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

COMMENTS OF AT&T

February 3, 2014

Robert Vitanza
Gary L. Phillips
Lori Fink

. AT&T Services, Inc.
208 S. Akard Street
Rm 2914
Dallas, Texas 75202
(214) 757-3357 (Phone)
(214) 746-2212 (Fax)

TABLE OF CONTENTS

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

COMMENTS OF AT&T

AT&T Inc. ("AT&T"), on behalf of its subsidiaries, submits the following comments in response to the Notice of Proposed Rulemaking ("*Notice*") released by the Federal Communications Commission ("Commission") in these dockets.[1]

[1] Acceleration of Broadband Deployment by Improving Wireless Facilities 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, WT Docket No. 13-238, WC Docket No. 11-59, RM-11688 (terminated), WT Docket No. 13-32, *Notice of Proposed Rulemaking*, 28 FCC Rcd 14238 (2013) ("*Notice*").

I. INTRODUCTION AND SUMMARY

AT&T strongly supports the Commission's efforts to comprehensively explore measures that would expedite the environmental and historic preservation review of new and modified wireless facilities and to clarify the import of Federal statutes that were passed to streamline State and local review of wireless siting proposals. A variety of factors continue to thwart broadband deployment, despite prior efforts of the Congress and Commission to expedite wireless facility deployment and the continued movement of the wireless industry to more low-profile antennas, equipment, and related technologies and more siting on existing non-tower structures.

The Commission can substantially remove those barriers by streamlining National Environmental Policy Act of 1969 ("NEPA") and National Historic Preservation Act of 1966 ("NHPA" or "Section 106") processes for evaluating wireless broadband deployments and clarifying how to interpret and apply the streamlined State and local siting processes mandated by Congress in Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 ("Section 6409") and Section 332 of the Communications Act ("Section 332"). AT&T applauds the holistic approach taken by the Commission to evaluate, and resolve, these barriers to broadband infrastructure deployment in a single proceeding. Attempting to address those barriers over time would be a fragmented approach that might create inconsistencies or gaps in related processes. Clear Commission action, properly applied, can promote the deployment of infrastructure necessary to provide ubiquitous broadband services to the American public, while allowing the Commission to continue complying with its NEPA and NHPA obligations to protect the environment.

Wireless facility deployment will continue at a high pace, as Commission licensees seek to deploy new 700 MHz, AWS, WCS, and other soon-to-be auctioned wireless services for

mobile broadband use and increase coverage and capacity to meet wireless demand on existing services. Although much of the infrastructure will consist of macro sites, alternative technologies with low mounted, low profile antennas, such as distributed antennas systems ("DAS") and small cells, will become more prevalent. These technologies have proven to be extremely beneficial to consumers and Commission licensees alike by allowing wireless providers to provide or improve service in high traffic and hard to serve areas, such as public buildings, malls, stadiums, and downtown areas, which might otherwise remain unserved or inadequately served, and to do so with a minimal environmental footprint.

Imposing needless Federal, State, and local regulatory processes on wireless providers seeking to deploy these types of wireless technologies and other mutually beneficial wireless facilities discourages infrastructure investment by delaying and increasing the costs of deployment. Further, because DAS and small cell systems are typically deployed as dozens, if not hundreds, of small antennas, applying needless requirements to those technologies are much more burdensome than applying them to macro sites that would serve the same area. The result would be fewer (or certainly less extensive) DAS and small cell projects, depriving the public of beneficial (and often necessary) advanced broadband services. In light of the evolution of technologies and the benefits from promoting advanced broadband services, AT&T suggests the below actions that the Commission can take to remove barriers to infrastructure deployment, in a manner consistent with the public interest, convenience, and necessity.

Clarify, and as needed, revise the NEPA and NHPA exemptions. The Commission should update its NEPA and NHPA environmental rules to exempt from environmental review additional infrastructure deployments that present a minimal risk of a significant adverse effect. The Commission's current environmental processing rules are outdated, as these processes were developed long before DAS and small cell technologies became prevalent, and for the most part

reflect the scale and level of environmental concern presented by traditional deployments on tall structures. They also do not reflect the extent to which Commission licensees have diversified their deployments from predominantly macro sites to collocations on poles, water towers, flag poles, utility poles, telephone poles, billboards and other non-tower structures. These types of low profile collocations on existing non-tower structures present an environmentally desirable alternative to new tower construction. AT&T supports the following efforts to update the Commission's NEPA and NHPA rules:

Clarify that the Note 1 exemption from NEPA review applies to all collocations. The Commission's Note 1 exemption from NEPA review ("Note 1")[2] applies to "the mounting of antenna(s) on an existing building or antenna tower," but should be revised (or clarified) to apply to collocations on all non-tower structures and to all equipment needed to operate the antennas. These modifications or clarifications would further the purpose of the exemption—to minimize regulatory burdens to the deployment of wireless facilities where there is a minimal impact on the environment—and are consistent with the NHPA exemptions in the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (the "Collocation NPA").[3] Placing antennas, especially DAS and small cell antennas, on an existing utility pole, flag pole, water tower, or traffic pole creates no greater direct or indirect environmental effect than placing antennas on an existing tower or building. All collocations on existing facilities should be encouraged and exempt from NEPA review and this exemption should be extended to all equipment necessary to operate the antennas. Limiting the exemption to antennas only would frustrate the purpose of the current exemption.

---

[2] 47 C.F.R. §1.1306, NOTE 1.

[3] *See* Nationwide Programmatic Agreement for the Collocation of Wireless Antennas ("*Collocation NPA*"), 47 C.F.R. Part 1, Appendix B.

Create a DAS and small cell exemption to NEPA and NHPA review. If a revised Note 1 exempts DAS and small cell collocations from NEPA review, they may still be subject to NHPA Section 106 review, such as when deployed on a non-tower structure exceeding 45 years of age or near a historic district. These processes discourage deployments in urban areas, which have a higher concentration of older structures, historic properties, and historic districts—areas where DAS and small cell deployments are often the most needed. Instead, Commission rules should encourage DAS and small cell deployments in these areas, as they ease traffic congestion that might overload macro sites and provide coverage in hard to serve areas, such as historic districts, with minimal intrusion on the environment.

