

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

In the Matter of	)	
	)	
Acceleration of Broadband Deployment by Improving Wireless 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 COMPETITIVE CARRIERS ASSOCIATION**

March 5, 2014

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**REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION**

Competitive Carriers Association (“CCA”) hereby submits reply comments addressing the opening comments filed in response to the Notice of Proposed Rulemaking issued in these proceedings.<sup>1</sup>

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<sup>1</sup> *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, 28 FCC Rcd 14238 (2013) (“NPRM”).

## INTRODUCTION AND SUMMARY

CCA is the trade association for the competitive wireless industry, whose mission is committed to the pursuit of policies that will promote competition in the wireless industry and that will expand wireless broadband deployment.<sup>2</sup> Given the increasing consolidation in the wireless industry, the Commission should take action to increase wireless carriers' access to critical inputs, including the spectrum and network facilities used to deploy wireless services.<sup>3</sup> Doing so will improve competitive opportunities for all carriers, and will expand wireless deployment across the United States, including to rural and underserved communities.

Wireless facilities siting policies are an important component of delivering on these procompetitive goals. In both the Telecommunications Act of 1996 and the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), Congress clearly spoke to the importance of advancing wireless broadband services and removing unnecessary obstacles to promoting infrastructure and investment, in furtherance of competition. Yet, over the past several years the Commission has neither found the wireless industry to be effectively competitive,<sup>4</sup> nor determined that broadband has been deployed in a reasonable or timely manner.<sup>5</sup> In fact, the

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<sup>2</sup> See, e.g., Competitive Carriers Association, "A Framework for Sustainable Competition in the Digital Age: Fostering Connectivity, Innovation, and Consumer Choice," GN Docket Nos. 12-268, *et al.* (filed Dec. 4, 2013).

<sup>3</sup> *Id.* at 6.

<sup>4</sup> See, e.g., *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. 11-186 (terminated), Sixteenth Report, 28 FCC Rcd 3700, 3704 ¶ 1 (2013) ("16th Mobile Competition Report").

<sup>5</sup> See, e.g., *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*, GN Docket No. 11-121,

Commission has identified access to broadband infrastructure as a “key barrier” to meeting both of these policy objectives.<sup>6</sup>

Specifically, unduly burdensome approval policies can create significant obstacles to timely deployment of network facilities, and can impede investment in much-needed wireless infrastructure improvements. In addition, outdated regulations can fail to keep up with changes in wireless technologies, such as the development of small cells, distributed antenna systems (“DAS”), and small Wi-Fi antennas. For these reasons, CCA applauds the Commission’s efforts to streamline wireless siting rules and to reduce impediments to wireless broadband deployment. The opening comments reveal strong support in the record for the Commission taking certain steps to remove obstacles to siting approval and increasing the timeliness of approvals.

As discussed further below, the record supports the Commission’s proposal to clarify the requirements of Section 6409(a) of the Spectrum Act to remove uncertainty and promote wireless broadband deployment by ensuring a streamlined review process for collocations and other minor modifications.<sup>7</sup> The Commission also should update its rules and establish a categorical exclusion from review under the National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act (“NHPA”) for small cell and DAS deployment. Finally, the Commission should make permanent the existing exception from the pre-construction environmental notification process for temporary towers, as set forth in CTIA’s Petition for Expedited Rulemaking.

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Eighth Broadband Progress Report, 27 FCC Rcd 10342, 10344 ¶ 1 (2012) (“Eighth Broadband Progress Report”).

<sup>6</sup> 16th Mobile Competition Report ¶¶ 328-30; Eighth Broadband Progress Report ¶ 142.

<sup>7</sup> *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) (codified at 47 U.S.C. § 1455(a)).

