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October 9, 2014

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**Ex Parte**

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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, WT Docket No. 13-238; Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265**

Dear Ms. Dortch:

On October 7, 2014, Tamara Preiss and Andy Lachance of Verizon met with Louis Peraertz in Commissioner Clyburn's office to discuss issues in the above-referenced proceedings.

**Wireless Facilities Siting**

We expressed support for the Commission's efforts to expedite wireless facilities deployment to meet the growing demand for wireless broadband services from consumers, government entities, and public safety. Although spectrum is a critical input to meet this demand, spectrum alone is not sufficient. Providers must squeeze more capacity out of their spectrum resources by deploying new or improved infrastructure such as small cells and DAS facilities. At the same time, we are mindful of the need to limit the impact of these deployments on the environment and historic preservation.

We discussed Verizon's proposal to exclude from historic preservation review the addition of new antennas to existing facilities sites on structures that are over 45 years old, provided that the following criteria are met:

- The new antennas are deployed at the same location as existing antennas, meaning that the new antennas are located within ten feet from the center point of the outermost existing antenna(s);
- The new antennas are no more than 3 feet taller than existing antennas, except where not visible from the ground;

- The new antennas must comply with existing zoning/historic preservation conditions; and
- The new antennas create no new ground disturbance.<sup>1</sup>

With respect to small cell and DAS deployments, we reiterated our support for PCIA's request for a categorical exclusion from NHPA review of facilities that meet certain volumetric limitations.<sup>2</sup> In particular we asked that the antenna volume limit be applied to *each* antenna, rather than cumulatively (so that all antennas combined do not exceed three cubic feet in volume). This will enable carriers to deploy equipment operating on different frequency bands (i.e., 700 MHz and AWS) and/or technologies (i.e., LTE and Wi-Fi), which require two small antennas that together may exceed the three cubic feet volume limit. To address situations where a wireless provider proposes to locate more than one antenna on the structure, the Commission could adopt a rule stating that the total volume of the antennas may not exceed six cubic feet.

We also asked that the Commission expand the historic preservation relief for small cells and DAS by adopting a set of conditions which, if met by any facility, would allow the Commission to conclude that no historic properties would be affected. The Commission would meet its twin goals of streamlining small cell and DAS deployment and ensuring that historic preservation concerns are addressed by adopting the following conditions:

- That the facility meet the above-referenced volumetric limits proposed by PCIA;
- That the facility not involve ground disturbance beyond that permitted by Section VI.D.2.c.1 of the Nationwide Programmatic Agreement;<sup>3</sup>
- That the facility requires historic preservation review solely due to the age of the structure; and
- That the structure is neither listed in the National Register of Historic Places nor formally determined eligible for listing by the Keeper of the National Register.

We discussed how to define “substantially change the physical dimensions” with respect to non-tower structures under Section 6409(a) of the Spectrum Act.<sup>4</sup> This statutory provision recognizes that placing additional facilities on existing structures is an ideal way to extend

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<sup>1</sup> *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-238, Comments of Verizon and Verizon Wireless (filed February 3, 2014)(“*Verizon Comments*”), at 16-19, 21-22; Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC (filed July 14, 2014)(“*Verizon July 14 Ex Parte*”).

<sup>2</sup> Letter from D. Zachary Champ, PCIA HetNet Forum, to Marlene H. Dortch, FCC, WC Docket No. 11-59, GN Docket No. 12-354 (filed July 22, 2013); *see also Verizon Comments* at 10-11.

<sup>3</sup> Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, 47 C.F.R. Part 1, Appendix C, § VI.D.2.c.1.

<sup>4</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012)(codified at 47 U.S.C. § 1455(a)).

capacity and coverage while limiting the effect on surrounding areas. We suggested adoption of three measures to ensure the appropriate balance is struck: First, if the Commission concludes that different definitions of “substantial change” should apply to tower and non-tower structures, it should apply the definition of substantial change for towers to utility poles. That definition is appropriate because of the significant similarities among wireless towers, on the one hand, and utility poles on the other. Second, the definition for other non-tower structures should allow new facilities to extend up to six feet wider than the widest point on the structure (which may be an appurtenance attached to the structure) and up to 15 feet above the highest point on the structure (which may be an appurtenance attached to the structure). Third, if the Commission adopts a height limitation stated in terms of a percentage of the height of the structure, it should also adopt a minimum allowable height increase to account for circumstances where the structure (i.e., a two-story building) is short, thus making the percentage too small to accommodate wireless facilities. That minimum height should be no less than ten feet above highest point of the structure.

Finally, we discussed the length of the “shot-clock” that applies to a local jurisdiction’s consideration of an application to approve a request for eligible facilities under Section 6409. We stated that an applicant should not be required to wait more than 90 days for action by a local jurisdiction.<sup>5</sup> Thus, if jurisdictions are permitted some period of time (i.e., thirty days) at the end of the shot-clock period to bring action in a court of competent jurisdiction, during which time an applicant may not proceed with its build, then the shot-clock should be no more than 60 days so that the total time allowed is not more than 90 days.

### **Roaming**

We also discussed the petition for declaratory ruling filed by T-Mobile that asked the Commission to determine the commercial reasonableness of a wireless provider’s data roaming rates by reference to that carrier’s retail, resale, and international and domestic roaming rates.<sup>6</sup> As Verizon previously explained, the gist of T-Mobile’s petition is its allegation that AT&T has failed to make data roaming available at commercially reasonable rates, a claim that AT&T disputes. Regardless of the merits, the Commission already has established processes by which T-Mobile can pursue its complaint.<sup>7</sup> Should T-Mobile bring a complaint against AT&T, it will

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<sup>5</sup> See *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-238, Notice of Proposed Rulemaking, 28 FCC Rcd 14238, 14287 (para. 134) (2013) (seeking comment on a shot clock shorter than the 90 days applicable to Section 332, “given that Section 6409(a) considerably narrows the scope of review”).

<sup>6</sup> Petition for Expedited Declaratory ruling of T-Mobile, USA, Inc., WT Docket No. 05-265 (filed May 27, 2014).

<sup>7</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Comments of Verizon (filed July 10, 2014), at 1-4; Reply Comments of Verizon (filed Aug. 20, 2014), at 5-9.

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have the opportunity to try to demonstrate that the roaming rates offered by AT&T are unreasonable. T-Mobile has no basis to challenge the adequacy of complaint proceedings when it apparently has failed to avail itself of those processes.

We also explained that the benchmarks T-Mobile seeks are neither necessary nor appropriate. Because a complaint proceeding enables a party to discover and produce evidence of roaming rates in its own and other parties' agreements, there is no need to examine retail or resale rates. Moreover, given that the FCC already rejected those rates as benchmarks for commercial reasonableness, T-Mobile's petition is an attempt to change the Commission's existing rules and thus cannot be addressed through a declaratory ruling.<sup>8</sup>

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This letter is being filed pursuant to Section 1.1206 of the Commission's Rules. Should you have any questions, please contact the undersigned.

Sincerely,



cc: (via e-mail)

Louis Peraertz

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<sup>8</sup> See Comments of Verizon at 4-7; see also Reply Comments of Broadpoint, LLC, Central Louisiana Cellular, LLC, and Texas 10, LLC (filed Aug. 20, 2014), at 2 (noting "valid economic reasons" that roaming rates do not reflect the same factors as retail, resale, and foreign rates).