

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 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 THE UTILITIES TELECOM COUNCIL**

Pursuant to Section 1.405 of the Commission’s Rules, the Utilities Telecom Council (“UTC”) hereby files its comments in response to the Commission’s Notice of Proposed Rulemaking in the above-referenced matter.<sup>1</sup> UTC supports the Commission taking additional steps to reduce barriers to wireless infrastructure deployment by excluding small cells and Distributed Antenna Systems (“DAS”) on facilities mounted on structures such as utility poles,

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<sup>1</sup> In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies; 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; 2012 Biennial Review of Telecommunications Regulations, WT Docket No. 13-238, WC Docket No. 11-59, WT Docket No. 13-32, *Notice of Proposed Rulemaking*, FCC 13-122 (rel. Sept. 26, 2013) (NPRM). See also *Comment Deadlines Announced for Notice of Proposed Rulemaking on Improving Wireless Facilities Siting Policies*, Public Notice, DA 13-2324, (rel. Dec. 5, 2013)

water tanks, light poles, and road signs, as well as on existing buildings and towers from environmental and historical preservation review. In that regard, UTC also supports codifying the exemption for temporary towers from the environmental and historical preservation review and clarifications regarding the scope of the provisions of the Spectrum Act regarding local zoning approval of wireless collocations.<sup>2</sup> Further, UTC recommends that the Commission determine appropriate rules and regulations to address certain issues in the context of the tribal review process.

## **I. INTRODUCTION**

UTC is the global trade association for the telecommunications and information technology interests of electric, gas and water utilities and other critical infrastructure industries (“CII”), such as pipeline companies.<sup>3</sup> Its members include large investor-owned utilities that serve millions of customers, often across multi-state service territories; and its members include smaller cooperative or municipal utilities that may serve only a few thousand customers in rural areas or isolated communities. All of these members own, manage or control extensive private internal communications networks that they use to support the safe, reliable and efficient delivery of essential services to the public at large. These communications networks are used both for voice and data communications for routine dispatch as well as emergency response during service restoration in the aftermath of hurricanes, storms and other natural disasters, which can affect large areas for extended periods.

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<sup>2</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) (codified at 47 U.S.C. § 1455(a)) (hereinafter “Spectrum Act”).

<sup>3</sup> See [www.utc.org](http://www.utc.org)

Utility and CII communications networks conform to a high standard of reliability, due to the critical nature of the underlying energy and water services they support. It is essential for them to be able to erect temporary towers in emergency situations without being hindered by unnecessary or duplicative regulations regarding environmental and historic preservation. Because of the ubiquity of utility and CII communications networks, operators of small cell and DAS networks can use collocation on these facilities to extend their networks and bring advanced communications capabilities throughout the United States. To continue this beneficial development, the Commission should streamline the environmental and historical review of small cell and DAS deployment, codify the exemption of temporary towers from environmental and historical review processes, and clarify the scope of the wireless collocation provisions of the Spectrum Act as well as discrete issues under Section 332(c)(7) of the Act.

## **II. The Commission Should Streamline Environmental and Historical Review of the Deployment of Small Cell and DAS Infrastructure.**

### **a. Updating the NEPA Exclusion for Collocations in Note 1.**

The Commission has already categorically excluded antennas on existing buildings or antenna towers, under Note 1 to Section 1.1306 (“Note 1”), except for effects on historic properties and exposure to Radio Frequency (“RF”) emissions.<sup>4</sup> UTC supports the Commission’s proposal to extend this exclusion to apply to facilities mounted on structures such

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<sup>4</sup> 47 C.F.R. § 1.1306 Note 1. *See* Amendment of the Commission’s Environmental Rules, *Order*, 3 FCC Rcd 4986, 4986 para. 7 (1988) (“the Commission has long held that the mounting of antennas on existing buildings or antenna towers generally is environmentally preferable to the construction of a new facility, a preference which is reflected in note 1”); Implementation of the National Environmental Policy Act of 1969, Docket No. 19555, *Report and Order*, 49 FCC 2d 1313, 1324 para. 27 (1974) (mounting an antenna on an existing building or tower “obviously has no significant aesthetic effect and is environmentally preferable to the construction of a new tower, provided there is compliance with radiation safety standards....”).

