Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	WT Docket No. 13-238
	)	WC Docket No. 11-59
Acceleration of Broadband Deployment	)	WT Docket No. 13-32
by Improving Wireless Facilities	)	
Siting Policies	)	Notice of Proposed Rulemaking
	)	(FCC 13-122)

COMMENTS OF THE CITY OF CHICAGO

I. Introduction and Overview

These Comments are filed by the City of Chicago ("City") in response to the Federal Communications Commission's ("the FCC" or "the Commission") Notice of Proposed Rulemaking in the above-captioned proceeding ("NPRM").[1] The City appreciates the opportunity to submit these comments on the NPRM and notes its strong support of the Commission's goal of promoting the efficient deployment of advanced broadband connections. In fact, in releasing its wide-ranging Chicago Tech Plan in September 2013,[2] the City set out its own ambitious goal of accelerating broadband deployment for all City residents, businesses, and

[1] *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, et al.*, Notice of Proposed Rulemaking, FCC 13-122, WT Dkt. No. 13-238, WC Dkt. No. 11-59, RM-11688 (terminated), WT Dkt. 13-32, (rel. Sept. 26, 2013).

[2] *See* The City of Chicago Technology Plan, *available at* http://techplan.cityofchicago.org/wp-content/uploads/2013/09/cityofchicago-techplan.pdf (Sept. 2013).

visitors. The City is also building an impressive track record of working collaboratively with technology companies on innovative solutions that improve the City's technology infrastructure.[3]

The City supports the Commission's efforts, in this NPRM and in other recent actions it has taken, to facilitate more widely available and improved wireless broadband access. We believe strongly that regularly examining the efficiency and effectiveness of regulatory processes is a hallmark of good governance. The City strives to do so as it relates to our various review and permitting functions, including review of wireless towers and equipment. Thus, we generally support the motivation behind this NPRM and believe that the end result can and should be certain changes to FCC rules where a consensus agrees that improvements can be made.

Today, we also seek to express our position on two particular aspects of the NPRM: 1) we are concerned that certain aspects of the proposed regulatory interpretation given to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") will negatively affect the City's ability to manage important aesthetic, historic preservation, and safety concerns through our land use review powers; and 2) we wish to emphasize our strong support for finalizing the Commission's proposed interpretation of Section 6409(a) as not applying to the City's proprietary control over wireless siting on City-owned public property[4], including explicitly stating that this includes public property in the right-of-way.

---

[3] As only one example, the City recently agreed to a partnership with ExteNet Systems, Inc., in which right-of-way fees were waived in exchange for ExteNet agreeing to fund installation of City-owned fiber optic cables when ExteNet installs its own fiber optics network. *See* http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2013/July/7.24.13IntroBroadband.pdf.

[4] *See* NPRM at 48.

II. FCC Interpretation of Section 6409(a) of the Spectrum Act

The City agrees that both local governments and regulated parties need clarity regarding how to construe the language in Section 6409(a). We are concerned, however, that aspects of the FCC's proposed regulatory interpretation of Section 6409(a) could negatively impact City residents, businesses, and visitors by constraining the City's ability to effectively manage aesthetic, historic preservation, and safety issues through siting review processes. In particular, we believe careful consideration must be given to any regulatory definition of the phrases "existing wireless tower or base station" and "substantially change the physical dimensions."[5] Congress clearly intended to make co-location of wireless equipment more efficient, but nothing in the statutory language or legislative history suggests that Congress intended to turn every existing building in the City of Chicago into a co-location-as-of-right location.

The City's zoning code provisions currently consider wireless communications equipment to be a permitted use. In order to properly manage aesthetic, historic preservation, and safety concerns, however, the City engaged in a collaborative process with telecommunications providers roughly 20 years ago that resulted in reasonable restrictions governing various characteristics of wireless equipment, such as height and color. These restrictions are set out at Chicago Municipal Code Section 17-9-0118, and are enforced during the zoning and building permit review process prior to installation of wireless equipment.

Despite a framework for siting approval that we believe is both fair and reasonable, we also are always ready to improve our processes. The City realizes that technology has evolved since the 1990s when we collaborated with the telecommunications industry on the standards in Section 17-9-0118. Thus, the City is very willing to convene a new collaborative process that

[5] Spectrum Act § 6409(a)(1).

could result in modernizing and, where appropriate, modifying the existing wireless permitting review framework. We believe strongly, however, that local governments, especially those in large, complex urban environments, must maintain the ability to require a reasonable permit review process that results in manageable permit conditions, such as prescribed equipment colors or height restrictions. Our neighborhoods and business districts are concerned about issues like aesthetics, historic preservation, and safety, and the City must have discretion to address those concerns at the local level. Thus, we believe that Section 6409(a) can and should be construed to allow conditional review of proposed wireless equipment co-locations.[6] Likewise, local reviewers such as the City must retain the ability to require compliance with building and other safety codes.[7] This local control can be preserved, while still giving voice to Congress' intent that a certain subset of co-locations should be allowed as-of-right.

