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Office of the Mayor Savannah, Georgia

Edna Branch Jackson
Mayor

Received & Inspected

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FCC Mail Room

April 1, 2014

Ms. Jane Jackson
Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

OFFICE OF GENERAL COUNSEL
FCC

2014 MAY -7 P 2:51

Dear Ms. Jackson:

On behalf of the City of Savannah, I would like to file the following ex parte comments about the proposed rule making. Those comments are attached below.

The City of Savannah is concerned that some interpretations suggested in the NPRM would result in potential harm to our National Landmark Historic District. Savannah boasts one of the largest and oldest historic districts in the nation, and our local economy depends in large part on the preservation and protection of that district. To that end, Savannah has adopted specific and unique Historic District ordinances, and supports a Historic District Board of Review and staff that is dedicated to upholding the integrity of this important and fragile treasure.

Nearly 40% of Savannah, GA's economy is related to tourism. People visit Savannah primarily because of our historic district and how we protect it. They visit our beaches and waterways in reliance on our health protection measures. Please allow us to continue to protect our community through responsible zoning.

Like Chatham County, the process of review and permitting for new facilities and modification of existing wireless facilities in the City of Savannah is not onerous or time-consuming. Savannah has adopted a virtually identical ordinance governing Wireless Telecommunications Facilities to that in place in Chatham, and we employ similar methods and protocols for our review. We act on zoning requests quickly and have never denied a collocation request that has not threatened the structural stability of the tower mount.

The City of Savannah would like to join with Chatham County in voicing our opposition to any change in the language that would preclude our supplemental marking and lighting requirement for wireless facilities between 100 and 200 feet agl. Several of the proposed changes (enumerated below) would exempt towers less than 200 feet in height from being required to install lighting and/or marking. The exemption sought by the tower industry to

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exempt towers shorter than 200 feet from placing any tape or lighting on towers would pose a potential hazard to our pilots, and to our residents.

Jack Butler was the primary author of our comments. If you have any questions, please contact Jack at 912-651-1478 or butlerj@thempc.com or me at 912-651-6444 or ejackson@savannahga.gov.

Thank you again for your time and for hearing Chatham County's concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Edna Branch Jackson", with a long horizontal flourish extending to the right.

Edna Branch Jackson
Mayor

Enclosure

Cc: Aldermen, City of Savannah
City Manager Stephanie Cutter
County Manager Russ Abolt
Chatham County Commissioners
Mr. Jack Butler, MPC
Dr. Henry Lewandowski
Mr. Scott Yackel

COMMENTS OF SAVANNAH, GA

To protect its nationally registered downtown historic district and to protect the health of all its citizens and visitors from mosquito carried diseases, and particularly the lives and safety of its helicopter pilots, the City of Savannah, GA would like to retain its authority to regulate issues of public safety and zoning within its boundaries pursuant to Georgia's Zoning Procedure Law, Chapter 66 of Title 36 (OCGA 36-66-1, et seq). Regulation of the appearance, location, fall zone, and setback of wireless installations and the height and markings of towers are all vital to the well-being of the residents of Savannah, to our local economy, and is the mandated responsibility of the local governing authority.

Savannah maintains that there is a fundamental difference between purpose-built communications support structures and buildings that have been designed for human habitation. To compel approval of the mounting of wireless antennae on buildings without design review, review for historic impact, or environmental impact, is to invite the degradation of the historic properties that are economically and culturally vital to our city.

Therefore, Savannah objects to "substantial increase in size" being defined as more than 10 percent or twenty feet, whichever is greater. The increase in the height of a tower by 10 percent or ... twenty feet, whichever is greater" would increase the potential fall zone of a tower outside of the approved (and frequently closely approached) separation from residential and occupied commercial structures. Savannah objects to any definition that would allow the addition of external arms that project up to 20 feet from the body of the tower. Such a collocation would change the character of many towers from the essential design of a "stealth monopole" (commonly called a "slick stick" or "flagpole" tower) to a design that has been rejected for use in our community.

The suggestion that the impact of such changes is "likely to be minimal or not adverse" is incorrect, and does not take into account the uniquely sensitive historical and environmental conditions in our community, and in particular in the historically designated areas in Savannah. Facilities which have been carefully designed to be unobtrusive and concealed, would cease to be so if they could be expanded by 20 feet in any direction, with no restriction on the number of iterations such "minimal" modifications could undergo.

With respect to specific paragraphs:

Paragraph 39 asks: *Are there any technical or other limitations that we should reference in a definition of the term "structure" such that Note 1 would not extend to types of existing structures, if any, for which collocations are likely to have significant environmental effects?*

Savannah proposes that the term "structure" should be limited to structures built for the sole and primary purpose of enabling wireless communication.

