

Gary I. Resnick

Shareholder

*[gary.resnick@gray-robinson.com](mailto:gary.resnick@gray-robinson.com)*

401 East Las Olas Blvd.  
Suite 1000  
Post Office Box 2328 (33303-9998)  
Fort Lauderdale, Florida 33301  
P 954-761-8111  
F 954-761-8112

## **UPDATE ON WIRELESS COMMUNICATIONS FACILITIES**

Palm Beach County League of Cities, Inc.  
Board of Directors

October 28, 2015

Lake Worth Casino Building and Beach Complex  
10 S Ocean Blvd, (2nd Floor Ballroom)  
Lake Worth, FL 33460

JOHN THUNE, SOUTH DAKOTA, CHAIRMAN

ROGER WICKER, MISSISSIPPI  
ROY BLUNT, MISSOURI  
MARCO RUBIO, FLORIDA  
KELLY AYOTTE, NEW HAMPSHIRE  
TED CRUZ, TEXAS  
DEB FISCHER, NEBRASKA  
JERRY MORAN, KANSAS  
DAN SULLIVAN, ALASKA  
RON JOHNSON, WISCONSIN  
DEAN HELLER, NEVADA  
CORY GARDNER, COLORADO  
STEVE DAINES, MONTANA

BILL NELSON, FLORIDA  
MARIA CANTWELL, WASHINGTON  
CLAIRE McCASKILL, MISSOURI  
AMY KLOBUCHAR, MINNESOTA  
RICHARD BLUMENTHAL, CONNECTICUT  
BRIAN SCHATZ, HAWAII  
EDWARD MARKEY, MASSACHUSETTS  
CORY BOOKER, NEW JERSEY  
TOM UDALL, NEW MEXICO  
JOE MANCHIN III, WEST VIRGINIA  
GARY PETERS, MICHIGAN

DAVID SCHWIERT, STAFF DIRECTOR  
KIM LIPSKY, DEMOCRATIC STAFF DIRECTOR

## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

October 2, 2015

The Honorable Gary Resnick  
Mayor  
City of Wilton Manors  
City Hall  
2020 Wilton Drive  
Wilton Manors, FL 33305

Dear Mr. Resnick:

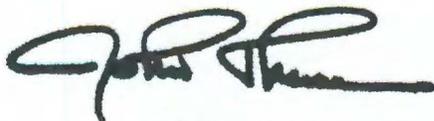
On Wednesday, October 7, 2015, at 10:00 AM in room 253 of the Russell Senate Office Building, the Committee on Commerce, Science, and Transportation will hold a hearing entitled, "Removing Barriers to Wireless Broadband Deployment." As Chairman of the Committee, I invite you to testify.

The focus of this hearing will be to examine barriers, regulatory and otherwise, to the deployment of wireless broadband facilities, infrastructure, and services.

Please submit your written testimony on these themes to the Committee two business days prior to the hearing. While your full statement will be made part of the hearing record, I ask that you limit your oral remarks to five minutes. Attached to this letter are more detailed instructions for Committee witnesses, including directions for submitting an electronic copy of your testimony.

If you have any questions, please contact Greg Orlando of the Republican staff at (202) 228-1086 or John Branscome with the Democratic staff at (202) 224-0411. Thank you for your consideration of this request.

Sincerely,



JOHN THUNE  
Chairman

## All Aboard looking to put cell towers along tracks



**THIS IS AN EXCLUSIVE STORY THAT WAS IN THE OCTOBER 24TH WPB INSIDER NEWSLETTER. GET EXCLUSIVE CITY NEWS FIRST: SUBSCRIBE TO THE WPB INSIDER: <http://wpb.org/insider/>**

October 26, 2015

(West Palm Beach, FL) – All Aboard Florida is looking to build cell towers along their tracks in West Palm Beach.

The city has been given thirty days to let the Florida Department of Transportation know whether it supports or opposes the construction of a 110' tall communications tower along the tracks at the dead end of Norton Avenue in the city's South End. The spot is two blocks south of Phipps Park.

The city has a specific approval process that needs to be followed if someone wants to put up a cell tower. But because the railroad is looking to put this tower along its tracks (on its own right of way), All Aboard Florida is able to avoid the city's approval process.

