Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 SPRINT CORPORATION

Sprint Corporation ("Sprint") submits these Reply Comments in response to comments filed to the Commission's Notice of Proposed Rulemaking associated with the above-referenced proceedings.[1]

[1] *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, Notice of Proposed Rulemaking,* Released September 26, 2013 ("NPRM").

I. INTRODUCTION

The Commission's effort to re-examine its environmental and historic preservation review processes and procedures in an effort to streamline regulatory review for Distributed Antenna Systems ("DAS") and small cell installations is to be applauded. There is extensive support in the record for the Commission to swiftly adopt a categorical exclusion for DAS and small cell installations, along with the definitions proposed by PCIA to establish parameters for this categorical exclusion. Verizon's recommendations that limited exclusions pertaining to historic preservation and tribal review for buildings over 45 years old should be seriously considered. As a number of commenters have discussed, it is important that the Commission take action to clarify ambiguous terms of Section 6409(a). The Commission should establish a deemed granted remedy for applications that fall under 6409(a) with a forty-five day timeline, consistent with comments filed by multiple commenters. The Commission should also clarify that any moratoria on the filing or processing of new facilities applications does not apply to covered requests for collocation or modification under 6409(a).

II. DISCUSSION

A. Environmental and Historic Preservation Review

In its Comments, Sprint strongly supported proposals to streamline federal environmental and historic preservation review for DAS and small cells. Many other commenters have also urged the Commission to take this action, arguing in favor of adopting a categorical exclusion from review under the National Environmental Policy Act ("NEPA") and National Historic Preservation Act ("NHPA") for DAS and small cell deployments.[2] As PCIA has noted, "Such a rule change will speed deployment, facilitate greater coverage and capacity of wireless

[2] *See* Qualcomm Comments at 3; ExteNet Comments at 4; PCIA Comments at 6; CTIA Comments at 22; AT&T Comments at 10; Comments of Association of American Railroads at 5-6; Crown Castle Comments at 3; UTC Comments at 5.

broadband networks, and provide new opportunities for commerce and connectivity in hard-to-target areas."[3] By adopting a categorical exclusion for DAS and small cells, which are expected to have a minimal impact on the environment, the Commission can eliminate unnecessary regulatory obstacles to wireless broadband deployment and ensure the delivery of these advanced services to consumers.

PCIA has outlined specific and appropriate parameters for installations that would be deemed categorically excluded from NEPA and NHPA review.[4] Its proposed definition of "Communications Facility Installations" and the parameters for Communications Facility Installations that would fall within the categorical exclusion are accurate. As PCIA states, the broader term "Communications Facility Installations" is "… appropriate and consistent with the goal of a flexible, technology-neutral definition."[5]

In its Comments, AT&T rightly proposes including in the exempt facilities modestly-sized antennas and related equipment that can be used for microwave backhaul where needed.[6] In some instances, microwave may be the only available form of backhaul. As AT&T suggests, "Requiring NEPA and NHPA Section 106 review of the microwave antennas and equipment in these instances would stall broadband deployment even if the underlying DAS or small cell equipment is exempt and limit the benefits of the DAS and small cell exemption, while conferring little public interest benefit."[7]

Verizon has proposed an amendment to Section 1.1306 of the Commission's rules to add an exclusion for certain collocations on buildings or structures over 45 years old from the

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[3] PCIA Comments at 6.
[4] PCIA Comments at 7-8.
[5] PCIA Comments at 8.
[6] AT&T Comments at 15.
[7] *Id.* at 16.

requirement to conduct NHPA reviews. Specifically, Verizon proposes that the addition of new antennas to a structure would be excluded if: (1) The antennas are being added in the same location as other antennas previously deployed by the carrier; (2) The height of new antennas does not exceed the height of the existing antennas by more than three feet or the new antennas are not visible from the ground regardless of the height increase; 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.[8]

The Collocation Agreement generally requires wireless providers to obtain concurrences from State Historic Preservation Officers ("SHPOs") and Tribal Historic Preservation Officers ("THPOs") prior to deploying new antennas on structures over 45 years old.[9] An increasing number of facilities now fall into this category, even though these structures may not have been over 45 years old when a carrier first located its facilities there. Certain collocations on buildings or structures over 45 years old should be excluded and the criteria Verizon proposes will be effective in addressing those circumstances where structures have already been cleared for wireless facilities. In these circumstances, adding antennas meeting the criteria outlined by Verizon would have neither a direct or indirect adverse effect on any historic property.[10] Requiring NHPA reviews for such sites is unnecessary and will only delay the rollout of advanced services.

Verizon also proposes that the Commission (1) eliminate the requirement to conduct tribal reviews when NHPA reviews are required only because the structure is over 45 years old; and, (2) modify the Tribal Notice System to enable tribes to opt out of reviewing certain types of

[8] Verizon Comments at 18.
[9] Collocation Agreement at § V.A.
[10] Verizon Comments at 18-19.

facilities in certain geographic areas.[11] Tribes have the right to preserve and protect sites that are sacred and culturally significant to Native American heritage, but regulatory processes that unnecessarily delay carriers' efforts to improve and expand wireless service to keep pace with technological advancement and consumer demand can be streamlined. Verizon's proposal could help to realign these processes by eliminating review of modifications that are unlikely to have an adverse impact.

