Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Practices	)	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

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE NATIONAL ASSOCIATION OF COUNTIES, THE NATIONAL LEAGUE OF CITIES, AND THE UNITED STATES CONFERENCE OF MAYORS

I. INTRODUCTION

The National Association of Telecommunications Officers and Advisors ("NATOA"),[1] the National Association of Counties ("NACo"),[2] the National League of Cities ("NLC"),[3] and

[1] NATOA's membership includes local government officials and staff members from across the Nation whose responsibility it is to develop and administer communications policy and the provision of such services for the Nation's local governments.

The United States Conference of Mayors ("USCM")[4] (collectively, "Commenters"), submit these reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), released September 26, 2013, in the above-captioned proceedings.

Commenters are encouraged that a number of concerns raised in the NPRM appear to be alleviated to some extent by many of the comments received to date. For example, there are few – if any – substantiated allegations that local governments hinder the deployment of wireless broadband infrastructure. And there is no support for the proposition that, based on these few unsubstantiated allegations, the Commission should adopt formal rules interpreting Section 6409, or weaken environmental and historical preservation review, or make changes to its 2009 "Shot Clock" order. Rather, the record and well-established principles of Federalism and the Tenth Amendment to the United States Constitution support Commenters' position that the Commission work cooperatively with local governments and industry to revise its guidance on Section 6409 and encourage the development of wireless broadband siting best practices.[5]

Furthermore, there is general consensus that a local government may require the filing of an application with an eligible facilities request and that such a request must adhere – at a minimum – to objective and nondiscretionary structural and safety codes. While there is no agreement yet on the full extent of information that may or may not be requested as part of the application process or on the full panoply of codes or other requirements that must be compiled

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[2] NACo represents county governments, and provides essential services to the nation's 3,069 counties.
[3] NLC serves as a resource to and an advocate for the more than 19,000 cities, villages, and towns it represents.
[4] USCM is the official nonpartisan organization of cities with populations of 30,000 or more. There are 1,192 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor.
[5] *See*, Reply Comments of Colorado Communications and Utility Alliance, *et al.* (filed Mar. 5, 2014).

with, such as setbacks and fall zones, Commenters believe that FCC-facilitated discussions between industry and local governments would resolve many of these issues. There is no need for a Commission rule dictating what can and cannot be included as part of the local application process.

Also, industry apparently recognizes the legitimacy of local government concerns dealing with the effect of Section 6409 on stealth installations and multiple or subsequent requests for collocation on the same existing wireless tower or base station. Again, Commenters urge the Commission to work with industry and local governments in a cooperative manner to resolve these issues in a way that promotes additional deployment of these facilities while respecting local government siting authority and community concerns.

Lastly, there is no serious opposition to the proposition that Section 6409 does not apply to a local government acting in its proprietary role. Therefore, we respectfully request that the Commission adopt this interpretation.

II. NARROWLY TAILORED DEFINITIONS WILL BEST ENSURE THE EFFICIENT DEPLOYMENT OF WIRELESS BROADBAND INFRASTRUCTURE AND RESPECT LOCAL GOVERNMENT SITING AUTHORITY

As a whole, the comments show that narrowly tailored definitions, which adhere to plain English standards, are the most efficient and equitable way to speed deployment while protecting local sovereignty. Commenters reiterate their strong belief that the Commission should refrain from adopting formal rules that would impose a one-size-fits-all interpretation of Section 6409. We, along with many other local government commenters, believe formal rules could prove to be unworkable and may actually hinder deployment. For example, the city of Alexandria, Virginia and other cities across the nation believe such an interpretation "would strongly discourage local

governments from approving initial "towers" and "base stations" – because those facilities could be expanded in ways that undermine local values later."[6]

If the Commission opts to adopt formal rules, it should apply narrow, "plain English" interpretations of key Section 6409 terms. Among other things: 1) the Commission must not define "wireless tower" to include a range of structures that the Commission and the industry have rightly never considered a wireless tower (e.g., utility pole, light pole, or building); 2) the Commission cannot read "base station" to reach beyond communications equipment to other support structures; and 3) the Commission cannot define "substantially change the physical dimensions of the tower or base station" to completely ignore a tower's or base station's actual characteristics. For example, if the test would lead to the same automatic result for a 200-foot facility and 2-foot one, or for a facility in a historic district and one outside of it, it does not measure a "change" at all. Such an approach, supported by many other commenters, would act to implement Section 6409 without sacrificing local oversight or doing disservice to the stated goals and legislative limitations of Section 6409.

III. THE POTENTIAL ADVERSE IMPACTS OF DAS AND SMALL CELL INSTALLATIONS ARGUE AGAINST EXPEDITED ENVIRONMENTAL REVIEW MEASURES

The Commission sought and received numerous comments on its proposal to subject DAS and small cell installations to expedited environmental review measures under the National Environmental Policy Act of 1969 ("NEPA") and Section 106 of the National Historic Preservation Act ("NHPA") since these "new wireless technologies . . . may, because of their

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[6] *See*, Comments of the City of Alexandria, Virginia, et al. (filed Feb. 3, 2014). "We therefore reiterate that whether it be through expanded informal guidance or in the adoption of formal rules, the Commission should refrain from adopting definitions of key statutory terms that would cause these terms to mean something beyond what the average person would think." Reply Comments of the Colorado Communications and Utility Alliance, *et al.*, at 10 (filed Mar. 6, 2014).

