Exhibit C

30 FCC Rcd. 31 (F.C.C.), 29 FCC Rcd. 12865, 30 F.C.C.R. 31, 29 F.C.C.R. 12865, 61 Communications Reg. (P&F) 519, 2014 WL 5374631

NOTE: An Erratum is attached to the end of this document

Federal Communications Commission (F.C.C.)
Report and Order

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 2012 Biennial Review of Telecommunications Regulations

FCC 14-153
WT Docket No. 13-238, 11-59, 13-32
Released: October 21, 2014
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****1** ***12865** By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Rielly issuing separate statements.

TABLE OF CONTENTS

Heading

I. INTRODUCTION

II. EXECUTIVE SUMMARY

III. NEPA AND NHPA REVIEW OF SMALL WIRELESS FACILITIES

A. Description of DAS, Small Cells, and Other Small Wireless Technologies

B. NEPA Categorical Exclusions

1. Regulatory Background

2. Antennas Mounted on Existing Buildings and Towers

a. Clarification of "Antenna"

b. Antennas Mounted in the Interior of Buildings

c. Antennas Mounted on Other Structures

3.Categorical Exclusion of Deployments in Communications or Utilities Rights-of-Way

not have any particular expertise in resolving local zoning disputes, whereas courts have been adjudicating claims of failure to act on wireless facility siting applications since the adoption of Section 332(c)(7). [636]

236. Accordingly, we require parties to bring claims related to Section 6409(a) in a court of competent jurisdiction. Such claims would appear likely to fall into one of three categories. First, if the State or local authority has denied the application, an applicant might seek to challenge that denial. Second, if an applicant invokes its deemed grant right after the requisite period of State or local authority inaction, that reviewing authority might seek to challenge the deemed grant. Third, an applicant whose application has been deemed granted might seek some form of judicial imprimatur for the grant by filing a request for declaratory judgment or other relief that a court may find appropriate. In light of the policy underlying Section 6409(a) to ensure that covered requests are granted promptly, and in the self-interest of the affected parties, we would expect that these parties would seek judicial review of any such claims relating to Section 6409(a) expeditiously. The enforcement of such claims is a matter appropriately left to such courts of competent jurisdiction. However, given the foregoing Federal interest reflected in Section 6409(a), it would appear that the basis for equitable judicial remedies would diminish significantly absent prompt action by the aggrieved party. In our judgment, based on the record established in this proceeding, we find no reason why (absent a tolling agreement by parties seeking to resolve their differences) such claims cannot and should not be brought within 30 days of the date of the ***12964** relevant event (*.e., the date of the denial of the application or the date of the notification by the applicant to the State or local authority of a deemed grant in accordance with our rules).*

4. Non-application to States or Municipalities in Their Proprietary Capacities

**77 237. *Background.* In the *Infrastructure NPRM*, the Commission sought comment on the IAC's argument that the Section 6409(a) mandate applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their capacities as property owners. [637] In its Recommendations to the Commission, the IAC had asserted that "[w]here ... a county government, as landlord rather than as land use regulator, has by contract or lease chosen, in its discretion, to authorize the installation of an antenna on a county courthouse rooftop of certain exact dimensions and specifications, Section 6409 does not require the county, acting in its capacity as landlord rather than its capacity as regulator of private land use, to allow the tenant to exceed to any extent those mutually and contractually agreed-upon exact dimensions and specifications." [638] The Commission proposed to adopt this interpretation, and sought comment on how to determine in which capacity a government is acting and whether to address how Section 6409(a) applies where both capacities are implicated. [639]

238. Although T-Mobile argues that Section 6409(a) does not distinguish between situations in which a local government is acting as a municipal authority or as a proprietary landlord, [640] the record otherwise reflects near unanimity in support of the IAC's recommendation. [641] Certain industry commenters argue, however, that municipal regulation of the public rights-of-way constitutes action by a government in its regulatory capacity rather than its proprietary capacity. [642] Municipal commenters argue, by contrast, that there is no need at this time to further define what is or is not proprietary action. [643]

239. *Discussion.* As proposed in the *Infrastructure NPRM* and supported by the record, we conclude that Section 6409(a) applies only to State and local governments acting in their role as land use regulators and does not apply to such entities acting in their proprietary capacities. As discussed in the record, courts have consistently recognized that in "determining whether government contracts are subject to preemption, the case law distinguishes between actions a State entity takes in a proprietary capacity—actions similar to those a private entity might take—and its attempts to regulate." [644] As the Supreme Court has explained, "[i]n the absence of any express or implied implication by Congress that a State may not manage its own property when it pursues its purely proprietary interests, and when analogous private conduct would be permitted, this Court will not infer such a restriction." [645] Like private property owners, local governments enter into

courts are well situated to assess whether such moratoria are in fact reasonable on a case-by-case basis, including when the moratorium extends for six months or longer.

