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
	)	
2012 Biennial Review of Telecommunications Regulations	)	WT Docket No. 13-32

COMMENTS OF VERIZON AND VERIZON WIRELESS

Michael E. Glover
Of Counsel

John T. Scott, III
Andre J. Lachance
VERIZON
1300 I Street, N.W.
Suite 400-West
Washington, D.C. 20005
(202) 515-2412

Attorneys for Verizon
and Verizon Wireless

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TABLE OF CONTENTS

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	)	
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I. INTRODUCTION AND SUMMARY

Verizon applauds the Commission for initiating this proceeding to update its siting rules to reflect the new ways in which wireless providers are enhancing their networks to deliver broadband and other services to the public.[2] The Commission proposes several actions that will streamline the siting process and expedite the deployment of the new network facilities needed to meet customers' growing demands. Verizon recommends several additional steps that will also

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[1] In addition to Verizon Wireless, the Verizon companies participating in this filing (collectively "Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Notice of Proposed Rulemaking, 28 FCC Rcd 14238, WT Docket No. 13-238 (2013) ("Notice").

speed wireless broadband deployment, without compromising the historic preservation or other environmental policies that underlie the siting regime.

The public's use of wireless broadband services continues to increase dramatically, putting ever-growing capacity demands on wireless networks. Verizon and other providers are making massive investments in new cell sites, additional equipment at existing sites, and other network facilities to meet the need for more capacity and to serve their customers. Having already invested billions of dollars to deploy the nation's largest broadband network, Verizon is committing billions more to expand and enhance the capacity and reliability of that network. Those investments include deploying LTE on its AWS spectrum, implementing LTE Advanced technology, and deploying thousands of small cells and distributed antenna systems ("DAS") to fill in coverage gaps and improve capacity and throughput in densely populated areas that are most likely to become capacity-constrained.

At the same time Verizon and other providers strive to enhance their networks to serve their customers, the current regime of wireless siting regulation often delays or impedes those efforts. When that regime was adopted nearly a decade ago, most siting involved constructing new macrocell towers or installing antennas and equipment for the first time on buildings, water towers and other structures. The siting regime was thus understandably focused on providing the opportunity to consider the impact of these large new sites on historic properties and the environment. For example, it established an historic preservation clearance process, which can take months but must be completed before providers can construct new antenna towers or install antennas on buildings that are over 45 years old.

Today, however, the lion's share of siting is not installing macro cells at new locations. Instead it involves installing much smaller antennas – which typically can fit inside a box two

feet on a side – on smaller sites such as utility and light poles, or adding equipment to buildings and other sites that have *already* been approved for wireless equipment. And carriers attempt wherever possible to collocate with other carriers' facilities.

The regulatory regime has not kept pace with this evolution in siting and still subjects these new deployments to most of the same requirements and waiting periods that were developed years ago for new macrocell sites, delaying new deployments. This problem is becoming particularly acute with small cells, given the literally tens of thousands of such cells carriers must deploy to meet exploding broadband capacity needs. Upgrades to macrocell sites – essential for many carriers' deployment of spectrum on newer frequency bands such as AWS-1 and 700 MHz – are also being delayed. Carriers securing additional spectrum in the upcoming AWS-3 and 600 MHz spectrum auctions will need to install additional antennas at their existing sites to provide service on that spectrum. The existing regime, however, applies the same exhaustive review process for installing additional antennas that it does for the first antennas installed on a building. The result has been to slow wireless providers' ability to expand and enhance their network capacity quickly, and to drive up costs.

Verizon recommends that the Commission take the following seven actions, which will speed wireless broadband deployment across the nation, while protecting all of the historic preservation and environmental concerns on which the regulatory siting regime is based.

- Exclude small cells and DAS facilities from historic preservation review.
- Clarify that historic preservation review is not required for any wireless facilities (macro cells as well as small cells and DAS) that are installed on utility poles, light poles and electric transmission structures.

- Exclude from *environmental* review any wireless facilities that are installed on these same types of structures.
- Where a site is *already* equipped with wireless facilities, exclude from historic preservation review the installation of additional wireless facilities on that site that will not have a potential adverse effect on historic preservation.
- Reduce burdens on wireless providers, Native American tribes and the Commission by exempting from tribal reviews the installation of facilities on *existing* structures, and enabling tribes to designate certain types of new facilities that they do not wish to review.
- Define certain currently undefined terms in Section 6409(a) of the Spectrum Act[3] to provide more certainty and clarity as to the scope of that provision and thus speed the zoning process for collocations on and modifications to sites.
- Shorten the local zoning shot clock to 45 days for an application to collocate equipment on an existing structure covered by Section 6409(a), and deem the application granted if the shot clock expires without a zoning decision.

II. OVERVIEW OF SITING REGIME

A brief overview of key elements of the regulatory regime for siting will help explain how the current regime can delay wireless providers' efforts to enhance their networks to serve customers. Later sections of these comments explain how the Commission can modify each of these elements to streamline the siting process and expedite deployment of broadband services –

[3] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) ("Spectrum Act") (codified at 47 U.S.C. § 1455(a)).

without harming the legitimate historic preservation, tribal, and environmental interests that the regime was designed to protect.

A. NHPA Reviews

Under the National Historic Preservation Act ("NHPA"),[4] the Commission is required to consider the effect of agency "undertakings" on historic properties and properties of religious or cultural significance to Native American tribes and Native Hawaiian Organizations (collectively "tribes"). The Commission has sole authority to determine which activities are federal undertakings.[5] It has determined that constructing new towers, placing new antennas and associated equipment on existing structures, and modifying antennas and related equipment are federal undertakings.

The Advisory Council on Historic Preservation ("Advisory Council"), the federal agency responsible for implementing the NHPA, has established rules that other federal agencies must follow for conducting historic preservation reviews.[6] In general, Advisory Council rules require federal agencies, prior to taking any action deemed an undertaking, to consult with and consider views of parties whose interests may be affected. These include historic preservation officers designated by each State (State Historic Preservation Officers or "SHPOs"), tribes with religious or cultural properties or interests that may be affected, and other parties, such as local historical commissions or nearby property owners with interests potentially affected by the undertaking.

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[4] The relevant NHPA provision is codified at 16 U.S.C. § 470(f). These reviews are referred to herein as "NHPA reviews."