Requiring NEPA and NHPA review for DAS and small cell systems is unnecessary, delays broadband deployment, and imposes unreasonable costs on Commission licensees, who would otherwise invest those funds in network enhancements. These costs are especially impactful for DAS and small cell deployments, which often require dozens, if not hundreds, of antennas. To promote broadband deployment for these types of facilities, with minimal risk of environmental effect, the Commission should revise Note 1 to exempt from NHPA Section 106 review all DAS and small cell deployments on existing structures. The Commission should also extend this exemption to replacement non-tower structures in the same manner that replacement towers are exempt from NHPA review under the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process ("Section 106 NPA"),[4] as this extension promotes collocations on existing infrastructure, minimizes the need to construct new support structures, and allows for expeditious broadband service deployment.

[4] 47 C.F.R. Part 1, Appendix C ("*Section 106 NPA*").

AT&T supports the proposal by PCIA and the HetNet Forum that all components of a wireless communications facility would be eligible for the DAS and small cell NHPA exemption if the equipment and antenna enclosures comprise less than 17 cubic feet and 9 cubic feet, respectively. AT&T supports an extension of this concept to modest microwave backhaul antennas and equipment, without which many DAS and small cell facilities will not operate. These proposals are technology neutral, provide Commission licensee's with flexibility in deployment, and are consistent with the state of DAS and small cell deployments.

Exempt all communications facility deployments in or near rights-of way ("ROWs")[5] *from NEPA review.* AT&T supports modifying Note 1 to extend the ROW NEPA exemption, which covers underground and aerial wire and cable, to **all** communications facilities in or within 50 feet of ROWs, including new support structures of comparable size to other structures in the ROW. The placement of facilities, including new structures, in ROWs is an environmentally desirable alternative to the construction of support structures outside of the ROW. Construction of new or modified wireless facilities in the ROW causes minimal ground disturbance and causes a minimal visual effect, as it occurs within an area where alterations and disturbances are expected. A ROW NEPA exemption also is consistent with the Section 106 NPA, which provides a limited exemption from NHPA review for ROW deployments based on the Commission's finding that locating new poles in ROWs near existing similar poles is not likely to cause an incremental adverse impact on historic properties.

Permanently exempt "temporary towers" from the environmental notification process. AT&T agrees with the Commission's proposal to permanently exempt temporary towers from the antenna structure registration ("ASR") environmental notification process based upon the

[5] Throughout these Comments, ROWs shall refer to rights-of-way, aerial corridors, public utility easements, and other areas where the placement of public utilities infrastructure are expected.

same criteria as the interim waiver. The interim waiver has reduced the administrative burdens of temporarily deployed service, with no adverse effect on the environment. Since adoption of the interim waiver, AT&T has requested no site-specific waivers, the industry has experienced no difficulty interpreting or applying the waiver, and there is no evidence that the application of the waiver has triggered an adverse environmental effect. Permanently exempting temporary towers from the ASR environmental notification process imposes no adverse costs and primarily benefits the public, as Commission licensees can supplement coverage and add capacity to provide consumers with reliable service where they otherwise would be without it. Where an exempt temporary tower must be extended beyond the sixty (60) day threshold, the Commission should provide a process to extend the exemption for up to sixty (60) days upon a timely request and adequate demonstration of need.

Clarify Section 6409 and Section 332. Clarifying the meaning of terminology in Section 6409 and Section 332 would eliminate ambiguities in interpretation that have created opportunities for State and local jurisdictions to delay or deny applications for broadband deployment. Eliminating these ambiguities would provide an opportunity for more streamlined, consistent, and predictable State and local processes for approving wireless facility siting applications, which inevitably will lead to more and expeditious broadband deployment. It would also further the policy decisions made by Congress when it passed Section 6409 and Section 332—that wireless facility siting is in the National interest and should not be unreasonably denied or delayed.

In clarifying the meaning of these undefined terms in Section 6409 and Section 332, the Commission should look to similar or identical terms in the Collocation NPA and the Section 106 NPA. Reliance on these existing terms and definitions would allow for consistent application, eliminate ambiguities, and serve as proven and objective guidance for Commission

licensees, structure owners, and the Commission, which for years have interpreted and applied those terms in the Collocation NPA and Section 106 NPA without significant difficulty, and by and large without contentiousness. It is reasonable to conclude they would also interpret and apply those common terms in the same manner to Section 6409 and Section 332 processes.

Section 6409, which prevents State and local jurisdictions from denying eligible requests to modify an existing wireless tower or base station, is "an administrative process that invariably ends in approval of a covered application."[6] As a purely administrative process, a qualifying Section 6409 application is not subject to discretionary review and should be granted in a timely manner without non-safety related conditions. Applications that are not processed in accordance with Section 6409 should be deemed granted. The Commission should also "deem granted" applications that are not processed in accordance with the timelines of Section 332(c)(7). A "deemed granted" remedy is necessary for violations of Section 6409 and Section 332(c)(7) because many State and local jurisdictions, intent on blocking wireless facility deployments, can successfully delay application review and approval by leveraging the need for applicants to resort to judicial action. Applicants, wary of the cost, delays, and uncertainty inherent in litigation and hopeful of a more direct and less contentious path to approval, agree to demands from State and local jurisdictions based upon the potential for shorter delays. These results are contrary to the purposes of Section 6409 and Section 332(c)(7). Clarifications in the interpretation of these statutes and an appropriate accelerated remedy will provide applicants with some incremental relief from these tactics.

[6] Guidance on Interpretation of Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, *Public Notice*, 28 FCC Rcd 1, 3 (2013) ("*Section 6409 Clarification PN*").