We are confident that all parties interested in this NPRM can agree that Section 6409(a), as enacted by Congress, is vague and does not provide a clear path forward for local governments seeking to comply with that statutory provision and wireless providers seeking certainty in understanding their regulatory obligations. The ideal outcome in resolving this vagueness and uncertainty would be for the Commission, local wireless siting regulators, and the telecommunications and wireless industry to reach a consensus understanding, at the finest level of detail possible, on Section 6409(a)'s meaning. Along those lines, we are greatly encouraged that discussions are underway between certain government associations and industry trade associations.[8] As one of the largest, most densely populated U.S. cities, we would be happy to

---

[6] *See* NPRM at ¶ 124.

[7] *Id.*

[8] *See* NPRM at 38.

participate in any discussions seeking consensus, if that would be useful in moving this matter forward. In fact, we believe the FCC should hold off on issuing a final rule subsequent to this NPRM until it is convinced that a voluntary consensus will not resolve the vagueness and uncertainty.

III. The City's Ability to Control Use of the Public Property it Owns and Manages on Behalf City Residents

Chicago, along with certain other large, densely populated cities, has been the location of rapid, innovative deployment of small cell and distributed antenna system ("DAS") technology. These innovative, new wireless technologies have benefited City residents, businesses, and visitors by improving wireless system capacities, increasing routine signal strength, and mitigating issues arising during large public gatherings like festivals and parades. In part, small cell and DAS technology has been deployed through utilization of City-owned public assets in the right-of-way, such as traffic signal and light poles.

The City strongly supports making available, when safe and in the public interest to do so, City-owned public property as a cost-effective and efficient means of deploying important small cell and DAS enhancements. But our obligation as the steward of public property in a crowded, complex urban environment means that we must be able to fully control when and how wireless equipment is deployed on public property. We ask that our publicly-owned property be treated no differently than the private landlord nearby. As such, we agree with the Commission's proposed interpretation of Section 6409(a) as not applying to local government proprietary decisions regarding the use of public property it owns. In addition, we urge the

Commission to explicitly clarify that this interpretation includes publicly-owned property in the right-of-way, such as light poles and traffic signals.

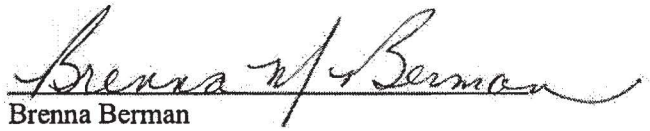
IV. Conclusion

The City is confident that this NPRM can lead to productive solutions and a balanced approach of aggressively expanding our nation's wireless broadband infrastructure, while preserving certain important local review functions. Chicago is a city that seeks to preserve its historic past while fully embracing a high-tech future. We look forward to working with the Commission, the telecommunications industry, and state and local governments as this rulemaking progresses.

February 3, 2014.

Respectfully submitted,

THE CITY OF CHICAGO



Brenna Berman
Commissioner and Chief Information Officer
Department of Innovation and Technology
50 W. Washington Street, Room 2700
Chicago, IL 60602

Stephen R. Patton
Corporation Counsel
Department of Law
121 N. LaSalle, Room 600
Chicago, IL 60602

Commission to explicitly clarify that this interpretation includes publicly-owned property in the right-of-way, such as light poles and traffic signals.

IV. Conclusion

The City is confident that this NPRM can lead to productive solutions and a balanced approach of aggressively expanding our nation's wireless broadband infrastructure, while preserving certain important local review functions. Chicago is a city that seeks to preserve its historic past while fully embracing a high-tech future. We look forward to working with the Commission, the telecommunications industry, and state and local governments as this rulemaking progresses.

February 3, 2014.

Respectfully submitted,

THE CITY OF CHICAGO

Brenna Berman
Commissioner and Chief Information Officer
Department of Innovation and Technology
50 W. Washington Street, Room 2700
Chicago, IL 60602

Stephen R. Patton
Corporation Counsel
Department of Law
121 N. LaSalle, Room 600
Chicago, IL 60602