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Via email: jhugendu@pahousegop.com

Pennsylvania House of **Representatives**
Attn: Consumer Affairs Committee
Capitol Building
Room 60, East Wing
Harrisburg, PA 17120

RE: Public Hearing on House Bill 2061 - Procedures for Wireless Communications Facilities and Wireless Support **Structures**

To the Members of the Consumer Affairs Committee:

On behalf of the **Pennsylvania** Wireless Association ("**PWA**"), I am writing to offer written testimony on House Bill 2061, introduced by **Chairman** Robert W. **Godshall** et. al. on December 7, 2011. PWA is comprised of **members** of all sectors of the wireless industry. These individuals are committed to educating customers and public officials about our industry and the critical role it plays in Pennsylvania. Our goal is to cultivate relationships between the various members of the industry and the local communities they serve to help ensure the continued growth and development of our industry.

PWA applauds Chairman **Godshall** and the fellow bill sponsors for proposing to create regulatory incentives to **collocate** wireless facilities on existing support structures. In doing so, the bill sponsors clearly recognized that, **as** discussed below, collocation provides maximum benefit for **all** stakeholders involved, including zoning authorities, the wireless industry, and the Pennsylvania communities that they serve.

BACKGROUND

As of **December** 31, 2009, the wireless adoption rate in the Commonwealth of **Pennsylvania** was **86%**, with 10,867,000 wireless subscribers **statewide**, representing a 37% **increase** over the number of subscribers in the Commonwealth **as** of December **2005**.¹ This rapid growth in wireless adoption across the Commonwealth is consistent with national **trends**, where **estimates** show that by 2014, US wireless networks will carry 40 **times** the amount of **traffic** carried in **2009**.² Demand for advanced wireless services is undoubtedly on the rise, and in order to **accommodate** that demand, more wireless **infrastructure** will necessarily be deployed within the Commonwealth. It is vitally important that this **infrastructure** get to market in the timeliest and most **efficient** manner, while also taking into account the legitimate health, safety, and welfare concerns of each community in which these facilities are located.

¹ **Source:** FCC

² *Id.*

Unfortunately, there are numerous **jurisdictions** nationwide (and in some parts of Pennsylvania) that have failed to **maintain** a proper balance between ensuring reliable access to state of the art wireless communications services while also **preserving** the intrinsic aesthetic character of their communities. **Local** governments have adopted regulations that impose significant height restrictions, severely limit-zoning districts in which wireless infrastructure can be located, impose unreasonable conditions, and require conditional use permits for collocation of wireless facilities on previously permitted wireless support structures. At a time when it is especially critical to **keep pace** with the ever-growing demand for advanced wireless services, the added delays and increased costs of zoning wireless facilities present a formidable challenge to their efficient and timely deployment.

Of **particular** concern in the present proceeding **are** local zoning **ordinances** that subject collocations and modifications to *de novo* discretionary zoning review. **When** a tower is initially **permitted**, it passes a jurisdiction's health, safety, and welfare review with regards to its **placement** and its use for the **provision** of wireless service. The collocation of additional **antennas** should not **trigger** a full zoning review because: public health issues (*i.e.* RF emissions) **are** by statute exclusively within the purview of the **FCC**; safety issues are addressed **through** the submission of an engineering report stamped by a licensed engineer at the building **permit** stage; and welfare issues (typically aesthetics, property value, etc.) **are** not an issue because the **tower** itself is essentially unchanged. Simply put, **discretionary** zoning review of collocation is unnecessary and **contrary** to the interests of the citizens, businesses, and **first-responders** who are **growing** increasingly dependent on advanced wireless services in their daily lives. Creating regulatory incentives to collocate (through, for example, a collocation-by-right mandate) would, however, serve a dual-purpose of **allowing** the rapid deployment of the facilities necessary to accommodate next-generation mobile broadband services, while at the same time ensuring the preservation of the aesthetic character of the communities in which new wireless facilities are located.

CURRENT REGULATORY LANDSCAPE

Over the past several **years**, many state and local jurisdictions have adopted zoning regulations that streamline the collocation process. Florida, Tennessee, North Carolina, **Georgia**, and **New Jersey** have all enacted various forms of legislation that **provide** for streamlined review of collocations and **modifications** on existing **support** structures.³ In each case, the **state** legislatures rightly recognized that collocation on existing wireless **infrastructure** is in the best interests of **all** stakeholders involved.

