



# County of San Diego

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Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554  
Comments filed electronically at <http://fjallfoss.fcc.gov/ecfs2/>

**COMMENTS ON THE FEDERAL COMMUNICATION COMMISSION NOTICE OF PROPOSED RULEMAKING ON WIRELESS FACILITIES; AGENCY DOCKET NUMBERS: WT DOCKET NOS. 13-238, 13-32; WC DOCKET NO. 11-59; FCC 13-122**

The County of San Diego (County) has received and reviewed the Federal Communication Commission's (FCC) Notice of Proposed Rulemaking for Wireless Facilities, dated December 5, 2013, and appreciates this opportunity to comment. County Planning & Development Services (PDS) and Department of Public Works (DPW) have completed their review and have the following comments regarding the content of the above documents.

**Proposed NEPA Exclusions**

1. The Proposed FCC Rulemaking identifies various NEPA categorical exclusions. The regulation is not clear what impact these exclusions would have on the ability of local jurisdictions to regulate similar facilities at the local level. The rulemaking should clarify what effect, if any, the proposed NEPA exclusions would have on the ability of local jurisdictions to regulate the types of wireless facilities that would fall under a proposed NEPA exclusion. The County of San Diego supports retaining local control for regulating wireless facilities.
2. The Rulemaking seeks comment on measures to expedite the environmental review process for new wireless technologies that use large numbers of smaller antennas deployed at lower heights than typical cell towers, supported by compact radio equipment. These technologies, including distributed antenna systems ("DAS"), small cells, and others, are typically deployed on utility poles, street lamps, water towers, or rooftops, as well as inside buildings, to enhance capacity or fill in coverage gaps. The County of San Diego has

the following comments regarding expediting environmental compliance for DAS and small cells:

- a. The rulemaking should clarify that any proposed NEPA exclusion would not affect the ability of a local agency or jurisdiction to regulate these types of wireless facilities.
  - b. The Proposed Rulemaking is seeking comment on the proposed updating of NEPA exclusions to include "utility poles, water tanks, light poles, and road signs" (as proposed by Verizon). The impact of excluding the installation of wireless facilities on light poles and road signs from NEPA review is unclear. The FCC should clarify that excluding utility poles, water tanks, light poles, and road signs from NEPA review does not eliminate local agency requirements for the installation of wireless facilities within the public ROW.
3. The FCC seeks comment on whether Distributed Antennas Systems (DAS) and small cell deployments are unlikely to have a significant environmental effect and whether a special collocation NEPA exclusion for small wireless technologies should apply. It is possible that multiple DAS facilities placed in the same location (i.e. single utility pole), could result in aesthetic and community character impacts. Cumulative impacts could result when multiple DAS facilities are placed in the same viewshed area, particularly if the existing utility poles are located in a scenic area or road. The State law (GSO-95) requires a particular amount of separation between electrical lines and wireless equipment. The distance can be six feet minimum. This law has resulted in the need for an existing utility pole to be replaced with a taller pole in order to accommodate the separation criteria, as well as the overall weight of the equipment and electrical lines. As an example, a utility pole may need to be replaced with a taller utility pole to allow DAS equipment to be collocated and this can increase visual, aesthetic and community character impacts.
  4. Page 18 (#45.): The FCC seeks comment if some or all of the construction of small technologies should be excluded from NEPA review. The FCC should consider the full scope of the construction phase for small technologies. DAS facilities typically include new cable wiring between utility poles, and are strung separately from existing telephone cables, which can lead to a change in viewshed.
  5. Page 20 (#51.): The FCC seeks comment on exempting installation of aerial and cable wiring. As stated in the response above, there are concerns that additional cable wiring can have direct and/or cumulative impacts upon aesthetic and community character. As such, the FCC should consider these issues before including a categorical exclusion for additional cable wiring.

