

No. 18-72689 (and related cases)

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY OF PORTLAND,
Petitioner

v.

UNITED STATES OF AMERICA AND
FEDERAL COMMUNICATIONS COMMISSION,
Respondents

**INTERVENORS CTIA – THE WIRELESS ASSOCIATION,
COMPETITIVE CARRIERS ASSOCIATION, SPRINT
CORPORATION, VERIZON COMMUNICATIONS INC., AND THE
WIRELESS INFRASTRUCTURE ASSOCIATION EXCERPTS OF
RECORD VOL. 1**

TABLE OF CONTENTS

	Page:
Description:	
AT&T Comments	IER 1
Competitive Carriers Association Comments.....	IER 10
Computer & Communications Industry Association (CCIA) Comments	IER 15
CTIA Comments	IER 24
Extenet Systems, Inc. Comments.....	IER 53
Mobilitie, LLC Comments.....	IER 58
Sprint Corporation Comments	IER 63
T-Mobile USA, Inc. Comments.....	IER 69
Verizon Comments	IER 77
Wireless Infrastructure Association Comments	IER 86
CTIA Reply Comments	IER 89
Crown Castle June 7, 2018 <i>Ex Parte</i> Letter.....	IER 94
CTIA August 30, 2018 <i>Ex Parte</i> Letter	IER 99

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment	)	WT Docket No. 17-79
by Removing Barriers to Infrastructure)	
Investment)	
)	

COMMENTS OF AT&T

Robert Vitanza
Gary L. Phillips
David Lawson
AT&T SERVICES, INC.
208 S. Akard Street
Rm 3031
Dallas, Texas 75202
(214) 757-3357 (Phone)
(214) 746-2212 (Fax)

Scott D. Delacourt
Joshua S. Turner
Katy M. Ross
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000 (Phone)
(202) 719-7049 (Fax)

Counsel for AT&T

June 15, 2017

332(c)(7) of the Communications Act to preempt state and local processes that deviate from these guidelines or otherwise impede wireless infrastructure deployment.⁵

Among other measures, the Commission should take the following actions to remove state and local barriers to wireless broadband deployment:

- Declare that state and local action that materially inhibits or limits the ability of a competitor to provide wireless service has the effect of prohibiting the provision of telecommunications service under Section 253(a).
- Declare that burdensome and unreasonable regulations that materially inhibit and limit the ability to provide wireless service include:
 - moratoria and other unreasonable prohibitions on the placement of wireless facilities, such as prohibitions on facilities above-ground, in all or part of a ROW, or on municipally-owned poles;
 - unreasonable prohibitions on adding or upgrading facilities to add *capacity* or *capabilities* even if *coverage* is already available;
 - unreasonable, vague, and subjective aesthetic restrictions that are applied discriminatorily to small cell facilities, but not to the facilities of other entities using the ROW in a like manner; and
 - unreasonable administrative processes and delays.
- Declare that cost-based, rather than market-based, rates to access the ROW and municipally-owned ROW structures are “fair and reasonable.”
- Declare that siting applications not acted upon within the Section 332(c)(7) shot clock are deemed granted.
- Establish a streamlined complaint process to resolve disputes between municipalities and providers arising under Section 253.

The Commission also should reduce burdens associated with time-consuming and costly environmental and historic review processes under the National Environmental Policy Act (“NEPA”) and National Historic Preservation Act (“NHPA”). In particular, the Commission’s NEPA and NHPA processes need to be refined to further reduce the review of small cell facility

⁵ 47 U.S.C. §§ 253, 332(c)(7).

deployments, as small cells are, by definition, small and unobtrusive. The Commission should resolve inefficiencies in the NHPA Tribal review process, which today can involve excessive fees and burdensome delays. Finally, the Commission should take this opportunity to address longstanding ambiguities associated with so-called “Twilight Towers,” which have had the effect of limiting collocations on thousands of existing structures. Resolving these inefficiencies will speed and simplify the wireless infrastructure deployment process and help providers deliver increased capacity and coverage to consumers and advance the United States’ status as a leader in wireless.