## DISCUSSION

### I. THE COMMISSION SHOULD CLARIFY THE REQUIREMENTS OF SECTION 6409(A) OF THE SPECTRUM ACT TO REMOVE OBSTACLES TO BROADBAND DEPLOYMENT

#### A. The Commission Should Make Clear That Section 6409(a) Applies Broadly to All Wireless Services and Equipment

Section 6409(a) of the Spectrum Act was designed to “promote rapid deployment of the network facilities needed for the provision of broadband wireless services.”<sup>8</sup> To achieve this goal, Section 6409(a) uses broad, technologically neutral language, and provides that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”<sup>9</sup> A broad cross-section of the wireless industry agrees that several key terms in Section 6409(a) remain undefined, and that the Commission can provide valuable clarifications that will increase predictability, reduce the risks of protracted litigation over the disputed meaning of terms, and foster uniform application of the statute.<sup>10</sup> The Commission should confirm that Section 6409(a) applies broadly to all wireless services and technologies, in order to facilitate modification requests and prevent obstacles to the development and deployment of novel wireless technologies.

***“Wireless” and “Transmission Equipment.”*** The record strongly supports the NPRM’s tentative conclusion that Section 6409(a) refers broadly to all wireless services and to all

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<sup>8</sup> NPRM ¶ 91.

<sup>9</sup> Spectrum Act § 6409(a)(1).

<sup>10</sup> See, e.g., Comments of Sprint Corporation, WT Docket No. 13-238, at 8 (Feb. 3, 2014); Comments of Towerstream Corporation, WT Docket No. 13-238, at 7 (Feb. 3, 2014); Comments of PCIA – The Wireless Infrastructure Association and the Hetnet Forum, WT Docket No. 13-238, at ii (Feb. 3, 2014); Comments of AT&T, WT Docket No. 13-238, at 7-8 (Feb. 3, 2014); Comments of Crown Castle, WT Docket No. 13-238, at 9-10 (Feb. 3, 2014); see also NPRM ¶ 97.

transmission equipment.<sup>11</sup> The statutory terms do not contain any explicit limitations or restrictions, and the Commission should not infer any. As CTIA notes, the term “wireless” is commonly used to refer to a wide variety of wireless services, and it would be inconsistent with the Spectrum Act’s stated goal to “advance wireless broadband service” to limit “wireless” to particular services.<sup>12</sup> CCA agrees with Towerstream that defining “transmission equipment” broadly, without excluding any equipment, will facilitate the deployment of wireless broadband networks and will “minimize the need to continually redefine the term as technology and applications evolve.”<sup>13</sup> CCA also supports the NPRM’s proposal to include backup power equipment within the definition of “transmission equipment,” because power supplies are a necessary and integral component of any “transmission” and because ensuring appropriate backup power is important to the public interest.<sup>14</sup>

***“Existing wireless tower or base station.”*** The record also confirms the need to interpret this term broadly to ensure consistency with congressional intent and to promote the public interest. CCA agrees with the Commission and with numerous commenters that the term “wireless tower or base station” includes all structures that support or house an antenna, transceiver, or other equipment that is part of a base station, even if the structures were not built

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<sup>11</sup> See PCIA Comments at 29; Towerstream Comments at 10-11; Sprint Comments at 8; AT&T Comments at 22.

<sup>12</sup> Comments of CTIA – The Wireless Association, WT Docket No. 13-238, at 11 (Feb. 3, 2014).

<sup>13</sup> Towerstream Comments at 10-11.

<sup>14</sup> See NPRM ¶ 105; see also, Sprint Comments at 8; Towerstream Comments at 11; PCIA Comments at 30; Comments of the Telecommunications Industry of America, WT Docket No. 13-238, at 5 (Feb. 3, 2014).

for the sole or primary purposes of supporting that equipment.<sup>15</sup> As the NPRM notes, the term is not on its face limited to particular types of structures, and many other types of structures—including buildings, water towers, and light and utility poles—can support antennas or base stations.<sup>16</sup> It would make little sense, and would impede deployment of small cell, DAS, and Wi-Fi equipment, to limit the statute’s application to certain types of towers. CCA also agrees with many commenters that the word “existing” includes collocations on existing buildings and other structures even if those structures do not currently house wireless communications equipment; so long as the structure exists and is capable of supporting antennas or base station equipment, then it is “existing” for purposes of Section 6409(a).<sup>17</sup>

**“Substantially Change the Physical Dimensions.”** CCA generally supports importing the test from the Collocation Agreements for whether a modification causes a “substantial increase in the size of the tower” to determine when a modification will “substantially change the physical dimensions” of a tower or base station for purposes of Section 6409(a).<sup>18</sup> At a minimum, applying the same test will promote uniformity and predictability. The Commission should also consider, however, a secondary set of standards for structures other than those “built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.”<sup>19</sup> Any standard, however, must be based on objective criteria.

