



March 14, 2014

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies

Dear Chairman Wheeler:

On behalf of PCIA – The Wireless Infrastructure Association, thank you for your interest in how the Federal Communications Commission can take further steps to streamline wireless deployment, which will facilitate the capital investment necessary to maximize the economic benefits of wireless broadband. Carriers and infrastructure providers are now investing significant capital to expand and improve networks to keep pace with skyrocketing demand. In 2012 alone, these companies poured over \$28 billion and \$658 million, respectively, into new deployment, upgrades and modifications across the network,¹ and these investments are expected to grow.

Information Age Economics recently completed a study for PCIA entitled “Wireless Broadband Infrastructure: A Catalyst for GDP and Job Growth 2013-2017.”² The report found infrastructure investments will, over the next five years:

- Stimulate up to **\$1.2 trillion in cumulative economic development**, a 606 percent increase over the total amount the wireless industry will invest;
- Increase GDP by 2.2 percent by 2017;
- Fuel up to \$87 billion of economic growth per year, for up to a 0.5 percent improvement to GDP per year; and
- **Create over 1.3 million jobs**, including over 122,000 jobs in the wireless infrastructure industry alone.

¹ See Comments of PCIA – The Wireless Infrastructure Association, WT Docket No. 13-35, at 2 (June 17, 2013).

² DR. ALAN PEARCE ET AL., WIRELESS BROADBAND INFRASTRUCTURE: A CATALYST FOR GDP AND JOB GROWTH 2013-2017 (2013), available at http://www.pcia.com/images/IAE_Infrastructure_and_Economy2.PDF.

PCIA supports the Commission's efforts to implement helpful policies in its Notice of Proposed Rulemaking on the acceleration of broadband infrastructure deployment.³ PCIA supports the Commission's proactive approach to examining the regulatory encumbrances on distributed antenna system ("DAS") and small cell deployment. Further, by clarifying Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") and the wireless facility siting Shot Clock, the Commission will foster the consistency necessary for investment and reduce friction created when national broadband policy objectives intersect with local concerns and priorities. In sum, to facilitate investment and enable industry to meet growing wireless demand, the Commission should, among other things:

- ***Amend its rules to categorically exclude DAS and small cell deployments from environmental and historic review.***⁴ DAS and small cell installations have limited visual impacts, involve minimal ground disturbance, and generally occur in existing public rights-of-way where some ground disturbance can be expected. Because the environmental and historic preservation effects of such construction will be nonexistent or *de minimis*, a categorical exclusion from environmental and historic review is warranted. Such a rule change will help streamline the deployment of infrastructure needed to provide the public with advanced wireless broadband services and create new opportunities for commerce and connectivity in hard-to-target and high-demand areas.
- ***Adopt rules implementing and enforcing Section 6409(a) of the Spectrum Act.***⁵ 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), which Congress enacted to streamline state and local permitting processes for minimally impactful modifications of existing wireless infrastructure facilities, including collocations. Failing to provide needed certainty would allow Section 6409(a) to be interpreted case-by-case through the courts and local jurisdictions—a lengthy, arduous process that would inevitably lead to patchwork implementation and undermine the legislation's streamlining purpose. Accordingly, the FCC should: establish consistent rules and avoid uncertainty by defining key terms in Section 6409(a), such as delineating an objective standard for when a modification "substantially change[s] the physical dimensions" of a wireless facility; clarify that

³ *In re* Acceleration of Broadband Deployment by Improving Wireless Facility 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; 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; 2012 Biennial Review of Telecommunications Regulations, *Notice of Proposed Rulemaking*, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, RM-11688, FCC 13-122 (rel. Sept. 26, 2013).

⁴ See Comments of PCIA – The Wireless Infrastructure Association, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, RM-11688, at 6-23 (Feb. 3, 2014) ("PCIA Broadband Acceleration Comments"); Reply Comments of PCIA – The Wireless Infrastructure Association, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, RM-11688, at 2-14 (Mar. 5, 2014) ("PCIA Broadband Acceleration Reply Comments").

⁵ See PCIA Broadband Acceleration Comments at 24-53; PCIA Broadband Acceleration Reply Comments at 15-26.

the statute's "may not deny, and shall approve" mandate requires approval of all eligible facilities requests without exception and without discretionary review; require the approval of these requests within forty-five days; and adopt a deemed granted rule and other remedies for Section 6409(a) non-compliance.

- **Take further steps to implement Section 332(c)(7).**⁶ Much has been learned in the years since the 2009 *Declaratory Ruling* that created the wireless facility siting Shot Clock,⁷ and as a result, the Commission should act to clarify its interpretations of Section 332(c)(7). To ensure the proper application of Section 332(c)(7), the FCC should: establish a floor for new siting application completeness for the purpose of triggering the Shot Clock's timeframes; make clear that the Shot Clock applies to DAS and small cell facilities; state that the Shot Clock's timeframes run regardless of any local moratoria; and recognize that municipal property siting preferences can effectively prohibit the provision of wireless services.
- **Utilize a Program Comment to Address the Twilight Tower Issue.** Twilight Towers are towers built between 2001 and 2005 that did not complete the Section 106 historic preservation review process. During that time, it was not clear whether Section 106 applied; as such, many commercial and public safety structures did not undergo Section 106 review. When the 2004 Nationwide Programmatic Agreement became effective in 2005,⁸ it became clear that the Section 106 process applied. Because collocation mandates successful completion of the Section 106 process, Twilight Towers remain in regulatory limbo and cannot be used for efficient deployment of commercial or public safety wireless broadband facilities. PCIA urges the Commission to work with the Advisory Council on Historic Preservation to utilize a program comment process to bring these towers into compliance expeditiously so they may be fully utilized to expand broadband capacity and coverage consistent with Commission goals.⁹

⁶ See PCIA Broadband Acceleration Comments at 53-59; PCIA Broadband Acceleration Reply Comments at 26-32.

⁷ *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 (2009), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd sub nom. City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013).

⁸ *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (2004), 47 C.F.R. Part I, Appendix C (2004).

⁹ See 36 C.F.R. § 800.14(e)(1). The Program Comment process described in 36 C.F.R. § 800.14(e)(1) was created to deal with issues that involve numerous undertakings that are likely not to have major effects.

With nearly forty percent of American households relying on wireless for voice communications¹⁰ and FirstNet gearing up to deploy the nationwide public safety broadband network, the stakes are high to develop sensible policies that foster network deployment. I look forward to working with you and your fellow Commissioners to enact expeditiously those policies that will ensure a connected future for all Americans.

Sincerely,

A handwritten signature in blue ink that reads "Jonathan S. Adelstein". The signature is fluid and cursive, with the first name being the most prominent.

Jonathan S. Adelstein
President & CEO
PCIA – The Wireless Infrastructure Association

CC: Renee Gregory

¹⁰ See *Wireless Substitution: State-level Estimates from the National Health Interview Survey, 2012*, CENTERS FOR DISEASE CONTROL NATIONAL HEALTH STATISTICS REPORTS 1 (Dec. 18, 2013), available at <http://www.cdc.gov/nchs/data/nhsr/nhsr070.pdf>.