II. THE COMMISSION SHOULD TAKE STEPS TO PROMOTE THE DEPLOYMENT OF NEXT-GENERATION WIRELESS BROADBAND.

As evidenced by a recent Senate Committee on Commerce, Science, and Transportation hearing, improving the nation’s wireless infrastructure and delivering robust wireless broadband to consumers is a national priority.⁶ Chairman Thune noted that “[A] major part of our continuing discussion on improving the nation’s infrastructure should include solutions to reducing any unnecessary hurdles to broadband deployment. As we look at potential solutions, we must be mindful of the tremendous investment made to deploy these services and look for opportunities to cut through red tape.”⁷ Commissioner O’Rielly noted that the wireless industry “is still experiencing excessive delays and moratoria when filing siting applications” which in some cases

⁶ See *Investing in America’s Broadband Infrastructure: Exploring Ways to Reduce Barriers to Deployment*, 115th Cong. (May 3, 2017) (statement of Sen. Bill Nelson, Ranking Member, U.S. Senate Committee on Commerce, Science, and Transportation) (“Everyone – from those of us in the Senate to our mayors and local officials around the country – want Americans to benefit from the availability of robust wireless broadband.”); *Id.* (statement of Brian M. Hendricks, Head of Technology Policy and Public Affairs for the Americas Region, Nokia Corp.) (“[B]roadband providers of all kinds . . . stand ready to invest significantly in broadband infrastructure to support” a connected society.”).

⁷ *Id.* (statement of Sen. John Thune, Chairman, U.S. Senate Committee on Commerce, Science, and Transportation).

are “blatantly illegal.”⁸ Chairman Pai has acknowledged the toll that unreasonable siting barriers impose on consumers, remarking that “cities shouldn’t impose unreasonable demands or moratoria on wireless siting requests. This simply penalizes their own constituents who want better mobile service.”⁹

Facilitating faster broadband deployment and avoiding unnecessary delays will help carriers provide exciting and innovative next generation wireless services to consumers and drive economic growth. Fueled by the American public’s insatiable demand for data and connected devices, service providers are shifting to denser, more efficient networks by reusing spectrum in smaller cells, closer to the customer. These denser networks will set the foundation for 5G wireless technologies, which will offer ultra-high data rates and reliability with low latency and power demands, revolutionizing mobile broadband service, and enabling groundbreaking IoT applications such as wearables, connected healthcare devices, and autonomous vehicles. Indeed, 5G networks are expected to create 3 million new jobs and boost annual U.S. gross domestic product by \$500 billion, driven by a projected \$275 billion investment from telecom operators.¹⁰

To deliver these benefits, wireless carriers still need to deploy and upgrade traditional macro facilities, but they must also install “hundreds of thousands of new small cells” around the country over the next few years.¹¹ For example, AT&T has announced plans to install over 1,000

⁸ Remarks of Michael O’Rielly, FCC Commissioner, 2017 Wireless Infrastructure Show, 4 (May 23, 2017) *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-345021A1.pdf (“O’Rielly Wireless Infrastructure Show Remarks”).

⁹ *NPRM*, 32 FCC Rcd at 3385 (Statement of Chairman Ajit Pai).

¹⁰ Accenture Strategy, *Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities*, 1 (2017) <https://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf> (“Accenture Strategy Report”).

¹¹ Comments of CTIA, WT Docket No. 16-421 at 2 (filed Mar. 8, 2017).

small cell antennas across the Bay Area alone in 2017,¹² with many other small cell projects underway or planned across the country. CTIA estimates about 300,000 small cells will be needed in just the next 3-4 years to support the evolution to 5G.¹³ Indeed, the industry's 5G network deployment build is expected to involve 10 to 100 times more antenna locations than 4G or 3G.¹⁴ With small cell deployments by the thousands, an extended review of each application has the potential to create massive backlogs and delay deployments.

Yet, despite Commission efforts to streamline federal, state, and local siting processes, some local governments continue to place obstacles in the way of wireless facility expansion, even for unobtrusive small cell equipment. AT&T's contrasting experiences trying to deploy state-of-the-art showcase small cell networks in Indianapolis and a Texas city provide an excellent example. Indianapolis worked cooperatively with AT&T from day one to facilitate small cell placement in the ROW, which has allowed AT&T, in about 18 months, to construct an expected 43 of approximately 105 planned small cell nodes as of the end of June 2017, with the remainder on track for timely deployment by year end 2017. In contrast, the Texas city refused to allow small cell placement on any structures in the ROW and allowed only a limited deployment after adoption of a Master License Agreement in February 2017. Since that date, AT&T has worked closely with the city and its contractor to develop procedures to file for and obtain permit approval, but, more than two years after initially approaching the City, has not yet received any permits to begin construction of 100+ planned nodes. Even so, the Master License Agreement and related rules

¹² Doug Irwin, *AT&T Deploys Network of Small Cells in San Francisco*, Radio Magazine (Feb. 21, 2017), available at <http://www.radiomagonline.com/mobile/0022/att-deploys-network-of-small-cells-in-san-francisco/38638>.

