

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
)	

COMMENTS OF OREGON CITY, OREGON

The City of Oregon City, Oregon appreciates the opportunity to respond to the Federal Communication Commission's ("Commission") Notice of Proposed Rulemaking ("Draft Rules"), released on September 26, 2013, in the above-entitled proceeding.

INTRODUCTION

Oregon City is a historic city with a population of over 32,000, located thirteen miles south of Portland, Oregon at the confluence of the Willamette and Clackamas Rivers. Oregon City includes many shopping areas, recreational opportunities and businesses, and is home to a

wide variety of historical and cultural attractions, including several interpretive centers and museums dedicated to celebrating the pioneer spirit. Oregon City was the first incorporated city west of the Rocky Mountains and was later designated Oregon's territorial capital.

Oregon City and its residents are diligent, proud stewards of this rich history. Within the City limits of Oregon City are the Canemah National Register District, the McLoughlin Conservation District, the Barlow Road and End of the Oregon Trail, as well as several locally designated historic landmarks that are of local, state and national significance. In 2011, the City received an Oregon Heritage Excellence Award for its City-wide Historic Survey, which was honored as an outstanding example of how to integrate historic resources and the historic building survey into larger planning efforts in Oregon. The City also has been designated by the Oregon Heritage Commission as an Oregon Heritage All-Star Community in recognition of the City's strong efforts to broadly preserve and develop heritage resources.

Given its ongoing efforts to protect the unique history of Oregon City, the City has significant concerns about two aspects of the Draft Rules in particular: the Commission's proposed interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409(a)") and the consideration of changes to the Commission's interpretations of Section 332(c)(7) in the *2009 Declaratory Ruling* ("Shot Clock Rule").

IMPLEMENTATION OF SECTION 6409(a)

Under Section 6409(a), city permitting authorities "may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." Congress did not define the terms "wireless tower," "base station," or "substantially change the physical dimensions." The Commission seeks comment on: (1) whether or not to adopt rules defining

these terms, and (2) proposed definitions for those terms. The City's experience does not support the need to define these terms at this time, and certainly not in the overly restrictive, one-size-fits-all manner proposed in the Draft Rules.

The City has implemented a common sense process for review of collocation applications that varies based on the zoning of the property where the new facilities are to be installed and the type of support structure proposed by the application. The collocation of antennas on existing support towers in industrial, commercial, mixed use or institutional zones are reviewed as administrative decisions, with basic application requirements and no public comment on the proposal. Collocations on towers in residential zones are subject to a site plan and design review land use process, which includes written public comment on the proposal. Collocation on existing structures other than towers (e.g., buildings, water towers, billboards) are processed the in the same manner as collocation on towers, with the exception of those applications that are located in a historic district, do not meet a minimum setback from the building edge or exceed certain width and height requirements. Collocation on existing utility poles requires a site plan and design review for industrial, commercial, institutional and mixed use zones and a conditional use permit in residential zones.

The City's review process has effectively managed the nine collocation applications it has received in the last few years. No applicant has complained about the City's management of this process or, to the City's knowledge, abandoned a collocation plan due to its collocation application review process. From the City's perspective, the sweeping provisions in the Draft Rules simply are not necessary to facilitate wireless collocation in the City.

Further, several of the proposed definitions in the Draft Rules would prevent the City from fulfilling its obligation to protect the health, safety and welfare of its citizens. For example,

the proposed test to define the phrase “substantially change the physical dimensions” results in rigid percentages or numerical rules that do not take into account the characteristics of the existing structure and neighborhood or the applicable land use requirements and decisions. In the many historical neighborhoods in Oregon City, a collocation that increases an existing facility by the greater of twenty feet or ten percent could have a very significant, negative impact that may not be true of a similar collocation in an industrial zone.

The Draft Rules also do not take into consideration any conditions placed on the approval of the original tower or base station. The City’s zoning authority would be gutted entirely if the Draft Rules disregard the important safety and aesthetic conditions the City imposed on the original structure as necessary to preserve the safety and quality of its neighborhoods. This concern is exacerbated to the extent the new rules apply the “substantially change” test based on the structure as altered by subsequent collocations rather than based on the original structure. Hamstringing cities in this way seems likely to lead to significant issues with the approval process of new “towers or base stations” as residents and local officials realize that the tower or base station described in the original application could grow exponentially over time without local authority to ensure it remains safe and compliant with local zoning and land use regulations.

The City is also concerned about the prospect of interpreting the phrase “must approve” in Section 6409(a) to preempt any conditions on the approval of a collocation. Currently, the City imposes conditions primarily dealing with landscaping around fenced equipment yards, use of non-glare paint on the facility, demonstration of the stability of the support structure, removal upon discontinued use for an extended period, decibel levels at the property line, and ensuring radiation emitted complies with FCC requirements. These conditions have not deterred any

collocation applicant from proceeding with its desired installation. The City's zoning authority will be gutted if it cannot impose reasonable conditions on its approval of collocation applications.

Finally, with the extensive number of historical properties in Oregon City, the City strongly opposes defining "existing" towers and base stations to include any existing structures even if they do not currently hold wireless communications equipment. The City's recognized efforts to balance its land use planning and regulations with the historic properties in the City would be eviscerated if it were forced to approve any eligible application to place facilities on these invaluable structures.

The City supports and encourages deployment of wireless facilities needed to meet the demand for wireless services and has worked hard to balance this goal with its obligation to protect the health, safety and welfare of its residents. The City has achieved this balance by enacting local zoning regulations that have worked well in enabling prompt but thoughtful collocations. The Draft Rules would override these carefully crafted regulations, imposing instead a one-size-fits-all set of regulations that cannot address the unique aspects of the City even where, as in Oregon City, there have been no significant issues with collocation. If the Commission does not wish to be the "national zoning board,"¹ the Commission should refrain from adopting rules that remove local authority to the extent contemplated in the Draft Rules, and should provide states and local governments the opportunity to work with local stakeholders, including wireless providers, to craft solutions to any issues that may arise related to collocation.

IMPLEMENTATION OF SECTION 332(c)(7)

Under the Shot Clock Rule, a wireless provider may seek a judicial remedy when a city does not approve or deny a permit application for a collocated site within ninety days or a new

¹ Draft Rules par. 99.

site within one hundred fifty days. In the Draft Rules, the Commission seeks comment on whether it should clarify certain aspects of its Shot Clock Rule, including the appropriate remedy in the event of a violation of the Shot Clock Rule.

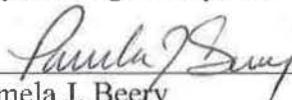
The City objects to any effort to ignore the plain language of Section 332(c)(7)(B)(v), and the remedy that the Commission already determined is mandated by the statute.² The determination that a governmental entity has failed to comply with the Shot Clock Rule (or approval an application governed by Section 6409(a)) will require careful, fact specific analysis of the application and the actions or inaction of the applicant and the governmental entity. This analysis should be left to local courts, not the imposition of a “deemed granted” remedy by the Commission that requires a local government to issue a permit or land use approval without prior review of the facts related to that application.

CONCLUSION

The City of Oregon City appreciates the Commission’s efforts to better understand the local practices and policies for collocation of wireless facilities. The City requests that the Commission consider these comments, as well as those submitted by all cities, before taking any action that may adversely affect the land use and zoning authority of cities.

Respectfully submitted,
City of Oregon City, OR

By:



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² See 2009 Declaratory Ruling, 24 FCC Rcd at 14009 par. 39.