

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**PETITION FOR RECONSIDERATION OF THE NATIONAL ASSOCIATION OF
TELECOMMUNICATIONS OFFICERS AND ADVISORS**

I. INTRODUCTION

The National Association of Telecommunications Officers and Advisors (“NATOA”) respectfully requests reconsideration of the Second Report and Order released on March 30, 2018, in the above-captioned proceeding (“Order”). Specifically, NATOA requests reconsideration of the Commission’s finding that deployments of small wireless facilities, as defined in the Order, are not subject to review under the National Historic Preservation Act (“NHPA”)¹ and the National Environmental Policy Act of 1969 (“NEPA”),² and that its amendments to Section 1.1312 of the Commission’s rules are consistent with the public interest.

The Order fails to adequately address existing limits on state and local authority that may prevent environmental or historic review processes, ignores the impacts of densely packed deployments in a small geographic area and creates inconsistencies with existing Commission rules. While NATOA continues to dispute other findings in the Order, we believe reconsideration is necessary to resolve these concerns. We therefore request reconsideration to address these omissions and conflicts in the Order.

II. ARGUMENT

There are three bases upon which NATOA seeks reconsideration. First, the Order does not address the impacts of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of

¹ 54 U.S.C. § 300101 *et seq.*

² 42 U.S.C. § 4321 *et seq.*

2012,³ which undermines the Commission’s assumption that state and/or local environmental and historic preservation reviews can act as a safety valve in order to prevent small cells it has rendered exempt from federal review from effecting the environment or historic areas. Second, the size limits incorporated into the definition of “small wireless facilities” in the Order do not account for the deployment of multiple small cells and related equipment within close proximity in a small geographic area. Third, the Order does not consider that existing rules have prevented adverse impacts, nor does it address the impacts on the Collocation NPA.⁴ These omissions undermine the Commission’s conclusion that its definition of small wireless facilities will “exclude from review those facilities that are least likely to implicate federal environmental and historic interests,”⁵ and require reconsideration.

A. The Commission Erred in Relying on State and Local Review Processes That Are Largely Precluded by Shot Clocks

In defining small wireless facilities in the Order, the Commission found that its numerical limits on height and volume, without any aggregate limits on deployments on a given pole or a given geographic areas sufficiently protect the public interest. The Commission dismisses commenters’ concerns about the adverse environmental and historic preservation effects of the Order by noting that state and local environmental review processes would remain in place. The Order states, “[t]he existence of state and local review procedures, adopted and implemented by regulators with more intimate knowledge of local geography and history, reduces the likelihood that small wireless facilities will be deployed in ways that will have adverse environmental and historic preservation effects.”⁶ The Order does not acknowledge or address that federally mandated “shot clocks” and “deemed granted” remedies—those that currently exist or similar limitations

³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, Sec 6409(a) (codified at 47 U.S.C. § 1455) (“Section 6409”).

⁴ Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, 47 CFR Part 1, Appx. B, § VI (“Collocation NPA”).

⁵ Order ¶ 4.

⁶ Order ¶ 77.

that may be imposed in the future—constrain the application review period to such an extent that environmental and historic preservation reviews effectively cannot be done.

This issue was raised in the record.⁷ Section 6409, as implemented by the Commission, requires state and local governments to approve certain collocation applications within 60 days and deems the application to have been granted should that shot clock expire without a final determination.⁸ If the shot clock and deemed granted remedy apply to small wireless facilities that trigger state or local environmental or historic preservation review, the shot clock likely will not provide the necessary time for a full review before the application is deemed granted, regardless of the impacts the deployment may have. With the absence of any federal review as a result of the Order, in many cases there will be effectively no environmental or historic preservation review of small wireless facilities subject to Section 6409.

Yet the only mention of Section 6409 in the Order is an ambiguous reference in a footnote implying that Section 6409 is an “otherwise-existing limitation[.]” on state and local review that will remain unchanged by the Order.⁹ Apart from this reference, the point of the footnote is that there is a range of state and local laws that “reduce[.] the likelihood [of] adverse environmental and historic preservation effects.”¹⁰ To acknowledge—but not discuss—limitations on the state and local review on which the Commission relies to “act as an independent check and show that [the Order] will not have the effect of authorizing indiscriminate deployment”¹¹ leaves a significant gap in the analysis supporting the Order.

⁷ See, e.g., Letter from Gerard Lavery Lederer, Counsel for City of Boston *et al.*, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 8 (filed Mar. 14, 2018) (“Boston Letter”); Letter from National Association of Telecommunications Officers and Advisors, *et al.*, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed Mar. 15, 2018) (“NATOA Letter”).

⁸ See 47 C.F.R. 1.40001(c).

⁹ Order ¶ 77, note 152.

¹⁰ Order ¶ 77.

¹¹ Order ¶ 77, note 153.

This flaw in the Commission’s analysis could be remedied if the Commission clarifies that Section 6409 does not apply where state or local laws require environmental or historic preservation review. Specifically, it should be clear that review may be longer than the 60 days provided under Section 6409 where environmental or historic preservation laws or regulations are implicated, and that where impacts are found the deployment would be a “substantial change” under Section 6409 that is not subject to mandatory approval or a deemed granted remedy. Absent this clarification—which we urge the Commission to make—the Order is internally inconsistent and fails to fully support the amendments to Section 1.1312.

