

**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
	)	

**REPLY COMMENTS OF AT&T**

March 5, 2014

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## TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY .....	1
II. DISCUSSION.....	4
A. The Record Reflects Broad Support, with Minimal Opposition, for Expanding the Note 1 NEPA Exclusions .....	4
B. Industry Commenters Favor Categorically Excluding DAS and Small Cell Deployments from NHPA Environmental Review.....	5
C. Commenters Agree that the Commission Should Clarify the Interpretation and Application of Section 6409.....	9
1. Terms in Section 6409 should be defined according to the plain language of the statute or consistent with commonly- accepted industry practice .....	9
2. Section 6409 removes most discretion within the local governments to deny an eligible facility modification .....	11
3. A “deemed granted” remedy for violations of Section 6409 will not discourage approval of new infrastructure deployment .....	14

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AT&T Inc. (“AT&T”), on behalf of its subsidiaries, submits the following reply comments in response to the Notice of Proposed Rulemaking (“*Notice*”) released by the Federal Communications Commission (“Commission”) in these dockets.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

The record reflects widespread support for the Commission to accelerate build-out of broadband services by streamlining its environmental review processes. A diverse group of

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<sup>1</sup> 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, *et. al.*, WT Docket No. 13-238, WC Docket No. 11-59, WT Docket No. 13-32, *Notice of Proposed Rulemaking*, 28 FCC Rcd 14238 (2013) (“*Notice*”).

commenters, with little opposition, support expanding to all existing structures the categorical exclusion from National Environmental Policy Act (“NEPA”) review in Commission rule section 1.1306, Note 1.<sup>2</sup> No rational basis exists for limiting the categorical exclusion to collocations on buildings and towers, as they are no less likely to adversely affect the environment than collocations on other structures. This is an easy, non-controversial first step that the Commission can take to clarify the obligations of structure owners and Commission licensees and to remove unnecessary barriers to wireless facility deployments.

Industry commenters unanimously support revising Note 1 to also categorically exclude DAS and small cell installations on existing facilities from review under Section 106 of the National Historic Preservation Act (“NHPA”).<sup>3</sup> Requiring NHPA review for DAS and small cell deployments is arbitrary, costly, and delays broadband deployment, with minimal protection to historic properties. Due to their low-profile and flexible nature, DAS and small cell technologies are not likely to adversely affect a historic property. In rare situations where an adverse effect may exist, Commission rules provide a means to timely escalate to the Commission for consideration. On balance, the benefits of categorically excluding DAS and small cells from NHPA review substantially outweigh the protections to be afforded to historic properties.

Despite the widespread support among commenters for clarifying Section 6409 of the Middle Class Tax Relief and Job Creation Act (“Section 6409”),<sup>4</sup> substantial differences exist between the interpretations advanced by local government and wireless industry commenters. The Commission should refuse the push from local governments to interpret Section 6409 in a way that deviates from the language and the spirit of the statute. When clarifying the meaning of

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<sup>2</sup> 47 C.F.R. §1.1306, Note 1.

<sup>3</sup> 16 U.S.C. §470f.

<sup>4</sup> 47 U.S.C. §1455.

undefined terms, the Commission should be governed by the plain meaning of the terms and, in the absence of a plain meaning, by their commonly-accepted meaning. For example, whether a local government must approve a structure modification because it does not substantially change the “physical dimensions” of a tower or base station involves a consideration of the “physical dimensions” (i.e. the size) of the structure, not a consideration of the tower’s surrounding area or other attributes. Also, the term “base station” is not limited to structures intended to be used primarily or solely to support wireless facilities, as that is not the commonly-accepted meaning of the term.

Similarly, despite the local governments’ arguments to the contrary, the Commission correctly concludes that Section 6409 local review processes are administrative. Section 6409 could not be more clear: “a State or local government may not deny, and shall approve” all covered modifications. Consequently, except for considerations relating to compliance with structural, building, and safety codes, Section 6409 grants no discretion to local governments, especially discretion to consider public objections and aesthetic considerations.

