

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

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| In the Matter of |) | |
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| Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies |) | WT Docket No. 13-238 |
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| 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 THE TOWN OF HILLSBOROUGH, CALIFORNIA

Comment Date: February 3, 2014

INTRODUCTION

The Town of Hillsborough, a California municipal corporation (“Hillsborough” or “Town”), appreciates the thoughtful and comprehensive Notice of Proposed Rulemaking (“Notice”) issued by the Commission in this matter. Hillsborough especially appreciates the Commission’s interest in obtaining comments from small cities like this one. Like the Commission, the Town has an interest in accelerating broadband deployment, and promoting advances in wireless broadband services.

The Town has been, and continues to be, willing to adhere to reasonable permit review

periods to promote timely approvals of applications, and it has been sensitive to, and sought to comply with, the *2009 Declaratory Ruling*. However, the Town also believes that the rules as proposed would not speed deployment and would in fact make it more difficult to develop innovative solutions that do allow for deployment to proceed in a way that does not harm other important interests.

COMMENTS

The Town of Hillsborough is a very small community. We have only 11,000 residents, very few streetlights, almost no sidewalks, no industry, and much of our community has only underground utilities. Other than our Town facilities (Town Hall, police and fire stations, and a public works yard), a handful of schools and a country club, the entire Town is comprised of single family homes (zoned R1). There are no buildings and few structures of any significant height.

Our wireless siting policies reflect a deliberate and careful balance between the public interest in access to advanced wireless service and the public interest in safe, well-planned land uses. Our goal is to have improved wireless service while preserving the beauty and rural character of our community. We are attempting to work cooperatively with wireless carriers to allow installations in a timely fashion in ways that minimize the impacts of the facilities on residential properties. That impact is not merely aesthetic—the economic value of the property in the Town is based on the careful attention that has been paid to the design of structures within the Town.

Contrary to the Commission's suggestions, DAS can require *significant* new and intrusive structures. When we were first approached by providers that wished to install DAS systems, we were told that because of the limited space on utility poles, and the limited number

of lights standards in our community, it would be necessary to install very tall monopoles. The Town's City Councilmembers and staff have since had several collaborative meetings directly with wireless service providers in order to craft a new wireless facilities ordinance that allows for expanded technology and addresses our residents' concerns of decreased property values due to unsightly installations.

The ordinance revision process provided an opportunity for the Town and wireless industry to explore creative solutions for deployments in rural residential communities like ours. During our most recent conversations with the carriers, we were shown new photos of DAS installations that appear to allow providers to offer advanced services while minimizing the height and virtually eliminating the visibility of wireless facilities. The facilities could support collocation. We were very encouraged by this development and by the cooperative effort involved.

Under the Commission's proposed rules, however, it appears that if the facilities we were shown were approved, the design could be altered at any time. Allowing an extension of 10 percent or 20 feet, whichever is greater, as permitted under the proposed rules, would change an acceptable and agreed-upon installation into something completely out of place with its surroundings. In effect, the rules would prevent the Town and industry from devising innovative solutions that allow both initial installation and collocation, subject to reasonable limits. Broadband deployment will be encouraged if Section 6409 is interpreted to allow conditions to be imposed on collocations, and to permit enforcement of size and other design conditions imposed when an initial installation is approved.

The proposed rules create enormous problems for other reasons as well. As drafted, the rules define the phrase "substantially change the physical dimensions" in absolute terms,

regardless of the location of the proposed collocated facility, or the size of the existing support structure. But as the Commission seems to recognize, what constitutes a “substantial change” depends on the circumstances, as the Town illustrates. Because our Town has no sidewalks, wireless facilities placed in the right of way or utility easements are effectively on the front lawns of homes. We have been told by the carriers that, if these rules are adopted, existing poles could be replaced by 40- to 60-foot poles within 50 feet of front doors, and the Town will have no option but to approve them and associated cabinets. The impact of that sort of expansion in front yards is obviously “substantial” as compared to a 20-foot extension on an existing 150-foot cell tower surrounded by fencing and shielded from other properties by an appropriate fall zone.

The proposed rules assume that because a particular DAS antenna may be small, the environmental and historical impact of DAS projects is also small. That is not the case. A DAS involves more than merely a few antennas, and those aspects of the project must be considered. For example, Notice, at ¶ 5, specifically recognizes the importance of protecting “Native American sacred sites, sites of Tribal cultural importance, and archeological sites.” A recent application for a wireless installation in the Town of Hillsborough included seven miles of trenching, some of it through areas where there are known Native American burial grounds. The proposed rules could be read to prevent localities (or States) from ensuring that proposed projects do not harm such sites. At the same time, the Commission is proposing to limit its own role in reviewing wireless projects for environmental and historic preservation impacts. Section 6409 can and should be interpreted so that localities retain the right to review proposals for historical and environmental impacts.

Under the proposed rules, it can be argued that ADA and safety issues can be disregarded, camouflaged installations can become uncamouflaged, local topography is not to be

considered and there is no limit to the ultimate size of an installation since the number of modifications is not limited. The Notice recognizes that Section 6409 could be read to preserve police powers and local authority to establish and maintain reasonable conditions on wireless facilities and their interpretation. The Town believes that is how Section 6409 must be interpreted to maintain a sensible process for wireless deployment, and any rules adopted must be clear on that point.

As part of the NPRM, the Commission asks whether moratoria should count against the presumptively reasonable time for review established in the *2009 Declaratory Ruling*. Hillsborough believes reasonable moratoria should be permitted and not count against the limitations period. As a practical matter, we are not usually on the “bleeding edge” of new developments, in the telecommunications area or otherwise. Hillsborough and many other small communities with limited staff often revisit existing land use regulations only when new developments require it. Typically, the review is not designed to *restrict* an otherwise *permitted use*, but to permit a use otherwise prohibited under the existing code. The review period takes time for any community, especially a small one, and a moratorium on applications is established both so that all potential entrants can be treated fairly, and so that limited staff can focus on developing solutions to deployment issues. We recognize that under the *2009 Declaratory Ruling*, a provider could always agree to a delay, but if there are multiple requests from different providers, the community could be faced with a situation where one agrees to a moratorium and another does not—thus complicating and delaying the ability to develop solutions that, in the long term, will speed deployment overall.

CONCLUSION

We ask that the Commission not adopt the rules proposed in this matter. While we understand the rationale for some of these rules in certain cases, we believe the unintended consequences will be devastating upon small communities such as ours that are interested in the increased services but are trying to implement the systems in a timely, collaborative fashion that will minimize the impacts in residential neighborhoods.

Respectfully submitted,

/s/ Randy Schwartz

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