[5] *See* The Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, 47 C.F.R. Part 1, Appendix C ("Nationwide Agreement") at § I.B ("The Commission has sole authority to determine what activities undertaken by the Commission or its Applicants constitute Undertakings within the meaning of the NHPA.").

[6] *See* 36 C.F.R. § 800 *et seq*.

The Advisory Council rules also provide that federal agencies do not have to conduct NHPA reviews if the undertaking "does not have the potential to cause effects on historic properties."[7]

As an alternative to following the process for conducting NHPA reviews set forth in the Advisory Council rules, federal agencies can work with the Advisory Council and the National Conference of SHPOs to adopt "programmatic agreements" setting forth agency-specific processes for reviewing agency undertakings.[8] The Commission has entered into two such agreements. The "Collocation Agreement" applies to collocations or modifications of equipment on existing towers or structures,[9] while the "Nationwide Programmatic Agreement" ("Nationwide Agreement") applies to other undertakings such as the construction of new cell towers. These agreements do not distinguish macrcoells on large towers from small cells on utility poles, nor do they provide relief in many instances for installing additional wireless facilities on structures that already hold such facilities. They thus do not reflect the major changes in the ways equipment is currently being deployed to provide more capacity to meet customers' broadband demand, particularly in urban areas. In Verizon's experience, securing clearance under the historic preservation review process alone can take up to several months.

B. Tribal Reviews

Part of the NHPA review process is designed to notify tribes of proposed facility so the tribes can determine if they have a concern with the site. Thus, wireless providers submit notifications about proposed projects in the Commission's Tower Construction Notification

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[7] 36 C.F.R. § 800.3.

[8] 36 C.F.R. § 800.14(a).

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

System ("Tribal Notice System") database.[10] This database allows tribes to identify the geographic regions in which they may have a significant religious or cultural interest. Those regions are not limited to tribal lands. For example, nine tribes (mostly based in the Western U.S.) must receive notices about (and concur in) any new rooftop antenna sites in New York City.

When a project is submitted in the Tribal Notice System, the database will determine which if any tribes have expressed an interest in the area of the project and provide notice of the projects to such tribes. Many tribes will not engage until the SHPO approves the project, adding a month or more to the process for that reason alone. If a tribe then expresses an interest in consulting on the project, the wireless provider must obtain a determination by the tribe as to whether the proposed project will affect tribal religious or cultural interests before the project can proceed ("a concurrence"). Some tribes assess a fee to the applicant for their services in reviewing the proposed projects. In many cases, the tribes notified through the Tribal Notice System do not respond to the initial notification. To address these situations, the Commission has adopted a 60-day process to try to obtain a response or, if there still is none, to give approval to the applicant to proceed without a response.[11] In other cases, a tribe may respond to the initial notification and express an interest in being a consulting party on the project, but then subsequently does not respond. The Commission does not have a process to address these situations, leading to even longer delays. Verizon has typically seen delays of three months or more – sometimes as long as six months – to obtain all tribal concurrences.

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[10] *See* NPA § IV; FCC Tribal Notice System webpage, available at: http://wireless.fcc.gov/outreach/index.htm?job=tower_notification.

[11] *Clarification of Procedures for Participation of Federally Recognized Indian Tribes and Native Hawaiian Organizations Under the Nationwide Programmatic Agreement*, Declaratory Ruling, 20 FCC Rcd 16092 (2005).

C. NEPA Reviews

Commission rules implementing the National Environmental Policy Act ("NEPA")[12] require licensees to consider the effect of new or modified facilities on certain categories of environmental concern, which include potential harms to wilderness areas, threatened or endangered species, wetlands, and flood plains.[13] Recognizing that the mounting of antennas on existing buildings and antenna towers is an "environmentally desirable alternative to the construction of new facilities," the Commission has excluded such facilities from the NEPA review requirement.[14] That exclusion, however, does not make clear that facilities collocated on structures *other than* antenna towers or buildings and that associated equipment installed with the antennas are excluded. Thus, the installation of an AWS antenna or a small cell on a light pole could trigger full environmental review by multiple federal and state agencies, leading to delay.

III. THE COMMISSION SHOULD REMOVE BARRIERS TO DEPLOYING SMALL CELL, DAS AND OTHER WIRELESS FACILITIES.

A. The Commission Should Exclude Small Cells, DAS and Similarly-Sized Facilities from the Requirement to Conduct Historic Preservation Reviews.

To meet the rapidly growing demands of its customers for broadband services, Verizon is deploying small cells to improve coverage, capacity and throughput, particularly in areas where capacity needs are most urgent. In 2014, the company expects to deploy over 3000 small cells across the country. Verizon also deploys DAS to improve coverage and/or capacity. These facilities are typically located on utility poles, light poles, and building roof-tops or facades. In

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[12] 42 U.S.C. § 4321 *et seq*.

[13] 47 C.F.R. § 1.1307(a).

[14] 47 C.F.R. § 1.1306, Note 1.

some cases, such as a DAS deployment in Arizona, the facilities can be located on new structures, like fake cacti, designed to blend with the environment.

Verizon's DAS and small cell deployments are incurring significant delays due to the long time period typically required for historic preservation review, which includes tribal review. Verizon recently conducted a survey of its DAS projects requiring NHPA reviews. It found that the average time to complete a review is 84 days. Moreover, any site requiring review also requires a written report by a consultant who is certified to evaluate potential historic preservation effects. Consultant reports for each of potentially thousands of deployments can cost as much as $4700 per report.[15] Thus, to the extent the Commission can eliminate the need to conduct NHPA reviews, projects can be deployed much more quickly and at less expense. Money saved in deploying sites will free up capital to deploy more facilities. Some of the particular delays Verizon has experienced include:

- A small cell installation on the roof-top of a 34 foot building in Scranton, PA with no historic effects required consultations with nine tribes, and the last response was received 126 days after the tribal review process was initiated;

- A DAS installation on a 38 foot light pole in an historic district in Cleveland took 150 days to complete. The SHPO approved the project in 37 days, but 19 tribes had to be consulted and the last response was not received until 150 days after the tribal review process was initiated;

- A DAS installation on the roof of a 58 foot tall, over 45 year old building in Pennsylvania with no historic properties in the area of potential effects required consultations with twelve tribes and took 117 days to complete;

- A DAS installation on the roof of a 59 foot tall, over 45 year old building in Ohio with no historic properties in the area of potential effects required consultations with 18 tribes and took 122 days to complete; and

[15] Additional costs may be incurred for tribal consultation fees and for additional studies or tests – such as balloon tests to determine visibility of the proposed facility.

