services shall be performed in a professional manner and to standards not less than those generally accepted in the industry. The foregoing Warranty shall not apply to any portion of a deliverable hereunder (a "Work Product") that has been modified by a party other than DSI without DSI's prior written approval.
  - Client's exclusive remedy and DSI's entire liability shall be the re-performance of the Professional Services.
  - **Disclaimer**. Except as expressly provided in this SOW, with respect to the services and the work product, DSI makes and Client receives no other warranties, expressed or implied, and expressly includes all warranties of merchantability and fitness for a particular purpose.

- Term and Termination:
  - The term of this SOW shall be effective and binding, and commence on the date signed by Client and shall terminate as provided herein or upon written acceptance of the work performed with final payment received.
  - **Termination Without Cause.** Either party may terminate this SOW for any reason or no reason by providing the other party with thirty (30) days prior written notice.
  - **Termination for Breach.** Except for a party's breach of its confidentiality obligations under this SOW, or any other agreement, current, and existing between both parties (which breach shall give the non-breaching party the right to automatically and immediately terminate this SOW), if either party is in material breach of this SOW, the non-breaching party may provide a written notice to the breaching party specifying the nature of the breach. The breaching party shall have thirty (30) days from receipt of such notice to correct the breach. If the breach is not cured within such period, the non-breaching party may terminate this SOW by providing the breaching party with written notice of termination. Consent to extend the thirty (30) day cure period shall not be withheld unreasonably if the breaching party has commenced cure efforts during such period and pursues cure of the breach in good faith. Notwithstanding the foregoing, if Client is in breach of the payment terms of this SOW and does not correct such breach within ten (10) business days of notice from DSI, DSI may terminate this SOW, and may suspend performance under any other SOW in progress, pending receipt of payment in full.
  - **Other Termination.** Either party may terminate this SOW immediately upon the occurrence of any of the following events with respect to the other party: (a) a receiver is appointed for either party or its material assets; (b) either party becomes insolvent, generally unable to pay its debts as they become due, or makes an assignment for the benefit of its creditors or seeks relief under any bankruptcy, insolvency or debtor's relief law; (c) if proceedings are commenced against either party, under any bankruptcy, insolvency or debtor's relief law, and such proceedings have not been vacated or set aside within sixty (60) days from the date of commencement thereof; or (d) if either party is liquidated, dissolved or ceases operations.
  - **Payment upon Termination.** Following a termination for cause by DSI under the above, Client shall, within ten (10) business days of such termination, pay DSI for all Services properly performed in accordance with this SOW, through and including the date of termination according to the fees and rates set forth in the applicable SOW.

We are committed to helping you build your knowledge, network and skills – and **Dude University 2020** is the best training and professional development for operations management professionals. Join us for four days of intensive training where you can: (http://www.university2019.com/)

- Build a strategic vision for your department and ensure goals align with the mission and vision of your organization.
- Save your organization time and money by investing in the training you need to keep your operations excellent and highly efficient.
- Learn how your peers are successfully overcoming similar challenges so you can be a leader of positive change.
- Receive hands on training and 1on1 guidance from our Client Success experts.

Your registration also includes:

- Professional development and leadership sessions
- Beginner and advanced solution training classes
- Peer-led best practices roundtables and panel discussions
- Hands-on solution training
- Sunday Opening General Session & Motivational Keynote Speaker
- Registered conference attendees also receive the following meals included:
  - **Sunday Welcome Reception & Dinner**
  - **Hot breakfast Monday, Tuesday and Wednesday**
  - **Networking lunch on Monday & Tuesday**
  - **Tuesday Client Appreciation Dinner**

Dude University Policies

CANCELLATION & SUBSTITUTION POLICY

If you are no longer able to attend this event, you may transfer your registration to another individual within your organization up to April 24, 2020. In the event you are unable to transfer your registration, you may cancel in accordance with the following refund terms:

- Cancellations received up until 11:59 pm ET on February 28, 2020 will be fully refunded.
- Cancellations received up until 11:59 pm ET on March 31, 2020 will receive a 50% refund.
- After 11:59 pm ET on March 31, 2020, we are unable to issue a refund.

SPOUSE/GUEST POLICY

Attendees can add a guest when registering for Dude University. Guest passes are available for $200 and include admission to both Sunday and Tuesday evening networking events. Guests must be 21 years or older, and cannot attend conference keynotes, breakout sessions or any other conference meals.

PHOTOGRAPHY, AUDIO AND VIDEO RECORDING

Dude Solutions has photographers and videographers taking pictures and video of events and people. We do not prohibit participants, exhibitors, sponsors, news organizations or other companies from photographing, video, or audio- taping activities in public spaces. By attending this event, you agree that Dude Solutions has the right to use, reproduce, broadcast or incorporate in any manner whatsoever, all or any portion of photographs and/or videos of you for use in marketing materials and/or training materials and for internal use ("Materials"). You grant, irrevocably transfer and assign to Dude Solutions your entire right, title and interest, if any, in and to the Materials and all copyrights in the Materials arising in any jurisdiction throughout the world, including the right to register and sue to enforce such copyrights against infringers. You also waive any right to royalties or other compensation related to the use of the Materials. You understand that the Materials may be substantially edited, altered, rearranged or modified. You hereby waive any right to inspect or approve the use of the Materials in any media.

BADGE SCANNING

By allowing an exhibitor and/or sponsor to scan your badge throughout the event, you are opting-in to receiving communications from that entity. You will be subject to their communications and privacy policy and must opt-out with them directly.

ADMITTANCE

Dude Solutions, at its sole discretion reserves the right to refuse admittance to or expel from the event anyone for any lawful reason, including but not limited to circumstances where attendee(s) are behaving in a manner that could be disruptive or dangerous to the event or other attendee(s). Attendee(s) who are refused admission or expelled from the event will not receive a refund of any payment rendered.

VIEWS

The views expressed by any event attendee, speaker, exhibitor or sponsor are not necessarily those of Dude Solutions. All event attendees, speakers, exhibitors and sponsors are solely responsible for the content of any and all individual or corporation presentations, marketing collateral, advertising and online Web content. If applicable, Dude Solutions reserves the right to substitute an equally qualified speaker in case of an emergency or cancellation. Dude Solutions has no duty with respect to presenters, exhibitors or sponsors, and makes no endorsements of any presentation or product.

LIMITATION OF LIABILITY

In no event shall Dude Solutions, in the aggregate, be liable for injury or damages of any Attendee during this event or traveling to or from this event. Dude Solutions disclaims any liability for the acts of any outside entities related to this event and reserves the right to cancel the event without liability. Airline tickets, hotel reservations and any other accompaniments in anticipation of attending the event are done at Attendee's own risk. In the event that Dude Solutions cancels the event, Dude Solutions may, at its sole discretion, issue a refund of registration payment.

Each Attendee shall be personally responsible for his/her/their behavior. The organizers do not accept responsibility for the behavior of any Attendee or outside entity during the event. Dude Solutions shall not be liable for any delays or failure in performance or interruption of services resulting directly or indirectly from any cause or circumstance beyond the reasonable control of Dude Solutions.

Attendee(s) at this event agree to indemnify, defend, and hold harmless Dude Solutions, its officers, directors and agents, against all claims arising out of actions or omissions of Attendee(s) at or in connection with this event. Under no circumstances shall Dude Solutions have liability with respect to its obligations under this agreement or otherwise for loss of profits or direct, exemplary, consequential, indirect, incidental, punitive or other indirect damages of any kind whether alleged as a breach of contract or tortious conduct, including negligence, or based on any other cause of action.

Registering to attend this event acknowledges acceptance of these terms and provisions of registration.

Signature

Presented to:

Q-153156
October 08, 2019, 9:10:52 AM

Accepted by:

Printed Name

Signed Name

Title

Date

DUDE SOLUTIONS, INC.

ONLINE SUBSCRIPTION AGREEMENT

This Online Subscription Agreement (this "Agreement") shall govern Subscriber's (as defined below) access and use of the Services (as defined below) provided by Dude Solutions, Inc. (together with its direct and indirect subsidiaries, collectively, "DSI"). BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT OR BY OTHERWISE ACCESSING AND USING THE SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. AS A RESULT, PLEASE READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE ANY SERVICE.

Section 1.0 Definitions

As used in this Agreement, the following terms shall have the meanings set forth below:

1.1 "Account" means Subscriber's specific account where Subscriber subscribes to access and use Service(s).

1.2 "Account User" means: (i) with respect to an Enterprise Application, each employee, consultant and contractor specified by Subscriber to access and use the Subscriber's Account; and (ii) with respect to a Named User Application, each unique Named User for which Subscriber has paid an applicable subscription fee to DSI for such Named User Application.

1.3 "Applications" means the software-as-a-service (SaaS) enterprise asset management applications designed, developed, marketed and made available by DSI, which include, without limitation, the following functionality: enterprise workflow, communication, content and business process logic for facilities, technology, business operations, facility scheduling, building automation, safety planning, crisis management, geographic information systems, energy and transportation management.

1.4 "Confidential Information" means any non-public information and/or materials disclosed in writing or orally by a party under this Agreement (the "Disclosing Party") to the other party (the "Receiving Party"), which (i) is designated in writing as confidential at the time of disclosure, or (ii) with respect to non-public information disclosed orally, the Disclosing Party sends the Receiving Party a written notice to Receiving Party within 15 days after oral disclosure identifying the non-public information that was disclosed as its confidential information, including when, where, how and to whom such non-public information was disclosed. For avoidance of doubt, DSI's Confidential Information shall include the source code, data structure, algorithms and logic of the Applications and Services. Notwithstanding the foregoing, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without

breach of any obligation owed to the Disclosing Party, (iii) is received from a Third Party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

1.5 "Content" means all of the audio and visual information, documents, content, materials, products and/or software contained in, or made available through, the Services.