II. DISCUSSION

A. Further Streamlining of Environmental Reviews of Wireless Communications Facilities Would Accelerate Broadband Deployment Without Increasing Environmental Impact.

1. The Commission Should Clarify that the Note 1 Exemption from NEPA Review Applies to All Collocations and All Equipment Needed for that Collocation.

Note 1 to Section 1.1306 excludes from NEPA environmental review (except for effects on historic properties and of RF emissions) "the mounting of antenna(s) on an existing building or antenna tower."[7] AT&T supports a clarification (or revision) from the Commission that this Note 1 collocation exclusion extends to facilities mounted on all existing structures, such as utility poles, water tanks, light poles, traffic poles, and bill boards. This clarification is warranted, as such collocations are no more likely to significantly affect the environment than collocations on towers and buildings. Collocating wireless facilities on existing structures, regardless of the type of structure, is an environmentally desirable alternative to the construction of new support structures and should be encouraged.

This clarification to (or revision of) Note 1 would also make the Commission's NEPA exemptions uniform with the Section 106 exemptions in the Collocation NPA, resulting in ease of application and reduced administrative burdens and costs on Commission licensees. Efficient facility deployments are especially important for DAS and small cell projects, which may require dozens or hundreds of antennas, most of which are deployed on existing structures. To encourage the deployment of DAS, small cell, and macro sites on existing infrastructure, the Commission should clarify that Note 1 extends to the placement of wireless facilities on any "existing building, antenna tower, or other structure."

[7] 47 C.F.R. §1.1306, NOTE 1.

Note 1 already provides sufficient flexibility and needs no further amendment to extend to power supplies, converters, cabling, mounts, radios, transceivers, and other associated equipment; to building rooftops, sides, and interiors; or to the varied manners of placements and mounting. Although, as currently written, Note 1 expressly exempts only "antennas," limiting its application in this manner would frustrate the purpose of the exemption, as it would exclude equipment, mountings, and other components needed to operate the antennas. That is an unreasonable construct of Note 1.

Further, there is no basis upon which to limit the application of Note 1 to specific antenna placements, such as only rooftop deployments. Regardless of the manner or location of placement of the antennas on an existing structure, collocations meet the goals of the exemption—to encourage collocations on existing structures and minimize new tower construction. To the extent that a clarification is needed on either of these issues, the Commission could cross reference the definition of "antenna" in the Section 106 NPA.

2. The Commission Should Exempt All DAS and Small Cell Deployments from NEPA and NHPA Environmental Review.

AT&T supports modifying Note 1 to categorically exclude from NEPA and NHPA Section 106 review those deployments of DAS and small cell technologies in or on existing buildings, towers or other structures and to apply that exemption to all construction associated with the facility. A DAS and small cell exemption is needed because the Section 106 exemptions provided in the Collocation NPA and Section 106 NPA are not comprehensive, and increasingly do not apply to DAS and small cell installations, despite their minimal environmental effect.

a. The DAS/Small Cell Exemption Should Extend to Section 106 Review.

The Commission's Note 1 exemption for collocations is designed to exclude from NEPA processing those categories of facilities that are unlikely to have significant environmental effects. But, Note 1 does not exempt a facility from NHPA Section 106 review. Instead, providers must look to the streamlined procedures in the Collocation NPA, which requires Section 106 review, with State Historic Preservation Officer ("SHPO") and tribal evaluation, if a non-tower structure is over 45 years of age, in a historic district, within 250 feet of a historic district and antennas are visible from ground level in that district, listed in or eligible for listing in the National Register of Historic Places, or the subject of a complaint.[8] However, the Collocation NPA (and the Section 106 NPA) is not suited to processing DAS and small cell deployments, as they were developed long before DAS and small cell technologies became prevalent, and for the most part reflect the scale and level of environmental concern presented by traditional macro deployments on tall structures.

Recent technologies advances have produced low-profile, minimally invasive antennas and equipment, such as DAS and small cell, that are increasingly being deployed on buildings, street poles, utility poles, traffic poles, water tanks, and other non-tower structures. Where less environmental risks exist, less environmental review should be required. Thus, in light of the evolution of DAS and small cell wireless technologies since adoption of the Collocation NPA, the minimally intrusive nature of those technologies, and the substantial public benefit from wireless broadband services enabled by their use, the Commission's rules should exempt DAS and small cell deployments from NHPA Section 106 review.

[8] The Section 106 NPA also provides limited exemptions from NHPA review.

"DAS and small cell antennas . . . cause little ground disturbance and create almost no additional visual effect—a quality that recommends the technologies for use in and near historic districts."[9] This sentiment is shared by the Commission, which has observed that DAS is "particularly desirable in areas with stringent zoning regulations, such as historic districts."[10] Yet, DAS and small cell deployments in historic areas would likely trigger Section 106 review. For example, DAS or small cell equipment deployments on a utility pole in excess of 45 years of age (or a utility pole near a historic property or district) requires Section 106 review, despite the lack of direct adverse effect upon the utility pole, which has no historical, cultural, or architectural significance, and the minimal risk that a pole with existing utility infrastructure would have a significant effect on historic properties. The Commission should encourage these minimally intrusive deployments by modifying Note 1 to exempt DAS and small cell technologies from NHPA review. Imposing unnecessary Section 106 administrative processes on DAS and small cells deployments on existing structures would be counterproductive, inefficient and time-consuming, needlessly subjecting licensees to delays and increased costs.

While applicable only to collocations, this exemption should extend to situations where an existing structure is replaced by a structure of comparable size and appearance. An existing pole may require re-engineering or replacement to support DAS or small cell technology, but otherwise fits the criteria for deployment. In those cases, the Commission should extend the

---

[9] *See* Letter from D. Zachary Champ, PCIA-The Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59, GN Docket No. 12-354 (filed Mar. 19, 2013), Attachment of Dr. Amos J. Loveday, DAS/Small Cells & Historic Preservation: An Analysis of the Impact of Historic Preservation Rules on Distributed Antenna Systems and Small Cell Deployment, Feb. 27, 2013, at 2.

