

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF SPRINT CORPORATION**

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**COMMENTS OF SPRINT CORPORATION**

Sprint Corporation (“Sprint”) submits these Comments in response to the Commission’s Notice of Proposed Rulemaking associated with the above-referenced proceedings, which seeks comment on a number of questions related to the regulation of wireless facility siting and construction.<sup>1</sup>

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<sup>1</sup> *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*

## I. INTRODUCTION AND SUMMARY

Sprint strongly supports the Commission’s efforts to streamline regulatory approval processes that might otherwise encumber the delivery of advanced broadband offerings. The Commission’s current policies and rules on environmental and historic preservation review were developed at a time when most wireless service was provided using a traditional macrocell model. As providers move beyond this traditional model, and deployment of Distributed Antenna Systems (“DAS”) and “small cells” accelerates, it is important that the Commission re-evaluate its policies and rules with new technologies in mind. Sprint supports the Commission’s proposal to make the interim exemption from ASR requirements for temporary towers permanent, but recommends the Commission modify the 60-day timeframe associated with this exemption. Finally, while significant action has been taken to ensure that states and local jurisdictions act in a timely manner on wireless facilities applications, through enactment of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act and Section 332(c)(7) of the Communications Act, it is clear that additional clarification and guidance from the Commission is needed to ensure these provisions are effective.

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*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, Notice of Proposed Rulemaking, Released September 26, 2013 (“NPRM”).*

## II. DISCUSSION

### A. Environmental and Historic Preservation Review

The Commission's efforts to clarify that environmental and historic preservation review for DAS and small cells should be expedited will greatly assist wireless carriers as they seek to improve the quality and availability of advanced broadband service using these technologies. It is important that the Commission take action in light of evolving technology. As the Commission recognizes, when it established its current policies and rules for environmental review of communications facilities, most wireless service was provided through antennas mounted on communications towers at a height of 100 to 200 feet or more and supported by radio equipment in large cabinets or shelters.<sup>2</sup> Increasingly, however, carriers are making use of new technologies in the form of DAS and small cells to fill in coverage gaps and provide additional capacity, thereby providing enhanced quality of service to their customers.

The Commission should act quickly to update its existing rules to establish a clear categorical exclusion from review under the National Environmental Policy Act ("NEPA") and National Historic Preservation Act ("NHPA") for DAS and small cell deployments. Taking this action would provide a greater level of clarity and could address those situations not currently covered under Note 1, such as deployment of DAS and small cells on new structures. According to the Commission, "As DAS and small cell systems become more popular and widespread, providers and environmental regulators have requested clarification of the existing NEPA and NHPA rules and processes, and adoption of better tailored rules and processes with respect to deployment of these facilities."<sup>3</sup> In the interest of providing the clearest possible guidance on this issue, the Commission should adopt a specific categorical exclusion to address DAS and

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<sup>2</sup> NPRM at par. 11.

<sup>3</sup> *Id.* at par. 12.

small cell deployments. PCIA's assertions are correct that a categorical exclusion is the most expeditious method for streamlining the deployment of DAS and small cells and that other options would involve a more protracted process<sup>4</sup> Pursuing these other options could ultimately delay the deployment of broadband service.

DAS and small cell systems will become increasingly important to providers as they seek to maximize their spectrum resources to provide improved coverage and capacity to consumers, particularly as the demand for data continues to grow. Small cells are a key component of the wireless industry's solution to resolve coverage and capacity issues. Large cities will have hundreds—or perhaps thousands—of small cells deployed in order to support customers' wireless network performance expectations.

It is appropriate for the Commission to establish an exclusion from the standard environmental and historic preservation processing rules for DAS and small cell deployments. Establishing a categorical exclusion for DAS and small cell deployments would be consistent with exclusions already established through the Nationwide Programmatic Agreement (“NPA”) and the Collocation Agreement. Under the NPA, exclusions from Section 106 review were established for enhancements to towers, replacement and temporary facilities, certain construction on industrial and commercial properties, certain construction in utility rights-of-way, and construction in State Historic Preservation Office/Tribal Historic Preservation Office designated areas.<sup>5</sup> In the decision implementing the NPA, the Commission concluded that, “...categorically excluding from routine Section 106 review categories of construction that are

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<sup>4</sup> *Id.* at par. 31-32, 55.