1.6 "Documentation" means the user documentation relating to the Services, including but not limited to descriptions of the functional, operational and design characteristics of the Services.

1.7 "Dude Learn Application" means DSI's online learning management system dedicated to increasing a subscriber's time to competency in Applications, which includes, without limitation, (i) learning tracks with the "top tips and tricks" for Applications, and (ii) on-demand knowledge pathways subscribers may use to enhance their skill sets and obtain certifications for Applications. The Dude Learn Application is a Named User Application.

1.8 "Enterprise Application" means each Application that is not a Named User Application.

1.9 "Highly-Sensitive Personal Information" means an Account User's (i) government-issued identification number (including social security number, driver's license number or state-issued identified number), (ii) financial account number, credit card number, debit card number, credit report information, in each case with or without any required security code, access code, personal identification number or password that would permit access to such Account User's financial account; and/or (iii) biometric data.

1.10 "HIPAA" means the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191) and all regulations promulgated thereunder (45 C.F.R. §§ 160-164), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act and all regulations promulgated thereunder, as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended from time to time.

1.11 "Intellectual Property Rights" means all ideas, concepts, designs, drawings, packages, works of authorship, processes, methodologies, information, developments, materials, inventions, improvements, software, and all intellectual property rights worldwide arising under statutory or common law, including without limitation, all (i) patents and patent applications owned or licensable by a party hereto; (ii) rights associated with works of authorship, including copyrights, copyright applications, copyright registrations, mask work rights, mask work applications and mask work registrations; (iii) rights related to protection of trade secrets and Confidential Information; (iv) trademarks, trade names, service marks and logos; (v) any right analogous to those set forth in clauses (i) through (iv); and (vi) divisions, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued or acquired.

1.12 "Named User" means, with respect to a Named User Application, each unique, identified named user for which Subscriber has paid an applicable named user subscription fee to DSI for such Named User Application.

1.13 "Named User Application" means an Application that DSI (i) limits access and use thereof to Named Users, and (ii) for which the applicable subscription fee is determined based upon the number of Subscriber's Named Users.

1.14 "Privacy Policy" means the DSI privacy policy, as amended from time-to-time, which can be viewed by clicking the "Privacy" hypertext link located on www.dudesolutions.com.

1.15 "QuickStart Service" means, with respect to each Service, DSI's unique implementation service that is provided to Subscriber with respect to such Service. A DSI advisor is provided by DSI to Subscriber in connection with QuickStart Services in order to help facilitate smooth transition and boost Subscriber adoption of the applicable Services.

1.16 "Services" means each of the Application(s) subscribed to by Subscriber pursuant to this Agreement. Subscriber shall specify each of the Services that Subscriber shall subscribe to as part of its Account registration process.

1.17 "Subscriber" means the legal entity identified on the Account.

1.18 "Subscriber Data" means all data and information provided by or on behalf of Subscriber to a Service, including that which the Account Users input or upload to a Service.

1.19 "Subscription Fee" means, with respect to each Services subscription, the annual subscription fee invoiced to Subscriber by DSI prior to the Initial Term and each applicable Renewal Term for such Services subscription, which is required to be paid in order for Subscriber to be permitted to access and use the Services in such Services subscription.

1.20 "Third Party" means a party other than Subscriber or DSI.

Section 2.0 Use of the Service; Proprietary Rights

2.1 Use of Service.

(a) *Subscription*. Subject to the terms of this Agreement (including, without limitation, the responsibilities, limitations and restrictions set forth in this Section 2.1 and payment of the Subscription Fees required hereunder), DSI shall permit Subscriber's Account Users to access and use the Services during the Term, including access and use of all of the Content contained in or made available through the Services. Subscriber agrees that it shall use the Services solely for internal business purposes, and access and use of the Services shall be limited to Account Users.

(b) *Account Setup*. To subscribe to the Services, Subscriber must establish its Account, which may only be accessed and used by its Account Users. To setup an Account User, Subscriber must provide DSI (and agree to maintain, promptly update and keep) true, accurate, current and complete information for such

Account User. If Subscriber or any applicable Account User provides any information that is untrue, inaccurate, not current or incomplete, DSI has the right to immediately suspend or terminate Subscriber's Account and usage of the Services and refuse any and all future use. Each Account User must establish and maintain a personal, non-transferable password, which shall not be shared with, or used by, any other Third Party. Subscriber may not transfer an Account User's right to access and use the Services to a different user; provided, however, that a Named User's right to access and use a Named User Application may be reassigned to a new Named User replacing such Named User if such replaced Named User has terminated its employment or its relationship with Subscriber or otherwise changes its job status or function within Subscriber and, as a result, no longer requires ongoing use of the applicable Named User Application. Subscriber shall be solely responsible for any and all activities that occur under its Account, including all acts and omissions of its Account Users. Subscriber shall notify DSI immediately of any unauthorized use of its Account and/or any other breach of security of the Services that it suspects or becomes aware of.

(c) *Subscriber Responsibilities*. Subscriber shall: (i) take appropriate action to ensure that non-Account Users do not access or use the Services; (ii) ensure that all Account Users comply with all of the terms and conditions of this Agreement, including the limitations and restrictions set out in Section 2.1(d); (iii) be solely responsible for the accuracy, integrity, legality, reliability and appropriateness of all Subscriber Data created by Account Users using the Services; (iv) access and use the Services solely in compliance with the Documentation and all applicable local, state, federal, and foreign laws, rules, directives and regulations (including those relating to export, homeland security, anti-terrorism, data protection and privacy); (v) allow e-mail notifications generated by the Services on behalf of Subscriber's Account Users to be delivered to Subscriber's Account Users; and (vi) promptly update and upgrade its system as requested or required in order to ensure continued performance and compatibility with upgrades to the Services. Subscriber shall be responsible for any breach of this Agreement by Account Users and any access or Use of the Services by persons other than Account Users.

(d) *Limitations and Restrictions*. Subscriber agrees that it shall not, and shall not permit any Third Party to, directly or indirectly: (i) modify, alter, revise, decompile, disassemble, reverse engineer, create derivative works or attempt to derive the source code of any Service; (ii) assign, transfer, lease, rent, sublicense, distribute or otherwise make available any Service, in whole or in part, to any Third Party, including on a timesharing, software-as-a-service or other similar basis; (iii) share Account login information or otherwise allow access or use the Services to provide any service bureau services or any services on a similar basis; (iv) use any Service in a way not intended by DSI or for any unlawful purpose; (v) use any Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of Third Party privacy rights; (vi) copy, frame or mirror any part or content of the Services, other than copying or framing on Subscriber's own intranets or otherwise for Subscriber's own internal business purposes; (vii) attempt to tamper with, alter, disable, hinder, by-pass, override, or circumvent any security, reliability, integrity, accounting or other mechanism, restriction or requirement of the Services; (viii) remove, obscure, cover or alter any copyright, trademark, patent or proprietary notice affixed or displayed by or in the Services or related documentation; (ix) perform load tests, network scans, penetration tests, ethical hacks or any other security auditing procedures on the Services; (x) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (xi) access any Service in order to build a competitive product or service, copy any features, functions or graphics of any Service or monitor the availability and/or functionality of any Service for any benchmarking or competitive purposes; (xii) store, manipulate, analyze, reformat, print, and display the Content for personal use; (xiii) upload or insert code, scripts, batch files or any other form of scripting or coding into the Services; and (xiv) store Highly-Sensitive Personal Information. Highly-Sensitive Personal Information should not be entered into the Services, as there are no data fields requesting this type of information. It is the

Subscriber's responsibility to enforce this policy for fields beyond DSI's control such as a description or notes field. DSI reserves the right in the future to scan input data and block certain information such as social security numbers or credit card numbers

(e) *Additional Guidelines*. DSI reserves the right to establish or modify general practices and limits concerning use of the Services, including without limitation, the maximum number of days that Subscriber Data shall be retained by the Services and the maximum disk space that shall be allotted on DSI servers on Subscriber's behalf. DSI shall provide at least sixty (60) days' prior notice of any such modification. DSI also reserves the right to block IP addresses originating a Denial of Service (DoS) attack or IP addresses causing excessive amounts of data to be sent to DSI servers. DSI shall notify Subscriber should this condition exist and inform Subscriber of its action. Once blocked, an IP address shall not be able to access the Services and the block may be removed once DSI is satisfied corrective action has taken place to resolve the issue.

(f) *Third Party Software*. The Services may incorporate and/or embed software and other technology owned and controlled by Third Parties. Any such Third Party software or technology that is incorporated and/or embedded into any Service shall be provided to Subscriber on the license terms set forth this Agreement, unless additional or separate license terms apply as indicated by DSI. To the extent that the Services link to any Third Party website, application or service, the terms and conditions thereof shall govern Subscriber's rights with respect to such website, application or service, unless otherwise expressly provided DSI. DSI shall have no obligations or liability arising from Subscriber's access and use of such linked Third Party websites, applications and services.

