Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Wireless Telecommunications Bureau Seeks Comment On The State of Mobile Wireless Competition	)	WT Docket No. 10-133
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COMMENTS OF PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION
AND
THE DAS FORUM (A MEMBERSHIP SECTION OF PCIA)

By: /s/

Michael T.N. Fitch, Esq.
President and CEO
Connie Durcsak
Senior Director of Industry Affairs
Executive Director, The DAS Forum
Michael D. Saperstein, Jr.
Director of Government Affairs
Brian M. Regan
Government Affairs Counsel

901 N. Washington St., Suite 600
Alexandria, VA 22314

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SUMMARY

Wireless services and devices are relied upon by end-users in every facet of their lives. Users leverage wireless services and advanced devices to organize their lives, improve productivity, access public safety services, and stay connected when at home, work, or on the road. The wireless services, devices, and applications that users demand and upon which they rely, are enabled through the rapid and robust deployment of wireless infrastructure. Wireless infrastructure is a key driver of the wireless ecosystem.

Wireless service and infrastructure providers are investing billions of dollars to expand and improve wireless networks to meet user demand for increased coverage and capacity. This growth feeds a highly competitive wireless infrastructure industry, which itself facilitates and improves competition between wireless service providers. An element of the wireless infrastructure industry—distributed antenna systems—is also a highly competitive and growing market.

Wireless infrastructure is essential to help the Commission achieve its goals of improving access to wireless services and stimulating broadband deployment to unserved areas. Yet, despite the importance of wireless and the billions of dollars invested, local regulation of the placement of wireless facilities is as a persistent barrier to the deployment of wireless infrastructure.

Local governments impose significant burdens on wireless infrastructure deployment. Some jurisdictions utilize a review process for efficient deployments, such as collocations, that requires the same amount of documentation and review as an entirely new tower. These processes not only significantly delay wireless infrastructure deployment, but also add to its cost. And, while the Commission has established timeframes within which local governments must review applications to site wireless facilities, an increasing number of jurisdictions are adopting moratoria on wireless facility siting, thereby sidestepping the Commission's rules. Compounding this problem in many jurisdictions is the use a private municipal consultant to review wireless facility applications. The consultant is generally paid by the applicant, and therefore has little incentive to act quickly—the longer the application review takes, the greater the fees generated. This not only delays deployments, it also adds to the costs of deployment.

Recognizing the importance of wireless infrastructure, the Commission should take action to remove the persistent barriers to wireless infrastructure deployment at the local level. The Commission should also undertake an initiative to educate localities about the importance of wireless infrastructure and the services it enables. The Commission should also examine its preemptive authority over burdensome local regulations, particularly for efficient infrastructure deployments like collocations. If the Commission determines that it does not have the authority to take action to remove these barriers, it should work with Congress to develop an effective solution.

I. INTRODUCTION

PCIA – The Wireless Infrastructure Association ("PCIA") and The DAS Forum, a membership section of PCIA ("The DAS Forum") respectfully submit these comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Public Notice* seeking comment on competition in the mobile wireless industry.[1] PCIA and The DAS Forum support the Commission's continued consideration of the importance of the infrastructure segment of the mobile wireless industry.[2] Indeed, if we are to achieve the National Broadband Plan's goal that "[t]he United States should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation,"[3] it will only be through the rapid deployment of the necessary supporting wireless infrastructure.

PCIA is the trade association representing the wireless telecommunications infrastructure industry. PCIA's members own and manage more than 125,000 telecommunications towers and antenna structures across the country upon which cell sites can be collocated. PCIA seeks to facilitate the widespread deployment of communications networks across the country, consistent with the mandate of the Telecommunications Act of 1996.[4] The DAS Forum, a membership section of PCIA, is dedicated to the development of distributed antenna systems ("DAS") as an element of the nation's wireless infrastructure.

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[1] Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition, WT Docket No. 10-133, *Public Notice*, DA 10-133 (rel. June 30, 2010) ("*Public Notice*").

[2] *See id*. at 6, 16.

[3] FED. COMMC'NS COMM'N, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN xiv (2010) ("NATIONAL BROADBAND PLAN").

[4] Pub. L. No. 104-104, § 706(a), 110 Stat. 56, 153 (directing the Commission to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity . . . regulating methods that remove barriers to infrastructure investment") (reproduced in the notes following 47 U.S.C. § 157) ("TCA").