- A small cell installation on the roof of a 53 foot tall, over 45 year old building in New Jersey with no historic properties in the area of potential effects required consultations with 5 tribes and took 45 days to complete.

To speed the deployment of small cell and DAS facilities, the Commission should adopt an exclusion from NHPA reviews for small cells, DAS and similarly-sized facilities.[16] In particular, the Commission should implement PCIA's request for a categorical exclusion from such reviews for wireless facilities meeting the following parameters:

(1) Antenna Volume. Each antenna associated with the installation shall be in an antenna enclosure of no more than 3 cubic feet in volume. Each antenna that has exposed elements shall fit within an imaginary enclosure of no more than 3 cubic feet. (This is the equivalent of a box no more than 17 inches on a side.)

(2) Equipment Volume. An equipment enclosure at the base of the structure shall be no larger than 17 cubic feet in volume. (This is the equivalent of a box approximately 2 ½ feet on a side.)

(3) Infrastructure Volume. Associated electric meter, concealment, telecom demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch may be located outside the primary equipment enclosure and are not included in the calculation of Equipment Volume.[17]

PCIA's proposed parameters were developed and approved by PCIA's members, including Verizon, to be technology neutral and accommodate present as well as future small cell technologies. They are designed to ensure that the exclusion will apply only to equipment that is small and therefore will not cause harmful impacts on historic properties or tribal interests.

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[16] Notice at ¶¶ 53-60.

[17] Letter from D. Zachary Champ, PCIA HetNet Forum, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59, GN Docket No. 12-354, July 22, 2013 ("PCIA July 22 Letter") at 2-3. While Verizon supports PCIA's request to include NEPA and NHPA relief in one, all-encompassing exclusion, adopting a NEPA exclusion that applies to facilities that meet these parameters would not obviate the need for amending and/or clarifying the current NEPA exclusion discussed below. That amendment/clarification would still be needed for facilities that do not meet these parameters.

Facilities meeting these very small size limits will not adversely affect any historic property. As former Commission Preservation Specialist Amos Loveday concluded in a study of the impact of such small cells and DAS on historic properties, "Because DAS and small cell antennas are commonly installed on existing structures, often on existing poles within or near utility rights-of-way, they cause little ground disturbance and create almost no additional visual effect – a quality that recommends the technology for use in and near historic districts."[18] In reaching this conclusion, Dr. Loveday's study drew upon findings made by the Commission in adopting the Collocation Agreement and Nationwide Agreement that collocated facilities have a minimal incremental adverse impact on historic properties,[19] and on a survey of how preservation groups perceive small cells and DAS facilities. According to Dr. Loveday, preservationists view small cells and DAS as far less visually intrusive than standard cell site installations.[20]

As the Commission and PCIA note,[21] there are three processes available to the Commission to exclude small cell and DAS facilities from the NHPA reviews. These are: (1) adopting a new rule, pursuant to Section 800.3 of the Advisory Council rules, that constructing the covered facilities does not have the potential to cause effects on historic properties;[22] (2)

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[18] *See* Amos J. Loveday, Ph.D, *DAS/Small Cells & Historic Preservation: An Analysis of the Impact of Historic Preservation Rules on Distributed Antenna Systems and Small Cell Deployment*, February 27, 2013 ("Loveday Analysis"), at 2, *attached to* Letter from D. Zachary Champ, PCIA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59, GN Docket No. 12-354, March 19 2013 ("PCIA March 19 Letter").

[19] *Id*. at 2-5.

[20] *Id*. at 5-6.

[21] Notice at ¶ 55; PCIA March 19 Letter at 2-7.

[22] 36 C.F.R. § 800.3. As noted in Section II, Advisory Council rules govern how federal agencies conduct NHPA reviews of agency undertakings. This section allows federal agencies to avoid such reviews for certain benign activities.

determining that small cell and DAS deployments do not constitute a federal undertaking; or (3) invoking the Advisory Council's "exempted category" process.[23] Verizon agrees with PCIA that the first approach is preferred, because the Commission can accomplish it in this single rulemaking proceeding based on input from all stakeholders. The other routes would likely require separate proceedings and thus would add substantial time and burdens without being likely to produce more meaningful input.[24]

PCIA argues that the Commission can adopt a rule excluding certain activities from NHPA reviews pursuant to Section 800.3 if it concludes that the activities covered in the exclusion will have "no potential adverse effect" or that any environmental effects are "*de minimis*."[25] Noting that Section 800.3 states that an exclusion may be adopted for an activity that "does not have the potential to cause effects on historic properties," the Commission seeks comment as to whether an exclusion can be adopted where effects are *de minimis* or whether the Commission must find that there is no potential for *any* effects (adverse or not) on historic properties.[26]

The Commission can and should interpret Section 800.3 to exclude activities that may have *de minimis* effects on historic properties. In *Save Our Heritage*, the court upheld an FAA decision to allow additional flights out of a Massachusetts airport based on a finding that effects would be *de minimis*. Opponents of the FAA decision claimed that the increased flights would

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[23] *See* 36 C.F.R. § 800.14(c) (establishing a process whereby agencies may create, after consultation with SHPOs and/or Tribal Historic Preservation Officers ("THPOs") and potentially affected tribes, and subject to the approval of the Advisory Council, a category of undertakings that are exempt from NHPA review).

[24] PCIA March 19 Letter at 2-5.

[25] *Id*. at 5 (citing *Save our Heritage, Inc. v. FAA*, 269 F.3d 49, 58, 62-63 (1st Circuit 2001) ("*Save Our Heritage*").)

[26] Notice at ¶ 56.

create noise and air pollution that would adversely affect historic properties, but the FAA disagreed. On review, the court upheld the FAA's decision to forego the more detailed consultative process required under the NHPA and FAA rules. It stated, "The substantive obligation to 'take into account the effect' of the flights on historic properties is beside the point if there is no potential adverse effect. *See* 36 C.F.R. § 800.3(a)(1) (2000). To that extent, the question under NEPA and under NHPA is the same: whether the FAA erred in finding that any impact of the newly authorized flights on the surrounding area was *de minimis*."[27] Similarly, the Commission should adopt the proposed exclusion based on a conclusion that small cells will have no adverse effects and any other effects are *de minimis*.

