



First Responder Network Authority

Categorical Exclusions and Administrative Record

Overview

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96, Title VI, 126 Stat. 156 (codified at 47 U.S.C. 1401 *et seq.*)) (the “Act”) directs FirstNet to take all actions necessary to ensure the establishment of a nationwide public safety broadband network (“NPSBN”).¹ To help facilitate FirstNet’s mission, the Act requires the Federal Communications Commission (“FCC”) to reallocate and grant a license to FirstNet for the use of the 700MHz D block spectrum and existing public safety broadband spectrum.² As a result, FirstNet is in the unique position of being the only entity that is both an independent federal authority and a FCC licensee. Consequently, FirstNet must comply with potentially duplicative environmental rules, such as those imposed under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 *et seq.*) and the Council on Environmental Quality (CEQ) (40 C.F.R. part 1500 *et seq.*) and applicable FCC regulations. Therefore, following review of these requirements, FirstNet determined that aligning the FirstNet and FCC environmental review processes, including establishing categorical exclusions (CEs) that are within the scope of actions encompassed by the FCC regulations, was necessary in order to avoid duplicating analysis and documentation resulting in additional costs or delays in network deployment, which could severely impact FirstNet’s ability to complete its statutory mission and ensure the establishment of a network for public safety.

For decades, FCC has overseen the installation of thousands of antenna structures across the United States.³ As a result, FCC has experience in understanding the potential environmental impacts of the installation of antenna structures in a variety of contexts. Furthermore, the similarities between the two programs suggest that an alignment of applicable CEs would streamline the deployment process and reduce confusion between similar applicants, including entities leasing spectrum capacity from FirstNet.

Accordingly, FirstNet is submitting the following CEs (and their associated Administrative Records) for consideration. FirstNet reviewed and deliberated the concept, coverage, applicability, and wording of each proposed CE. Moreover, FirstNet carefully reviewed the Administrative Record on each of these CEs to ensure they fulfilled the goal of balancing increased administrative efficiency in NEPA compliance with avoidance of misinterpretations and misapplications of exclusionary language that could lead to non-compliance with NEPA requirements. Ultimately, FirstNet concluded that the proposed CEs encompassed programmatic activities that inherently do not have a significant individual or cumulative impact on the environment.

The use of these CEs, however, does not constitute a substitute for meeting other legal requirements and all other applicable environmental laws and regulations, including the Endangered Species Act of 1973 (16 U.S.C. § 1531 *et seq.*) and National Historic Preservation Act of 1966 (16 U.S.C. § 470 *et seq.*), that continue to apply to all projects.

¹ 47 U.S.C. § 1426(b).

² 47 U.S.C. § 1421(a) (FCC granted a license to FirstNet for the use of the 700 MHz D block spectrum under Call Sign WQQE234 on November 15, 2012).

³ Federal Communications Commission, *Final Programmatic Environmental Assessment for the Antenna Structure Registration Program* (March 13, 2012) (stating that as of February 1, 2012 there were 96,039 structures classified as towers, poles, or mast identified as having a construction date in the FCC ASR database).

Comparable CEs Used by FCC and Other Federal Agencies

These proposed CEs are supported by long-standing CEs and administrative records that have been developed through a process consistent with NEPA regulatory requirements. In particular, FirstNet identified CEs of numerous other Federal agencies that are sufficiently descriptive such that they demonstrated to FirstNet that those activities that fall within these CEs were similar in nature, scope, and impact on the human environment to those performed by FirstNet. In addition, FirstNet recognized that all Federal agencies, with very few limitations, must meet the same requirements to protect the environment. Accordingly, FirstNet has reviewed the list of proposed CEs and their supporting administrative records and determined that the activities described below are similar in nature, scope, and intensity to those anticipated to be undertaken by FirstNet during the design, construction, and operation of the NPSBN. Further, FirstNet concluded that the proposed CEs encompassed programmatic activities that inherently do not have a significant individual or cumulative impact on the environment.

Proposed Categorical Exclusion [B.1]

The actions contemplated by these categorical exclusions encompass activities that have no inherent potential for significant environmental impacts.