So far, the railroad has only sought permission for the one tower in the South End. But the construction of cell towers in the city was not part of discussions or negotiations over the past two years between City Hall and the railroad and city officials do not know if more towers (including in downtown or in residential areas) are planned in other portions of the city.

This entry was posted in [Construction Services](#), [General](#), [Headlines](#), [Parks and Recreation](#), [Slide](#)

GRAY | ROBINSON  
ATTORNEYS AT LAW

Gary I. Resnick

954-761-8111

GARY.RESNICK@GRAY-ROBINSON.COM

401 EAST LAS OLAS BLVD.  
SUITE 1000  
POST OFFICE BOX 2328 (33303-9998)  
FORT LAUDERDALE, FLORIDA 33301  
TEL 954-761-8111  
FAX 954-761-8112  
gray-robinson.com

BOCA RATON  
FORT LAUDERDALE  
GAINESVILLE  
JACKSONVILLE  
KEY WEST  
LAKELAND  
MELBOURNE  
MIAMI  
NAPLES  
ORLANDO  
TALLAHASSEE  
TAMPA

MEMORANDUM

**TO:** Florida League of Cities  
**FROM:** Gary I. Resnick  
**DATE:** March 30, 2015  
**SUBJECT:** New Federal Regulations Regarding Regulating Wireless Facilities

The Middle Class Tax Relief and Job Creation Act of 2012 contained provisions to facilitate the deployment of wireless broadband infrastructure deemed necessary for economic development. In particular, **Section 6409(a)**<sup>1</sup> mandates States and local governments approve certain requests to collocate equipment on existing wireless towers and base stations. Section 6409(a) provides that State and local governments: “may not deny, and **shall approve**” an “eligible facilities request” so long as it does not “substantially change the physical dimensions of the existing wireless tower or base station.”<sup>2</sup>

On October 17, 2014, the Federal Communications Commission (“FCC”) adopted an Order pursuant to Section 6409(a) with new regulations (“FCC Regulations”).<sup>3</sup> The FCC Regulations become effective April 8, 2015, and significantly impact how States and local governments may process requests to construct such wireless facilities.<sup>4</sup>

Florida law also contains a policy of encouraging collocation and provides that local governments may only conduct a building permit review for requests to collocate antennas on existing structures.<sup>5</sup> The FCC Regulations are more restrictive on local governments than Florida law

<sup>1</sup> Public L. No. 112-96 §6409(a), codified at 47 U.S.C. §1455(a).

<sup>2</sup> *Id.*

<sup>3</sup> FCC Report and Order: *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies (WT Docket Nos. 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)*; and *2012 Biennial Review of Telecommunications Regulations (WT Docket 13-32)* (hereinafter “Order”).

<sup>4</sup> Because the Office of Management and Budget has not completed its review, the effectiveness of certain aspects of the FCC Regulations may be delayed. In addition, several local governments around the country, including Montgomery County, MD and Los Angeles, have filed appeals challenging the FCC Regulations. These have been consolidated in the U.S. Court of Appeals for the 4<sup>th</sup> Circuit. Such appeals do not operate to stay the FCC Regulations.

<sup>5</sup> Florida law governing local governments’ regulatory authority over “wireless communications facility” is set forth in Section 365.172(13), *Florida Statutes* (“F.S.”)

March 30, 2015  
Page 2

for such requests that are covered. In addition, there are key differences between the FCC Regulations and Florida law.

We prepared this Memorandum to assist local governments understand the FCC Regulations and key differences from Florida law. The FCC as well as national associations representing local governments have advised local governments to re-examine their codes and more importantly, their procedures for processing requests for wireless facilities. Most local governments may want to consider revising their application procedures and their codes, particularly the timeframes to address such requests. Accordingly, this Memorandum discusses the substantive and procedural provisions under the FCC Regulations and Florida law, and includes suggested application items as well as practical advice.

**A. Section 6409(a) and the FCC Regulations Are Limited to Certain Applications**

Generally, the FCC Regulations and Section 6409(a) apply only to applications to collocate antennas on an existing tower or to alter equipment on an existing base station on private property or in public rights-of-way.<sup>6</sup> While every application needs to be reviewed individually, the FCC Regulations would not apply generally to the following:

- Applications to construct a new tower;
- Applications to construct a new base station;
- Applications to install antennas or to alter equipment that would “substantially change” an existing tower or base station;
- Applications to install antennas on a building or rooftop;
- Applications to install antennas on utility poles in rights-of-way; and
- Applications pertaining to facilities on property owned by a local government such as a water tower or other government owned property.