³See Florida Statutes § 365.172(12); Tennessee Code Annotated § 13-24-305; North Carolina Senate Bill No. 831; Official Code of Georgia Annotated § 36-66B-1 – 36-66B-4; and New Jersey Senate Bill No. 2989.

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Similarly, on February 22, 2012, the federal government enacted its own **collocation-by-right legislation**.⁴ § 6409 of the Middle Class Tax Relief and Job Creation Act is as follows:

Sec. 6409. WIRELESS FACILITIES DEPLOYMENT

(a) **FACILITY MODIFICATIONS.—**

(1) **IN GENERAL.—**Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, 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.

(2) **ELIGIBLE FACILITIES REQUEST.—**For purposes this subsection, the **term** "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves –

- (A) **collocation** of new transmission equipment;
- (B) removal of transmission equipment; **or**
- (C) replacement of transmission equipment.

(3) **APPLICABILITY OF ENVIRONMENTAL LAWS.—**nothing in paragraph (1) shall be **construed** to relieve the Commission **from** the requirements of the National Historic **Preservation** Act or the National **Environmental** Policy Act of 1969.

In addition to the recently enacted federal **collocation-by-right legislation**, it is also important to note that in 2009 the FCC adopted **regulations designed to** thwart delays in the wireless siting process by requiring local zoning authorities to act on an application to collocate on existing communications towers **within 90 from** the date **on which** the application was received by the jurisdiction.'

HOUSE BILL 2061

PWA is **encouraged** by the **introduction** of House Bill 2061; however, given the recent enactment of **federal** siting legislation described above, PWA asserts that the Commonwealth of **Pennsylvania** would not be well served by a bill that duplicates – or worse yet – conflicts with

⁴ See **Middle Class Tax Relief and Job Creation Act of 2012**, Pub. L. No. 112-96, § 6409 (2012).

⁵ 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 AN Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14021 (2009).

currently controlling federal law. Instead, PWA **contends** that a statewide siting bill in **Pennsylvania** should augment and clarify applicable federal regulations. With the foregoing in mind, PWA makes the following recommendations:

- Clarify that the definition of **“base station”** as used in the federal collocation-by-right legislation **includes** non-traditional support structures, including rooftops, light **standards, utility** poles, and other free-standing **vertical** structures. As with collocation on **traditional** wireless towers, **streamlined** zoning review of **collocation** on non-traditional **vertical infrastructure ensures** efficient deployment of advanced wireless facilities while **minimizing** any potential adverse visual impact.
- Clarify that any "eligible **facilities** request" (**as** such is defined in the federal collocation-by-right **legislation**) to collocate on a **wireless** tower located **within** the Commonwealth of **Pennsylvania** may only be reviewed by a local **zoning** and **permitting** authority for the **purpose** of **determining** whether the proposed collocation complies with applicable structural standards. This regulation will **ensure** that there are no delays due to unnecessary verification of compliance with RF emissions regulations (which is solely within the purview of the **FCC**) or **unnecessary** design review to verify compatibility with the surrounding visual landscape (since the collocation would involve a lawfully permitted and previously existing wireless tower).
- Clarify that, in accordance with **§ 7210.502** of the Pennsylvania Uniform **Construction** Code, any "eligible **facilities** request" receiving the streamlined **permitting** review described above **will** be granted or denied within **30** business **days** of the filing date. Timely decision-making focused solely on matters within the **jurisdiction** of a local **zoning** and permitting authority will eliminate unnecessary delays in the process.
- Expand efforts to educate **local** policy-makers about the wireless industry. Helping local policy-makers understand the intricacies of mobile broadband technologies and effective wireless Siting policy **will** lead to a more rational and transparent **process** for all interested parties.

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CONCLUSION

As the statewide association for members of all sectors of the wireless **industry**, PWA appreciates the **opportunity** to participate in the public hearing on House Bill 2061. We applaud the Pennsylvania House of Representatives for introducing legislation aimed at **streamlining** the process of collocating wireless facilities on existing wireless support structures within the Commonwealth. However, since the time of House Bill 2061's introduction, the regulatory landscape has changed significantly, with the notable **enactment** of § 6409 of the Middle Class **Tax** Relief and Job Creation Act. PWA therefore urges the Consumer Affairs Committee to reconsider the contents of its siting bill, and further **recommends** implementing the items outlined **above**. In this regard, we welcome the **opportunity** to participate in this process going **forward**.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick', followed by a long horizontal line extending to the right.

Nick Limberopoulos