Paragraph 40 asks: *Should we further amend the categorical exclusion for collocations so*

that it expressly covers not only the mounting of antennas but also the associated equipment?

Savannah answers, "No". Associated equipment may have a greater environmental and historic impact, even where it may be appropriate to permit the collocation of antennae by right.

Paragraph 41 asks about expanding the collocation exclusion to include rooftops and the sides of buildings. Savannah contends that any collocation exclusion should be limited to the interior of buildings. Installations on rooftops are frequently visible from street level, and installations on the walls of buildings could have serious impact on the character and historic integrity of the buildings.

Paragraph 47 asks for suggestions that would ensure "de minimus" effects on the environment from excluding DAS and small wireless installations from NEPA review. This is not possible. Without review, there is no way to prevent negative effects from occurring. By exempting these installations from review, it becomes certain that the effects will exceed desirable levels when it suits an unscrupulous or careless installer.

Paragraph 49 proposes a cubic volume limit for categorical exemption. Such an exemption would guarantee that abuses and mistakes will occur. There is no effective way to measure the volume of facilities that are exempted from review, and no practical way to compel removal of installations that are found to exceed a set volume, after the fact, should they be discovered.

Paragraph 56 asks for comment on DAS and small cell systems potential for impact on historic properties. The City of Savannah has one of the oldest and largest National Landmark Historic Districts in the nation (plus four other nationally registered historic areas. All registered by the National Register of Historic Places.) To preserve our National Landmark Historic District treasured resource, the City of Savannah has established a Historic District Board of Review that is charged with maintaining the historic integrity of the Savannah Landmark District and a full-time staff to review development in the other historic areas. To that end, the HDBR and/or staff examines all alterations to the exterior of contributing structures, and new installations, in the District. While Savannah has no objections to the installation of DAS and small cell systems that are interior to buildings, any installation that is visible to the public in the Savannah Landmark Historic District has the potential to negatively impact the integrity of the district. To that end, the City of Savannah is opposed to any changes to the process that would remove DAS and small cell systems from careful review by local authority.

Paragraph 58 proposes exclusion of small cell and DAS from historic review. This is not acceptable. However, the paragraph also asks that, if small cell systems and DAS are excluded, should the facilities be defined for an exclusion under NEPA review. Bearing in mind that all changes visible as explained above that are reviewed for visual compatibility and against other standards a "de minimus" effect on a historic landmark district are not definable; i.e., there is no such a thing as a "minor" scratch on a work of art. Any

exclusionary rule should limit the exclusion to those installations which are not visible to the public (i.e., the interior, rooftop, and service ways of buildings).

Paragraph 59 goes to precisely the issues raised above. The Savannah Historic District Board of Review examines all changes to contributing historic properties in the district. Elements seemingly as minor as the size and shape of individual window panes, the color and hardware associated with shutters, and the proportion and rhythm of window and door openings are given careful scrutiny. Any provision which could add visible, and *non-historic*, technological elements to the visible façade of a historic structure has the potential to degrade the historic character of that structure.

Paragraphs 60 through 63 are indications of misdirection by PCIA -- The Wireless Infrastructure Association and the DAS Forum. In claiming that utility poles and buildings within the historic district are being needlessly reviewed, the PCIA is attempting to redefine one of the key elements of an historic district. A "district" is not solely the buildings; it includes the lamp posts, utility poles, sidewalks, traffic control devices and other appurtenances. While change and improvement to these facilities may be necessary, it is also vitally necessary to ensure that the change and improvement maintains the historic character of the district. To accomplish this, review is necessary, and an exclusion of such appurtenances from review could have a negative impact on the district.

Paragraph 64 requests comment on an alternative to individual review of installations on utility poles in historic districts. The City of Savannah and the Metropolitan Planning Commission are in the process of developing an amendment to our Wireless Telecommunications Facilities Ordinance that would permit the review of DAS and small cell system equipment as a class, establishing a range of appropriate equipment design and installation parameters that would be acceptable, then subsequently allowing staff-level approval for installations that do not directly impact contributing historic structures. By laying "ground rules" for the providers, it should be possible to develop DAS and small cell networks that will have minimal impact, but can be installed with the minimum of administrative time and effort.

