

**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
)	

To: The Commission

**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

March 5, 2014

Chuck Hogg, President
Alex Phillips, FCC Committee Chair
Jack Unger, Technical Consultant

Stephen E. Coran
Kevin M. Cookler
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006-1809
(202) 416-6744
Counsel to the Wireless Internet Service Providers Association

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SUMMARY

The Wireless Internet Service Providers Association (“WISPA”) replies to certain of the initial Comments to reiterate support for many of the Commission’s proposals to implement Section 6409(a) of the Spectrum Act and to streamline environmental and historic preservation review. The Commission should reject the arguments by those commenters, primarily State and local governments, seeking to undermine Congressional intent and sharply limit the public interest benefits of Section 6409(a) and those associated with streamlining environmental and historic preservation review.

The record shows strong support for broadly defining “transmission equipment,” “wireless” and “existing wireless tower and base station.” Any attempt to limit “wireless” to cellular, or limit “existing” structures to only towers, as some propose, would severely undermine the Congressional mandate of accelerating the provision of broadband services. In particular, limiting “existing” structures to those that are constructed “solely or primarily” to support communications would exclude structures such as water tanks, grain silos and utility poles, critical vertical infrastructure in rural areas where traditional communications towers are less plentiful and the need for broadband services is greatest. Completed applications should generally be deemed granted within 45 days if they are not approved, and the Commission should make clear that the imposition of unreasonable conditions on collocation approvals will not be permitted.

There is broad consensus for adopting an exemption from the environmental and historic preservation review process for new deployments and collocations based on objective and technology-neutral physical characteristics. It is clear that the Commission has authority to exempt construction projects that may have *de minimis* effects on the environment and historic properties. WISPA urges the Commission to exclude facilities with an antenna volume not

exceeding six (6) cubic feet. Regardless of whether the Commission adopts such exclusion, the comments overwhelmingly demonstrate that collocations on all existing non-tower structures, such as water tanks, grain silos and utility poles, are unlikely to have adverse environmental effects and should be added to the exemption in Note 1 to Section 1.1306. Finally, the record developed in this proceeding supports the Commission's conclusions that collocations on utility poles and deployments in a utility right-of-way should be excluded from the Section 106 historic review process, regardless of whether the utility pole is over 45 years old or whether the right-of-way is located within a historic district. Streamlining the review process for all communications facilities would serve the public interest by promoting the deployment of fixed broadband services, especially in rural areas.

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**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby replies to certain of the Comments filed in response to the Notice of Proposed Rulemaking (“*NPRM*”) adopted by the Commission on September 26, 2013.¹ The Comments demonstrate strong support for adoption of rules implementing Section 6409(a) of the Spectrum Act² to accelerate the collocation process for all

¹ *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Notice of Proposed Rulemaking, WT Docket No. 13-238, *et al.*, 28 FCC Rcd 14238 (2013) (“*NPRM*”). On December 5, 2013, the *NPRM* was published in the Federal Register, which established a deadline of March 5, 2014 for filing Reply Comments. *See* 78 Fed.Reg. 73144 (Dec. 5, 2013). Accordingly, these Reply Comments are timely filed.

² *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112-96, H.R. 3630, 126 Stat. 156, § 6409(a) (enacted Feb. 22, 2012) (“Spectrum Act”).

wireless communications services, consistent with Congressional intent. Comments further favor a “deemed granted” approach and dispute resolution with the Commission under the preemption authority Congress enacted. The record further shows that the Commission should expand the universe of structures that would be subject to streamlined environmental and historic preservation review. Not surprisingly, local governments generally oppose these changes and instead suggest that industry and governments establish “best practices” as a substitute for nationwide rules and standards that can be applied uniformly to create certainty. They further contend that any rules the Commission adopts should narrowly interpret Section 6409(a). These arguments are not in the public interest and should be rejected.

Discussion

I. THE RECORD REFLECTS A NEED FOR RULES IMPLEMENTING AND ENFORCING SECTION 6409(a) OF THE SPECTRUM ACT.

The Commission’s authority to adopt and enforce rules implementing Section 6409(a) of the Spectrum Act is both clear³ and necessary. PCIA pointed out that a failure to adopt rules and definitions that would be applied nationwide “would inevitably lead to patchwork implementation and undermine the streamlining purpose of the legislation.”⁴ As evidence that this is already occurring, other commenters noted that, despite the clear language of Section 6409(a) and guidance from the Wireless Telecommunications Bureau,⁵ some local governments have been adopting ordinances that are inconsistent with Congressional intent.⁶

³ See *id.* at § 6003 (giving FCC authority to “implement and enforce” the provisions of Section 6409(a)).