B. The Commission Should Clarify that Utility Structures and Poles Are Not Subject to NHPA Review.

Under the Collocation Agreement, if a wireless facility is installed on a building or other existing structure, and that structure is over 45 years old, the facility must be cleared through the NHPA process. Collocations on existing *antenna* towers are exempt from review regardless of the age of the tower, because such towers are not likely to be historic properties. This exemption, however, does not cover other types of structures such as light poles, utility poles and electric transmission structures.[28] Verizon supports the Commission's proposal to clarify the definition of "other structures" in the Collocation Agreement to exclude utility structures and poles. This action is necessary even if the Commission adopts a blanket exclusion from NHPA review for small cells and DAS, because larger equipment such as traditional macro antennas is increasingly being deployed on utilities' poles and other structures.

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[27] *Save our Heritage*, 269 F.3d at 58.

[28] Notice at ¶ 61.

The purpose of the 45 year old structure requirement is to consider whether the structure itself might qualify for inclusion on the National Register of Historic Places ("National Register"), and, if so, to consider the effects the proposed facilities might have on the structure.[29] The focus of this requirement is on buildings, and not on utility structures and poles.[30] Adding wireless facilities to an existing utility structure or pole would be far less likely to adversely affect historic properties than collocations on buildings. This is both because buildings are more likely to be considered historic properties than utility structures and light poles, and because the use of utility structures historically has evolved with technological changes. Thus, a structure originally constructed to host telegraph, telephone, or power equipment is likely to have changed or added other equipment with the advent of technologies such as cable, fiber or wireless. This evolution is consistent with the original use of the structure and would not harm any historic characteristic of the structure. In short, the Collocation exemption should apply to all utility structures and poles, not just those under 46 years old.

C. Antennas and Other Equipment Installed on Any Type of Structure Should Be Excluded from Environmental Review.

Another important action the Commission proposed in the Notice is amending its environmental review rules.[31] Those rules currently exclude antennas attached to existing

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[29] *See Fact Sheet, Antenna Collocation Programmatic Agreement,* January 10, 2002, available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-02-28A1.pdf ("Collocation Fact Sheet") at 7 ("Collocation without consultation or review under Section 106 is more limited [on non-tower structures] to account for the fact that the building or non-tower structure itself could be a historic property").

[30] Loveday Analysis at 3; Notice at ¶ 61 ("the [Nationwide Agreement] was adopted when the use of structures such as utility poles for wireless communications facilities was extremely rare").

[31] *See* Notice at ¶¶ 36-52.

buildings and antenna towers from NEPA reviews for environmental effects on wetlands, floodplains and other environmentally sensitive sites.[32] That exclusion makes sense because by definition there is no ground disturbance associated with installing equipment on existing buildings and antenna towers. But this exclusion currently does not cover facilities located on structures *other than* buildings and towers, such as water towers, smokestacks, electric transmission towers, or utility and light poles. It also does not make clear that the exclusion applies to equipment associated with the antenna, such as base station equipment, cabling, and power supplies.[33] The Commission correctly recognizes that the rule should be updated to exclude siting on other existing structures from NEPA review. It should thus (1) adopt its proposal to change the phrase "existing building or antenna tower" to "existing building, antenna tower, or other structure;"[34] and (2) either amend Note 1 to change the phrase "mounting of antenna(s)" to "mounting of antenna(s) and associated equipment," or otherwise clarify that associated equipment is part of the exclusion.

These actions will help speed deployment of broadband wireless facilities without impacting the environment. The Commission adopted the current exclusion based on a determination that locating wireless facilities on existing buildings and towers "is an environmentally desirable alternative to the construction of new facilities and is encouraged."[35] Locating wireless facilities on other types of existing structures is equally environmentally desirable. Because these facilities will be mounted on existing structures in previously developed areas, they will not impact wetlands, endangered or threatened species, flood plains,

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[32] 47 C.F.R. § 1.1306, Note 1. The NEPA categories are codified at 47 C.F.R. § 1.1307(a).
[33] *See* Notice at ¶ 40.
[34] *Id*. at ¶ 38.
[35] 47 C.F.R. § 1.1306, Note 1.

or any of the other environmental concerns covered by NEPA. There is therefore no reason to differentiate among the types of structures excluded from NEPA review.

Similarly, for the current exclusion to have any beneficial effect, it is necessary to amend it to make clear that it applies to associated equipment deployed with antennas. Antennas cannot operate without associated base station, power and cabling equipment. If antennas alone are covered by the exclusion, then NEPA evaluations and reviews would be required for every collocation. This clearly is not what the Commission intended in adopting the exclusion and it should be revised or clarified accordingly.

D. The Commission Should Exclude From NHPA Review Installations of Certain Additional Antennas on Existing Sites.

Verizon is enhancing its existing wireless facilities to deploy additional LTE macro antennas to augment capacity. In 2014, it expects to deploy over 12,000 AWS antennas to supplement its existing LTE network and boost capacity in areas of high demand. In virtually every case these antennas are being added to existing structures (towers, utility structures, buildings, etc.) that *already* hold antennas that operate on cellular, PCS and/or 700 MHz frequencies. Verizon has incurred delays in deploying many AWS antennas due to the requirement to conduct NHPA reviews, including consultations with tribes, prior to deploying additional antennas at many existing antenna sites. These new reviews are required under the current regime – even though these same sites were previously cleared for wireless facilities. These reviews are unnecessary and should be excluded for most installations.

The Collocation Agreement generally requires wireless providers to obtain concurrences from SHPOs and tribes prior to deploying new antennas on structures that are over 45 years

old.[36] Collocation is defined as "the mounting of or installation of *an antenna* on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes," and there is no exception for adding *additional* antennas to *existing* antenna arrays or locations.[37] In an increasing number of cases, the structures on which new antennas are mounted are over 45 years old.[38] The requirement to conduct historic preservation reviews has caused and will continue to cause significant delays to Verizon's deployment of LTE on its AWS spectrum. For example, Verizon recently examined 52 collocations on structures over 45 years old. It determined that the average time to complete the NHPA reviews was 126 days. Some of the particular delays Verizon has experienced include:

- A collocation on a 100 year old, 57 foot tall building in Pennsylvania that was not considered historic was not able to be completed until the last tribal response was received more than 10 months after the initial tribal notification;
- A collocation on the roof-top of a 100 year old, 98 foot tall building in Hawaii with no adverse effects took more than six months for the last concurrence;
- A collocation on a 54 year old, 123 foot tall water tank in Michigan with no adverse effect took more than 10 months to receive the last tribal determination;
- A collocation on the roof of a 90 year old, 176 foot tall building in Wisconsin required 139 days to obtain concurrences;
- A collocation on a 96 year old, 129 foot tall water tank in Oklahoma took 110 days for the last tribal response;

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[36] Collocation Agreement at § V.A.

