BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C 20554

IN THE MATTER OF	)	
	)	
	)	WT Docket No. 15-180
Wireless Telecommunications Bureau Seeks	)	
Comment on Proposed Amended Nationwide	)	
Programmatic Agreement for the Collocation	)	
of Wireless Antennas	)	
	)	

COMMENTS FILED BY SANDY CITY, UTAH

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INTRODUCTION AND SUMMARY

Sandy City, a Utah municipality, offers these comments in response to the May 12, 2016 Public Notice on the proposed Amended Collocation Agreement.

While small cells that play an important role in communities' economic development, the Commission should consider how its regulatory changes in this very narrow context may reverberate throughout the broader deployment process. In particular, the Commission should align its definition for "collocation" and criteria for a categorical exclusion with its prior decisions, and clarify that the proposed amendments will not impact a "collocation application" under the *2009 Declaratory Ruling*.[1]

I. THE PROPOSED AMENDMENTS SHOULD BE ALIGNED WITH THE COMMISSION'S PRIOR INTERPRETATIONS AND RULES

The proposed amendments to the Collocation Agreement depart from the commonly understood definition for "collocation" and contain looser standards for installations on historic structures than the Commission recently promulgated in the *2015 Infrastructure Order* for old-but-not-historic structures.[2] This approach may cause confusion over which regulations govern the same facilities at different review stages and may lead to unnecessary conflict and delays. To ensure that efficiencies achieved through the Collocation Agreement are not negated by apparent conflicts with related regulations, the Commission should align its amendments with its prior definitions and rules.

In fact, the proposed amendments, as drafted, render historic structures subject to reduced (if not effectively zero) scrutiny and dramatically reduced time for city and county staff to

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[1] *See Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, 24 FCC Rcd 13994, 14012 ¶ 42 (Nov. 18, 2009) [hereinafter "*2009 Declaratory Ruling*"].
[2] *See* In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, *Report and Order*, 29 FCC Rcd. 12865, ¶ 97 (Oct. 17, 2014) [hereinafter "*2015 Infrastructure Order*"].

review applications before addition of original wireless equipment. The Commission should reject the proposed amendments because it would essentially render local review superfluous in these circumstances.

A. The Proposed Definition for "Collocation" Conflicts with its Ordinary Meaning – Multiple Wireless Facilities in a Shared Location

As a threshold matter, the proposed amendment to § I.B. departs from the commonly understood definition for the term "collocation" because it would include situations in which transmission equipment is installed on a structure not previously intended or approved as a support structure for wireless facilities. Collocation has historically meant multiple wireless facilities in shared space, predating even the *2009 Declaratory Ruling*.[3] Installations on non-tower structures without any previously approved wireless facilities are not collocations in the general, commonly understood sense.

Collocation as a regulatory concept first appeared in the Telecommunications Act of 1996 as a mandate to allow competitive local exchange carriers into the incumbent carriers' facilities.[4] Later, the *2009 Declaratory Ruling* utilized the term to distinguish between "collocation applications" for additions to previously approved sites and applications for "new facilities or major modifications."[5] Indeed, the state statutes the Commission cited as support in the *2009 Declaratory Ruling*—and even some the Commission omitted—define collocation as multiple wireless facilities in a shared location.[6] Although the Commission's interpretation in the

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[3] *See* 47 U.S.C. § 251(c)(6); *2009 Declaratory Ruling*, *supra* note 1, at ¶ 43 (distinguishing between collocation applications and applications for "new facilities or major modifications"); *2015 Infrastructure Order*, *supra* note 2, at 178 (defining "collocation" as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes").

[4] *See* 47 U.S.C. § 251(c)(6).

[5] *See 2009 Declaratory Ruling*, *supra* note 1, at ¶ 43.

[6] *See id.* at ¶ 47–48 (citing CAL. GOV'T CODE § 65850.6(d)(1) ("'Collocation facility' means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility."); FLA. STAT. ANN. § 365.172(3)(f) ("'Collocation' means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent

2015 Infrastructure Order deviated from the traditional definition because it no longer contemplated multiple equipment owners but rather additional equipment without respect to ownership, it nevertheless confirmed that an "existing wireless tower or base station" is a fundamental prerequisite for a collocation.[7]

The proposed amendments would explicitly and unreasonably extend the definition to cover installations on structures without any previously approved wireless facilities.[8] Even when the Commission has classified installations on towers without existing antennas to be a collocation, the tower itself received a prior approval as a structure solely intended to support FCC-licensed or authorized equipment.[9]

The proposed amendments, in most instances, effectively moot consultation with local agencies about the cumulative effects of new antenna "small cell" arrays, even beyond the original installation. As an example, historic light poles could be extended or expanded in a manner that might accommodate wireless equipment, but might also destroy the historic features of the pole.

The Commission should reject the proposed revision to Draft Collocation Agreement § I.B, and maintain uniformity in its regulatory definitions.