[B.1.] Actions related to network deployment that are subject to and satisfy the environmental requirements established under 47 C.F.R § 1.1306 as described below:

- (a) Except as provided in 47 C.F.R. § 1.1307 (c) and (d), FirstNet's actions not covered by 47 C.F.R. § 1.1307 (a) and (b) are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing.
- (b) Specifically, any FirstNet action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, provided such proposals do not:
 - (1) Involve a site location specified under 47 C.F.R. § 1.1307(a) (1) – (7)
 - (2) Involve high intensity lighting under 47 C.F.R. § 1.1307(a)(8).
 - (3) Result in human exposure to radio frequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

(c) Any FirstNet action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, subject to the following:

(1) Unless 47 C.F.R. § 1.1307(a)(4) is applicable, the provisions of 47 C.F.R. § 1.1307(a) requiring the preparation of Environmental Assessments (EAs) do not encompass the construction of wireless facilities, including deployments on new or replacement poles, if:

(i) The facilities will be located in a right-of-way that is designated by a Federal, State, local, or tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment;

(ii) The right-of-way is in active use for such designated purposes; and

(iii) The facilities would not:

(A) Increase the height of the tower or non-tower structure by more than 10 percent or 20 feet, whichever is greater, over existing support structures that are located in the right-of-way within the vicinity of the proposed construction;

(B) Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;

(C) Add an appurtenance to the body of the structure that would protrude from the edge of the structure more than 20 feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or

(D) Involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

(2) Such wireless facilities are subject to 47 C.F.R. § 1.1307(b) and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in 47 C.F.R. § 1.1307(b).

- (d) The provisions of 47 C.F.R. § 1.1307(a) requiring the preparation of EAs do not encompass the mounting of antenna(s) and associated equipment (such as wiring, cabling, cabinets, or backup-power), on or in an existing building, or on an antenna tower or other man-made structure, unless 47 C.F.R. § 1.1307(a)(4) is applicable. Such antennas are subject to 47 C.F.R. § 1.1307(b) of this part and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in 47 § 1.1307(b) of this part. The provisions of 47 C.F.R. § 1.1307 (a) and (b) of this part do not encompass the installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use, established by the Applicant or others. The use of existing buildings, towers, or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged. The provisions of 47 C.F.R. § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.
- (e) The specific height of an antenna tower or supporting structure, as well as the specific diameter of a satellite Earth station, in and of itself, will not be deemed sufficient to warrant environmental processing, *see* 47 C.F.R. § 1.1307 and § 1.1308, except as required by FirstNet or the FCC pursuant to the note to 47 C.F.R. § 1.1307(d).
- (f) The construction of an antenna tower or supporting structure in an established “antenna farm” (i.e., an area in which similar antenna towers are clustered, whether or not such area has been officially designated as an antenna farm) will be categorically excluded unless one or more of the antennas to be mounted on the tower or structure are subject to the provisions of 47 § C.F.R. 1.1307(b) and the additional radiofrequency radiation from the antenna(s) on the new tower or structure would cause human exposure in excess of the applicable health and safety guidelines cited in 47 C.F.R. § 1.1307(b).

Legacy and Comparable Agency Categorical Exclusions and Administrative Record

FEDERAL COMMUNICATIONS COMMISSION

Reference: 47 C.F.R § 1.1306.

- (a) Except as provided in § 1.1307 (c) and (d), Commission actions not covered by § 1.1307 (a) and (b) are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing.
- (b) Specifically, any Commission action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, provided such proposals do not:
- (1) Involve a site location specified under § 1.1307(a) (1)-(7), or
 - (2) Involve high intensity lighting under § 1.1307(a)(8).

(3) Result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in § 1.1307(b).

(c) (1) Unless § 1.1307(a)(4) is applicable, the provisions of § 1.1307(a) requiring the preparation of EAs do not encompass the construction of wireless facilities, including deployments on new or replacement poles, if:

(i) The facilities will be located in a right-of-way that is designated by a Federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment;

(ii) The right-of-way is in active use for such designated purposes; and

(iii) The facilities would not

(A) Increase the height of the tower or non-tower structure by more than 10% or twenty feet, whichever is greater, over existing support structures that are located in the right-of-way within the vicinity of the proposed construction;

(B) Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;

(C) Add an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or

(D) Involve excavation outside the current site, defined as the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, whichever is more restrictive.