[37] *Id*. at § I.A. (emphasis added). The Nationwide Agreement provides that "maintenance and servicing of Towers, Antennas, and associated equipment" is not an undertaking and therefore not subject to the provisions of the NHPA, Nationwide Agreement at § I.B., and adopts an exclusion for tower enhancements, Nationwide Agreement at § III.A., but those provisions do not apply to the addition of new antennas to existing sites.

[38] Verizon's environmental consultants have estimated that 70-80 percent of utility poles in the Northeast, and 50-60 percent of utility poles in the Southwest, are 45 years old or older. They likewise estimate that more than half of the buildings are at least 45 years old.

- A collocation on a 55 year old, 311 foot tall factory smokestack in Florida took 101 days for the last response; and

- A collocation on the roof of a 53 year old, 106 foot tall church in Ohio that was submitted to the Tribal Notice System in September 2013 and is still awaiting the last tribal response more than four months later.

To address these concerns and eliminate unnecessary historic preservation reviews, the Commission should amend Section 1.1306 of its rules to add an exclusion for certain collocations on buildings or structures over 45 years old from the requirement to conduct NHPA reviews. Specifically, the addition of new antennas to a structure would be excluded if:

1. The antennas are being added in the same location as other antennas previously deployed by the carrier;

2. The height of new antennas does not exceed the height of the existing antennas by more than three feet or the new antennas are not visible from the ground regardless of the height increase;[39]

3. The new antennas comply with any requirements placed on the existing antennas by the state or local zoning authority or as a result of the previous historic preservation review process.

This change will remove obstacles to wireless broadband facility siting without adversely affecting any historic property. The addition of a wireless facility to an existing structure may adversely affect historic properties in two ways. First, if the structure *itself* is a historic property, it can physically alter the structure or the features that make the structure historic ("direct effect"). Second, it can introduce visual elements within the view shed of other historic properties that diminish those properties' historic features ("indirect effects").[40] Adding antennas in the limited way described above would not have either a direct or indirect adverse

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[39] Three feet was selected both to allow some tolerance for different mounting brackets that might elevate the new antennas and because FAA survey tolerance rules do not consider height anomalies and changes within +/- 3 feet to be significant.

[40] *See* 36 C.F.R. § 800.5 (Advisory Council rules for assessing adverse effects).

effect on any historic property. Even if the structure itself is historic, the effect of adding antennas of a similar size to equipment that already exists at the same location on the structure will not be different than the effects, if any, created by the existing facilities. Similarly, if the structure is in or the facilities to be added are visible from a nearby historic district, the effects of adding antennas to the existing facilities will not (as limited by the proposed rule) have an additional visual effect on the historic district. Accordingly, the Commission should conclude that an exception limited in manner described above does not have the potential to cause any effects on historic properties.

As with the proposals to streamline and/or eliminate historic preservation reviews for small cells, DAS and similarly-sized facilities, the Commission has three options to exclude additional antennas from review.[41] Verizon urges the Commission to adopt a categorical exclusion for such facilities as it is authorized to do under Section 800.3 of the Advisory Council rules.[42] To do so, the Commission would need to determine that the activity creates no potential adverse effect or only *de minimis* effects to historic properties. As discussed above, adding antennas to existing structures under the proposed parameters satisfies this standard.

IV. THE TRIBAL REVIEW PROCESS SHOULD BE STREAMLINED.

Verizon understands and appreciates the need for tribes to review and comment on projects that may affect tribal religious and cultural properties. Verizon also appreciates that many tribes lack the resources to respond to inquiries quickly. Nonetheless, it is Verizon's experience that the longest delays in the NHPA review process result from the time required to

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[41] Notice at ¶ 55, *citing* PCIA March 19 Letter at 2-7. *See* Section III.A., *supra* for a discussion of the other available options.

[42] 36 C.F.R. § 800.3.

obtain concurrences from tribes. If even one tribe does not respond to a notification or fails to render a determination about the effects of a project, the entire project will be delayed by a minimum of 60 days, but many times, as documented above, the time is far longer. To further illustrate the problem, the chart below, based on 574 siting reports compiled between January and September 2013, shows average tribal consultation times for different project types:

	Collocations on Buildings	**Collocations on Utility Structures**	**Collocations on Other Structures**	**Collocations on Existing Towers**
Average Days to Complete Tribal Consultation	76	83	72	91
Longest Time to Complete Tribal Consultation (Days)	107	101	100	118
Shortest Time to Complete Tribal Consultation (Days)	49	65	50	48

In many cases, Verizon incurs these delays waiting for tribes to review or respond to inquiries concerning projects such as collocations on roof-tops and other existing structures in urban and suburban areas where there is no possible impact on tribal religious or cultural properties. For example, projects in New York City must be reviewed by as many as nine tribes, none of which is located there,[43] and projects in Cleveland must be reviewed by 19 tribes. Projects involving collocating antennas on existing structures would not adversely affect any tribal religious or cultural property. Likewise, if a tribe's interest in an area is ancestral or

[43] These are: The Delaware Nation (consultation information is sent to Anadarko, OK); Cayuga Nation (Seneca Falls, NY); Tuscarora Nation (Lewiston, NY); Keweenaw Bay Indian Community (Baraga, MI); Stockbridge-Munsee Band of Mohican Indians (Bowler, WI); Eastern Shawnee Tribe of Oklahoma (Seneca, MO); Wyandotte Nation (Wyandotte, OK); Shawnee Tribe (Miami, OK); and Delaware Tribe of Indians in Oklahoma (Emporia, KS).

aboriginal, it may only have an interest in reviewing projects that involve significant ground disturbance.

There are two actions the Commission can and should take to improve the process, eliminate unnecessary delays, and conserve tribal and applicant resources without affecting any tribe's ability to review activities that could affect tribal religious or cultural properties. It should (1) eliminate the requirement to conduct tribal reviews when NHPA reviews are required only because the structure is over 45 years old; and (2) modify the Tribal Notice System to enable tribes to opt out of reviewing certain types of facilities in certain geographic areas.

