3060-XXXX
February 2015

New collection: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies.

SUPPORTING STATEMENT

A. Justification:

1. The Commission has adopted a Wireless Infrastructure Report and Order (Infrastructure Order) in WT Docket No. 13-238, FCC 14-153, which, in part, promulgates rules to implement and enforce Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act). Section 6409(a) provides, in part, 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." 47 U.S.C. § 1455(a)(1). Section 6409(a) includes a number of undefined terms that bear directly on how the provision applies to infrastructure deployments. In the Infrastructure Order, the Commission adopted measures to provide guidance to all stakeholders on the proper interpretation of the provision and to enforce its requirements. Specifically, the Commission adopted definitions of ambiguous terms, procedural requirements for the processing of requests under Section 6409(a), and remedies.

The Commission is requesting OMB approval for an information collection consisting of new notification requirements that were adopted to enforce the requirements of Section 6409(a) and are codified in Subpart CC of Part 1 of the Commission's rules. The following are the notification requirements in connection with Subpart CC of Part 1 of the Commission's rules:

- 47 C.F.R. § 1.40001(c)(3)(i) – To toll the 60-day review timeframe on grounds that an application is incomplete, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of Section 1.140001. Paragraph (c)(1) provides that a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of Section 1.140001, and that a State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.
- 47 C.F.R. § 1.140001(c)(3)(iii) – Following a supplemental submission from the applicant, the State or local government will have 10 days to notify the applicant in writing if the supplemental submission did not provide the information identified in the State or local government's original notice delineating missing information. The timeframe for review is tolled in the case of second or subsequent notices of

incompleteness pursuant to the procedures identified in paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

- 47 C.F.R. § 1.140001(c)(4) – In the event the reviewing State or local government fails to approve or deny a request within the 60-day timeframe for review (accounting for any tolling), the request shall be deemed granted; however, the deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

The new information collection is necessary to effectuate the rule changes that implement and enforce the requirements of Section 6409(a). This collection will serve the public interest by providing guidance to all stakeholders on their rights and responsibilities under Section 6409(a), reducing delays in the review process for wireless infrastructure modifications, and facilitating the rapid deployment of wireless infrastructure.

This information collection may affect individuals or households. However, the information collection consists of third-party disclosures in which the Commission has no direct involvement. Personally identifiable information (PII) is not being collected by, made available to, or made accessible by the Commission. There are no additional impacts under the Privacy Act.

Statutory authority for this information collection is contained in Sections 1, 2, 4(i), 7, 201, 301, 303, and 309 of the Communications Act of 1934, as amended, and Sections 6003, 6213, and 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, 47 U.S.C. §§ 151, 152, 154(i), 157, 201, 301, 303, 309, 1403, 1433, and 1455(a).

2. The information is used by third parties to comply with the Commission's rules promulgated in the Infrastructure Order.

3. The use of information technology is feasible for the notification requirements in this situation. Whether, and to what extent, such information technology will be used will be for the applicable reviewing authority to decide.

4. This agency does not impose a similar information collection on the respondents. There are no similar data available.

5. In conformance with the Paperwork Reduction Act of 1995, the Commission is making an effort to minimize the burden on all respondents, regardless of size. The Commission has limited the information requirements to those absolutely necessary to comply with the Commission's rules promulgated in the Infrastructure Order. The Commission believes whatever burdens small entities may incur in complying with these requirements are warranted by the overall benefit to the public from increased guidance to all stakeholders on the proper interpretation of Section 6409(a), which will reduce

delays in the review process for wireless infrastructure modifications and facilitate the rapid deployment of wireless infrastructure.

6. The information is collected only when necessary to implement the Commission's rule – *i.e.*, when a covered application is incomplete as submitted, and when an applicant notifies the applicable reviewing authority that an application has been deemed granted. Less frequent submissions are not possible.

7. There are no special circumstances associated with this collection of information. Current data collection is consistent with 5 C.F.R. § 1320.