⁴ Comments of PCIA – The Wireless Infrastructure Association and the HetNet Forum, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“PCIA Comments”) at 24, *citing NPRM* at 14275.

⁵ See *Public Notice*, “Wireless Telecommunications Bureau Offers Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012”, 28 FCC Rcd 1 (WTB 2013).

⁶ See Comments of Crown Castle, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“Crown Castle Comments”) at 9 (describing San Francisco ordinance that would exclude DAS facilities from Section 6409(a) preemption); Comments of League of California Cities, *et al.*, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“League of Cal. Cities Comments”) at 9; PCIA Comments at 26-27 (noting efforts of local jurisdictions to limit protections afforded by Section 6409(a)).

Some local governments asked the Commission to merely encourage local governments and industry to develop “best practices” in lieu of adopting formal rules.⁷ The Commission should reject this approach, which would be clearly contrary to Congressional intent and would be entirely ineffective in streamlining the collocation process and avoiding unnecessary delay. Just as local governments are already giving differing interpretations to Section 6409(a), so, too, would a “best practices” regime lead to differing interpretations, only without the benefit of legal enforcement and remedies. Further, requiring “industry” and “local governments” to determine “best practices” in the first instance would require those constituencies to be adequately represented in any discussions, and that cannot be guaranteed. As one example, WISPA would face the risk of being left out of a “best practices” process and its members’ unique concerns would be unaddressed by other stakeholders. Allowing state and local governments to implement Section 6409(a), as one commenter suggests, would be no better.⁸ Instead, as PCIA suggests, best practices could be used to develop common forms for collocation application, and are better employed after the Commission establishes rules based on a full and complete record.⁹

II. THE COMMISSION SHOULD BROADLY DEFINE THE STATUTORY TERMS.

As an initial matter, WISPA agrees with the Commission¹⁰ and other parties that Section 6409(a) is not limited to “personal wireless services,” but covers all types of wireless services, including services provided over unlicensed spectrum.¹¹ This is of particular significance to fixed broadband providers that do not provide “telecommunications” services, which is a requirement for being a “personal wireless service” under Section 332(c)(7) of the

⁷ See, e.g., Comments of the City of Alexandria, Virginia, *et al.*, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“Alexandria Comments”) at 5; Comments of the District of Columbia, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“DC Comments”) at 2.

⁸ See DC Comments at 7.

⁹ See PCIA Comments at 25-26.

¹⁰ See *NPRM* at 14277.

¹¹ See Comments of AT&T, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“AT&T Comments”) at 22; Comments of Towerstream Corporation, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“Towerstream Comments”) at 13-14.

Communications Act of 1934, as amended (the “Act”). Further, as WISPA and PCIA both pointed out, the Commission’s rules should be applied in a technology-neutral manner.¹²

The City of Alexandria takes a creative view in suggesting that Section 6409(a) applies only to “personal wireless services” and does not apply to other types of services.¹³ It also states that “base station” traditionally refers to the electronics associated with mobile devices.¹⁴ The City of Alexandria’s Comments reflect no understanding of fixed wireless Internet services that use unlicensed spectrum transmitted from “base stations” to provide broadband access – “information” services and not “telecommunications” services – to consumers that, in many cases cannot receive such services from other terrestrial providers. Had Congress intended to limit Section 6409(a) to “personal wireless services,” it could have done so rather easily by simply using that term or cross-referencing to Section 332(c)(7) of the Act. Had Congress intended to limit “base stations” to facilities employed solely in connection with mobile wireless networks, it could have easily done so by adding the word “mobile” to modify “wireless.” That Congress took neither of these approaches confirms that Section 6409(a) applies to all wireless services, regardless of whether such services are “information” services or “telecommunications” services, whether licensed or unlicensed, fixed or mobile.

“Transmission equipment” and “wireless.” Like WISPA, commenters from industry supported a definition of “transmission equipment” that includes antennas and other necessary associated equipment such as backhaul facilities,¹⁵ power supply and back-up generators.¹⁶ The

¹² See Comments of WISPA, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“WISPA Comments”) at iii, 2; PCIA Comments at 29.

¹³ See Alexandria Comments at 26.

¹⁴ See *id.*

¹⁵ See PCIA Comments at 29.

