



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 19-250 and RM-11849; FCC 20-75; FRS 16875]

Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (“Commission” or “FCC”) proposes rule changes that would allow applicants to excavate or deploy wireless facilities outside the boundaries of an existing tower site. The Commission proposes to revise the definition of “site” in the Commission’s rules to make clear that “site” refers to the boundary of the leased or owned property surrounding the tower and any access or utility easements currently related to the site as of the date that the facility was last reviewed and approved by a locality. The Commission also proposes to amend its rules so that a modification of an existing facility that entails ground excavation or deployment of up to 30 feet in any direction outside the facility’s site will be eligible for streamlined processing under the Spectrum Act. The *Notice of Proposed Rulemaking (NPRM)* also seeks comment on whether the Commission should adopt a different definition of “site” than the one proposed.

DATES: Interested parties may file comments on or before **[20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments on or before **[30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: 445 12th Street SW, Washington, DC 20554. For detailed instructions for submitting comments and additional information on the rulemaking process, see the

SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For further information on this proceeding, contact Paul D’Ari, Paul.DAri@fcc.gov, of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418-1150.

SUPPLEMENTARY INFORMATION:

This is a summary of the Commission’s *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 19-250 and RM-11849, adopted on June 9, 2020, and released on June 10, 2020. The document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Comments and Reply Comments: Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).*

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020).
<https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.
- During the time the Commission’s building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

***Ex Parte* Procedures:** The proceeding this *NPRM* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. *See* 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Synopsis:

1. In the *NPRM*, the Commission seeks comment on whether changes to its rules regarding excavation outside the boundaries of an existing tower site, including the definition of the boundaries of a tower “site,” would advance the objectives of Section 6409(a).

I. NOTICE OF PROPOSED RULEMAKING

2. Section 1.6100(b)(7)(iv) provides that “[a] modification substantially changes the physical dimensions of an eligible support structure if . . . [i]t entails any excavation or deployment outside the current site[.]” In other words, a proposed modification that entails any excavation or deployment outside the current site of a tower or base station is not eligible for Section 6409(a)’s streamlined procedures. Section 1.6100(b)(6) defines “site” for towers outside of the public rights-of-way as “the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.”

3. In its Petition for Declaratory Ruling, WIA requests that the Commission clarify that “current site,” for purposes of Section 1.6100(b)(7)(iv), is the *currently* leased or owned compound area. Industry commenters argue that current “site” means the property leased or owned by the applicant at the time it submits an application to make a qualifying modification under Section 6409(a). Industry commenters state that their proposed clarification merely affirms the plain meaning of the rule. They assert that such clarification is needed because many local governments interpret Section 1.6100(b)(6) as referring to the original site and wrongly claim that a modification is not entitled to Section 6409(a) if it entails any deployment outside of those original boundaries.

4. WIA’s Petition for Rulemaking also requests that the Commission amend its rules to establish that a modification would not cause a “substantial change” if it entails excavation or facility deployments at locations of up to 30 feet in any direction outside the boundaries of a macro tower compound. Industry commenters contend that it is often difficult to collocate transmission equipment

on existing macro towers without expanding the compounds surrounding those towers in order to deploy additional equipment sheds or cabinets on the ground. They argue that such deployments are becoming increasingly necessary to house multiple carriers' facilities on towers built in the past to support the needs of a single carrier and to facilitate the extensive network densification needed for rapid 5G deployment. WIA states that this proposal is consistent with the Wireless Facilities Nationwide Programmatic Agreement, which excludes from Section 106 historic preservation review "the construction of a replacement for any existing communications tower" that, *inter alia*, "does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site."

5. Local governments argue that the definition of "site" should not be interpreted to mean the applicant's leased or owned property on the date it submits its eligible facilities request. They assert that this interpretation would permit providers to expand the boundaries of a site without review and approval by a local government by entering into leases that increase the area of a site after the locality's initial review. NLC argues that it would lead to "extensive bypassing of local review for property uses not previously reviewed and approved to support wireless equipment." Localities also generally oppose the compound expansion proposal because they argue that excavation of up to 30 feet beyond a tower's current site cannot be considered insubstantial. Moreover, several cities argue that the Commission considered and rejected this proposal in the *2014 Infrastructure Order* and that circumstances have not changed that would warrant a policy reversal.