Based upon that lack of discretion, the Commission should clarify that covered modification applications not approved in accordance with Section 6409 are deemed granted. Congress passed Section 6409 because there is an important Federal interest in accelerating broadband service deployment. Allowing local governments to continue to keep covered modification applications in a state of uncertainty following actions that violate Section 6409 would frustrate the purpose of the statute. Contrary to the claims of local government commenters, this remedy would not encourage local governments to reject all new wireless facilities, as such an action would violate Section 332(c)(7) of the Communications Act<sup>5</sup> and be

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<sup>5</sup> 47 U.S.C. §332(c)(7).

against the best interest of those local governments and their citizens.

## II. DISCUSSION

### A. The Record Reflects Broad Support, with Minimal Opposition, for Expanding the Note 1 NEPA Exclusions.

Commenters support a Commission effort to clarify or modify Note 1 to categorically exclude from NEPA review wireless facilities mounted on all existing structures, including utility poles, water tanks, light poles, traffic poles, and bill boards.<sup>6</sup> PCIA explains that “[p]lacing antennas on such structures has little, if any, environmental impact, and certainly no greater impact than placement of antennas on buildings or towers.”<sup>7</sup> As Verizon observes, “[b]ecause these facilities will be mounted on existing structures in previously developed areas, they will not impact wetlands, endangered or threatened species, flood plains, or any of the other environmental concerns covered by NEPA.”<sup>8</sup> And, “inclusion of ‘other structures’ would accelerate expansion of broadband services, consistent with the public interest objectives of this proceeding.”<sup>9</sup> Accordingly, “there is no basis to subject collocations on structures such as utility poles to greater environmental review than collocations on buildings.”<sup>10</sup>

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<sup>6</sup> See e.g. Comments of PCIA - The Wireless Infrastructure Association and The HetNet Forum, WT Docket No. 13-238, at 17 (filed Feb. 3, 2014); Comments of Sprint Corp., WT Docket No. 13-238, at 6 (filed Feb. 3, 2014); Telecommunications Industry Association, WT Docket No. 13-238, at 3-4 (filed Feb. 3, 2014); Towerstream Corp., WT Docket No. 13-238, at 30-31 (filed Feb. 3, 2014).

<sup>7</sup> PCIA Comments at 17. Towerstream also asks for clarification that Note 1 applies to antennas and associated equipment deployed in the interior of buildings.<sup>7</sup> AT&T agrees with Towerstream that building installations are covered by Note 1 and would continue to be covered if Note 1 is extended to all structures.

<sup>8</sup> Comments of Verizon and Verizon Wireless, WT Docket No. 13-238, at 15-16 (filed Feb. 3, 2014).

<sup>9</sup> Comments of Wireless Internet Service Providers Association (“WISPA”), WT Docket No. 13-238, at 13 (filed Feb. 3, 2014).

<sup>10</sup> Utilities Telecom Council, WT Docket No. 13-238, at 4 (filed Feb. 3, 2014).

Few commenters oppose extending the Note 1 categorical exclusion to all existing structures. However, a few supportive commenters oppose extending the Note 1 exclusion to water tanks because “[a]ttachment of facilities to water tanks can have adverse public safety effects (because of the potential for contamination during the construction/attachment process).”<sup>11</sup> Contrary to these commenters mistaken impression, the NEPA process does not consider the impact of a wireless facility on water or the water tower. It considers only the impact of a wireless installation on the specific environmental categories listed in Commission rule section 1.1307(a), i.e. wilderness areas, wildlife preserves, threatened or endangered species, historic properties, tribal burial grounds, flood plains, surface feature changes, and high intensity lights.<sup>12</sup> Continuing to subject wireless installations on water tanks to NEPA review not benefit the water tank or the water inside the tank. Thus, there is no reason to exclude water tanks from a revised Note 1 categorical exclusion.

**B. Industry Commenters Favor Categorically Excluding DAS and Small Cell Deployments from NHPA Environmental Review.**

Industry commenters unanimously support modifying Note 1 to categorically exclude from NHPA review DAS and small cell technologies in or on existing buildings, towers or other structures.<sup>13</sup> As commenters observe, applying the NHPA to DAS and small cell deployments leads to illogical results. PCIA observes the arbitrariness of requiring historical review for minimally invasive DAS and small cells, which are similar to, and may compete with, Wi-Fi and

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<sup>11</sup> Comments of Steel in the Air, Inc., WT Docket No. 13-238, at 2 (filed Feb. 3, 2014). *See also* Comments of City of West Palm Beach, Florida, WT Docket No. 13-238, at 2 (filed Feb. 3, 2014); Comments of City of Coconut Creek, Florida, WT Docket No. 13-238, at 2 (filed Feb. 3, 2014).

