Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies	)	WT Docket No. 13-238
	)	
Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting	)	WC Docket No. 11-59
	)	
Amendment of Parts 1 and 17 of the Commission's Rules Regarding Public Notice Procedures for Processing Antenna Structure Registration Applications for Certain Temporary Towers	)	RM-11688 (terminated)
	)	
2012 Biennial Review of Telecommunications Regulations	)	WT Docket No. 13-32

To: The Commission

COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

February 3, 2014

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SUMMARY

The Wireless Internet Service Providers Association ("WISPA") submits these Comments to express general support for the Commission's proposals to implement Section 6409(a) of the Spectrum Act and to streamline environmental and historic preservation review. In some respects, however, the Commission should make clear that its rules apply in a technology-neutral manner to all forms of communications and all existing structures.

As the trade association representing fixed wireless Internet service providers ("WISPs"), WISPA has a keen interest in easing the federal, State and local processes by which WISPs can access structures to collocate transmission equipment. By accelerating those processes, the Commission can incent investment in broadband and encourage more rapid build-out of broadband facilities, especially in rural areas where the number of available structures is limited.

The Commission should exercise its statutory authority to promote uniform application of Section 6409(a). In so doing, the Commission should broadly define terms such as "transmission equipment," "wireless" and "existing wireless tower and base station" to include all forms of communication, including the fixed unlicensed services and equipment that WISPs use, and all structures. The Commission should not limit "existing" structures to those that are constructed "solely or primarily" to support communications, but should include existing structures such as buildings, water tanks, grain silos, utility poles and other structures that could be used for collocation. State and local approval processes should be applied in a technology neutral and non-discriminatory manner, and approvals should not be subject to onerous conditions or fees that will discourage collocation applications. Completed applications should generally be approved within 60 days, after which time the application would be "deemed granted." The Commission should retain jurisdiction to adjudicate disputes so that any decision will be applied consistently nationwide.

The Commission should streamline the environmental and historic preservation review processes for facilities that are unlikely to have significant effects on the environment or historic properties. WISPA strongly supports adoption of the proposed amendment to Note 1 of Section 1.1306 that would include "other structures" in exempting collocations from most environmental review. WISPA agrees with the Commission that there is no reason to subject structures such as utility poles to greater environmental review than collocations on buildings. WISPA also urges the Commission to streamline environmental review process for all types of unobtrusive communications facilities that are unlikely to have a significant environmental impact. For collocated facilities and for new structures, WISPA recommends that the "antenna volume" exemption be six (6) cubic feet. A six-foot antenna volume exemption would include most wireless broadband devices, including those that operate in lower frequencies where larger antennas are necessary, while still remaining physically unobtrusive.

Likewise, the Commission should streamline Section 106 review for all collocated communications facilities and ensure that its historic preservation review process applies in a technology-neutral way that anticipates future technological developments. WISPA supports PCIA's position that review of collocations on structures more than 45 years old should not apply to collocation on utility poles, water tanks and grain silos, and recommends that collocations on other non-tower structures that are older than 45 years old should be exempt. WISPA agrees that facilities constructed in or near a right-of-way should be categorically exempt from Section 106 review, regardless of whether such right-of-way is located in a historic district. WISPA also supports AT&T's proposal that the categorical exclusion in the NPA for the construction of replacement towers should be clarified to cover replacements of non-tower structures.

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COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

The Wireless Internet Service Providers Association ("WISPA"), pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby provides its Comments in response to the Notice of Proposed Rulemaking ("*NPRM*") adopted by the Commission on September 26, 2013.[1] As further discussed herein, the Commission should adopt its Proposed Rules to implement Section 6409(a) of the Spectrum Act, with modifications intended to clarify those communications facilities that would be encompassed by the rules and to ensure that its rules

[1] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Notice of Proposed Rulemaking, WT Docket No. 13-238, *et al.*, 28 FCC Rcd 14238 (2013) ("*NPRM*"). On December 5, 2013, the NPRM was published in the Federal Register, which established a deadline of February 3, 2014 for filing Comments. *See* 78 Fed.Reg. 73144 (Dec. 5, 2013). Accordingly, these Comments are timely filed.

apply in a technology-neutral manner. WISPA also supports the Commission's proposal to expand the universe of structures that would be subject to streamlined environmental and historic preservation review. Taken together, these rule changes will provide clarity and consistency in the application of federal policy, accelerate federal, State and local approvals of communications facilities and expedite the provision of fixed and mobile services to the public.