2.2 Proprietary Rights.

(a) Subscriber acknowledges and agrees that (as between Subscriber and DSI) DSI retains all ownership right, title, and interest in and to the Applications, the Services, the Documentation and the Content, including without limitation all corrections, enhancements, improvements to, or derivative works thereof (collectively, "Derivative Works"), and in all Intellectual Property Rights therein or thereto. To the extent any Derivative Work is developed by DSI based upon ideas or suggestions submitted by Subscriber to DSI, Subscriber hereby irrevocably assigns all rights to modify or enhance the Applications and the Services using such ideas or suggestions or joint contributions to DSI, together with all Intellectual Property Rights related to such Derivative Works. Nothing contained in this Agreement shall be construed to convey to Subscriber (or to any party claiming through Subscriber) any Intellectual Property Rights in or to the Applications, the Services, the Documentation and the Content, other than the rights expressly set forth in this Agreement.

(b) DSI acknowledges and agrees that (as between Subscriber and DSI) Subscriber retains all ownership right, title, and interest in and to the Subscriber Data, including all Intellectual Property Rights therein or thereto. Notwithstanding the foregoing, Subscriber hereby grants DSI a non-exclusive, royalty-free license to display, distribute, transmit, publish and otherwise use the Subscriber Data to improve the Services and the performance of DSI, including without limitation, submitting and sublicensing the Subscriber Data to Third Parties for analytical purposes, provided that (i) such Third Parties have entered into a written agreement with DSI to maintain the confidentiality of the Subscriber Data and (ii) DSI shall not specifically identify the Subscriber Data as originating from Subscriber when providing the Subscriber Data to such Third Parties.

(c) Subscriber acknowledges the Services may utilize Third Party software and/or tools (each, a "Third-Party Tool") under a license granted to DSI by one or more applicable Third Parties (each, a "Third-Party Licensor"), which licenses DSI the right to sublicense the use of the Third-Party Tool solely as part of the Services.

Each such sublicense is nonexclusive and solely for Subscriber's internal use and Subscriber shall not further resell, re-license, or grant any other rights to use such sublicense to any Third Party. Subscriber further acknowledges that each Third-Party Licensor retains all right, title, and interest to its applicable Third-Party Tool and all documentation related to such Third-Party Tool. All confidential or proprietary information of each Third-Party Licensor is Confidential Information of DSI under the terms of this Agreement and shall be protected in accordance with the terms of Section 8.0.

Section 3.0 DSI Responsibilities

3.3 Professional Services. DSI shall provide and perform professional, technical, consulting and/or other services (collectively, "Professional Services") that are mutually agreed upon and described in one or more statements of work. Each statement of work shall be effective, incorporated into and form a part of this Agreement when duly executed by an authorized representative of each of the parties. Each statement of work shall (i) describe the fees and payment terms with respect the Professional Services being provided pursuant to such statement of work, (ii) identify any work product that shall be developed pursuant to such statement of work, and (iii) set forth each party's respective ownership and proprietary rights with respect to any work product developed pursuant to such statement of work. DSI represents and warrants that all such Professional Services shall be performed in a professional and workmanlike manner.

3.4 Subscriber Data. DSI shall not edit or disclose any information regarding Subscriber's Account, including any Subscriber Data, without Subscriber's prior permission, except in accordance with this Agreement. Notwithstanding the foregoing, DSI is hereby permitted to provide certain statistical information (*e.g.,* usage, average costs or time values, or user traffic patterns) in aggregated and de-identified form to Third Parties or to other Application subscribers.

3.5 Implementation and Support.

(a) DSI shall, in exchange for Subscriber's payment of a non-refundable QuickStart fee for a Service, provide the QuickStart Service for such Service. Subscriber is responsible for scheduling the timing and delivery of each QuickStart Service with DSI. The QuickStart Service with respect to a Service must be performed within the six (6) month period immediately following the date Subscriber initially subscribes to such Service. DSI shall not be obligated to provide the QuickStart Service with respect to a Service after the expiration of such 6-month period.

(b) During the Term DSI shall, as part of Subscriber's Subscription Fees, provide telephone and e-mail support ("Support Services") to Subscriber during the hours of 8:00 a.m. (Eastern time) to 6:00 p.m. (Eastern time), Monday through Friday, excluding holidays.

3.6 Availability. DSI shall use commercially reasonable efforts to make the Services available (i) 99.9% of the time during the hours of 6:00 a.m. (Eastern time) to 10:00 p.m. (Eastern time), Monday through Friday, excluding holidays ("Business Hours"), and (ii) 99.5% of the time, determined on a twenty-four (24) hours a day, seven (7) days a week basis. Availability shall be calculated on a monthly basis. For purposes of calculating availability, the Services shall not be deemed unavailable during any period arising from: (i) routine system maintenance that is performed weekly during non-Business Hours; (ii) scheduled downtime for extended system maintenance (of which DSI shall give at least 8 hours' prior notice and which DSI shall schedule to the extent reasonably practicable outside of Business Hours); and (iii) any unavailability caused by circumstances

beyond DSI's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, non-DSI software or hardware, or denial of service attack.

3.7 Protection of Subscriber Data. DSI shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Subscriber Data. In addition, if Subscriber is a "Covered Entity" under HIPAA, DSI is Subscriber's "Business Associate" under HIPAA, and any Subscriber Data provided by Subscriber to DSI in their capacities as a Covered Entity and Business Associate, respectively, DSI and Subscriber shall enter into a Business Associate Agreement (the form of which shall be reasonably satisfactory to DSI).

Section 4.0 Third Party Interactions

4.8 Relationship to Third Parties. In connection with Subscriber's use of the Services, Subscriber may: (i) enter into correspondence with and/or participate in promotions of advertisers or sponsors showing their goods and/or services through the Services; (ii) purchase goods and/or services, including implementation, customization, content, forms, schedules, integration and other services; (iii) exchange data, integrate, or interact between Subscriber's Account, the Services and a Third Party provider; (iv) be offered additional functionality within the user interface of the Services through use of the Services' application programming interface; and/or (v) be provided content, knowledge, subject matter expertise in the creation of forms, content and schedules. Any such activity, and any terms, conditions, warranties or representations associated with such activity, shall be solely between Subscriber and the applicable Third Party. DSI shall have no liability, obligation or responsibility for any such correspondence, purchase, promotion, data exchange, integration or interaction between Subscriber and any such Third Party.

4.9 Ownership. Subscriber is the owner of all Third Party content and data loaded into the Subscriber Account. As the owner, it is Subscriber's responsibility to make sure it meets its particular needs. DSI shall not comment, edit or advise Subscriber with respect to such Third Party content and data in any manner.

4.10 No Warranty or Endorsement. DSI does not warrant any Third Party providers or any of their products or services, whether or not such products or services are designated by DSI as "certified," "validated," "premier" and/or any other designation. DSI does not endorse any sites on the Internet which are linked through the Services. DSI is providing these links to Subscriber only as a matter of convenience, and in no event shall DSI be responsible for any content, products, or other materials on or available from such sites.

4.11 Additional Terms. The Disclaimer of Warranties (Section 7.1) and Limitation of Liability (Section 7.3) set forth herein shall apply to all Third Party interactions.

Section 5.0 Subscription Fees

5.12 Subscription Fees. Subscriber shall, on or before the commencement of the Initial Term of a Service subscription, pay to DSI the Subscription Fee for such Service subscription. Thereafter, DSI shall invoice Subscriber for each applicable Subscription Fee at least sixty (60) days prior to the commencement of the applicable Renewal Term. Unless Subscriber provides written notice of non-renewal in accordance with Section 6.1, Subscriber agrees to pay all Subscription Fees no later than thirty (30) days after the receipt of DSI's

applicable invoice therefor. Subscriber is responsible for providing complete and accurate billing and contact information to DSI and notifying DSI of any changes to such information. Except as otherwise specified herein, Subscriber's payment obligations are non-cancelable and Subscription Fees paid are non-refundable.

5.13 RESERVED.

5.14 Reimbursable Expenses. DSI's Professional Service fees do not include travel, lodging or other expenses incurred by DSI unless specified on the Statement of Work. Subscriber shall reimburse DSI for all travel, lodging, communications, incidentals and other out-of-pocket expenses as they relate to the performance of Professional Services rendered by DSI to Subscriber.

5.15 Renewal Charges. DSI maintains the right to increase Subscription Fees and other applicable fees and charges in connection with each Renewal Term.

5.16 Taxes. DSI's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Subscriber is responsible for paying all Taxes associated with its purchases hereunder. If DSI has the legal obligation to pay or collect Taxes for which Subscriber is responsible under this Section 5.4, DSI shall invoice Subscriber and Subscriber shall pay that amount unless Subscriber provides DSI with a valid tax exemption certificate authorized by the appropriate taxing authority. Subscriber agrees to indemnify and hold DSI harmless from any encumbrance, fine, penalty or other expense which DSI may incur as a result of Subscriber's failure to pay any Taxes required hereunder. For clarity, DSI is solely responsible for taxes assessable against DSI based on its income, property and employees.

Section 6.0 Term and Termination

6.17 Term. This Agreement commences on the date Subscriber establishes its Account and continues until all Services subscriptions hereunder have expired or have been terminated (the "Term"). The initial term of each Services subscription shall be for a period of one (1) year (the "Initial Term"). Thereafter, each Services subscription shall automatically renew for successive one-year periods (each, a "Renewal Term") unless either party has provided written notice of its intent to not renew such Services subscription not less than thirty (30) days prior to the expiration of the then-current Initial or Renewal Term applicable to such Services subscription.

