



City of Portland
Historic Landmarks Commission

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January 31, 2014

Thomas Wheeler
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: FCC Rulemaking: 13-1222, WT Docket No. 13-238

Dear Chairman Wheeler,

Thank you for giving the Portland Historic Landmarks Commission (PHLC) the opportunity to review and comment on the FCC's Rulemaking procedure noted above. In a public hearing held January 30, 2014, the Portland Historic Landmarks Commission was briefed by City staff from the Office of Community Technology and the Bureau of Development Services on DAS and 'small cell' facilities, specifically in light of the proposed FCC Rulemaking. City staff invited wireless telecommunications industry professionals to come and testify at the hearing, and coordinated with AT&T and Verizon in particular prior to the hearing to get a better sense of DAS/small cell technology. Industry documents from AT&T briefing us on DAS/small cell technology were provided to us prior to the hearing, and industry testimony at the hearing was helpful and informative.

The PHLC provides leadership and expertise on maintaining and enhancing Portland's historic and architectural heritage. The Commission identifies and protects buildings and other properties that have historic or cultural significance or special architectural merit. The PHLC members are all unpaid volunteers, appointed by the Mayor to serve four-year terms.

The PHLC provides advice on historic preservation matters, and coordinates historic preservation programs in the City. The Commission is also actively involved in the development of design guidelines for historic design districts. The City of Portland is proud of its historic preservation achievements. The appointment of the first Portland Historic Landmarks Commission in 1965 actually predates passage of the National Historic Preservation Act by a year.

The PHLC cares deeply about any alterations or additions to historic buildings and structures throughout the City, whether on private property or within our rights of way. The PHLC recognizes and acknowledges the national goals of timely review and deployment of wireless technology. Our role is to help deploy these systems appropriately utilizing methods that result in minimal impacts to the urban landscape, specifically when they are proposed for location on our historic buildings and structures, in our Historic and Conservation Districts, and on historic structures within the right of way.

After consideration and discussion of these issues, we have strong concerns about the FCC exempting 'small cell' facilities from local review, due to the dramatic potential impacts to our City's extensive historic resources of all kinds.

Our specific thoughts and concerns regarding DAS/small cell deployment and the proposed FCC Rulemaking flow from the inevitable results that would result from a categorical federal exemption/pre-emption from/of our Historic Review process for DAS/small cell facilities of any kind impacting Portland's historic resources:

- *We understand the importance of improving access to broadband wireless connectivity in Portland, and many aspects of Portland city policy encourage us to move towards becoming a more socially just, livable, and wired/connected place. However, based on the negative visual, architectural and urbanistic impacts of the innumerable wireless facilities in Portland installed outside of design or historic districts, we strongly object to exempting these from local review. Unregulated facilities outside of design or historic districts in Portland at 30'-35' above grade (where DAS/small cell will likely locate) are typically found in our commercial and industrial areas, and consist of the following:*
 - *Unsightly rooftop-mounted facilities with highly visible, bright white antennas which stick up above the building parapet or rooftop like a 'crown of thorns', completely overwhelming any sense of proportion*

and architectural integrity for the 1- or 2-story building below, and automatically drawing the eye when passing by on foot;