<sup>12</sup> 47 C.F.R. §1.1307(a). Subsection (b) of 1.1307 considers exposure to radiofrequency emissions.

<sup>13</sup> *See, e.g.*, Comments of Association of American Railroads (“AAR”), WT Docket No. 13-238, at 5 (filed Feb. 3, 2014); Comments of CTIA-The Wireless Association, WT Docket No. 13-238, at 22 (filed Feb. 3, 2014); Comments of ExteNet Systems, Inc., WT Docket No. 13-238, at 4 (filed Feb. 3, 2014); Sprint Comments at 3.

other unlicensed wireless technologies that have no such requirement.<sup>14</sup> Crown Castle, among other commenters, describes the absurdity of a NHPA review for DAS and small cell deployments on utility poles that are 45 years or older.<sup>15</sup> And, the Arkansas Historic Preservation Program, while noting that exceptions may exist, acknowledges that it is “in general not opposed to the exclusion of review for utility poles older than 45 years in age, as . . . the addition of DAS structures to existing poles would not cause an adverse effect.”<sup>16</sup>

The Commission should end the arbitrariness and delays associated with performing NHPA processes for minimally intrusive DAS and small cell deployments by including them in the Note 1 categorical exclusion. The “financial and regulatory costs involved in environmental and NHPA processing far outweigh any minimal danger of environmental effects that would stem from expanding the current exclusions to include small wireless facilities. The current uncertain regulatory landscape slows the pace of wireless deployment and needlessly wastes the time and money of all stakeholders, without benefitting the resources such regulations are intended to protect.”<sup>17</sup>

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<sup>14</sup> PCIA Comments at 11.

<sup>15</sup> Comments of Crown Castle International Corp., WT Docket No. 13-238, at 4 (filed Feb. 3, 2014). *See also* Comments of Fibertech Networks, LLC, WT Docket No. 13-238, at 15-16 (filed Feb. 3, 2014); PCIA Comments at 21-22; WISPA Comments at 17-18; Verizon Comments at 17-18.

<sup>16</sup> Comments of Arkansas Historic Preservation Program (“AHPP”), WT Docket No. 13-238, at 1 (filed Feb. 3, 2014).

<sup>17</sup> AAR Comments at 8.

A few commenters oppose a categorical exclusion from NHPA review for DAS and small cells because a facility could adversely affect a historic property.<sup>18</sup> In fact, truly adverse effects on historic properties should be rare. DAS and small cells have no more of an impact on historic property than any of the many other attachments placed on poles, including traffic cameras, wireless transmitters, and other devices installed by many local governments opposing a DAS and small cell exclusion. Moreover, the Commission has concluded that the minimal visual impact of DAS and small cell antennas makes their deployment desirable even in and around historic districts.<sup>19</sup>

For those limited situations where a DAS or small cell deployment may affect an historic property, Commission rule sections 1.1307(c) and (d) provide an effective path to timely escalate to the Commission. Further, “DAS and small cell deployment are critical components needed to achieve this country’s goal of universal wireless broadband coverage to all Americans.”<sup>20</sup> Categorically excluding DAS and small cell technologies from NHPA review would remove a significant barrier to their timely deployment. Balancing the small risk that DAS and small cell deployments would adversely affect historic properties against the benefits of encouraging DAS and small cell deployments over new towers and taking into account the escalation processes

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<sup>18</sup> Comments of Piedmont Environmental Council, WT Docket No. 13-238, at 1 (filed Feb. 3, 2014); AHPP Comments at 1.

<sup>19</sup> Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 09-66 (Terminated), *Fourteenth Report*, 25 FCC Rcd 11407, 11577 n.757 (2010).

<sup>20</sup> Letter from D. Zachary Champ, PCIA-The Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59, GN Docket No. 12-354 (filed Mar. 19, 2013), Attachment of Dr. Amos J. Loveday, DAS/Small Cells & Historic Preservation: An Analysis of the Impact of Historic Preservation Rules on Distributed Antenna Systems and Small Cell Deployment, at 1 (Feb. 27, 2013).

available under existing Commission rules, a categorical exclusion for DAS and small cell deployments is reasonable and appropriate.

