**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of: | ) | |
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| Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies | ) | WT Docket No. 13-238 |
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| 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 |

## COMMENTS FILED BY THE CITY OF CARPINTERIA, CALIFORNIA REGARDING THE FCC'S NOTICE OF PROPOSED RULEMAKING

**Comment Date: May 27, 2014**
**City of Carpinteria, 5775 Carpinteria Avenue, Carpinteria, CA 93013 (805) 684-5405**

## INTRODUCTION

The City of Carpinteria is located along the coast of southern California, in southern Santa Barbara County. Carpinteria is a small community, measuring only two and one-half square miles. As a coastal community, the City enforces local zoning regulations and regulatory authority in support of the California Coastal Act as it relates to coastal resources such as biological resources, agricultural lands, recreational and visitor-serving uses and visual resources including views to and along the coast. Carpinteria is located within a valley which is home to many agricultural uses which include tree crops, greenhouses and field crops. Much of the surrounding valley is located outside of the City's jurisdiction and is regulated by the County of Santa Barbara.

Since Wireless Communications regulations were adopted in 2001, Carpinteria has approved requests for facilities from AT&T, Sprint and Verizon. These providers operate five sites, all of which are building-mounted facilities screened from view by incorporation into existing structures or by parapet structures when roof-mounted. Some facilities have been granted exceptions to the City's height limit of 30 feet when the antennas have been incorporated into architectural projections such as faux chimneys or towers that are five to ten feet higher than the 30-foot limit. No telecommunications facilities in Carpinteria are located on towers or false trees as the City has a strong interest in maintaining the aesthetic values of its coastal location with expansive ocean and mountain views.

In recent years, the majority of telecommunications requests have proposed facilities where gaps in service strength exist for a particular carrier or where collocation is not available. Many of the requests have also included technology changes which have helped providers deliver data services which keep up to speed with user demand. Due to the City's relatively small size and fairly complete build-out, few vacant or undeveloped properties are available for new structures. If an existing facility needs modification to allow collocation, the request is processed through a public hearing in front of the Planning Commission. Once an application is deemed complete, a hearing is scheduled within one to two months. If the proposed modification includes architectural changes to a building, additional review by the Architectural Review Board occurs within the same one to two-month timeframe. Thus far, requests for modifications have been approved without delay, particularly in the case of minor changes which are often reviewed by the Community Development Director with no public hearing. These types of changes, such as replacing equipment within a cabinet or replacing existing antennas with more modern technology, can be accommodated within a one to two-week timeframe, including issuance of any required Building Permits.

**IMPLEMENTATION OF SECTION 6409(a)**

In its brief existence, Section 6409(a) appears to facilitate *de minimis* changes to legally established wireless facilities without much controversy. A diligent search revealed that only three cases even address the statute. The Commission should therefore find that it should neither interpret the terms in Section 6409(a) nor adopt any related mandatory rules.

In the event that the Commission determines that it should exercise its regulatory authority with respect to Section 6409(a), the City of Carpinteria counsels the Commission to: (1) narrowly interpret the statutory terms to afford them the narrow and common definition that Congress intended; (2) affirm the primacy of local authorities to define a "substantial" change; (3) bear in mind that the statute mandates a specific result without any reference to any specific process; (4) acknowledge local courts as the most appropriate and efficient means to resolve wireless land use disputes; and (5) consider the federalism and Tenth Amendment limits on federal power over the States and their political subdivisions.

Additionally, although Section 6409(a) contains few words and virtually no legislative history, the Commission should not view it as a blank slate. Congress enacted Section 6409(a) within the context of the Telecommunications Act of 1996 ("Telecom Act"), and the Commission should interpret any new rules to govern Section 6409(a) in a manner consistent with the policies, objectives, history and well-developed case law connected with the Telecom Act. Section 6409(a) exists as a very narrow exception to the rule of local authority explicitly reserved in the Telecom Act, and the Commission should not interpret the statute so broadly that the exception swallows the rule.

Section 6409(a) raises concerns about the potential future changes to facilities in Carpinteria. Although industry staff have identified difficulties in locating in Carpinteria, regulation has not been the primary burden. Many industry representatives have identified real estate hesitation and safety concerns as contributing to the challenge of securing a site. Many industry representatives have also identified that the City's relatively low topography creates engineering difficulties in siting and designing facilities.

The Commission's proposed Draft Rules would allow towers and existing building-mounted facilities to heights beyond that allowed for other structures in Carpinteria, without public input or regulatory oversight. The City is most concerned about the visual impacts that could result within this coastal region. Changes to structures already exceeding standard building height limits would be permitted without the benefit of public or regulatory review which may result in better design, screening of the structure and preservation of ocean and mountain views so important in the coastal zone. Concerns

also arise from existing facilities that had been installed prior to current zoning regulations and are therefore considered non-conforming or "grandfathered." Without even meeting current regulations, a facility could further expand, again potentially significantly impacting the visual resources of the area which are mandated to be protected under the California Coastal Act. This leads to subsequent concerns about increased development of aging facilities and the extension of non-conforming uses or structures. Any modification of a non-conforming use must lose any grandfathered status; cities must be able to condition application approval on building codes and land use laws.

Without the oversight of the local jurisdiction, cities will ultimately be allowing a specific industry free range development where other industries must meet the City's local land use regulations. Since the City of Carpinteria's regulation of the wireless industry has not proven overly burdensome or time consuming, requiring review of projects by local jurisdictions must be retained to ensure equal enforcement of the regulations of the City which are intended to preserve the quality of life in Carpinteria as a small beach town and in particular, its visual resources.

**IMPLEMENTATION OF SECTION 332(c)(7)**

The Commission also seeks comment on whether to modify its *2009 Declaratory Ruling* that interprets the term "reasonable time" as used in Section 332(c)(7)(B). For the most part, State and local governments adapted well to the *2009 Declaratory Ruling*, and no factual record before the Commission provides a basis for change. The City of Carpinteria recommends that the Commission should not adopt any new rules.

In the event that the Commission determines that it should exercise its regulatory authority with respect to Section 332(c)(7)(B), the City of Carpinteria advises that the Commission carefully preserve local control over and flexibility in the permit process to encourage government, industry and community stakeholders to cooperate to achieve creative wireless solutions. Any finally-adopted rules must preserve enough local authority to bring wireless applicants to the negotiating table.

**CONCLUSION**

The City of Carpinteria would like to thank the Commission for its efforts to better understand the practices and policies surrounding cities' management of public rights-of-way and the practices currently used to co-locate wireless facilities. The City of Carpinteria strongly encourages the Commission to consider these comments, as well as those submitted by all cities, before taking any action that may adversely affect cities. The Commission has explicitly acknowledged that it does not intend to become a national zoning board, but the practical impact of the Draft Rules will likely result in that very outcome.

Respectfully submitted,

City of Carpinteria

By: Brad Stein, Mayor
5775 Carpinteria Avenue
Carpinteria, CA 93013