Introduction

WISPA is the trade association that represents the interests of wireless Internet service providers ("WISPs") that provide fixed wireless broadband services to consumers, businesses and first responders across the country. WISPA's members include more than 700 WISPs, equipment manufacturers, distributors and others committed to providing affordable and competitive fixed broadband services. WISPA estimates that WISPs serve more than 3,000,000 people, many of whom reside in rural, unserved and underserved areas where wired technologies like DSL and cable Internet access services may not be available. In some of these areas, WISPs provide the only terrestrial source of fixed broadband access. In areas where other broadband options are available, WISPs provide a local access alternative that fosters competition in service, cost and features.

To deliver these services, WISPs require access to spectrum and to vertical infrastructure for base stations, access points and middle-mile connectivity to the Internet. Unlike many urban and suburban areas, rural areas often lack suitable existing traditional towers on which to place transmission equipment. WISPs thus look to other forms of infrastructure, such as water tanks, grain silos, utility distribution poles and public safety towers that provide sufficient antenna height above ground to provide cost-effective service. The cost for a WISP to collocate on an existing structure is less than constructing a new tower and takes significantly less time to

deploy. As a result, WISPs place a premium on the ability to collocate on existing structures wherever possible. In some cases, collocation is the difference between whether a community receives fixed broadband service or not.

In other Commission proceedings, WISPA has highlighted the need for more expeditious and cost-effective access to government-owned structures. In its Comments filed in connection with the formation of the National Broadband Plan, WISPA made specific proposals designed to improve access to facilities owned by the federal government.[2] WISPA also participated in the *Accelerating Broadband Deployment Notice of Inquiry*[3] to report on the results of a survey of WISPA's membership concerning access to federal property for broadband facilities. Among other things, WISPA emphasized the need for streamlined access to facilities, suggesting a 90-day period for the negotiation and approval of collocation requests.[4]

Whether involving collocation requests requiring federal approval or State or local approval, the principles of time-certainty and consistency should apply. WISPA therefore is pleased that the *NPRM* recognizes Congressional intent to ensure easier and more timely access to existing structures for all forms of wireless communications. With modest recommended changes, WISPA also supports proposed Commission rules that would streamline environmental and historic preservation review. The combination of these rule changes will markedly improve the ability of WISPs to deliver fixed broadband services, especially in rural areas where existing structures are limited and the demand for service is greatest.

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[2] *See* WISPA Comments, GN Docket Nos. 09-47 and 09-137 (Nov. 9, 2009) (filed in response to *Public Notice*, "Comment Sought on the Contribution of Federal, State, Tribal, and Local Government to Broadband," DA 09-2122 (rel. Sept. 25, 2009)).

[3] *Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, Notice of Inquiry, 26 FCC Rcd 5384 (2011).

[4] *See* Letter from Elizabeth Bowles and Richard D. Harnish, WISPA, to Marlene H. Dortch, FCC Secretary, Written Ex Parte Presentation, WC Docket No. 11-59 (Aug. 6, 2012) at 3.

Discussion

I. THE COMMISSION SHOULD ADOPT RULES IMPLEMENTING SECTION 6409(a) OF THE SPECTRUM ACT TO ENSURE THAT REQUESTS FROM WISPS TO COLLOCATE ON EXISTING STRUCTURES ARE APPROVED EXPEDITIOUSLY AND WITHOUT UNNECESSARY CONDITIONS.