¹³ *Ex Parte*, CTIA, WT Docket No. 16-421 at Attachment, 4 (filed Apr. 13, 2017).

¹⁴ Accenture Strategy Report at 1.

The Commission should also reject the “significant gap” standard that some courts have articulated in some Section 332 cases.²⁶ This standard requires the provider to show that there is a significant gap in coverage and that its proposed facility is the least intrusive means of filling that gap.²⁷ With its sole focus on “gaps” in coverage, this test is far too narrow and allows many prohibitory practices and decisions to persist, in contravention of the letter and the spirit of Section 332. It is particularly ill-suited for analyzing small-cell deployments, which are by definition used to expand capacity and throughput in circumstances where coverage already exists. Blocking small cells, or materially interfering with their deployment, will undoubtedly stand as a barrier to the provision of services, even if some level of coverage already exists. For the same reasons that the FCC rejected the “one provider” rule in 2009,²⁸ it should recognize that a test focused only on whether there is “coverage” or a “gap” in coverage does not adequately embody the statutory commitment to encourage wireless deployment.

The significant gap standard would also plunge local jurisdictions into analyzing technical network issues, a task for which they have neither the expertise nor the authority. By requiring

²⁶ *Sprint Spectrum, LP v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999) (“[L]ocal governments must allow service providers to fill gaps in the ability of wireless telephones to have access to land-lines.”); *APT Pittsburgh Ltd. P’ship v. Penn Township*, 196 F.3d 469, 480 (3d Cir. 1999) (“In order to show a violation of [Section 332] an unsuccessful provider applicant must show . . . that its facility will fill an existing significant gap in the ability of remote users to access the national telephone network . . . [and] that the manner in which it proposes to fill the significant gap in service is the least intrusive on the values that the denial sought to serve.”); *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1056-57 (9th Cir. 2014) (“A locality violates this provision “if it prevent[s] a wireless provider from closing a ‘significant gap’ in service coverage.”).

²⁷ *Willoth*, 176 F.3d at 643.

²⁸ *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(b)*, Declaratory Ruling, 24 FCC Rcd 13994, ¶ 56 (2009) (“[T]he fact that another carrier or carriers provide service to an area is an inadequate defense under a claim that a prohibition exists, and we conclude that any other interpretation of this provision would be inconsistent with the Telecommunications Act’s pro-competitive purpose.”).

local jurisdictions to determine the “least intrusive means” to fill a gap in coverage, this standard compels zoning boards to opine on the availability and technological feasibility of, *inter alia*, “less sensitive sites, alternative system designs, alternative tower designs, placement of antenna[s] on existing structures, etc.,” to determine if they are more or less intrusive.²⁹ Yet neither local governments nor courts are positioned to substitute their judgments for those of service providers with regard to the design and deployment of wireless networks.

Further, the Commission should confirm that municipalities act in a regulatory capacity—subject to preemption—in managing their rights of way and that those actions are not protected from Section 253 and 332 review by categorizing them as “proprietary.” As an initial matter, this distinction finds no support in the text of Sections 253 or 332, which do not use the term “proprietary.” Moreover, these arguments ignore the distinction between ROWs and other government owned property. A municipality holds the ROW in trust for the public,³⁰ not as an owner, and, subject to state law, can regulate the time, place, and manner of its use. In contrast, a municipality’s role as a private property owner involves complete discretion to buy, sell, and manage property as it deems appropriate.³¹ Insulating local government regulatory action from preemption by categorizing it as “proprietary” would effectively rewrite Sections 253 and 332, allowing municipalities to bar wireless facilities deployment in ROWs with impunity. Such an

²⁹ *APT Pittsburgh Ltd. P’ship*, 196 F.3d at 480.

