

**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 THE UTILITIES TELECOM COUNCIL

Pursuant to Section 1.405 of the Commission’s Rules, the Utilities Telecom Council (“UTC”) hereby files its reply comments in response to the Commission’s in response to the Commission’s Notice of Proposed Rulemaking in the above-referenced matter.¹ The record clearly establishes the need for, and timeliness of, modernizing, updating and clarifying the Commission’s rules on the environmental and historical review of collocation applications for

¹ In the Matter of 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, WT Docket No. 13-238, WC Docket No. 11-59, WT Docket No. 13-32, *Notice of Proposed Rulemaking*, FCC 13-122 (rel. Sept. 26, 2013) (NPRM). See also *Comment Deadlines Announced for Notice of Proposed Rulemaking on Improving Wireless Facilities Siting Policies*, Public Notice, DA 13-2324, (rel. Dec. 5, 2013)

small cells and DAS, codification of the exemption of certain temporary towers from such rules, clarifying the scope of wireless collocation language in the Spectrum Act and offering relief from delays by implementing a “deemed granted” remedy.

I. The Commission Should Streamline Environmental and Historical Review of the Deployment of Small Cell and DAS Infrastructure.

The record shows well-documented support for a categorical exclusion for DAS and small cell deployments.² UTC agrees with PCIA that the preferred approach would be for a simple and comprehensive solution by adopting a rule change that would create a specific categorical exemption from both NEPA and NHPA review of small cells and DAS, given their minimal at best impact. Alternatively, UTC agrees with PCIA that the Commission could also ask the Advisory Council for Historic Preservation (“ACHP”) to invoke the “exempted category” provision of its rules, or determine that deployment of DAS and small cells meeting specified criteria is neither a “major federal action” under NEPA nor a “federal undertaking” under the NHPA.³

a. Updating the NEPA Exclusion for Collocations in Note 1.

UTC agrees with AT&T that the Commission should clarify or revise the rule, so that the collocation exclusion in Note 1 extends to collocations on all non-tower structures and to all equipment needed to operate the antennas. As AT&T explains, “[l]imiting the exemption to antennas only would frustrate the purpose of the current exemption.”⁴ Further, the Note 1 collocation exclusion should extend to facilities mounted on all existing structures, such as utility

² See, e.g., Comments of [Association of American Railroads](#) (AAR) at 5, [AT&T](#) at 10, [PCIA – The Wireless Infrastructure Association and the HetNet Forum](#) (PCIA) at 6; and the [Wireless Internet Service Providers Association \(WISPA\)](#) at 14 in WT Docket No. 13-238.

³ Comments of PCIA at 6.

⁴ Comments of AT&T at 4.

poles, water tanks, light poles, traffic poles, and bill boards. AT&T correctly notes that “[t]his clarification is warranted, as such collocations are no more likely to significantly affect the environment than collocations on towers and buildings.”⁵

b. Adopting A New Categorical Exclusion for DAS and Small Cell Deployments

The Association of American Railroads (“AAR”) proposes a technology-neutral approach in its support for adopting a new categorical exclusion for small wireless facilities. UTC supports the AAR’s proposal that the exclusion should be drafted “based on the size and location of the covered small wireless facilities, rather than attempting to define the exclusion based on reference to a specific technology.”⁶ Crown Castle agrees that technology-neutral rules for small wireless facilities will spur broadband deployment nationwide while ensuring that only facilities with *de minimis* impacts will be excluded from review.⁷

c. Options for Tailoring Historic Preservation Review.

UTC supports PCIA’s proposal that a rulemaking to add DAS and small cell solutions to the list of facilities that are categorically excluded from non-RF-related environmental processing under Section 1.1306 (Note 1) would satisfy the Commission’s responsibilities under the NHPA and the ACHP’s Section 106 regulations.⁸ UTC recommends that the Commission also take into consideration the comments of the Wireless Internet Service Providers Association,

⁵ See Comments of AT&T at 9.

⁶ See Comments of AAR at 6.

⁷ See Comments of [Crown Castle](#) at 3.

⁸ Comments of PCIA – The Wireless Infrastructure Association and the DAS Forum (A Membership Section of PCIA) in WC Docket No. 11-59, at 50-51. *See also* Section 106 of the National Historic Preservation Act (“NHPA”), 16 U.S.C. § 470(f). *And see* Advisory Council on Historic Preservation (“ACHP”), 36 C.F.R. §§ 800.2, 800.3 et seq.

which suggests that the Commission focus on technology-neutral physical characteristics to reflect developments in the deployment of new technology by applying the same definition for all communications facilities that are excluded from both Section 106 review and NEPA review.⁹

d. Defining the Scope of the Exclusion.