<sup>5</sup> *A Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, Report and Order (“NPA Report and Order”),* 20 FCC Rcd 1073 (2004).

unlikely adversely to impact historic properties is appropriate and in the public interest.”<sup>6</sup> Under the Collocation Agreement, many collocations on existing towers, buildings and other structures are excluded from routine historic preservation review, with certain exceptions.<sup>7</sup> As part of the Collocation Agreement, the parties agreed that the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be minimal and not adverse.<sup>8</sup> The National Broadband Plan underscored the importance of collocating facilities on existing infrastructure, such as utility poles and conduits and made facilitating the collocation process one of the goals of the Plan.<sup>9</sup> Many DAS and small cells will be attached to existing structures and installed within utility rights-of-way corridors, as was encouraged by the Collocation Agreement, the NPA, and the National Broadband Plan.

The exclusions set forth in the Collocation Agreement and NPA were established at a time when the traditional macrocell model was the only technology contemplated. DAS and small cell deployments can be expected to have even less of an impact, as these technologies are considerably smaller than traditional macro sites, operate at lower power levels and can be deployed in discreet locations such as utility poles, street lamps, water towers, and rooftops.

Due to the nature of DAS and small cell technologies, carriers may deploy multiple network technologies in the same service area and it is important that there is clear guidance so that carriers will not be delayed in deploying these technologies. As the Commission observes, “... because DAS and small cell deployments often require a large number of antennas or base stations to provide coverage to an area comparable to a single macrocell, they may implicate

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<sup>6</sup> *Id.* at 1087.

<sup>7</sup> *Wireless Telecommunications Bureau Announces Execution of a Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures, Public Notice*, 16 FCC Rcd 5577 (2001).

<sup>8</sup> *Id.* at 5575.

<sup>9</sup> FCC, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, Chapter 6, 107-118 (2010) (“National Broadband Plan”), <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

dramatically greater environmental compliance costs under the existing site-by-site review process.”<sup>10</sup> Obtaining separate environmental review or historic preservation review for each would entail significant time when, in most cases, there is no environmental or historic preservation impact or the impact is *de minimis*.

Sprint also supports implementing Verizon’s proposal to modify Note 1 of Section 1.1306 to apply the exclusion provided for collocations on existing buildings or antenna towers to other structures such as utility poles, water tanks, light poles, and street signs.<sup>11</sup> As with collocations on existing buildings and towers, collocations on these “other structures” are also unlikely to have significant environmental effects.

With respect to the scope of the exclusion for DAS and small cells, the Commission should adopt a technology-neutral definition, rather than referencing a specific technology. A definition, such as the one proposed by PCIA and the HetNet Forum, based on size and volume instead of the type of technology, is appropriate.<sup>12</sup> The exclusion for DAS and small cells should apply to all construction related to deployment of DAS and small cells and should include associated equipment (hubs, cables and wires) and new or replacement poles.

## **B. Temporary Towers**

The Commission’s proposed exemption from its Antenna Structure Registration (“ASR”) environmental notification requirements for certain temporary antenna structures that, because of their characteristics, do not have the potential for significant environmental effects is appropriate.<sup>13</sup> By making the current interim policy on temporary towers permanent, the Commission will help ensure the availability of broadband and other wireless services during

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<sup>10</sup> NPRM at par. 35.

<sup>11</sup> *Id.* at par. 37.

<sup>12</sup> *Id.* at par. 49.

<sup>13</sup> NPRM at par. 78.

major events and other periods of localized high demand. The Commission asks whether the criteria set out in the Commission's Order adopting a temporary waiver in response to the Petition filed by CTIA (the "Waiver Order")<sup>14</sup> are sufficient and appropriate for this purpose.<sup>15</sup> While most of the criteria set forth in the Waiver Order are correct, the timeframe of 60-days or less is not sufficient to include many towers deployed on a temporary basis for certain situations, including towers deployed when existing towers are damaged.