For such applications, Florida law and existing federal law continue to apply. For example, an application by subsequent providers to install subsequent antennas on a rooftop may be considered a collocation under Florida law, and subject only to building permit review. Such an application, however, would not be covered by the FCC Regulations since a rooftop would not be a tower. In addition, the FCC adopted procedures governing local governments that differ from Florida law. Thus, local governments may want to create new procedures to address those applications that fall within Section 6409(a) and the FCC Regulations as opposed to Florida law.

**B. FCC Definitions VS. Florida Definitions**

There was a great deal of confusion under Section 6409(a) because Congress did not define key terms. Section 6409(a)(2) defines an “eligible facilities request” as a request for a modification that involves “collocation, removal, or replacement of transmission equipment” at an “existing wireless tower or base station.”<sup>7</sup> However, key terms, such as “collocation” and “existing wireless

---

<sup>6</sup> In addition to imposing new restrictions on traditional local land-use authority over wireless facilities, the FCC Regulations expand exemptions for wireless sites from review under the National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act (“NHPA”).

<sup>7</sup> 47 U.S.C. §1455(a)(2).

March 30, 2015  
Page 3

tower or base station” were not defined, and thus, created confusion on the part of both the wireless industry and local governments. The FCC-supplied definitions below, differ in many instances from Florida law.

- “*wireless*” means “any Commission-authorized wireless communications service.”<sup>8</sup> This is a broader category of services than under existing law and includes for example, WiFi, which is not covered by the Telecom Act, which applies only to “personal wireless service” (e.g., mobile phones). This is also a key difference from Florida law which defines “wireless services” as “commercial mobile radio service,” including “personal communications service.”<sup>9</sup> Florida law would not include WiFi. Thus, an application to install an antenna on a tower for WiFi service would not be covered by Florida law, but may be covered under the FCC Regulations.
- “*transmission equipment*” means “any equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas and other relevant equipment associated with and necessary to their operation, including coaxial or fiber-optic cable, and regular and backup power supply.”<sup>10</sup> Florida law does not define “transmission equipment” and while it includes antennae and “other equipment associated with the location and operation of the antennae,” it may not include backup power supply.
- “*wireless tower*” means “any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities.”<sup>11</sup> Florida law allows for a “collocation” on existing towers as well as “all other existing structures” and thus, antennas on a building or rooftop may be covered by Florida law.<sup>12</sup>
- “*base station*” means “the equipment and non-tower supporting structure at a fixed location that enable Commission-licensed or authorized wireless communications between user equipment and a communications network.”<sup>13</sup> A “non-tower support structure” means any structure (whether built for wireless purposes or not) that supports wireless transmission equipment under a valid permit at the time the applicant submits its application.<sup>14</sup>
- “*collocation*” means “the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.”<sup>15</sup> Under Florida law, collocation means when a second or subsequent wireless provider locates a second or subsequent antenna on an existing

---

<sup>8</sup> Order ¶ 149.

<sup>9</sup> Section 365.172(3)(ii), *F.S.*

<sup>10</sup> Order ¶ 160.

<sup>11</sup> Order ¶ 166.

<sup>12</sup> Section 365.172(13)(b), *F.S.*

<sup>13</sup> Order ¶ 167.

<sup>14</sup> Order ¶¶ 169, 174.

<sup>15</sup> Order ¶ 178.

March 30, 2015  
Page 4

structure.<sup>16</sup> Thus, the FCC Regulations may apply to requests to locate the first antenna, where Florida law would provide that such application would be considered a new facility.