3. Application to DAS and Small Cells

268. *Background.* In the *Infrastructure NPRM*, the Commission noted that some jurisdictions have adopted the view that the shot clocks do not apply to DAS or small-cell deployments. [702] The Commission proposed to clarify that to the extent DAS or small-cell facilities, including neutral-host deployments shared by more than one carrier, are or will be used for the provision of personal wireless services,their siting applications are subject to the same presumptively reasonable timeframes and other requirements as applications related to other personal wireless service facilities. [703]

269. Several industry commenters support our proposal, arguing that DAS and small-cell applications are covered by the *2009 Declaratory Ruling* and are subject to the same timeframes as other ***12973** covered applications. [704] Other commenters support the proposal with modifications. Some, for example, argue that the shot clocks apply, but also that the applicable timeline should be adjusted if a single DAS deployment entails more than 10 antenna siting applications, in light of the greater review and processing burden. [705] Coconut Creek proposes that we apply a shot clock only when a DAS deployment will support multiple providers, but not where it is designed to support only one. [706] Some municipalities disagree with our proposal altogether, arguing that the *2009 Declaratory Ruling* timeframes do not apply to DAS or small cells, [707] while others assert this issue does not require any additional clarification. [708]

****85** 270. *Discussion.* We clarify that to the extent DAS or small-cell facilities, including third-party facilities such as neutral host DAS deployments, are or will be used for the provision of personal wireless services, their siting applications are subject to the same presumptively reasonable timeframes that apply to applications related to other personal wireless service facilities. We note that courts have addressed the issue and, consistent with our conclusion, have found that the timeframes apply to DAS and small-cell deployments. [709]

271. Some commenters argue that the shot clocks should not apply because some providers describe DAS and small-cell deployments as wireline, not wireless, facilities. [710] The City of Eugene, Oregon, for example, argues that the Commission should not consider DAS a personal wireless service because one DAS provider has argued that its service is "no different from, and indeed competes directly with, the fiber-based backhaul/private line service provided by Incumbent Local Exchange Carriers." [711] This argument is not persuasive. Determining whether facilities are "personal wireless service facilities" subject to Section 332(c)(7) does not rest on a provider's characterization in another context; rather, the analysis turns simply on whether they are facilities used to provide personal wireless services. [712] Based on our review of the record, we find no evidence sufficient to compel the conclusion that the characteristics of DAS and small-cell deployments somehow exclude them from Section 332(c)(7) and the *2009 Declaratory Ruling*. For similar reasons, we reject Coconut Creek's argument that the shot clocks should apply only to neutral host deployments.

***12974** 272. Some commenters suggest revising our proposal on the grounds that the unique qualities of DAS and small-cell systems require longer timeframes for municipal review. [713] We decline to adjust the timelines as these commenters suggest. We note that the timeframes are presumptive, and we expect applicants and State or local governments to agree to extensions in appropriate cases. Moreover, courts will be positioned to assess the facts of individual cases—including whether the applicable time period "t[ook] into account the nature and scope of [the] request"—in instances where the shot clock expires and the applicant seeks review. [714] We also note that DAS and small-cell deployments that involve installation of new poles will trigger the 150-day time period for new construction that many municipal commenters view as reasonable for DAS and small-cell applications. [715] Accordingly, we find it unnecessary to modify the presumptive timeframes as they apply to DAS applications.

648 *See Infrastructure NPRM*, 28 FCC Rcd at 14276 para. 100.

649 *See id.*

650 *See* PCIA Comments at 27-28.

651 *See, e.g.*, Alexandria *et al.* Reply Comments at 24; CA Local Governments Comments at 29-30 (arguing that at least twelve months is necessary to adjust local land use ordinances, policies, and procedures to reflect any new rules adopted as a result of this proceeding); Haddon Heights Comments at 2; San Diego Comments at 3.

