

June 13, 2014

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

**RE:** WT Docket No. 13-238; WC Docket No. 11-59; RM-11688 (terminated)  
**SUBJ:** Notice of Ex Parte Letter

Dear Secretary Dortch:

On June 13, 2014, representatives from the League of California Cities, the California State Association of Counties, and the States of California and Nevada Chapter of National Association of Telecommunications Officers and Advisors (collectively, the “California Local Governments”) sent a letter to The Honorable Chairman Tom Wheeler in response to a letter dated May 29, 2014, sent to Chairman Wheeler from Congress members Mr. Fred Upton and Mr. Greg Walden (the “Upton-Walden Letter”) in connection with the current Notice of Proposed Rulemaking to interpret Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. The Upton-Walden Letter is attached to this Notice as Exhibit 1.

California Local Governments set out the reasons and authorities for why it respectfully disagrees with the opinions expressed in the Upton-Walden Letter. In particular, our letter urges the Commission to reject the proposed “deemed granted” remedy and decline to impose a mandatory ministerial process for Section 6409(a).

Respectfully,

/s/ Christy Marie Lopez

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Christy Marie Lopez, Esq.  
President, SCAN NATOA  
Aleshire & Wynder, LLP  
18881 Von Karman Ave.  
Suite 1700  
Irvine, CA 92612  
clopez@awattorneys.com  
Tel: (949) 223-1170  
Fax: (949) 223-1180

# **EXHIBIT “1”**

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115  
Majority (202) 225-2927  
Minority (202) 225-3641

May 29, 2014

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

Dear Chairman Wheeler:

With the spectrum provisions of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), Congress set the stage to bring valuable spectrum to market to meet wireless broadband demand, to provide first responders an interoperable nationwide wireless broadband network, and to generate needed revenue for the Treasury. In addition to making more spectrum available, there are other steps that must be taken to meet consumer demand for wireless services and build the nationwide public safety network – namely, expanding existing networks and deploying next generation networks. Congress passed Section 6409(a) with the intent of streamlining the approval of eligible facilities requests and to avoid lengthy and costly disputes that thwart the efficient use of existing wireless infrastructure in expanding mobile broadband coverage and capacity.

In January of 2013, the Commission initiated a rulemaking proceeding to adopt rules to clarify and implement Section 6409(a). In commencing this action, the Commission expressly acknowledged the need of stakeholders for guidance as to how Section 6409(a) should be applied. Today, more than a year later, the need for that guidance remains.

Time is of the essence. We urge you to take swift action to clarify the terms of Section 6409(a) consistent with the intent of the statute to deliver the benefits of wireless broadband access to all Americans. To ensure that 6409(a) achieves its goal of streamlining the approval of eligible facilities requests, the Commission should adopt rules that provide consistency for applicants and reviewing authorities alike. The FCC should delineate an objective standard for when a modification "substantially change[s] the physical dimensions" of a wireless facility. We agree with the Commission's proposed approach of leveraging its existing rules, particularly the Collocation Programmatic Agreement, to craft this objective standard.

We also agree in principle with many of the Commission's tentative conclusions for the definitions of other key terms of 6409(a). "Wireless tower or base station" should, at a minimum, include structures that support or house an antenna, transceiver, or other associated equipment that constitutes part of a base station, even if they were not built for the sole or primary purpose of providing such support. "Base station" should include antennas, transceivers, and other associated equipment like fiber and coaxial cable, backhaul equipment, and regular and backup power facilities.

Further, 6409(a)'s "may not deny, and shall approve" mandate should establish a non-discretionary review process and a "deemed granted" remedy for eligible facilities requests, including those to structures deemed legal but non-conforming uses, so that these minor modifications and collocations can be submitted, processed and put into use as quickly as possible.

In addition to Section 6409(a), the Commission's other efforts in the rulemaking proceeding to identify ways to foster broadband infrastructure deployment warrant similar swift action. Facilitating both the deployment of small cells for targeted capacity and the use of temporary towers for short, sharp spikes in usage are part and parcel to meeting national broadband goals. Both are important tools for providing the robust service upon which consumers, businesses, and public safety rely.

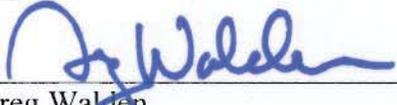
If you have any questions, please contact David Redl with the Energy & Commerce Committee staff at (202) 225-2927.

Sincerely,



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Fred Upton  
Chairman



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Greg Walden  
Chairman  
Subcommittee on Communications and  
Technology

cc: The Honorable Henry A. Waxman, Ranking Member  
House Committee on Energy and Commerce

The Honorable Anna Eshoo, Ranking Member  
Subcommittee on Communications and Technology

The Honorable Mignon Clyburn, Commissioner  
Federal Communications Commission

The Honorable Jessica Rosenworcel, Commissioner  
Federal Communications Commission

The Honorable Ajit Pai, Commissioner  
Federal Communications Commission

The Honorable Michael O'Rielly, Commissioner  
Federal Communications Commission