A. The Commission Should Exercise its Authority to Adopt Rules Implementing Section 6409(a) of the Spectrum Act.

The Commission has authority under Section 6003 of the Spectrum Act to "implement and enforce" the provisions of Section 6409(a) "as if this title [Title VI of the Spectrum Act] is part of the Communications Act of 1934."[5] In addition to this express authority, the Commission also has authority under Section 706(a) of the Communications Act of 1934, as amended (the "Act") to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing . . . regulatory methods that remove barriers to infrastructure investment." This statutory provision enables the Commission to exercise its authority to adopt certain rules that will advance broadband deployment. Fixed and mobile broadband providers would benefit from clear, nationwide standards[6] that will limit requests to the Commission for declaratory rulings and "protracted and costly litigation"[7] in State and federal courts and avoid differing local interpretations. By providing guidance in a Report and Order and final rules, the Commission can eliminate uncertainty and the potential for patchwork local interpretations that will discourage infrastructure investments by WISPs. Section 706(a) thus provides independent authority for adoption of regulations that streamline collocation procedures and thus accelerate the provision of broadband services on a more reasonable and timely basis.

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[5] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112-96, H.R. 3630, 126 Stat. 156 (enacted Feb. 22, 2012) ("Spectrum Act"). *See also Public Notice*, "Wireless Telecommunications Bureau Offers Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, 28 FCC Rcd 1 (WTB 2013) ("*Bureau Guidance PN*") at n.3; *NPRM* at 14273, n.204.
[6] *Id.* at 14274.
[7] *Id.* at 14275.

Notwithstanding the Commission's acknowledgement of the "countervailing benefits" of affording State and local governments the "opportunity and flexibility" to develop their own requirements for collocation approval, the Commission should exercise its authority to adopt rules implementing and enforcing Section 6409(a).[8] Any approval obligations applicable to State and local governments should be limited to the prescribed State and local legal processes by which approvals are granted, and should not extend to interpretation of the Section 6409(a) definitions. For example, local governments can establish their own applications or filing requirements based on administrative efficiency applicable to the community – New York City's bureaucracy and the nature of its infrastructure may require a collocation request to contain more detailed showings than a small town in rural America where one person may have authority to grant collocation requests on the town's water tank. But all State and local governments should apply a uniform set of definitions to promote clarity, to lessen the potential for litigation and to ensure that collocation requests are processed expeditiously, consistent with Section 6409(a).

B. A Broad Interpretation of the Statutory Terms Would Accurately Reflect Congressional Intent.

The *NPRM* and Appendix A thereto propose specific definitions for the operative language in Section 6409(a). WISPA agrees that the proposed definitions generally are appropriate, reflect the intent of Congress and will promote the ability of wireless operators to deploy services in an expeditious, efficient and cost-effective manner. As discussed below, however, the Commission should modify certain of the language in its Proposed Rules to ensure clarity, consistency and inclusion of covered communications facilities.[9]

"Transmission equipment" and "wireless." The Commission correctly concludes that Section 6409(a) does not limit or modify the word "wireless," but rather applies to any "request

[8] *Id.*.

[9] As Exhibit A hereto, WISPA proposes specific language that would clarify Proposed Rule Section 1.30001(b)(6).

for modification of an existing wireless tower or base station."[10] The Commission, like the Wireless Telecommunications Bureau ("Bureau"), notes the difference between the language in Section 332(c)(7) that is limited to "personal wireless services" and the broader use of the word "wireless" in Section 6409(a).[11] Based on this distinction, the Commission proposes that Section 6409(a) "applies to the collocation, removal, or replacement of equipment used in connection with any Commission-authorized wireless transmission, *licensed or unlicensed*, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul or *fixed broadband*."[12] Not all of this language is reflected in Proposed Rule Section 1.30001(b)(6), however. In particular, the Proposed Rule does not include "fixed broadband," and the absence of this service from the list of examples could be interpreted as limiting the scope of the services to which the rule would apply. Accordingly, the term "fixed broadband" should be included in the definition.[13]

WISPA agrees with the broad definition for "transmission equipment" contained in Proposed Rule Section 1.30001(b)(5). For clarity, this term also should be included in the definition of "wireless tower" instead of the more limited term "antenna," as Proposed Rule Section 1.30001(b)(6) currently suggests. Because the Commission proposes to define the statutory term "transmission equipment" and such term encompasses the proposed definition of "antennas," it is not necessary for the Commission to separately define "antennas." To do so would invite confusion.