652 *See* Letter from Kenneth S. Fellman, Intergovernmental Advisory Committee, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 13-238, filed Oct. 8, 2014 (IACOct. 8, 2014 *Ex Parte*), at 1-2 (asserting that it will be necessary to educate staff and elected officials throughout the country of the substance of the Order and the changes that might be required once local codes are reviewed in light of the Commission's guidance).*See also* Letter from Yejin Jang, National Association of Counties, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 13-238, filed Oct. 10, 2014 (NACo Oct. 10, 2014 *Ex Parte*), at 1 (asserting that the effective date should be no earlier than 90 days after publication and that in implementing such changes to existing State and local laws and requirements, States and municipalities would need time for appropriate action, such as providing notice for official meetings and agenda, informing the public, providing opportunity for comment, gathering public input and testimony, and, in some instances, action by state legislatures to support local compliance with the Commission's order).

653 To the extent existing State and local laws conflict with our rules implementing Section 6409(a), they will no longer apply once the rules take effect.

654 *See, generally*, 47 U.S.C. § 332(c)(7); *2009 Declaratory Ruling*, 24 FCC Rcd 13994.

655 47 U.S.C. § 332(c)(7)(A) (stating that, "[e]xcept as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless services facilities"). Personal wireless services are defined as "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services."47 U.S.C. § 332(c)(7)(C)(i). As discussed above, in 2012, Congress expressly modified this preservation of local and State authority by enacting Section 6409(a), which requires local or State governments to approve certain types of facilities siting applications "[n]otwithstanding section 704 of the Telecommunications Act of 1996 [codified in substantial part as Section 332(c)(7)] ... or any other provision of law ...." Spectrum Act § 6409(a)(1). *See supra*, Section V.

656 47 U.S.C. § 332(c)(7)(B)(i)(I).

657 *Id.*at § 332(c)(7)(B)(i)(II).

658 *Id.*at § 332(c)(7)(B)(iv).

659 *Id.* at § 332(c)(7)(B)(ii). In addition, Section 332(c)(7)(B)(iii) provides that "[a]ny decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record." *Id.* at § 332(c)(7)(B)(iii). *See T-Mobile S., LLC v. City of Roswell*, 731 F.3d 1213 (11th Cir. 2013) *cert. granted* 134 S. Ct. 2136 (2014).

660 47 U.S.C. § 332(c)(7)(B)(v).

661 *Id.*

662 *See id.*

663 *See 2009 Declaratory Ruling*, 24 FCC Rcd 13994.

664 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, Petition for Declaratory Rulingof CTIA-The Wireless Association, WT Docket No. 08-165, filed July 11, 2008 (*CTIA Petition*). In its petition, CTIA also requested that the Commission find that a State or local regulation that requires a variance or waiver for every wireless facility siting violates Section 253(a) of the Communications Act. 47 U.S.C. § 253(a). The Commission denied this request due to a lack of a specific controversy. *See 2009 Declaratory Ruling*, 24 FCC Rcd at 14019-20 paras. 66-67.

665 *See id.* at 14012 para. 45.

666 *See id.* at 14005 para. 32, 14012 para. 45.

667 *See id.* at 14010 para. 42.

668 *Id.* at 14014 para. 52.

669 *See id.* at 14014-15 para. 53.

670 *See id.* at 14013 para. 49.

671 *See id.* at 14016 para. 56.

672 *See* 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,

697 *See, e.g.*, *Illinois Bell Telephone Co. v. Village of Itasca, Illinois*, 503 F.Supp.2d 928, 935 (N.D.Ill. 2007) (finding that moratoria, some of which were extended formally or informally, were effectively complete prohibitions on the expansion of plaintiff's telecommunications facilities); *Masterpage Communications, Inc. v. Town of Olive*, NN, 418 F.Supp.2d 66,78 (N.D.N.Y. 2005) (finding that delay was unreasonable where a moratorium lasted more than two years, was extended at least once without explanation, and prohibited Masterpage from applying for more than one year); *Sprint Spectrum, L.P. v. City of Medina*, 924 F.Supp. 1036, 1039-40 (W.D.Wash. 1996) (finding a six-month moratorium was reasonable). *See also* CA Local Governments Comments at 34.

698 *See, e.g.*, Coconut Creek Comments at 8, 10; Steel in the Air Comments at 8, 10; West Palm Beach Comments at 8, 10.

699 *See, e.g.*, Alexandria *et al.* Comments at 55.