Verizon proposes that the Commission eliminate tribal reviews of collocations where NHPA review is required solely due to the age of the structure. Many wireless antennas are currently located on numerous structures over 45 years old and eventually all structures that host antennas will reach that 45-year benchmark. Being respectful of tribal concerns, modifications on existing structures, such as roof-tops in urban and suburban areas, are not likely to adversely impact tribal religious and cultural properties, especially when changes to existing antenna facilities on structures older than 45 years involve no ground disturbance. Under current policies, however, a change as insignificant as adding a single antenna to an existing antenna array may oblige a carrier to consult with tribes solely because the structure is over 45 years old. Once a structure has met the age benchmark, that requirement would apply every time a carrier whose facilities are located on that facility desired to make a change. Carriers continue to receive a significant number of tribal consulting requests even though most antenna facilities in urban areas and many in suburban areas are collocated on non-tower structures and many have been in operation for twenty years or more. Verizon's proposals could help facilitate the Commission's goal of the rapid deployment of broadband networks. Ultimately, these proposed changes could enhance tribal efforts to protect their religious and cultural properties by

[11] Verizon Comments at 21.

eliminating unnecessary and/or duplicative reviews and allowing for greater resources and attention to be allocated toward projects where the potential for an adverse impact is more likely to exist. Verizon's proposals would be welcome and the suggested parameters are appropriately limited.

B. Clarification of Section 6409(a) and 332(c)(7)

Commenters appropriately urge the Commission to take action to clarify Section 6409(a).[12] Without such clarification, broadband deployment will be delayed as local jurisdictions attempt to interpret these provisions and, ultimately, these ambiguities could lead to protracted litigation.[13]

Applications that fall Section within 6409(a) should be subject to a "deemed granted" remedy.[14] Commenters properly recommend a forty-five day timeline from the date of the application for the application to be deemed granted.[15] A shorter "shot clock" is justified in light of the limited review associated with these applications. As CTIA has noted, "Because Section 6409(a) mandates that collocation requests must be deemed granted unless they fundamentally change the physical dimensions of a structure, there no longer is a need for localities to evaluate most collocation requests – only those that substantially change the physical dimensions of a structure will need to be evaluated."[16] In addition, as Verizon correctly observes, "Under Section 6409(a), the only determination a zoning authority must now make is whether the proposed facility is an "eligible facilities request.""[17]

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[12] PCIA Comments at 25 -27; Verizon Comments at 27; AT&T Comments at 20-21.
[13] Verizon Comments at 27; Towerstream Comments at 7-8; The Wireless Internet Service Provider Association ("WISPA") Comments at 4.
[14] Sprint Comments at 11.
[15] *See* CTIA Comments at 16-19; PCIA Comments at 46-49; Verizon Comments at 31-32.
[16] CTIA Comments at 17.
[17] Verizon Comments at 32.

While several Commenters recommend that jurisdictions be allowed to enact "reasonable moratoria,"[18] others support action by the FCC to clarify that any moratoria on the filing or processing of new facilities applications does not apply to covered requests for collocation or modification under 6409(A).[19] As CTIA has discussed, "… Section 6409(a) clearly requires the approval of collocation agreements so there is no need for localities to adopt complicated regulations governing the evaluation of collocation requests."[20] Without a clarification on this issue, jurisdictions can enact and repeatedly extend moratoria, contrary to the statute's goals. As highlighted by CTIA, the City of Hillsborough, California adopted a moratorium in 2012 after Section 6409(a) was enacted and already has extended that moratorium two times.[21] As AT&T aptly observes, "No other single government activity impacts wireless deployment as significantly as a decision to impose a moratorium and do nothing."[22] In addition, if jurisdictions are permitted to enact moratoria on requests covered under 6409(A), such action could have anticompetitive results. For example, if the moratoria is not in place when one carrier locates its facilities in a jurisdiction but that moratoria is later enacted prior to another carrier locating in a jurisdiction, the moratoria could effectively lock the second carrier out from locating in that jurisdiction.

In its 2009 "Shot Clock" Declaratory Ruling interpreting Section 332(c)(7), the Commission declined to adopt a deemed granted remedy.[23] The Commission should reconsider

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[18] Town of Hillsborough Comments at 5; City of Tempe, Arizona Comments at 29.
[19] *See* CTIA Comments at 18; PCIA Comments at 49; Towerstream Comments at 26; WISPA Comments at 11; AT&T Comments at 30.
[20] CTIA Comments at 19.
[21] CTIA Comments at 18.
[22] AT&T Comments at 30.
[23] *See* 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*, 24 FCC Rcd 13994 (2009) ("Shot Clock Declaratory Ruling").

its 2009 Shot Clock Declaratory Ruling and should modify the Shot Clock to incorporate a deemed granted remedy.[24] The existing remedy of appealing a decision in court is likely to result in extensive delays, as has already been shown to be the case.[25] In addition, it is appropriate for the Commission to reconsider remedies associated with Section 332(c)(7) in the wake of enactment of Section 6409(a). As CTIA correctly observes, "… to avoid any confusion regarding the interplay between Section 6409(a) and the existing Collocation Shot Clock, the Commission should incorporate the principles of Section 6409(a) into the Shot Clock."[26]

[24] Crown Castle Comments at 17-19; AT&T Comments at 30-31; Joint Venture Comments at 8; UTC Comments at 17; CTIA Comments at 20; PCIA Comments at 56-59.
[25] Joint Venture Comments at 8, referencing *Crown Castle NG East Inc. v. Town of Greenburgh*, 2014 U.S. App. LEXIS 925 (2nd Cir. Jan. 17, 2014); Crown Castle Comments at 16.
[26] CTIA Comments at 16.

III. CONCLUSION

To help facilitate and accelerate wireless broadband deployment, the Commission should act swiftly to adopt proposals to streamline environmental and historic preservation review for DAS and small cells and for facilities located on buildings over 45 years old. The Commission should clarify aspects of Section 6409(a) to remove ambiguity regarding its interpretation, adopt a deemed granted remedy for applications that fall within Section 6409(a) and should reconsider its decision regarding a deemed granted remedy under 332(c)(7).

Respectfully Submitted,

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