



Federal Communications Commission
Washington, D.C. 20554

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DA 19-277

SMALL ENTITY COMPLIANCE GUIDE

**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

FCC 18-133

Released: September 27, 2018

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 *Declaratory Ruling and Third Report and Order (Third Report and Order)* in FCC 18-133, WT Docket No. 17-79 and WC Docket No. 17-84, the Commission continued its efforts to streamline the regulatory framework for deployment of small wireless facilities and 5G service. 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.

The *Third Report & Order* establishes and codifies specific rules pertaining to the amount of time siting agencies may take to review and approve certain categories of wireless infrastructure siting applications. More specifically, the *Third Report and Order* establishes two new review period shot clocks for Small Wireless Facilities (60 days for collocation on existing structures and 90 days for new builds) and codifies the existing 90 and 150 day shot clocks for deployments of wireless facilities that do not qualify as small wireless facilities. In addition, the *Third Report and Order* sets out how the shot clock date is calculated, how any applicable shot clock tolling periods are applied and states that all state and local government authorizations necessary for the deployment of personal wireless service infrastructure are subject to the applicable shot clocks. The *Third Report and Order* also adopts a new remedy for applicants when siting authorities miss shot clocks for small wireless facilities.

II. COMPLIANCE REQUIREMENTS

The *Third Report & Order* amends the Commission's rules, adding 47 CFR § 1.6003 to require a siting authority (i.e., state or local governmental entity) to take timely action on a siting application and establishes the parameters for a reasonable time to act on a siting application.

Timely Action Required by A Siting Authority (47 CFR § 1.6003(a))

- Any siting authority that fails to act on a siting application by the expiration of the applicable shot clock is presumed not to have acted within a reasonable period of time.

Shot Clock Period for A Siting Application (47 CFR § 1.6003(b))

- The shot clock period for a siting application is the sum of the number of days specified for the relevant application type as the presumptively reasonable time for a siting authority to act plus the number of days of any applicable tolling period.

Presumptively Reasonable Period of Time for Action (47 CFR § 1.6003(c))

- Siting authorities must act in accordance with the following shot clocks:
 - Application to collocate a small wireless facility using an existing structure: 60 days.
 - Application to collocate a facility other than a small wireless facility using an existing structure: 90 days.
 - Application to deploy a small wireless facility using a new structure: 90 days.
 - Application to deploy a facility other than a small wireless facility using a new structure: 150 days.

Batched Applications (47 CFR § 1.6003(d))

- If an applicant files either a batched application to collocate small wireless facilities or a batched application to deploy new small wireless facilities, the shot clock that applies to the batch is the same one that would apply had the applicant submitted an individual application.
- If an applicant files a batch of applications that includes both collocation and new construction of small wireless facilities, the 90-day shot clock that applies to new construction of small wireless facilities would apply to the entire batch.
- Siting authorities may not refuse to accept batched applications.

Tolling Period (47 CFR § 1.6003(d))

- Absent a written agreement between an applicant and the siting authority specifying an alternative tolling period, the tolling period for an application is as follows:
 - 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 which the applicant submits all the documents and information identified by the siting authority to make the application complete.
 - For initial applications to deploy facilities other than small wireless facilities, the shot clock is paused if the siting authority notifies the applicant in writing, within 30 days of the initial submission, 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, and ***the shot clock resumes (the date calculation does not restart) to run*** on the date when the applicant submits all the documents and information identified by the siting authority to render the application complete.
 - If an applicant's supplemental submission fails to make the application complete, and the siting authority notifies the applicant of this determination within 10 days of the supplemental submission and clearly and specifically identifies the missing documents or information, the applicable shot clock would be paused until the applicant provides the missing documents or information. ***The shot clock resumes (the date calculation does not restart) to run*** on the date when the applicant submits all the documents and information identified by the siting authority to render the application complete.

Shot Clock Date (47 CFR § 1.6003(e))

- The shot clock dates (i.e., the dates by which the siting authority must act on an application) are determined by counting forward, by calendar days, including any pre-application period asserted by the siting authority. If the shot clock date falls on a "holiday" under FCC rules or within the relevant State or local jurisdiction, the shot clock date is the next business day.

An Additional Remedy for a Siting Authority's Failure to Act

- 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).
- 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. An 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).
- 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.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

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

IV. IMPLEMENTATION DATE

The rules in the *Third Report and Order* became effective on January 14, 2019, 90 days after publication in the Federal Register of a summary of the *Third Report and Order* (which contained the full text of the rules).

V. INTERNET LINKS

A copy of the *Third Report and Order* is available at:
https://docs.fcc.gov/public/attachments/FCC-18-133A1_Rcd.pdf

A copy of the Federal Register Summary of the *Third Report and Order* is available at:
<https://www.govinfo.gov/content/pkg/FR-2018-10-15/pdf/2018-22234.pdf>