Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

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

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WT Docket No. 13-32

NOTICE OF PROPOSED RULEMAKING

COMMENTS OF JOINT VENTURE: SILICON VALLEY
# TABLE OF CONTENTS

I. INTRODUCTION ................................................................................................................................. 1

II. THE COMMISSION SHOULD EXPEDITE ENVIRONMENTAL COMPLIANCE FOR DAS/SMALL CELLS ........................................................................................................................................ 3

III. THE COMMISSION SHOULD MODIFY THE ENVIRONMENTAL NOTIFICATION EXEMPTION FOR TEMPORARY TOWERS ........................................................................................................... 4

IV. THE COMMISSION SHOULD ADOPT RULES INTERPRETING THE STATUTORY LANGUAGE OF SECTION 6409(A) ........................................................................................................................................ 5

V. THE COMMISSION SHOULD MAKE IMPROVEMENTS TO ITS 2009 DECLARATORY RULING (“SHOT CLOCK”) ........................................................................................................................................ 7

VI. CONCLUSION ............................................................................................................................................ 9
To: The Commission

NOTICE OF PROPOSED RULEMAKING
COMMENTS OF JOINT VENTURE: SILICON VALLEY

Joint Venture: Silicon Valley’s Wireless Communications Initiative (“Joint Venture”) respectfully submits these comments in response to the above-captioned Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“Commission”).

I. INTRODUCTION

In 2010 the National Broadband Plan recommended establishing “the fastest and most extensive wireless networks” in the world.¹ Joint Venture supports the Commission’s efforts to advance this goal and is similarly dedicated to having the best wireless broadband networks in Silicon Valley, which encompasses the southern portion of the San Francisco Bay Area and such cities as San Jose (home to Cisco, Adobe, and Ebay), Palo Alto (home to Hewlett-Packard and Tesla), Mountain View (home to Google), Cupertino (home to Apple), and Santa Clara (home to Yahoo) to name a few.

Joint Venture was established in 1993 to provide analysis and take action on issues affecting the Silicon Valley’s economy and quality of life. Joint Venture started the Wireless Communications Initiative in 2005 in order to identify and promote solutions to the problem of inadequate wireless coverage in our region—somewhat ironic since Silicon Valley is synonymous with our nation’s mobile revolution and information age. We take pride in being home to the companies driving this transformation, yet remain frustrated when our “smart phones” do not work.

Joint Venture summarized the problem in 2012 as: “The significant challenge facing the

The next phase in technology deployment is the need to place wireless facilities in residential neighborhoods. These facilities need to be closer to consumers to allow signals to be accessible within homes.\(^2\)

The initiative is a collaboration between industry, public safety, cities, businesses, and residents working to improve wireless infrastructure and eliminate dead zones. Our steering committee is co-chaired by Pete Constant, San Jose City councilmember and Dr. Edwin Tasch, Chief of Neurology, Santa Clara Medical Center, Kaiser Permanente. Our committee members range from network providers to officials and staff from a variety of local governments, for example, Gary Waldeck, councilmember and former mayor of Los Altos Hills—a beautiful hillside city that suffers from a number of wireless dead zones depending on your provider.

Together, the initiative leads a coordinated public-private sector effort to mount a highly strategic campaign to transform Silicon Valley’s wireless broadband infrastructure. We have two primary goals: (1) improve broadband and wireless networks and (2) have faster, cheaper and more wireless and wired broadband communications. We meet these goals by convening local governments and network providers to discuss quicker timelines for permits; by creating greater awareness of the need for 21st century wireless infrastructure; by participating in policy making at the state and federal levels; and by participating in a greater regional consortia to promote additional public safety and private wireless broadband infrastructure.

Unfortunately, in California in general and the Bay Area in particular, local governments “have reputations within the industry of being something less than friendly when it comes to deploying technology. The process can be contentious and often takes far longer when compared

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to other regions. So when it comes to rolling out technology, carriers initially deploy where it's easiest to build.”\(^3\) Sadly, nothing illustrates the hostilities to all things “wireless” quite as well as the recent heckling and protest of Commission Chairman Tom Wheeling as he visited the Silicon Valley city of Los Gatos—the home to Netflix.\(^4\)