"Existing wireless tower or base station." The Commission proposes to interpret the terms "wireless tower" and "base station" to include "structures that support or house an antenna,

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[10] *See NPRM* at 14277.
[11] *See Bureau Guidance PN* at 3.
[12] *NPRM* at 14277 (emphases added).
[13] *See* Exhibit A hereto.

transceiver, or other associated equipment that constitutes part of a base station, *even if they were not built for the sole or primary purpose of providing such support.*"[14] The Commission correctly observes that in addition to structures built for the sole or primary purpose of supporting transmission equipment, "many other types of structures, from buildings and water towers to streetlights and utility poles, may also support antennas or other base station equipment."[15] Significantly, Congress did not limit the application of Section 6409(a) to such towers, but rather broadly stated that Section 6409(a) extended to "an existing tower or base station," whether built for the purpose of providing communications or not. Moreover, the Commission's proposal is consistent with the stated benefit of collocation, which "is often the most efficient, rapid, and economical means of expanding wireless coverage and capacity, and also reduces the environmental and other impacts of new wireless facilities development."[16]

Unfortunately, however, the language of Proposed Rule Section 1.30001(b)(6) does not reflect the Commission's statement or Congressional intent – the "sole or primary purpose" limitation appears in two places in the Proposed Rule. If the rules are limited to structures built "solely or primarily" for communications, many structures on which transmission equipment can be placed would be unnecessarily excluded from the benefits Congress intended. These include buildings, rooftops, water tanks, grain legs, utility poles, lamp posts and other structures that may have been constructed for other purposes, but are also used for wireless facilities. For example, a water tank was presumably built to supply water to a community, but it may support cellular antennas, fixed broadband antennas and microwave antennas or have the ability to do so. Or a rooftop built for the primary purpose of covering a building may have a public safety antenna on it. Yet in each of these examples – and there are many, many more – the party requesting

[14] *NPRM* at 14279 (emphasis added).
[15] *Id.* at 14278-79.
[16] *Id.* at 14242.

collocation would be foreclosed from enjoying the benefits of collocation if the rules applied only to structures that were built for the "sole or primary" purpose of supporting communications facilities. This result then forces the requester either to go through an uncertain approval process outside the scope of the Commission's rules (which could lead to denial of the collocation request), find a new location (if available and at a greater cost and time) or abandon its plans altogether. None of these results is consistent with the public interest.

WISPA thus strongly agrees with the Commission's proposal to interpret Section 6409(a) to apply to *all* structures, regardless of whether they were built "solely or primarily" to support communications equipment. However, as discussed above, Proposed Rule Section 1.30001(b)(6) is strikingly at odds with the Commission's proposal – it contains language that would limit "wireless towers" subject to the rules to those built "solely or primarily" to support wireless facilities. In crafting its final rules, the Commission should be sure to eliminate the glaring inconsistency between the correct conclusion in the *NPRM* and the incorrect language in Proposed Rule Section 1.30001(b)(6), consistent with both Congressional and Commission intent and the language WISPA proposes in Exhibit A hereto.[17]

In defining "base station" in Proposed Rule Section 1.30001(b)(1), the Commission correctly excluded the limiting language. Given that the proposed definition is drawn from other definitions that use "base station" in the mobile communications context,[18] the Commission should clarify in its Report and Order that the term "base station" applies to *all* forms of communications facilities, whether mobile or fixed. Otherwise, the definition in Proposed Rule 1.30001(b)(1) is appropriate and should be adopted.

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[17] *See* Exhibit A hereto.
[18] *See NPRM* at 14278.

As the Commission indicates, Section 6409(a) requires a wireless tower or base station to be "existing" in order for its modification to be covered by the rules.[19] WISPA agrees with Verizon that the *structure* should only be existing at the time of the collocation application, and it need not be used to support communications facilities at that time. Any limitations on the availability of structures subject to collocation should be imposed only by the statutory requirement that the modification "does not substantially change the physical dimensions" of the structure.

C. The Commission Should Adopt its Proposed Rules for Review and Processing Applications, Time Limits and Remedies.

The Commission proposes rules governing the processing of modification requests, the time period in which eligible facilities requests must be approved and remedies for violations of the rules.[20] WISPA generally agrees with the Commission's recommendations, particularly those that "deem granted" unapproved requests.