as utility poles, water tanks, light poles, and road signs.<sup>5</sup> UTC agrees with the Commission that the Collocation Agreement and the NPA do not distinguish between buildings and other non-tower structures in applying exclusions from Section 106 review and there is no basis to subject collocations on structures such as utility poles to greater environmental review than collocations on buildings.<sup>6</sup>

Further, UTC supports the Commission's proposal to adopt this amendment to the Note 1 collocation exclusion -- independent of whether the FCC also adopts a separate categorical exclusion applicable to smaller facilities generally.<sup>7</sup> UTC does not believe that there are any technical or other limitations that the FCC should reference in a definition of the term "structure" in order to limit the types of existing structures for which collocations are likely to have significant environmental effects.<sup>8</sup> UTC supports the Commission further amending the categorical exclusion for collocations so that it expressly covers not only the mounting of antennas but also the associated equipment.<sup>9</sup> UTC also supports the Commission clarifying that the collocation exclusion applies to installations in the interior of buildings and to the sides of buildings and is not aware of any other special environmental concerns that might arise from collocations inside or on the side of buildings as opposed to collocations on rooftops.<sup>10</sup>

#### **b. Adopting A New Categorical Exclusion for DAS and Small Cell Deployments**

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<sup>5</sup> NPRM at ¶39.

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

<sup>7</sup> *Id.* at ¶42.

<sup>8</sup> *Id.* at ¶39.

<sup>9</sup> *Id.* at ¶40.

<sup>10</sup> *Id.* at ¶41.

UTC believes that DAS and small cell deployments are unlikely to have significant environmental effects and that the FCC should adopt a categorical exclusion for some or all of the components involved in DAS and small cell deployments from NEPA review, other than for compliance with RF exposure limits.<sup>11</sup>

UTC believes that amending Note 1 as proposed would effectively exclude the collocation of nodes for DAS, small cells, and other comparable wireless technologies from NEPA review, other than historic preservation review and review for compliance with our RF exposure limits.<sup>12</sup> However, it may be advisable for the Commission to clarify this in its rules in order to avoid any potential disputes. As the Commission notes, even if it “adopt[s] a broadened collocation exclusion, either in general or specifically for small communications nodes, such an exclusion would not cover all construction that may be necessary to deploy DAS, small cells, and other small facilities,” particularly new support structures, such as new poles, that are constructed to support communications nodes as part of a DAS or small cell deployment.<sup>13</sup> UTC believes all such construction should also be excluded from NEPA review.<sup>14</sup> UTC agrees with PCIA that that the financial and regulatory costs involved in environmental and Section 106 processing are not warranted due to the minimal environmental effects of small cells and DAS facilities.<sup>15</sup> For example, new poles, particularly replacement poles, that are used for DAS or small cells are visually unobtrusive and do not impact the environment in other ways that might require review. That said, there are so many poles, that requiring them to go through

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<sup>11</sup> *Id.* at ¶43.

<sup>12</sup> *Id.* at ¶44.

<sup>13</sup> *Id.* at ¶45.

<sup>14</sup> *Id.* at ¶45.

<sup>15</sup> PCIA and DAS Forum Comments, WC Docket No. 11-59, at 50-51.

environmental review every time a new pole was installed or an existing pole was replaced would be cost prohibitive and an unreasonable regulatory burden.

UTC supports adopting objective criteria for the definition of the exclusion, based upon the proposal submitted by PCIA and the HetNet Forum, which would define facilities as categorically exempt according to the maximum cubic volume of the relevant facilities rather than on specific technological labels, such as DAS or small cells.<sup>16</sup> UTC supports adopting a categorical exclusion from routine NEPA review for DAS and small cells in rights-of-way designated for utilities or telecommunications similar to the one in the NPA that applies to Section 106 review.<sup>17</sup> UTC believes that it is not necessary for the FCC to adopt the NPA conditions for this categorical exclusion such as the one requiring that the facilities not constitute a substantial increase in size over existing nearby structures in the right-of-way.<sup>18</sup> Instead, the exclusion should encompass all DAS and small cells in utility and telecommunications rights of way broadly. UTC supports extending the wire and cable exclusion to cover components of DAS or small cell deployments in utility corridors, including new support structures.<sup>19</sup> The addition of these collocations will not individually or cumulatively have a significant effect on the quality of the human environment so as to qualify for a categorical exclusion from NEPA review under 40 C.F.R. § 1508.4, even if the deployments require the deployment of fiber optic cable. The

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<sup>16</sup> *Id.* at ¶49.

