



March 15, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch,

The National Association of Telecommunications Officers and Advisors (“NATOA”)¹, the National League of Cities (“NLC”)², the National Association of Regional Councils (“NARC”)³, and the National Association of Counties (“NACo”),⁴ on behalf of all the respective constituencies that we represent, write to express our concern regarding the proposals in the Federal Communications Commission’s (“Commission”) draft *Second Report and Order* (“Draft Order”) in the above-referenced docket, which is included on the proposed March 22, 2018 Commission agenda. We urge you to reconsider the Draft Order, and instead take advantage of the expertise offered by local officials to find a better path for enhanced 5G deployment across the nation.

As local leaders, our members recognize the numerous benefits of next-generation wireless networks for their residents and have long been working with the telecommunications industry to increase wireless infrastructure deployment in their communities. Although local elected officials enthusiastically support deployment of 5G networks, they have a responsibility to their citizens to preserve the safety and livability of their communities. Because our members are held accountable for upholding this distinctly local obligation, they are experts in finding the right balance that enables timely deployment of infrastructure while respecting the unique character and needs of their communities.

¹ NATOA’s membership includes local government officials and staff members from across the nation whose responsibility it is to develop and administer communications policy and the provision of such services for the nation’s local governments.

² The National League of Cities is the oldest and largest organization representing cities and towns across America. NLC represents 19,000 cities and towns of all sizes across the country.

³ The National Association of Regional Councils represents more than 500 councils of government, metropolitan planning organizations, and other regional planning organizations throughout the nation.

⁴ NACo represents county governments, and provides essential services to the nation’s 3,069 counties.

In exempting “small” wireless deployments from review under the National Historic Preservation Act (“NHPA”) and the National Environmental Policy Act of 1969 (“NEPA”),⁵ the Draft Order sacrifices local communities’ interests without a full and fair assessment of the ramifications of this proposed action. When viewed in the context of existing (and ever-increasing) preemptions of local authority of wireless facilities, it is clear the proposed Draft Order paves the way for dramatic changes in our communities with limited or, in many cases, no opportunity for local review.

As an initial matter, the Draft Order misstates the record in indicating that NATOA and other local government advocates support this action. In paragraph 72, the Draft Order cites NATOA’s Comments in this docket to support the assertion that “comments in the record” support the Commission’s “expectations regarding the environmental and historic preservation consequences of removing small wireless facility deployment,”⁶ namely, that there are “apparently minimal effects of small wireless facility deployment on environmental and historic preservation interests.”⁷ NATOA’s Comments in no way support this conclusion.

The citation to NATOA’s Comments appears to reference Reply Comments submitted by NATOA, NLC, NARC, NACo, and United States Conference of Mayors in a prior proceeding.⁸ In the cited portion of that filing, we made the point that calling these facilities “small” was a “misnomer” that “fails to convey the true scope and breadth of this proceeding and the true impact that the installation of nearly 800,000 ‘small’ cell deployments by 2026 will have on our communities.”⁹ We would like to make the record clear that we *do not support* the idea that small cells have minimal impacts on environmental and historic preservation interests, and nothing we have submitted in the record supports this conclusion.

To the contrary, we expressly rejected the categorical exclusion of these facilities from NEPA and NHPA review.¹⁰ As we pointed out in the Reply Comments:

As the Commission correctly points out, these installations “may require the deployment of dozens or hundreds of small cells or antennas in an area in order to achieve the ubiquitous coverage that would previously have been provided by the deployment of a single large cell site.” If the collocation mandate of Section 6409 applies to small cells to permit the sorts of expansions allowed under the proposed rules, it is impossible to say that the environmental or historic impact from the potential deployment of hundreds of antennas and other pieces of equipment in such installations would be non-existent or *de minimis*. Rather, the *cumulative* effect of these installations could very easily result in significant and severe environmental

⁵ 54 U.S.C. § 300101 *et seq.* and 42 U.S.C. § 4321 *et seq.*, respectively.

⁶ Draft Order at ¶ 74.

⁷ Draft Order at ¶ 74.

⁸ NATOA’s Comments in this docket consist of Comments and Reply Comments submitted in prior proceedings involving the same issues. The reference in paragraph 72, footnote 124 of the Draft Order appears to be to page 11 of Reply Comments previously filed in *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Practices*, WT Docket No. 13-238 (“Reply Comments”).