A number of the temporary towers Sprint has put in place in recent years have been at military installations, which can require the temporary deployment for six months or more due to military-specific rules and regulations regarding environmental compliance and Joint Spectrum coordination. Sprint also uses temporary towers to address situations where a permanent tower is lost due, for example, to a fire or other unforeseen circumstances. In these situations it normally takes approximately six months to go through the regulatory processes and other steps required to construct a permanent replacement. In these situations, a new location must be found, lease arrangements must be made, and due diligence must be performed, including local zoning and environmental/NEPA review. In addition, a building permit must be obtained and then actual construction of the structure must take place. In order to address these scenarios where temporary towers must be deployed to maintain the availability of service, the criteria for temporary towers should be extended to those deployed for up to six months.

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

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act was a positive step in the right direction, making it clear that certain "eligible" wireless applications should be

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<sup>14</sup> 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; 2012 Biennial Review of Telecommunications Regulations, RM-11688, WT Docket No. 13-32, *Order*, 28 FCC Rcd 7758 (2013) ("Waiver Order").

<sup>15</sup> NPRM at par. 78.

processed without delay. As the Commission observes, “By requiring timely approval of eligible collocations, Section 6409(a) will help providers meet the Nation’s growing demand for wireless broadband service and may be critical to the deployment of the nationwide public safety broadband network mandated by the Spectrum Act.”<sup>16</sup> However, a number of important terms used in 6409(a) are undefined and it would be in the public interest for the Commission to issue additional guidance and clarification. Providing clarification in this area will ultimately decrease delays caused by the need for local interpretations and judicial decisions.

Section 6409(a) should apply broadly 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.<sup>17</sup> The Commission’s proposal to define a “wireless” tower or base station to include one used for any such purpose is correct.<sup>18</sup> Not any one specific type of equipment should be excluded.

The Commission proposes to define “transmission equipment” to encompass antennas and other equipment associated with and necessary to their operation, including, for example, power supply cables and a backup power generator.<sup>19</sup> It is appropriate to include “other equipment associated with and necessary to their operation,” since, without such equipment the antennas could not properly function.

Sprint supports the Commission’s proposal that, “...the term “wireless tower or base station” should be interpreted to encompass structures that support or house an antenna,

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<sup>16</sup> NPRM at par. 9.

<sup>17</sup> *Id.* at par. 104

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at par. 105.

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.”<sup>20</sup> Other structures that may not have been built for the purpose of supporting communications equipment are important to the deployment of wireless communications infrastructure, particularly because they are already part of the landscape and carriers can more rapidly co-locate on such structures.

In addition, the Commission correctly concludes that “base station” applies to DAS and small cells, consistent with the Wireless Telecommunications Bureau’s (“Bureau”) findings in the 6409 Public Notice.<sup>21</sup> As the Bureau has found, there is no limiting statutory language and a “base station” should encompass such equipment in any technological configuration, including distributed antenna systems and small cells.<sup>22</sup>

With respect to the definition of “existing,” Verizon correctly interprets the meaning of modifications to base stations to include collocations on buildings and other structures, even if those structures do not currently house wireless communications equipment.<sup>23</sup> This interpretation is consistent with the Collocation Agreement, which defines collocation as encompassing the mounting of an antenna on an existing building or structure.

The Commission proposes to interpret a modification of a “wireless tower or base station” to include collocation, removal, or replacement of an antenna or any other transmission equipment associated with the supporting structure, even if the equipment is not physically

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<sup>20</sup> NPRM at par. 108.

<sup>21</sup> Wireless Telecommunications Bureau Offers Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, *Public Notice*, 28 FCC Rcd at 3 (WTB 2013) (“*Section 6409(a) PN*”).

<sup>22</sup> *Id.*

<sup>23</sup> Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 11-59, at 2 (filed Feb. 28, 2013) (“Verizon Feb. 28, 2013 *Ex Parte*”).

located upon it.<sup>24</sup> This proposal is appropriate, since it is consistent with the Collocation Agreement.

With regard to how to define the term “substantially change the physical dimensions,” Sprint generally supports the adoption of the four-prong test outlined in the Collocation Agreement but proposes this test be modified to reflect the more recent guidelines established in the NPA. The NPA referenced prongs one through three of the test outlined in the Collocation Agreement, but also extended the definition of “substantially change the physical dimensions” to include expansion outside the existing tower site that does not “expand the boundaries of the leased or owned property surrounding the tower by more than thirty feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site.”<sup>25</sup>

The Commission asks whether it should provide that a municipality may toll the running of the presumptively reasonable 90-day review period if it notifies the applicant in writing within 30-days that an application is incomplete and specifies the additional information or documentation required to complete the application.<sup>26</sup> The Commission also asks if Section 6409(a) warrants imposing any limits on the ability of a municipality to require such additional information or documentation.<sup>27</sup> The Commission should set reasonable limits on the ability of a municipality to require additional information or documentation. Sprint has found that savvy jurisdictions will request additional information that is not always relevant to review under Section 6409 in order to stop the clock on the 90-day review period. The Commission should clarify that States and localities may not require information or documents in connection with an

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<sup>24</sup> NPRM at par. 114.

