

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Acceleration of Broadband Deployment by Improving Wireless 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
)	
2012 Biennial Review of Telecommunications Regulations)	WT Docket No. 13-32
)	

**REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS**

In its *Notice of Proposed Rulemaking* in the captioned proceeding,¹ the Commission tentatively concluded that broadcast, along with all other wireless services, are covered by section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”).² That conclusion is supported by the record. The comments also reveal substantial support for applying section 6409(a) broadly to cover the collocation, removal, or replacement of transmission equipment for all wireless services and to cover a broad range of support structures.

The National Association of Broadcasters (“NAB”)³ supports such broad application of section 6409(a), which would ensure that broadcast services, their

¹ *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, 28 FCC Rcd 14238 (2013) (“*NPRM*”).

² 47 U.S.C. § 1455(a).

³ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

equipment, and towers fall within the ambit of section 6409(a). As discussed below and in the initial comments, this interpretation is entirely consistent with the statutory language, context, and policy and will give rise to a myriad of public interest benefits.

DISCUSSION

Section 6409(a) was enacted as part of Title VI of the Spectrum Act, which is intended to “advance wireless broadband service” for both public safety and commercial users.⁴ Section 6409(a) contributes to this important goal by requiring, that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”⁵ As the *NPRM* recognizes, this provision gives rise to the fundamental questions of what wireless services are covered? what equipment can be collocated, removed, or replaced under section 6409(a)? and what types of support structures and base stations may be modified pursuant to the expedited collocation process?⁶

In response to these questions, the Commission tentatively concluded in the *NPRM* that broadcast is among the wireless services covered by section 6409(a):

[W]e propose to find that section 6409(a) applies to the collocation, removal, or replacement of equipment used in connection with any Commission-authorized wireless transmission, licensed or unlicensed, terrestrial or satellite, including commercial mobile, private mobile, broadcast, and public safety services, as well as fixed wireless services⁷

⁴ H.R. Rep. 112-399, at 136 (2012) (“Conf. Rep.”).

⁵ 47 U.S.C. § 1455(a)(1).

⁶ *NPRM*, 28 FCC Rcd at 14277-80.

⁷ *Id.* at 14277.

The Commission concluded further that the relevant equipment includes “antennas and other equipment associated with and necessary to” the operation of such wireless services.⁸ Finally, the Commission sought comment on the scope of support structures encompassed by section 6409(a), i.e., whether this provision covers all structures that can support wireless transmission equipment (e.g., towers, buildings, light poles, and utility fixtures) or is more limited in scope.⁹

NAB strongly urges the Commission to adopt a broad interpretation of section 6409(a) as encompassing any Commission-authorized “wireless” transmission, including broadcast services, the equipment associated with such transmission, and “structures that support or house” such equipment “even if they were not built for the sole or primary purpose of providing such support.”¹⁰ To begin, there is express and substantial support for the Commission’s tentative conclusion that broadcast services are covered by section 6409(a).¹¹ The Commission, therefore, should not hesitate to conclude that broadcast falls within the ambit of section 6409(a).

Moreover, a broad interpretation of section 6409(a) that encompasses broadcast service, towers, and equipment is fundamentally consistent with Congressional intent to streamline the facilities application process and will permit broadcast towers to be fully utilized as platforms for collocation. Anecdotal evidence suggests that as many as 85 percent of the approximately 25,000 existing broadcast towers are being used to

⁸ 47 U.S.C. § 1455(a)(2).

⁹ *NPRM*, 28 FCC Rcd at 12479-80.

¹⁰ *Id.* at 14277-79.

¹¹ See, e.g., Comments of CTIA – The Wireless Association®, at 11 (filed Feb. 3, 2014) (“CTIA Comments”); Comments of PCIA – The Wireless Infrastructure Association and the Hetnet Forum, at 29 (filed Feb. 3, 2014) (“PCIA/Forum Comments”).

collocate wireless facilities today. As such, applying the section 6409(a) expedited collocation process broadly doubtless will “advance wireless broadband service”¹² by supporting the approximately 25,000 broadcast towers as collocation platforms and will provide numerous other public interest benefits. Indeed, collocation “is often the most efficient, rapid, and economical means of expanding wireless coverage and capacity, and also reduces the environmental and other impacts of new wireless facilities deployment.”¹³

Also, many commenters support a broad interpretation of section 6409(a) that would encompass broadcast services, towers and equipment.¹⁴ As CTIA points out, there is simply no basis to conclude that Congress intended to expedite collocations only for a single type of wireless service or only on a single type of support structure.¹⁵ Promoting collocations broadly is economically and environmentally efficient and consistent with the Commission’s long-standing preference for collocations over new construction.¹⁶ Thus, there is every reason for Congress to have intended to

¹² Conf. Rep. at 136.

¹³ *NPRM*, 28 FCC Rcd at 14242.

¹⁴ See CTIA Comments at 11-12; Comments of Fibertech Networks, LLC, at 19-23 (filed Feb. 3, 2014) (“Fibertech Comments”); PCIA/Forum Comments at 31-36; Comments of Towerstream Corporation, at 14-19 (filed Feb. 3, 2014) (“Towerstream Comments”); Comments of Sprint Corporation, at 8 (filed Feb. 3, 2014) (“Sprint Comments”); Comments of the Utilities Telecomm Council, at 12-13 (filed Feb. 3, 2014) (“UTC Comments”).