The Commission's *2010 Wireless Competition Report*[5] examined, for the first time, the role that wireless infrastructure plays in the overall wireless ecosystem. The Commission's recognition that "[i]nfrastructure facilities are a major input into the provision of mobile wireless service"[6] is an important one. Today's wireless infrastructure market is not only extremely competitive in and of itself, but it also enables competition among wireless providers and thereby enhances investment and innovation throughout the entire wireless industry. Yet despite the importance of wireless infrastructure, there are too many barriers to wireless infrastructure deployment that are frustrating the Commission's goals for the deployment of wireless services and wireless broadband. We urge the Commission to take all steps within its power to enable the provision of this crucial infrastructure.

II. THE WIRELESS INFRASTRUCTURE INDUSTRY IS A CRITICAL COMPONENT OF THE WIRELESS ECOSYSTEM ENABLING COMPETITION THROUGHOUT THE ENTIRE WIRELESS INDUSTRY

As the *Competition Report* realized, "[i]nfrastructure facilities are a major input into the provision of mobile wireless service."[7] Without the necessary infrastructure, none of the wireless services upon which Americans have come to depend—from simple voice transmission to emergency services to data-intensive mobile applications—could exist. Clearly wireless infrastructure is the backbone of America's wireless future, and is increasingly an essential component necessary to achieve the Commission's broadband goals.

Americans across the country rely on their wireless devices and wireless services for communication, productivity, safety, and entertainment. The value of end-users' access to wireless services and devices is only growing. As Chairman Genachowski has stated, "mobile

[5] *In re* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, WT Docket No. 09-66, *Fourteenth Report*, FCC 10-81 ¶ 226 (rel. May 20, 2010) ("*Competition Report*").
[6] *Id.* at ¶ 284.
[7] *Id.*

has never had greater potential to help address vital priorities—including generating economic growth, spurring job creation, and advancing national purposes . . . ."[8] The current wireless networks, however, need to be augmented with additional cell sites to meet the skyrocketing demand for wireless broadband. As the Commission itself noted in the National Broadband Plan, "analysts predict that within five years more users will connect to the Internet via mobile devices than desktop personal computers."[9] Such increased use requires more infrastructure because data applications consume much more bandwidth than traditional voice services.

Also, the Center for Disease Control's annual report on wireless substitution found that nearly a quarter of American homes have only wireless phones.[10] Approximately half of all E911 calls are made from wireless devices.[11] Due to consumer's reliance on their wireless service and devices, especially while at home, access to wireless services is increasingly important in residential areas, and so too is the ability to deploy wireless infrastructure in or near residential areas.

Wireless service will also help the Commission achieve its rural broadband goals. The Commission recently concluded that "broadband deployment to all Americans is not reasonable and timely."[12] Wireless broadband is an essential element of a strategy to ensure access to

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[8] *In re* 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, *Declaratory Ruling*, 24 F.C.C.R. 13994, 14029-30 (rel. Nov. 18, 2009) ("*Declaratory Ruling*") (Statement of FCC Chairman Julius Genachowski).

[9] NATIONAL BROADBAND PLAN at 75.

[10] Stephen J. Blumberg & Julian V. Luke, Division of Health Interview Statistics, national Center for Health Statistics, Centers for Disease Control, Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2009, 1 (2010) ("*CDC Wireless Substitution*"), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.pdf.

[11] FCC, Consumer and Government Affairs Bureau, Wireless 911 Services, http://www.fcc.gov/cgb/consumerfacts/wireless911srvc.html, last visited July 30, 2010.

[12] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, As Amended by the Broadband Data Improvement Act, A National Broadband Plan for Our Future*, GN Docket Nos. 09-137, 09-51, *Sixth Broadband Deployment Report*, FCC 10-129 ¶ 2 (rel. July 20, 2010) ("*Sixth Section 706 Report*").

broadband for all Americans. Wireless infrastructure is unique in that a key component—the physical support structure—is often owned and operated by competitive neutral-host providers. Wireless infrastructure has the capacity to serve many end users with a single deployment.

