

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

***Re: 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; 2012 Biennial Review of Telecommunications Regulations, WT Docket No. 13-32.***

I am very pleased to support the item before us to facilitate the deployment of wireless infrastructure. It is disappointing, however, that we had to go to such great lengths to get where we are today. But that is not a slight on the Chairman or the Commission.

By way of background, section 704 of the Telecommunications Act of 1996 was designed to ensure a thoughtful process to deal with disagreements between local and state governments and wireless communications providers.<sup>1</sup> Many weeks of negotiations between interested parties resulted in a statutory provision that many thought provided a reasonable compromise and outcome. It balanced the market demands of wireless companies—and their then predominately voice consumers—with the interests of localities.

Unfortunately, as soon as the ink was dry on the Telecom Act, some state and local governments went to work to undermine, and in some cases, completely ignore the siting provisions in the statute. The same entities that previously struck a deal continued to impede the placement of wireless towers in their jurisdictions. We saw some impose siting moratoria, claiming that such restrictions were not a violation of the statute. We saw certain localities stretch out zoning meetings for months, require excessive documentation, intentionally delay decisions, fail to provide written rejections based on the facts, and generally do everything possible to maintain barriers to siting. And the scope of the blocking did not just focus on larger or new towers; it also extended to adjustments or additions of antennas to existing towers.

I have observed years of court filings and cases containing weak arguments as to why action on a particular siting application was unnecessary or not required. On point, the Supreme Court is expected to soon consider what qualifies as “in writing” under the statute and the timing for providing the reasons for denying an application.<sup>2</sup> Is it really too much to ask for a locality to provide written justification for denying an application at the same time it provides the reasons for denying the application? Or for a locality to spell out the exact reasons for a denial? Must an applicant get a denial one day and be forced to fish through a record issued on another to find the reasons? Of course not.

Such disruptive practices did not go unnoticed. After years of excuses, Congress acted as part of what is commonly referred to as the Spectrum Act.<sup>3</sup> The provisions of the law, which we act upon today, provide extensive responses to lessons learned from the practices of certain state and local governments. The overall message delivered was the gig is up. Congress provided what I believed to be very clear direction to remove barriers to the siting, installation and modification process.

The benefits of today’s item will be great, and our action is essential to the development of the future of wireless communications. As wireless data continues to grow annually at a furious pace,<sup>4</sup> more

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<sup>1</sup> Telecommunications Act of 1996 § 704, 47 U.S.C. § 332(c)(7).

<sup>2</sup> T-Mobile South, LLC v. City of Roswell, 731 F. 3d 1213 (11<sup>th</sup> Cir. 2013), *cert. granted* 134 S. Ct. 2136 (2014).

<sup>3</sup> Middle Class Tax Relief and Job Creation Act of 2012 § 6409(a), 47 U.S.C. § 1455.

<sup>4</sup> One wireless provider calculated its mobile data traffic growth at 30,000 percent between 2006 and 2012. HetNet Forum Seminar Presentation, Small Cell Acceleration, at 21 (July 29, 2013), <http://www.thedasforum.org/wp-content/uploads/2013/07/HetNet-Forum-Small-Cell-Acceleration-Seminar-Presentations.pdf>, *cited in* Comments of

wireless infrastructure is needed to carry such traffic and deploy new wireless services. By removing specific practices that are unnecessary obstacles, simplifying numerous provisions in our rules and providing clarity on exactly how the Commission will implement the statutory provisions, we set the stage for an easier wireless antenna siting process. This will facilitate the hundreds of thousands of sitings in the future and greatly expand wireless service capacity and coverage. To put this in perspective, comments in the record by PCIA suggest that one provider is in the process of trying to deploy 10,000 new macro-cells, 40,000 small cells and 1,000 distributed antenna systems (DAS).<sup>5</sup>

Our action today is especially important for unlicensed spectrum use, and small cell and DAS siting. I have been promoting more unlicensed spectrum allocations in a number of spectrum bands. Licensed spectrum networks unload a large portion of traffic onto unlicensed networks, which also must receive approvals to place equipment. Small cell and DAS deployments are also crucial because they can expand capacity and coverage of existing wireless networks. The growth of unlicensed use and small cells means more wireless infrastructure is going to be needed. Simply put, we are going to need more towers and more antennas, and fewer legal obstacles by state and local governments.

More importantly, we need to keep in mind the types of wireless communications that can be aided by our action. As we know from other proceedings, today's wireless devices are used to communicate in times of emergency, keep in touch with friends and families, expand broadband options for an array of people, among other purposes. The Commission must remain focused on the needs of the American consumer.

Lastly, let me be clear that I see a great deal of difference between the action we take today and the effort to override state and local protections on municipal-owned and operated networks. The most important distinction is that Congress spoke directly to wireless infrastructure but not to muni-broadband. Over the years, there have been numerous efforts in Congress to address the muni-broadband issue, but those efforts were never enacted.

I thank the Chairman for moving this item and incorporating many of my edits and the staff for all of their hard work.

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PCIA – The Wireless Infrastructure Association and the HetNet Forum, WT Docket No. 13-238, at 3 n.7 (Feb. 3, 2014) (“Comments of PCIA”). Mobile data traffic in the U.S. in 2013 was 51 times the amount in 2008. See Cisco, *VNI Mobile Forecast Highlights, 2013-2018, United States – 2013 Year in Review*, [http://www.cisco.com/assets/sol/sp/vni/forecast\\_highlights\\_mobile/index.html#~Country](http://www.cisco.com/assets/sol/sp/vni/forecast_highlights_mobile/index.html#~Country) (filtering by United States and 2013 Year in Review) (last visited Oct. 16, 2014). Annual wireless data usage more than doubled between 2012 and 2013 from approximately 1.47 trillion Megabytes to 3.23 trillion Megabytes. CTIA-The Wireless Association, *Your Wireless Life, Annual Wireless Industry Survey*, <http://www.ctia.org/your-wireless-life/how-wireless-works/annual-wireless-industry-survey> (last visited Oct. 16, 2014).

<sup>5</sup> Comments of PCIA at 3.