B. The Order Fails to Address the Accumulation of Facilities in Close Proximity in a Given Geographic Area

In establishing the size limits for small wireless facilities no longer subject to NEPA/NHPA review, the Order fails to account for the many small cells and associated equipment likely to be deployed by various providers in close proximity to one another, which will multiply the impact of these deployments on the environment and historic areas.

The Order acknowledges that the number of new small wireless facilities to be deployed is significant. For example, Verizon anticipates the need for “10 to 100 times more antenna locations than previous technologies[.]”¹² AT&T estimates “hundreds of thousands of wireless facilities—equal to or more than they have deployed over the last few decades.”¹³ The Order dismisses commenters’ concerns about multiple small cells on a single pole, stating “there are practical limitations on how many small wireless facilities can fit on a single pole.”¹⁴ Left unsaid, and unconsidered, is the fact that these practical limitations mean that more poles in any given area will be used for small wireless facilities.

¹² Order ¶ 64.

¹³ *Id.*

¹⁴ Order ¶ 77.

As pointed out by commenters, this is a very likely outcome of small cell deployment and triggers different concerns than multiple attachments on a single pole.¹⁵ The analysis of aggregate deployments in the Order is limited to the question of whether multiple small cells on a single pole would be larger than a macrocell deployment, along with a cursory statement that even in that event the definition of small cells exempt from NEPA/NHPA review is “reasonable given the economic, technical, and public interest benefits of promoting small wireless facility deployments.”¹⁶ The question of whether a particular pole may or may not end up looking like a macrocell deployment after a series of mandatory collocations under Section 6409 does not address the impacts of *many* of these deployments within several hundred feet or less of one another.¹⁷ Nor does the description of small wireless facilities in the amended Section 1.1312 address the proximity of other small wireless deployments.

The deployment of many small cells in a limited area is exacerbated by Section 6409. Not only does the Commission’s implementation of that Section require local governments to approve collocation of additional wireless facilities, it also requires approval of additional equipment on the pole or on the ground near the pole. Nowhere does the Order address the impacts of multiple ground-mounted cabinets and other equipment sited near or on many poles in a small geographic area.

The Commission’s omission of any analysis of the accumulation of deployments within a limited geographic area undermines the conclusion that small wireless facilities, as defined in the Order, pose little or no environmental or historic preservation concerns. We ask the Commission to reconsider the amendments to Section 1.1312 in light of the significant effects of numerous deployments in a small geographic area.

¹⁵ See, e.g., NATOA Letter at 2-3; Boston Letter at 5.

¹⁶ Order ¶ 77.

¹⁷ See, e.g., Comments of AT&T, WT Docket No. 17-79, at 15 (June 15, 2017) (indicating that providers may need to place small cells as close as 100 feet apart). This does not account for multiple providers in one area, in which case small wireless facilities likely would be even closer together absent collocation.

C. The Order Ignores the Effect of Existing Rules and Impacts on the Collocation NPA

While the Commission argues there is an “extremely limited record of such harms flowing from small wireless facilities,” that is in fact an argument that the existing rules have prevented harm, rather than that no harm will arise under new, more relaxed rules.¹⁸ The Commission does not otherwise justify its affirmative finding that small cell sites of the size contemplated will have no impact on historic properties. It must reconsider its Order to address this gap in its analysis. Questions of consistency with the Collocation NPA were raised in the record, yet remain unaddressed.¹⁹

Separately, the Order fails to address the impact the Order will have on the Collocation NPA. While the Commission notes that it “build[s] on the Collocation NPA,” the Order’s provisions conflict with several requirements of the NPA, particularly with respect to historic districts and properties. The Collocation NPA provides separate requirements for sites within or near historic properties to be exempt from NHPA review,²⁰ but the Order does not acknowledge those distinctions, or clarify whether or not they are preserved under the Commission’s new Order. The Commission must clarify this point, and if it is eliminating the distinction between historic and nonhistoric properties, must explain its reasons why.

Furthermore, the Collocation NPA preserves an important “safety valve” for historic preservation. While the Order points to minimal evidence of harm and the already-existing exclusions,²¹ those facts arose under a regime in which the public and other affected parties had the ability to submit a filing showing that a particular installation would have an adverse impact on historic properties, and the installation could not proceed until the complaint was resolved.²²

¹⁸ Order ¶ 76, note 146.

¹⁹ See Boston Letter at 3-4.

²⁰ Collocation NPA at VII.

²¹ Order ¶ 75 (“This size is analogous to that of facilities the Commission previously has excluded from review under the Collocation NPA.”)

²² Collocation NPA at VII.A.6, VII.B.5.

The complaint process was designed because the Commission recognized that the broad standards under the NPA could have an adverse historic impact under certain circumstances. The Order does not address whether this important safety valve remains available, or explain why it is unnecessary, since the NPA recognizes that the stricter standards adopted there were, if anything, less protective than necessary. Reconsideration is necessary to clarify the Commission's policy regarding this and other unresolved conflicts between the Collocation NPA and the Order, so that the impact of the Order can be properly assessed. Where the Order has the effect of supplanting the Collocation NPA, the Commission must clearly articulate the specific findings which justify its departure from existing policy.

III. CONCLUSION

NATOA respectfully requests that the Commission reconsider the Second Report and Order to address the significant omissions and issues discussed above. The gaps in the Commission's analysis undermine support for the conclusion that small wireless facilities of the size contemplated in the Order will have no impact on historic properties, and create conflicts with existing rules and policies that we urge the Commission to address.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nancy L. Werner', written in a cursive style.

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