[10] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 09-66 (Terminated), *Fourteenth Report*, 25 FCC Rcd 11407, 11577 n.757 (2010).

DAS and small cell exemption to cover replacement non-tower structures that do not substantially increase the size of the original structure, similar to the current Section 106 exemption for replacement towers.[11] In adopting the Section 106 replacement tower exemption, the Commission concluded:

> [S]trengthened structures may reduce the need for more towers by housing up to two, four or more additional antennas. Given the limitation of the exclusion to replacements that do not effectuate a substantial increase in size, it is highly unlikely that a replacement tower within the exclusion could have any impact other than on archeological properties. Moreover, the limitation on construction and excavation to within 30 feet of the existing leased or owned property means that only a minimal amount of previously undisturbed ground, if any, would be turned, and that would be very close to the existing construction. Balancing the small risk of new archeological disturbance against the benefits of encouraging replacement rather than the construction of new towers, and taking into account the requirement to cease work and provide notice in case of unanticipated discoveries, we conclude that an exclusion for replacement towers, limited to within 30 feet of the existing leased or owned boundary, is reasonable and appropriate. We further conclude that the speculative benefits of exceptions to the exclusion for replacement towers located on historic properties or replacements for towers that may themselves be historic have not been shown to merit the costs of drafting and implementing such exceptions, including the time and resource costs of additional review by applicants.[12]

These observations apply equally to replacement non-tower structures, which, with the substantial increase in size limitation, pose very little risk of a new adverse effect. Replacement non-tower structures promote the expedited placement of wireless facilities on existing infrastructure, creating conditions for the rapid deployment of broadband service—desirable goals that advance the public interest.

The Commission has the authority under ACHP rule 800.3(a)(1) to adopt this DAS and small cell exemption as a modification to Note 1. Section 800.3(a) supports a categorical

---

[11] *See Section 106 NPA* at III.B. The prior review limitation for towers constructed after March 16, 2001 would not extend to non-tower structures, which likely were not subject to Section 106 when initially constructed.

[12] Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, *Report and Order*, WT Docket No. 03-128, 20 FCC Rcd 1073, 1090 ¶45 (2005) ("*Section 106 NPA Report & Order*").

exclusion in circumstances where the Commission has determined that there is minimal effect on historic properties as well as in circumstances where there is no potential for an effect on historic properties. Although Section 800.3(a)(1) specifically addresses situations where there is no potential to cause an effect, the introduction to subpart (a) is broader and authorizes a federal agency to assess "the potential to cause effects on historic properties," which would include circumstances where there is minimal effect. This alternative would be more efficient and timely than pursuing a program alternative under Section 800.14 of the ACHP rules,[13] or finding that covered deployments are not "undertakings." Yet, it also is an open process that presents the opportunity for public involvement and comment, including by the Advisory Council on Historic Preservation ("ACHP"), National Council of State Historic Preservation Officers ("NCSHPO"), and federally-recognized Tribes.

Adopting this exemption from NEPA and the NHPA review for DAS and small cell technology is also preferable to trying to resolve on a piecemeal basis those situations where the Collocation NPA and the Section 106 NPA do not exempt minimally invasive DAS and small cell deployments. A fragmented approach would be inefficient, not evolve with technology, risk leaving gaps in the process, and not facilitate accelerated broadband deployment. Adopting a uniform exemption that is applied universally removes ambiguity from the process, simplifies deployments, and encourages more investment in broadband.

b. AT&T supports PCIA's and the HetNet Forum's Proposal Identifying Those DAS and Small Cell Facilities to Exclude From NEPA and NHPA Review.

AT&T supports the proposal submitted by PCIA and the HetNet Forum to use cubic volume to define those facilities that are categorically excluded from NEPA and NHPA Section

[13] 36 C.F.R. §800.14.

106 review.[14] As PCIA and the HetNet Forum describe, a categorical exclusion from NEPA and Section 106 review should extend to facilities whose minimally invasive infrastructure is designed to provide service in a limited geographic area with relatively inconspicuous, small form-factor installations consisting of one or more radio transceivers, antennas, interconnecting cables, power supply, and other associated electronics. Generally, these installations would include the following:

- an equipment enclosure no larger than seventeen (17) cubic feet in volume;
- an antenna enclosure of no more than three (3) cubic feet in volume, each antenna with exposed elements fitting within an imaginary enclosure of three (3) cubic feet or less;
- associated equipment, such as an electric meter, concealment or camouflage, demarcation box, ground-based enclosures, power sources, grounding equipment, power transfer switch, and cut-off switch, none of which be included in the calculation of volume included in the equipment enclosure or antenna enclosure and can be located outside those enclosures.

In applying these criteria, volume would be measured based on exterior displacement, not the interior volume, of the enclosures and equipment concealed from public view in or behind an otherwise approved structure or concealment would not be included in volume calculations.

AT&T also proposes including in the exempt facilities, modestly-sized antennas and related equipment that can be used for microwave backhaul where needed. In some cases, microwave is the only feasible backhaul solution because of the location of the facility or the unavailability of fiber and, without it, the DAS or small cell facility could not provide

[14] Letter from D. Zachary Champ, PCIA-The Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59, GN Docket No. 12-354, at 2-3 (filed July 22, 2013).

commercial service. Modestly-sized microwave antennas and equipment can be deployed using "millimeter wave" spectrum in the 70, 80, 90 GHz bands, without significantly increasing the environmental effect of the facility.[15] Requiring NEPA and NHPA Section 106 review of the microwave antennas and equipment in these instances would stall broadband deployment even if the underlying DAS or small cell equipment is exempt and limit the benefits of the DAS and small cell exemption, while conferring little public interest benefit.