- “**modification**” “includes collocation, removal, or replacement of an antenna or any other transmission equipment associated with the supporting structure.”<sup>17</sup>

**C. Substantial Change Under FCC Regulations vs. Florida Law**

Section 6409(a) and FCC Regulations mandate approval for all eligible facilities requests that do not “substantially change the physical dimensions of the existing wireless tower or base station.” The FCC Regulations provide specific limits to a request that causes a “substantial change” including, if it increases the height of the tower on private property by more than 10% or one additional antenna array with separation from the nearest existing antenna of more than 20 feet, or more than 10% or 10 feet for towers in the public rights-of-way and all base stations.<sup>18</sup> Further, a request causes a substantial change if it involves more than the “standard number of new equipment cabinets for the technology involved” not to exceed four, or if in the public rights-of-way, it involves installing of new equipment cabinets on the ground if there are no pre-existing ground cabinets. An eligible facilities request causes a substantial change when it involves excavation outside the area of the current site or would defeat the existing concealment elements of the tower or base station.<sup>19</sup>

Under Florida law, an applicable collocation may not increase the height of the existing structure, measured from the highest point of the structure or any existing antenna attached to the structure. Further, an applicable collocation may not increase the ground space area, otherwise known as the compound.<sup>20</sup> Thus, under Florida law, facilities that increase the height of a tower would not be considered collocations subject to only a building permit review, while the FCC Regulations may apply to such collocations. Florida law similarly provides that collocation must be of a “design and configuration consistent with” restrictions and regulations that applied to the initial antennae placed on the tower and if applicable, the tower, such as camouflage.<sup>21</sup>

**D. Procedural Rules and Remedies under Section 6409(a) Vs. Florida Law**

Local governments may require a permit application and fees for facilities potentially governed under Section 6409(a). However, to avoid a “deemed granted” remedy, such reviews must occur in a faster timeframe, commonly known as the “shot clock,” than under Florida law.

**1. Timeframes to Act Under FCC Regulations Compared with Florida Law**

The FCC Regulations provide that within 60 days of the date on which an applicant submits an application seeking approval, the local government shall approve the application unless it determines that the application is not covered by Section 6409(a). The 60-day review period begins to run when the application is filed, and may be tolled only by mutual agreement with the applicant,

---

<sup>16</sup> Section 365.172(3)(f), *F.S.*

<sup>17</sup> Order ¶ 178.

<sup>18</sup> Order ¶ 192. There are similar limits on increasing the width of the tower or base station.

<sup>19</sup> Order ¶ 191

<sup>20</sup> Section 365.172(13)(a)(1)(a)(I) and (II), *F.S.*

<sup>21</sup> Section 365.172(13)(a)(1)(a)(III), *F.S.*

March 30, 2015  
Page 5

or in cases where the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications. To toll the timeframe for incompleteness, the local government must provide written notice to the applicant within 30 days of receipt of the application, specifically delineating all missing documents or information required in the application. The timeframe for review begins running again when the applicant makes a supplemental submission in response to such notice of incompleteness. Following a supplemental submission, the local government must notify the applicant within 10 days that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is similarly tolled in the case of second or subsequent notices.

Under Florida law, a local government has 20 business days to notify an applicant if an application is complete or is deficient. This process continues for subsequent submissions and the local government may establish a reasonable timeframe for submission of missing materials, which if not met, may allow the local government to consider the application withdrawn or closed.<sup>22</sup> Florida law will continue to apply to applications not covered by Section 6409(a).

## **2. Effect of Not Acting Within the Timeframes**

In the event a local government fails to approve or to deny a request seeking approval under Section 6409(a) within the timeframe for review, the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the local government in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted. Local governments may challenge a “deemed granted” permit in a court of competent jurisdiction within 30 days after the applicant delivers the deemed-granted notice.

Florida law provides that a local government shall grant or deny each properly completed application for collocation in no later than 45 business days after the application is determined to be properly completed.<sup>23</sup> Further, if the local government does not act within such timeframe, the application is deemed automatically approved and the applicant may install such facilities.<sup>24</sup> As a practical matter, applicants will rarely install such facilities without a building permit.

## **3. Conditional Approvals Permitted**

Although the statute says a state or local government “may not deny, and shall approve” a covered project, a conditional approval of a Section 6409(a) request does not necessarily amount to an unlawful denial. Local governments may approve a request subject to conditions that do not conflict with the Commission rules include “compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety.”

## **4. Fees for Permit Review**

Local governments may continue to collect fees and require deposits from wireless permit applicants, both under the FCC Regulations and Florida law.