intrinsic characteristics, have minimal effects on the environment."[7] While Commenters agree that "a great number of installations could potentially have little to no effect on historic resources"[8] or may cause only a "minimal environmental footprint,"[9] we do not agree that such installations should be subject to a categorical exclusion from review nor do we believe the Commission should make a determination that such installations are not an "undertaking" under Section 106.[10]

As the Commission correctly points out, these installations "may require the deployment of dozens or hundreds of small cells or antennas in an area in order to achieve the ubiquitous coverage that would previously have been provided by the deployment of a single large cell site."[11] If the collocation mandate of Section 6409 applies to small cells to permit the sorts of expansions allowed under the proposed rules, it is impossible to say that the environmental or historic impact from the potential deployment of hundreds of antennas and other pieces of equipment in such installations would be non-existent or *de minimis.*[12] Rather, the *cumulative* effect of these installations could very easily result in significant and severe environmental or historic impacts. Indeed, as one commenter stated, the placement of equipment on "original historic street lamps or street signs also has the potential to cause an adverse effect."[13]

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[7] NPRM at ¶11.
[8] *See,* Comments of National Conference of State Historic Preservation Officers (filed Feb. 3, 2014).
[9] *See,* Comments of AT&T (filed Feb. 3, 2014).
[10] *Id.*
[11] NPRM at ¶12.
[12] It is not obvious at all that Section 6409 is meant to apply to small cells or to historical or environmental reviews, as the City of Alexandria, *et al*. explained. The Commission would need to recognize that the defining characteristic by which it allows the categorical exemption is that the small cell is, in fact, a small cell with limited supporting facilities. Under the rules as proposed, however, not just the small cell but the structure to which it is attached could be modified to support much larger facilities, and multiple equipment cabinets.
[13] *See,* Comments of Arkansas Historic Preservation Program (filed Feb. 3, 2014).

Furthermore, the proposition that these installations be excluded from environmental and historical review fails to appreciate the unique attributes and needs of our communities. Local governments and their residents are "in the best position to efficiently and adequately protect our historic resources due to our understanding and expertise with contextual issues."[14]

San Antonio, Texas is a prime example of a large metropolitan city (the 7th largest in the country) that must carefully balance the deployment of wireless and landline broadband infrastructure with preserving its "unique historic and cultural heritage."[15] While DAS deployments may be "less damaging to historic areas," the "[i]mpacts of the deployment of DAS components, including antennas, power supplies, converters, transceivers, and other equipment, on historic structures, such as building facades and street lights" cannot be ignored.[16] So while "individually" the deployment of a single small cell or antenna may not result in a significant effect on the environment, *collectively*, an installation may.

Likewise, Washington, DC faces various challenges as it seeks "a balance between the preservation of our nation's historical buildings and structures and the deployment of advanced technology."[17]

Section 6409(a)(3) contains the admonition that "[n]othing in paragraph (a) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969." Commenters join with others in urging the Commission to reject calls to categorically exclude DAS installations from environmental and historic preservation review. Rather, we believe in "pursuing a collaborative approach focused on best practices rather than [a] broad, one-size-fits-all rulemaking." We concur with the

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[14] *See*, Reply Comments of the City of St. Paul, Minnesota (filed Mar. 5, 2014).
[15] *See*, Comments of the City of San Antonio, Texas (filed Feb. 3, 2014).
[16] *Id.*
[17] *See*, Comments of the District of Columbia (filed Feb. 3, 2014).

National Conference of State Historic Preservation Officers ("NCSHPO") that "using the principles of the existing signed national collocation agreement and the NPA will satisfactorily exclude many DAS and small cell systems – still leaving mechanisms in place to deal with the few situations where adverse effects may be possible. If these agreements need modifications to address elements of DAS, [the NCSHPO is] happy to work with the FCC and the ACHP in that direction. Additionally, we continue to be ready to help with the creation and approval of a separate NPA covering this or similar technologies."

IV. THE COMMISSION SHOULD NOT REVISIT ITS "SHOT CLOCK" ORDER

As we stated above, there is a lack of substantiated allegations that the 2009 "Shot Clock" order is not working as the Commission intended.[18] We strongly urge that the Commission make no changes to the order.

With respect to AT&T's vague allegation that "some local jurisdictions continue to take advantage of the ambiguities in the process by applying a separate Section 332(c)(7) shot clock to each of many local proceedings," we agree that once an applicant has submitted a *complete* application to the appropriate local government authority, the shot clock timeframes apply to the "overall municipal review from start to finish and does not restart with each subordinate local board or body."[19] There is no evidence in the record that any specific jurisdiction is "taking advantage" of ambiguities, and certainly no evidence that the "deemed granted" remedy previously considered and rejected by the Commission is now warranted.

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[18] Order on *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 (2009) ("2009 Shot Clock Order").

[19] *See*, Comments of AT&T (filed Feb. 3, 2014).

V. CONCLUSION

The comments show that local government processes are not hindering deployment on a wholesale level. Where issues may arise that cause conflict between local governments and industry, the Commission could be most helpful by creating an atmosphere conductive to mutually beneficial discussions. Commenters hope that the Commission will take this opportunity to navigate such a path.

Respectfully submitted,

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