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<sup>15</sup> NPRM ¶ 108; *see, e.g.*, PCIA Comments at 31; Towerstream Comments at 18; Sprint Comments at 9-10; AT&T Comments at 22.

<sup>16</sup> NPRM ¶ 108.

<sup>17</sup> Sprint Comments at 9-10; Towerstream Comments at 17; Verizon Comments at 28; PCIA Comments at 34.

<sup>18</sup> NPRM ¶ 119.

<sup>19</sup> NPRM ¶ 121.

**B. The Commission Should Adopt Procedures to Ensure Rapid Approval of Applications**

The Commission also should ensure that the substantive provisions of Section 6409(a) are not evaded through procedural loopholes. The record reflects the unfortunate reality that some state and local governments do not process modification applications in a timely manner, and that such delay creates significant obstacles to wireless broadband deployment. It is therefore critical that the Commission implement procedural protections that ensure prompt approval of applications under Section 6409(a) and that prevent state and local governments from delaying or obstructing approval.

First, the Commission should clarify that the statute's requirement that state and local governments "may not deny, and shall approve" covered requests is mandatory and without exception. As some commenters note, local jurisdictions have been known to use applications for modifications at existing sites as a vehicle to consider other issues, such as aesthetic concerns or zoning issues.<sup>20</sup> Importing such extraneous concerns into the Section 6409(a) approval process creates unfounded opportunities for delay. The statute by its terms does not provide for discretionary review processes, or for approval subject to conditions, and the Commission should so clarify.

Additionally, the Commission should take steps to streamline the application process. Unduly complex applications can create significant burdens, particularly on smaller carriers. Because Section 6409(a) provides for mandatory, non-discretionary approval, the Commission should explain that a modification application may request only the information necessary to

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<sup>20</sup> Sprint Comments at 11, PCIA Comments at 44; Verizon Comments at 26-27.

determine if the applicant satisfies the provisions of Section 6409(a).<sup>21</sup> Doing so is consistent with Congress’s goal to streamline modification requests and consistent with the mandatory nature of 6409(a). In addition, Towerstream correctly observes that the deployment of a broadband network involving small cell, DAS, Wi-Fi, or other evolving technology could require hundreds—if not thousands—of modification applications to deploy facilities to serve even a medium-sized city.<sup>22</sup> The potential for such numerous applications, with each application consisting of at least several and likely scores of pages,<sup>23</sup> magnifies the need for streamlined application and processing requirements. The Commission therefore should consider adopting mechanisms for applicants to submit multiple modification requests using a single application.

The Commission also should implement reasonably prompt time limits for state and local governments to act, and should determine that applications not acted upon within the time limit will be “deemed granted.” The record confirms that state and local jurisdictions could evade Section 6409(a)’s streamlining goals by simply withholding a decision on applications, which would frustrate the purposes of the statute.<sup>24</sup> The 90-day period that the Bureau created in its *2009 Declaratory Ruling* as presumptively reasonable for processing collocation applications under Section 332(c)(7) is unnecessarily long for processing of applications under Section 6409(a). Given the mandatory nature of Section 6409(a) and the circumscribed scope of review that the statute establishes for state and local governments, CCA agrees with commenters that argue for a shorter period, such as 45 days, within which state and local governments must act on

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<sup>21</sup> See, e.g., Crown Castle Comments at 11. Similarly, the Commission should limit what information is necessary to deem an application “complete” under section 332(c)(7). See NPRM ¶ 154; Crown Castle Comments at 16-17.