(2) Such wireless facilities are subject to § 1.1307(b) and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b).

Reference: *Final Programmatic Environmental Assessment for the Antenna Structure Registration Program* (March 13, 2012)

The Antenna Structure Registration (ASR) Program is the process under which each antenna structure that requires FAA notification must be registered with the FCC by its owner. The ASR requirements only apply to those antenna structures that may create a hazard to air navigation due to height (generally, structures more than 200 feet [61 meters] tall) or proximity to an airport runway. Under the current ASR program, tower registration applications are categorically excluded from preparation of an EA unless they fall within one of the categories listed in the FCC NEPA regulations found at 47 CFR § 1.1307(a) and (b). The Programmatic Environmental Assessment reviews the existing ASR Program and NEPA compliance procedures to evaluate their effects on environmental resources, including migratory birds.

Analysis: The impacts of the ASR Program at the national level on all resources, including migratory birds, are not significant.

DEPARTMENT OF ENERGY (DOE)

Reference: 10 C.F.R. § 1021, Appendix B.

B1.3. Routine maintenance activities and custodial services for buildings, structures, rights-of way, infrastructures.

B1.3(m). Repair and maintenance of transmission facilities, including replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, capacitors, crossarms, insulators, and downed transmission lines, in accordance, where appropriate, with 40 C.F.R . § 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions).

B1.7. Acquisition, installation, operation, and removal of communication systems, data processing equipment, and similar electronic equipment.

B1.19. Siting construction, operation of microwave and radio communication towers and associated facilities, if the tower and associated facilities would not be in an area of great visual value.

B4.6. Additions or modifications to electric power transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms.

B4.11. Construction of electric power substations (including switching stations and support facilities) with power delivery at 230 kV or below, or modification (other than voltage increases) of existing substations and support facilities, that could involve the construction of electric power lines approximately 10 miles in length or less, or relocation of existing electric power lines approximately 20 miles in length or less, but not the integration of major new generation resources into a main transmission system.

DEPARTMENT OF HOMELAND SECURITY (DHS)

Reference: DHS Management Directive 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A.

D1. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (e.g. realigning interior spaces of an existing building, adding a small storage shed to an existing building, retrofitting for energy conservation, or installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement for the installation).

D4. Reconstruction and/or repair by replacement of existing utilities or surveillance systems in an existing right-of-way or easement, upon agreement with the owner of the relevant property interest.

E1. Construction, installation, operation, maintenance, and removal of utility and communication systems (such as mobile antennas, data processing cable, and similar electronic equipment) that use existing rights-of-way, easements, utility distribution systems, and/or facilities. This is limited to activities with towers where the resulting total height does not exceed 200 feet and where the FCC would not require an EA or EIS for the acquisition, installation, operation or maintenance.

FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION (FEMA)

Reference: 44 C.F.R. § 10.8(d)(2).

(ix) Acquisition, installation, or operation of utility and communication systems that use existing distribution systems or facilities, or currently used infrastructure rights-of-way.

(xv) Repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location.

UNITED STATES COAST GUARD (USCG)

Reference: COMDTINST M16475, Figure 2-1 Categorical Exclusions

(5) Routine repair and maintenance of buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, or an impact on a historically significant element or setting.

(6) Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use, a historically significant element, or historically significant setting.

ARMY

Reference: 32 C.F.R. Appendix B to Part 651, Categorical Exclusions, Section II

(e)(3) - Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing right-of-way, easement, distribution systems, and/or facilities (REC required).

AIR FORCE

Reference: 32 C.F.R. Appendix B to Part 989, Categorical Exclusions

A2.3.12. Installing, operating, modifying, and routinely repairing and replacing utility and communications systems, data processing cable, and similar electronic equipment that use existing rights-of-way, easements, distribution systems, or facilities.

NAVY

Reference: 32 C.F.R. § 775.6

(f)(36) - Acquisition, installation, and operation of utility and communication systems, data processing cable, and similar electronic equipment which use existing rights of way, easements, distributions systems, and/or facilities.

