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
	)	
2012 Biennial Review of Telecommunications Regulations	)	WT Docket No. 13-32

REPLY COMMENTS OF TOWERSTREAM CORPORATION

Towerstream Corporation ("Towerstream"), by its attorneys, hereby submits reply comments in the above-captioned proceeding,[1] elaborating on comments it filed previously as well as responding to comments filed by other parties.

Comments filed in this proceeding are generally divided along expected lines. Local regulating authorities have opposed the Congressional reach of Section 6409(a) of the Spectrum Act[2] and proposed exemptions from environmental and historic preservation review requirements for distributed antenna systems ("DAS") and small cells. Broadband infrastructure providers have urged the adoption of rules that will implement the Spectrum Act's intent to streamline and facilitate broadband deployment. Towerstream urges the Federal

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[1] *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*, Notice of Proposed Rulemaking, 28 FCC Rcd 14238 (2012) ("NPRM").

[2] *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) (codified as 47 U.S.C. § 1455(a)) ("Spectrum Act").

Communications Commission ("FCC" or "Commission") to proceed with this rulemaking in a manner that is consistent with the Commission's directive and authority to accelerate broadband deployment and remove barriers to infrastructure investment.

Many local regulating authorities argue that the Commission should not adopt formal rules, but rather that it should provide additional time for local governments and industry to develop best practices, solutions, and consensus about compliance with Section 6409(a).[3] While the Commission and the states were both tasked with encouraging broadband deployment,[4] Congress directed the Commission alone to take action to accelerate broadband deployment and remove barriers to infrastructure investment if it found that broadband was not being deployed in a reasonable and timely fashion.[5] In the two most recent reports on broadband deployment, the Commission found that barriers to infrastructure investment continue to exist and that broadband is not being reasonably or timely deployed.[6] With that determination having been made twice, the Commission should not delay action that will assist it in fulfilling its directive by deferring to a local government-industry discussion process. The discussion regarding Section 6409(a) must

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[3] *See* City of Alexandria, Virginia *et al*. Comments, WT Docket No. 13-238 *et al.* at 5 (filed Feb. 3, 2014); City of Chicago Comments, WT Docket No. 13-238 *et al.* at 4 (filed Feb. 3, 2014); City of San Antonio, Texas Comments, WT Docket No. 13-238 *et al.* at 7 (filed Feb. 3, 2014); and The District of Columbia Comments, WT Docket No. 13-238 *et al.* at 1-2 (filed Feb. 3, 2014).

[4] *See* 47 U.S.C. § 1302(a) ("Section 706(a)").

[5] *See* 47 U.S.C. § 1302(b) ("Section 706(b)").

[6] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Eighth Broadband Progress Report, 27 FCC Rcd 10342, ¶ 139 (2012) and *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, Seventh Broadband Progress Report and Order on Reconsideration, 26 FCC Rcd 8008, ¶ 65 (2011).

take place now in this rulemaking process, and must result in the adoption of rules to clarify and implement Section 6409(a). Section 6409(a) is a pathway to greater broadband deployment, and the Commission must not delay in enabling broadband providers to utilize that path.

I. The Commission Has Authority To Implement Section 6409(a) and Limit the Authority of Localities To Regulate Broadband Facilities Sitings

Towerstream agrees with the Wireless Internet Service Providers Association ("WISPA") that Section 706(a) "enables the Commission to exercise its authority to adopt certain rules that will advance broadband deployment … [and] provides independent authority for adoption of regulations that streamline collocation procedures and thus accelerate the provision of broadband services on a more reasonable and timely basis."[7] Moreover, in light of the two most recent broadband progress reports, the Commission is also fulfilling its Section 706(b) obligation by defining the terms and parameters of Section 6409(a). As the agency with jurisdiction to regulate broadband, the Commission may act within its reasonable discretion to implement measures consistent with directives it has been given by Congress, including issuance of regulations that will limit state and local government regulation that is in conflict with the Commission's Congressionally directed objectives.

There is Commission precedent for regulating in a manner that makes clear its authority over federal communications matters and that limits the ability of states to regulate inconsistently – notably, Commission regulation of satellite communications,[8] direct broadcast satellite

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[7] WISPA Comments, WT Docket No. 13-238 *et al.* at 4 (filed Feb. 3, 2014) ("WISPA Comments").

[8] The Commission has preempted local zoning that limits transmission or reception by earth station antennas used for satellite communications. Specifically, Rule Section 25.104(a) states that "[a]ny state or local zoning, land use, building, or similar regulation that materially limits transmission or reception by satellite earth station antennas, or imposes more than minimal costs on users of such antennas, is preempted unless the promulgating authority can demonstrate

services,[9] and amateur radio services.[10] In each instance the Commission has ensured that its efforts to promote the use of these radio services would not be impaired by state and local regulations, including zoning regulations, that are not reasonably related to the state or locality's legitimate purpose in regulating. Similarly, the Commission also has authority to accelerate broadband deployment by taking action that removes barriers to investment in broadband infrastructure, including limiting state and local government regulation of the permitting of antennas and equipment used for wireless broadband facilities. Streamlining the permitting process for wireless broadband facilities with federal standards will create predictability. A streamlined and predictable process will accelerate broadband deployment.

