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FCC Mail Room

January 30, 2014

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

**Re: Notice of Proposed Rulemaking, WT Docket. Nos. 13-238, 13-32;
WC Docket No. 11-59; FCC 13-122
Comments of the City of Henderson**

Dear Secretary Dortch:

The City of Henderson (City), a municipal corporation and political subdivision of the State of Nevada, appreciates this opportunity to submit comments to the Federal Communications Commission (Commission) on its September 26, 2013 Notice of Rulemaking (NPRM). Our comments are directed primarily at the Commission's proposed interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012; specifically in the area of local government permit authority and wireless provider use applications. While the City supports efforts to encourage the efficient and expeditious development of wireless facilities and infrastructure to further the deployment of broadband services, we cannot support the diminution of local oversight and review authority.

Local Government Permitting Authority

The City has authority and responsibility to protect the public health and welfare of its residents through local government land use, zoning, and planning requirements (*see* Henderson Municipal Code (HMC) Chapter 19.5, Use Regulations).¹ A conditional use permit from the City is required for most utility projects, including wireless communication facilities (HMC 19.5.4.T). Tower modifications to accommodate collocation requests are also addressed in our

¹ http://www.cityofhenderson.com/community_development/docs/devcode/revised%2011-5-13/19.5_use_regulations.pdf

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code (HMC 19.5.4.2(b)(7), and may be administratively approved if the form and height are within described dimensional limits (tower increases are limited to ten feet over the zoning district height, to a maximum height of 70 feet). The City's policy objectives with regard to wireless facility siting are designed to encourage safe and efficient rights-of-way use by facilitating the responsible, coordinated deployment of such facilities, and to this end allow public input to assist the determinations of its Planning Commission and City Council.

Section 6409(a)(1) provides: "Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." Taken literally, the language in this regulation would greatly impact the traditional land use authority of local government, whenever a wireless provider makes an application to modify or add to an existing wireless facility. The plain language of the Section, in particular the term "substantially change," appears to preempt local codes and regulations, effectively extending authority to the Commission over local siting and development issues. Application of the regulation would create an automatic expansion right to wireless providers; modifications to tower height or wireless equipment configuration would be exempt from local government review and consequently the community would be compelled to accept larger, more visible tower profiles irrespective of established zoning, and without community input.

The City believes that "substantially change" should be narrowly defined in terms of existing structure size and dimension, and limited to wireless expansion applications that are consistent with the conditions of approval of the original wireless structure. Also, the definition of "existing wireless tower or base station" in Section 6409(a) should be interpreted in the specific context of a structure designed and constructed primarily for the purpose of supporting one or more antennas for communications purposes. The City further urges the Commission to continue to allow local authority to regulate siting locations in situations where local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other discrete elements unique to the community exist.

Application Review and Processing

The City understands the Commission's interest in expediting local governmental review of wireless facility applications, in particular with respect to collocations on existing structures. In Henderson, most wireless provider applications for facilities are processed without undue delay. The development application entitlement process coordinates review and action by City staff, the City's planning commission which meets once a month, and the City Council which meets twice monthly. In the absence of any delays that may be occasioned by unresolved deficiencies in the application or missed deadlines by the applicant (or the applicant's subcontractor), final action on an application is normally completed within ten weeks. Also and as noted above, our code provides for administrative approval of collocation applications that are within specified dimensional limitations. We are not aware of instances where the City's ordinances and

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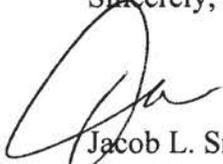
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procedures in this regard have impaired private commercial entities from providing broadband service within the City's jurisdictional limits.

The "Shot-Clock Rule" previously adopted by the Commission sets forth time-frames for local authorities to approve or deny a request for new wireless facilities (150 days) and collocations on existing facilities (90 days). The City does not support the adoption of shorter time-frames for review. Further to this, we oppose any suggestion that local government toll the shot-clock when a wireless applicant submits an incomplete application. We believe it is important to allow local government to maintain its review period for proposed changes to existing structures in particular circumstances involving local environmental and historical conditions, local traffic and economic development patterns, and other issues important to our community, with public input.

Henderson has developed considerable experience applying its policies to protect and further public safety, economic development, and other community interests. By adopting its proposed interpretation of Section 6409(a), the Commission could disrupt established, functioning review processes at substantial cost to local taxpayers and to the local economy, and possibly impair other community interests. The City urges the Commission to interpret the federal rule in a manner that recognizes those circumstances where local government is best suited to review siting applications and existing facility modifications, so that community interests will be protected while accommodating wireless service providers' access to the rights-of-way in a fair and consistent manner.

Sincerely,



Jacob L. Snow
City Manager

JS: lf

cc: Josh M. Reid, City Attorney