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

To: The Commission

Motion to Accept Late Filed Comments

The City of Miami Beach, Florida, (Petitioner) asks that the attached comments be accepted into the record of this proceeding. The proffered comments support the thoughtful presentations made in this proceeding by The City of Minneapolis, Minnesota and by the Commission's own Intergovernmental Advisory Committee. No party is prejudiced by the City of Miami Beach's endorsement of these previously filed comments and the public interest is

served by permitting the Petitioner to participate in this important proceeding .

Respectfully submitted

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Supporting Comments

The City of Miami Beach, Florida, ("Miami Beach" or the "City") submits the following comments endorsing the thoughtful submissions of the City of Minneapolis, Minnesota, ("Minneapolis")[1], the City of Alexandria, Virginia, et al.[2] and the Commission's own Intergovernmental Advisory Committee ("IAC")[3] in this proceeding.[4]

[1] See Comments of the City of Minneapolis, Minnesota dated January 31, 2014.
[2] See Comments of the City of Alexandria Virginia, et al., dated February 3, 2014.
[3] See Intergovernmental Advisory Committee to the Federal Communications Commission, Advisory Recommendation Number 2013-13, approved December 2, 2013.
[4] The proceeding was initiated in Notice of Proposed Rulemaking, WT Docket No. 13-238, FCC 13-122, released September 26, 2013 (the "NPRM").

Miami Beach shares the concerns of Minneapolis regarding preservation of municipal authority over the public rights-of-way. Like Minneapolis, Miami Beach's authority over public rights-of-way is statutory.[5] The City's right-of-way resources must be allocated to meet its residents' need for numerous services including transportation, power, water, cable and telecommunications services. Like Minneapolis, Miami Beach must devote substantial right-of-way resources to drainage/flood control, a function that will gain in significance with expected sea level changes. Equipment located in Miami Beach rights-of-way is subject to extreme weather conditions, including hurricanes, and public safety considerations require strict adherence to zoning and building codes. Accordingly, Miami Beach joins Minneapolis in urging the Commission to refrain from regulating local right-of-way management and facility placement processes, particularly as they apply to municipal roadways and roadway easements.[6]

Miami Beach agrees with the Comments of The City of Alexandria, Virginia, et al., concerning the wide range of problems posed by the NPRM's proposed rules. As demonstrated therein, even the relatively smaller structures comprising DAS systems can pose significant public safety issues when local conditions are not adequately considered in their design and construction. This is particularly problematic when wireless facilities are sited in public rights-of-way, where proposed automatic 20 foot extensions of facilities and automatic addition of ground facilities could impede and obstruct other persons' use of the local government's roadway easements.

Miami Beach endorses Alexandria's comments on the environmental and historic preservation issues posed by the NPRM's proposals. Certainly proposals allowing automatic

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[5] See Fla. Stat. §337.401.

[6] In this connection, Miami Beach shares Minneapolis' view that management of municipal property rights in roadways and roadway easements is an attribute of State sovereignty protected by the Tenth Amendment to the United States Constitution.

approval of modifications to wireless facilities will substantially frustrate local efforts to employ stealth technologies to diminish visual the impact of wireless facilities on communities. As Alexandria notes, the proposed rules fail to recognize that a 20 foot height extension can be a very significant modification to a base station, depending on the location and condition of the original, unmodified facility. The NPRM's "one-size-fits-all" approach to facilities modification is the negation of rational and responsible stewardship of public resources. Alexandria is completely correct in exposing the error inherent in this proposal.

Finally, Miami Beach asks that the Commission adopt each of the seven recommendations made by its Intergovernmental Advisory Committee with respect to this rulemaking proceeding. These recommendations, found at page 20 of IAC's Advisory Recommendation Number 2013-13, are:

1. The Commission's primary efforts should be focused on working with government and industry to collaborate on best practices and education regarding deployment of wireless communications facilities in a manner that meets the legitimate needs and interests of all parties and all Americans.
2. Where the Commission needs to adopt specific rules to clarify the intent of Congress, it should do so in the narrowest possible fashion, and refrain from expanding federal preemption in areas of traditional local, state and tribal government authority.
3. The Commission should confirm its initial proposal to adopt (NPRM, Para. 129) the IAC's earlier recommendation that 6409(a) is properly construed only to apply to zoning and similar land use regulation decisions regarding use of private property, and is not applicable to actions of state, local and tribal governments with respect to

their own property, when such governments are acting as landlord or otherwise in a proprietary rather than regulatory capacity.

4. The Commission should not adopt any rules that waive or minimize the application of environmental or historic preservation laws on the siting of wireless communications facilities.
5. Any challenges to local government action, claiming a violation of Commission rules, should be addressed in local state courts and local federal courts. Localities should not be required to incur the expense of retaining legal counsel in Washington, D.C. and traveling long distances to defend local zoning actions.
6. With the limited exception of making any definitional rules applicable to the Commission's "shot clock" decision in WC Docket No. 11-59, the Commission should refrain from revisiting and expanding its findings and rules adopted in connection with that Docket.
7. The Commission should respect and heed the advice of government commenters in this Docket regarding the Tenth Amendment to the United States Constitution and the role of federalism in connection with this proceeding.

Miami Beach submits that the IAC's strong interest in enforcement of environmental and historic preservation laws is particularly praiseworthy. Miami Beach is home to the National Register Art Deco District. The City's neighborhoods contain numerous examples of Art Deco, Mediterranean Revival and Miami Modernism architecture, many of which have historical significance. Miami Beach's shore and marine resources are world famous and merit watchful environmental monitoring. No one has a greater stake in the preservation and rational development of Miami Beach's resources than the local government, and the Commission should

partner with local governments to insure that municipalities obtain the benefits of wireless technology without compromising public safety, the environment or their cultural heritage.

Respectfully submitted

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