In its comments, Verizon also asks the Commission to amend rule section 1.1306 to categorically exclude from NHPA review the addition of antennas on existing wireless support structures over 45 years old if (1) the antennas are added in the same general location as other antennas previously deployed by the carrier; (2) the new antennas are deployed at a height that does not exceed the existing antennas by more than three feet or are not visible from ground level; and (3) the new antennas comply with any requirements placed on the existing antennas by the state or local zoning authority or as a result of the previous historic preservation review process.<sup>21</sup> AT&T agrees with Verizon that adopting a limited exclusion of this nature would remove unnecessary obstacles to wireless broadband facility siting without adversely affecting any historic property. The exclusion would immediately accelerate broadband deployment for AT&T, as the vast majority of AT&T's LTE deployments involve adding antennas to structures that already support wireless facilities.

AT&T also agrees that tribal consultations are unnecessary for collocations on existing structures that are over 45 years old, as the existing requirement in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas ("Collocation NPA")<sup>22</sup> to review such structures is focused on historic preservation, not tribal interests.<sup>23</sup> Like all wireless providers, AT&T often endures substantial delays waiting for tribal review. While construction timelines are built to account for tribal review, it is unreasonable and unnecessary to subject Commission licensees and structure owners to delays associated with obtaining tribal reviews that do not

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<sup>21</sup> Verizon Comments at 16-19.

<sup>22</sup> 47 C.F.R. Part 1, Appendix B.

<sup>23</sup> *Id.* at 21-22.

advance tribal interests. It also causes the tribes to divert resources away from reviewing those wireless facilities for which they, in fact, may have a legitimate interest, unnecessarily delaying review of all facilities. Thus, AT&T asks the Commission to exclude from tribal review those collocations that require NHPA review merely because the structure exceeds 45 years of age, or, at a minimum, explore the best manner in which to exclude these facilities from NHPA review without delaying resolution of the other issues in this docket.

**C. Commenters Agree that the Commission Should Clarify the Interpretation and Application of Section 6409.**

The record reveals a consensus among local government and wireless industry commenters that they would benefit from clarifications about the meaning Section 6409.<sup>24</sup> But, those groups diverge on what parts of Section 6409 need clarification and on the Commission's tentative conclusions in the *Notice*.

**1. Undefined terms in Section 6409 should be defined according to the plain language of the statute or consistent with commonly-accepted industry meaning.**

Local governments object to the Commission's proposed interpretation of key undefined terms in Section 6409, seeking the narrowest possible construction, often at odds with the clear language of the statute and with existing commonly-accepted meanings. For example, Section 6409 requires a State or local government to approve an application to modify an existing wireless tower or base station that does not "substantially change the physical dimensions of the tower or base station." Many local governments propose a flexible definition of "substantially change the physical dimensions" to allow for varying meanings depending on the characteristics

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<sup>24</sup> See e.g. Comments of California Wireless Association, WT Docket No. 13-238, at 3 (filed Feb. 3, 2014); Comments of Carolinas Wireless Association, WT Docket No. 13-238, at 2 (filed Feb. 3, 2014); Comments of City of Chicago, Illinois, WT Docket No. 13-238, at 3 (filed Feb. 3, 2014); Coconut Creek Comments at 5; West Palm Beach Comments at 5; Comments of the County of San Diego, WT Docket No. 13-238, at 2 (filed Feb. 3, 2014); Crown Castle Comments at 9; CTIA Comments at 10-11; Extenet Comments at 4.

of the surrounding area and the qualitative features of the tower or base station.<sup>25</sup> Interpreting “substantially change the physical dimensions” in this manner would contravene the language of Section 6409. The qualifier “substantially change the physical *dimensions*,” contemplates an objective assessment of whether a modification would increase the size (i.e. the dimensions) of the tower relative to its size before the modification. It includes *no* language conditioning the application of Section 6409 upon the characteristics of the surrounding area or the qualitative features (other than size) of the tower or base station. Faced with this clear expression of Congressional intent, the Commission correctly defined the phrase “substantially change the physical dimensions” consistent with the phrase “substantial increase in the size of the tower” from the Collocation NPA.