---

<sup>22</sup> Section 365.172(13)(d)(3)(a), *F.S.*

<sup>23</sup> Section 365.172(13)(d)(1), *F.S.*

<sup>24</sup> Section 365.172(13)(d)(3)(b), *F.S.* Florida law allows extensions under limited circumstances.

March 30, 2015  
Page 6

**E. Application Materials**

Local governments may define the application contents, so long as all information and materials required by the application reasonably relate to issues within the scope of local authority. State and local governments retain “considerable flexibility in determining precisely what information or documentation to require” to illuminate these issues.<sup>25</sup> Applications submitted under Section 6409(a) cannot require the applicant to demonstrate a “need” or “business case” for the modification. This is consistent with Florida law which provides local governments may only address land development or zoning issues, and may not require information on or evaluate a provider’s business decisions or demand for service form a particular area or site, unless related to a zoning issue. For example, for applications for new towers, Florida law allows a local government to inquire into whether an existing structure could reasonably accommodate an antenna instead of requiring a new tower.<sup>26</sup>

The FCC Regulations do not explicitly set forth what information local governments may require in such requests. It is recommended that applications for an Eligible Facilities Request that the applicant maintains is subject to the FCC Regulations, require at a minimum, the following:

- Applicant and Property Owner information, including the applicant’s valid property interest in the site (i.e. a lease), or location in the public rights-of-way;
- Property Information including size and zoning district;
- Description of the existing tower or base station;
- Description of the current site;
- Information showing that the existing structure has received land use approval and any conditions upon such approval;
- Description of request including if collocation of new equipment, removal and/or replacement of existing equipment;
- Height of existing structure and alteration to height;
- Other changes to the physical dimension of the structure;
- Any conditions impacted such as concealment or noise levels;
- Photo simulations of the new facilities;
- Any excavation and if so, where;
- Number and dimensions of equipment cabinets;
- Equipment type, model number and manufacturer specs including weight for equipment and cabinets;
- Engineering report to demonstrate the structure can accommodate the facilities taking into considering all existing facilities and pending facilities requests;
- Application fees.

All application requirements should state the format for submissions and how many copies. For example, a requirement for “site plans” should state the requirement in specific terms such as:

---

<sup>25</sup> *Id.*

<sup>26</sup> Section 365.172(13)(b)(1), *F.S.*

March 30, 2015  
Page 7

“three (3) full-size construction quality plans with an exact PDF copy on disk, stamped by a professional engineer, showing the entire proposed structure in plan and elevation views, all proposed changes in plan and elevation views.” Local governments cannot rely on “catch-all” clauses that allow staff to require additional information on a case-by-case basis. Such requests may not stop the Shot Clock.

F. Practical Suggestions

Since Section 6409(a) was adopted, many local governments received requests to install facilities, claiming that such local governments were mandated to approve such requests pursuant to Section 6409(a). Upon closer examination of such requests, it was clear that Section 6409(a) did not apply. Perhaps the FCC Regulations will put an end to such confusing efforts, but local governments should be prepared to raise issues with requests claiming to fall within Section 6409(a) and which do not, and to do so in a very quick timeframe.

In addition, because of Section 6409(a) mandating approval of such covered requests, local governments must be very careful as to which new towers and facilities they approve as well as the conditions placed upon such approvals. If a local government approves a new tower, it may be mandated to approve subsequent antennas and base station equipment that seek to locate on such site. More importantly, local governments should consider carefully whether to approve towers and base stations in public rights-of-ways as well as the conditions placed upon such facilities. As with towers on private property, if a local government approves a tower in the public rights-of-way, it may be mandated to approve additional antennas and equipment. Also, all new sites should be evaluated for camouflage requirements.

The substantive and procedural differences between the FCC Regulations pursuant to Section 6409(a) and Florida law likely justify entirely separate applications and processes. Local governments should also determine which department will review such applications and may need to alter their review and decision-making processes to meet the FCC Regulations timeframes. Further, if the local government will seek assistance from an outside engineer or other expert, it should include an appropriate deposit to cover such fees. The local government may want to require pre-scheduled appointments for all submittals where a staff member can check the materials for completeness. It can also develop a form incomplete notice with check-the-box line items for each required application item.