II. The Commission Must Regulate in a Manner To Spur Broadband Deployment

Not only was Congress clear in giving the Commission authority under Section 706(b) to take action to accelerate broadband deployment, but it was also clear that it intended the collocation process for wireless broadband facilities to be streamlined by removing the authority

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that such regulation is reasonable, except that nonfederal regulation of radio frequency emissions is not preempted by this section." 47 C.F.R. § 25.104(a).

[9] The Commission has prohibited local zoning that impairs reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services. Specifically, Rule Section 1.4000(a)(1) states that [a]ny restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of [a]n antenna [falling within designated specifications] … is prohibited to the extent it so impairs …." 47 C.F.R. § 1.4000(a).

[10] The Commission has authorized erection of station antenna structures at heights and dimensions that are sufficient to accommodate amateur service communications, and permits state and local regulation only to the extent necessary for the goal of that regulation. Specifically, Rule Section 97.15(b) states that "State and local regulation of a station antenna structure must not preclude amateur service communications. Rather it must reasonably accommodate such communications and must constitute the minimum practicable regulation to accomplish the state or local authority's legitimate purpose." 47 C.F.R. § 97.15(b).

of state and local governments to deny eligible facilities requests and by requiring state and local governments to approve such requests.[11] Towerstream agrees with PCIA – The Wireless Infrastructure Association and The HetNet Forum ("PCIA") that if the Commission fails "to act here and provide needed certainty" the result will be "patchwork implementation" of Section 6409(a), undermining the streamlining purpose of the legislation.[12] Specifically, the collocation process will not be streamlined if wireless broadband facilities providers are subjected to varying state and local regulations. This would be the inevitable result if the Commission fails to define the terms of Section 6409(a) broadly, or requires wireless broadband facilities providers to rely on courts across the country to resolve disputes, with potentially inconsistent results. The Commission has expertise to interpret the terms of Section 6409(a) broadly and establish application processes and remedies.[13] Doing so will help the Commission address today's delayed deployment of broadband infrastructure, and also meet tomorrow's needs for the broadband network.

Towerstream agrees with commenters urging the Commission to define the terms of Section 6409(a) clearly and broadly,[14] to specify application processes consistent with the goals

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[11] See 47 U.S.C. § 1455(a).

[12] See PCIA Comments, WT Docket No. 13-238 et al. at ii (filed Feb. 3, 2014) ("PCIA Comments").

[13] See PCIA Comments at ii ("As the expert agency charged with implementing the Communications Act, the FCC is uniquely positioned to interpret and define the terms of Section 6409(a).")

[14] See generally AT&T Comments, WT Docket No. 13-238 et al. at 21-24 (filed Feb. 3, 2014)("AT&T Comments"); CTIA – The Wireless Association Comments, WT Docket No. 13-238 et al. at 11-13 (filed Feb. 3, 2014) ("CTIA Comments"); Fibertech Networks, LLC Comments, WT Docket No. 13-238 et al. at 18-24 (filed Feb. 3, 2014) ("Fibertech Comments"); PCIA Comments at 29-37; Sprint Corporation Comments, WT Docket No. 13-238 et al. at 8-9 (filed Feb. 3, 2014) ("Sprint Comments"); The Telecommunications Industry Association Comments, WT Docket No. 13-238 et al. at 5-6 (filed Feb. 3, 2014) ("TIA Comments"); The Utilities Telecom Council Comments, WT Docket No. 13-238 et al. at 11-15 (filed Feb. 3, 2014)

of Section 6409(a);[15] and to provide remedy paths that do not obstruct the goals of Section 6409(a).[16] The implementing rules must include objective size measurements, and establish safe harbors, clarifying when a deployment does not constitute a substantial change in the physical dimensions of the tower or base station. All of these actions will help streamline the collocation process.

A streamlined collocation process, however, also must reflect the characteristics of the technologies being deployed. Towerstream provides broadband using Wi-Fi and fixed wireless

one application with only very minimal documentation required to demonstrate that the project covers eligible facilities requests. If the Commission and state and local governments do not address such processes for small equipment deployments, then broadband deployments will be slowed to a crawl under a mountain of literally hundreds of thousands of applications and the collocation mandate of Section 6409(a) will be meaningless.

Finally, Towerstream supports a deemed granted remedy, and a process to bring disputes or violations before the Commission, which has the authority to regulate broadband deployment and the ability to produce consistent resolution of disputes.[17]

For the foregoing reasons, Towerstream urges the Commission to move forward diligently with the facilities siting rulemaking, bringing clarity to both broadband facilities providers and local regulating authorities, and to exercise its authority under Section 706 and Section 6409(a) to adopt rules that facilitate broadband deployment.

Respectfully submitted,

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[17] *See supra* note 16.