III. THE WIRELESS INFRASTRUCTURE INDUSTRY IS COMPETITIVE IN ITSELF AND FACILITATES COMPETITION IN THE WIRELESS INDUSTRY

A. Competition Abounds in the Wireless Infrastructure Industry

PCIA first reported to the Commission in its initial inquiry into the wireless infrastructure industry that the dynamics of the industry are "robustly competitive"[13] and this remains the case a year later. There are two primary classifications of cell site locations: those on towers and those on non-tower structures. The *Competition Report* correctly notes that while the "most visible cell sites are those that are situated on relatively tall communications towers . . . . cell sites may also be located on buildings, municipal water towers, and church steeples, and some cell sites are located inside buildings to fill indoor coverage gaps."[14]

The tower industry remains an extremely competitive one filled with literally thousands of different market participants. Competitors in the wireless tower industry include not only the neutral-host providers (i.e., providers of wireless infrastructure unaffiliated with a wireless carrier) that consist of large tower companies that own over 20,000 towers, mid-size tower companies, and owners of a single or small number of towers ("mom and pops"), but also the wireless carriers themselves who continue to build their own infrastructure. According to the latest data available, the distribution of towers by type of owner is as follows:[15]

- Wireless Carriers: 97,520 towers

[13] *See* Comments of PCIA—The Wireless Infrastructure Association and the DAS Forum, WT Docket No. 06-99, 2-4 (Sept. 30, 2009) ("PCIA 2009 Competition Report Comments").
[14] *Competition Report* at ¶ 285.
[15] Clayton Funk & Jason Nicolay, *Trends and Forecasts for the Wireless and Tower Industries*, AGL MAGAZINE, Jul.-Aug. 2010, at 51.

- Publicly-traded tower companies:[16] 58,069 towers
- Mid-tier tower companies: 47, 247 towers
- Mom and Pops: 42,026 towers

Thus, the tower industry remains highly diversified and competitive.

The distributed antenna system[17] ("DAS") market is much newer and continues to grow. As PCIA noted in its comments to the Commission's 2009 inquiry, DAS is not a replacement for macro-sites that are found on towers or non-tower structures. Instead, DAS is:

> [A] complementary and ancillary solution to towers and more traditional wireless infrastructure that enables competitive wireless deployments in wide variety of unique scenarios. The choice of which solution to pursue in a given case is dependent upon a number of factors – including topography, RF propagation, interference, local siting conditions, available land or space on an existing facility, environmental considerations, etc. [18]

The use of DAS is growing as carriers continue to respond to the demand for wireless services. DAS networks are deployed by a variety of providers, including specialty DAS providers, traditional tower companies, and the carriers themselves, creating a competitive dynamic similar to that of macro-site infrastructure. Recent reports estimate that the DAS market is a $500 million market with some 10,000 individual outdoor DAS nodes deployed.[19] The growth of DAS furthers the competitive nature of the wireless infrastructure industry.

The infrastructure industry also remains vibrant in terms of the number of cell sites deployed. As discussed above, wireless carriers are under increasing pressure to meet not only

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[16] Currently there are three publicly-traded tower companies in the United States: American Tower Corporation, Crown Castle International, and SBA Communications. The next two largest tower companies, Global Tower Partners and TowerCo are privately held.

[17] DAS is a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are generally at or below the clutter level and node installations are compact. *See* http://thedasforum.org/, visited Jul. 28, 2010. For example, a typical outdoor DAS network could consist of a number of small antennas that are mounted on utility poles and connected to a central hub via fiber in existing rights-of-way. A typical indoor DAS network would consist of numerous antennas connected by wires throughout a large building such as a hotel, casino or shopping mall and terminating a neutral host station that could accommodate transmitting facilities of multiple wireless carriers.

[18] PCIA 2009 Competition Report Comments at 4.

[19] Phil Goldstein, *Distributed Antenna Systems: From Niche to Necessity*, FIERCE WIRELESS, Mar. 4, 2010, *available at* http://www.fiercewireless.com/story/distributed-antenna-systems-niche-necessity/2010-03-04.

coverage challenges, but the burgeoning capacity demands of a mobile broadband networks. To do this carriers are investing billions of dollars into network expansion including cell site deployment. While the carriers report that there were 247,081 cell sites at the end of 2009,[20] that number is poised to grow significantly with analysts predicting that "new cell site additions by the country's major carriers could total between 16,700 and 26,000 for 2010."[21] As a means of comparison, the analysts also note that "[2009's] high estimate was 20,200,"[22] an increase of over 28 percent in the number of cell sites to be deployed in 2009. This is indicative of strong investment by wireless carriers in 2010 as "[a]nalysts are predicting wireless capex of more than $41 billion for 2010, *more than doubling 2009's capex*."[23] The fact that wireless carriers continue to invest billions of dollars deploying infrastructure to build both new and existing networks reflects strong competition amongst service providers.