Using the PCIA/HetNet Forum proposal as the qualifier for the DAS and small cell exemption has many advantages. While the volume of antenna and equipment may not be the singular determiner of environmental impact, it is the predominant factor. By and large, a lower volume of equipment equates to less environmental impact. It is also technology neutral and thus, does not limit application to certain wireless services or technologies. In that vein, the language added to Note 1 to explain this exemption should reference "communications facilities" or similar neutral terminology rather than DAS, small cell, or other technology-oriented identifier that might become outdated or exclude certain technologies or services. Basing the exemption on the cubic volume of the equipment and antenna enclosures also provides Commission licensee's with flexibility, as it would cover different types of equipment and equipment with differing dimensions, allowing deployments to evolve with advancements in design and technology.

The baseline cubic volume parameters proposed by PCIA and the HetNet Forum (and that AT&T has proposed for a microwave backhaul facility) for equipment and antenna enclosures are reasonable, within the range of equipment size currently being deployed, with minimal to no impact upon the environment. Including associated equipment is appropriate

[15] A typical millimeter wave deployment would add about 9 cubic feet to the facility (≈2 cubic feet of antennas and 7 cubic feet of accompanying equipment).

because, as referenced above, antennas cannot operate without radios, cables, power, and other accessories.

3. The Commission Should Exempt all Communications Facility Deployments in or Near ROWs from NEPA Review, Including Comparably-Sized, New Support Structures.

The Section 106 NPA partially exempts from NHPA review those wireless facilities, including new support structures of limited size, placed inside or within 50 feet of a ROW. However, the Note 1 ROW exemption from NEPA review is more limited, applying to only the placement of aerial or underground wire or cable. AT&T supports expanding Note 1 to exempt from NEPA review the placement of all communications facilities, including comparably-sized new support structures, in or within 50 feet of a ROW. The ROW exemptions in the Section 106 NPA and Note 1 recognize that minimal ground disturbance occurs in and near ROWs, and when it does occur, it is within an area where alterations and disturbances are expected. The Section 106 NPA also recognizes the minimal incremental effect from a new, comparable support structure in the ROW:

> Where such structures will be located near existing similar poles, we find that the likelihood of an incremental adverse impact on historic properties is minimal. Moreover, it promotes historic preservation to encourage construction of such minimally intrusive facilities rather than larger, potentially more damaging structures.[16]

This rationale applies equally, if not more so, to the potential effect of a new support structure on non-historic NEPA protected categories.[17] DAS and small cell antennas and their support structures tend to be shorter and less intrusive than similar antennas used for macro sites.

---

[16] *Section 106 NPA Report & Order*, 20 FCC Rcd at 1098 ¶63.

[17] The non-historic NEPA protected categories consider only direct effects, i.e. physical impacts, from the support structure, whereas Section 106 considers the support structure's direct and indirect (i.e. visual) effect on the environment.

It promotes environmental protection to encourage construction of such minimally intrusive support structures rather than larger, potentially more impactful structures.

As referenced above, deploying DAS and small cell antennas in ROWs causes little ground disturbance, and often, a new support structure is placed in ground that has been previously disturbed. Even if a support structure is placed in new ground, it would not adversely affect the environment any more than the abundance of structures and equipment currently occupying those areas. This limited height and ground disturbance for support structures within a ROW minimizes the chance that they will present a substantial adverse effect on floodplains, critical habitats, endangered species, or any other NEPA category. Exempting ROW deployments from NEPA review, even for new comparably-sized support structures, would be consistent with the Section 106 NPA, fall within the actions that are expected in the ROWs, and provide more flexible alternatives for providers to deploy DAS and small cell facilities.

Just as AT&T supports applying the Note 1 exemption and a new DAS and small cell exemption to equipment necessary to operate the antennas, an expanded Note 1 ROW exemption should also extend to components necessary to operate the antennas, such as fiber and hub stations. It is understood that these components are necessary for operations within ROWs and in practice, these components tend to be deployed within reasonable proximity to the DAS or small cell antennas, presenting a low risk of an independent adverse environmental impact.

B. Temporary Towers Should be Permanently Exempt from the Environmental Notification Process.

AT&T agrees with the Commission's proposal to permanently exempt from the pre-construction environmental notification process those temporary towers that require antenna structure registration, but have a minimal potential to cause significant environmental effects because of their short duration, height limits, minimal to no excavation, and absence of lighting.

AT&T also agrees that a permanent exemption should follow the criteria established by the Commission to qualify for the current interim waiver. In prior comments, AT&T explained that an exemption from the environmental notification process for "temporary towers" enables wireless carriers to respond to non-emergency, short-term spikes in demand (planned and unplanned), allows carriers to quickly deploy temporary towers when antennas must be unexpectedly removed from a permanent structure in non-emergency circumstances, and ensures service continuity, all without undermining environmental and air safety concerns or significantly affecting avian mortality.[18] AT&T refers Commission staff to AT&T's prior comments.

While AT&T has not tracked, and thus cannot objectively quantify, the extent to which it has benefitted from the interim waiver, it is reasonable to conclude that AT&T (and presumably other Commission licensees) has derived substantial benefit that justifies extending the interim waiver on a permanent basis. AT&T annually deploys dozens of temporary towers. Yet, since adoption of the interim waiver, AT&T has requested no site-specific waivers. Further, there is no sign that the industry has struggled to interpret or apply the interim waiver or that its application has caused any adverse environmental effects. Therefore, no cause exists for the Commission to limit application of the waiver to certain types of temporary towers. To the contrary, limiting the types of facilities that qualify for the temporary tower exemption would contravene the public interest, as it would be inflexible and not keep pace with technological change, inevitably preventing the deployment of new technologies.

AT&T further agrees with the Commission that it is impractical and not in the public interest to subject temporary towers that qualify for the exemption to post-construction

[18] Comments of AT&T, WT Docket No. 13-238, WC Docket No. 11-59, WT Docket No. 13-32 (filed Feb. 25, 2013).

environmental notice. As the Commission has observed, post-construction notice for temporary towers that qualify for the exemption would serve little purpose, as the deployment would be over or nearly so by the time the notice period ended, and temporary structures generate little, if any, public opposition.