"May not deny and shall approve." WISPA believes that the statutory language stating that a State or local government "may not deny, and shall approve, any eligible facilities request for modification of an existing wireless tower or base station" leaves no discretion for disapproval of a request, unless the proposed modification "substantially change[s] the physical dimensions" of the structure. Congress could have included additional language limiting the circumstances where approval would not be required, but elected to not do so. The plain language of Section 6409(a) thus does not allow State and local governments to deny any eligible facilities request.

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[19] *See id.* at 14280.
[20] *See id.* at 14283-90.

The Commission asks, however, whether State and local governments should be permitted to condition approvals or subject requests to local building codes and land use laws.[21] If the practical effect of the exercise of State or local authority is the *de facto* denial of a modification request, such action should be deemed null and void. Such circumstances would occur where, for example, ordinances favor one technology or service over another, or where the permitting fees are so excessive as to discourage a party from applying altogether.

Application procedures. The Commission interprets Section 6409(a) to permit State and local governments to require an application for an eligible facilities request.[22] This interpretation is consistent with the statutory provision suggesting that the government take affirmative action to "approve" a request. Although WISPA does not support adoption of uniform processes that all State and local governments must use in processing and approving requests, any approval process must be transparent and imposed in a non-discriminatory manner. Thus, the process in New York City need not be the same process that a small town in Iowa must employ, but each process should be applied to all requesters in the same fashion and not favor one company or one technology over another. In each case, the approving body should request only such information as is necessary for compliance with applicable law and approval of the request. Any processing fees should cover only the cost of processing the request, and should not include payment of any bonds or extra fees.

WISPA also urges the Commission to adopt a 60-day time limit for processing and approval of completed eligible facilities requests.[23] This should be more than enough time for review of an application to determine if it is complete, complies with applicable law and does not involve a substantial change in the physical dimensions of the structure. This process could be

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[21] *See id.* at 14283.
[22] *See id.* at 14286.
[23] *See id.* at 14287.

tolled if the application was incomplete or if there were legitimate questions about whether the proposed structure modification would be "substantial," and the approval period extended for 30 days beyond submission of any necessary additional information or resolution of any outstanding legal concerns. Any completed request would be deemed automatically granted if the State or local authority did not take action within the requisite 60-day or extended period.

WISPA agrees with the Commission that any moratoria on the filing or processing of new facilities applications should not apply to covered requests for collocation or modification under Section 6409(a).[24] The reasons why a State or local authority may impose a moratorium on new facilities has nothing to do with requests for collocation on existing structures, a fact Congress surely appreciated when it adopted Section 6409(a).

Remedy and enforcement. WISPA agrees that the Commission should have jurisdiction over any disputes that may arise pursuant to Section 6409(a).[25] Any party to an application may file a petition for declaratory ruling with the Commission, and the opposing party should be given an opportunity to respond. Examples of cases where Commission resolution might be necessary would include disputes over the interpretation and applicability of local ordinances in relation to Commission rules, the contents of applications and any conditions attached to collocation approvals. Although the rules adopted in this proceeding will eliminate much of the case-by-case adjudication that would result if there were no implementing regulations, Commission oversight and adjudicatory authority will ensure consistent application of the rules and provide certainty and guidance to others.

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[24] *See id.* at 14288.
[25] *See id.* at 14290.

II. THE COMMISSION SHOULD STREAMLINE THE ENVIRONMENTAL AND HISTORIC PRESERVATION REVIEW PROCESS.

WISPA supports the Commission's decision to streamline the environmental and historic preservation review processes for communications facilities that are unlikely to have significant effects on the environment or historic properties. WISPA believes the Commission's proposals, with certain modifications, will allow broadband providers to meet the public's growing demand for broadband services by reducing the costs and timeline for deployment, while ensuring that the deployment of new facilities does not harm the environment or historic properties. As discussed below, WISPA encourages the Commission to adopt rules that are technology neutral so that they apply equally to all wireless providers, not just to distributed antenna system ("DAS") and small cell providers.