B. Collocation Continues to be the Most Economic Means to Deploy Wireless Networks, Reducing Capital Expenses and Speeding Time to Market

The collocation of wireless facilities on existing infrastructure, including those owned by neutral-host providers, is the most effective and efficient means of deploying wireless networks. The *Competition Report* found that:

> [T]he ability of wireless service providers to lease space for new cell sites on established towers can ease and speed their entry into new geographic areas by eliminating the need to build a new tower. The use of existing towers also reduces the capital requirements for both new entrants and existing wireless service providers because they only need to finance the purchase and installation of the transmission equipment to be used at the cell site.[24]

PCIA supports this *Competition Report* analysis as well as the finding that "[w]hen communications towers are owned by independent companies rather than wireless service

[20] CTIA, US Wireless Quick Facts, *available at* http://www.ctia.org/advocacy/research/index.cfm/AID/10323
[21] *Trends and Forecasts for the Wireless and Tower Industries*, at 43 (citing a report by RBC Capital Markets).
[22] *Id.*
[23] *Id.* (emphasis added).
[24] *Competition Report* at ¶ 291.

providers, it may increase efficiency in the industry, ease entry, and enhance wireless service competition."[25]

Though the costs associated with deploying infrastructure can vary dramatically based upon individual factors such as the cost of land, local zoning processes and the design of the structure to be built,[26] PCIA members estimate that an average new build costs approximately $250,000-$300,000. In comparison, PCIA members estimate that an average collocation costs $25,000-$30,000 to deploy, though costs can vary greatly depending upon the type of local zoning regulations and the type of architectural integration necessary. The math is simple—a carrier can deploy approximately 10 collocations for a single new tower. The cost advantage of collocation is essential in spurring competition amongst both new entrants and established wireless carriers alike, reducing capital expenditures as a significant barrier to entry and facilitating deployments to increase the coverage and capacity of a wireless network.

Collocation also improves speed to market. The time and regulatory processes for collocations are generally reduced as opposed to new infrastructure builds (though as discussed below, considerable local barriers still remain to collocations as well). At a minimum, the carrier seeking to deploy its facilities on existing infrastructure can do so more quickly when the time necessary to construct the actual structure is eliminated. This allows carriers to bring new services to an area in an expedited fashion, facilitating market entry and enabling further competition in the wireless industry.

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[25] *Id.*

[26] Local jurisdictions are increasingly requiring "stealth" designs for new tower builds that requires the structure to be designed in a way that camouflages it with its surroundings. Examples include "mono-pines," "mono-palms," and flagpoles. Each of these design features has an increased associated cost for design and implementation. Further, the nature of these "stealth" facilities limits the number of collocations available and therefore increases the amount of overall infrastructure needed in a community as well as the capital expense necessary to supply them.

IV. BARRIERS TO INFRASTRUCTURE DEPLOYMENT AT THE LOCAL LEVEL ARE INHIBITING WIRELESS SERVICE DEVELOPMENT AND FRUSTRATING THE COMMISSION'S GOALS

The National Broadband Plan describes deploying broadband infrastructure as "the great infrastructure challenge of the 21st century."[27] Indeed, the Plan describes the Commission's *Declaratory Ruling* establishing timelines for siting applications as the first step towards achieving the goals of the National Broadband Plan.[28] The *Public Notice* asks "[t]o what extent do regulatory and zoning approvals from state and local government authorities act as barriers to tower and cell site deployment."[29] Unfortunately, wireless infrastructure deployments—new builds and collocations alike—continue to be burdened by regulatory processes at the local level, impeding the Commission's goals for wireless broadband deployment.

The Commission, by virtue of its finding in its most recent Section 706 report that broadband is not being deployed in a timely manner,[30] is now required by statute to "take immediate action to accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."[31] PCIA requests that the Commission consider the issues described below as it assesses how it can remove barriers to wireless infrastructure deployments.