AT&T also disagrees with some commenters’ proposals to define the term “wireless tower or base station” to include only structures built for the sole or primary purpose of supporting wireless equipment.<sup>26</sup> While the Collocation NPA and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (“Section 106 NPA”),<sup>27</sup> define “tower” to include only those structures built for the sole or primary purpose of supporting wireless communications equipment, the term “base station” is not so limited.<sup>28</sup> This interpretation is consistent with the current practices of Commission

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<sup>25</sup> See e.g. Comments of California Coastal Commission, WT Docket No. 13-238, at 58 (filed Feb. 3, 2014); Comments of City of Alexandria, Virginia; City of Arlington, Texas; City of Bellevue, Washington, et al., WT Docket No. 13-238, at 12-14, 32-33 (filed Feb. 3, 2014); Comments of City of Des Moines, Iowa, WT Docket No. 13-238, at 7 (filed Feb. 3, 2014).

<sup>26</sup> See e.g., Des Moines Comments at 6; Fairfax County Comments at 8-9; Borough of Mendham, New Jersey Planning Board, WT Docket No. 13-238, at 5-6 (filed Feb. 3, 2014); Piedmont Comments at 9.

<sup>27</sup> 47 C.F.R. Part 1, Appendix C.

<sup>28</sup> See Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, *Public Notice*, 28 FCC Rcd 1, 3 (2013) (“*Section 6409 Clarification PN*”).

(continued....)

licensees, structure owners, and many municipalities, which have embraced collocations on all types of support structures, and with the Collocation NPA, which streamlines the Section 106 process for collocations on all types of support structures.

Interpreting “wireless tower or base station” to include only those structures built solely or primarily to support wireless communications equipment would disregard these policy considerations, deviate from commonly accepted meanings, render the term “base station” superfluous, and remove the vast majority of DAS and small cell deployments from coverage. For that reason, the term “base station” encompasses structures that support or house an antenna, transceiver, or other associated equipment, even if not built for the sole or primary purpose of supporting that equipment.

**2. Section 6409 removes most discretion within the local governments to deny an eligible facility modification.**

A number of municipalities and municipal organizations seek to retain sole discretion to determine how to comply with Section 6409, including considering public comment and aesthetics.<sup>29</sup> Those commenters disregard the clear language of Section 6409—“a State or local government may not deny, and shall approve” an eligible facility siting application. As this Commission has concluded, “the statute . . . contemplates an administrative process that invariably ends in approval of a covered application.”<sup>30</sup> Section 6409 represents a policy

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<sup>29</sup> See e.g., Comments of Planning Board of the Borough of Haddon Heights, New Jersey, WT Docket No. 13-238, at 2 (filed Jan. 31, 2014); Comments of Fairfax County, Virginia, WT Docket No. 13-238, at 18 (filed Feb. 3, 2014); Comments of League of California Cities, the California State Association of Counties and the States of California and Nevada Chapter of National Association of Telecommunications Officers and Advisors, WT Docket No. 13-238, at 19 (filed Feb. 3, 2014).

<sup>30</sup> Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, *Public Notice*, 28 FCC Rcd 1, 3 (2013) (“*Section 6409 Clarification PN*”).

decision by Congress that there is an important Federal interest in wireless facility siting, in this case collocations on towers and base stations, to promote wireless broadband deployment. To interpret the statute in a manner that allows local governments to consider public opposition and aesthetics merely retains the status quo and would nullify Section 6409. Thus, the Commission should provide guidance on the parameters of an effective administrative process for timely approval under Section 6409.

While such a process would restrict local governments from imposing most conditions on approval of a Section 6409 covered application, AT&T agrees that reasonable conditions that are necessary to ensure compliance with applicable building codes and other applicable non-discretionary structural and safety codes should be allowed. AT&T also agrees with Crown Castle that Section 6409 should not be read to defeat conditions previously imposed on a structure's original zoning approval.<sup>31</sup>

Some commenters argue that the Commission should allow communities to develop voluntary programs, best practices, model ordinances, and public/private partnerships that encourage the deployment of communications facilities in a manner that is consistent with local public interests.<sup>32</sup> AT&T appreciates the efforts of many state and local jurisdictions that work cooperatively to resolve issues associated with wireless infrastructure deployments, and believes that there will still be opportunities for cooperation. However, deferring solely to best practices

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<sup>31</sup> Crown Castle Comments at 14.