<sup>17</sup> *Id.* at ¶50.

<sup>18</sup> *Id.* (asking whether to apply any of the NPA conditions for this categorical exclusion such as the one requiring that the facilities not constitute a substantial increase in size over existing nearby structures in the right-of-way.)

<sup>19</sup> *Id.* at ¶51 (asking whether the Commission should extend the wire and cable exclusion to cover components of DAS or small cell deployments in right-of-way corridors, including new support structures.)

existing exclusion for aerial or underground cables deployed in existing corridors adequately covers such components as fiber.<sup>20</sup>

**c. Options for Tailoring Historic Preservation Review.**

UTC favors the categorical exclusion approach as the most expeditious means to streamline the deployment of DAS and small cells and to facilitate wireless broadband deployment while maintaining historic preservation goals.<sup>21</sup> UTC agrees with PCIA that a rulemaking to add DAS and small cell solutions to the list of facilities that are categorically excluded from non-RF-related environmental processing under Section 1.1306 (Note 1) would satisfy the Commission's responsibilities under the NHPA and the ACHP's Section 106 regulations.<sup>22</sup>

**d. Defining the Scope of the Exclusion.**

The Commission should adopt the same standards for exclusion under NHPA as it adopts for NEPA, and the Commission need not define the circumstances (e.g., locations) where an NHPA exclusion should apply.<sup>23</sup> Instead, it is sufficient to rely on Section 1.1307(c) and (d) of the Commission's rules, which directs the reviewing Bureau to require an EA for an otherwise

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at ¶51.

<sup>22</sup> *Id.* at ¶55. *See also* Section 106 of the National Historic Preservation Act (“NHPA”), 16 U.S.C. § 470f. *and see* Advisory Council on Historic Preservation (“ACHP”), 36 C.F.R §§ 800.2, 800.3 *et seq.*

<sup>23</sup> *Id.* at ¶¶58-59 (asking if the Commission should define the facilities excluded from Section 106 review the same way it defines the facilities excluded from NEPA review, and asking if there may also be circumstances where a facility that meets criteria for an exclusion under NEPA does not meet the criteria for an exclusion under Section 106 and vice versa.)

categorically excluded deployment where the Bureau finds that the deployment may have a significant environmental impact.<sup>24</sup> The Commission should ensure that the categorical exclusions for utility pole structures extends beyond 45 years, and that the categorical exclusions for utility poles in or near utility rights-of-way should continue to apply even if the structure would be located within the boundaries of a historic property.<sup>25</sup> UTC agrees with PCIA that as the number of poles 45 years or older increases, the issue could frustrate the Commission's efforts. The time and expense to validate whether a pole is 45 years or older would pose an extraordinary administrative burden and would outweigh any value of the historic or cultural significance of the pole. UTC believes that the addition of small cells and DAS would not significantly affect the historic or cultural significance of an area, given that the deployment occurs in an existing utility right-of-way. Finally, the Commission should extend the exclusion for replacement towers under the NPA to cover replacements of non-tower structures, in addition to its existing exclusion for the replacement of tower structures.<sup>26</sup>

#### **e. Other Considerations**

While it is true that macro site deployments are considered Federal undertakings, the Commission may exclude small cells and DAS deployments because they are less intrusive than traditional macro sites and there are other differences that would distinguish them, such that an exclusion should apply.<sup>27</sup> While the physical characteristics of DAS and small cells are not the

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<sup>24</sup> *Id.* at ¶59 (asking if it is sufficient to rely on Section 1.1307(c) and (d) of the Commission's rules, which direct the reviewing Bureau to require an EA for an otherwise categorically excluded deployment where, on its own motion or in response to public petition, the Bureau finds that the deployment may have a significant environmental impact.)

<sup>25</sup> *Id.* at ¶60.

<sup>26</sup> *Id.* at ¶63.