¹⁶ See Comments of Fibertech Networks, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“Fibertech Comments”) at 18; Comments of Sprint Corporation, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“Sprint Comments”) at 8; Comments of the Telecommunications Industry Association, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“TIA

Comments appear to lack any significant objection to an inclusive definition of “transmission facilities,” and the Commission therefore should follow the record and adopt its proposed definition with the specific inclusion of backhaul facilities.¹⁷

“Existing wireless tower or base station.” In addition to WISPA, many commenters agreed with the Commission’s proposal to interpret the terms “wireless tower” and “base station” to include “structures that support or house an antenna, transceiver, or other associated equipment that constitutes part of a base station, *even if they were not built for the sole or primary purpose of providing such support.*”¹⁸

Many commenters agreed that this definition would be consistent with Congressional objectives. For example, PCIA stated that “[l]imiting the definition only to those structures built ‘solely or primarily’ for wireless would fail to recognize the current diverse state of wireless deployment undertaken by providers and encouraged by many states and municipalities to minimize impacts.”¹⁹ This is especially true for WISPs, many of which operate in rural areas where the *only* vertical infrastructure available may be existing structures such as water tanks, grain silos or utility poles. To apply more restrictive rules to areas where traditional communications towers are *less* plentiful would significantly undermine Congress’ intent to streamline procedures and accelerate broadband deployment in all areas of the country, not just those where traditional communications towers happen to exist.

Comments”) at 5; Comments of CTIA – The Wireless Association, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“CTIA Comments”) at 13.

¹⁷ See *NPRM* at 14277-78. The City of Tempe argues that backup power generators should not be included within the definition if “transmission equipment,” especially if the generator is powered by hazardous substances. See Comments of Tempe, Arizona, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“Tempe Comments”) at 11-12, 14, 17. In such cases, WISPA submits that it would be appropriate for a State or local authority to approve the collocation request with reasonable conditions designed solely to ensuring public safety in the installation and use of the backup generator.

¹⁸ *NPRM* at 14279 (emphasis added). See WISPA Comments at 7; AT&T Comments at 22; Fibertech Comments at 22; PCIA Comments at 31; Sprint Comments at 8-9; TIA Comments at 5; Towerstream Comments at 16.

¹⁹ PCIA Comments at 31. See *also id.*

The Commission should reject suggestions from municipalities that streamlined collocation should apply only to structures constructed for the primary purpose of attaching communications facilities.²⁰ These parties attempt to harmonize Section 6409(a) with the more limiting definition of “tower” in the Antenna Collocation Programmatic Agreement. Congress, however, did not cross-reference Section 6409(a) to the Collocation Agreement, suggesting that the Commission could apply its own new definition. Moreover, such a narrow interpretation would sharply limit the benefits intended by the statute, foreclosing streamlined collocation on structures such as water tanks and grain silos that are, in rural areas, traditional facilities for wireless equipment even if they were initially constructed for different purposes. The ability to use existing infrastructure for collocation is both consistent with Congressional intent and the objectives of Section 706 of the Act, which are intended to promote the reasonable and timely deployment of broadband to all Americans. Without the ability to collocate on existing water tanks, grain silos and other similar facilities, WISPs would be forced to apply to construct new towers at significant cost, substantial delay and disruption to the environment. In many cases, WISPs will have no choice but to abandon plans to serve a rural community, a result that would perpetuate the digital divide and contravene the public interest.

WISPA thus supports the Commission’s proposal to broadly interpret Section 6409(a) so it applies to *all* structures, regardless of whether they were built “solely or primarily” to support communications equipment. This approach would not only be consistent with Congressional

²⁰ See DC Comments at 8; Comments of the Intergovernmental Advisory Committee, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“IAC Comments”) at 5; Comments of the National Association of Telecommunications Officers and Advisors, *et al.*, WT Docket No. 13-238, *et al.*, (Feb. 3, 2014) at 13; Comments of the Colorado Communications and Utilities Alliance, *et al.* WT Docket No. 13-238, *et al.*, (Feb. 3, 2014) at 8; Alexandria Comments at 23; Comments of The Piedmont Environmental Council, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) at 9; Comments of the City of Minneapolis, Minnesota, WT Docket No. 13-238, *et al.*, (Jan. 31, 2014) at 12; League of Cal. Cities Comments at 4; Comments of the City of San Antonio, Texas, WT Docket No. 13-238, *et al.*, (Feb. 3, 2014) at 11; Tempe Comments at 3; Comments of the City of Salem, WT Docket No. 13-238, *et al.*, (Feb. 3, 2014) at 10.

intent, it would also promote policies in Section 706 by enabling more rapid deployment of broadband to all Americans.