<sup>22</sup> Towerstream Comments at 24.

<sup>23</sup> See *id.*

<sup>24</sup> See, e.g., PCIA Comments at 48; AT&T Comments at 26; CTIA Comments at 17-18.

an application.<sup>25</sup> And there is strong support in the record for the Commission to clarify that, if a state or local jurisdiction fails to act within the prescribed time period, the application will be deemed granted.<sup>26</sup> Without a “deemed granted” rule, the Commission’s time limit would be merely aspirational, and would fail to ensure the prompt approval that Congress intended for modification applications.

The Commission would be on solid legal footing to adopt a time limit for processing applications, and to conclude that applications not acted upon within the time limit be deemed granted. Because Section 6409(a) provides that “a State or local government may not deny, and shall approve” a covered request, a time limit simply clarifies that, at some point, inaction is equivalent to a denial. Thus, a time limit merely implements and gives meaning to the requirement that the state or local government “may not deny, and shall approve” a covered request. The Supreme Court recently upheld the Commission’s authority to impose presumptive time frames for state and local governments to process wireless tower and siting requests, even in the absence of a specific statutory directive to the Commission to adopt such a limit.<sup>27</sup> Here, the Commission should implement a similar time frame in order to effectuate Congress’s goal of ensuring rapid approval of modification requests.

The Commission has previously imposed a “deemed granted” framework for local approval of requests in analogous circumstances. For example, Section 652 of the Communications Act imposes buyout restrictions on cable operators and local exchange carriers,

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<sup>25</sup> See, e.g., Towerstream Comments at 25 (supporting a 30-day timeframe for action on an application); see also Verizon Comments at 31-32; PCIA Comments at 48; CTIA Comments at 16.

<sup>26</sup> See, e.g., Sprint Comments at 11; Towerstream Comments at 27; PCIA Comments at 50-53; CTIA Comments at 19-20; AT&T Comments at 26-27; Verizon Comments at 31-32.

<sup>27</sup> *City of Arlington v. FCC*, 133 S. Ct. 1863 (2013).

unless the applicants obtain a waiver from the Commission and approval of the relevant local franchising authority.<sup>28</sup> Although the Commission has granted forbearance from the statute, it previously credited concerns by waiver applicants that inaction or delay by local franchising authorities could create significant adverse effects.<sup>29</sup> Even though Section 652 does not on its face provide for a time limit for waiver approvals by the local franchising authority, the Commission implemented a procedure whereby local franchise authorities would have 60 days to inform the Commission of their decision, or else they would be deemed to have approved the waiver request.<sup>30</sup> In response to a petition for reconsideration, the Commission reaffirmed the importance of the “deemed approved” framework to protect and promote the public interest and effectuate the purposes of the statute.<sup>31</sup>

Similar considerations counsel in favor of a time frame and a “deemed granted” approach here. The record demonstrates that state and local authorities have previously introduced delays into the approval process for modification requests in a manner that is inconsistent with Section 6409(a)’s purpose and text. The Commission can fulfill Congress’s intent by setting a reasonable time frame for state and local action, coupled with a “deemed granted” rule for inaction.<sup>32</sup>

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<sup>28</sup> 47 U.S.C. § 572(d)(6)(B).

<sup>29</sup> *See Applications Filed for the Acquisition of Certain Assets of CIMCO Communications, Inc. by Comcast Phone LLC, Comcast Phone of Michigan, LLC and Comcast Business Communications, LLC*, Memorandum Opinion and Order and Order on Reconsideration, 25 FCC Rcd 3401, ¶¶ 15-16 (2010).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* ¶¶ 25-31.