#### **Implementation of Section 6409(A)**

6. The County of San Diego agrees that establishing rules clarifying the requirements of Section 6409(a) would eliminate ambiguity. Although there has been uncertainty in the interpretation of these rules, the County of San Diego has streamlined its review process for wireless telecommunication facilities and has been able to comply with

Section 6409(a) of the Middle Class Tax Relief Act of 2012. Regarding any changes or clarification to these rules, the County has the following comments:

- a. The FCC should allow local jurisdictions to continue the lead on zoning and land use matters.
  - b. For any proposed changes, a transition period should be implemented to provide local jurisdictions with adequate time to implement changes and review and update ordinances, if needed.
7. Regarding the interpretation of terms in Section 6409(a), the County has the following comments:
- a. Page 39 (#102.): The FCC states that the scope of Section 6409(a) depends on the interpretation of terms. The FCC should have a more detailed definition for the term 'eligible facilities request' in order to clarify if the intent is to include facilities that are not currently being used for wireless sites, such as wireline towers.
  - b. Page 40 (#104.): The FCC asks if the scope of "transmission equipment" to be collocated, replaced, or removed be different from the scope of structures to be modified. The FCC should consider excluding emergency facilities (i.e. Sheriff communications tower) from collocation, as there are on-going issues with signal interference from wireless providers that locate near or onto existing emergency facilities.
  - c. Page 43 (#111.): The FCC requests a definition for "collocation" as either a facility being locating upon an existing building, or upon an existing structure that was permitted for a telecommunication use. The County of San Diego defines collocation as one or more carriers on a particular site (i.e. water tank, property) or one or more carriers located on the same mono-pole or faux tree.
  - d. Page 44 (#116.): The FCC asks for comment on when does a change to a project "substantially change the physical dimensions?" The County of San Diego uses a 10% rule to determine if the project qualifies for a minor deviation, which is based upon height, width, coverage, etc. This means that if a project results in a change of more than 10% beyond the baseline condition, it would be substantial.
  - e. Page 44 (#118.): The FCC requests comments on what would be considered a "substantial increase in the height of the tower". The County of San Diego would consider a height increase to be substantial if greater than 10% increase.
8. Any clarification to the "May not deny and shall approve" clause should clarify that local governments may regulate facilities with exception and discretionary review. Depending on the scope and details of the definition of "eligible facilities", it is possible that the local government could deny a covered request. Local ordinances will not typically include the exact definitions and allowances as FCC rules and the FCC should allow for this flexibility of local governments to regulate and maintain discretion over project approvals. State and local governments should also be able to require that covered requests be subject to conditions and that they comply with building codes and local land use laws.
9. Page 47 (#126 & 127.): The FCC seeks comment on the applicability of Section 6409(s) to a local jurisdiction review of a non-conforming site. The County of San Diego has

many non-conforming facilities that were approved prior to the adoption of the County of San Diego Telecommunication Ordinance. When an applicant requests to make changes to a non-conforming use, the County reviews the request to comply with the current Ordinance requirements. Non-conforming sites (such as mono-poles) are amortized, or given an end date by which they must be converted into a design that adheres to the Ordinance (i.e. faux tree). The end date is based upon the total valuation of the facility (i.e. facilities valued over \$500,000 would qualify for a maximum use period of 15 years from the date of the adoption of the Ordinance). A local jurisdiction should not be required to approve colocations on non-conforming facilities that do not comply with 'stealth' conditions. This approach would exacerbate existing non-conforming conditions.

10. Page 49 (#131.): The FCC is asking if Section 6409(a) warrants specific expedited procedures or limits on the documents that are required with the state/local government's application? The FCC shot clock ruling that requires a review period of 150 days (new sites) or 90 days (modifications to existing approved sites) is already enforced by our jurisdiction. The FCC should not further limit the required documentation to process wireless applications, particularly when the overall processing times have been significantly reduced.

The County appreciates the opportunity to participate in the review process for this project. We look forward to receiving future documents related to this project or providing additional assistance at your request. If you have any questions regarding these comments, please contact Jennifer Domeier, Land Use/ Environmental Planner, at (858) 495-5204, or via email at [jennifer.domeier@sdcounty.ca.gov](mailto:jennifer.domeier@sdcounty.ca.gov).

Sincerely,



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