Paragraph 65 requests comment on the difference between DAS and small cell systems and macro-cell installations as regards to their being a Federal undertaking. The primary difference here is that DAS and small cell systems are not essential to the Federal goal of providing an effective wireless network across the nation. DAS and small cell systems are coverage enhancement tools, not primary coverage providers. DAS and small cell systems are short range, expensive and high maintenance. Installing such systems requires user population densities that do not exist for most of the nation. DAS and small cell systems are rarely used as the primary system to provide wireless coverage, and even in those few cases, are an optional choice. To declare them a Federal undertaking is to dramatically expand the scope of the Federal mandate.

Paragraph 67 promises that even in the event DAS and small cell systems are exempted from review, some sort of complaint-driven remedy for inappropriate impact on historic

properties would still be in effect. This is not likely to be sufficient to prevent damage to those historic properties, and to the historic district, and would require repair and redesign of installations that should be compelled to be installed properly in the first place by the methodology suggested above (see comment on Paragraph 64).

Paragraph 82 mentions CTIA's proposal that temporary towers less than 200 feet high be exempt from notice. The City of Savannah and Chatham County, in their Wireless Telecommunications Ordinances, have adopted provisions for the notice, marking, and lighting of facilities between 100 and 199 feet in height. Because of our flat topography, generally low building heights, and heavy traffic of low-flying rotary-winged and fixed-winged aircraft from our Mosquito Control operations, Hunter Army Airfield, Fort Stewart, the U.S. Coast Guard, LifeSTAR air ambulance and private aircraft, the hazard from towers over 100 feet in height (as opposed to the FAA's arbitrary 200 foot airspace designation) is greater in Chatham County than in most of the nation. This proposed exemption would needlessly increase the risk to our public, and to our pilots in particular.

Paragraph 92 dealing with the three provisions of Section 6409, raises the main area of objection of the City of Savannah. We are particularly concerned that there is no limit, either by time or number, on how many modifications or collocations may be requested. Theoretically a cell tower provider could request a new collocation every day. Therefore, the definition of "substantially change" is far too broad, too vague, and potentially disastrous for our community. The failure of the proposed language to time limit repeated iterations of so-called non-substantial changes is a gateway to the dismantling of our regulatory system. We strongly advocate the limiting of this provision solely to *one-time* modifications of purpose-built wireless facilities, with the provision that any alteration of the basic design of the facility constitute a "substantial change." The cell tower industry's suggested interpretation could allow the expansion of buildings, the inappropriate expansion of concealed equipment, the modification of a "flagpole" tower into something far more visually intrusive, and the incremental increase in the height, width and compound size. (See our attached "Appendix A-Proposed Rules Amended" document for a possible remedy.)

Paragraph 97 proposes that the reason the FCC is presently considering action regarding the nationwide standardization of what has historically and fundamentally been a locally regulated activity (i.e., the protection of the public interest in regulating installation of towers and other equipment) is to avoid "protracted and costly litigation." To the contrary, the City of Savannah maintains that the proper venue for determining the rights of local government to enforce local zoning laws, building codes, historic district ordinances, environmental protection rules and locally adopted wireless ordinances, is the legislative branch. While the Supreme Court has granted the FCC the authority to mandate Federal standards governing the wireless industry, the Supreme Court did not strip the authority of municipal and county authorities to expand and enhance those Federal standards, when it is warranted, to protect the public interest.

Paragraph 99 notes the efforts by State and local governments to streamline and enhance the review process. This is absolutely the case. In fact, the Georgia legislature just recently

passed a bill to streamline the processes for the wireless industry while keeping in effect the ordinances of many local governments, including the Savannah City Council. However, this bill, as well as amendments to anticipated local ordinances in accordance with this bill, which will develop standards for DAS and small cell systems, are now effectively on "hold" as the State and local governments wait breathlessly for the FCC, whose rulemaking will either make State and local efforts redundant or unenforceable (depending on where the FCC ultimately lands). This national standard interference in a local zoning issue (despite claims that there is no desire on the part of the FCC to become "a national zoning board") is delaying and perhaps blocking local community efforts to accomplish the same goal: efficient implementation of an effective wireless system.

Paragraph 101-139. Savannah proposes the following alternative language:

PROPOSED RULES

The Federal Communications Commission proposes to amend 47 C.F.R. Parts 1 and 17 as set forth below:

PART 1 – PRACTICE AND PROCEDURE

1. *The authority citation for Part 1 would be amended to read as follows:*

AUTHORITY: 15 U.S.C. 79, *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, and 1455.

2. *1.1306 would be amended by revising NOTE 1 to read as follows:*

§ 1.1306 Actions which are categorically excluded from environmental processing.