Where an exempt temporary tower must be extended beyond the sixty (60) day threshold, the Commission should provide a process for extending the exemption for up to an additional sixty (60) days if the applicant seeks an extension within a reasonable time before expiration of the original waiver period and provides reasonable justification for the extension. In the absence of such a request supported by justification, the applicant would need to take down the temporary tower, complete post-construction environmental notification, or seek a site-specific waiver.

In the *Notice*, the Commission inquires about the costs and benefits of granting the exemption versus the alternative. While wireless licensees derive some financial benefit from providing service to their customers, by and large the benefits and costs of the exemption are not financial. Instead, they are experienced by the public. Because temporary towers are often deployed on short-term notice in emergency situations or due to events where substantial network congestion is expected, the exemption could be the difference between having and not having service. In light of the minimal impact to the environment from temporary towers (i.e. the absence of environmental costs) and the ability of wireless providers to offer service for members of the public who would otherwise be without it (i.e. the substantial benefits to public safety, health, and welfare), the benefits to the public substantially outweigh the costs of retaining the environmental notification process for temporary towers.

C. The Commission Should Clarify the Interpretation and Application of Section 6409.

The Commission's *Section 6409 Clarification PN* has been valuable and the Commission should not reexamine those clarifications. However, providing further guidance would add

substantial value, help to achieve the benefits of a streamlined review of collocations that Section 6409 was intended to deliver, and ensure that those benefits are not unnecessarily delayed. These further clarifications to Section 6409 should take the form of rules, rather than best practices, clarifying how to interpret and apply the various parts of the statute. Rules would provide the settled interpretations and definitive guidance upon which licensees, State and local jurisdictions, structure owners, and Commission staff can rely. As the Commission accurately stated in the *Notice*, "in the absence of definitive guidance from the Commission, the uncertainties under Section 6409(a) may lead to protracted and costly litigation and could adversely affect the timely deployment of a nationwide public safety network and delay the intended streamlining benefits of the statute with respect to other communications services."[19]

1. To Define Terms in Section 6409, the Commission Should Rely on Existing Definitions in the Collocation NPA and Section 106 NPA.

Where possible, the Commission should define terms in Section 106 consistent with the already vetted and applied language of the Collocation NPA and Section 106 NPA, which was agreed to by the Commission, ACHP, and NCSHPO. Most undefined terms in Section 6409 correspond with identical or similar terms used in the Collocation NPA and/or the Section 106 NPA. When Congress drafted Section 6409, it knew about the Collocation NPA and the Section 106 NPA and it is reasonable to conclude that Congress used identical or substantially similar terms in drafting that statute with the intention that they have the same meaning. After all, the Collocation NPA, Section 106 NPA, and Section 6409 were all drafted to facilitate streamlined deployment of wireless facilities, and the use of similar terms in those statutes would be most likely to accomplish that goal.

[19] *Notice* at 14275.

AT&T agrees with the Commission that the application of Section 6409(a) is not limited to "personal wireless services," as defined by Section 332(c)(7), and covers all manner of wireless service. This interpretation is consistent with the express language of Section 6409, which uses the broad term "wireless" and in no way suggests that Congress intended the benefits of a streamlined collocations process to extend to only certain wireless services or technologies. Similarly, a "wireless tower or base station" would be used for supporting any wireless service or technology.

AT&T also agrees that the term "wireless tower or base station" encompasses 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 supporting that equipment. While "tower" is defined in the Collocation NPA and the Section 106 NPA to include only those structures built for the sole or primary purpose of supporting wireless communications equipment, the term "base station" is not so limited.[20] This interpretation is consistent with the current practices of Commission licensees and many municipalities, which have embraced collocations on all types of structures, and with the Collocation NPA, which streamlines the Section 106 process for collocations on all types of support structures, not just towers built for the sole or primary purpose of supporting communications equipment. Interpreting "wireless tower or base station" to include only those structures built solely or primarily to support wireless communications equipment would disregard these policy considerations, render the term "base station" superfluous, and remove the vast majority of DAS and small cell deployments from coverage.

[20] *See Section 6409 Clarification PN*, 28 FCC Rcd at 3.

Section 6409 requires State and local jurisdictions to approve requests for "modification of an existing . . . base station." In practice, a base station is the compilation of multiple, necessary parts, any one of which may need to be modified to provide service. Thus, the term "base station" includes structures that support or house any part of a base station. A contrary interpretation would substantially limit the application of Section 6409, reserving its impact for sites that need to be completely modified. For the same reasons, the Commission should not limit the scope of equipment encompassed by the term "base station" or impose proximity requirements on equipment. Equipment buildings, shelters, and cabinets are necessary to ensure the survivability of other base station equipment, and may periodically require placement or replacement, even if they are not located immediately adjacent to the support structure. Thus, they should also benefit from the streamlined application approval process contemplated by Section 6409.

Similarly, the Commission should interpret "transmission equipment" to include antennas and other equipment and power sources used in their operation. The definition of "transmission equipment" should be adapted from the definition of "antenna" in the Section 106 NPA, which includes "the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets."[21] As the Commission explained in the *Notice*, this interpretation "is consistent with Congressional intent to streamline the review of collocations and minor modifications and also with Congress's use of the broad term "transmission equipment" rather than a more specific term such as "antenna."[22] It is also consistent with the manner in which the wireless industry has applied the Collocation NPA and Section 106 NPA.

---

[21] *See Section 106 NPA* at II.A.1.

[22] *Notice* at 14277.

AT&T also supports using a common definition of "collocation" to interpret Section 6409 and the Collocation NPA. The definition should be consistent with the other terminology used in Section 6409 and encompass the replacement or hardening of an existing tower or non-tower structure, such as a utility pole, that does not substantially change the physical dimensions of the structure. As referenced above, non-tower structures, such as utility and municipal poles, may require hardening or slight increases in size to support DAS and small cell deployments. These modifications are beneficial, as they utilize existing sites, and should be encouraged.