Similarly, the Commission should ensure that its definition of “base station” includes all forms of communications facilities, whether fixed or mobile.²¹ The Commission should reject the views of those commenters that seek to limit the inclusion of certain components.²² Such an interpretation would create a vehicle for local governments to subject collocation applicants to more rigid approval requirements if, for instance, just one base station component were not included. Here again, the intent of Congress would be thwarted. To quote PCIA, “the Commission should adopt a base station definition that allows for streamlined modifications to facilitate deployment and allow for the replacement of base station components as necessary.”²³

How the Commission defines the term “existing” is also a critical issue in this proceeding. PCIA suggests that a structure built for the primary purpose of housing or supporting communications facilities should be deemed “existing” even if it does not currently host wireless equipment, and further states that other structures should be deemed “existing” if they currently support or house wireless equipment.²⁴ This proposal appears to strike the appropriate balance, and would allay the fears of the Intergovernmental Advisory Committee (“IAC”) that any structure, even a single family home in a residential neighborhood, would be considered “existing.”²⁵

“Substantially Change the Physical Dimensions” WISPA supports PCIA’s proposed definition of what constitutes a “substantial change” in physical dimensions under Section

²¹ See WISPA Comments at 8.

²² See, e.g., IAC Comments at 5.

²³ PCIA Comments at 34.

²⁴ See PCIA Comments at 34.

²⁵ See IAC Comments at 5.

6409(a).²⁶ The Commission should adopt the four-part test in the Commission’s 2001 Collocation Agreement, except that the last part of the test should be consistent with the Commission’s 2004 Nationwide Programmatic Agreement test for determining when replacement towers are deemed to substantially increase the size of the existing tower.²⁷ Under this definition, the last part of the four-part test for purposes of Section 6409(a) should read “the mounting of the proposed antenna would expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site.”²⁸ WISPA agrees with PCIA that this definition will reduce the need for the construction of new towers by facilitating the collocation on existing structures, while meeting the concerns of IAC to minimize the visual impact of facilities.²⁹

III. THE COMMISSION SHOULD ESTABLISH A “SHOT CLOCK” ON STATE AND LOCAL APPROVALS, AND ENSURE THAT APPROVALS DO NOT CONTAIN UNREASONABLE CONDITIONS.

Many commenters asked the Commission to adopt a “shot clock” for State and local approvals, after which time collocation requests would be deemed granted.³⁰ In its Comments, WISPA suggested that the Commission allow State and local governments 60 days to approve completed collocation requests.³¹ WISPA has no objection to a shorter time period, whether the

²⁶ PCIA Comments at 37-40.

²⁷ Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, § III.B, codified at 47 C.F.R. Part 1, Appendix C.

²⁸ *Id.*

²⁹ PCIA Comments at 38-40.

³⁰ See PCIA Comments at 57; Comments of Verizon and Verizon Wireless, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) (“Verizon Comments”) at 31; Crown Castle Comments at 15; CTIA Comments at 18; Comments of Joint Venture: Silicon Valley, WT Docket No. 13-238, *et al.*, (Feb. 3, 2014) at 7; Comments of the Utilities Telecom Council, WT Docket No. 13-238, *et al.*, (Feb. 3, 2014) (“UTC Comments”) at 15-17; Towerstream Comments at 27; Sprint Comments at 12.

³¹ See WISPA Comments at 10.

14 days proposed by AT&T³² or the 45 days proposed by CTIA,³³ Fibertech,³⁴ PCIA³⁵ and Verizon.³⁶ This approval period could be tolled if the application is incomplete and could be extended by mutual agreement of the local government and the applicant.³⁷ In the absence of a reasonable period by which local governments should act, as Towerstream notes, applicants would be subject to indefinite delays in approving requests that should be routinely processed.³⁸

The application process itself must be administered in a fair, non-discriminatory and technology-neutral manner. WISPA agrees with Crown Castle that applications should be limited to a signed application form, a demonstration of the applicant's entitlement or authorization and a site plan showing that the request does not involve a substantial change in the physical dimensions of the proposed structure.³⁹ Applications should be reviewed only to determine whether the request is an "eligible facilities request" and there is no "substantial change."⁴⁰ As many commenters urge, local governments should not be permitted to charge excessive fees, and should not be permitted to impose conditions that would have the effect of denying the collocation request.⁴¹

IV. THE COMMISSION'S ENVIRONMENTAL AND HISTORIC PRESERVATION RULES SHOULD BE TECHNOLOGY-NEUTRAL.

There is broad support in the record that the Commission should adopt rules to streamline the environmental and historic preservation review process for new deployments and collocations on existing structures that are based on objective and technology-neutral physical

³² See AT&T Comments at 26-27.