6. In light of the different approaches recommended by the industry and localities, the Commission seeks comment on whether it should revise its rules to resolve these issues and, if so, in what manner. In particular, the Commission proposes to revise the definition of "site" in Section 1.6100(b)(6) to make clear that "site" refers to the boundary of the leased or owned property surrounding the tower and any access or utility easements currently related to the site as of the date that

the facility was last reviewed and approved by a locality. The Commission further proposes to amend Section 1.6100(b)(7)(iv) so that modification of an existing facility that entails ground excavation or deployment of up to 30 feet in any direction outside the facility's site will be eligible for streamlined processing under Section 6409(a).

7. Alternatively, the Commission seeks comment on whether it should revise the definition of site in Section 1.6100(b)(6), as proposed above, without making the proposed change to Section 1.6100(b)(7)(iv) for excavation or deployment of up to 30 feet outside the site. As another option, the Commission seeks comment on whether to define site in Section 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request*. Commenters should describe the costs and benefits of these approaches, as well as any other alternatives that they discuss in comments, and provide quantitative estimates as appropriate.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.

a. Need for, and Objectives of, the Proposed Rules

9. The *NPRM* proposes to revise the definition of "site" in Section 1.6100(b)(6) to make

clear that “site” refers to the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site as of the date the facility was last reviewed and approved by a locality. It also proposes to amend Section 1.6100(b)(7)(iv) to allow for streamlined procedures under the Section 6409 of the Commission’s rules to cover modifications to an existing facility that entail ground excavation or deployment of up to 30 feet in any direction outside the boundary of the site.

10. The *NPRM* seeks comment on whether the Commission should revise the definition of “site” in Section 1.6100(b)(6) without making the proposed change for excavation or deployment of up to 30 feet outside the boundary of the site. The *NPRM* also seeks comment on an alternative definition—whether to define “site” in Section 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request*. Finally, the *NPRM* asks commenters to describe the costs and benefits of each approach, as well as any other alternatives, and quantitative estimates as appropriate.

11. Section 1.6100(b)(7)(iv) of the Commission’s rules provides that “a modification substantially changes the physical dimensions of an eligible support structure if . . . [i]t entails any excavation or deployment outside the current site[.]” Accordingly, a proposed modification that entails any excavation outside the current site of a tower or base station is not eligible for streamlined approval by State or local governments under Section 6409(a). Section 1.6100(b)(6) defines “site” for towers outside of the public rights-of-way as “the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.”

12. Industry commenters argue that current “site” means the property leased or owned by the applicant at the time it submits an application to make a qualifying modification under Section 6409(a). Industry commenters state that their proposed clarification merely affirms the plain meaning of the rule.

They state that such clarification is needed, because many local governments interpret Section 1.6100(b)(6) as referring to the original site and wrongly claim that a modification is not entitled to Section 6409(a) if it entails any deployment outside of those original boundaries. Local governments oppose WIA’s interpretation, saying it would permit providers to expand the boundaries of a site without review and approval by a local government by entering into leases that increase the area of a site after the locality’s initial review.

13. Section 1.6100(b)(7)(iv) provides that “a modification substantially changes the physical dimensions of an eligible support structure if . . . [i]t entails any excavation or deployment outside the current site[.]” However “site” is defined, a proposed modification is not eligible for streamlined processing under Section 6409(a) if it is on a tower outside a right-of-way and involves excavation outside the site. WIA and other industry commenters urge the Commission to amend this rule so that “excavation or facility deployments at locations up to 30 feet in any direction outside the current boundaries of a macro tower compound” would not constitute a substantial change in the physical dimensions.

14. Industry commenters contend that it is often difficult to collocate transmission equipment on existing macro towers without expanding the compounds surrounding those towers in order to deploy additional equipment sheds or cabinets on the ground. They argue that such deployments are becoming increasingly necessary to house multiple carriers’ facilities on towers built in the past to support the needs of a single carrier and to facilitate the extensive network densification needed for rapid 5G deployment. In contrast, local governments generally oppose the compound expansion proposal arguing that excavation of up to a 30-feet beyond a tower’s current site cannot be considered insubstantial. Moreover, several cities argue that the Commission considered and rejected this proposal in the *2014 Infrastructure Order* and that circumstances have not changed that would warrant a policy reversal.

b. Legal Basis

15. The proposed action is authorized pursuant to Sections 1, 4(i)-(j), 7, 201, 253, 301, 303,

309, 319, and 332 of the Communications Act of 1934, as amended, and Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended, 47 U.S.C. 151, 154(i)-(j), 157, 201, 253, 301, 303, 309, 319, 332, 1455.

c. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

16. 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 proposed rules and policies, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business 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.

17. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

18. 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.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or

less according to the registration and tax data for exempt organizations available from the IRS.

19. 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.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

20. *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. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

21. The Commission’s own data—available in its Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by the Commission’s actions. 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 internally developed

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. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

22. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. 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. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for “All Other Telecommunications”, which consists of all such firms with annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999. Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by the Commission’s action can be considered small.

23. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service, Millimeter Wave Service, Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. 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. The Commission has not yet defined a small business with respect to 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. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

24. The Commission 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. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies discussed herein. The Commission notes, however, that the microwave fixed licensee category includes some large entities.

25. *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. This U.S. industry, Radio Stations, 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. The SBA has established a small business size standard which consists of all radio stations whose annual receipts are \$41.5 million dollars or less. U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated

during that year. 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. Therefore, based on the SBA's size standard the Commission concludes that the majority of FM Translator Stations and Low Power FM Stations are small.

26. *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. 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. These definitions have been approved by the SBA. 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.

27. *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. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. 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.

28. *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. 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. The SBA has approved these definitions. 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.

29. 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 licenses in 176 EAs was conducted. 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.

30. 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 size standards. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this category, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of firms that may be affected by the Commission's action can be considered small.

31. *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.

32. 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 the Commission can easily determine how many of these towers are registered to non-licensees or how many non-licensees have registered towers. Regarding towers that do not require ASR registration, the Commission does 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 the Commission seeks comment. Moreover, the SBA has not developed a size standard for small businesses in the category “Tower Owners.” Therefore, the Commission is unable to determine the number of non-licensee tower owners that are small entities. The Commission believes, 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 the Commission seeks comment. The Commission does not have any basis for estimating the number of such non-licensee owners that are small entities.

33. The closest applicable SBA category is All Other Telecommunications, and the appropriate size standard consists of all such firms with gross annual receipts of \$38 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. 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. Thus, under this SBA size standard a majority of the firms potentially affected by the Commission’s action can be considered small.

34. *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 the Commission’s rules. 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. 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 the Commission applies 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. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of firms can be considered small. The Commission notes 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 the Commission's actions in this proceeding.

35. *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. Companies of all sizes operating in all U.S. business categories use these radios. 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 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. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of PLMR Licensees are small entities.

36. According to the Commission's records, a total of approximately 400,622 licenses comprise PLMR users. Of this number there are a total of approximately 3,174 PLMR licenses in the 4.9 GHz band; 29,187 PLMR licenses in the 800 MHz band; and 3,374 licenses in the frequencies range 173.225 MHz to 173.375 MHz. 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.

37. *Public Safety Radio Licensees.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. 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. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. 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, the Commission includes 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. There are 3,121 licenses in the 4.9 GHz band, based on an FCC Universal Licensing System search of March 29, 2017. The Commission estimates that fewer than 2,442 public safety radio licensees hold these licenses because certain entities may have multiple licenses.

38. *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.” The SBA has established a small business size standard for this category as firms having \$41.5 million or less in annual receipts. U.S.

Census Bureau data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year and 17 with annual receipts between \$25 million and \$49,999,999 million. Therefore, based on the SBA's size standard the majority of such entities are small entities.

39. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,580 stations and the number of commercial FM radio stations to be 6,726, for a total number of 11,306. The Commission notes it has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,172. 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.

40. The Commission also notes, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. 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. The Commission further notes 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 the Commission's 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.

41. *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.” Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules. 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. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

42. *Television Broadcasting.* This Economic Census category “comprises establishments primarily engaged in broadcasting images together with sound.” These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. 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 \$41.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of \$25,000,000 or less, and 25 had annual receipts between \$25,000,000 and \$49,999,999. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

43. The Commission has estimated the number of licensed commercial television stations to be 1,377. 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 television stations to be 384. 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 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. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

44. The Commission notes, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations must be included. 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, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. The Commission is 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.

45. *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)).

46. *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. 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, the Commission estimates 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 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

47. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. 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. Auction 86 concluded in 2009 with the sale of 61 licenses. 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.

48. *EBS* - 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.” The SBA’s small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to U.S. 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 institutions and school districts, which are by statute defined as small businesses.

d. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

49. The excavation or deployment boundaries of an eligible facilities request poses significant policy implications associated with the Commission’s Section 6409(a) rules. The Commission anticipates that any rule changes that result from the *NPRM* will provide certainty for providers, state and local governments, and other entities interpreting the Section 6409(a) rules. In the *NPRM*, the Commission seeks comment on changes to its rules regarding the definition of a “site” surrounding a tower, as well as streamlined treatment pursuant to the Section 6409 rules for an excavation or deployments outside the boundaries of an existing tower site. The Commission does not believe that its resolution of these matters will create any new reporting, recordkeeping, or other compliance requirements for small entities or others that will be impacted by this decision.