8. The 60-day notice soliciting public comments on this collection was published in the *Federal Register* as required under 5 C.F.R. § 1320.8(d) on November 21, 2014 (79 FR 69472). The Commission received fifteen comments from municipalities and municipal representatives, including fourteen that were essentially identical, objecting to the requirements in this collection.

Commenters object to the requirements that, under the process for reviewing Section 6409(a) applications, a State or municipality must notify an applicant that its application is incomplete within 30 days of receipt, and following the applicant's response, the State or municipality has 10 days to notify the applicant if it remains incomplete. Commenters argue these requirements are not the least burdensome necessary for the proper performance of the agency's functions and that the Commission in particular hasn't justified a 10-day response time.

These requirements are necessary to ensure that applications are processed in a timely manner, and the time periods are reasonably tailored to the limited purpose of the notifications, which is simply to alert applicants to what is missing from their applications – applications that Congress has required that the States and municipalities "may not deny, and shall approve" if they meet the Section 6409(a) standard of not substantially changing the physical dimensions of an existing facility. Removing these notice requirements could frustrate the will of Congress by allowing States and municipalities to unreasonably delay the approval process by not informing applicants that their applications are incomplete. As the Commission previously stated, without such requirements "a State or local government could evade its statutory obligation to approve covered applications by simply failing to act on them, or it could impose lengthy and onerous processes not justified by the limited scope of review contemplated by [Section 6409(a)]. Such unreasonable delays not only would be inconsistent with the mandate to approve but also would undermine the important benefits that the provision is intended to provide to the economy, competitive wireless broadband deployment, and public safety." Infrastructure Order, para. 212.

While the Communications Act of 1934, as amended, affords aggrieved parties the opportunity to challenge time deadlines established by Commission order through petitions for reconsideration filed with the Commission, 47 U.S.C. § 405, the Paperwork Reduction Act contains no such provision for challenging deadlines. Nor, with one

exception, do OMB rules. As noted by the commenters, 5 C.F.R. § 1320.5(d) provides that OMB will not approve a requirement to prepare "a written response" to a collection of information in fewer than 30 days after receipt, unless the agency is able to demonstrate that such a deadline "is necessary to satisfy statutory requirements or other substantial need." This rule does not apply to the 30-day deadline referred to above. To the extent it were deemed to apply to the 10-day deadline, which does not involve a substantive "response" to an information collection, for the reasons set forth above, the deadline is necessary to satisfy the mandate of Section 6409(a) and the substantial public interest need to avoid undue delay in deploying modifications to wireless facilities. The record included evidence that some local authorities, although already subject to a time frame for decision on certain wireless siting applications under a different provision of the Act, had significantly delayed action on such applications through successive unrelated data requests, Infrastructure Order, paras. 257 & n.684. The deadline on determinations of incompleteness therefore helps to ensure that localities approve applications for eligible facilities that do not substantially change the physical dimensions of the existing tower or base station in a timely fashion, and is analogous to procedures found to be reasonable in various state statutes regulating the local review of wireless siting applications, including a Wisconsin statute that provides that localities have only 5 days to determine completeness. Infrastructure Order, n.596. Clarifying when and for how long successive requests for data will toll the running of the 60-day period for substantive review also helps to provide all stakeholders with a clear understanding of when the deadline for decision is reached, and is necessary to provide applicants with an opportunity to seek relief for any failure to act on a pending application.

The 10-day notification requirement is very tailored in scope. First, neither Section 6409(a) of the Spectrum Act nor the Commission's rules require any state or local authority to review *any* installation of facilities. Second, if any such authority chooses to do so, the 10-day notification requirement applies only to modified facilities, and not new ones – i.e., only those that involve collocation, removal, or replacement of transmission equipment on an *existing* tower or base station. 47 U.S.C. §§ 1455(a)(1)-(2). Third, the 10-day notification requirement requires no substantive action on the application, but only notification of what information a *supplemental* submission is missing, and only after the authority has been afforded a prior 30-day period to identify what information or documents were missing from the *original* application. Fourth, because Section 6409(a) *requires* approval of any such modification that does not substantially change the physical dimensions of such existing tower or base station, the only documentation or information the authority may require under the Commission's rule is that which is "reasonably related to determining whether the request meets [those] requirements" for requiring a grant under Section 6409(a). The Commission expects any such second submission to involve minimal additional information tailored to that required by the authority's prior 30-day notification consistent with this "reasonably related" rule, and thus imposes a shorter deadline for the authority's *second* review, *i.e.*, of the adequacy of the information provided in any supplemental filing that it may have required.