³⁰ *Meriwether v. Garrett*, 102 U.S. 472, 513 (1880) (“In its streets, wharves, cemeteries, hospitals, court-houses, and other public buildings, the corporation has no proprietary rights distinct from the trust for the public. It holds them for public use, and to no other use can they be appropriated without special legislative sanction. It would be a perversion of that trust to apply them to other uses.”).

³¹ *See generally Sprint Spectrum L.P. v. Mills*, 283 F.3d 404, 417-21 (2d Cir. 2002); *Omnipoint Commc’ns, Inc. v. City of Huntington Beach*, 738 F.3d 192, 200 (9th Cir. 2013).

interpretation runs contrary to the explicit language and purpose of these provisions,³² and their consistent interpretation by courts.³³

Likewise, the Commission should reject arguments that Section 224 of the Communications Act insulates municipal ROW management from Commission oversight. Section 224 gives the Commission authority to regulate rates, terms, and conditions for telecommunications attachments to poles owned by a utility, but not those owned by a state.³⁴ Nevertheless, state and municipal-owned poles are still subject to Section 253.³⁵ Section 253's requirement that state and local governments adopt competitively neutral and nondiscriminatory regulations does not carve out pole attachments or other portions of the Act.³⁶ Otherwise, municipal pole regulations and fees could discriminate without repercussion, frustrating the purpose of the Act. Accordingly, the Commission should assert its authority over these structures and preempt local regulations that conflict with the Communication Act's requirements.

IV. TO REDUCE STATE AND LOCAL BARRIERS TO SMALL CELL DEPLOYMENTS, THE COMMISSION SHOULD DECLARE THAT SECTIONS

³² See, e.g., 47 U.S.C. § 253(a) (“No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”). Section 253(c), which carves out “reasonable” rights of way management, would hardly be necessary if all ROW decisions were proprietary and shielded from the statute’s sweep.

³³ See, e.g., *City of Rancho Palos Verdes, Cal. v. Abrams*, 544 U.S. 113, 115 (2005) (“[Section 332] imposes specific limitations on the traditional authority of state and local governments to regulate the location, construction, and modification of [wireless] facilities.”); *Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 721 (9th Cir. 2009) (“The [Telecommunications Act] seeks a balance by placing certain limitations on localities' control over the construction and modification of [wireless communications facilities].”).

³⁴ 47 U.S.C. §§ 224(a)(1), (4).

³⁵ See 47 U.S.C. § 253(a) (“No state or local regulation . . .”).

³⁶ 47 U.S.C. § 253(c).

Scott D. Delacourt
Joshua S. Turner
Katy M. Ross
WILEY REIN LLP
1776 K Street, NW
Washington, DC 20006
(202) 719-7000 (Phone)
(202) 719-7049 (Fax)

Counsel for AT&T

Dated June 15, 2017

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
)	
Revising the Historic Preservation Review Process for Wireless Facility Deployment	)	WT Docket No. 15-180
)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
)	
)	

COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Steven K. Berry
President & CEO

Rebecca Murphy Thompson
EVP & General Counsel

Elizabeth Barket
Law & Regulatory Counsel

COMPETITIVE CARRIERS ASSOCIATION
805 15th Street NW, Suite 401
Washington, DC 20005
(202) 449-9866
www.ccamobile.org

June 15, 2017

moratoria where a local authority refuses to negotiate with a carrier.⁶¹ The Commission also should find that moratoria “prohibit or have the effect of prohibiting” broadband services under Section 332 (personal wireless facilities) and Section 253 (telecommunications service).⁶² This finding should include instances where localities ban attachments in ROWs, and where localities lack a process to accept and review siting applications.

However, the Commission could provide a relief mechanism applicable when moratoria are genuinely needed, such as during a hurricane, earthquake, or other natural disaster. In such situations, applicable shot clocks could extend for a brief period of time, such as 30 days, or until a federal body declares the end of a state of emergency. Otherwise, the FCC could simply clarify that shot clocks may be extended if both applicant and locality consent.

E. Fees Throughout the Local Siting Process are Inflated and Harming Deployment.

The Commission should exercise its authority under Sections 253 and 332(c)(7)(B) to curb application processing fees and ROW-related fees. The Commission may do so by clarifying the meaning of “fair and reasonable compensation” on a “competitively neutral and nondiscriminatory basis” under Section 253(c) and on the basis of Sections 253(a) and 332(c)(7)(B), which preempt state and local actions that “prohibit or have the effect of prohibiting” services under those sections.⁶³ Not only does Section 253(d) give the Commission

⁶¹ See Sprint Comments at 17.