A. The Commission Should Amend Note 1 to Section 1.1306 to Encompass "Other Structures."

WISPA strongly supports Verizon's proposal and the Commission's proposed language clarifying that Note 1 to Section 1.1306 of the Commission's rules should exempt collocations of all antennas and associated equipment on all types of existing structures from most routine environmental review, not just on buildings and antenna towers.[26] The Commission correctly states that increasing demand for advanced wireless broadband services is driving the need for greater access by broadband providers to existing infrastructure. As discussed above, WISPs depend upon access to a broad array of infrastructure beyond existing traditional communications towers and buildings in order to provide fixed broadband service to communities that would not otherwise be able to receive such service. WISPs often look first to collocate on structures such as water tanks, grain silos, utility distribution poles and other non-

[26] *See id.* at 14253.

tower infrastructure. Accordingly, inclusion of "other structures" would accelerate expansion of broadband services, consistent with the public interest objectives of this proceeding.

At the same time, WISPA's members are committed to ensuring that their facilities do not adversely affect the environment. The Commission has already determined that antenna collocations on buildings and towers are unlikely to have a significant environmental impact and are therefore excluded from routine environmental review, except for review for RF emissions exposure and effects on historic properties. Based on the experience of its members, WISPA believes that collocations on other existing infrastructure such as water tanks, grain silos, utility distribution poles and other non-tower infrastructure are extremely unlikely to have significant environmental effects and are definitely no more likely to have such effects than collocations on existing towers and buildings.

WISPA agrees with the Commission that there is no basis to subject collocations on structures such as utility poles to greater environmental review than collocations on buildings, and believes that similar logic dictates that collocation on other non-tower structures also should be subject to the same streamlined level of environmental review.[27] Under the Commission's Collocation Agreement and Nationwide Programmatic Agreement ("NPA"), collocations on buildings and other "non-tower structures" are treated similarly. For purposes of evaluating effects on historic properties under these agreements, collocations on structures such as water tanks, grain silos, utility distribution poles and other structures are subject to the same level of review as collocations on buildings. There is no legitimate policy reason why collocations on these structures should be treated any differently when evaluating other types of environmental effects. Indeed, the Commission appears to acknowledge this point in stating that "the proposed expansion of the Note 1 collocation exclusion to cover all structures will continue to provide

[27] *See id.*

independent benefits, because it will apply to all collocations on any non-tower structure, not merely collocations involving DAS and small cell facilities. For example, such a clarification would also cover collocation of a macrocell on a water tank."[28]

WISPA also supports the Commission's proposal to clarify that the exclusion for collocations in Note 1 to Section 1.1306 applies to installations in the interior of buildings and recommends that the Commission further clarify that the exclusion applies to collocations on the sides of buildings.[29] Collocations inside or on the side of a building are no more likely to have significant environmental effects than collocations on a building rooftop and should not be subject to a greater level of environmental review. WISPA believes that the Commission's proposed language is sufficient because collocations on the side of a building would constitute the mounting of antennas and associated equipment "on an existing building." However, in order to provide clarity, WISPA asks the Commission to explicitly state that the language "on an existing building" includes collocations on the side of a building. WISPA recommends that the Commission further amend the categorical exclusion for collocations to expressly cover equipment associated with the mounting of the antenna.

Accordingly, WISPA urges the Commission to adopt its proposed amendment to Note 1 to Section 1.1306 and does not believe that it is necessary to define or otherwise limit what constitutes a "structure" for purposes of this rule.

B. <u>The Commission Should Adopt Definitions for New Categorical Exclusions Based on Objective Physical Characteristics.</u>

In addition to the proposed amendment to Note 1 to Section 1.1306, the Commission seeks comment on whether to adopt a new categorical exclusion that would broadly exclude DAS and small cell deployments from routine environmental review other than RF evaluation,

[28] *Id.* at 14254.
[29] *See id.*

whether collocated on existing infrastructure or deployed on new infrastructure.[30] WISPA urges the Commission to also streamline the environmental review process for all types of comparable unobtrusive communications facilities that are unlikely to have a significant environmental impact, such as the types of antennas deployed by fixed wireless broadband providers. This would serve the public interest by removing barriers to the deployment of fixed wireless broadband service and expanding broadband availability in unserved and underserved areas.