Some commenters propose that the 10-day period for any subsequent notification of incompleteness should be measured as 10 business days, not 10 calendar days. As noted above, this type of proposal should be made through a petition for reconsideration to the Commission. The PRA review process is not the appropriate vehicle for handling such a request.

Commenters also argue that, in order to have practical utility, the "deemed grant" notice that applicants must provide to municipalities should include additional information, such as a copy of the application and evidence that the time period for review has expired. However, the purpose of the "deemed grant" notice is to give States and municipalities an opportunity to challenge the deemed grant remedy in court. Requiring applicants to submit additional documentation would not further this purpose. The additional documentation that commenters request would already be in the possession of the State or municipality with which the application was filed. Indeed, imposing such additional reporting requirements would place an unnecessary paperwork burden on applicants filing such "deemed grant" notices.

Finally, certain commenters request additional time to file comments related to the Commission's proposed collections, claiming that they did not have sufficient notice of the proposed collections. The record does not support this claim. The required PRA notice was published in the Federal Register on November 21, 2014, granting interested parties the standard 60 days to file comments. In addition to this notice, Commission staff directly informed counsel that represents the commenters submitting this request of the publication of notice of the proposed collections only five days after Federal Register publication. Furthermore, interested parties will have an additional opportunity to file comments with OMB regarding this information collection following the publication of the 30-day Federal Register notice.

9. Respondents will not receive any payments in connection with this collection of information.

10. There is no need for confidentiality with this information collection.

11. This collection of information does not address private matters or questions of a sensitive nature.

12. There are two parts to this collection: Part A covers the incompleteness notice, and Part B covers the deemed granted notification.

We estimate that facilities-based wireless and infrastructure providers, as well as cable, utility, and public safety entities, will submit approximately 50,000 applications for wireless facilities siting annually.

Part A: 1.40001(c)(3)(i) and 1.40001(c)(3)(iii) - Incompleteness Notice.

Total Number of Annual Respondents: **1,250**

We estimate that there are 38,000 jurisdictions across the country, and that approximately 20,000 of these will review wireless siting applications annually.

We estimate that approximately 25% of these jurisdictions will process applications filed pursuant to Section 6409(a). Of those jurisdictions processing applications filed pursuant to Section 6409(a), we further estimate that approximately 25% of the reviewing authorities will request additional information on the grounds that the initial application is incomplete.

20,000 jurisdictions x .0.25 x 0.25 = 1,250 Annual Respondents.

Total Number of Annual Responses: **3,472**

As explained above, we estimate that State and local reviewing will receive approximately 50,000 applications for wireless facilities siting annually.

We estimate that approximately 25% of these applications will be filed pursuant to Section 6409(a). We further estimate that the reviewing authority will request additional information on the grounds that the initial application is incomplete for approximately 25% of the applications.

50,000 x 0.25 x 0.25 = 3,125 first requests for additional information

We further estimate that: approximately 10% of these applications requiring a first request for additional information will also require a second request; approximately 10% of the applications requiring a second request for additional information will also require a third request; and approximately 10% of these applications requiring a third request for additional information will also require a fourth request.

3,125 + (3,125 x 0.1) + (3,125 x 0.1 x 0.1) + (3,125 x 0.1 x 0.1 x 0.1) = 3,125 + 313 + 31 + 3 = 3,472 Annual Responses.

Total Annual Burden Hours: 3,472 hrs.

We estimate that State and local reviewing authorities will spend approximately one hour on each response.

