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February 3, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW, Room TW-A325
Washington DC 20554

Re: WT Docket Nos. 13-238, 13-32; WC Docket Nos. 11-59; FCC 13-122

Dear Secretary Dortch,

The City of Mount Vernon together with the Mount Vernon Planning Board respectfully submit the following comments with reference to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM) on local wireless siting, which would implement Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Jobs Act) and Section 332 (c)(7) of the Federal Communications Commission.

We echo your Intergovernmental Advisory Committee's (IAC) observation that local governments are best suited to determine what constitutes a substantial change in a site, especially when there is a scenic or historic area that is affected. Out of thirteen (13) applications submitted over the last six months, each applicant has urged that there is no substantial change being made to the site and review is therefore not warranted. The City of Mount Vernon is an urban municipality situated in southern Westchester County, directly north of the Bronx, New York City. The age and unique architecture of our buildings make public safety, health and fire concerns more complex as compared to newer cities or towns. We urge you to adopt your own Committee's recommendation and allow the municipality to determine whether review is warranted. We are concerned that telecommunications companies have self-servingly interpreted the law in a manner deceptively evading review.

Our geographic proximity to New York City places us at a crossroads where hundreds of thousands of commuters from the northern part of the County travel through our municipality
February 3, 2014

on their way into New York City. The companies have situated their antennas within our municipality to serve these commuters as well. Furthermore, we are surrounded by more affluent neighborhoods that do not have the building height required to serve end-users and antennas located in Mount Vernon must provide coverage to these citizens of neighboring municipalities. We understand carriers' desires to provide seamless coverage including in-building coverage to our own residents as well. We have processed hundreds of wireless applications over the last ten years and there are dozens of antennas throughout the City. If there is not a substantial change requested in the application, the wireless provider can bring the challenge in Federal Court. These courts have quickly developed an expertise in the application of the TCA. We urge the Commission to refrain from tying the hands of municipal boards committed to improving their City in all respects including wireless coverage.

Collocation Concerns

One of the biggest concerns we have relates to collocation. We were led to believe by a telecommunications company that the Distributed Antennae System (DAS) applied for would accommodate other carriers. Now we are told that this is not possible on the equipment that was used by the carrier. Our qualm is the lack of accountability and responsibility that these carriers are showing. In fact, some of their behavior borders on reckless. Now, we fear that being able to evade review will further promote their cavalier attitude in our City without regard to the health and safety of our citizens.

We urge that each of these companies be required to have a municipal liaison who works directly with the municipality to be the face of the company. Most often, we are forced to interface with attorneys from white shoe firms that have no concern for our municipality and no concern for the wireless company's reputation. We find that the carriers do not cooperate with one another to allow for use of the most technologically advanced equipment by all providers within our City.

Although we are only four square miles, we have dozens of wireless sites including the recently installed DAS system. As indicated above, just in the last six months, our Planning Department received thirteen (13) applications for wireless sites from telecommunications companies such as T-Mobile and Sprint. Each of these applications boasts that it is immune from review as it does not propose a substantial change.

Health and Safety Concerns

As this Commission is well aware, the Telecommunications Act (TCA) attempted to strike a balance between two competing aims- to facilitate nationally the growth of wireless telephone

February 3, 2014

service and to maintain substantial local control over siting of towers.” *Omnipoint Communications, Inc. v. City of White Plains*, 430 F.3d 529, 531 (2d Cir. 2005) (quoting *Town of Amherst, N.H. v. Omnipoint Communications, Inc.*, 173 F.3d 9, 13 (1st Cir. 1999)). With new technologies, towers have thankfully been replaced by smaller antennae. However, the health and safety concerns, environmental and visual impacts of antennae systems continue.

In fact, an antenna mounted on the rooftop of a six story residential building flew off of the roof during a storm onto the roadway damaging the windshield of a car. Thankfully no one was injured. As these antennas are hundreds of pounds in weight, their placement must be monitored by local building department officials. When physical injuries or property damage occur, the City is held liable and therefore must continue to have control over the construction and placement of these sites in order to ensure safety and compliance with building codes. With automatic approvals, this City is fearful that the telecommunication companies will skip the safety analysis and oversight required by local municipalities. Most especially, as some rooftops and buildings were constructed more than a hundred years ago, construction on these sites requires knowledge and expertise regarding building and fire safety codes that only municipal building department officers possess and demand intricate attention to detail when constructing structures.

Thank you for your time and consideration of our comments. If you should have any questions whatsoever, please contact me at (914)665-2374 or at hsherwani@cmvny.com. We welcome the opportunity to discuss our concerns further.

Very truly yours,

Hina Sherwani

Hina Sherwani
Assistant Corporation Counsel and Counsel to the Planning Board