- *Antennas pipe-mounted to the side of a building wall without any consideration for a compatible paint color, concealment of the shiny black electrical and telecommunications conduit, creating unnecessary visual clutter and reducing the physical attractiveness and overall appearance of the surroundings;*
- *At-grade equipment enclosures with chain link fencing which do not adequately visually screen the generators and unpainted metal cabinets, often with the cheap, poorly-maintained landscaping that barely meets screening standards; and*
- *Lower, stand-alone cell towers standing in surface parking lots or unused building setback areas with large triangular davit arm mountings of multiple antennas, with clearly visible and poorly-screened pedestrian-level accessory equipment enclosures, ice bridges, connecting conduit, and chain link fencing with razor/security wire atop the fence.*
- *Conversely, in recent years we have been quite successful at finding specific design solutions to better integrate wireless facilities into historic structures/buildings/districts:*
 - *We have worked closely with the industry to explore acceptable screening materials for rooftop facilities, and understand the possibilities in molded fiberglass technology that can allow rooftop mounts in many locations where an unscreened facility would be unacceptable. Generally speaking, we recognize the historically utilitarian nature of building rooftops as the appropriate place for such equipment, and have approved multiple installations on several landmarks, including multiple carriers on the historic Pittock Block in downtown Portland;*
 - *Recently there was some local confusion among industry actors regarding metal structural reinforcement for rooftop wireless stealth screening structures, with industry officials claiming City plans examiners were requiring metal corner reinforcement which interfered with wireless signal transmission. We investigated and determined that this was not the case, and that in fact the recent code change had allowed stealth screening structures without metal corner reinforcements, communicating the results immediately to our local wireless applicants; and*
 - *While solutions must be evaluated on a site-specific basis for visual impacts from the street, architectural integrity and impacts to the original structure, and other context-specific factors, we have approved most facilities in our design and historic districts with minimal or no stealth screening, a simple compatible paint finish, and careful consideration of concealment for the mounting devices, accessory cabling, and other necessary equipment integral to the facility but which can be concealed from view (e.g. through-wall electrical/wiring connections, concealing gps antennas and RRU units from view nearby but inside the parapet, etc.)*
- *For historic buildings and historic districts, attachments to facades can permanently damage historic material [brick, or terra cotta for instance], or clutter and obscure historic features and/or view sheds.*
- *Both the Pioneer Square and NW 23rd Avenue DAS/small cell initial deployment districts are home to significant historic resources. Landmark terra-cotta commercial buildings from the turn of the century create one of the most cohesive and intact streetcar-era downtowns in the country. As a city we have been extremely flexible in allowing attachments to these structures through our review process, including modifying window openings, adding louvers and new canopies, removing and storing original terra cotta panels to allow for new signage and other alterations/attachments, etc. in a way that preserves history and architectural integrity.*
- *Categorically exempting ‘small cell’ technology from local review will permanently reverse the careful review and approved placements of wireless technology within historic districts or on Historic Landmark Buildings.*
- *Historic resourced and districts only cover 4% of the land area in the City of Portland, including areas with high redevelopment potential in neighborhoods, the central city, and our Gateway regional center. DAS/small cell facilities outside of these areas, when located more than 50’ from a residential/open space/design overlay zone, will remain allowed subject to non-discretionary development standards.*