⁶² See Wireline NPRM ¶ 102; see Wireless NPRM ¶ 22.

⁶³ See T-Mobile Streamlining Comments at 10; see also Wireline NOI ¶ 100 (seeking comment on whether the Commission should enact rules under Section 253 preempting actions that fall outside of, for example, the “safe harbor” provided by Section(c) permitting state and local authorities to charge “fair and reasonable compensation”); see *id.* ¶ 104 (seeking comment on adopting rules prohibiting excessive fees and other costs that may have the effect of prohibiting the provision of telecommunications service).

express authority to preempt actions that “prohibit or have the effect of prohibiting” services, but the courts also have upheld the Commission’s authority to implement rules under Section 332(c)(7), as described above.⁶⁴ CCA urges the Commission to move away from defining “excessive” fees as a means to address what fees are preempted under Section 253.⁶⁵ The record is replete with evidence that siting fees are in fact prohibitive, “directly impacting the evolution to 5G networks”⁶⁶ and “threaten the economics of a deployment.”⁶⁷ Accordingly, a fee outside the meaning of “fair and reasonable compensation” would implicate Section 253(a)’s “prohibition” language, and would arguably extend to the identical language in Section 332(c)(7)(B).

CCA likewise reiterates the recommendations stated in our filings to the *Streamlining Public Notice*. First, the Commission should clarify that application processing fees and any ROW-related fees should be based on authorities’ actual costs.⁶⁸ This limitation would not overwhelm local and state authorities as some states already narrow siting and ROW fee collections to actual associated costs,⁶⁹ and is appropriate, considering Congress’s statutory goals

⁶⁴ See *City of Arlington v. FCC*, 668 F.3d at 254.

⁶⁵ See Wireline NOI ¶ 105.

⁶⁶ See T-Mobile Streamlining Comments at 10.

⁶⁷ See Nokia Comments at 6.

⁶⁸ By siting fees, CCA refers to “those fees including, but not limited to, fees that states or local authorities impose for access to rights-of-way, permitting, construction, licensure, providing a telecommunications service, or any other fees that relate to the provision of telecommunications service.” Wireline NOI ¶ 104. See CCA Streamlining Reply Comments at 10; see also Globalstar Comments at 14; Lightower Fiber Networks Comments at 27, 29; Mobilite Comments at 17; Sprint Comments at 32; WIA Comments at 69; T-Mobile Comments at 24.

⁶⁹ See CCA Streamlining Reply Comments at 11, citing Comments of the Association of Washington Cities at 2, WT Docket No. 16-421 (filed Mar. 8, 2017); Comments of Mid-Ohio

to promote deployment and not to create a revenue opportunity for permitting authorities.⁷⁰

Further, “actual costs” should exclude licensing or consultant fees,⁷¹ including fees charged on a contingency basis or a result-based arrangement.

“Franchise fees” or any other revenue-based fees, which in no way are related to the locality’s direct costs,⁷² should also be declared outside the scope of “fair and reasonable compensation” and within the bounds of “prohibitive” conduct.⁷³ As CCA has noted, “[franchise] fees also discourage deployment, as some carriers will, as a rule, refuse to pay a gross annual revenue fee and, therefore, will not deploy services in such areas.”⁷⁴

The Commission also should specify that requiring siting applicants to “obtain business licenses for individual cell sites” is outside the scope of Sections 253 and 332. These “loopholes” expose carriers to immense financial liability and are completely disparate from direct review or management costs.⁷⁵

Regional Planning Commission at 2, WT Docket No. 16-421 (filed Mar. 8, 2017); WIA Comments at 69 n.158 (citing statutes from California, Minnesota, and Utah).

⁷⁰ See Sprint Comments at 33 (noting that “fair and reasonable” fees cannot include fees set by a fictional “market rate” construct; “local governments possess a monopoly power over the public rights of way and other essential public infrastructure,” and frequently abuse that power by “extracting unjustified sums of money from carriers who have no choice but to pay what the municipalities demand”).

⁷¹ See CCA Streamlining Reply Comments at 11.