A. Local Jurisdictions Continue to Delay the Collocation Process

Collocation creates a true "win-win" situation for wireless carriers, consumers of wireless services, and the community. Making use of existing infrastructure can allow wireless carriers to bring new services to market in a cost-effective manner, increasing the coverage and capacity available to the end user with a minimal aesthetic impact upon the community. Yet instead of

[27] NATIONAL BROADBAND PLAN at xi.
[28] NATIONAL BROADBAND PLAN at 109-110.
[29] *Public Notice* at 16.
[30] *Sixth Section 706 Report* at ¶ 2.
[31] *Id.* at ¶ 3 (citing 47 U.S.C. § 1302(b)).

encouraging the use of collocations by streamlining the regulatory process, many jurisdictions subject applications for collocation to the same costly and time-consuming process required of new infrastructure builds.

In an informal and by no means exhaustive survey of PCIA members, they provided over a hundred jurisdictions that still require a special or conditional use permit for collocations on existing infrastructure for which the underlying structure has already been approved to facilitate additional antenna arrays.[32] The responses indicate that the situation is not limited to one geographic area, but instead are indicative of a nationwide problem. Given that the survey was a quick and fractional snapshot of the situation, we estimate that thousands of jurisdictions across the country require this burdensome regulatory procedure for collocations.

The special or conditional use permitting process typically requires an intensive application procedure that requires the applicant to prove the need for the facility. This process often also includes one or more public hearings on the application for collocation, which adds considerably to the time and expense of the collocation process. While the FCC's *Declaratory Ruling* provides that a local jurisdiction must act on an application for a collocation within 90 days,[33] it has been difficult to determine the practical effect that the *Declaratory Ruling* has had to date. One of the largest barriers to the effectiveness of the *Declaratory Ruling* is the remedy it provides when a jurisdiction has taken longer than the permissible time to decide upon an application: an applicant can take the jurisdiction to court. In most cases, litigation involves

[32] *See, e.g.*, SAN DIEGO COUNTY, CAL., CODE § 6980 (2010); CITY OF LEAWOOD, KAN., CODE § 16-4-12; (2010); HOPKINTON, MASS., CODE § 210-100(A); VILLAGE OF PORT WASHINGTON NORTH, N.Y., § 176, ART. XIX (2010); TOWN OF CHEEKTOWAGA, N.Y., CODE CH. 255, § 255-7 (2010); CITY OF STRONGSVILLE, OHIO, CODE § 1273.01 (2010); PORTLAND, ORE., CODE CH. 33.274.02 (2010).

[33] *Declaratory Ruling* at ¶ 45.

even greater delays and expense. Applicants may conclude that it is more efficient from a time and cost perspective to extend the application process rather than proceed to court.[34]

A further significant trend that PCIA members are experiencing with the special or conditional use permitting process is re-review of the already approved underlying facility. Many jurisdictions are requiring as a condition of collocation that the existing infrastructure be retrofitted at significant added costs. Conditions for approval for collocation can include changing the landscaping of the underlying structure,[35] requiring that the structure be retro-fitted into a stealth design,[36] or even that the underlying structure itself be replaced with a new and often shorter structure.[37] Such requirements go beyond being a disincentive to collocation to completely altering the network design of existing wireless systems. The significant benefits of collocation are negated by these processes.

Some states have recognized the benefits of collocation and have taken steps to encourage collocations through expedited regulatory review. The Commission recognized this fact in its *Declaratory Ruling*[38] and most recently the state of Georgia has enacted the "Advanced

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[34] We note that the examples provided in note 32, *supra*, of jurisdictions that utilize a special use process are not provided as evidence that these specific jurisdictions are exceeding the bounds of the Commission's *Declaratory Ruling*, simply that the special or conditional use permitting process is a costly and time-consuming process.

[35] For example in Suwanee, GA, a member reports that in order to collocate on a facility built before the jurisdiction's ordinance was enacted, the member was required to have the property rezoned and have three variances along with new conditions for landscaping. This process of attempting to site on long-existing infrastructure took five months and three public hearings. Pearland, TX recently revised its ordinance so that any pre-existing tower must now undergo a special-use permitting process and comply with new landscaping requirements in order to collocate.

[36] In the City of Carson, CA, an attempt to collocate on a monopole in an industrial zone resulted in the City demanding that the tower first be re-designed so that it is camoflauged as a mono-eucalyptis. In Commerce, CA, the code requires denial of collocation on monopoles unless they are replaced with a new structure. CITY OF COMMERCE, CAL., CODE § 19.27.060(H) (2010). The City of Oceanside, CA would not even renew the underlying permit of an existing structure (the permit renewal was the applicants only action) unless they replaced a monopole with a mono-eucalyptis.