50. Specifically, the Commission proposes to amend the definition of the term “site” in Section 1.6100(b)(6) to make clear that “site” refers to the current boundary of the leased or owned

property surrounding the tower and any access or utility easements currently related to the site on the date the facility was last reviewed and approved by a locality. In addition, the Commission proposes to change its rules to allow streamlined treatment under the Section 6409 rules for “compound expansions” (i.e. excavation or facility deployments outside the current boundaries of a macro tower compound) of up to 30 feet in any direction outside the boundary of a site. This change to the existing rule, which was requested by industry commenters, is opposed by state and local government jurisdictions, and was previously considered but not adopted by the Commission in the *2014 Infrastructure Order*. The *NPRM* also seeks comment on whether to revise the definition of “site” without making the proposed change to allow for excavation or deployment of up to 30 feet outside the site. It seeks further comment on whether to define site in Section 1.6100(b)(6) as the boundary of the leased or owned property surrounding the tower and any access or utility easements related to the site *as of the date an applicant submits a modification request*.

51. The Commission does not anticipate rule changes resulting from the *NPRM* to cause any new recordkeeping, reporting, or compliance requirements for entities preparing eligible facilities requests under Section 6409(a) because entities are required to submit construction proposals outlining the work to be done regardless of whether the project qualifies as an eligible facilities request under Section 6409(a). Additionally, while the Commission does not anticipate that any action it takes on the matters raised in the *NPRM* will require small entities to hire attorneys, engineers, consultants, or other professionals to comply, the Commission cannot quantify the cost of compliance with the potential changes discussed in the *NPRM*. As part of the invitation for comment however, the Commission requests that parties discuss any tangible benefits and any adverse effects as well as alternative approaches and any other steps the Commission should consider taking on these matters. The Commission expects the information it receives in comments to help the Commission identify and evaluate relevant matters for small entities, including compliance costs and other burdens that may result from the matters raised in the *NPRM*.

e. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing 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 or 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.

53. The Commission believes that clarifying the parameters of excavation or deployment within or around a “site” under Section 1.6100 will provide more certainty to relevant parties and enable small entities and others to navigate more effectively state and local application processes. As a result, the Commission anticipates that any clarifying rule changes on which the *NPRM* seeks comment may help reduce the economic impact on small entities that may need to deploy wireless infrastructure by reducing the cost and delay associated with the deployment of such infrastructure.

54. To assist the Commission in its evaluation of the economic impact on small entities, and of such a rule change generally, and to better explore options and alternatives, the *NPRM* asks commenters to discuss any benefits or drawbacks to small entities associated with making such a rule change. Specifically, the Commission inquires whether there are any specific, tangible benefits or harms from changing the definition of “site” or applying Section 6409(a)’s streamlined process to compound expansions, which may include an unequal burden on small entities.

55. The Commission is mindful that there are potential impacts from its decisions for small entity industry participants as well as for small local government jurisdictions. The Commission is hopeful that the comments received will illuminate the effect and impact of the proposed regulations in the *NPRM* on small entities and small local government jurisdictions, the extent to which the regulations

would relieve any burdens on small entities, including small local government jurisdictions, and whether there are any alternatives the Commission could implement that would achieve the Commission's goals while at the same time minimizing or further reducing the economic impact on small entities, including small local government jurisdictions.

56. The Commission expects to consider more fully the economic impact on small entities following its review of comments filed in response to the *NPRM*. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities, including small local government jurisdictions.

f. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

57. None.

B. Comment Filing Procedures.

58. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020).
<https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.
- During the time the Commission’s building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

C. People with Disabilities.

59. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

D. Ex Parte Rules—Permit-But-Disclose.

60. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making

oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

E. Paperwork Reduction Act.

61. This *Notice of Proposed Rulemaking* does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

III. ORDERING CLAUSES

62. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i) through (j), 7, 201, 253, 301, 303, 309, 319, and 332 of the Communications Act of 1934, as amended, and Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, as amended, 47 U.S.C. 151, 154(i) through (j),

157, 201, 253, 301, 303, 309, 319, 332, 1455 that this *Notice of Proposed Rulemaking* in WT Docket No. 19-250 and RM-11849 IS hereby ADOPTED.

63. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch.
Secretary

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