A. The Commission Should Eliminate Tribal Reviews of Collocations Where NHPA Review Is Required Solely due to the Age of the Structure.

Given the delays often associated with tribal reviews, one of the most significant steps the Commission can take to facilitate broadband deployment is to eliminate the requirement to conduct tribal reviews where such reviews are not needed to protect legitimate tribal interests. Tribal consultations are not necessary for collocations on existing structures that are over 45 years old.

As discussed in Section III.C. above, the Collocation Agreement requires NHPA reviews for structures over 45 years old only to consider the effects on historic preservation interests the proposed facilities might have on the structure itself.[44] If the structure is not over 45 years old, or in or near a historic district, NHPA review is not required.[45] Accordingly, the purpose of reviewing buildings over a certain age is clearly based only on protecting historic qualities of the structure. Had the Collocation Agreement intended to cover tribal interests as well, it would not

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[44] *See* Collocation Fact Sheet at 7.

[45] Collocation Agreement at § V.

have adopted an age cutoff. Moreover, Verizon is aware of only one instance where it has altered a proposed collocation on an over-45 year old structure as a result of a tribal consultation, and that was where the structure and equipment were visible from tribal lands.[46] Accordingly, the Commission can and should eliminate the need to conduct tribal reviews for collocations on over-45 year old structures. As with the proposals discussed above, the Commission can best and most efficiently accomplish this change by adopting a rule that excludes collocations on structures over 45 years old from tribal reviews, as it is authorized to do pursuant to Section 800.3 of the Advisory Council rules.[47]

B. The Commission Should Enable Tribes to Designate Types of Facilities that Do Not Require Their Review.

The existing Tribal Notice System does not differentiate among types of wireless facilities. It merely asks tribes to identify the geographic areas of interest; once the tribes designate an area, all siting that triggers the NHPA review process also triggers automatic notifications to the tribes which then must spend their resources to respond, even if the sites are of no interest. For example, while a tribe may be interested in a new tower that is proposed in an area, it likely has no reason to spend its resources responding to a proposal to add an antenna on an existing building in the same area. The fact that many notifications go unanswered, requiring the Commission and wireless providers to pursue responses from tribes, confirms that the existing system of seeking tribal concurrences is overbroad.

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[46] To address that situation, the exclusion from tribal review could be conditioned on the structure, if visible from the ground level on tribal lands, being at least 250 feet from tribal lands. Such a provision would be consistent with the Collocation Agreement requirement for facilities visible from historic districts. *See* Collocation Agreement at § V.A.2.

[47] 36 C.F.R. § 800.3.

The Commission can assist the tribes in focusing their resources on the types of siting projects that they want to review by enabling them to forego reviewing certain types of projects. Specifically, it should create a means through the Tribal Notice System for tribes to opt out of reviewing certain types of facilities within all or part of the areas where the tribe has expressed an interest in consulting on facilities siting projects. Verizon has been told by staff that no such means currently exists. The Commission should create a list of facility types, including but not limited to collocations on towers, buildings, utility poles, water tanks, or other structures, new facilities in industrial zones and rights-of-way corridors,[48] and new facilities constructed on previously disturbed land, for which a tribe can elect to opt out of receiving notices within all or part of their geographic areas of interest. The Commission staff should work with tribes both to notify them of the change to the Tribal Notice System and to encourage them to update their elections to opt out of reviewing facilities that pose no legitimate threat to tribal interests. In these ways, the tribes would participate in the reviews of only those types of facilities that they determine would affect their interests.

V. THE COMMISSION SHOULD GRANT A PERMANENT EXCEPTION TO THE ENVIRONMENTAL NOTICE RULES FOR CERTAIN TEMPORARY TOWERS.

Prior to the Commission adopting an interim waiver of the antenna structure registration notice requirements for temporary towers, Verizon was at times forced to forego deploying cells on wheels ("COWs"), cells on light trucks ("COLTs") and other temporary facilities. These

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[48] The Nationwide Agreement currently requires tribal consultation even if the Nationwide Agreement exclusions for facilities in industrial zones and rights-of-way corridors apply. Nationwide Agreement at §§ III.D, E. Since these facility types, particularly those in industrial zones, will be constructed on previously disturbed ground and in developed areas, tribes may determine that there is little or no likelihood that facilities in these areas will affect tribal religious or cultural properties.

facilities are needed to provide coverage or boost capacity in areas where usage spiked due to some event. Often, the need for and/or the location of the temporary towers was not known far enough in advance to complete the Commission's antenna structure registration approval process, which can take as long as two months.[49] Last May, however, the Commission granted CTIA's request for an interim waiver of its antenna structure notice rules for temporary towers that are (1) in use for no more than 60 days; (2) require notice of construction to the FAA; (3) do not require marking or lighting; (4) are less than 200 feet tall; and (5) involve no or minimal ground disturbance.[50] The Commission now seeks comment on its proposal to make permanent the temporary exclusion it adopted last May. Verizon supports amending the antenna structure registration notice rules to make the exclusion permanent.[51]

Since the temporary exclusion was adopted, Verizon has used the expedited approval process multiple times.[52] The company is not aware of any instance where any party has raised any environmental concerns about any of those temporary towers. This experience demonstrates that excluding certain temporary towers from the notice requirement provides benefits to consumers without harming the environment. Moreover, the notice waiver did not remove the separate requirement to seek FAA review for any sites that trigger that review, so air navigation concerns remain fully protected. Accordingly, the Commission should amend its rules to make

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[49] Verizon Wireless Comments, RM No. 11688, filed February 25, 2013 ("Verizon Temporary Tower Comments") at 3-4.

[50] *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*, Order, RM-11688, WT Docket No. 13-32, 28 FCC Rcd 7758 (2013) ("Temporary Tower Waiver Order") at ¶ 9.

[51] Notice at ¶¶ 78-89.

[52] Verizon deployed more than 40 temporary towers during this timeframe, but it did not need to use the waiver process for every site because, in some cases, it had ample time to complete the regular notice process.

permanent the exclusion it adopted temporarily last May. Verizon believes the parameters of that exclusion are appropriate and balance the need to protect the environment with the desire to facilitate deployment of temporary towers. It does not oppose amending the exclusion to apply to temporary towers that will be deployed for up to 90 days, as requested by NTCH,[53] but Verizon does not believe the Commission should specify the types of temporary towers that qualify for the exemption.[54] Specifying the types of temporary towers will only serve to the limit the rule and could result in new structure types developed in the future being excluded from its benefits.

