

Tower and Antenna Siting

- [NEPA FAQ](#)

Building certain types of new towers or certain collocations of an antenna on an existing structure requires compliance with the Commission's rules for [environmental review](#). These rules ensure that licensees and registrants take appropriate measures to protect environmental and historic resources, and that the agency meets its obligations under the National Environmental Policy Act (NEPA) to consider the potential environmental impact of its actions, as well as under other environmental statutes such as the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA). A new tower construction requires:

- Approval from the state or local governing authority for the proposed site;
- Compliance with FCC rules implementing the [NEPA](#), which includes separate procedures for
 - [ESA](#); and,
 - [NHPA](#) (including [Section 106](#)).
- Depending on the tower's height and location, construction may also require:
 - [Federal Aviation Administration \(FAA\) notification](#); and,
 - [Antenna Structure Registration \(ASR\)](#) with the FCC.

In 2018, the Wireless Telecommunications Bureau held a [workshop](#) to provide a general overview of the process.

Collocations may also require compliance with these same processes. See the [Collocation Agreement](#) and other sections below for more information about collocations that require compliance with NEPA, NHPA, FAA and ASR rules. The Commission's October 2014 [Infrastructure Report and Order](#) includes some NEPA and NHPA exclusions specific to DAS and Small Cell deployments. In addition, pursuant to the Commission's March 2018 [Wireless Infrastructure Second Report and Order](#), the deployment of certain [small wireless facilities](#) does not require NHPA or NEPA review.

State and Local Authorities

[Section 332\(c\)\(7\) of the Communications Act](#) preserves state and local authority over zoning and land use decisions for personal wireless service facilities, but sets forth specific limitations on that authority. Specifically, a state or local government may not unreasonably discriminate among providers of functionally equivalent services, may not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services, must act on applications within a reasonable period of time, and must make any denial of an application in writing supported by substantial evidence in a written record. The statute also preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, assuming that the provider is in compliance with the Commission's RF rules.

Allegations that a state or local government has acted inconsistently with Section 332(c)(7) may be resolved by the courts. In September 2018, the Commission released the [Wireless](#)

[Infrastructure Third Report and Order and Declaratory Ruling](#) to clarify the scope of Sections 253 and 332(c)(7) in various deployment contexts, including the deployment of small cells.

[Section 1455\(a\) of the Communications Act](#), enacted as part of the Middle Class Tax Relief and Job Creation Act of 2012, establishes a further limitation on state and local land use authority over certain wireless facilities. Specifically, it provides that a state or local government may not deny and shall approve any eligible facility 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, and defines eligible facility requests as including requests for the collocation, removal, or replacement of transmission equipment.

The Commission has adopted a rule, codified at [47 C.F.R. § 1.6100](#), to further clarify and implement these requirements.

FCC Items Related to Section 332(c)(7) and Section 1455(a) include:

- Report and Order, FCC 00-408, adopted November 13, 2000 (establishing procedures for requesting relief under Section 332(c)(7) from impermissible State and local regulation of wireless facilities based on the environmental effects of RF emissions).
- Declaratory Ruling, FCC 09-99, adopted November 18, 2009 (clarifying certain aspects of the limits on state and local authority under Section 332(c)(7)).
- Report and Order, FCC 14-153, adopted October 21, 2014 (adopting rule to clarify and implement requirements of Section 1455(a), and providing further clarification of Section 332(c)(7)).
- Third Report and Order and Declaratory Ruling, FCC 18-133, adopted September 26, 2018 (adopting rule on shot clocks and clarifying scope of Sections 253 and 332(c)(7) for small wireless facilities).

New Mexico

State Rep. James Smith (R) and Debbie Rodella (D) introduced the bipartisan bill [HB 38](#), entitled the [Wireless Consumer Advanced Infrastructure Investment Act](#), in January 2018. A sister bill was introduced into the state Senate by Sen. Jacob Candelaria (D) and Candace Gould (R).^[44] The bill outlines provisions for deploying cellular network nodes in public rights-of-way. The bill allows the relevant governing bodies to charge fees to wireless service providers for using public rights-of-way, but caps those fees at \$250 per unit.

The bill also outlines rules for wireless service providers collocating hardware on utility poles. The bill also allows authorities to require wireless service providers to make sure their small wireless facilities conform to design standards in certain districts, such as historic districts, throughout the state. The bill was signed into law by Gov. Susana Martinez and went into effect in September 2018.