- *We have a track record of approving wireless telecommunications facilities without undue delay or hardship. City staff have approved literally hundreds of such facilities over the years, with only two denials since 2006, both of which were able to be constructed in a nearby location at either a lower height or in the right-of-way (versus on private property as proposed). Our Historic Review procedures are not inhibiting the deployment of wireless technology, just ensuring it respects our designated historic resources.*
- *The City of Portland has a Broadband Strategic Plan that was adopted by City Council 2011 in order to provide city-wide policy guidance to remove unreasonable barriers to deployment of Broadband technology. As a Commission, we fully support this adopted plan, and recognize the importance of wireless as a critical element in our regional economy.*
- *However, we wish to stress in the strongest language possible, that imposing a blanket federal mandate across the country, with no regard to situation, placement or local conditions flies in the face of, and undermines the intent of the National Historic Preservation Act.*
- *As a Historic Landmarks Commission, we must ask, in the strongest terms possible, why the FCC would waive its own rules regarding environmental and historic review, in addition to categorically exempting a specific industry or technology from local land use or historic reviews otherwise required in our Zoning Code. This is not a balanced approach of adequately weighing all public benefits and impacts of these facilities, and literally destroys our local procedures to ensure timely, integrated, reasonable placement on our most sensitive and vulnerable historic buildings and resources.*
- *City policy as a whole favors locating wireless telecommunications facilities in the right-of-way, and typically right-of-way facilities are not subject to Historic Review. Proposals in the right-of-way often have to provide neighborhood notice beforehand, but the facility itself is exempt from the discretionary Historic Review procedure, consistent with City policy to encourage right-of-way locations.*
- *Right-of-way facility locations may make the most sense in the densely built, high-traffic areas where DAS/smart cell installations are proposed in Portland. Omni-directional installations on utility or streetlight poles in the streetscape may be available to provide greater coverage from a single antenna than multiple 'slap mounts' on the vertical exterior facades of downtown buildings.*
- *It is important to the Portland Historic Landmarks Commission and the city landmarks it protects to limit the pre-emption of local zoning requirements to the existing FCC rules as they pertain to the Section 6409(a). Central to the PHLC concerns are the definitions of key terms within the proposed rule making that could have real effects upon local historic landmarks. These terms are key to providing local input via review, encourage a collaborative relationship between the industry and local jurisdictions, and should not be re-interpreted to provide blanket exemptions.*
 - *First, the FCC needs to address the definition of "substantial change" in instances when sequential incremental modifications to an existing facility individually require an exemption, but when collectively these modifications do not. In other words, there will inevitably be instances where the number and nature of equipment, when attached to a historic resource, will have a negative cumulative effect upon the fabric of that historic resource. Similarly, the Commission should seek to address the potential for cumulative effects within the context of the Nationwide Programmatic Agreement and how that pertains to the consideration of effects to historic properties subject to 36 CFR 800.*
 - *The so-called "shot clock" should remain intact and providers should retain the right to seek the existing legal remedies if a local jurisdiction and a provider cannot agree on the merits of a specific local permitting application.*
 - *Within the context of an "eligible facilities request" under Section 6409(a), the term "existing" should not be construed to include the attachment of equipment to any structure not already in existence at the time of the application submittal. In other words, "existing" should not be construed to include a telephone pole replacement with a new metal pole with cell equipment attached. The new metal pole does not meet the definition or common meaning of the word "existing". Elaborating further, the phrase "existing wireless tower or base station" should refer to an existing wireless facility and not just any structure, irrespective of whether it has communications equipment or not. Further, the term "collocation", used in reference to the collocation of cell equipment on an existing structure, should only include "pre-existing structures rather than construction of new support structures".*

- *Lastly, as a Certified Local Government and occasional participant as a consulting party in Section 106 of the National Historic Preservation Act proceedings, City staff and the PHLC will continue to monitor and provide comments to the FCC on projects subject to the agency's rules governing the implementation of 36 CFR 800.*

- *We are concerned about the broad and sometimes vague definitions in current federal law regarding wireless facilities, and hopes these issues can be clarified in the current rule-making. A modification to a facility that can go up to 20'-0" tall, for example, is equivalent to a two-story building, and could have dramatic impacts on many of our existing rooftop and other wireless facilities if allowed by-right.*

- *If the FCC pre-empts DAS/small cell installations from local regulatory review, it will remove the incentive for our industry partners to work collaboratively with us on how best to deploy this new technology in a way that enhances the urban landscape. We are interested in extending our track record of working closely with industry to deploy wireless technology, and having regulations in place at the local level is not necessarily a disincentive or discouragement. Local review procedures can create a predictable path for deployment of DAS/small cell facilities, benefiting both industry and the city in the long term.*

- *The City is the only actor in this discussion who has to consider the potential impacts that result from multiple companies acting at the same time to deploy DAS/small cell technology. No one company or firm has the burden of considering city-wide impacts that result from deployment, but this is by necessity the City's perspective. Any discussion on how to move forward collaboratively can only happen if local involvement in the specifics of siting such facilities is not pre-empted by the FCC.*

Again, thank you for giving Portland Historic Landmarks Commission an opportunity to comment on this crucial Rulemaking procedure. Please do not hesitate to call on the Commission if we can be of further assistance, or if you wish to discuss our recommendations further.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brian Emerick", with a long horizontal line extending to the right.

Brian Emerick
Portland Historic Landmarks Commission Chair

Cc: Portland Historic Landmarks Commission
Tim Heron