6.18 Termination of Agreement for Breach. DSI may terminate this Agreement prior to the expiration of the Term if Subscriber commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach is given by DSI; provided that if the breach involves a failure of Subscriber to pay any of the fees required under this Agreement, the cure period shall be reduced to ten (10) days. Without limiting the foregoing, in the event of a breach that gives rise to the right by DSI to terminate this Agreement, DSI may elect, as an interim measure, to terminate one or more of Subscriber's Services subscriptions and/or suspend its performance hereunder (including, without limitation, Subscriber's right to access and use the Services and the Account) until the breach is cured. DSI's exercise of its right to elect any interim measure shall be without prejudice to DSI's right to terminate this Agreement upon written notice to Subscriber.

6.19 Termination of Services Subscription.

(a) Either party may terminate a Services subscription prior to the expiration of its applicable term if the other party breaches any term of this Agreement or such Services subscription and, if such breach is capable of cure, such breach is not cured by the breaching party within thirty (30) days after receipt of written notice of such breach from the non-breaching party; provided that if the breach involves a failure of Subscriber to pay any of the fees required under this Agreement, the cure period shall be reduced to ten (10) days.

(b) Subscriber may terminate any Services subscription (other than a Services subscription for the Dude Learn Application, which is not terminable for convenience) at any time for convenience by providing DSI thirty (30) days' prior written notice to the following email address: clientsuccess@dudesolutions.com. Upon termination by Subscriber pursuant to this Section 6.3(b), Subscriber may request in writing and be granted a refund in an amount equal to: (i) the Subscription Fee prepaid by Subscriber for the one-year term during which such termination is effective, *multiplied by* (ii) the number of full months remaining in the applicable one-year term (determined based upon the effective date of termination), (iii) *divided by* twelve; provided, however, that if DSI receives Subscriber's written notice of termination pursuant to this Section 6.3(b) within the first sixty (60) days after the commencement of the Initial Term, DSI shall refund to Subscriber the entire Subscription Fee for the Initial Term. For avoidance of doubt, no refund shall be granted with respect to fees for training, import or project management, and/or other professional services.

6.20 Stop Providing Service. DSI may, upon 180 days' prior written notice to Subscriber, terminate provision of a Service as a hosted offering. Upon such termination Subscriber may request in writing and be granted a refund in an amount equal to: (i) the Subscription Fee prepaid by Subscriber for such Service for the one-year term during which such termination is effective, *multiplied by* (ii) the number of full months remaining in the applicable one-year term (determined based upon the effective date of termination of such Service), (iii) *divided by* twelve.

6.21 Effect of Termination. Upon termination of this Agreement, (i) Subscriber's access and use of the Services shall automatically cease, and (ii) DSI shall have no obligation to maintain the Subscriber Data or to forward the Subscriber Data to Subscriber or any Third Party.

6.22 Survival. The following portions of this Agreement shall survive termination of this Agreement and continue in full force and effect: Sections 2.1(d), 2.2, 6.4, 7, 8 and 9. Termination of this Agreement, or any of the obligations hereunder, by either party shall be in addition to any other legal or equitable remedies available to such party, except to the extent that remedies are otherwise limited hereunder.

Section 7.0 Disclaimers and Indemnification

7.23 Disclaimer of Warranties. DSI AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR ANY CONTENT. DSI AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT: (I) THE USE OF THE SERVICES SHALL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (II) THE SERVICES SHALL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (III) ANY STORED DATA SHALL BE ACCURATE OR RELIABLE; (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES SHALL MEET YOUR REQUIREMENTS OR EXPECTATIONS; (V) ERRORS OR DEFECTS SHALL BE CORRECTED; (VI) THE SERVICES OR THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES AND ALL CONTENT IS PROVIDED TO YOU STRICTLY

ON AN "AS-IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY DSI AND ITS LICENSORS.

7.24 Indemnification.

(a) *Indemnity by DSI*. DSI shall defend, indemnify and hold harmless Subscriber from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Subscriber, in connection with any Third Party claim (each, a "Claim") alleging that Subscriber's use of the Services as expressly permitted hereunder infringes upon any United States patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; provided that Subscriber (x) promptly gives DSI written notice of the Claim; (y) gives DSI sole control of the defense and settlement of the Claim; and (z) provides to DSI all reasonable assistance, at DSI's expense. If DSI receives information about an infringement or misappropriation claim related to the Services, DSI may in its sole discretion and at no cost to Subscriber: (i) modify the applicable Service(s) so that it no longer infringes or misappropriates, (ii) obtain a license for Subscriber's continued use of the applicable Service(s), or (iii) terminate the Subscriber's Account subscriptions for the applicable Service(s) upon prior written notice and refund to Subscriber any prepaid Subscription Fees covering the remainder of the term of the terminated Account subscriptions. Notwithstanding the foregoing, DSI shall have no liability or obligation with respect to any Claim that is based upon or arises out of (A) use of the applicable Service(s) in combination with any software or hardware not expressly authorized by DSI, (B) any modifications or configurations made to the applicable Service(s) by Subscriber without the prior written consent of DSI, and/or (C) any action taken by Subscriber relating to use of the applicable Service(s) that is not permitted under the terms of this Agreement. This Section 7.2(a) states Subscriber's exclusive remedy against DSI for any Claim of infringement of misappropriation of a Third Party's Intellectual Property Rights related to or arising from Subscriber's use of the Services.

(b) Subscriber shall defend, indemnify and hold harmless DSI from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by DSI, in connection with any Claim alleging that the Subscriber Data, or Subscriber's use of the Services in breach of this Agreement, infringes upon any United States patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; provided that DSI (x) promptly gives Subscriber written notice of the Claim; (y) gives Subscriber sole control of the defense and settlement of the Claim; and (z) provides to Subscriber all reasonable assistance, at Subscriber's expense. This Section 7.2(b) states DSI's exclusive remedy against Subscriber for any Claim of infringement of misappropriation of a Third Party's Intellectual Property Rights related to or arising from the Subscriber Data or Subscriber's use of the Services.

7.25 Limitation of Liability. IN NO EVENT SHALL DSI, IN THE AGGREGATE, BE LIABLE FOR DAMAGES TO SUBSCRIBER IN EXCESS OF THE AMOUNT OF SUBSCRIPTION FEES PAID BY SUBSCRIBER TO DSI PURSUANT TO THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO THE LAST ACT OR OMISSION GIVING RISE TO THE LIABILITY. UNDER NO CIRCUMSTANCES SHALL DSI OR ANY THIRD-PARTY LICENSOR HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, OR CONSEQUENTIAL, EXEMPLARY, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF DSI OR THE APPLICABLE THIRD-PARTY LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESENTIAL

PURPOSE OF ANY LIMITED REMEDY.

SUBSCRIBER AGREES THAT DSI'S CRISISMANAGER AND SAFETY CENTER APPLICATIONS (COLLECTIVELY, "SAFETY APPS") IS A DOCUMENTATION TOOL ONLY, AND THAT EACH OF THE SAFETY APPS IS NOT INTENDED TO PROVIDE EMERGENCY SERVICES OR PROTOCOLS, PROCEDURES OR ACTION PLANS IN THE EVENT OF A CRISIS OR EMERGENCY. SUBSCRIBER FURTHER AGREES THAT IT SHALL BE SOLELY RESPONSIBLE FOR: (1) CREATING AND MAINTAINING ITS EMERGENCY ACTION PLAN WITHIN EACH RESPECTIVE SAFETY APP, (2) ENSURING THAT SUBSCRIBER'S EMPLOYEES, CONTRACTORS AND OTHER PERSONNEL ARE PROVIDED ACCESS TO ITS EMERGENCY ACTION PLAN WITHIN THE SAFETY APPS, AND (3) CONTACTING (*E.G.,* CALLING 911) EMERGENCY SERVICES IN THE EVENT OF AN ACTUAL CRISIS OR EMERGENCY. DSI SHALL HAVE NO RESPONSIBILITY OR LIABILITY AS A RESULT OF THIS AGREEMENT AND/OR SUBSCRIBER'S USE OF THE SAFETY APPS FOR DECISIONS MADE OR ACTIONS TAKEN OR NOT TAKEN IN THE EVENT OF A CRISIS OR EMERGENCY.

Section 8.0 Confidentiality

8.26 Protection of Confidential Information. The Receiving Party agrees that it shall (i) hold the Disclosing Party's Confidential Information in strict confidence and shall use the same degree of care in protecting the confidentiality of the Disclosing Party's Confidential Information that it uses to protect its own Confidential Information, but in no event less than reasonable care, (ii) not use the Confidential Information of the Disclosing Party for any purpose not permitted by this Agreement; (iii) not copy any part of the Disclosing Party's Confidential Information except as expressly permitted by this Agreement, (iv) limit access to the Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

8.27 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party shall reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8.28 Remedies. Recipient acknowledges that Disclosing Party would have no adequate remedy at law should Receiving Party breach its obligations relating to Confidential Information and agrees that Disclosing Party shall be entitled to enforce its rights by obtaining appropriate equitable relief, including without limitation a temporary restraining order and an injunction.

Section 9.0 Miscellaneous

9.29 Authority. Subscriber represents and warrants that: (i) it has full right, title and authority to enter into this Agreement; and (ii) this Agreement constitutes a legal, valid and binding obligation of Subscriber, enforceable against it in accordance with its terms.

9.30 Acceptance of Privacy Policy. All data and information provided by Subscriber through its use of the Services is subject to the Privacy Policy. By using the Services, Subscriber accepts and agrees to be bound and abide by the Privacy Policy.

9.31 Governing Law & Venue. This Agreement and any dispute arising out of or in connection with this Agreement shall be governed by and construed under the laws of the State of Tennessee, without regard to the principles of conflict of laws. Venue shall be in a court of competent jurisdiction in Williamson County, Tennessee.