* * * * *

NOTE 1: The provisions of § 1.1307(a) of this part requiring the preparation of EAs do not encompass the mounting of antenna(s) and associated equipment on an existing antenna tower, or other wireless tower structure, or inside an existing building or other structure, unless § 1.1307(a)(4) of this part is applicable. Such antennas and associated equipment are subject to § 1.1307(b) of this part and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b) of this part. The provisions of § 1.1307 (a) and (b) of this part do not encompass the installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use, established by the applicant or others. The use of existing wireless towers or corridors is an environmentally desirable alternative to the construction of new facilities and is encouraged. The provisions of § 1.1307(a) and (b) of this part do not encompass the construction of new submarine cable systems.

* * * * *

3. *Part 1 would be amended by adding Subpart BB to read as follows:*

Subpart BB – State and Local Review of Applications to Site Wireless Facilities

§1.30001 Wireless Facility Modifications.

(a) *Purpose.* These rules are issued under the Communications Act of 1934, as amended, 47 U.S.C. 151 et seq., implementing § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. § 1455), which requires a State or local government to approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(b) *Definitions.* Terms used in this section have the following meanings.

(1) *Base Station.* A station built for the sole and primary purpose at a specified site to enable wireless communication between user equipment and a communications network, including any associated equipment such as, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. It includes an eligible support structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station. It may encompass such equipment in any technological configuration, including distributed antenna systems and small cells. Base station does not include a building onto which a wireless tower has been placed.

(2) *Collocation.* The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) *Eligible Facilities Request.* Any request for modification of an existing wireless tower or base station involving (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.

(4) *Eligible Support Structure.* Any structure that meets the definition of a wireless tower or base station.

(5) *Transmission Equipment.* Any equipment that facilitates transmission for wireless communications, including all the components of a base station, such as, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply, but not including support structures.

(6) *Wireless Tower.* Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized license-exempt antennas and their associated facilities, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower. It includes structures that are constructed solely or primarily for

any wireless communications service, such as, but not limited to, private, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul.

(c) A State or local government may not deny and shall approve any eligible facilities request for a single, one time, non-repeatable modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(d) A modification of an eligible support structure would result in a substantial change in the physical dimension of such structure if

(1) the proposed modification would increase the existing height or width of the support structure; or

(2) the proposed modification would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or

(3) the proposed modification would involve adding an appurtenance to the body of the support structure that would protrude from the edge of the support structure- more than the width of the support structure at the level of the appurtenance, ; or

(4) the proposed modification would involve excavation outside the current structure site, defined as the current boundaries of the leased or owned property surrounding the structure and any access or utility easements currently related to the site.

PART 17 – CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

1. *The authority citation for Part 17 would continue to read as follows:*

AUTHORITY: §§ 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, Interpret or apply §§ 301, 309, 48 Stat. 1081, 1085, as amended; 47 U.S.C. §§ 301, 309.

2. *Section 17.4 would be amended by revising paragraph (c)(1) to add paragraph (c)(1)(vii) and amending paragraphs (c)(1)(v)-(vi) to read as follows:*

§ 17.4 Antenna structure registration.

* * * * *

(c) Each prospective applicant must complete the environmental notification process described in this paragraph, except as specified in paragraph (c)(1) of this section.

(1) Exceptions from the environmental notification process. Completion of the environmental notification process is not required when FCC Form 854 is submitted solely for the following purposes:

* * * * *

(v) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure;

(vi) For construction, modification, or replacement of an antenna structure on Federal land where another Federal agency has assumed responsibility for evaluating the potentially significant environmental effect of the proposed antenna structure on the quality of the human environment and for invoking any required environmental impact statement process, or for any other structure where another Federal agency has assumed such responsibilities pursuant to a written agreement with the Commission. See § 1.1311(e) of this chapter; or

(vii) For any antenna structure that meets all of the following criteria:

- (A) The antenna structure will be in use for no longer than 60 days;
- (B) Construction of the antenna structure requires the filing of Form 7460-1 with the FAA;
- (C) The antenna structure does not require marking or lighting pursuant to FAA regulations;
- (D) The antenna structure will be less than 100 feet in height;
- (E) The antenna structure will involve either no excavation or excavation where the depth of previous disturbance exceeds the proposed construction depth (excluding proposed footings and other anchoring mechanisms) by at least two feet; and
- (F) Construction of the antenna structure does not require the filing of an Environmental Assessment pursuant to § 1.1307 of this chapter.

* * * * *

APPENDIX C

Text of Section 6409(a)

SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.

(a) FACILITY MODIFICATIONS.

(1) **IN GENERAL.** Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) **ELIGIBLE FACILITIES REQUEST.** For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves —

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

(3) **APPLICABILITY OF ENVIRONMENTAL LAWS.** Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969.