Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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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	)	GN Docket No. 12-228

COMMENTS OF PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION and THE DAS FORUM

PCIA—The Wireless Infrastructure Association ("PCIA") and The DAS Forum, a membership section of PCIA ("The DAS Forum"),[1] hereby submit these comments in the *Ninth Broadband Progress Notice of Inquiry* ("*NOI*").[2] The *NOI* makes it clear that the Federal Communications Commission ("FCC" or "Commission") shares PCIA and The DAS Forum's goal of rapid wireless broadband deployment. If the Commission decides that mobile services should be evaluated separately from fixed services in its evaluation of broadband deployment and availability under section 706,[3] it must also undertake a thorough analysis of barriers particular to wireless infrastructure deployment. Wireless infrastructure is a prerequisite to ubiquitous mobile broadband, and streamlined infrastructure deployment helps to meet the

[1] PCIA is a non-profit national trade association representing the wireless infrastructure industry. PCIA's members develop, own, manage, and operate over 120,000 towers, rooftop wireless sites, and other facilities for the provision of all types of wireless services. The DAS Forum, a membership section of PCIA, is a nationwide non-profit association dedicated to the development of distributed antenna systems ("DAS") as a component of our nation's wireless infrastructure.

[2] *In re* 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, GN Docket No. 12-228, *Ninth Broadband Progress Notice of Inquiry*, FCC 12-91 (rel. Aug. 21, 2012) ("*NOI*").

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, § 706 (1996).

Commission's goal of serving all Americans by providing optimum capacity and speeds regardless of the technology utilized or spectrum available.

The demand for mobile broadband is exploding.[4] In its *Eighth Report* the Commission noted that only two years ago there was zero LTE deployment in the United States.[5] Today, three mobile wireless providers have launched LTE services covering 211 million people.[6]

Wireless infrastructure makes these achievements possible. In order to accommodate growing data traffic, it is necessary to aggressively deploy wireless infrastructure to achieve the coverage and service quality that consumers expect. Infrastructure must be present to connect devices to the network. The Commission's discussion of the speed, latency, and capacity of any network is predicated on the breadth and density of the access points that facilitate wireless connections.[7] In today's wireless networks, mobile access points are cell towers, DAS systems, and small cells, all of which are the physical backbone of the network and require placement near end-users. As with wireline services, the most difficult part of reaching unserved areas is building access points. Once the infrastructure is in place, faster speeds, lower latency, and greater capacity can be achieved more readily. Thus, speed, latency, and capacity are inextricably tied to the strength of the infrastructure that supports the network. This makes it

[4] Since 2011, the United States has achieved greater than 100% penetration of wireless handsets, meaning that there are more cell phones than people. *Wireless Quick Facts*, CTIA—The Wireless Association, http://www.ctia.org/media/industry_info/index.cfm/AID/10323 (last visited Sept. 20, 2012). The wireless industry is valued at $195.5 billion, comparable to the computer service and oil industries, and it re-invests over $25 billion per year to keep up with demand. *50 Wireless Quick Facts*, CTIA—The Wireless Association (May 2012), http://www.ctia.org/media/industry_info/index.cfm/AID/10377. And, while other segments of the economy have shed jobs during the economic recession, the wireless industry added almost 1.6 million new ones. *Id*.

[5] *In re* 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, GN Docket No. 11-121, *Eighth Broadband Progress Report*, FCC 12-90, ¶ 6 (rel. Aug. 21, 2012) ("*Eighth Report*").

[6] *Id*.

[7] *NOI* ¶ 25 (discussing how to incorporate latency and capacity metrics into its Report).

critically important for the Commission to continue to address barriers to broadband investment and wireless facility deployment.

I. The Commission Should Continue to Address Barriers to Broadband Investment and Deployment

The *NOI* seeks comment on barriers to infrastructure investment that the Commission identified in the *Eighth Report*, including costs and delays in building out networks.[8] Despite that the Commission has made significant progress promoting the deployment of wireless broadband infrastructure,[9] unproductive costs and delays continue to hinder the infrastructure deployment necessary to deliver the benefits of mobile broadband to all Americans, including underserved and unserved Americans. Therefore, any analysis of mobile broadband deployment should be accompanied by scrutiny of barriers to investment and deployment.

A. The Commission Should Continue to Promote Infrastructure Deployment on Federal Properties

The federal government owns nearly one-third of the Nation's landmass and owns or leases space in 8,600 buildings.[10] These properties offer tremendous potential for wireless broadband deployment, especially in rural areas.[11] Recognizing this, the President issued an executive order creating the Broadband Deployment on Federal Property Working Group ("Working Group") to streamline the process of siting wireless infrastructure on federal property.[12] As a member of the Working Group, we urge the Commission—consistent with our

[8] *Eighth Report* ¶¶ 141-145.

[9] *Id.* (detailing the Commission's efforts).

[10] FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 115 (2010).

[11] *Eighth Report* ¶ 44 (noting that, of the citizens who lack access to broadband, approximately 76% of them reside in rural areas).

[12] Exec. Order No. 13,616, 77 Fed. Reg. 36,903 (June 14, 2012).

comments in the Broadband Acceleration proceeding[13]—to use its previous successes in promoting broadband deployment to continue to guide the Working Group's recommendations. The most difficult portions of the country to serve are rural areas because the expense of building broadband infrastructure of any type is prohibitive. Streamlining that process will bolster the Commission's ongoing efforts to bring broadband to unserved Americans.