[37] In the City of Leawood, KS, for example, an attempt to collocate on an existing facility has resulted in the city requesting that the existing 180' tower be replaced with a 150' tower and that all antennas be flush-mounted. In Commerce, CA, the code requires denial of collocation on monopoles unless they are replaced with a "stealth structure."

[38] *Declaratory Ruling* at ¶ 47.

Broadband Collocation Act"[39] which is streamlines the permitting process for collocations. In doing so, Georgia found that collocations should be deployed in a more efficient manner in order to "[e]nsure the ready availability of wireless communication services to the public to support personal communications, economic development, and the general welfare."[40] To do so, the law requires that an application for collocation should be subject to only a building-permit level review for structures that are already approved to facilitate wireless sites and prevents localities from considering the business case for a particular collocation as an element of review.[41]

The Commission should examine its authority to streamline the collocation review process in a like manner. Should the Commission decide that it does not have the statutory authority necessary to mandate this review process, we ask that the Commission work directly with Congress as it is for other aspects of implementing the National Broadband Plan to emphasize the need for a more streamlined treatment of collocations. The Commission should also begin an extensive educational campaign to alert local jurisdictions of the importance of wireless services as part of its national goals and recommend ways that a local jurisdiction can streamline its collocation-review process.

B. Other Elements of Local Zoning Review are also Inhibiting the Deployment of Wireless Services

While the special or conditional use permitting process for collocations serves as a significant source of cost and delay in the local approval process, there are other actions that hinder the deployment of wireless infrastructure. Specifically, the adoption of moratoria and the use of municipal consultants are burdening the deployment process.

1. Moratoria on Wireless Infrastructure are Prohibiting Deployment

[39] O.C.G.A. §§ 36-66B-1 – 36-66B-4 (2010).
[40] *Id.* § 36-66B-2(a)(2).
[41] *Id.* § 36-66B-4.

The wireless infrastructure deployment process has been significantly retarded by jurisdictions that enact moratoria on the siting of wireless infrastructure. The Commission's *Declaratory Ruling* on timelines for application review does not address moratoria and as a result many jurisdictions have enacted them in an effort to avoid the Commission's ruling altogether.[42] Often the moratorium extends even beyond new site development to include a moratorium on all collocations as well.[43] Siting moratoria lasting longer than six months are contrary to the industry-community agreement signed in 1998, barring unusual circumstances.[44] Yet in too many cases today, local jurisdictions have flouted this agreement and moratoria can stretch well beyond the six-month time period.[45] Moratoria not only delay deployments for the length of the moratorium, but also make long-term planning for deploying in those jurisdictions difficult or impossible. We ask the Commission to examine its authority to address siting moratoria, either in the context of its statutory authority to define a "failure to act" as it did in its *Declaratory Ruling*,[46] or by emphasizing to local jurisdictions the importance of abiding by the industry-community agreement timelines.

2. Some Municipal Consultants Delay Review and Add Unnecessary Expense to the Deployment of Wireless Broadband

[42] For example, Long Beach, CA, the fourth largest City in the state, has enacted a moratorium on all siting on land zoned either Institutional or Residential. Their letter to those with pending applications states that "Any and all of your applications involving wireless telecommunications sites may be affected by this moratorium." Copy on file with PCIA.

[43] *See, e.g.*, Kendall Hatch, *Ashland Planners Put Cell Tower Permits on Hold*, METROWEST DAILY NEWS, Apr. 30, 2010 *available at* http://www.metrowestdailynews.com/news/x457997697/Ashland-planners-put-cell-tower-permits-on-hold ("The Planning Board last night voted to recommend that Town Meeting approve a six-month moratorium *on permits for new cell phone antennas and upgrades to existing ones*.") (emphasis added).

[44] *See* Guidelines for Facilities Siting Implementation and Informal Dispute Process, http://www.fcc.gov/statelocal/agreement.html, visited Jul. 29, 2010. This agreement was ratified by the Commission's Local and State Government Advisory Committee, PCIA, CTIA, and the American Mobile Telecommunications Association.

[45] *See* Comments of PCIA—The Wireless Infrastructure Association, WT Docket Nos. 08-165, 10-11 (Sept. 29, 2008).