VI. THE COMMISSION SHOULD ADOPT DEFINITIONS OF UNDEFINED TERMS IN SECTION 6409(A) OF THE SPECTRUM ACT AND DEEM APPLICATONS GRANTED IF NOT ACTED UPON IN 45 DAYS.

Congress adopted Section 6409(a) of the Spectrum Act to facilitate deployment of wireless broadband facilities by requiring zoning authorities to approve "eligible facilities requests" for collocations and modifications. It requires State and local zoning authorities to approve and not deny "any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station."[55] The term "eligible facilities request" is defined as "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

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[53] NTCH Comments, RM-11688, filed February 25, 2013, at 3. *See* Notice at ¶ 84.

[54] *See* Notice at ¶ 87 (seeking comment regarding whether the rule adopted should specify the types of temporary structures to which the relief applies).

[55] Spectrum Act at § 6409(a)(1).

equipment."[56] Other key terms, however, are not defined. In January 2013, the Wireless Telecommunications Bureau ("Bureau") issued a Public Notice offering interpretative guidance as to the meanings of several undefined terms.[57] The Commission now seeks comment on whether and, if so, how it should clarify the meaning of those undefined terms, specifically: "transmission equipment," "existing wireless tower or base station," "substantially change the physical dimensions," and "collocation."[58]

Verizon is concerned that some jurisdictions have failed to give full meaning and effect to the local zoning relief adopted by Congress in Section 6409(a) of the Spectrum Act. While a number of States have enacted legislation to implement Section 6409(a),[59] there have been and will continue to be jurisdictions that adopt their own, overly narrow interpretations of the provision. For example, Lafayette, California has determined that "*any* increase in height that would cause the wireless tower or base station to exceed the maximum height permitted under the City's code or under the wireless tower or base station's initial permit" constitutes a substantial increase.[60] A Ventura County, California ordinance provides that a collocation that includes more than three antennas or increases the total number of antennas on the pole to seven

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[56] *Id*. at § 6409(a)(2).

[57] *Wireless Telecommunications Bureau Offers 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 (WTB 2013) ("Section 6409 Public Notice").

[58] Notice at ¶ 102.

[59] *See id*. at ¶ 99.

[60] Lafayette Municipal Code § 6-1509 – Modification of Existing Wireless Towers and Base Stations (emphasis added). The Davis, California ordinance contains the same limitation. *See* Davis Municipal Code § 40.29.290(c) – Modification of Existing WTFs.

or more is a substantial increase.[61] The California Coastal Commission (San Mateo County) recently required a discretionary review, which took 391 days to complete, of an application to extend the height of an existing tower by 20 feet to determine whether the pole would extend above the tree canopy. Also, a number of Georgia cities and counties continue to require comprehensive public hearings for *any* increase in the height of an existing tower.

To ensure that Section 6409(a) is given the full effect intended by Congress, is applied consistently across State and local jurisdictions, and to avoid protracted litigation over the meaning of undefined terms, the Commission should adopt rules clarifying the meaning of undefined terms.[62] Verizon generally supports the Commission's proposed definitions of the key undefined terms. These comments, therefore, focus on the two most important definitional issues: (1) whether the term "existing wireless tower or base station" can be read to include collocations on existing structures that do not already hold wireless facilities; and (2) whether the Bureau's guidance with respect to "substantially change the physical dimensions" should be adopted by the full Commission.

A. The Commission Should Define "Existing Wireless Tower or Base Station" to Apply to Collocations on Existing Structures that Do not Currently Hold Wireless Facilities.

Verizon has previously expressed concerns that the Bureau's definition of the term "existing wireless tower or base station" limits the benefits of Section 6409(a) to new

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[61] Ventura County, California, Code of Ordinances, Division 12, Highway Encroachments, Chapter 8. Wireless Telecommunications Facilities – Public Right-of-Way § 12803 – Definitions.

[62] The Commission has authority to "implement and enforce [the Spectrum Act] as if this title is a part of the Communications Act of 1934." Spectrum Act at § 6003(a).

collocations on towers or structures that already hold a wireless facility.[63] As a result, a substantial number of small cell and DAS deployments, which will be made on structures such as light and utility poles that do not currently hold wireless facilities, will not benefit from the relief provided by the statute. There is no evidence that Congress intended this result, and it does not make sense to limit the provision in this manner. Therefore, in keeping with Commission's goals of facilitating small cell and DAS deployment, the Commission should define this term to include small cell and DAS deployment.

There are two ways in which terms can be defined consistent with the statutory language to include more small cell and other deployments. The term "tower" can be defined to include structures similar to wireless antenna towers that typically hold wireless facilities. Specifically, existing light and utility structures should be included within the definition. Alternatively, the Commission could interpret the term "existing wireless tower or base station" in conjunction with the accepted (and proposed) definition of collocation, which includes "the mounting or installation of an antenna on existing tower, *building, or structure*."[64] Since the drafters of the provision clearly intended to include collocations,[65] the term "existing wireless tower or base station" should be interpreted to include all collocations, not just those on structures that already hold wireless facilities.

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[63] Notice at ¶ 111 (citing Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-59 (filed February 28, 2013)).

[64] Notice at ¶ 113; Collocation Agreement at § I.A (emphasis added).

[65] *See* Spectrum Act at § 6409(a)(2)(A) (including "collocation of new transmission equipment" within the definition of "eligible facilities request").

B. The Current Definition of "Substantial Change" Is Appropriate.

The Bureau interpretation of "substantially change the physical dimensions" was to recommend using the Collocation Agreement definition of a "substantial increase in the size of a tower."[66] That definition includes parameters stated in relation to a tower, i.e., "the mounting of the proposed antenna shall not increase the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater."[67] The Commission seeks comment on (1) whether this definition should be modified or limited to prevent subsequent collocators from increasing the height of tower another 10 percent or twenty feet each time a new antenna is added – the so-called "blooming tower" concern; and (2) whether a different definition would be more appropriate for collocations on other structures such as buildings.[68]

With respect to the "blooming tower" concern, it is not likely that existing towers will grow significantly by application of the Collocation Agreement definition of substantial increase. This is because collocators typically locate new facilities below the initial licensee's equipment on existing towers rather than increasing the height of the tower. In addition, there are a limited number of potential collocators in each market, and there may be structural limitations that prevent increases in the height of existing towers. However, if the Commission feels it needs to place some absolute limits on the height of towers to address this concern, Verizon would not oppose a definition that caps the maximum height increase to 10 percent or 20 feet total from the height of the tower as of the date the rule becomes effective. Thus if the tower is extended by

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[66] Collocation Agreement at § I.C.