³³ See CTIA Comments at 16.

³⁴ See Fibertech Comments at 31.

³⁵ See PCIA Comments at 48. WISPA also agrees with PCIA that local governments should be permitted to adopt shorter approval periods.

³⁶ See Verizon Comments at 31.

³⁷ See PCIA Comments at 48; City of Alexandria Comments at 44-45.

³⁸ See Towerstream Comments at 23.

³⁹ See Crown Castle Comments at 11.

⁴⁰ See *id.*

⁴¹ See AT&T Comments at 26; UTC Comments at 15.

characteristics.⁴² WISPA strongly agrees with PCIA and other commenters that the Commission should amend Note 1 to Section 1.1306 to exclude from most routine environmental and historic preservation review the installation of a “communications facility” based on the cubic volume of the antenna and associated equipment.⁴³

As discussed in WISPA’s Comments, the Commission should adopt a definition of “antenna volume” of six (6) cubic feet instead of three (3) cubic feet.⁴⁴ Other commenters also suggested that the Commission should increase the size of the antenna volume definition to encompass similar physically unobtrusive antennas that would have minimal effects on the environment.

For example, AT&T proposed extending the exemption to include “modestly-sized antennas and related equipment that can be used for microwave backhaul where needed.”⁴⁵ AT&T explained that microwave antennas may be the only feasible backhaul solution because of the location of the facility or the lack of availability of fiber and that such antennas and associated equipment can be deployed without any significant environmental effects.⁴⁶ AT&T recommended that the Commission increase the definition of antenna volume by two (2) cubic feet for the antenna volume and seven (7) cubic feet for the accompanying equipment.⁴⁷

Crown Castle proposed that the Commission modify the maximum antenna volume allowed to five (5) cubic feet in situations where multiple carriers are collocated on a structure.⁴⁸ Crown Castle noted that it deploys antennas that are used for DAS and small cells that are larger

⁴² See PCIA Comments at 7-8; TIA Comments at 4; UTC Comments at 6; Verizon Comments at 10; AT&T Comments at 14-17; Sprint Comments at 6; Crown Castle Comments at 5-7; Comments of the Association of American Railroads, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) at 9-12; Towerstream Comments at 30-31.

⁴³ See PCIA Comments at 7.

⁴⁴ See WISPA Comments at 15.

⁴⁵ AT&T Comments at 15.

⁴⁶ See *id.* at 16.

⁴⁷ See *id.* at 16, n. 15.

⁴⁸ See Crown Castle Comments at 5-6.

than three (3) cubic feet in order to accommodate multiple carriers and that one antenna it deploys is actually around seven (7) cubic feet.

WISPA agrees with these commenters that the Commission can increase the cubic volume parameters proposed by PCIA without causing any adverse impacts on the environment. While AT&T and Crown Castle have proposed definitions that vary from WISPA's proposal of six (6) cubic feet, they both agree that antennas slightly larger than three (3) cubic feet are physically unobtrusive and would have minimal effects on the environment. Therefore, WISPA urges the Commission to exclude antennas with a cubic volume of up to six (6) feet. Alternatively, the Commission should increase the maximum cubic volume to at least five (5) feet for antennas as proposed by AT&T and Crown Castle, regardless of whether the antenna supports a single carrier or multiple carriers.

Independent of whether the Commission adopts a broad categorical exclusion for communications facilities, WISPA agrees with other commenters that the Commission should also amend Note 1 to Section 1.1306 to encompass collocations of all antennas on "other structures."⁴⁹

V. THE COMMISSION CAN STREAMLINE THE HISTORIC PRESERVATION REVIEW PROCESS WITHOUT CAUSING ADVERSE IMPACTS TO HISTORIC PROPERTIES

WISPA generally agrees with other commenters within the industry that the Commission can and should exempt activities that may have *de minimis* effects on historic properties.⁵⁰ In addition to the issues raised in WISPA's comments, WISPA agrees with Verizon that the historic preservation review process should not be required for any communications facilities collocated

⁴⁹ See PCIA Comments at 17-18; UTC Comments at 4; AT&T Comments at 9-10; Sprint Comments at 6; Verizon Comments at 14-16.