[46] *Declaratory Ruling* at ¶¶ 23-26, 32 (finding that the Commission has the authority to interpret Section 332(c)(7) of the Communications Act).

The use of some municipal consultants to review wireless infrastructure siting applications can significantly delay and add expense to infrastructure deployments to the detriment of the consumer utilizing wireless services. As PCIA reported to the Commission in 2008:

> [M]any siting applications are unnecessarily delayed in jurisdictions that utilize private municipal consultants, whose fees must be paid by the applicant, to process their wireless applications. These consultants offer the jurisdiction a comprehensive ordinance and full review of all applications at no cost to the locality (i.e., with costs to be incurred by applicants). Clearly, these consultants' incentives lie in making the process as prolonged and complicated as possible, and the local jurisdiction's authority is used as a platform to promote the consultant's private business interests. The public's interest and the Commission's policy goals are completely lost in this approach.
>
> Some of these consultants extract exorbitant fees for simple reviews of wireless siting applications, including extensive introductory meetings to explain the terms of the relevant ordinance, which must be paid for by the applicant. Most jurisdictions charge reasonable fees that are related to the actual costs of review of the wireless facility application, but the same application process in jurisdictions with a particular consultant-recommended ordinance routinely costs thousands of dollars more. The applicant typically must place about $8,500 into escrow to cover the consultant's fees. In these situations, neither the locality nor its consultant faces any incentive to provide efficient results, as the consultant is paid an hourly fee by the applicant for his or her review. In jurisdictions where some consultants are used, the application process can take six (6) months or more, even for simple requests for collocation. As such, these consultant reviews can serve as a substantial barrier to entry in violation of the Telecommunications Act, and, at a minimum, serve to decrease investment incentives and quality of service in jurisdictions where consultants delay the process at great cost to the applicant.[47]

The situation has not improved in the past two years and has gotten worse to the point where it is effectively prohibiting the deployment of wireless broadband in some jurisdictions.

For example, Tipp City, OH, utilizes a municipal consultant for application review. In this case, a carrier was attempting to replace its existing antennas to upgrade its service for the provision of enhanced wireless broadband. Under the City's ordinance governing the siting of wireless facilities, all applicants for a "modification" must apply for a special use permit.

[47] Comments of PCIA—The Wireless Infrastructure Association and the DAS Forum, WT Docket 08-165, 8-9 (Sept. 29, 2008).

A "modification" includes "[t]he addition, removal, or change of any physical and visually discernible components or aspects of a wireless facilities, such as antennas."[48] The application review process for a "modification" is identical of that for an entirely new tower.[49] There is no legitimate reason for this requirement, other than as a revenue generating opportunity for the City and the consultant whom the City retains to review applications to site wireless facilities.

Under Tipp City's ordinance, an applicant for a new tower must "pay a non-refundable application fee of $5,000 to the city," while an applicant for a special use permit to collocate or modify a tower must pay a non-refundable fee of $2,500.[50] The standard fee for applications for special use permits for non-wireless facility applications is $25.[51] In addition to the application fee, an applicant must maintain an escrow account—which must always have a balance of at least $5,000—from which the consultant retained by the City can draw.[52] There is no limit in the ordinance on the amount of fees the consultant can charge.

Ordinances like Tipp City's are extremely detrimental to the deployment of wireless infrastructure, and ultimately to the ability of Americans to access wireless services. While we cite here only one example, the consultant retained by the City to write the ordinance and review applications under the ordinance, claims to represent 1,000 communities in 30 states across the country.[53]

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[48] TIPP CITY, OHIO, CODE OF ORDINANCES, title XV, Chpt. 156, § 156.004 (2010), *available at* http://www.amlegal.com/nxt/gateway.dll/Ohio/tippcity_oh/tippcityohiocodeofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:tippcity_oh

[49] *Id.* § 156.008.

[50] *Id.* § 156.020.

[51] *Id.* Title XV, Appx. G.

[52] *Id.* § 156.016(B).

[53] *See* Eamon Harbord, *Fate of Cell Tower Still Up in the Air*, NORTHJERSEY.COM, July 22, 2010, http://www.northjersey.com/news/98991039_Fate_of_potential_cell_tower_still_up_in_the_air_.html.