9.32 Relationship of the Parties. DSI is performing pursuant to this Agreement only as an independent contractor. DSI has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Agreement, except as otherwise agreed upon by the parties. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between DSI and Subscriber. DSI shall not act or attempt to act or represent itself, directly or by implication, as an agent of Subscriber or its affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, Subscriber or its affiliates.

9.33 Waiver. No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently enforce any of its rights, whether relating to the same or a subsequent matter.

9.34 Assignment. Subscriber shall have no right to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement to any Third Party and any attempt to do so shall be null and void. DSI shall have the full ability to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement.

9.35 Force Majeure. Subject to the limitations set forth below and except with respect to any payment obligations of Subscriber, neither party shall be held responsible for any delay or default, including any damages arising therefrom, due to any act of God, act of governmental entity or military authority, explosion, epidemic casualty, flood, riot or civil disturbance, war, sabotage, unavailability of or interruption or delay in telecommunications or Third Party services, failure of Third Party software, insurrections, any general slowdown or inoperability of the Internet (whether from a virus or other cause), or any other similar event that is beyond the reasonable control of such party (each, a "Force Majeure Event"). The occurrence of a Force Majeure Event shall not excuse the performance by a party unless that party promptly notifies the other party of the Force Majeure Event and promptly uses its best efforts to provide substitute performance or otherwise mitigate the force majeure condition.

9.36 Notices. Except as otherwise specified in this Agreement, all notices, instructions, requests, authorizations, consents, demands and other communications hereunder shall be in writing and shall be delivered by one of the following means, with notice deemed given as indicated in parentheses: (a) by personal delivery (when actually delivered); (b) by overnight courier (upon written verification of receipt); (c) by certified or registered mail, return receipt requested (upon verification of receipt); or (d) solely with respect to notices to Subscriber, via electronic mail to the e-mail address maintained on Subscriber's Account. All notices to DSI shall be addressed as follows: Dude Solutions, Inc., 11000 Regency Parkway, Suite 110, Cary, NC 27518 Attn: Legal Operations, *with a copy to*: Robinson, Bradshaw & Hinson, P.A., 101 N. Tryon St., Suite 1900, Charlotte, NC 28246, Attn: Richard Dunn.

9.37 Interpretation of Agreement. The Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not affect in any way the meaning or interpretation of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

9.38 No Third Party Beneficiaries. No person or entity not a party to this Agreement shall be deemed to be a third party beneficiary of this Agreement or any provision hereof.

9.39 Severability. The invalidity of any portion of this Agreement shall not invalidate any other portion of this Agreement and, except for such invalid portion, this Agreement shall remain in full force and effect.

9.40 Entire Agreement. This Agreement is the entire agreement between Subscriber and DSI regarding Subscriber's use of the Service and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in any purchase order or in any other order documentation is void.

9.41 Anti-Corruption. Subscriber has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of DSI's employees or agents in connection with this Agreement. If Subscriber learns of any violation of the above restriction, Subscriber shall immediately notify DSI.

9.42 Export Compliance. The Services, other technology DSI may make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Subscriber shall not export or re-export the Services in any form without first obtaining the appropriate United States and foreign government approvals. Each party represents that it is not named on any U.S. government denied-party list. Subscriber shall not permit Account Users to access or use the Services in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

9.43 Cooperative Use. With Subscriber's approval, the market research conducted by Subscriber during its selection process for the Services may be extended for use by other jurisdictions, municipalities, and government agencies of Subscriber's state. Any such usage by other entities must be in accordance with ordinance, charter, and/or procurement rules and regulations of the respective political entity.

9.44 Children Under the Age of 13. Websites and/or online applications and services that are collecting information from children under the age of 13 are required to comply with Federal Trade Commission (FTC) Children's Online Privacy Protection Act (COPPA). Subscriber shall not submit, and shall ensure that its Account Users shall not submit, any information from children under the age of 13. DSI does not knowingly collect personal information from children under 13. If Subscriber believes DSI might have any information from or about a child under 13, please contact DSI at: notice@dudesolutions.com or by mail at the following address: Dude Solutions, Inc., 11000 Regency Parkway, Suite 110, Cary, NC 27518 Attn: Operations. If DSI learns it has collected or received personal information for a child under 13 without verification of parental consent, DSI shall delete such information.

9.45 Modifications. DSI may revise the terms of this Agreement from time-to-time and shall post the most current version of this Agreement on its website. If a revision meaningfully reduces Subscriber's rights, DSI shall notify Subscriber.

[Remainder of page intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

Town of Thompson's Station	**Dude Solutions, Inc.**
Signature	Signature
Print Name	Print Name
Title	Title
Date Signed	Date Signed

DUDE SOLUTIONS COMMUNITY DEVELOPMENT™

SmartGov™

Simplified Service for Your Community

Provide a better experience for your citizens, businesses and staff by managing permitting, planning, licensing, inspections and code enforcement in one centralized system.

Using SmartGov™, you can streamline your plan review, reduce liability, increase transparency and facilitate your community's needs by optimizing your processes.

You also have the ability to add an easy-to-use public portal. As a result, you can increase efficiencies and dramatically reduce time, cost and error for your organization.

How does it work?

SmartGov is a browser-based software-as-a-service (SaaS) solution that securely manages and streamlines processes at every stage of engagement. With automation and a mobile app, SmartGov simplifies access and processes for citizens, contractors and businesses. Manage all of your essential processes tied to permitting, planning, licensing, inspections and code enforcement in one unified system.

866.455.3833 / info@dudesolutions.com / dudesolutions.com

Dude Solutions®

Product Features

Permitting & Planning	> Centralize permit and project data > Monitor contractor license information > Automate workflow and approval process > Define an unlimited number of permit and project types > Collaborate internally between departments or externally with clients > Calculate fees automatically, including late NSF penalties > Attach notes, scanned images and electronic files to a permit or project > Manage special zoning and conditional requirements > Assign inspections based on geographical area, violation type or inspector workload > Integrate with existing GIS systems
Business Licensing	> Manage licensing from new applications to renewals and expirations, including timelines, fees and inspections > Issue business licenses > Generate notice letters for applicants > Enable online application submittal and fee payment > Allow for expirations or blocking of permit and inspection requests > Enable users to view business license history
Enforcement	> Automate enforcement, from complaint submittal to resolution > Centrally track and manage unlimited case types, code violation activity and deadlines > Assign inspections based on geographical area, violation type or inspector workload > Track investigations, hearings and legal actions > Automatically calculate violation fines > Attach notes, scanned images and electronic files to a case > View case resolution and create a permanent case history > Integrate with existing GIS systems
Inspections	> Unify automated workflows, task lists, scheduling and note-taking > Define your own inspection types > Create checklists of actions for each inspection type > Assign inspection types and checklists to every project, permit, case or license > Schedule inspections based on geography, type or inspector > Track every inspection as part of a permanent digital record > Sort, query and access records easily, from anywhere at any time

Mobile	> Inspections and code enforcement tools in the field via any laptop, tablet or smartphone > Document updates or code issues and communicate them with co-workers and clients in real time > Print any letters, certificates or reports from your mobile device
Map Integration	> Enable visualization of any number of GIS layers alongside permits, projects, inspections and code enforcement cases with an ArcGIS integration > GIS layers can be displayed in conjunction with the standard base maps included as part of the core feature set > Display inspection search results and enforcement actions as a point on a map > Navigate existing cases and initiate new cases starting from a map
Public Portal	> Submit permit applications, including digital documents, digital plans, fee payments and inspection requests > View the status of permits, inspections and violations > Print reports and required forms > Access fee information > View daily and pending inspection schedules, as well as year-to-date metrics > View and respond to digital plan markup and comments > Review real-time plan check comments and inspection results
Online Payments	> Define fee types and rates > Assess fees and invoice for payment > Receive partial or full payments and issue partial or full refunds > View transaction history > Integrate with payment processors and Financial Management Systems > Manage security and uptime to allow for payments 24/7

Reporting	> Access library of formatted reports, form letters and related output documents for managing the lifecycle of permits, licenses and enforcement cases > Build your own reports in a variety of formats, generated with user-defined parameters and available on scheduled intervals or in real time > On-screen queries using integrated search tool

Product Pricing

COMMUNITY DEVELOPMENT
Annual subscription

- Full cloud-based solution
- Licensing
- Permitting and planning
- Code enforcement
- Inspections
- Reporting and analysis
- Mobile application

COMMUNITY DEVELOPMENT ADD-ONS
Additional annual fee (per feature)

- Public portal
- Electronic plan review
- Map integration
- Financial integrations

ADDITIONAL ADD-ONS
Additional annual fee

- Work & Asset Management
- Capital Forecasting
- Energy Management
- Technology Management
- Skills Management
- Consulting services

Key Benefits

Increase citizen confidence and satisfaction. Build a stronger connection with your community while saving time and money by allowing citizens to complete processes and check statuses online 24/7. This way citizens can work with you anywhere and anytime they need.

Improve safety. Make requests and applications easy to submit, and maintain more reasonable response times to ensure citizens follow through with proper permitting procedures and work is done safely. With automated code enforcement, compliance is enforced more quickly and accurately, minimizing violations and increasing public safety.

Drive development, growth and revenue. With optimized processes for functions like permitting and licensing, you'll capitalize on development opportunities faster, ensure revenue is collected quicker and provide an optimized experience for the business and development community. You and your department will maintain a positive reputation and continue to attract new development.