<sup>32</sup> See e.g., Comments of City of Alexandria, Virginia; City of Arlington, Texas; City of Bellevue, Washington, et al., WT Docket No. 13-238, at 5-6, 11-13 (filed Feb. 3, 2014); Chicago Comments at 4-5; Comments of Colorado Communications and Utility Alliance, the Rainier Communications Commission, the Cities of Seattle and Tacoma, Washington, King County, Washington, the Colorado Municipal League, and the Association of Washington Cities ("CCUA et al"), WT Docket No. 13-238, at 16-17 (filed Feb. 3, 2014); Comments of Brevard County, Florida, WT Docket No. 13-238, at 4 (filed Feb. 3, 2014).

and cooperative relationships runs the risk of inconsistent interpretation and application of Section 6409, leading to continued uncertainty and protracted and costly litigation, which would frustrate the very purpose of Section 6409 by adversely affecting the timely deployment of broadband services.

It also would be a mistake to believe that cooperative relationships alone can resolve on a nationwide scale the myriad of issues involved in interpreting Section 6409. As the comments in this rulemaking make clear, local governments and wireless industry members have widely divergent interpretations of Section 6409, the structures it covers, its breath of coverage, the appropriate processes that local governments should follow, and the appropriate remedies for a violation of the statute. The sheer number of local governments and industry players involved makes it highly unlikely that even a plurality of local governments could reach an agreement with the wireless industry on how to resolve all of these outstanding issues. In these situations, with the direction from Congress, it is appropriate for the Commission to step-in and provide guidance.

It also ignores reality. Too many local jurisdictions are still unwilling to modify their processes in ways that allow for streamlined processing intended by the Section 332(c)(7) Shot Clock. It defies belief that they would suddenly agree to cooperate to develop reasonable processes for quickly clearing applications covered by Section 6409 (or to agree on what applications are covered by the statute). Although it has been over 15 years since passage of Section 332(c)(7), over four years since the Commission's Shot Clock Declaratory Ruling,<sup>33</sup> and over two years since the passage of Section 6409, the wireless industry continues to struggle

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<sup>33</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, *Declaratory Ruling*, WT Docket No. 08-165, 24 FCC Rcd 13994 (2009).

against State and local governments that attempt to unduly restrict the placement of wireless facilities. For example, during the pendency of this docket, one county considered drafting an ordinance that would prohibit wireless facilities within a certain portion of the county. This would clearly violate Section 332. While this county's example is certainly extreme, it should not be discounted, as it represents the all too common "not in my backyard" philosophy that remains in many local communities, even for the minimally intrusive DAS and small cell deployments on existing structures.

**3. A "deemed granted" remedy for violations of Section 6409 will not discourage approval of new infrastructure deployment.**

Local government commenters also oppose a "deemed granted" remedy for violations of Section 6409, arguing that it would create incentives for them to deny all new wireless facilities, effectively precluding new structures on which Section 6409 covered collocations could occur.<sup>34</sup> This is not likely. Section 332(c)(7) precludes local governments from regulating the placement, construction, and modification of personal wireless service in a manner that prohibits or has the effect of prohibiting the provision of those services and requires those local governments to support any decision to deny a wireless facility application with a written decision and substantial evidence of the reason for denial in a written record. Refusing to approve new wireless siting applications would likely violate these rules. It would also violate the prohibition in Section 332(c)(7) on discriminating against providers of functionally equivalent service, as new providers would be unable to deploy facilities and compete against providers with existing facilities.

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<sup>34</sup> See e.g. Piedmont Comments at 6; League of California Cities Comments at 12; CCUA Comments at 13.

Further, local governments are charged with protecting the health, safety, and welfare of their community. More and more, it will be difficult for a local government to meet those goals without allowing Commission licensees to improve their service and coverage. Residents have come to expect ubiquitous, reliable commercial wireless service, and rely on that service to communicate with children at school, stay in touch with friends and family, and make calls to 9-1-1 and others during emergencies. Refusing new wireless facilities would do substantial harm to a community by reducing the coverage and reliability of commercial service, and reduce that community's ability to grow and prosper. Section 6409 will remove barriers to broadband deployment and facilitate the continued enhancement of service to meet these needs, and the Commission should interpret Section 6409 consistent with those goals.

Dated: March 5, 2014

Respectfully submitted,



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