⁵⁰ See PCIA Comments at 6-16, 21-23; AT&T Comments at 10-14; Sprint Comments at 3-6; Verizon Comments at 8-19; UTC Comments at 7-8.

on utility poles and other utility structures, not just those utility poles and structures that are less than 45 years old.⁵¹ WISPA also agrees with Verizon and UTC that the Commission should take steps to improve the Tribal consultation process, such as by eliminating the requirement to notify Native American tribes if review is required solely because the structure is over 45 years old and by clarifying when it is appropriate to require a site monitor.⁵²

While some local governments and other commenters opposed any changes to the Commission's historic preservation review procedures, several actually agreed with WISPA that certain types of deployments should be exempt from historic review because they are unlikely to cause adverse impacts.

For example, although it opposed a broad categorical exemption, the District of Columbia stated that "it would not need to review installations on sites that have not been listed in or determined eligible for listing in the National Register"⁵³ WISPA strongly agrees with the District of Columbia that collocations on existing structures that are not listed in or eligible for listing in the National Register of Historic Places should be exempt from the Section 106 historic preservation review process. As discussed in WISPA's comments, the Commission should streamline the historic preservation review process of all communications facilities collocated on existing structures, such as water tanks, grain silos, utility distribution poles and other structures.⁵⁴ WISPA agrees with the District of Columbia that the Commission's rules should focus on whether the underlying structure is a historic property, rather than whether the structure

⁵¹ See Verizon Comments at 13.

⁵² See Verizon Comments at 19-23; UTC Comments at 8-9.

⁵³ DC Comments at 25-26.

⁵⁴ See WISPA Comments at 17.

is 45 years old. WISPA urges the Commission to eliminate the 45-year age threshold for the exclusion in the Collocation Agreement for all non-tower structures.⁵⁵

Several commenters, including the District of Columbia, agreed with WISPA that utility poles are unlikely to have historic value and should be excluded from review and that facilities constructed in or near a right-of-way should also be excluded. The District of Columbia acknowledged that “[i]t is possible that the [DC State Historic Preservation Office] could also exclude from review installations on utility poles.”⁵⁶ Similarly, the Arkansas Historic Preservation Program stated that “[w]e are in general not opposed to the exclusion of review for utility poles older than 45 years in age, as we feel that the addition of DAS structures to existing poles would not cause an adverse effect.”⁵⁷ The Arkansas Historic Preservation Program further stated that “the placement of DAS structures on modern utility poles would not cause an adverse effect on nearby historic properties, or within a historic district.”⁵⁸ The California Office of Historic Preservation, Department of Parks and Recreation recommended that the Commission exempt utility poles that are 45 years or older from review under Section 106 and exempt utility corridors that have utility poles and associated infrastructure, even when identified as listed in or eligible for listing in the National Register.⁵⁹

Thus, the record developed in this proceeding makes clear that the historic review process can be streamlined to eliminate reviews for communications facilities that are unlikely to have adverse effects on historic properties, including, but not limited to, collocations on utility poles and other non-tower structures that are 45 years or older and communications facilities deployed

⁵⁵ See PCIA Comments at 21 (Commission should adopt an NHPA exclusion for utility poles and other non-tower structures, such as street lamps or water towers, that are over 45 years old and are not covered by the Collocation Agreement due to their age.”); Verizon Comments at 13.

⁵⁶ DC Comments at 26.

⁵⁷ Comments of Arkansas Historic Preservation Program, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) at 1.

⁵⁸ *Id.* at 2.

⁵⁹ See Comments of Office of Historic Preservation, Department of Parks and Recreation, WT Docket No. 13-238, *et al.* (Feb. 3, 2014) at 2.

in a right-of-way for above-ground utility distribution or transmission lines or communications towers.⁶⁰

Conclusion

The Commission has a distinct opportunity to revise its wireless facilities rules to improve access to structures and expedite federal, State and local approvals. Any rules must be technology-neutral and include facilities for licensed and unlicensed fixed wireless broadband services as well as DAS and small cells. WISPA thus supports many of the Commission's proposals and, to take full advantage of the opportunity this proceeding provides, recommends further clarification and expansion of certain proposed rules to reflect Congressional intent and to maximize the public interest objectives of this proceeding.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

March 5, 2014

By: */s/ Chuck Hogg, President*
/s/ Alex Phillips, FCC Committee Chair
/s/ Jack Unger, Technical Consultant

Stephen E. Coran
Kevin M. Cookler
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006-1809
(202) 416-6744
Counsel to the Wireless Internet Service Providers Association

⁶⁰ See PCIA Comments at 21-23; AT&T Comments at 11-14.