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SMALL ENTITY COMPLIANCE GUIDE

**Accelerating Wireless Broadband Deployment by
Removing Barriers to Infrastructure Investment**

FCC 17-153

WT Docket No. 17-79

Released November 17, 2017

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In the *Replacement Pole Report and Order* in FCC 17-153, WT Docket No. 17-79, the Commission adopted rules that streamlined the process of deploying next-generation wireless broadband infrastructure by eliminating the need for historic preservation review pursuant to the National Historic Preservation Act (NHPA)¹ in certain instances where there is no potential effect on historic properties. Specifically, the Commission found that the construction of replacement utility poles that can support antennas or other wireless communications equipment to replace pre-existing utility poles that are substantially identical, under specified conditions, has no potential to affect historic properties, and therefore, the historic preservation review process is unnecessary in this context. Prior to adoption of this exemption, the Commission's rules generally required applicants replacing utility poles constructed with a sole or primary purpose other than supporting communications antennas with poles that would support communications antennas, to ensure that each pole underwent historic preservation review. By adopting this new exclusion subject to the specified limitations, the Commission continues to fulfill its statutory responsibilities regarding historic preservation, while removing an unnecessary impediment to the rapid deployment of much needed small cell facilities and other wireless infrastructure across the country. This order also reorganized the rules governing the Commission's historic preservation review procedures by bringing together provisions that previously were scattered across a number of sections into a single new rule section, 47 CFR §1.1320, which clearly sets forth the existing requirements but, with the exception of the new exclusion for replacement utility poles discussed above, does not modify them.

II. COMPLIANCE REQUIREMENTS

The *Report and Order* created an exemption from historic preservation review, for the replacement of utility poles that were constructed with a sole or primary purpose other than supporting communications antennas with poles that will support such antennas. The exemption can be found in the exclusion provisions of the new section 47 CFR §1.1320(b).

Replacement Utility Poles (47 CFR §1.1320(b)(3))

- Construction of a replacement pole for an existing structure will be excluded from historic preservation review where all of the following conditions are met:
 - (i) The original structure-
 - A. Is a pole that can hold utility, communications, or related transmission lines;
 - B. Was not originally erected for the sole or primary purpose of supporting antennas that operate pursuant to a spectrum license or authorization issued by the Commission; and
 - C. Is not itself a historic property.
 - (ii) The replacement pole-
 - A. Is located no more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole; provided that construction of the replacement pole in place of the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines. For purposes of this paragraph,

¹ 54 U.S.C. § 306108.

“ground disturbance” means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils;

- B. Has a height that does not exceed the original pole by more than 5 feet or 10 percent of the height of the original pole, whichever is greater; and
- C. Has an appearance consistent with the quality and appearance of the original pole.

Except for the replacement utility pole exemption discussed above, the new rule section at 47 CFR §1.1320 did not make any substantive changes to the pre-existing rules implementing the historic preservation review process under Section 106 of the NHPA or associated compliance obligations. Instead, it simplified how the Commission’s regulations set forth the existing requirements that govern the historic preservation review process. The structure of the new section is outlined below.

Review of Commission Undertakings That May Affect Historic Properties (47 CFR §1.1320)

- Section 47 CFR §1.1320(a) incorporates into the Commission’s rules the existing provisions in the Advisory Council on Historic Preservation’s (ACHP’s) regulations, which establish procedures for review of federal agencies’ undertakings with the potential to cause effects on historic properties under Section 106 of the NHPA, as well as program alternatives adopted pursuant to those regulations.
- Section 47 CFR §1.1320(b) lists Commission undertakings that are not subject to any FCC historic preservation review process.
- Section 47 CFR §1.1320(c) sets forth the responsibilities of Commission applicants and licensees relating to the historic preservation review process.
- Section 47 CFR §1.1320(d) provides definitions of the most significant terms in the rule—“antenna,” “applicant,” “collocation,” “tower,” and “undertaking.”

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission’s actions in the *Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The rules in the *Report and Order* became effective January 16, 2018, 30 days after publication in the Federal Register of a summary of the *Report and Order* (which contained the full text of the rules).

V. INTERNET LINKS

A copy of the *Report and Order* is available at:

<https://www.fcc.gov/document/fcc-streamlines-requirements-utility-pole-replacements-0>.

A copy of the Federal Register Summary of the *Report and Order* is available at:

<https://www.gpo.gov/fdsys/pkg/FR-2017-12-14/pdf/2017-26940.pdf>.