<sup>27</sup> *Id.* at ¶65 (asking the extent to which deployments of DAS or small cell facilities qualify as Federal undertakings under the NHPA and major Federal actions under NEPA.) *See also Id.* (asking if there are differences in how the

only distinguishing factor that may make them less intrusive than traditional macro sites, it is sufficient for the Commission to justify distinguishing DAS and small cells from macro sites on their physical characteristics alone.<sup>28</sup>

In the context of the Commission's request for comment on other considerations as part of the NPRM, UTC notes that the Commission should consider changes to the tribal review process that has been a factor in delaying deployment activities for a number of UTC's members. Tribes should continue to require historical review for legitimate concerns regarding deployments that could affect an area of cultural or historical significance. However, some tribes are routinely making claims for new deployments where there is no legitimate concern. Further, some tribes require a monitor at sites, even after a completed ethnographic study the tribe requires does not raise any concerns. The Commission should also clarify the issues of monitor qualifications, monitor reporting requirements and whether the monitor, the tribe or the FCC has the authority to determine when and under what conditions monitoring may end. Questionable claims, unnecessary ethnographic studies, and ambiguous monitor requirements impose significant delays and additional costs. The Commission should determine the appropriate means by which to assess these problems and develop recommendations to address them.

### **III. The Commission Should Codify the Exemption of Temporary Towers from the Environmental and Historical Review Process.**

UTC supports the Commission's proposal to adopt an exemption from the Commission's Antenna Structure Registration ("ASR") System environmental notification requirements for

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NHPA and NEPA apply to DAS facilities and small cells as compared to macrocells and the towers on which they are mounted that would justify distinguishing the deployment of DAS and small cell facilities for purposes of classification as a Federal undertaking and major Federal action.)

<sup>28</sup> *Id.* (asking if the physical characteristics of DAS and small cells are the only distinguishing factor that may make them less intrusive than traditional macro sites.)

temporary antenna structures that, because of their characteristics, do not have the potential for significant environmental effects.<sup>29</sup> UTC supports the exclusion criteria under the *Waiver Order* that currently apply to temporary towers: the temporary tower (i) will be in use for 60 days or less, (ii) requires notice of construction to the FAA, (iii) does not require marking or lighting pursuant to FAA regulations, (iv) will be less than 200 feet in height, and (v) will involve minimal or no excavation.<sup>30</sup>

UTC supports the Commission's proposal to require no post-construction environmental notice for temporary towers that qualify for the exemption.<sup>31</sup> UTC agrees with the FCC that notice in this circumstance would seem to serve little purpose as the deployment would be over or nearly so by the time the notice period ended. UTC supports the Commission's proposal that if an applicant determines that it needs to complete an EA for a temporary tower that would otherwise be exempt from environmental notice, or if the Bureau makes this determination under Section 1.1307(c) or (d), the Commission should provide that temporary towers that require an EA would be eligible for the exemption.<sup>32</sup> In addition, if the Commission provided for a national notice only instead of a national and local notice, that would be very helpful for such deployments that are time-sensitive, temporary and low impact.<sup>33</sup>

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<sup>29</sup> *Id.* at ¶¶68 and 78.

<sup>30</sup> *Id.* at ¶78, *citing*, *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>31</sup> *Id.* at ¶85.

<sup>32</sup> *Id.* at ¶86.

<sup>33</sup> *Id.* at ¶86.

In addition to the temporary towers that are currently excluded under the FCC rules, UTC urges the Commission to include temporary towers by Part 90 and Part 101 eligibles as part of that list.<sup>34</sup> The Commission should not limit the list only to the currently listed temporary towers. Alternatively, the Commission could dispense with the list entirely and just apply the exclusion generally to all temporary towers, which would eliminate altogether the risk of unintended exclusion of some new technologies.<sup>35</sup> In any event, UTC notes that utilities and CII may also need to deploy temporary towers during emergencies, not just Commercial Mobile Radio Service or other commercial providers. Exempting temporary towers from review will reduce costs, remove regulatory uncertainty and promote communications restoration in the aftermath of emergencies.

