

September 26, 2014

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: *Ex Parte Communication, Acceleration of Broadband Deployment by Improving Wireless Siting Policies, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59***

Dear Ms. Dortch:

Fibertech Networks, Inc. (“Fibertech”), through the undersigned counsel, submits this *ex parte* letter in the above referenced dockets to re-iterate its support of recent submissions by PCIA—The Wireless Infrastructure Association, CTIA—The Wireless Association, and Verizon.

First, Fibertech reiterates its support of PCIA’s proposal that the Commission amend Note 1 to Section 1.1306 to categorically exclude facilities that meet a technologically-neutral, volume-based definition. Specifically, Fibertech supports PCIA’s proposal of a definition that includes 17 cubic feet as the measure of the equipment and 3 cubic feet for the antenna.<sup>1</sup> The volumetric standard proposed by PCIA is reasonable in light of real-world DAS and small cell installations, and installations of that size will have no, or at most *de minimus*, effect on the environment. Although Fibertech’s installations fall within the PCIA proposal, a significantly smaller volume would unreasonably limit DAS and small cell deployment.

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<sup>1</sup> Comments of PCIA – The Wireless Infrastructure Association, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, RM-11688, at 7-8 (Feb. 3, 2014) (“PCIA Comments”); *see also* Letter from D. Zachary Champ, PCIA – The Wireless Infrastructure Association, WC Docket No. 11-59, GN Docket No. 12-354 (filed July 22, 2013) (introducing the volume-based exemption); Letter from D. Van Fleet Bloys, PCIA – The Wireless Infrastructure Association, WC Docket No. 11-59, GN Docket No. 12-354 (filed September 18, 2014).

Second, Fibertech reiterates its support for the Commission to adopt a “deemed granted” remedy under Section 6409.<sup>2</sup> The plain text of Section 6409 mandates that if an application is an “eligible facilities request” that does not substantially change the physical dimensions of the tower or base station, the only outcome must be grant of the application. The statute leaves no room for other outcomes. In addition, Fibertech supports PCIA and CTIA in their September 19, 2014 *ex parte* that, at a minimum, the “shall approve” mandate necessitates an expedited period of no more than 45 days for a local government to review and approve an eligible facilities request.<sup>3</sup> The proposed 45 days is more than adequate time for local regulators to confirm that an application is an eligible facilities request. Fibertech also reiterates the need for clear definitions and application guidelines. Specifically, Fibertech supports the proposed definitions of “substantially change the physical dimensions” proposed by PCIA.<sup>4</sup> The PCIA proposed guidelines are reasonable and will provide certainty and stability, allowing more efficient and effective deployment of wireless telecommunications infrastructure. Without specific definitions and a timeframe for action, local governments will continue to demand information that is irrelevant to the statutory questions, even engaging “consultants” that further delay the process with unnecessary demands for information and consideration of irrelevant issues.

Finally, Fibertech urges the Commission to disregard the advocacy by the Intergovernmental Advisory Committee (“IAC”) in the IAC’s “Advisory Recommendation Number 2014-1” because its assertions are really arguments against Section 6409, not proposals for the Commission to meaningfully and accurately implement the statute. Congress has recognized the national problem of municipal impediments to wireless collocations and modifications, and Congress addressed the problem in Section 6409. Yet, among other things, the IAC’s “Recommendations” seek to constructively reverse Section 6409 by having local governments be the arbiter of the meaning of “substantial change” and the determiner of proper remedies—effectively watering down an “eligible facilities request” until it is non-existent and without an avenue for meaningful relief.<sup>5</sup> The IAC’s assertion that Section 6409 rules should be narrowly tailored is meritless and seeks to retain the status quo that Congress intentionally preempted. Moreover, it is particularly troubling that the IAC categorizes the record’s documented examples of delay as “only a limited number of bad actors.”<sup>6</sup> Laws and rules exist specifically for bad actors, and only rules from the Commission implementing the preemption enacted by Congress can provide the relief that wireless broadband deployment requires.

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<sup>2</sup> See Letter from William Sill on behalf of PCIA and CTIA at 1 (Sept. 19, 2014).

<sup>3</sup> *Id.*

<sup>4</sup> See PCIA Sept. 18, 2014 Letter at 2-3.

<sup>5</sup> IAC Advisory Recommendation Number 2014-1 at Part II.3-4.

<sup>6</sup> *Id.* at Part II.3(c).

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For example, Fibertech and other wireless broadband providers have been trying to work with a large city in Ohio on extensive expansions and improvements to the wireless broadband infrastructure. This delay has lasted over a year and impacted every resident and business that could have had better network services. That is not one “bad actor”—it is a population being silently denied better services because of a recalcitrant city government. Delays like this one and numerous others put into the record show why it is critical the Commission adopt clear and objective rules that will prevent parochial local politics from interfering with national wireless broadband deployment goals.

Sincerely

Davis Wright Tremaine LLP

/s/ T. Scott Thompson

T. Scott Thompson

cc: Chad Breckinridge  
Roger Sherman