Improve decision making. Maximize visibility and transparency with a full suite of reports and charts. Provide analytics to elected officials to enable data-driven decisions to improve efficiencies and deliver meaningful outcomes.

Maximize efficiencies. Dramatically reduce time, costs and errors associated with permit processing, business licensing, code enforcement and inspections by tracking and managing all processes and tasks in a unified, web-based and mobile-enabled system. Backend process automation combined with an intuitive public portal provide an end-to-end solution that eliminates guesswork and dependence on paper, while enabling faster revenue generation for your jurisdiction.

Gain critical portability. Conduct on-site inspections and code enforcement from anywhere with a system that can be used on virtually any mobile device.

"User-friendly, manageable and efficient, [Dude Solutions] software has allowed us to successfully implement streamlined and efficient permit processing at a time when resources (staff, time and funding) are strained and customer satisfaction is a priority."

— Nikki Hollatz, Environmental Health, Skamania County, WA

Technical Requirements

We suggest the latest version of all browsers and mobile operating systems (OS) for the best experience. Please consult with your IT department to ensure that all browsers are up to date and capable of supporting Community Development.

INTERNET BROWSER
Latest versions are recommended

- Google Chrome
- Internet Explorer 11

Implementation Information

All Dude Solutions clients have our support, starting with implementation. Your dedicated project manager and implementation specialist will support you with a call to outline your objectives and guide you through every step of the process. And our support doesn't stop there. As a client, you'll have our Legendary Support Team on your side to ensure you get the most out of our solutions. From initial installation to your first permit processed, we've got you covered.

Legendary Support Team *Cost: Included*	› All Dude Solutions clients have unlimited access to our Legendary Support Team › Reach support via phone or email for answers
Implementation support *Cost: Included*	› Dedicated implementation resources, including a project manager and an implementation specialist › Orientation call to establish objectives and answer questions › Project collaboration tool for implementation management › Weekly status meetings and implementation updates

V3_ 101419

ABOUT DUDE SOLUTIONS

Dude Solutions is a leading software-as-a-service (SaaS) provider of operations management solutions to education, government, healthcare, senior living, manufacturing and membership-based organizations. For nearly two decades, Dude Solutions has inspired clients to create better work and better lives. We combine innovative, user-friendly technology with the world's smartest operations engine, empowering operations leaders to transform the most important places in our lives. Today, more than 12,000 organizations use our award-winning software to manage maintenance, assets, energy, safety, IT, events and more. For more information, visit dudesolutions.com.

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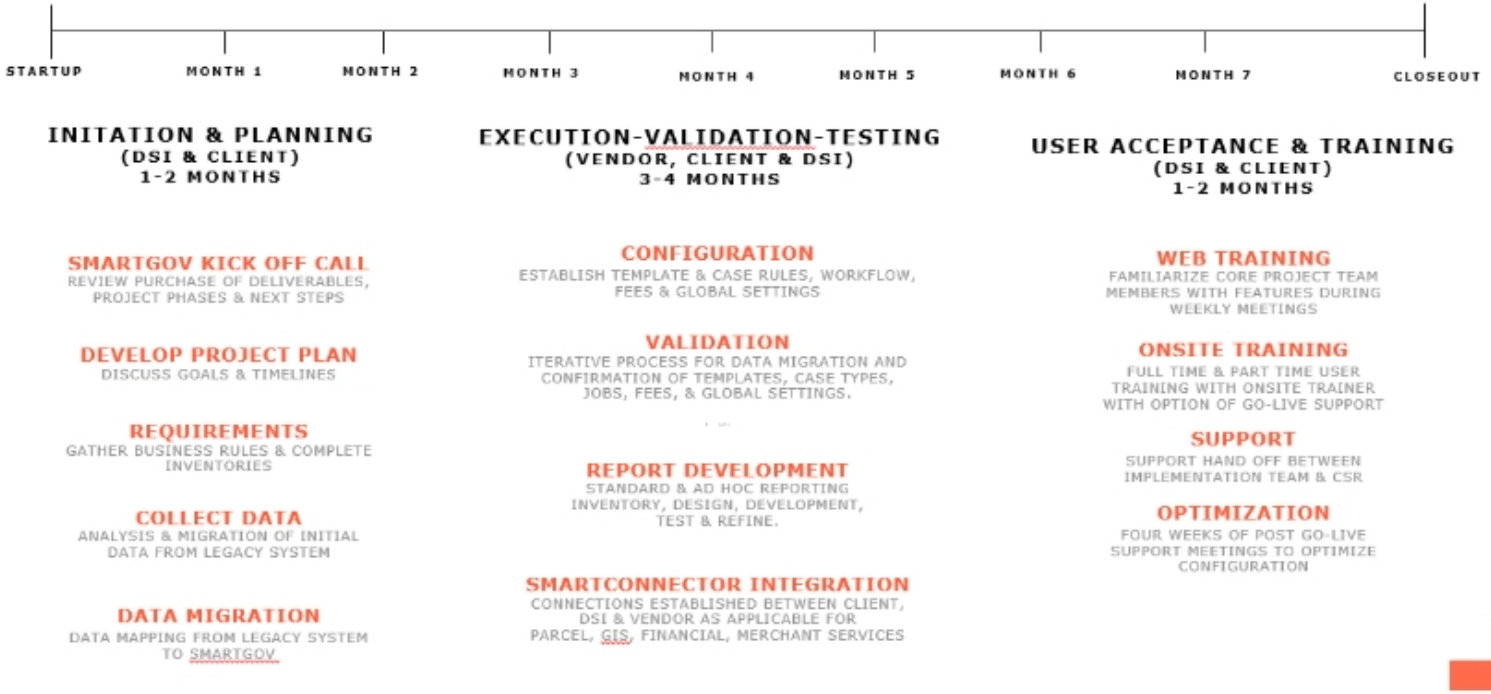
Dude Solutions®

Sample Implementation Timeline – From Proposal to "Go Live"

Thompson's Station, TN		Dude Solutions		Estimated Date: Scheduled/Completed
Review Quote/Contract/ Sow	X			*November 1, 2019*
Sign and return electronic Agreement	X			*November 1, 2019*
		Dude Internal Call – post purchase project review and planning	X	*November 15, 2019*
Client Intro Call	X	Client Intro Call	X	*December 2, 2019*
Project Kick-off call/Initiation & Planning	X	Project Kick-off call/Initiation & Planning	X	*December 16, 2019*
Execution/Validation/Testing	X	Execution/Validation/Testing	X	*March-April*
User Acceptance & Training	X	User Acceptance & Training	X	*May-June*

SMARTGOV High Level Process



Permit Software Review Chart

	Customizable Workflows	Contractor Portal	Online Payments	ERP (Electronic Plan Review)	Mobile Devices	Cloud Hosting	GIS Integration	Contractor Licenses	Code Enforcement	Work Order	Reports	3rd Party Reviews	Future Expansion	User Friendly	Training	Timeline	Pricing
SmartGov	15 permit and planning worflows to start and we can create new ones for free	Public Portal where builders can sign themselves up	Merchant Connector Portal	3rd party: Bluebeam Plan Review Software	iOS and Android App, can be offline	Yes, Unlimited	Yes, Parcel connector to County GIS Data	Additional Module that pulls from State DB . Can also keep records manually	Included in annual subscription	Work Order & Asset Module (Additional Module, not included in our quote)	Yes, can customize and email out automatically on monthly basis	Collierville, TN - Staff very pleased with product functionality	Work Order/Asset Mgnt, Energy Mgnt, IT Mgnt, Event Mgnt	Well laid out and easy to navigate for contractors and staff	2-days on-site training with supplemental online training available	5-6 months for configuration, installation and user training	**Year One: $34,592. Annual: $15,083**
MyGov	Yes, unlimited workflows but not well integrated - Permit Module	Collaborator Portal (Included)	Included in Collaborator Portal	Custom ERP software	Not an app, dashboard on website	Yes, Unlimited	GIS / Mapping ($1,200 per yr)	Credential Manager - keep records manually	Code Enforcement Module	Work Order Module (included)	Yes, simple reporting features	Dyersburg, TN - Staff viewed it as rather limited in it's operation	Business License, Lien Collection, Request Manager, Asset Management	Simple but not as fully featured	Online Training Only	6-9 weeks to implement, configure and user training	**Year One: $13,968. Annual: $10,800**
idtPlans	1 application and workflow, 1 custom doc, 5 permits and 8 inspections. Additional cost to expand. See table below.	Contractor Portal - Every contractor would need a specific login setup for them	Yes if we connect our merchant portal to their gateway	3rd party: Bluebeam Plan Review Software	Not an app, dashboard on website, can be offline	Yes, unlimited	Yes, can pull from County GIS Data	No, possibly in the future	No, not designed for Code Enforcement	No, not designed for Work Orders	Dashboard with statistics that can be turned into a report	Williamson Cnty & Franklin, TN - have heard mixed reviews from County Staff	No additional modules to expand into	"Help me Choose" buttons for builders, internally it is more complicated	Local reps (Nashville) On-site training for specific users	6 months average tiered approach	**Year One: $24,144. Annual: $14,792**
GovPilot	Customizable forms, they cannot track status	Forms available Online. GovAlert App for request tracking	Yes	3rd party: Bluebeam	Windows Tablets only	Yes	Online GIS Mapping for citizens	No	Yes	Public Works Forms	No	Jersey City, NJ	Pet Licensing, Tax Assessment, Landlord Registration	Lots of details we have to setup ourselves	Online Training Only	9 weeks for training and setup	**Year One: $11,432. Annual: $4,503**
Local Gov. Corp.	LG Permits - Their software cannot track workflows, is more a place to store static info	No	No	No	No	No, hosted locally - requires new server hardware, upgrade to Town Hall Network.	No	LG Permits module can record the status of contractors, manual process	No	Task Tracker - additional module for sale	No	State of TN & Spring Hill, TN - Spring hill has been slowly moving away from Local Gov. for Permits	Inventory Control, Property Tax, Business License, Call Tracking, etc.	Old system, not very easy to use	2-days onsite training along with the Freeline Online University	8 weeks of training with installation and configuration after completion	**Year One: $18,030 Annual: $3,016**

idtPlans Customization Costs

Customization Costs (as needed)		
The costs noted below are only assessed on an as needed basis. The system comes pre-configured with 1 application and workflow, 1 custom document, 5 permits, and 8 inspections.		
Item	**Qty**	**Total**
Application & Workflow Configuration (Simple)	1	$1,000
Application & Workflow (Complex)	1	$1,500
Permit Configuration	1	$500
Inspection Configuration	1	$500
Custom Document Configuration	1	$750
Custom Report	1	$1,000

NOTE: We reached out to Tyler Technologies to review their EnerGov Permit Software but they did not return our inquiries after multiple attempts to contact.