¹⁵ CTIA Comments at 12.

¹⁶ *Id.* (citing *Implementation of the National Environmental Policy Act of 1969*, 49 FCC 2d 1313, 1324 (1974) (finding that mounting an antenna on an existing building or tower “has no significant aesthetic effect and is environmentally preferable to the construction of a new tower . . .”).

encompass a wide range of wireless services and facilities within the scope of section 6409(a), including broadcast service and facilities.

Nevertheless, a few local jurisdictions generally advocate for applying section 6409(a) narrowly and in ways that could limit the applicability of section 6409(a) to some mix of towers, equipment, and facilities that might exclude broadcast facilities and towers.¹⁷ This narrow approach, however, would affirmatively thwart Congressional intent to expedite the collocation, modification, and replacement of wireless facilities.

As many commenters emphasize, the “current diverse state of wireless deployment” today demands the flexibility to collocate quickly and efficiently on a variety of supporting structures including towers and non-purpose built structures, such as water towers, light stanchions, and utility poles.¹⁸ Fibertech emphasizes the importance of applying section 6409(a) to non-purpose built structures for small cell infrastructure and the need to “obtain streamlined access to existing utility poles and streetlights/traffic signals.”¹⁹ Towerstream points out that the Commission has long encouraged the expansive use of non-purpose built structures to “enhance capacity for wireless networks” and should continue that policy here.²⁰ Sprint likewise notes that “structures that may not have been built for the purpose of supporting communications equipment are important to the deployment of wireless communications infrastructure, particularly

¹⁷ See Comments of the City of Alexandria, et al., 22-26 (filed Feb. 3, 2014) (“City of Alexandria Comments”); Comments of the District of Columbia, at 8-9 (filed Feb. 3, 2014) (“District of Columbia Comments”); Comments of the City of Eugene, Oregon, at 9-10 (filed Feb. 3, 2014) (“City of Eugene Comments”); City of Salem, Oregon at 10 (filed Feb. 3, 2014); City of San Antonio, Texas, at 11-13 (filed Feb. 3, 2014); City of Tucson, at 5 (filed Feb. 3, 2014).

¹⁸ PCIA/Forum Comments at 31-32.

¹⁹ Fibertech Comments at 19-21.

²⁰ Towerstream Comments at 14-15.

because they are already part of the landscape and carriers can more rapidly co-locate on such structures.”²¹

Building on its tentative conclusion that broadcast services fall within the ambit of section 6409(a), the Commission should remove any doubt and confirm that section 6409(a) applies broadly and in a way that will ensure broadcast towers can take advantage of the expedited collocation process under section 6409(a). As CTIA and others demonstrate conclusively, the fundamental purpose of section 6409(a) is “to preempt ‘the ability of State and local authorities to delay collocation of, removal of, and replacement of wireless transmission equipment.’”²² Parties have offered no compelling reason to conclude that Congress intended to preempt State and local actions from collocations for some services or on some structures, while continuing to allow such actions to delay collocations in all other circumstances. To the contrary, such a “bifurcated” approach would allow state and local action to seriously delay collocations on a broad range of structures, including broadcast towers, in direct conflict with the goal of section 6409(a) – to “advance wireless broadband service.”²³

Following the kind of bifurcated approach advocated by a few local jurisdictions will lead to bizarre, unintended results. For instance, the question of whether section 6409(a) applies to a given tower could turn not on the physical nature of the tower itself, but rather on questions such who owns the tower and for what purpose the tower was originally built. In other words, under the narrow reading of “existing wireless tower or base station,” a collocation on a tower built by a wireless company would be eligible

²¹ Sprint Comments at 8-9.

²² CTIA Comments at 11-12 (quoting Upton Statement, 158 CONG. REC. at E239).

²³ Conf. Rep. at 136.

under section 6409(a), while a collocation on an identical tower owned and constructed by a broadcaster would not be eligible. Further, if a tower were constructed for wireless use and then sold to a broadcaster, the same tower could no longer take advantage of section 6409(a)'s expedited collocation. Such an outcome is nonsensical and can be avoided by the FCC providing clear guidance at this juncture.

CONCLUSION

The Commission should therefore amend its rules to apply section 6409(a) broadly to encompass any Commission-authorized wireless transmission, the equipment used for such transmissions, and the structures that support or house such equipment even if they were not built for the sole or primary purpose of providing such support. By this action, the Commission would encourage collocation on broadcast structures and empower broadcasters to make a significant contribution to our nation's infrastructure build-out effort.

Respectfully submitted,

**THE NATIONAL ASSOCIATION
OF BROADCASTERS**

A handwritten signature in black ink, appearing to read "Ann West Bobeck". The signature is stylized with a large, looped initial "A" and a long horizontal stroke extending to the right.

By: _____
Jane E. Mago
Jerianne Timmerman
Ann West Bobeck

1771 N Street, NW
Washington, DC 20036
(202) 429-5430

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