Finally, local governments should demonstrate their support for broadband services through their procedures. Local governments are not only regulators of such facilities, but their residents, businesses and employees rely on the services provided by such facilities. For example, if a request submitted under Section 6409(a) does not satisfy the criteria, the local government may seek to convert the application to an application and process it under Florida law, rather than merely deny the application. The FCC Regulations allow for such conversion.

# City of Wilton Manors

2020 Wilton Drive • Wilton Manors, Florida 33305 • (954) 390-2120 • FAX (954) 390-2199



**Gary Resnick**  
*Mayor*

**Scott Newton**  
*Vice Mayor*

**Julie A. Carson**  
*Commissioner*

**Tom Green**  
*Commissioner*

**Justin S. Flippen**  
*Commissioner*

**Leigh Ann Henderson**  
*City Manager*

**Kerry Ezrol**  
*City Attorney*

## STATEMENT OF

**THE HONORABLE GARY RESNICK  
MAYOR, WILTON MANORS, FLORIDA**

**BEFORE THE SENATE COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION**

**“REMOVING BARRIERS TO WIRELESS BROADBAND  
DEPLOYMENT”**

**OCTOBER 7, 2015  
WASHINGTON, DC**

**Statement of**  
**The Honorable Gary Resnick**  
**Mayor, Wilton Manors, Florida**  
**Before the Senate Committee on Commerce, Science, and Transportation**  
**“Removing Barriers to Wireless Broadband Deployment”**  
**October 7, 2015**

Good morning, Chairman Thune, Ranking Member Nelson and Members of the Committee. I am Gary Resnick, Mayor of Wilton Manors, Florida and long-term member of the National League of Cities (NLC) and the National Association of Telecommunications Officers and Advisors (NATOA). The National League of Cities is the nation’s largest and most representative membership and advocacy organization for city officials, comprised of more than 19,000 cities, towns, and villages representing more than 218 million Americans. The National Association of Telecommunications Officers and Advisors is the premier local government professional association that provides support to its members on the many local, state, and federal communications laws, administrative rulings, judicial decisions, and technology issues impacting the interests of local governments. The cities and towns in your states are very likely members of NLC and NATOA.

I also serve as Chair of the Intergovernmental Advisory Committee (IAC) of the Federal Communications Commission (FCC). The IAC provides guidance to the FCC on a broad range of issues of importance to state, local and tribal governments including cable and local franchising, public rights-of-way, facilities siting, universal service, broadband access, barriers to competitive entry, and public safety communications. My background as an attorney with the Florida firm of GrayRobinson, representing businesses and local governments for over 20 years in connection with such communications issues, and my role as Mayor, has allowed me to work effectively with public and private entities, and local citizens, focused on improving wireless communications.

I want to thank the Committee for calling attention to the importance of wireless communications services by holding this hearing and appreciate the opportunity to provide the

unique perspective of local governments and our role in ensuring our communities have access to wireless broadband services. No one wants broadband deployment and competitive choice more than local governments. We are not only regulators of the deployment of these services for the benefit of our residents, we are large consumers of these services and often local governments are providers of broadband services. For years, communities across the country have taken innovative steps to increase the deployment of critical infrastructure – including towers – carefully balancing the health, safety and welfare concerns of our residents and communities.

The recent tragedy in Oregon and the preparations for Hurricane Joaquin are just the latest examples demonstrating the importance of local governments and our first responders having reliable access to vital wireless communications and broadband services.

#### **Role of Local Governments in Increasing Wireless Broadband**

While various stakeholders' approaches to increasing wireless broadband may differ, it is safe to conclude that all of us have the same goals – to ensure that all Americans have universal, affordable access to advanced broadband services and that deployment occurs as efficiently as possible without compromising the public's health and safety. It is undeniable that the growing demand for wireless broadband services, coupled with the growing use of personal wireless devices, requires the deployment of additional infrastructure. Increased access and better wireless broadband services bring a wealth of benefits to America's municipalities and counties, including increased economic development and job creation, enhanced public safety, telemedicine, distance learning, and improved civic engagement.

Our need for additional broadband deployments must be balanced with the absolute need for local governments to maintain reasonable control and authority over the placement of these facilities in our communities. Because of our responsibility as local leaders to protect the health, safety, and welfare of our residents, federal policies must respect our ability as local officials to manage public rights-of-way as well as land uses on private and public property. Disruption to neighborhoods, open spaces, streets, sidewalks, and businesses can have a negative impact on public safety and industry, as well as the sustainability of our communities. As such, local

governments have, and must maintain, authority to regulate land use, zoning and access to public rights-of-way.