⁷² See AT&T Comments at 19; Comments of Conterra Broadband Services and Uniti Fiber at 18-19, WT Docket No. 16-421 (filed Mar. 8, 2017) (“Conterra Broadband Services and Uniti Fiber Comments”); CTIA Comments at 16; Sprint Comments at 27-28; Chamber of Commerce Letter at 3.

⁷³ See CCA Streamlining Reply Comments at 11.

⁷⁴ CCA Streamlining Comments at 18.

⁷⁵ See, e.g., T-Mobile Comments at 12. The Commission also should be aware of the growing number of local authorities incorrectly applying ANSI/TIA-222-G structure classes to

innovative technology supporting the entire Internet ecosystem.¹⁸⁶ The Commission is right to support these efforts, and eliminate both avoidable fees and delay barriers. CCA appreciates the Commission’s robust, thoughtful proposals in support of CCA members’ goals. CCA and its members remain committed to working with the Commission and all interested stakeholders to create strong national standards for broadband deployment.

Respectfully submitted,

/s/ Rebecca Murphy Thompson
Steven K. Berry
Rebecca Murphy Thompson
Elizabeth Barket
COMPETITIVE CARRIERS ASSOCIATION
805 15th Street NW, Suite 401
Washington, DC 20005
(202) 449-9866

June 15, 2017

¹⁸⁶ See, e.g., Comments of ACT the App Association, WT Docket No. 17-79 et al., at 2 (filed April 28, 2017) (urging the Commission to “reduce barriers for deploying new infrastructure” to achieve the massive economic and employment benefits 5G networks will provide).

Before the
Federal Communications Commission
Washington, D.C.

In the matter of

Accelerating Wireless Broadband Deployment
by Removing Barriers to Infrastructure
Investment

WT Docket No. 17-79

Accelerating Wireline Broadband Deployment
by Removing Barriers to Infrastructure
Investment

WC Docket No. 17-84

**COMMENTS OF THE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

John A. Howes, Jr.
Computer & Communications
Industry Association (CCIA)
655 15th Street, NW Suite 410
Washington, D.C. 20005
(202) 783-0070
jhowes@ccianet.org

June 15, 2017

Before the
Federal Communications Commission
Washington, D.C.

In the matter of

Accelerating Wireless Broadband Deployment
by Removing Barriers to Infrastructure
Investment

WT Docket No. 17-79

WC Docket No. 17-84

Accelerating Wireline Broadband Deployment
by Removing Barriers to Infrastructure
Investment

**COMMENTS OF THE
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)¹**

CCIA respectfully submits these comments in the above-referenced proceedings² regarding how the Commission can update its rules to advance the deployment of next generation telecommunications networks.

I. Introduction and Summary.

Global data usage is exploding: sixty-three percent last year, eighteen-fold over the past five years, and at least seven-fold in the next five.³ In the U.S., wireless data traffic is expected

¹ CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services. Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. A list of CCIA's members is available online at <http://www.ccianet.org/members>.

² Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, *Notice of Proposed Rulemaking and Notice of Inquiry*, WT Docket No. 17-79 (“*Wireless NPRM*”) (rel. Apr. 21, 2017); Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, *Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment*, WC Docket No. 17-84 (“*Wireline NPRM*”) (rel. Apr. 21, 2017).

³ Cisco, *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update*, <https://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.html> (Feb. 7, 2017); see also Ericsson, *Latest Mobile Statistics: Key Figures*, <https://www.ericsson.com/en/mobility-report/latest-mobile-statistics> (last visited June 15, 2017) (projecting that in North America mobile data traffic per smartphone will increase from 5 GB per month to 26 GB per month in 2022, and total mobile data traffic will increase from 1.8 EB per month to 9.8 EB per month by 2022).

to grow another five-fold through 2021.⁴ With this growing demand for connectivity, mobile carriers and other network providers are in a race to deploy new technologies that can handle this rapid increase in traffic and meet the needs of customers. These next generation technologies, commonly called “5G,” will be characterized by speeds above 1 Gbps and extremely low latency. 5G technology will require more network connections, greater utilization of mid and high band spectrum, as well as greater densification to increase the network’s performance. Such densification requires the deployment of small cells that will vastly outnumber the macro cells that are currently the norm for mobile networks.

In addition to their smaller physical size, small cells differ from macro cells because they are generally designed to propagate a signal a few hundred to a thousand feet. