



April 9, 2014

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Ex Parte Communication: WT Docket Nos. 13-238, 13-32, 13-240; WC
Docket No. 11-59**

Dear Ms. Dortch:

On April 7, 2014, Jonathan Campbell and the undersigned of PCIA – The Wireless Infrastructure Association (“PCIA”) met with David Goldman of Commissioner Rosenworcel’s office. Consistent with its recommendations in the Broadband Acceleration docket,¹ PCIA emphasized that swift Commission action will best speed wireless broadband deployment. PCIA also urged the Commission to bring into compliance certain wireless towers caught in regulatory limbo using a program comment process.

PCIA shared a copy of the attached economic study by Information Age Economics, highlighting the results that projected wireless infrastructure investment of \$34 to 36 billion per year over the next five years would result in \$1.2 trillion in economic development and 1.3 million net new jobs.²

To improve clarity and consistency in wireless facility deployment, PCIA urged the Commission to adopt rules implementing and enforcing Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012.³ Decisive rules—not voluntary best practices—to define statutory

¹ *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).

² 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.

³ See Comments of PCIA – The Wireless Infrastructure Association, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, RM-11688, at 24-53 (Feb. 3, 2014) (“PCIA Comments”); Reply Comments of PCIA – The Wireless Infrastructure Association, WT Docket Nos. 13-238, 13-32; WC Docket No. 11-59, RM-11688, at 15-26 (Mar. 5, 2014) (“PCIA Reply Comments”).

terms and specify application procedures, timelines, and remedies consistent with congressional intent will promote predictability, remove uncertainty, and avoid unnecessary and costly litigation. PCIA underscored the need for the FCC to define terms of Section 6409(a). With regard to “Substantially Change the Physical Dimensions,” the Commission should utilize the 2001 Collocation Programmatic Agreement’s test, modified to encompass practical developments from the 2004 Nationwide Programmatic Agreement; further, the Commission should tie the baseline tower size to the structure’s last zoning approval or the date of the promulgation of FCC rules, whichever is later.⁴ PCIA asserted that “may not deny, and shall approve” requires a limited application to be filed for all Eligible Facilities Requests (“EFR”) and mandates approval without exception and without discretionary review within forty-five days, including approval of eligible legal, non-conforming structures, but that jurisdictions may require adherence to building codes.⁵ To carry out Section 6409(a)’s “shall approve” mandate, the FCC should implement a “deemed granted” remedy.⁶

PCIA also asked the Commission to streamline its environmental and historic review process for DAS and small cells by categorically excluding facilities that meet a technology-neutral, volume-based definition.⁷ Because these facilities have, at most, a *de minimis* effect on the environment, the FCC has authority to propose the exclusion.⁸ To remain future-proof, those facilities that conform to the exclusion’s intention but lie outside the volume-based definition would be eligible for an accelerated waiver process.⁹ These steps will allow providers to deploy more quickly, especially in rights-of-way, to anticipate future demand for wireless coverage and capacity.

Finally, PCIA commended the Commission for moving forward to speed deployment of positive train control facilities through the use of a program comment.¹⁰ PCIA outlined the potential benefits of utilizing a program comment to bring into compliance certain “Twilight Towers,” 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 2005,¹¹ 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 urged the Commission to utilize a program comment process to bring these towers into compliance

⁴ PCIA Comments at 37-40; PCIA Reply Comments at 19-20.

⁵ PCIA Comments at 41-50; PCIA Reply Comments at 18-19.

⁶ PCIA Comments 50-53.

⁷ *Id.* at 6-9.

⁸ *Id.* at 9-11.

⁹ PCIA Reply Comments at 7-8.

¹⁰ *See* Comments of PCIA – The Wireless Infrastructure Association, WT Docket No. 13-240 (Nov. 15, 2013).

¹¹ 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).

expeditiously so they may be fully utilized to expand broadband capacity and coverage consistent with Commission goals.¹²

Pursuant to Section 1.1206 of the Commission's rules, this notice will be filed via ECFS with your office, and a copy will be provided via email to the attendees. Please do not hesitate to contact the undersigned with any questions.

Sincerely,



D. Van Fleet Bloys
Government Affairs Counsel
703-535-7451
van.bloys@pcia.com

CC: David Goldman

¹² 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.