In these comments, Joint Venture will share some of its successes and advocate for how the Commission may do more by removing needless federal regulatory impediments, clarifying the scope of Section 6409(a), and insuring that State and local governments issue critical permits in a timely manner. By making these improvements, the Commission can fulfill its goals of lowering costs and providing faster deployment of wireless infrastructure, which will ultimately bring us closer to meeting “America’s demand for and reliance on wireless broadband services.”\(^5\)

II. THE COMMISSION SHOULD EXPEDITE ENVIRONMENTAL COMPLIANCE FOR DAS/SMALL CELLS

In 2011, the Commission took a major step in advancing distributed antenna systems (“DAS”) and small cell installations by expanding access and increasing the speed of deployment on utility poles in the twenty-nine states directly regulated by the Commission.\(^6\)

These regulations have successfully opened up large geographic areas that had previously been unreceptive towards wireless attachments on utility poles. Also in 2011, the Commission sought comment on “specific steps that could be taken to identify and reduce other unnecessary

\(^{3}\) Id.


\(^{5}\) NPRM at ¶ 2.

obstacles to obtaining access to public rights-of-way and siting wireless facilities.” In this NPRM, the Commission more specifically requested “comment on whether to expedite or tailor our environmental review process for technologies such as DAS and small cells.”

Joint Venture has been a proponent of increased DAS/small cell deployments because it efficiently uses existing structures, such as utility poles and streetlights, in the public rights-of-way. The initiative has worked with many local cities, such as Los Altos, Mountain View, Palo Alto, San Jose, and Sunnyvale, to streamline permitting requirements for these types of networks and applauds the Commission for recognizing that DAS/small cells are critical to meeting future wireless growth. As such, Joint Ventures encourages the Commission to use its regulatory authority to formally modify the current federal environmental review process to remove other unnecessary delays for DAS/small cells in the public rights-of-way.

III. THE COMMISSION SHOULD MODIFY THE ENVIRONMENTAL NOTIFICATION EXEMPTION FOR TEMPORARY TOWERS

Joint Venture also supports the Commission’s proposed adoption of “a permanent exemption from the pre-construction environmental notification process for certain temporary towers that require antenna structure registration.” Due to an insatiable demand for social networking and the need to stay connected during temporary events such as festivals, celebrations, and sporting events, temporary towers—fondly referred to as “COWS” for “cell on wheels”—allow the wireless networks to continue operating even with large surges of demand on capacity. Disasters—natural and man-made—require immediate coverage and capacity to facilitate public and private emergency services. We have all been separated from friends and

8 NPRM at ¶ 43.
9 NPRM at ¶ 68.
family during large events, but fully functioning wireless networks allow us to find each other amongst the chaos, which was often impossible before the mobile revolution. As such, Joint Venture encourages the Commission to make this exemption permanent because it is another example of how current federal regulatory burdens can be lessened by simple, common sense reductions.

IV. THE COMMISSION SHOULD ADOPT RULES INTERPRETING THE STATUTORY LANGUAGE OF SECTION 6409(A)

When Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, it brought us closer to insuring that network providers will be able to construct the necessary wireless infrastructure to support the today’s capacity demands. The central problem is “frozen infrastructure,” where existing wireless towers and base stations are essentially frozen with outdated technology because changes in local government code delay or deny the necessary improvements to upgrade and expand facilities to meet today’s technology demands.

Understanding what Section 6409(a) means has been a key focus of Joint Venture’s goal to convene stakeholders to discuss changes in law. However, even with the Commission’s public notice (“Section 6409(a) PN”) much confusion continues.11 Joint Venture encourages the Commission to expand what it started in the Section 6409(a) PN by continuing to clarify key terms. Detailed and objective definitions would provide critical guidance to State and local governments and network providers so that there is nationwide predictability to the replacement and collocation of wireless infrastructure.

For all the areas of uncertainty in Section 6409(a), one clear thing is that Congress

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11 NPRM at ¶ 107 (citing 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(a) PN”).
intended to preempt State and local governments and remove their discretion on whether or not to approve an eligible facilities request. There is nothing in Section 6409(a) that prevents network providers from agreeing with reasonable conditions of States or local governments. However, where those conditions are impossible or cost prohibitive, denial of an otherwise eligible facilities request should not be allowed. For example, in the City of San Jose there are currently many “frozen rooftop” base stations that can essentially not be touched because of unreasonable conditions related to shrouding existing and unrelated equipment. As such, necessary network improvements and new entrants are prevented from utilizing these existing locations. Congress set out to change this.