WISPA recommends that the Commission adopt a categorical exclusion that exempts communications facilities from routine environmental review other than RF evaluation, based on objective, technology-neutral physical characteristics such as height of the supporting structure, size of the antenna and ancillary equipment, or location, rather than restricting application of its streamlined process to any specific technology. The Commission's current environmental review rules do not distinguish among the type of services or the specific technology utilized by the provider. In streamlining its environmental review processes, the Commission should ensure that any exclusion it adopts is clear, concise and flexible to accommodate new technologies.

The Commission should also make clear that any such exclusion applies to new support structures and not just to collocations on existing structures. WISPA believes that the proposal put forth by PCIA and the HetNet Forum provides a reasonable starting point for a safe-harbor exclusion, but recommends the adoption of a definition of "antenna volume" of six (6) cubic feet instead of three (3) cubic feet.[31] An antenna volume of six (6) cubic feet would ensure that facilities eligible for the exclusion would have no more than *de minimis* effects on the environment, while accommodating current wireless broadband provider deployments and accommodating foreseeable technological development. A definition of antenna volume based

[30] *See id.* at 14254-57.
[31] *See id.* at 14256, n.99.

on three (3) cubic feet would unnecessarily limit the types of antennas that could be deployed and restrict providers to utilizing antennas that provide limited coverage or that only operate on certain frequency bands. In particular, lower frequency antennas such as those used in the 900 MHz band and in the TV white space band typically use radiating devices that are larger than three (3) cubic feet. Such devices are still physically unobtrusive and have minimal effects on the environment and should be covered by any exclusion adopted by the Commission. WISPA also recommends that the Commission adopt a waiver process or other procedural grounds for an applicant to seek an exemption for the deployment of comparable wireless facilities.[32]

To the extent that the Commission adopts a categorical exclusion based on the physical dimensions of the antenna and supporting structure, WISPA recommends that the categorical exclusion apply regardless of the location of the collocation or new deployment. To the extent the Commission decides to limit the exclusion to certain locations, WISPA recommends that the Commission adopt a categorical exclusion from routine NEPA review for all communications facilities that meet the relevant objective physical characteristics in rights-of-way designated for the location of communications towers or above-ground utility transmission or distribution lines and associated structures or equipment, similar to the exclusion in the NPA. WISPA also supports adopting a categorical exclusion for the deployment of eligible facilities along or within existing aerial or underground corridors.[33]

C. The Commission Should Ensure That the Historic Preservation Review Process is Similar for All Communications Facilities.

WISPA supports the Commission's goal of tailoring the historic preservation review process to reflect developments in the deployment of new technology to meet growing consumer

[32] *See id.* at 14256.
[33] *See id.* at 14257.

demand.[34] WISPA urges the Commission to streamline the historic preservation review process under Section 106 of the National Historic Preservation Act ("NHPA") for *all* communications facilities. WISPA recommends that the Commission adopt the same definition for communications facilities that are excluded from both Section 106 review and NEPA review. The Commission should define the scope of facilities that are excluded from review based on objective, technology-neutral physical characteristics such as height of the supporting structure, size of the antenna and ancillary equipment, or location, rather than referencing any specific technology. The Commission should also ensure that any size or other criteria it adopts are broad enough to anticipate future technological and industry developments. By adopting rules to streamline the Section 106 review process that are technology-neutral and forward-looking, the Commission will remove unnecessary and outdated regulatory burdens that impede the timely and efficient deployment of fixed wireless broadband service.

At a minimum, the Commission should streamline the Section 106 review for all communications facilities collocated on existing structures, such as water tanks, grain silos, utility distribution poles and other structures. Based on the experience of its members, WISPA believes that collocations on these types of existing infrastructure are extremely unlikely to have any impact on historic properties.

45-Year Age Requirement for Collocation Exclusion. WISPA supports PCIA's proposal that the Commission clarify that the provision in the Collocation Agreement requiring review for collocations on existing buildings and other non-tower structures over 45 years old does not apply to a collocation on a utility pole that is over 45 years old.[35]

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[34] *See id.* at 14258.
[35] *See id.* at 14261.

