

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

**REPLY COMMENTS OF THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Telecommunications Industry Association (“TIA”)¹ hereby files these reply comments in response to the Notice of Proposed Rulemaking (“NPRM”)² in the above-captioned proceeding.

The initial comments clearly demonstrate the need to remove obstacles to wireless deployments, and there is strong support for the proposals in the NPRM. In contrast, commenters opposing the Commission’s proposals do not address the reality that small cells are fundamentally different, and that simplified or shortened approval mechanisms for small cell deployments would therefore be appropriate. Meanwhile, arguments that the Commission’s authority to impose a “deemed granted” remedy under Sec. 332(b)(7) of the Communications Act has been restricted by the enactment of Sec. 6409(a) of the Spectrum Act miss the mark.

I. Operators and Industry Face Real Obstacles to Wireless Deployment.

Several commenters highlighted the specific obstacles they face in deploying wireless broadband infrastructure. Belying protestations that industry has not sufficiently identified

¹ TIA is the leading trade association for the information and communications technology (“ICT”) industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on policy issues affecting the ICT industry and forges consensus on industry standards.

² [Notice of Proposed Rulemaking](#), *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC 17-38, WT Docket No. 17-79 (Apr. 20, 2017).

specific governments causing difficulties,³ Crown Castle lays out – in vivid detail with many specific examples from across the country – various state and local practices that have hindered wireless deployments.⁴ Nokia identified several local government practices impeding timely deployment, including undefined laws and processes, lack of personnel, redundant or fragmented procedures, onerous fees, and outright moratoria.⁵ And Samsung among others likewise supports the Commission’s proposals.⁶ These comments confirm TIA’s position that the Commission is on the right path and should impose a “deemed granted” remedy.⁷

II. Opponents’ Focus on Large Towers Reaffirms the Need for Differentiated Treatment for Small Cells.

While expressing general opposition to the Commission’s proposals, key opponents do not argue – and barely acknowledge – that small cells are fundamentally different from traditional large cell towers. For example, the National League of Cities never even mentions the term “small cell” in its main comments, instead arguing vaguely against “situational shortening” of federal shot clocks.⁸ NLC does, however, attach testimony from a recent Senate hearing arguing that “small cell” refers to coverage area rather than physical size, and worries about 120-foot-tall towers or equipment cabinets of 28 cubic feet that are “bigger than most

³ See National League of Cities *et al.*, [Request for Extension of Time to File Reply Comments](#), filed July 7, 2017 in WT Docket No. 17-79, at 3, 4.

⁴ [Comments of Crown Castle International Corp.](#), filed June 15, 2017 in WT Docket No. 17-79, at 8-22.

⁵ [Comments of Nokia](#), filed June 15, 2017 in WT Docket No. 17-79, at 4-9.

⁶ See generally [Comments of Samsung Electronics America, Inc.](#), filed June 15, 2017 in WT Docket No. 17-79.

⁷ [Comments of the Telecommunications Industry Association](#), filed June 15, 2017 in WT Docket No. 17-79, at 2-4 (“TIA Comments”).

⁸ [Comments of the National League of Cities](#) at 4 (“NLC Comments”).

refrigerators.”⁹ Yet even a cursory glance reveals that many small cell deployments will involve hardware that is truly smaller than a pizza box.¹⁰

Nor do opponents address the legal requirement to acknowledge the differences between small cells and larger deployments. Section 332(c)(7)(B)(ii) requires a locality to act “within a reasonable time, *taking into account the nature and scope of such request*.”¹¹ As TIA explained in our initial comments, creating different procedures for different types of deployments would better comport with the statute and strengthen the Commission’s position upon review.¹²

III. Sec. 6409(a) Does Not Restrict The Commission’s Authority to Impose a “Deemed Granted” Remedy Under Sec. 332(c)(7).

Under Sec. 6409(a) a state or local government “may not deny, and shall approve” certain facility modification applications, while under Sec. 332(c)(7)(B)(ii) a state or local government “shall act on any request ... within a reasonable period of time.” Some opponents argue that the clear *directive* from Congress to implement a “deemed granted” remedy under Section 6409(a) for certain applications somehow restricts the Commission’s *discretion* to impose that remedy for other applications under Sec. 332(c)(7). Their argument is that “if Congress intended to have similar regulations, it would have drafted similar statutes,” and that the Commission should not “attempt to bring harmony to two facially distinct statutory frameworks.”¹³

This argument misses the mark. To begin with, Sec. 332(c)(7) standing alone would permit creation of a “deemed granted” remedy, and as TIA explained in our initial comments, the

⁹ Testimony of Gary Resnick at 3 (attached to NLC Comments).

¹⁰ See, e.g., Nokia, *Nokia Small Cells – innovative ways to expand coverage and capacity for the future*, available at <https://resources.ext.nokia.com/asset/200247> (visited Jul. 14, 2017) (image)

¹¹ 47 U.S.C. § 332(b)(7)(B)(ii) (emphasis added).

¹² TIA Comments at 4-5.

¹³ [Comments of Washington State cities](#), filed June 14, 2017 in WT Docket No. 17-79, at 7-8.

Fifth Circuit made the agency’s authority clear in *City of Arlington v. FCC*.¹⁴ Importantly, Congress enacted Sec. 6409(a) in 2012 not to *restrict* the Commission’s authority, but to push matters *further* than the Commission had been willing to go in the *2009 Declaratory Ruling* when the agency declined to adopt a “deemed granted” remedy. Congress’ failure to simultaneously amend Sec. 332(c)(7) in 2012 to include compulsory language therefore cannot be read to eliminate the discretion that Congress might have wished the agency would have exercised to begin with. Regardless, it is a basic principle of statutory interpretation that “Congress need not deal with every problem at once.”¹⁵

IV. Conclusion

The record clearly reflects the need for the Commission to act as proposed. Meanwhile, opponents do not engage with the reality that small cells are fundamentally different from large towers, and their legal arguments miss the mark. TIA supports the proposals in the NPRM and appreciates the Commission’s efforts in this proceeding.

Respectfully submitted,

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¹⁴ TIA Comments at 3-4 (discussing 668 F.3d 229, 247-54 (5th Cir. 2012)).

¹⁵ *Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 757 (1996).