

October 10, 2014

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

On October 8-10, 2014, representatives of CTIA—The Wireless Association® and member companies AT&T, Sprint, T-Mobile, US Cellular, and Verizon met separately with the offices of Chairman Wheeler, Commissioner Clyburn, Commissioner Rosenworcel, Commissioner Pai, and Commissioner O’Rielly, as well as the Wireless Telecommunications Bureau (a full list of meeting attendees is provided in the attachment). During the meetings, the parties generally discussed the pending rulemaking in the above-referenced proceeding.

CTIA and members indicated their strong support for the FCC to adopt a Report and Order facilitating wireless infrastructure deployment at its October 17, 2014 Open Meeting. CTIA stressed that the wireless industry’s ability to meet the explosive demand for wireless broadband services is dependent on the ability to rapidly deploy new or improved wireless facilities, whether those facilities are macro cells, small cells, or distributed antenna systems (“DAS”). In particular, CTIA highlighted a few key considerations which, if incorporated, can enhance the potential to eliminate delays and unnecessary steps associated with providers’ further investment and deployment.

- ***Deemed Granted.*** CTIA reiterated its support for implementation of a “deemed granted” remedy to carry out Section 6409(a)’s “shall approve” mandate if an eligible facilities request (“EFR”) application is not timely approved. At most, local jurisdictions should be given 60 days to review and approve EFR applications, followed by a 30 day period for a party to seek relief from a court.

The FCC’s and industry’s experience from the collocation shot clock is instructive. The Commission currently has a 90 day shot clock in place for collocation applications pursuant to Section 332(c)(7). This 90 day period was established based on the belief that localities may have numerous substantive zoning decisions to make with respect to collocations — zoning decisions that they were entitled to make pursuant to Section 332(c)(7)’s

preservation of local zoning authority. Section 6409(a) eliminates the need for such substantive deliberations by requiring localities to grant EFRs. Because Section 6409(a) mandates that localities “shall approve” collocation requests unless they fundamentally change the physical dimensions of a structure, there no longer is a need for localities to evaluate most collocation requests – only those that “substantially change” the physical dimensions of a structure. And even this limited review will be greatly simplified as a result of the guidance from the Commission in this order as to what constitutes “substantial change.” Thus, these applications should be subject, at most, to an administrative review that should require significantly less than 90 days to complete. A 60 day shot clock provides ample review time given the Section 6409(a) mandate and the Commission’s prior recognition that, even before Congress greatly simplified the collocation review process, some jurisdictions take only 14 days – or less – to complete the review of wireless applications.¹ Extending this period to 90 days, and then tacking on an additional 30 days for a local jurisdiction to challenge whether an application qualifies as an EFR, unnecessarily invites delay and inaction into a process that is critical to continued broadband deployment.

- ***Substantial Change.*** For the purpose of Section 6409(a), what constitutes a “substantial change” should be the same for towers and utility poles. A different definition of “substantial change” should apply to non-tower structures. New facilities that extend the height of the non-tower structure up to 10% or 10 feet (whichever is larger), and/or increase the widest point of a structure by 6 feet or less, should be considered a non-substantial change.
- ***Volumetric limit.*** The Commission should adopt the technology-neutral, volumetric definitions proposed by PCIA for DAS and small cells. To avoid confusion, however, the Commission should clarify that the antenna volume limit applies on a per antenna basis, rather than cumulatively, provided the total volume of the antennas does not exceed six cubic feet. Such an approach will expedite broadband deployment by carriers operating on different frequency bands or with multiple technologies, such as WiFi and LTE, that require the use of multiple antennas to expand coverage. The Commission also should exclude from any volumetric calculation cabling as well as ancillary equipment installed by the power or telecommunications provider necessary for the operation of the wireless facility.

¹ See *CTIA 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, 14011 (2009) (1 to 14 days) (“*Shot Clock Declaratory Ruling*”), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff’d sub nom. City of Arlington, Texas v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, 133 S.Ct. 1863 (2013); see *Shot Clock Declaratory Ruling*, 24 FCC Rcd. at 14011 (“[T]he City of Saint Paul, Minnesota has processed personal wireless service facility siting applications within 13 days, on average, since 2000.”).

- **Utility Poles.** Utility poles should be broadly defined to include light poles and similar objects.

- **Section 106 Review.** DAS and small cells should be excluded from Section 106 review, regardless of whether the facilities are located on utility poles or non-utility poles. The facilities should be excluded if they meet the following parameters:
 1. The facility meets the volumetric definition for small cells/DAS;
 2. The facility would require historic preservation review only because the structure on which it is mounted is over 45 years old;
 3. Mounting the facility will not require ground disturbance greater than already allowed in the Nationwide Programmatic Agreement; and
 4. The structure is neither listed in the National Register of Historic Places nor has been formally determined eligible for listing by the Keeper of the National Register.

- **Conditioning Grants on Compliance with Federal Law.** CTIA urges the Commission to preclude localities from tying or conditioning their approval or permitting processes to or on compliance with Federal Law. Such conditions would effectively put the localities in the role of enforcing Federal Law, which is well beyond their jurisdiction and traditional zoning functions.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this letter is being electronically filed via ECFS with your office and a copy of this submission is being provided to the meeting attendees. Please direct any questions to the undersigned.

Sincerely,

/s/ Brian M. Josef

Brian M. Josef

cc: Attachment

ATTACHMENT

October 8th - 10th Meeting Participants, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59

October 8, 2014:

Office of Chairman Wheeler

Renee Gregory, Office of Commissioner Wheeler
Scott Bergmann, CTIA
Brian Josef, CTIA
Jeanine Poltronieri, AT&T
Ray Rothermel, Sprint
Grant Spellmeyer, US Cellular
Indra Chalk, T-Mobile
Andy Lachance, Verizon

Office of Commissioner Rosenworcel

David Goldman, Office of Commissioner Rosenworcel
Scott Bergmann, CTIA
Brian Josef, CTIA
Jeanine Poltronieri, AT&T
Ray Rothermel, Sprint
Grant Spellmeyer, US Cellular
Indra Chalk, T-Mobile
Andy Lachance, Verizon

Office of Commissioner O’Rielly

Erin McGrath, Office of Commissioner O’Rielly
Brian Josef, CTIA
Jeanine Poltronieri, AT&T
Ray Rothermel, Sprint
Indra Chalk, T-Mobile
Andy Lachance, Verizon

October 9, 2014:

Office of Commissioner Clyburn

Louis Peraertz, Office of Commissioner Clyburn

Brian Josef, CTIA

Jeanine Poltronieri, AT&T

Ray Rothermel, Sprint

Grant Spellmeyer, US Cellular

Luisa Lancetti, T-Mobile

Tamara Preiss, Verizon

Office of Commissioner Pai

Brendan Carr, Office of Commissioner Pai

Brian Josef, CTIA

Jeanine Poltronieri, AT&T

Ray Rothermel, Sprint

Shannon Reilly Kraus, T-Mobile (via telephone)

Tamara Preiss, Verizon

Wireless Telecommunications Bureau

Chad Breckinridge, FCC – WTB

Brian Josef, CTIA

Jeanine Poltronieri, AT&T

October 10, 2014:

Office of Commissioner Pai

Nicholas Degani, Office of Commissioner Pai

Brian Josef, CTIA (via telephone)