AT&T also supports adapting the definition of the term "substantial increase in the size of the tower" from the Collocation NPA to define when a modification will "substantially change the physical dimensions" of a tower or base station under Section 6409. Commission licensees and structure owners have been applying this "substantial increase in size" standard since adoption of the Collocation NPA, and could apply it consistently to deployments under Section 6409. Adopting this uniform approach to collocations will provide certainty to licensees and structure owners, whereas relying on a case-by-case approach advocated by some would encourage piecemeal interpretations, uncertainty, and delayed deployments of broadband services.

The Commission should also clarify that the "substantial change in physical dimension" standard applies only to base station components with a visual effect and not to antennas and other equipment concealed from public view through screening or other camouflage techniques. For example, antennas camouflaged within a steeple or building façade may be replaced with larger antennas, which remain wholly within the existing steeple or façade. Such modifications to equipment should not be limited provided that the antennas or equipment remain camouflaged or screened, as even a substantial change in their physical dimensions would have no visual effect.

2. Applications Should be Deemed Granted if they are Not Timely Granted by State and Local Jurisdictions in Accordance with Section 6409.

Section 6409 prevents State and local governments from denying and requires the approval of eligible requests to modify an existing wireless tower or base station. The Commission has pronounced that "the statute clearly contemplates an administrative process that invariably ends in approval of a covered application."[23] Consistent with the pronouncement, Section 6409 is an administrative requirement for an application that is not subject to discretionary review and must be granted in a timely manner. Applications that are not processed in accordance with Section 6409 should be deemed granted.

The administrative process contemplated by Section 6409 should be quantifiable, such that applicants and State and local jurisdictions can objectively assess whether an application qualifies as an "eligible request" and if so, the application can be granted without delay. This requires State and local jurisdictions to promulgate rules that identify the specific, limited documentation that applicants must include to demonstrate that they qualify for Section 6409 approval, such as statements explaining how the facility is eligible and a diagram showing any proposed height increase to the existing facility. The Commission should not interpret Section 6409 in such a way that State and local jurisdictions can impose vague and endless document requirements, impose standards that are inconsistent with State or local laws, or frequently reevaluate the documents that must be included with the application. For their part, applicants must provide the required documents to demonstrate that the application qualifies as an eligible request under Section 6409. If the application meets the objective criteria for eligibility, the State and local jurisdiction must approve the application.

---

[23] *Section 6409 Clarification PN*, 28 FCC Rcd at 3.

As grant of an eligible application under Section 6409 is non-discretionary, State and local jurisdictions are not allowed to impose conditions when granting an application except for those necessary to ensure compliance with applicable building codes and other applicable non-discretionary structural and safety codes. Imposing other conditions on an approval is the same as a denial with conditions for approval. In either case, the State or local jurisdiction's action would deviate from the express requirements of Section 6409 by refusing to approve the deployment unless the applicant complies with its wishes.

If a State or local jurisdiction fails to approve an eligible application within a reasonable time (or approves the application with unreasonable conditions), the application should be deemed granted without requiring the applicant to seek approval of the Commission or a Federal or State court. Requiring applicants to seek a Commission or judicial remedy would cause delays in the deployment of broadband services, embolden some State and local governments to use those inevitable delays to their advantage, put an undue burden on applicants, and frustrate the goals of a streamlined approval that Section 6409 was intended to promote. In a similar debate about the appropriate remedy for a failure to comply with the presumptive timelines under Section 332(c)(7), the Commission declined to adopt a "deemed granted" remedy, requiring applicants to seek judicial redress instead. This decision has resulted in a Section 332(c)(7) shot clock that is less effective than expected at accelerating State and local approvals, as seeking a judicial remedy is costly and subjects applicants to delays and uncertainty that is inherent in the judicial process.

Instead, applicants would advise a State or local jurisdiction that failed to comply with Section 6409 that the applicant considers the application deemed granted under Section 6409. Within fourteen (14) days of notice from the applicant, or some other reasonable period of time, the State or local jurisdiction could seek redress with the Commission, challenging the

information provided by the applicant, the eligibility of the application for streamlined Section 6409 processing, whether the application proposes a substantial change in the physical dimensions of a tower or base station, etc. If the State or local jurisdiction does not seek redress with the Commission within this period of time, the application is deemed approved. If a State or local jurisdiction seeks redress with the Commission, applicants could have an opportunity to respond, after which the Commission would render a timely decision.

As an example of how the Commission could process and resolve such requests on a timely basis, the Commission currently considers and renders an expedited decision in response to requests for further environmental review under the ASR environmental notification process. In fact, it is likely easier for the Commission to decide whether an applicant and the State or local jurisdiction has met the objective criteria of Section 6409 than it is to make the subjective assessments about the environmental impact of sites in the ASR environmental notification process. A Commission administered Section 6409 review process would provide applicants a definitive timeline for approval of an eligible application, State and local jurisdictions a means to address concerns about applications, and the Commission a means to bring finality to the process in an expedited manner.

AT&T's recent experience demonstrates why the application process covered by Section 6409 must be objectively-based, cannot be subject to unreasonable, inapplicable conditions, and should be "deemed approved" if the municipality does not comply with the statute. AT&T submitted a local zoning permit application for a 4G LTE upgrade on an existing tower that complied with the State building code and other requirements imposed by the municipality. Yet, the application was delayed for months to allow the municipality's consultant to evaluate the structural integrity of the tower, after which zoning approval was conditioned on compliance with a construction standard not adopted by the State. In this case, the municipality's zoning

board took an application that objectively met all applicable zoning and building requirements and, thus, should have been quickly approved in accordance with Section 6409, and unreasonably imposed a condition inconsistent with the State Building Code, based upon the subjective assessment of the municipality's consultant. A "deemed granted" remedy would advance the purpose of Section 6409 by relieving licensees and structure owners from the burdens of these types of subjective maneuvers to delay or deny facility siting.