#### **IV. The Commission Should Clarify the Scope of the Wireless Collocation Provisions of the Spectrum Act.**

Under Section 6409(a) of the Act, States and localities must grant an “eligible facilities request,” defined as “any request for modification of an existing wireless tower or base station” that involves collocation, removal or replacement of “transmission equipment,” if the request does not “substantially change the physical dimensions” of the tower or base station.<sup>36</sup> UTC

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<sup>34</sup> *Id.* at ¶87 (asking if the Commission should list or provide examples of specific types of facilities potentially eligible for an exemption from its environmental notification rules, and, if so, whether it should or modify in any way the list provided in the NPA)

<sup>35</sup> *Id.* (asking if limiting the exemption to listed facilities could have unintended consequences, such as inadvertently excluding new technologies or types of structures.)

<sup>36</sup> *Id.* at ¶92, *citing*, Spectrum Act § 6409(a)(1)-(a)(3).

supports the Commission’s goal of interpreting various statutory terms and other questions of implementation to reduce uncertainty and promote deployment of DAS and small cells.<sup>37</sup>

**a. “Transmission Equipment” and “Wireless.”**

UTC supports the Commission’s proposal to find that Section 6409(a) applies 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>38</sup> UTC supports the Commission’s proposal to define a “wireless” tower or base station to include one used for any such purpose.<sup>39</sup> UTC also supports the Commission’s proposal 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>40</sup>

**b. “Existing Wireless Tower or Base Station.”**

UTC supports the proposal to include antennas, transceivers, and other equipment associated with and necessary to their operation, including coaxial cable and regular and backup

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<sup>37</sup> *Id.* at ¶97 (explaining that “we anticipate that, in the absence of definitive guidance from the Commission, the uncertainties under Section 6409(a) may lead to protracted and costly litigation and could adversely affect the timely deployment of a nationwide public safety network and delay the intended streamlining benefits of the statute with respect to other communications services.”)

<sup>38</sup> *Id.* at ¶104.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

power equipment.<sup>41</sup> UTC believes that the term “existing” requires only that the structure be previously constructed at the time of the collocation application. This interpretation is supported by the statutory language and context, as well as policy.<sup>42</sup>

**c. “Substantially Change the Physical Dimensions.”**

With regard to whether and how to define when a modification would “substantially change the physical dimensions” of a wireless tower or base station, UTC supports the use of the Collocation Agreement four-part test, except that the first part of the test should be modified as follows. Instead of adopting a 10% threshold for a substantial increase in the height of the structure, UTC suggests that the Commission develop a higher threshold, particularly in the context of wireless collocation on utility poles. This is appropriate because when a typical 40 foot pole is increased in height by five feet for a pole-top wireless attachment, as is necessary in many cases in order to meet utility safety codes, the increase in height of the pole would be greater than 10%, thus exceeding the first of the four parts of the test under the Collocation Agreement for a substantial increase in height. As such, UTC believes that “a standard that allows for separation from the nearest existing antenna of up to twenty feet [is] appropriate for structures that are much shorter than traditional towers, such as utility poles.”<sup>43</sup> Therefore, UTC supports the use of the test as applied to all modification requests, including collocation, replacement and removal of transmission equipment.

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<sup>41</sup> *Id.* at ¶105.

<sup>42</sup> *Id.* at ¶111.

<sup>43</sup> *Id.* at ¶121.

The Commission should expand the Collocation Agreement definition of towers, which is currently limited to “any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.”<sup>44</sup> Instead, the definition of towers should be expanded to other types of structures that may be defined as towers or base stations, such as buildings or utility poles.<sup>45</sup> UTC opposes the Intergovernmental Advisory Commission’s (“IAC”) suggestion that a change in a tower's height of only 5 percent that would “adversely affect substantial safety, esthetic or quality-of-life elements” would represent a substantial change in physical dimensions.<sup>46</sup> As explained above, even a 10% threshold would mean that many pole top wireless attachments would fall outside the four part test for a substantial change under the Collocation Agreement. If the Commission were to adopt the IAC’s suggestion, which it should not, it would make it even harder for a wireless pole top attachment to meet the requirements under the four part test under the Collocation Agreement. Thus, UTC opposes the IAC’s suggestion to adopt a 5 percent threshold for an increase in tower height as constituting a substantial change in physical dimensions under Section 6409(a) of the Spectrum Act.