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antennae."); KY. REV. STAT. § 100.985(3) ("'Co-location' means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower.); N.C. GEN. STAT. ANN. § 160A-400.51(4) ("The installation of new wireless facilities on previously-approved [sic] structures, including towers, buildings, utility poles, and water tanks."); *see also* IND. CODE. ANN. § 8-1-32.3-4 ("As used in this chapter, 'collocation' means the placement or installation of wireless facilities on existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement, or modification of wireless facilities within an approved equipment compound.").

[7] *See* 47 C.F.R. § 1.40001(b)(2) ("The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes."). An "eligible support structure" means a tower (a structure built solely or primarily to support FCC-licensed or authorized equipment) or a base station (a non-tower structure locally approved as a support for FCC-licensed or authorized equipment). *See id.* §§ 1.40001(b)(1), (4) and (9).

[8] *See* Draft Collocation Agreement Amendments at § I.B.

[9] *See 2015 Infrastructure Order*, *supra* note 2, at ¶ 174.

B. The Proposed Amendments Relating to Historic Properties Appear to be Less Restrictive than Analogous Criteria for Categorical Exclusions for Non-Historic Properties

The proposed amendments could allow for more intrusive installations on historic properties than the Commission has deemed categorically excluded from Section 106 review on non-historic properties. The proposed amendments merely require some undefined "stealth techniques" on genuinely historic properties, whereas the *2015 Infrastructure Order* requires compliance with "all zoning and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects" on structures subject to Section 106 review merely due its age.[10] Moreover, the proposed amendments would allow for ground disturbance on historic properties at least as deep and wide as prior excavations, but the *2015 Infrastructure Order* excluded facilities on non-historic structures only when it involved no new ground disturbances.[11] The Bureau offers no explanation for the loosened standard.

These proposed amendments in section VII.A appear backwards: the Commission should require stricter criteria on historic properties than for wireless deployments on structures subject to Section 106 review solely due to a structure's age. The Commission should align the proposed amendments with the established criteria for a small-cell categorical exclusion from Section 106 review.

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[10] *Compare* Draft Collocation Agreement Amendments at VII.A.1.c, *with 2015 Infrastructure Order*, *supra* note 2 at ¶ 97

[11] *Compare* Draft Collocation Agreement Amendments at VII.A.4 ("A small antenna . . . may be mounted on a building or non-tower structure . . . that is (1) a historic property (including a property listed in or eligible for listing in the National Register of Historic Places) or (2) inside or within 250 feet of the boundary of a historic district without being reviewed through the Section 106 process set forth in the NPA, provided that . . . [t]he depth and width of any proposed ground disturbance associated with the collocation does not exceed the depth and width of any previous ground disturbance (including footings and other anchoring mechanisms)."), *with 2015 Infrastructure Order*, *supra* note 2 at ¶ 97 ("[W]e find that collocations on buildings or other non-tower structures over 45 years old will have no potential for effects on historic properties if . . . the deployment of the new antenna will involve no new ground disturbance.").

II. TO THE EXTENT THAT PROPOSED AMENDMENTS IMPACT A "COLLOCATION APPLICATION" UNDER THE *2009 DECLARATORY RULING*, THE COMMISSION MUST RE-NOTICE THE PROCEEDING

It does not appear that the proposed amendments to the Collocation Agreement will impact the presumptively reasonable timeframe to review collocation applications under the *2009 Declaratory Ruling*. The Public Notice has styled this proceeding as amending a programmatic agreement to streamline NHPA reviews for small cells in historic districts to "ensur[e] . . . that the Commission's rules reflect the NHPA's values and obligations." The Public Notice did not state that the "subjects and issues involved" included collocation applications for non-small cells beyond historic districts.[12]

However, some wireless providers have recently taken the position that a request to establish a new wireless site on any existing structure (regardless of whether a wireless facility is present) qualifies as a collocation subject to the 90-day shot clock under the *2009 Declaratory Ruling*. In some cases, carriers have erroneously claimed that collocations covered by the 90-day shot clock include more than towers or other structures without any established wireless uses.

To address the carriers' potential claims that this proceeding somehow modifies generally applicable regulations for all wireless siting requests, the Commission should either (1) confirm that the proposed amendments to the Collocation Agreement will not impact the definition of a "collocation" or "collocation application" under the *2009 Declaratory Ruling*. Alternatively, to the extent that the Commission does intend broader impacts, it must re-notice

[12] *See* 5 U.S.C. § 553(b) ("General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law. The notice shall include . . . (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.").

this proceeding in a manner that would allow all interested parties to understand the "subjects and issues involved" and have a meaningful opportunity to comment.[13]

III. CONCLUSION

The Commission should decline to redefine "collocation" for purposes of this historic district proceeding, and it should also confirm that the proposed amendments will not impact the definition of a "collocation" or "collocation application" under the *2009 Declaratory Ruling*. Alternatively, the Commission must re-notice this proceeding to allow interested parties and localities without historic structures or districts a meaningful opportunity to comment.

Respectfully submitted,

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[13] *See* 5 U.S.C. § 553(b).