There is no evidence that utility distribution poles possess any historic value or that collocations on such structures could result in adverse effects to any such historic value. There is no evidence in the record developed by the Commission when it adopted either the Collocation Agreement in 2001 or the NPA in 2004 that the use of utility poles raised significant concerns regarding impacts on historic properties because of the potential historic value of utility poles. In fact, when the Commission adopted the NPA, it included an exclusion from the Section 106 review process for both new deployment and collocations in utility rights-of-way, but did not limit the exclusion for collocations on utility poles based on the age of the utility pole.

WISPA urges the Commission to exclude collocations on other categories of structures, such as water tanks, grain silos, and other non-tower structures that are over 45 years old from the Section 106 review process, so long as they meet the other three criteria included in the categorical exclusion. Rather than focusing on the age of the underlying structure regardless of its eligibility as a historic property, the Commission should focus on whether the underlying structure is historic. The 45-year old provision is burdensome and is not well tailored to the harm the Commission seeks to prevent. Although the Commission suggests that other non-tower structures such as water tanks may be more likely to have historic value, eliminating the 45-year age threshold for the exclusion in the Collocation Agreement for such non-tower structures will not lead to greater adverse impacts on historic properties. Applicants will still need to ensure that the underlying structure is not a designated landmark or listed in or eligible for listing in the National Register of Historic Places and will not be able to proceed if they have received a complaint that the collocation has an adverse effect on historic properties.

NPA Exclusion for Utility or Telecommunications Right-of-Way. WISPA recommends that the Commission adopt PCIA's proposal to clarify that facilities constructed in or near a

utility or telecommunications right-of-way should be exempt from Section 106 review under the categorical exclusion in the NPA, regardless of whether such right-of-way is located in a historic district.[36] As long as the proposed construction in a utility or telecommunications right-of-way otherwise meets the exclusions in the Collocation Agreement or NPA, the collocation or new deployment should be exempt from Section 106 review. Because the current exemption in the NPA for facilities constructed in a right-of-way is limited to facilities that do not constitute a substantial increase in size over the existing structures in the right-of-way within the vicinity of the proposed construction, the construction of additional infrastructure to support communications antennas in a right-of-way where there are already above-ground utility distribution or transmission lines or communications towers is unlikely to have significant effects on historic properties.

NPA Exclusion for Replacement Non-Tower Structures. Finally, WISPA supports AT&T's proposal that the categorical exclusion in the NPA for the construction of replacement towers should be clarified to cover replacements of non-tower structures.[37] This exclusion in the NPA exempts from Section 106 review the construction of a communications tower that replaces an existing tower, so long as the replacement tower does not substantially increase the size of the existing tower and meets certain other criteria. However, the NPA does not currently include a similar exclusion for the construction of replacement non-tower structures, such as water tanks, grain silos or utility distribution poles. The Commission thus should amend the categorical exclusion to include replacements of non-tower structures because it would permit additional collocations on such structures and reduce the need for new structures. There is minimal potential for impact on historic properties from a replacement structure, regardless of whether the

[36] *See id.*
[37] *See id.*

replacement structure is a communications tower or a non-tower structure. The provision in Section IX of the NPA, which requires certain procedures if an applicant discovers a previously unidentified historic property during construction, will protect against unexpected impacts to historic properties.

Conclusion

The Commission has a distinct opportunity to revise its wireless facilities rules to speed broadband deployment by improving access to structures and expediting federal, State and local approvals. Any rules must be technology-neutral and include facilities for fixed wireless broadband services as well as DAS and small cells. WISPA thus supports many of the Commission's proposals and, to take full advantage of the opportunity this proceeding provides, recommends further clarification and expansion of certain proposed rules to reflect Congressional intent and to maximize the public interest objectives of this proceeding.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

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Exhibit A

Proposed Rules

Section 1.30001(b)(6) *Wireless Tower*.

Any structure ~~built for the sole or primary purpose of supporting~~ *that supports* any FCC-licensed or authorized license-exempt ~~antennas~~ *transmission equipment* and their associated facilities, including *but not limited to antennas,* the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower. It includes structures ~~that are constructed solely or primarily~~ for any wireless ~~communications~~ service, ~~such as,~~ *including* but not limited to, *commercial and* private *mobile*, broadcast, and public safety services, as well as *commercial and private* fixed wireless services such as microwave backhaul *and fixed broadband.*