<sup>25</sup> NPA Report and Order, 20 FCC Rcd 1073 at 1147.

<sup>26</sup> NPRM at par. 134.

<sup>27</sup> *Id.*

eligible facilities request asserted to be a covered request under Section 6409(a) that are not relevant to the criteria for approval under Section 6409(a), as the Commission suggests.<sup>28</sup>

Section 6409(a) should be read to require States and localities to approve all requests that meet the definition of eligible facilities requests and do not result in a substantial change in the dimensions of the facility, without exception and/or discretionary review. Wireless facilities may still be subject to building code and other non-discretionary structural and safety codes. States and localities should not be permitted, however, to use an application for modification at an existing site to address other issues, such as aesthetic concerns. Sprint has recent experience with a local jurisdiction requiring existing antennas mounted on a building's façade to be moved to a rooftop in response to a modification application.

The Commission should act quickly to adopt a "deemed-granted rule" where a state or local jurisdiction does not act timely on an application covered under 6409(a). Section 6409(a) expressly directs that states and localities "may not deny and shall approve" covered requests. States and localities are compelled to approve covered requests that meet the criteria of Section 6409(a). Accordingly, where a state or local jurisdiction fails to act, a covered request should be deemed granted within a specified period of time. Some states have already taken action to adopt a "deemed granted" provision, such as the one contemplated by the Commission, and these provisions have been effective in moving broadband facility deployment forward without unnecessary delays.<sup>29</sup>

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<sup>28</sup> *NPRM* at par. 133.

<sup>29</sup> For example, the Commonwealth of Pennsylvania enacted the Wireless Broadband Collocation Act, P.L. 1501, No. 191, Cl. 66 on October 24, 2012 ("Pennsylvania Wireless Broadband Collocation Act"). Under this Act, "If the municipality fails to act upon an application for the modification or collocation of wireless telecommunications facilities within 90 calendar days as provided under paragraph (2), the application shall be deemed approved." Pennsylvania Wireless Broadband Collocation Act at Section 4(b)(3).

#### **D. Implementation of Section 332(c)(7)**

The Commission should clarify that the presumptively reasonable timeframes associated with Section 332(c)(7) should apply to DAS and small cell facilities. As the Commission reasons, “Neither Section 332(c)(7) nor any Commission decision interpreting Section 332(c)(7) makes any distinction among personal wireless service facilities based on technology, and absent a compelling reason to do so, we are not inclined to make such distinctions.”<sup>30</sup> This provision was intended to be technology-neutral, applying to any technology used for the provision of personal wireless services.

In addition, as PCIA requests, the Commission should revisit its decision not to put in place a “deemed granted” remedy for Section 332(c)(7), because pursuing a judicial remedy in cases where states or localities do not act within a reasonable time will result in “great time and expense.”<sup>31</sup> Such delay will ultimately hinder the rollout of broadband services and affect customers’ ability to utilize advanced wireless service offerings.

### **III. CONCLUSION**

The Commission’s efforts to examine its rules and policies on environmental and historic preservation review to ensure unnecessary regulatory barriers to broadband deployment are eliminated is to be applauded. The Commission should modify its rules to clarify that DAS and small cell systems are categorically excluded from environmental and historic preservation review. The Commission should make the interim exemption from ASR requirements for temporary towers permanent, but should modify the 60-day timeframe associated with this exemption. In addition, the Commission should provide further clarification and guidance

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<sup>30</sup> NPRM at par. 158.

<sup>31</sup> *Id.* at par. 162.

regarding Section 6409(a) of the Middle Class Tax Relief and Job Creation Act and Section 332(c)(7) of the Communications Act so that these provisions will be more effective and enable carriers to make necessary modifications to their networks without facing unreasonable delay.

Respectfully Submitted,

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