⁹ Reply Comments of NATOA *et al.*, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Practices*, WT Docket No. 13-238 at p. 11.

¹⁰ *Id.* at p. 5.

or historic impacts. Indeed, as one commenter stated, the placement of equipment on “original historic street lamps or street signs also has the potential to cause an adverse effect.” (Citations omitted.)¹¹

The Reply Comments predate the Commission’s Order implementing Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012,¹² and thus the “if” in the quotation above is now properly read as “because.” Because local governments cannot deny a subsequent request to collocate or modify support structures within the parameters of the 6409 Order, what the Draft Order supposes is just one “small” deployment can change considerably. Thus, even if one were to accept that a three cubic foot antenna mounted on a historical structure or in a historical district has “minimal effects”—a dubious proposition in itself—under the Section 6409 Order, we cannot assume that will be the only antenna on the structure or that the structure will not be modified again in the future without any authority for local review.

Despite the evident likelihood of modifications and collocations mandated under the Section 6409 Order—and multiple comments on this issue in the record¹³—the Draft Order does not even mention the potential cumulative effects of Section 6409 in reaching the conclusion that “small” wireless deployments will not have adverse impacts. This omission is particularly glaring given that, as the Commission has recognized, “Section 6409(a) expressly references the Commission’s continuing obligations to comply with NEPA and NHPA.”¹⁴

Even outside the context of modifications under Section 6409, the Draft Order’s definition of “small wireless facility” leaves plenty of room for large deployments. The new rules appear to allow installation of new facilities that are less than fifty feet tall or up to ten percent taller than existing structures in the area with no NEPA/NHPA review. Our members strongly oppose the assumption that new installations of this magnitude have no environmental or historic preservation impacts.

Further, the Draft Order treats equipment associated with wireless antennas as an afterthought rather than the significant element of deployment that they are. The size parameters to qualify as a “small wireless facility” do not include any equipment, which may include “switches, wiring, cabling, power sources, shelters or cabinets.”¹⁵ The new rules would require only that equipment be “no larger than necessary for the operation of the small wireless facility”—a provision so open-ended that shelters and cabinets deployed with a wireless antenna could be well in excess of the three cubic feet standard. There is no basis to categorically declare these facilities to be “small” without any reliable limits on the size of associated equipment.

Finally, the Draft Order asserts that the proposed revised approach to small cells “could cut the regulatory costs of deployment... trim months off of deployment timelines, and incentivize

¹¹ *Id.*

¹² *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, et al.*, WT Docket Nos. 13-238, 23-32, WC Docket No. 11-59, Report and Order, 29 FCC Rcd 12865 (2014) (“6409 Order”).

¹³ *See, e.g., id.*; *Combined Reply Comments of City and County of San Francisco* at p. 5.

¹⁴ 6409 Order at ¶ 151.

¹⁵ The Draft Order would define “equipment” as that term is defined in the definition of antenna in 47 C.F.R. § 1.1320(d), which includes the list of items quoted above rather than an express definition of equipment.

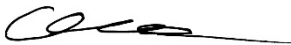
thousands of new wireless deployments.”¹⁶ However, the Draft Order is not likely to lead to deployment in rural areas and urban broadband deserts because it does not address the root of the problem for wireless broadband investment. These communities, whether they be sparsely populated or low-income, do not provide a return on investment that private businesses are looking for. Regulatory streamlining in profitable areas will never be a true substitute for direct investment in underserved areas.

Local governments remain motivated and willing partners with private businesses, states, and the federal government to build a robust broadband infrastructure network that meets all Americans’ economic, educational, health, and recreational needs, and support the deployment of next-generation wireless technologies. We oppose any effort to undermine local authority to preserve the safety and livability of our communities, or to reduce the obligations of broadband providers to be good citizens to the communities they serve. We urge you to oppose the Draft Order.

Sincerely,



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Executive Director
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Officers and Advisors



Clarence E. Anthony
CEO and Executive Director
National League of Cities



Matthew D. Chase
Executive Director
National Association of Counties



Leslie Wollack
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¹⁶ Draft Order at ¶ 5.