General Fund

Unaudited

	Jul	Aug	Sep	Oct	YTD Actual	Budgeted	% Act/Bud
Property Tax	$ 717	$ 2,135	$ 36	$ 4	$ 2,892	$ 283,500	1.0%
Sales Tax	$ 128,716	$ 124,132	$ 119,652	$ 126,655	$ 499,155	$ 1,642,000	30.4%
Gas Tax	$ 15,418	$ 14,835	$ 16,457	$ 16,173	$ 62,883	$ 178,000	35.3%
Bldg Permits/Impact Fees	$ 65,173	$ 114,446	$ 77,291	$ 27,315	$ 284,225	$ 1,076,000	26.4%
Alcohol	$ 10,237	$ 23,445	$ 12,265	$ 1,623	$ 47,570	$ 123,600	38.5%
Grants	$ -	$ -	$ -	$ -	$ -	$ 572,000	0.0%
All Other	$ 4,314	$ 5,400	$ 5,031	$ 8,392	$ 23,137	$ 129,400	17.9%
Total Revenues	**$ 224,575**	**$ 284,393**	**$ 230,732**	**$ 180,162**	**$ 919,862**	**$ 4,004,500**	**23.0%**
Payroll expenditures	$ 67,382	$ 54,471	$ 71,193	$ 95,376	$ 288,422	$ 926,352	31.1%
Streets & Roads	$ 4,246	$ 3,631	$ 10,003	$ 8,068	$ 25,948	$ 252,000	10.3%
Professional Fees	$ 38,120	$ 11,378	$ 38,061	$ 70,255	$ 157,814	$ 360,500	43.8%
Operating Expenditures	$ 28,316	$ 57,190	$ 7,770	$ 18,124	$ 111,400	$ 205,750	54.1%
County Services	$ 8,333	$ 9,652	$ 8,992	$ 17,986	$ 44,963	$ 133,000	33.8%
Debt Service	$ -	$ -	$ 144,105	$ -	$ 144,105	$ 301,267	47.8%
Capital Projects	$ -	$ 4,200	$ 1,966	$ 150,377	$ 156,543	$ 3,912,000	4.0%
Total Expenditures	**$ 146,397**	**$ 140,522**	**$ 282,090**	**$ 360,186**	**$ 929,195**	**$ 6,090,869**	**15.3%**
Net change in Position	**$ 78,178**	**$ 143,871**	**$ (51,358)**	**$ (180,024)**	**$ (9,333)**	**$ (2,086,369)**	

General Fund Cash Position	Jul	Aug	Sep	Oct
Checking	$ 1,094,839	$ 1,013,378	$ 897,015	$ 848,232
Savings	$ 5,588,085	$ 5,791,923	$ 5,795,160	$ 5,897,011
Less: Reserve	$ (1,030,000)	$ (1,030,000)	$ (1,030,000)	$ (1,036,862)
Total Cash	**$ 5,652,924**	**$ 5,775,301**	**$ 5,662,175**	**$ 5,708,381**
Less:				
Note Balance (First Farmers)	$ (576,500)	$ (576,500)	$ (461,200)	$ (461,200)
Note Balance (First Tennessee)	$ (1,420,000)	$ (1,420,000)	$ (1,420,000)	$ (1,420,000)
Due to Wastewater Fund	$ (318,365)	$ (395,029)	$ (418,963)	$ (407,408)
Accounts Payable	$ (132,912)	$ (35,591)	$ (22,479)	$ (169,035)
Total Avaiable Funds	**$ 3,205,147**	**$ 3,348,181**	**$ 3,339,533**	**$ 3,250,738**

Budget vs. Actuals: FY2020 - FY20 P&L Divisions

for period July 1 - Oct 31, 2019

Unaudited

	General Fund			
	Actual	Budget	Remaining	% of Budget
Revenues				
31111 Property Tax	2,892	283,500	280,608	1.02%
31610 Local Sales Tax - Trustee	311,617	915,000	603,383	34.06%
31810 Adequate School Facilities Tax	19,582	46,000	26,418	42.57%
32260 Business Tax Revenue	17,085	75,000	57,915	22.78%
33510 Local Sales Tax - State	150,870	550,000	399,130	27.43%
33320 TVA Payments in Lieu of Taxes		56,000	56,000	0.00%
Total Sales Tax	499,155	1,642,000	1,142,845	30.40%
33552 State Streets & Trans. Revenue	3,128	9,000	5,872	34.75%
33553 SSA - Motor Fuel Tax	31,349	92,000	60,651	34.08%
33554 SSA - 1989 Gas Tax	5,013	15,000	9,987	33.42%
33555 SSA - 3 Cent Gas Tax	9,288	28,000	18,712	33.17%
33556 SSA - 2017 Gas Tax	14,106	34,000	19,894	41.49%
Total Gas Tax	62,883	178,000	115,117	35.33%
32200 Building Permits	113,645	504,000	390,355	22.55%
32230 Submittal & Review Fees	4,513	5,000	487	90.26%
32300 Impact Fees	166,067	567,000	400,933	29.29%
Total Bldg Permits/Impact Fees	284,225	1,076,000	791,775	26.41%
31710 Wholesale Beer Tax	38,603	99,000	60,398	38.99%
31720 Wholesale Liquor Tax	4,336	15,000	10,664	28.90%
32000 Beer Permits		600	600	0.00%
33535 Mixed Drink Tax	4,632	9,000	4,368	51.46%
Total Alcohol	47,570	123,600	76,030	38.49%
33725 Grants		572,000	572,000	0.00%
32245 Miscellaneous Fees		2,000	2,000	0.00%
31900 CATV Franchise Fee Income	7,747	30,000	22,253	25.82%
36120 Interest Earned - Invest. Accts	10,883	57,500	46,617	18.93%
37746 Parks Revenue	2,207	30,000	27,793	7.36%
37990 Other Revenue	2,300	9,900	7,600	23.23%
Total Alcohol	23,137	129,400	106,263	17.88%
Total Revenues	**919,861**	**4,004,500**	**3,084,639**	**22.97%**
Expenditures				

	General Fund			
	Actual	Budget	Remaining	% of Budget
41110 Payroll Expense	216,001	724,555	508,554	29.81%
41141 Payroll Taxes - FICA	13,489	44,922	31,433	30.03%
41142 Payroll Taxes - Medicare	3,156	9,781	6,625	32.27%
41147 Payroll Taxes - SUTA	397	1,666	1,269	23.85%
41514 Insurance - Employee Medical	45,895	109,200	63,305	42.03%
41289 Employee Retirement Expense	9,484	36,228	26,744	26.18%
Total Payroll Expenditures	288,422	926,352	637,930	31.14%
41264 Repairs & Maint - Vehicles	3,917	20,000	16,083	19.59%
41268 Repairs & Maint-Roads, Drainage	7,073	40,000	32,927	17.68%
41269 SSA - Street Repair Expense	6,899	170,000	163,101	4.06%
41270 Vehicle Fuel & Oil Expense	8,059	22,000	13,941	36.63%
Total Streets & Roads	25,948	252,000	226,052	10.30%
41252 Prof. Fees - Legal Fees	60,829	150,000	89,172	40.55%
41253 Prof. Fees - Auditor	4,000	14,500	10,500	27.59%
41254 Prof. Fees-Consulting Engineers	77,805	146,000	68,195	53.29%
41259 Prof. Fees - Other	15,180	50,000	34,820	30.36%
Total Professional Fees	157,814	360,500	202,686	43.78%
41161 General Expense		3,000	3,000	0.00%
41211 Postage, Freight & Express Chgs	156	1,500	1,344	10.43%
41221 Printing, Forms & Photocopy Exp	467	6,000	5,533	7.79%
41231 Publication of Legal Notices	663	3,000	2,337	22.09%
41235 Memberships & Subscriptions	2,590	5,000	2,410	51.80%
41241 Utilities - Electricity	4,434	15,000	10,566	29.56%
41242 Utilities - Water	1,021	2,500	1,479	40.84%
41244 Utilities - Gas	320	2,000	1,680	15.99%
41245 Telecommunications Expense	2,150	6,000	3,850	35.83%
41265 Parks & Rec. Expense	3,880	20,150	16,270	19.25%
41266 Repairs & Maint - Bldg		24,000	24,000	0.00%
41280 Travel Expense	774	5,000	4,226	15.48%
41285 Continuing Education Expense	1,858	6,000	4,142	30.97%
41300 Economic Development Expense	1,299	3,500	2,201	37.11%
41311 Office Expense	35,535	50,000	14,465	71.07%
41511 Insurance - Property	23,064	5,000	-18,064	461.28%
41512 Insurance - Workers Comp.	14,486	12,000	-2,486	120.72%
41513 Insurance - Liability	16,009	7,500	-8,509	213.45%
41515 Insurance - Auto	2,694	5,000	2,306	53.88%
41516 Insurance - E & O		11,000	11,000	0.00%
41551 Trustee Commission		4,000	4,000	0.00%
41691 Bank Charges		600	600	0.00%
41899 Other Expenses		8,000	8,000	0.00%
Total Operating Expenditures	111,400	205,750	94,350	54.14%