700 *See, e.g.*, UTC Comments at 16. *See also* Coconut Creek Comments at 10; Steel in the Air Comments at 10; West Palm Beach Comments at 10.

701 *See, e.g.*, Alexandria *et al.* Comments at 55; Alexandria *et al.* Reply Comments at 36-37.

702 *See, e.g.*, PCIA and DAS Forum *NOI* Comments, WC Docket No. 11-59, at 13, 47 (asserting that the *2009 Declaratory Ruling* timeframes have not been applied to DAS projects in some jurisdictions due to the lack of clarity or consensus regarding their applicability).

703 *See Infrastructure NPRM*, 28 FCC Rcd at 14295 para. 158.

704 *See, e.g.*, CalWa Comments at 3-4; CTIA Comments at 21-22; CTIA Reply Comments at 12; ExteNet Comments at 4, 7; Fibertech Comments at 33-34; Fibertech Reply Comments at 20-21; PCIA Comments at 55-56; PCIA Reply Comments at iii, 28; Sprint Comments at 12.

705 *See, e.g.*, Coconut Creek Comments at 10; Steel in the Air Comments at 10; West Palm Beach Comments at 10. *See also* CA Local Governments Comments at 34 (arguing that a 150-day review period is necessary for DAS collocations because antennas will typically be installed on poles that do not, prior to the installation, host any personal wireless service equipment); Fairfax Comments at 27-28 (arguing that, due to the number of nodes proposed with many DAS systems and the fact that they are not collocations, 150 days is an appropriate time for processing applications).

706 *See* Coconut Creek Comments at 10; Steel in the Air Comments at 10; West Palm Beach Comments at 10.

707 *See, e.g.*, Eugene Comments at v, 16-17; San Antonio Comments at v-vi, 18-20; San Antonio Reply Comments at 18-19; *see also* Tempe Comments at 30 (arguing that the shot clock should not apply to DAS and small-cell installations "where the wireless antenna portion will be going on a support structure that does not currently house a wireless facility").

708 *See, e.g.*, Alexandria *et al.* Reply Comments at 39; Fairfax Comments at 27-28.

709 *See, e.g.*, *Crown Castle NG East Inc. v. Town of Greenburgh*, 2013 WL 3357169 (S.D.N.Y. 2013), *aff'd*, 552 Fed.Appx. 47 (2d Cir. 2014).

710 *See, e.g.*, Alexandria *et al.* Reply Comments at 38-39; Eugene Comments at v, 16-17; San Antonio Reply Comments at 18-19.

711 Eugene Comments at 16.

712 *See, e.g.*, Alexandria *et al.* Comments at 58-59; Alexandria *et al.* Reply Comments at 38; CTIA Comments at 21-22.

713 *See, e.g.*, Alexandria *et al.* Comments at 60; Alexandria *et al.* Reply Comments at 39; CA Local Governments Comments at 34; Coconut Creek Comments at 10; Fairfax Comments at 27-28; Steel in the Air Comments at 10; West Palm Beach Comments at 10.

714 47 U.S.C. § 332(c)(7)(B)(ii).

715 *See, e.g.*, CA Local Governments Comments at 34; Fairfax Comments at 28.

716 *2009 Declaratory Ruling*, 24 FCC Rcd at 14012 para. 45.

717 *Id.* at 14012 para. 46.

718 *Infrastructure NPRM*, 28 FCC Rcd at 14293-94para. 153.

719 *See, e.g.*, AT&T Comments at 28-29; Coconut Creek Comments at 9-10; Fibertech Comments at 34 (arguing that if Commission expands the *2009 Declaratory Ruling* to collocations on existing base stations, it should adopt the same "substantial change" test as Fibertech proposed for Section 6409(a)); PCIA Comments at iii, 53-54; Steel in the Air Comments at 9-10; UTC Comments at 16; West Palm Beach Comments at 9-10.

720 *See, e.g.*, MDIT Comments at 7; Springfield Comments at 17.

721 *See, e.g.*, CA Local Governments Comments at 30 (proposing to define ""collocation" as a wireless facility placed at a location shared with an existing wireless tower or other wireless structure); Fairfax Comments at 23-24 (proposing to define "collocation" as an installation of additional antennas on an existing wireless facility that already supports one or existing antennas, with no substantial change in the existing facility's physical dimensions).

722 Tempe Comments at 30.