D. Further Efforts are Needed to Facilitate Compliance with Section 332.

AT&T supports the Commission's efforts to provide more clarity with regard to the application of Section 332(c)(7) and the timelines for acting on wireless facility siting requests under that statute. Additional certainty would benefit Commission licensees, structure owners, State and local jurisdictions, and the public by eliminating inconsistent application of the Section 332 timelines for granting applications and the delays in broadband deployment and increased compliance costs borne by applicants. While most State and local jurisdictions strive to review and approve wireless facility siting applications in an efficient and timely manner, many local jurisdictions continue to leverage perceived ambiguities in the application of Section 332 to delay application review and approval, and potentially discourage applicants from continuing with build efforts. The Commission can minimize the options of opportunistic State and local jurisdictions to hinder broadband deployment by more specifically defining the limits of their discretion under Section 332(c)(7).

The Commission should apply the definitions of the terms "collocation" and "substantial increase in size" from the Collocation NPA to the Section 332(c)(7) test in the same manner as proposed for Section 6409. Uniform definitions for NEPA, Section 106, Section 6409, and Section 332(c)(7) would be efficient, provide consistent results, and minimize the opportunities

for confusion and delay. Absent clear Congressional direction otherwise, there is no compelling reason to adopt inconsistent definitions for similar or identical terms.

AT&T reiterates its comments previously filed in this docket explaining the measures that some local jurisdictions have used to delay and discourage wireless facility siting, and refers the Commission to those comments.[24] AT&T's experience has not changed since that 2011 filing. For example, some local jurisdictions continue to take advantage of the ambiguities in the process by applying a separate Section 332(c)(7) shot clock to each of many local proceedings. Thus, the Commission should clarify for applicants and State and local jurisdictions when a new or collocation siting application is complete and that the shot clock applies to the overall municipal review from start to finish and does not restart with each subordinate local board or body.

Other jurisdictions, seeking justification to delay the start of the Section 332(c)(7) shot clock, constantly redefine what constitutes a completed application. In one municipality, AT&T filed a building permit application seeking to add equipment to an existing guyed tower, and included all required information with the application. Following referral to the municipality's consultant, which indicated it would review the application after AT&T filed a $5,000 escrow with the municipality, AT&T resubmitted the application package to the consultant, which requested additional information, such as, among other things, a revised building permit application "correcting" the tax parcel number from "197.04-1-8" to "197.04<u>0</u>-1-8" (the identical parcel number expressed in a slightly different way); verification of the truth and accuracy of the information provided; non-substantive clarifications regarding the equipment being installed; proof that the landowner (as opposed to the tower owner) had consented to the equipment

[24] Comments of AT&T, WT Docket 11-59 (filed July 18, 2011).

upgrades (a fact easily discernible from documentation already in the municipality's possession); a certification that the proposed antennas would not interfere with other telecommunications devices; and copies of AT&T's Commission licenses. Although AT&T provided or referred the consultant to the municipality for all of the requested information, the consultant continued to claim that the application was incomplete, requiring additional documentation, such as a revised radiofrequency emissions report certified by a State licensed professional engineer[25] and a copy of the tower owner's removal bond covering AT&T's equipment, notwithstanding that the removal bond was already on file with the municipality.

Section 332(c)(7) and Section 6409 reflect Congressional intent that State and local jurisdictions not subject Commission licensees and structure owners to these types of unreasonable delays (or denials) of wireless siting applications. It is also inconsistent with that policy decision for State and local jurisdictions to impose moratoria on the filings, review, consideration, or granting of wireless siting applications. No other single government activity impacts wireless deployment as significantly as a decision to impose a moratorium and do nothing. This Commission should clarify that no State or local government can prevent or delay the filing, review, consideration, or grant of a wireless facility siting application by adopting a moratorium and that if a moratorium is imposed, the periods of time for approving an application under Section 332(c)(7) and Section 6409 are not suspended.

AT&T also urges the Commission to reconsider its prior refusal to adopt a "deemed granted" remedy for applications that were not processed in accordance with the Section 332(c)(7) shot clock. As referenced above, State and local jurisdictions intent on blocking wireless facility deployments frequently leverage their ability to force applicants to resort to

[25] It is questionable whether this request would independently violate Section 332(c)(7)(B)(iv).

judicial action for relief from delayed site reviews and approvals. Many applicants, wary of the cost, inherent delays, and uncertainty of litigation and hopeful of a more direct and less contentious path to approval, agree to tolling or other demands from the State or local jurisdiction. For example, providers may agree to toll the shot clock, while cities consider applications for the most basic facility modifications, create new or modified wireless ordinances, or ask for more, and often unnecessary, information. Presented with such requests, Commission licensees face a no-win situation—accept the extensive and unforeseeable delays and depletion of resources inherent in acquiescing to the request or accept the longer delays, greater depletion of resources, and uncertainty of litigation.

These urgencies exist with respect to all siting applications, whether for collocations or new site requests. However, for collocations, the case for a "deemed granted" remedy is even stronger. Since the Commission declined to adopt a "deemed granted" remedy, Congress has passed Section 6409, which mandates approval of applications seeking to deploy wireless equipment as a collocation notwithstanding Section 332(c)(7). Thus, Section 6409 reflects a direction from Congress that collocation applications should not be delayed. The Commission can end the run-around that applicants frequently receive by imposing a "deemed granted" remedy for applicants if State and local jurisdictions do not comply with the Section 332(c)(7) shot clock.

Dated: February 3, 2014

Respectfully submitted,

Robert Vitanza
Gary L. Phillips
Lori Fink

AT&T Services, Inc.
208 S. Akard Street
Rm 2914
Dallas, Texas 75202
(214) 757-3357 (Phone)
(214) 746-2212 (Fax)