In July 2010, a federal court realized the detrimental impact that some municipal consultants have on the siting of wireless infrastructure. In *MetroPCS v. the City of Mt. Vernon, NY*,[54] the court found that the City, upon the consultant's recommendation, had unreasonably discriminated against MetroPCS by denying it the ability to collocate on a structure which already supported three other wireless providers without a valid reason.[55] This collocation application process took 15 months and cost MetroPCS over $16,000 in consultant fees. The court found the fees unreasonable and ordered disgorgement of some of the consultant fees paid because part of the review for which the consultant was compensated involved "repeatedly requesting unnecessary information and belaboring issues already resolved." [56]

We ask the Commission to, as part of the educational campaign requested above, include information to local jurisdictions on the effect of turning over review of wireless infrastructure to municipal consultants whose incentives are additional processes, delay and expense.

V. WIRELESS SERVICES ARE BECOMING A TRUE REPLACEMENT FOR LANDLINE VOICE SERVICES

The Commission asks in its *Public Notice* the "extent to which mobile voice service competes with wireline voice service."[57] The Center for Disease Control reports that nearly 25 percent of U.S. households have "cut the cord" and substituted wireless service for traditional landline service.[58] As such, the demand for in-building residential services have increased tremendously at a time when siting in residential areas has become more difficult than ever before. The need for in-building residential coverage is especially heightened given the number of users who rely on their wireless connections to place emergency calls. The latest data

[54] MetroPCS New York, LLC v. The City of Mount Vernon and The City of Mount Vernon Planning Board, No. 09 Civ. 8348 (SCR) (S.D.N.Y. July 22, 2010)
[55] *Id.* at 24-26.
[56] *Id.* at 26.
[57] *Public Notice* at 18.
[58] *CDC Wireless Substitution* at 1.

indicates that there are over 291,000 E-911 calls made from wireless devices *per day*,[59] a large percentage of which necessarily are placed in residential buildings.

Because of the nature of intermodal competition between wireless and wireline providers, we urge the Commission to examine its authority pursuant to Section 253 of the Telecommunications Act[60] to provide relief from the local zoning challenges wireless carriers face that its wireline competitors do not. Section 253 must be read in light of the TCA's express focus on stimulating a competitive marketplace.[61] In this vein, the FCC has decided that the proper method of determining whether a regulation "has the effect of prohibiting" telecommunications under Section 253(a) is "whether the [regulation] materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[62]

It thus becomes important to recognize that competition is not only internal to the wireless telecommunications industry, but also includes wireline telephone companies, cable companies, electric companies with broadband over power line services, and satellite providers. Burdensome regulations applied specifically to one aspect of the broader telecommunications market (in the form of unreasonable local siting regulations that apply only to wireless services) undoubtedly "materially inhibits [and] limits the ability of" wireless providers to compete against other telecommunications providers "in a fair and balanced regulatory environment." Given the increased substitution of wireless services for wireline services, we urge the Commission to

[59] CTIA, US Wireless Quick Stats, http://www.ctia.org/advocacy/research/index.cfm/AID/10323.

[60] 47 U.S.C. § 253 (2006).

[61] Congress enacted the TCA to "provide a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services by opening all telecommunication markets to competition." H.R.Conf. Rep. No. 104-458 at (206)(1996), reprinted in U.S.C.C.A.N. 124).

[62] *In re* California Payphone Association, *Memorandum Opinion and Order*, 12 F.C.C.R. 14191, 14206 (rel. July 17, 1997).

examine its preemption authority of burdensome siting regulations that are preventing fair and effective intermodal competition not only for voice services, but for broadband services as well.

VI. CONCLUSION

The wireless infrastructure industry is competitive in and of itself and, as a key input in the mobile wireless ecosystem, is a prime driver in enabling the competition in the wireless industry broadly. To facilitate continued infrastructure investment and growth needed to support wireless competition and innovation, the FCC should act to remove the many local-level barriers that are frustrating the Commission's goals of wireless broadband deployment

Respectfully submitted,

PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION

and

THE DAS FORUM (A MEMBERSHIP SECTION OF PCIA)

By: _____/s/_____

Michael T.N. Fitch, Esq.
President and CEO
Connie Durcsak
Senior Director of Industry Affairs
Executive Director, The DAS Forum
Michael D. Saperstein, Jr.
Director of Government Affairs
Brian M. Regan
Government Affairs Counsel

901 N. Washington St., Suite 600
Alexandria, VA 22314