B. The Commission Should Continue to Eliminate Barriers at the State and Local Level

Siting at the state and local level continues to be barrier to deployment, despite the Commission's efforts.[14] PCIA has explained in the Broadband Acceleration proceeding, and in response to prior section 706 inquires, that wireless service and infrastructure providers face myriad barriers to deployment from state and local jurisdictions.[15] If the Commission analyzes mobile broadband separately from fixed broadband under section 706, it should take action consistent with PCIA's recommendations to ensure timely deployment to all Americans.

C. The Commission Should Educate State and Local Jurisdictions on the Application of Federal Law

A cornerstone of the Commission's efforts has been outreach regarding the impact of federal law on state and local jurisdictions. The Commission should redouble its efforts to make jurisdictions aware of how to encourage wireless infrastructure deployment in light of new federal legislation. Recently, Congress recognized a need to streamline the wireless facility collocation and modification processes. Section 6409 of the Middle Class Tax Relief and Job

[13] Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum (A Membership Section of PCIA), WC Docket No. 11-59, at 53-54 (July 18, 2011).

[14] *See generally* Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum (A Membership Section of PCIA), GN Docket No. 07-45 (May 16, 2007); Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum (A Membership Section of PCIA), GN Docket Nos. 09-137, 09-51 (Sept. 4, 2009).

[15] Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum (A Membership Section of PCIA), WC Docket No. 11-59 (July 18, 2011); Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum (A Membership Section of PCIA), GN Docket No. 07-45 (May 16, 2007); Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum (A Membership Section of PCIA), GN Docket Nos. 09-137, 09-51 (Sept. 4, 2009).

Creation Act of 2012 (the "Act") states that "a State or local government may not deny, and shall approve" eligible facilities requests, which include collocations and modifications.[16] Therefore, state and local jurisdictions may consider only whether a collocation or modification request qualifies as an eligible facilities request. If it does, they must approve the request.

Although existing law provides guidance on the application of section 6409, state and local governments may lack the expertise to apply the Act in conjunction with the Commission's Shot Clock rules[17] and the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.[18] As section 6409 greatly simplifies the collocation and modification process for state and local governments, the time is ripe for the Commission to perform educational outreach.

D. The Commission Should Promote Wireless Infrastructure Deployment On and Around Schools

Section 706 requires the Commission to also consider broadband availability to schools and libraries.[19] PCIA is aware of a troubling trend in some jurisdictions where wireless infrastructure providers have been barred outright from deploying infrastructure near schools, or must seek separate regulatory approval processes to site near schools. The Commission should be concerned for three reasons.

First, schools are often strategically located in residential areas. Wireless facilities in residential areas are already scarce, and the inability to site at locations that serve residential

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[16] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409 (2012).

[17] *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, WT Docket No. 08-165, *Declaratory Ruling*, FCC 09-99 (rel. Nov. 18, 2009), *aff'd*, City of Arlington, Texas; City of San Antonio, Texas v. FCC, No. 10-60039 (5th Cir. 2012).

[18] *In re* Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, WT Docket No. 03-128, *Report and Order*, FCC 04-222, att. 1 (rel. Oct. 5, 2004). *See* Jeffrey Steinberg, *Local Government Review of Collocations—The Legal Framework*, FEDERAL COMMUNICATIONS COMMISSION (May 1, 2012), http://transition.fcc.gov/bureaus/wtb/workshops/collocation_5_12_2012/fcc_presentation/presentation.pdf (noting that the Nationwide Collocation Agreement "[m]ay be useful as guidance in applying Section 6409").

[19] *NOI* ¶¶ 12, 40.

communities most efficiently disrupts broadband deployment to those communities. For example, a Georgia bill would create an outright ban on the leasing of school property within the entire state for the construction and maintenance of "any telecommunications" facility.[20] In Connecticut, the legislature passed an ordinance that prohibits the state Siting Council from approving a telecommunications tower installation within 250 feet of a school or commercial child day care center unless (1) the municipality's chief elected official approves the location or (2) the council finds that it will not have a substantial adverse effect on the aesthetics or scenic quality of the school or day care center's neighborhood.[21] Each bill denies infrastructure providers critical areas of deployment and needlessly complicates the process of creating efficient networks.

Second, learning should not be confined to a classroom. Wireless infrastructure is critical to facilitating e-learning initiatives and giving students the freedom to learn anywhere, as Chairman Genachowski has recognized on multiple occasions.[22] As students harness the latest technology, such as digital textbooks, the availability of mobile broadband enables them to access resources and assignments at home, on the road, at any time.

Third, restrictions on the deployment of wireless infrastructure on or around school property are poorly disguised radiofrequency emission regulations. In their enthusiasm to restrict towers from being built in their communities, some state and local jurisdictions resort to arguments about the impact of emissions from wireless equipment, when in fact the equipment complies with all Commission emissions regulations. Insofar as these state and local laws base

[20] H.B. 1128, 2012 Leg., Reg. Sess. (Ga. 2012).

[21] H.B. 5271, 2012 Leg. (Conn. 2012).

[22] *See* Julius Genachowski, Chairman, FCC, Prepared Remarks to International CTIA Wireless 2012 (May 8, 2012), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-313945A1.pdf; Julius Genachowski, Chairman, FCC, Remarks – Connect 2 Compete Pilot (May 31, 2012), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-314388A1.pdf.

their decisionmaking on radiofrequency emissions, they are in violation of section 332 of the Communications Act, which states that "[n]o State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions."[23]

The Commission should take steps to educate state and local jurisdictions on the appropriate application of its rules. Schools should be a focal point of learning, and not a battleground for state and local jurisdictions to exercise their zoning authority.

[23] 47 U.S.C. § 332(c)(7)(B)(iv).

CONCLUSION

For the foregoing reasons, the Commission should promote further broadband deployment consistent with section 706's mandate by considering further action to curb unproductive state and local tower siting requirements.

Respectfully submitted,

PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION and THE DAS FORUM

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