**d. “Collocation,” “Removal,” and “Replacement.”**

UTC believes that the Commission should adopt the definition in the Collocation Agreement for the term “collocation” as the definition for these term “collocation” under Section 6409(a).<sup>47</sup> UTC supports the Commission’s proposal to interpret a modification of a “wireless tower or base station” to include collocation, removal, or replacement of an antenna or any other

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<sup>44</sup> *Id.* at ¶121.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at ¶122.

<sup>47</sup> *Id.* at ¶113.

transmission equipment associated with the supporting structure, even if the equipment is not physically located upon it.<sup>48</sup> UTC further believes that the Commission’s rules should cover a request to replace or harden a tower or other covered structure, if the replacement would not substantially change the physical dimensions of the structure.<sup>49</sup>

#### **e. Review and Processing of Applications, Time Limits, and Remedies**

UTC does not believe that the statutory language leaves any room for State or local governments to deny or condition approval, or, for that matter, impose any restrictions or requirements on the processes that a State or locality may adopt for the review of applications.<sup>50</sup> UTC believes that Section 6409(a) warrants establishment of time limits for State and local review and prescription of remedies in the event of a failure to approve a covered request under Section 6409(a)(1).<sup>51</sup>

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

Section 332(c)(7) states that regulation by State and local authorities of the “placement, construction, and modification of personal wireless service facilities “shall not unreasonably discriminate among providers of functionally equivalent services ....”<sup>52</sup> UTC supports the

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<sup>48</sup> *Id.* at ¶114.

<sup>49</sup> *Id.* at ¶115.

<sup>50</sup> *Id.* at ¶124.

<sup>51</sup> *Id.* at ¶134.

<sup>52</sup> 47 U.S.C. § 332(c)(7)(B)(i)(I).

Commission’s efforts to clarify the application of several discrete standards established in the 2009 Declaratory Ruling, as further described below.<sup>53</sup>

**a. Definition of Collocation.**

UTC believes that the Commission should apply the test for “substantial increase in size” under Section 332(c)(7) in the same manner as it interprets the test under Section 6409(a) for substantial change in physical dimensions.<sup>54</sup> The Commission should clarify when a siting application is considered complete for the purpose of triggering the 2009 Declaratory Ruling time frame and, if so, how that should be determined.<sup>55</sup> That will prevent local zoning authorities from continually dragging out the process of approval by asking for additional information.

**b. Local Moratoria.**

UTC believes that the Commission should apply the rules to prohibit siting moratoria lasting longer than six months in order to discourage localities from circumventing the intent of the Commission’s shot clock rules.<sup>56</sup> The moratoria should not toll the running of the reasonable time period for reviewing an application.<sup>57</sup>

**c. Application to DAS**

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<sup>53</sup> Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009) (“2009 Declaratory Ruling”).

<sup>54</sup> NPRM at ¶153.

<sup>55</sup> *Id.* at ¶154.

<sup>56</sup> *Id.* at ¶155.

<sup>57</sup> *Id.* at ¶154.

UTC believes that ordinances establishing preferences for the placement of wireless facilities on municipal property are unreasonably discriminatory.<sup>58</sup>

**d. “Deemed Granted” Remedy**

UTC urges the Commission to revisit this decision and adopt a “deemed granted” remedy.<sup>59</sup> Specifically, UTC agrees with PCIA that “[a]dding a deemed granted rule is critical to ensuring that states and localities act within the prescribed timelines.”<sup>60</sup> PCIA notes that seeking judicial relief for violations of Section 332(c)(7) can involve “great time and expense” and that a “deemed granted” remedy would “reduce costly and time-consuming litigation, allowing those resources to be used to fund rather than defend the expansion of broadband deployment.”<sup>61</sup>

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<sup>58</sup> *Id.* at ¶160.

<sup>59</sup> *Id.* at ¶161.

<sup>60</sup> *Id.* at ¶162.

<sup>61</sup> *Id.*

## **CONCLUSION**

In conclusion, UTC appreciates the opportunity to provide these comments in response to the Commission's NPRM and supports the Commission's efforts in clarifying requirements for wireless facilities siting policies that will further promote the deployment of DAS and small cells.

Respectfully submitted,

**Utilities Telecom Council**

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