In its initial comments, UTC pointed to the need to exclude utility poles over the age of 45 years from review and ensure that the same standards for exclusion apply under the NHPA as under NEPA. In its comments, PCIA agrees and emphasizes that utility poles and similar structures are standardized and not unique, even above the age of 45, such that they do not merit historical review.¹⁰ Moreover, Verizon's estimates that 70-80 percent of utility poles in the Northeast, and 50-60 percent of utility poles in the Southwest, are 45 years old or older.¹¹ As such, this is a potentially significant issue, which requires the Commission to clarify.

e. Other Considerations

As noted in its initial comments, UTC believes that the Commission should consider changes to the tribal review process that has been a factor in delaying deployment activities for a number of UTC's members. UTC recommended that Tribes should continue to require historical review for legitimate concerns regarding deployments that could affect an area of cultural or historical significance but should preclude claims where no legitimate concern exists. Verizon and Verizon Wireless ("Verizon") illustrated some of the difficulties, complexities and delays it faces with the tribal review process when it is deploying its wireless infrastructure. Verizon's experience mirrors UTC members' experience, adding significant expense and multiple months

⁹ Comments of the [Wireless Internet Providers Association](#) at 16.

¹⁰ See Comments of [PCIA](#) at 23.

¹¹ Comments of Verizon at 17, n. 38.

to a process that should have been completed in short order.¹² As such, UTC supports Verizon's request that the Commission adopt an exclusion from NHPA reviews for small cells, DAS and similarly-sized facilities. In addition, UTC also urges the FCC to address the larger issue of unnecessary delays and costs for wireless siting in general during the tribal review process.

II. The Commission Should Codify the Exemption of Temporary Towers from the Environmental and Historical Review Process.

Commenters support the Commission's proposal to codify the exemption of temporary towers from the environmental and historical review process. Joint Venture: Silicon Valley notes that making such an exemption permanent could serve as "another example of how current federal regulatory burdens can be lessened by simple, common sense reductions."¹³ Similarly, PCIA supports making the waiver permanent based on the positive comments in the record already and the fact that there has been no substantial effect on the environment, migratory birds, or air safety.¹⁴ Finally, as CTIA – The Wireless Association points out, codifying the waiver has substantial public interest benefits.¹⁵

III. The Commission Should Clarify the Scope of the Wireless Collocation Provisions of the Spectrum Act.

On the issue of the scope of the wireless collocation provisions of Section 6409(a) the Spectrum Act, the record shows again that there is significant support for the Commission's goal of broadly interpreting various statutory terms and other questions of implementation to reduce uncertainty and promote deployment of DAS and small cells. The Telecommunications Industry Association observes that Section 6409(a) gives the Commission ample authority to clarify the

¹² Comments of [Verizon](#) at 9-11.

¹³ See Comments of [Joint Venture: Silicon Valley](#) at 5.

¹⁴ See Comments of [PCIA](#) at 59.

¹⁵ See Comments of [CTIA-The Wireless Association](#) at 6.

existing language,¹⁶ and Sprint remarks that “providing clarification in this area will ultimately decrease delays caused by the need for local interpretations and judicial decisions.”¹⁷

In its comments, UTC proposed modifications to the “substantially changed physical dimensions” standard in order to accommodate pole top attachments to utility poles that require an increase in pole height more than five feet.¹⁸ In that regard, UTC recognizes that Sprint noted that the latest NPA includes a modified fourth prong in its four-prong test that could be used as the basis for future assessments.¹⁹

IV. Implementation of Section 332(c)(7)

In its comments, UTC expressed its support for the Commission’s efforts to clarify the application of several discrete standards established in the 2009 Declaratory Ruling.²⁰ The record is replete with amplifications of UTC’s position. AT&T,²¹ PCIA,²² Crown Castle,²³ Towerstream²⁴ and Verizon²⁵ are just a few of the commenters supporting shorter timeframes for

¹⁶ Comments of the [Telecommunications Industry Association](#) at 5.

¹⁷ Comments of [Sprint](#) at 8.

¹⁸ Comments of UTC at 13.

¹⁹ Comments of Sprint at 10.

²⁰ 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, WT Docket No. 08-165, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009) (“*2009 Declaratory Ruling*”).

²¹ Comments of AT&T at 25.

²² Comments of PCIA at 50.

²³ Comments of Crown Castle at 17.

²⁴ Comments of Towerstream at 6.

²⁵ Comments of Verizon and Verizon Wireless at 31.