The Commission asked if there should be a full zoning review for “non-conforming uses.” Again, what must be preserved is the intent of Congress—to streamline “the process for siting of wireless facilities by preempting the ability of State and local authorities to delay collocation of, removal of and replacement of wireless transmission equipment.” This means being able to improve the thousands of existing wireless towers and bases stations that are currently non-conforming uses, frozen in time with outdated equipment that needs to be upgraded to current technologies.

The Commission requested comment on whether an eligible facilities request should “comply with State or local building codes and land use laws.” Wireless facilities should always comply with non-discretionary safety standards, such as TIA-22 Revision G and the National Electric Safety Code. However, an eligible facilities request should not have to comply

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13 NPRM at ¶ 126.
15 NPRM at ¶ 125.
with “land use law” because that is the precise area of Section 332(c)(7) that Congress intended to preempt.\footnote{47 U.S.C. 1455(a) (stating, “Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law…”).}

Additionally, the Commission should adopt regulations regarding the review and processing of applications. Joint Venture hopes that State and local governments would decide to waive a formal application process in favor of simply providing notice. However, for those with an application process, Joint Venture encourages the Commission to outline that it be administrative only in order to avoid the uncertainty that comes with discretionary zoning processes, which are extremely vulnerable to multiple hearings, appeals and delays.

Finally, Joint Venture encourages the Commission to be clear that any required applications be processed and approved within 90 days, which is currently the “shot clock” standard for collocations.\footnote{NPRM at ¶ 134 (stating “90 days as a presumptively reasonable period of time to process collocation applications under Section 332(c)(7)”).} In regard to the Commission’s request for comment on whether an eligible facilities request should be “‘deemed granted’ by operation of law if a State or local government fails to act within a specified period of time,”\footnote{NPRM at ¶ 137.} Joint Venture urges the Commission to adopt a deemed granted remedy because that is the only way to fulfill Congress’s intent to streamline the process for upgrading and improving existing wireless infrastructure without unnecessary delay.

\textbf{V. THE COMMISSION SHOULD MAKE IMPROVEMENTS TO ITS 2009 DECLARATORY RULING (“SHOT CLOCK”)}

Joint Venture appreciates the opportunity to comment on the Commission’s 2009

\textit{Declaratory Ruling} under Section 332(c)(7)—fondly referred to as the “Shot Clock.”\footnote{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} As
discussed above, Joint Venture has been a strong supporter of DAS/small cell networks in hard-to-reach communities. To prevent any possible confusion, it encourages the Commission to make it explicitly clear that “existing structures” includes all structures, such as buildings, water towers, utility poles, etc. This will allow DAS/small cells to attach to existing structures under the 90-day timeline for collocations.

Joint Venture also requests the Commission adopt a “deemed granted” remedy when the time to process a collocation or new structure application under the 2009 Declaratory Ruling exceeds 90 or 150 days respectively. This will avoid the incredibly time and money intensive litigation processes that plague many deployments of wireless infrastructure. A case in point is Crown Castle NG East v. Town of Greenburgh, which has taken over four years to get an order granting the permits at the Second Circuit Court of Appeals. In the meantime, the community has suffered with lesser wireless services than they otherwise would have had but for the open hostility of a local government towards wireless facilities. Crown Castle NG East v. Town of Greenburgh is just one example out of many.

The Commission’s goal should be to direct resources to support wireless broadband deployment, not costly and time-consuming litigation. Sadly, there are numerous lawsuits currently in the Bay Area—San Francisco, Oakland, Burlingame, Hillsborough, and Albany, to name a few. A “deemed granted” remedy will “reduce costly and time consuming litigation, allowing those resources to be used to fund rather than defend the expansion of broadband deployment,” which is in everybody’s best interest.


21 NPRM at ¶162 (quoting PCIA).
VI.  CONCLUSION

Based on the foregoing, Joint Venture respectfully requests the Commission affirm the importance of wireless infrastructure by removing unproductive and burdensome federal regulatory requirements, creating comprehensible regulations for Section 6409(a), and clarifying the 2009 Declaratory Ruling. Without such actions, wireless facilities will continue to suffer unnecessary regulations and unpredictable treatment by State and local governments, which will hinder the expansion of wireless broadband services to the public, contrary to the goals of Congress and the Commission.

Respectfully submitted,

[Signature]

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