[67] *Id*. at § I.C(1).

[68] Notice at ¶¶ 120-121.

five percent to accommodate new equipment after the rule becomes effective, a subsequent collocator would be able to extend the tower by another five percent (of the height at the rule's effective date) and Section 6409(a) would still apply.

Verizon believes the Collocation Agreement definition is appropriate for structures such as utility structures and light poles, as well as water towers. These structures are similar enough to wireless towers so that the Collocation Agreement substantial increase definition parameters make sense. While the Collocation Agreement parameters do not fit as easily for collocations on buildings, Verizon does not believe that a different definition is needed. That is because substantially increasing the size of the building is not likely to be a concern with antennas mounted on the roof or side of a building. If the Commission adopts a different definition of "substantial change" for buildings, however, that definition should be flexible enough to accommodate the types of collocations typically done on buildings. For example, the definition should accommodate collocations on the sides or facades of buildings, roof-top collocations that extend some height above the roof (with the allowable height increasing the further the facilities are set back from the edge of the roof) or that are shielded or otherwise not visible from the street,[69] and collocations involving adding antennas to existing collocation sites.

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[69] When possible, carriers attach roof-top antennas above the surface of the roof to keep the RF emissions on the roof below Commission general population emissions limits. Limiting the height of roof-top mounted antennas therefore would be odds with Commission objectives in its open RF proceedings. *See Reassessment of Federal Communications Commission Radiofrequency Exposure Limits and Policies*, ET Docket No. 13-84; *Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields*, ET Docket No. 03-137, First Report and Order, Further Notice of Proposed Rulemaking and Notice of Inquiry, 28 FCC Rcd 3498 (2013), at ¶¶ 175-203 (considering rules to restrict access to transmitter facilities that may be accessible to workers or the public).

C. The Commission Should Adopt a 45-Day Shot Clock for Facilities to which Section 6409(a) Applies and Deem Applications Granted if Not Acted on by Then.

The Commission seeks comment on whether it should adopt a time limit for processing Section 6409(a) facilities applications that is different from the 90-day shot clock adopted for collocations.[70] It also seeks comment on whether it should adopt a "deemed granted" remedy for Section 6409(a) applications, and, if so, how such a remedy should work.[71] Verizon supports a 45-day shot clock for eligible facilities under Section 6409 and a rule that deems applications granted if not acted upon in 45 days.

Although the Spectrum Act was adopted in early 2012, Verizon still experiences a number of local zoning delays for "eligible facilities requests" under Section 6409. For example:

- In Livermore, California, a proposal to add three like-sized camouflaged antennas on an existing tree pole required discretionary view that took 168 days to approve;
- In San Francisco, a proposal to deploy LTE by replacing existing antennas on the façade of a building with antennas of a similar size has been pending for over 45 days;
- In Campbell, California, a proposal to deploy LTE by replacing three existing antennas with like-sized antennas was deemed not to conform with height restrictions in the new City ordinance and has been pending for over 130 days; and
- In Albany, California, the City took over 90 days and required public hearings to determine that a proposed application was for "eligible facilities."

The Commission should adopt a 45-day shot clock for Section 6409(a) applications. A shorter shot clock will help facilitate wireless facilities siting by speeding the zoning process. In adopting the current 90-day shot clock for collocation applications, the Commission stated its

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[70] Notice at ¶ 134.

[71] *Id*. at ¶¶ 137-143.

belief that many applications can and should be processed in the 45-day timeframe that CTIA requested and provided examples of a number of jurisdictions that processed applications within 45 days.[72] A shorter shot clock is justified in light of the limited review now permitted for such applications. Under Section 6409(a), the only determination a zoning authority must now make is whether the proposed facility is an "eligible facilities request." This determination requires far less information from applicants and a much more cursory review by zoning authorities.[73] As such, a shorter shot clock for Section 6409(a) is appropriate.

The Commission should also adopt a rule that deems Section 6409(a) applications not approved within the shot-clock period to be automatically granted. Deeming applications granted when the shot clock time periods are not met avoids the need for applicants aggrieved by a failure to grant the application to pursue judicial or administrative remedies to enforce the statutory requirement. Those remedies are costly and take considerable time, thus impeding applicants' ability to deploy wireless facilities, even when the zoning authority has failed to identify any evidence to support denial of an application.

In the Shot Clock Ruling, the Commission decided not to deem applications granted if the shot clock time period was not met, because the statutory provision it was interpreting provided a judicial remedy when a State or local government "fails to act."[74] Section 6409(a), by contrast, *requires* that applications for "eligible facilities requests" be granted, and does not

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[72] *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994 (2009) ("Shot Clock Ruling") at ¶¶ 43-44, *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd sub nom. City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013).

[73] *See* Notice at ¶ 132.

[74] Shot Clock Ruling at ¶ 39; 47 U.S.C. § 332(c)(7)(B)(v).

direct that applicants adversely affected by a failure to grant such a request pursue a judicial remedy. Thus, the concerns expressed by the Commission in declining to adopt a "deemed granted" remedy in Section 332(c)(7)(B) cases are not present in Section 6409(a), and the Commission should adopt a "deemed granted" rule for Section 6409(a) applications. Moreover, adopting a deemed granted remedy would be consistent with similar actions taken by the Commission in interpreting Section 621(a)(1) of the Communications Act pertaining to video franchising.[75]

VII. CONCLUSION

The Commission should adopt rules to streamline wireless broadband facilities siting consistent with Verizon's comments herein.

Respectfully submitted,

By: /s/ John T. Scott, III

John T. Scott, III
Andre J. Lachance
VERIZON
1300 I Street, N.W.
Suite 400-West
Washington, D.C. 20005
(202) 515-2412

Attorneys for Verizon
and Verizon Wireless

Michael E. Glover
Of Counsel

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[75] 47 U.S.C. § 621(a)(1). *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, 5138-5140 (¶¶ 76-81) (2007), *aff'd Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008) (implementing language requiring that local video franchising authorities "not unreasonably refuse to award an additional competitive franchise" by adopting both a shot clock and a conditional deemed granted remedy).