	General Fund			
	Actual	Budget	Remaining	% of Budget
41291 Animal Control Services	3,296	8,000	4,704	41.20%
41800 Emergency Services	41,667	100,000	58,333	41.67%
41720 Donations		25,000	25,000	0.00%
Total County Services	44,963	133,000	88,038	33.81%
49030 Debt Service	144,105	301,267	157,162	47.83%
41940 Capital Projects				
1555 Office Furn, Fix, Equip		50,000	50,000	0.00%
1555 Office Renovations	1,966	100,000	98,034	1.97%
Approved Budget Capital Expenditures	150,377	197,000	46,623	76.33%
Critz Lane Improvements	4,200	1,400,000	1,395,800	0.30%
New Town Hall		1,200,000	1,200,000	0.00%
Park Improvements		965,000	965,000	0.00%
Total 41940 Capital Projects	156,543	3,912,000	3,755,457	4.00%
Total Expenditures	**929,194**	**6,090,869**	**5,161,675**	**15.26%**
Net Change in Position	**-9,333**	**-2,086,369**	**-2,077,036**	**0.45%**

Wastewater Fund

Unaudited

	Jul	Aug	Sep	Oct	YTD Actual	Budgeted	% Act/Bud
Wastewater Fees	$ 105,788	$ 107,549	$ 103,596	$ 107,709	$ 424,642	$ 1,201,619	35.3%
Tap Fees	$ 32,500	$ 62,500	$ 35,000	$ 15,000	$ 145,000	$ 500,000	29.0%
Other	$ 1,986	$ 2,087	$ 1,984	$ 2,092	$ 8,149	$ 40,350	20.2%
Total Revenues	**$ 140,274**	**$ 172,136**	**$ 140,580**	**$ 124,801**	**$ 577,791**	**$ 1,741,969**	**33.2%**
Payroll Expenses	$ 11,269	$ 12,464	$ 11,866	$ 11,866	$ 47,465	$ 256,078	18.5%
Operating Expense	$ 26,386	$ 14,955	$ 21,162	$ 27,475	$ 89,978	$ 355,350	25.3%
Depreciation	$ 37,500	$ 37,500	$ 37,500	$ 37,500	$ 150,000	$ 450,000	33.3%
Interest Expense	$ 889	$ 898	$ 879	$ 832	$ 3,498	$ 9,500	36.8%
Total Expenses	**$ 76,044**	**$ 65,817**	**$ 71,407**	**$ 77,673**	**$ 290,941**	**$ 1,070,928**	**27.2%**
Income from Operations	**$ 64,230**	**$ 106,319**	**$ 69,173**	**$ 47,128**	**$ 286,850**	**$ 671,041**	

Wastewater Funds Cash Position	Jul	Aug	Sep	Oct
Checking	$ 187,430	$ 125,930	$ 198,052	$ 188,248
Savings	$ 4,122,614	$ 4,224,702	$ 4,225,390	$ 4,327,484
Less: Reserve	$ (500,000)	$ (500,000)	$ (500,000)	$ (517,726)
Total Cash	**$ 3,810,044**	**$ 3,850,632**	**$ 3,923,442**	**$ 3,998,006**
Add:				
Accounts Receivable	$ 160,488	$ 180,092	$ 160,112	$ 199,901
Due from Gen Fund	$ 318,365	$ 395,029	$ 418,963	$ 422,757
Less:				
Note Balance (Franklin Synergy)	$ (425,926)	$ (416,667)	$ (407,408)	$ (398,148)
Accounts Payable	$ (25,167)	$ -	$ (1,708)	$ (58,957)
Deposits	$ (2,775)	$ (3,900)	$ (5,400)	$ (11,325)
Total Avaiable Funds	**$ 3,835,029**	**$ 4,005,186**	**$ 4,088,001**	**$ 4,152,234**

	as of 10/31/2019
Available Funds	$ 4,152,234
Less committed:	
W&O drip fields	$ (2,926,500)
Barge Design	$ (175,000)
Less estimated:	
Equipment	$ (100,000)
Cell #1 repairs	$ (500,000)
Est Ending Cash	**$ 450,734**

Town of Thompson's Station
Budget vs. Actuals: FY2020 Wastewater Fund
As of Oct 31, 2019

	Wastewater			
	Actual	Budget	Remaining	% of Budget
Income				
31000 Wastewater Treatment Fees	$ 408,910	$ 1,177,019	$ 768,109	34.74%
31010 Septage Disposal Fees	$ 2,050	$ 9,600	$ 7,550	21.35%
31050 Late Payment Penalty	$ 13,682	$ 15,000	$ 1,318	91.21%
33000 Tap Fees	$ 145,000	$ 500,000	$ 355,000	29.00%
36120 Interest Earned - Invest. Accts	$ 8,079	$ 40,000	$ 31,921	20.20%
37990 Other Revenue	$ 70	$ 350	$ 280	20.00%
Total Revenues	**$ 577,791**	**$ 1,741,969**	**$ 1,164,178**	**33.17%**
Expenses				
41110 Payroll Expense	$ 36,756	$ 213,104	$ 176,348	17.25%
41141 Payroll Taxes - FICA	$ 2,279	$ 13,212	$ 10,933	17.25%
41142 Payroll Taxes - Medicare	$ 533	$ 2,877	$ 2,344	18.53%
41147 Payroll Taxes - SUTA		$ 630	$ 630	0.00%
41289 Employee Retirement Expense	$ 1,838	$ 10,655	$ 8,817	17.25%
41514 Insurance - Employee Medical	$ 6,059	$ 15,600	$ 9,541	38.84%
Payroll Expenses	$ 47,465	$ 256,078	$ 208,613	18.54%
41211 Postage, Freight & Express Chgs	$ 2,415	$ 9,000	$ 6,585	26.83%
41220 41220 Lab Water Testing	$ 325	$ 4,000	$ 3,675	8.13%
41221 Printing, Forms & Photocopy Exp	$ 962	$ 8,000	$ 7,038	12.03%
41241 Utilities - Electricity	$ 31,271	$ 85,000	$ 53,729	36.79%
41242 Utilities - Water	$ 1,037	$ 6,000	$ 4,963	17.28%
41245 Telecommunications Expense	$ 629	$ 3,600	$ 2,971	17.47%
41253 Prof. Fees - Auditor	$ -	$ 2,500	$ 2,500	0.00%
41254 Prof. Fees-Consulting Engineers	$ 20,255	$ 100,000	$ 79,745	20.26%
41259 Prof. Fees - Other	$ 8,886	$ 5,000	$ (3,886)	177.72%
41260 Repairs & Maint WW	$ 18,619	$ 100,000	$ 81,381	18.62%
41320 Supplies Expense	$ 4,002	$ 5,000	$ 998	80.04%
41513 Insurance - Liability		$ 20,000	$ 20,000	0.00%
41720 Donations		$ 250	$ 250	0.00%
42100 Permits and Fees	$ 1,577	$ 6,000	$ 4,423	26.28%
41899 Other Expenses		$ 1,000	$ 1,000	0.00%
Operating Expenses	$ 89,978	$ 355,350	$ 265,372	25.32%
Depreciation	$ 150,000	$ 450,000	$ 300,000	33.33%
41633 Interest Expense - Note Payable	$ 3,498	$ 9,500	$ 6,002	36.82%
Total Expenses	**$ 290,941**	**$ 1,070,928**	**$ 779,987**	**27.17%**
Net Operating Income	**$ 286,849**	**$ 671,040**	**$ 384,190**	**42.75%**

Capital Projects FY2020

Fund	Project Name	Budgeted	Awarded	Contracted/Paid out Amount	Balance Remaining
GF	Town Hall Building	$ 1,200,000			$ 1,200,000
GF	Office Furniture/Upgrade	$ 50,000			$ 50,000
GF	Software upgrade	$ 100,000		$ 34,592	$ 65,408
GF	Road Improvements	$ 1,400,000		$ 31,205	$ 1,368,795
GF	Maintenance Equipment	$ 197,000		$ 84,580	$ 112,420
GF	Park Improvments	$ 965,000			$ 965,000
	Total General Funds	**$ 3,912,000**		**$ 150,377**	**$ 3,761,623**
WW	Repairs of Cell #1	$ 500,000			$ 500,000
WW	Hill Property Drip Fields	$ 3,100,000	W & O Constr.	$ 2,926,500	$ (1,500)
			Barge Design	$ 175,000	
WW	Equipment Replacements (items over $5,000)	$ 100,000		$ 13,515	$ 86,485
	Total Wastewater Funds	**$ 3,700,000**		**$ 3,115,015**	**$ 584,985**