U.S. DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICES

Reference: 7 C.F.R. § 1794.21(b)(7)

(b)(7) - Ordinary maintenance or replacement of equipment or small structures (*e.g.*, line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites).

(b)(8) - The construction of telecommunications facilities within the fenced area of an existing substation, switching station, or within the boundaries of an existing electric generating facility site.

(b)(15) - Phase or voltage conversions, reconductoring or upgrading of existing electric distribution lines, or telecommunication facilities.

(b)(21) - Construction of standby diesel electric generators (one megawatt or less total capacity) and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or at an industrial, commercial or agricultural facility served by the applicant.

Reference: 7 C.F.R. § 1794.22

(a)(3) - Construction of microwave facilities and energy management systems involving no more than five acres (2 hectares) of physical disturbance at any single site.

(a)(5) - Changes to existing transmission lines that involve less than 20 percent pole replacement, or the complete rebuilding of existing distribution lines within the same right of way. Changes to existing transmission lines that require 20 percent or greater pole replacement will be considered the same as new construction.

(a)(6) - Changes or additions to existing substations, switching stations, telecommunications switching or multiplexing centers, or external changes to buildings or small structures requiring one acre (0.4 hectare) or more but no more than five acres (2 hectares) of new physically disturbed land or fenced property.

(a)(7) - Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property.

U.S. DEPARTMENT OF COMMERCE, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Reference: BTOP Categorical Exclusions - 74 Fed. Reg. 52,456 (Oct. 13, 2009)

B2. Construction of microwave facilities involving no more than five acres (2 hectares) of physical disturbance at any single site.

B.5. Changes or additions to existing substations, switching stations, telecommunications switch or multiplexing centers, or external changes to building or small structures requiring one acre (.04 hectare) or more but no more the five acres (2 hectares) of new physically disturbed land or fenced property

B6 Construction of substations, switching stations, or telecommunications switching or multiplexing centers requiring no more than five acres (2 hectares) of new physically disturbed land or fenced property.

B7. Changes or additions to microwave sites, substations, switching stations, telecommunications switching and multiplexing centers, buildings, or small structures requiring new physical disturbance or fencing of less than one acre (.04 hectare).

B8. Ordinary maintenance or replacement of equipment or small structures (*e.g.* line support structures, line transformers, microwave facilities, telecommunications remote switching and multiplexing sites).

B9. The construction of telecommunications facilities within the fenced area of an existing substation, switching state, or within the boundaries of an existing electric generating facility site.

B13. Phase or voltage conversions, reconducting or upgrading of existing electric distributions lines, or telecommunications facilities.

B14. Construction of standby diesel electric generators (one megawatt or less total capacity) and associated facilities, for the primary purpose of providing emergency power, at an existing applicant headquarters or district office, telecommunications switching or multiplexing site, or at an industrial, commercial or agricultural facility served by the applicant.

Proposed Categorical Exclusion [B.15]

[B.15.] Deployment of Cells on Wheels, Systems on Wheels, or another deployable architecture intended for temporary placement (no more than two years) on an impervious surface.

Legacy and Comparable Agency Categorical Exclusions and Administrative Record

DEPARTMENT OF HOMELAND SECURITY (DHS)

Reference: DHS Management Directive 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A

D1. Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (e.g. realigning interior spaces of an existing building, adding a small storage shed to an existing building, retrofitting for energy conservation, or installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement for the installation).

E1. Construction, installation, operation, maintenance, and removal of utility and communication systems (such as mobile antennas, data processing cable, and similar electronic equipment) that use existing rights-of-way, easements, utility distribution systems, and/or facilities. This is limited to activities with towers where the resulting total height does not exceed 200 feet and where the FCC would not require an EA or EIS for the acquisition, installation, operation or maintenance.

ARMY

Reference: 32 C.F.R. Appendix B to Part 651, Categorical Exclusions, Section II

(e)(3) - Acquisition, installation, and operation of utility and communication systems, mobile antennas, data processing cable and similar electronic equipment that use existing right-of-way, easement, distribution systems, and/or facilities (REC required).