<sup>32</sup> CCA also agrees with the NPRM that there is no Tenth Amendment defect with a “deemed granted” rule. NPRM ¶ 138. Such a rule would not “compel the States to enact or administer a federal regulatory program.” *Printz v. United States*, 521 U.S. 898, 933

## II. THE COMMISSION SHOULD EXCLUDE SMALL CELL AND DAS DEPLOYMENTS FROM NEPA AND NHPA REVIEW

The Commission also should update its existing rules and establish a categorical exclusion from review under the National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act (“NHPA”) for small cell and DAS deployment. The record confirms that small cell and DAS deployments are likely to have minimal and non-adverse effects on the environment and on historic properties.<sup>33</sup> NEPA and NHPA reviews can be time consuming, costly, and burdensome, yet, in the context of DAS and small cell deployment, provide no meaningful benefit.<sup>34</sup> As the NPRM correctly recognizes, DAS and small cell deployments may require large numbers of antennas, which could require very significant environmental compliance costs under a site-by-site review.<sup>35</sup> Sprint correctly notes that an exclusion from environmental and historic preservation review for small cell and DAS deployments would be consistent with exclusions already established through the Nationwide Programmatic Agreement and the Collocation Agreement.<sup>36</sup> And as PCIA argues, “DAS and some small cells are similar to, and compete with, Wi-Fi and other unlicensed wireless technologies that do not require environmental review under NEPA and NHPA.”<sup>37</sup> The Commission should ensure the technological neutrality of its rules by providing similar regulatory treatment for competing technologies.

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(1997). To the contrary, the rule would permit states not to act at all, and the resulting approval of the modification application would occur purely by operation of federal law.

<sup>33</sup> See, e.g., Sprint Comments at 5; Crown Castle Comments at 3; AT&T Comments at 9.

<sup>34</sup> See, e.g., Verizon Comments at 9; PCIA Comments at 11; Crown Castle Comments at 3-4; Towerstream Comments at 30.

<sup>35</sup> NPRM ¶ 35.

<sup>36</sup> Sprint Comments at 4.

<sup>37</sup> PCIA Comments at 11.

CCA accordingly supports the NPRM's proposal to categorically exclude DAS and small cell deployments from NEPA and NHPA review.<sup>38</sup> The Commission should amend Note 1 to Section 1.1306<sup>39</sup> of its rules to exclude collocations as well as all DAS and small cell deployments from environmental processing.<sup>40</sup> And the Commission should clarify that its revision to Note 1 exempts DAS and small cell deployments on existing structures from review under NHPA Section 106.<sup>41</sup>

### **III. THE COMMISSION SHOULD MAKE PERMANENT THE EXEMPTION FROM ENVIRONMENTAL NOTIFICATION FOR TEMPORARY TOWERS**

Finally, the Commission should make permanent the current temporary exception from the pre-construction environmental notification process for temporary towers. The record establishes that temporary towers can be valuable in ensuring continuity of service during major events or during periods of localized high demand, or when permanent towers are temporarily out of commission.<sup>42</sup> The record also confirms that the temporary waiver has produced significant public interest benefits without significantly impacting the environment, migratory birds, or air safety.<sup>43</sup> The Commission accordingly should make permanent its exception from public notice requirements, and should adopt its proposed guidelines for determining if temporary towers are entitled to the exemption.<sup>44</sup>

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<sup>38</sup> See NPRM at ¶¶ 43, 55-56.

<sup>39</sup> 47 C.F.R. § 1.1306, note 1.

<sup>40</sup> See PCIA Comments at 7; Sprint Comments at 3-6; AT&T Comments at 10.

<sup>41</sup> See Sprint Comments at 3; AT&T Comments at 10-13

<sup>42</sup> See, e.g., Sprint Comments at 7; AT&T Comments at 19; PCIA Comments at 59; CTIA Comments at 6; Verizon Comments at 24.

<sup>43</sup> *Id.*

<sup>44</sup> NPRM ¶ 82.

## CONCLUSION

The Commission should take the steps discussed above to promote rapid wireless broadband deployment and ensure that wireless carriers have access to the resources that they need to compete effectively. Doing so will help achieve Congress's and the Commission's stated policy goals of (1) ensuring that broadband services is reasonably and timely deployed to all Americans and (2) promoting competition in the wireless industry.

Respectfully submitted,

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