3,472 Responses x 1 hr/response = 3,472 Annual Burden Hours.

Total Annual "In-House" Cost for Part A: $121,520

We assume that the applicable reviewing authority will prepare the notice(s) of missing documents using an in-house Planning Professional (Urban or Regional Planner) at $35 an hour.

3,472 Responses x 1 hr/response x $35.00/hr. = $121,520

Part B: 1.140001(c)(4) - Deemed Granted Notice.

Total Number of Annual Respondents: **100**

We estimate below that there will be a total of 125 "deemed granted" submissions annually. We anticipate that some respondents will submit more than one notice in a year and that, on average, each respondent will submit 1.25 of these submissions. As a consequence, the number of respondents is 100 (125 submissions / 1.25 submissions per respondent = 100).

Total Number of Annual Responses: **125**

As explained above, we estimate that State and local reviewing will receive approximately 50,000 applications for wireless facilities siting annually, and we estimate that approximately 25% of these applications will be filed pursuant to Section 6409(a).

We further estimate that approximately 1% of the applications filed pursuant to Section 6409(a) will result in the applicant providing a deemed granted notice to the reviewing authority.

50,000 applications x .25 x .01 = 125 Annual Responses.

Total Annual Burden Hours: 63 hrs.

We estimate that applicants will spend an average of 0.5 hours on each deemed granted notice.

125 Responses x 0.5 hr./response = 63 Annual Burden Hours.

Total Annual "In-House" Cost for Part B: $1,063

We assume that applicants will prepare and submit the deemed granted notice using an in-house staff secretary at $17 an hour.

125 Responses x 0.5 hr./response x $17.00/hr. = $1,063

Total Number of Annual Respondents for the entire collection: Part A (1,250) + Part B (100) = 1,350

Total Number of Annual Responses for the entire collection: Part A (3,472) + Part B (125) = 3,597

Total Number of Annual Burden Hours for the entire collection: Part A (3,472) + Part B (63) = 3,535

Total Annual "In-House" Cost for the entire collection: Part A ($121,520) + Part B ($1,063) = $122,583

13. There is no annual cost burden to respondents resulting from the collection of information beyond the "in-house" costs addressed in Items 12 and 14.

Part A: 1.40001(c)(3)(i) and 1.40001(c)(3)(iii) - Incompleteness notice.

(a) Total Annualized Capital/Startup Cost: None

(b) Total annual costs (O&M): None

(c) Total annualized cost requested: None

There will be no annualized costs incurred by the respondents from part A of the collection.

Part B: 1.140001(c)(4) - Deemed Granted Notice.

(a) Total Annualized Capital/Startup Cost: None

(b) Total annual costs (O&M): None

(c) Total annualized cost requested: None

There will be no annualized costs incurred by the respondents from part B of the collection.

Total Number of Annualized Capital/Startup Costs Requested for the entire collection: Part A ($0) + Part B ($0) = $0

Total Number of Annual Costs (O&M) Requested for the entire collection: Part A ($0) + Part B ($0) = $0

Total Number of Annualized Cost Requested for the entire collection: Part A ($0) + Part B ($0) = $0.

There will be no annualized costs incurred by the respondents from this collection.

14. There are no costs to the Federal Government because: (1) notices of incompleteness are prepared by the applicable reviewing authority and involve no federal action or cost; (2) deemed granted notices are prepared by the applicant and involve no federal action or cost. Disclosures will not be actively monitored in the absence of consumer complaints.

15. This is a new collection. This new collection results in a program change increases of 1,350 respondents, 3,597 responses, 3,535 annual burden hours and no annual costs. This is due to the information collection requirements adopted in FCC 14-153 for Section 1.40001.

16. The data will not be published for statistical use.

17. OMB approval of the expiration of the information collection will be displayed at 47 C.F.R. § 0.408.

18. There are no exceptions to the "Certification Statement."

B. <u>Collections of Information Employing Statistical Methods</u>:

No statistical methods are employed.