### **Not a Barrier to Deployment**

Local governments believe that the vast majority of projects in our communities are reviewed and deployed in a timely manner, respecting both the needs of providers and tower owners, and also the desires of the communities they serve. In fact, many communities, with industry input, have taken steps to streamline their siting practices in an effort to provide certainty in the permitting and zoning processes. Many communities have enacted ordinances that express a preference for collocations and encourage such siting requests by limiting government review solely to a staff process. Any assertion that most local governments are barriers to wireless infrastructure deployment is simply wrong. As Mayor, I know firsthand how vitally important communications services are to our first responder police and fire personnel – the vast majority of whom are local government employees. Additionally, wireless broadband is critical for the economic and social welfare of our residents, educational institutions, libraries, and businesses and we strive to ensure they have affordable, reliable access to these services.

In 2009, the Federal Communications Commission adopted a declaratory ruling establishing timeframes within which local communities must act on tower siting applications. Prior to that FCC action, the Florida Legislature adopted similar timeframes for such local government action. To date, the timeframes have worked well in my State and throughout the country. In a related facilities siting Report and Order adopted in 2014, the Commission declined to adopt an additional remedy in the event the timeframes were not met, in large part because of a finding that the existing rules are working well.

Furthermore, in its 2014 wireless broadband facilities siting order, the FCC recognized the vital role that local governments play in bringing advanced communications services to all Americans. While taking steps to eliminate what it viewed as unnecessary review procedures with respect to small-sized wireless broadband facilities on existing structures, the FCC did so in a way to preserve local land use authority, protect camouflage and concealment measures, and allow local communities to protect aesthetic and safety interests.

In conjunction with the 2014 order, NLC, NATOA, and the National Association of Counties worked cooperatively with CTIA and PCIA on educational initiatives and materials that provide communities with resources to encourage increased broadband deployment and choice for our residents and businesses, consistent with the new federal rules. We are eager to work with all stakeholders. Proof of cooperation between local governments and industry is evident by the sheer number of sites deployed to date.

There may be instances where deployment does not occur as quickly as industry or local governments would like. We understand that the wireless industry is undergoing many changes and has many pressures that may delay deployment of infrastructure. Similarly, wireless infrastructure is just one of the many responsibilities that fall on the shoulders of local governments. If there are delays to deployment, it should be understood that we, as local leaders, are managing a variety of infrastructure needs, just as the industry is managing a variety of issues. It would not be productive for the legislative process to portray each other as obstacles to wireless broadband deployment. Reaching consensus, which is the mainstay of the government process at the local level, would be most effective. We look forward to continuing our demonstrated effective working relationship with the wireless industry and our federal colleagues using a collaborative approach to promote deployment in a manner that respects the legitimate interests of all interested parties.

### **FirstNet**

Public and private stakeholders are working collaboratively to deploy a new nationwide, interoperable, wireless broadband network for public safety communications (“FirstNet”) to serve both urban and rural America within the next several years. As a result, challenges to timely wireless deployment may increase. However, let there be no mistake – local governments actively encourage and want the deployment of this new network and will strive to ensure it is built in a timely manner.

Any assertion that local governments would act in any manner to delay the deployment of FirstNet ignores the long-established role that local governments play in providing public safety communications and protecting life and property.

**Conclusion**

Billions of dollars are being invested in broadband projects through various federal programs, such as the Connect America Fund and E-Rate, with much of it in rural parts of our country. Local governments – the government closest to the people and most accountable to our joint constituents – want to see these investments succeed. We fully recognize that local governments will play an important role in helping to ensure that these initiatives are deployed in a timely and efficient manner, while protecting their unique needs and interests of the communities they seek to serve.

On behalf of NLC and NATOA, I want to thank the Committee for inviting me to participate in this hearing today. I offer the ongoing assistance of local governments as you examine ways to increase broadband deployment across our nation. I urge you to view local governments as strong partners in ensuring that broadband services are available to all Americans.

Thank you again. I look forward to any questions you might have.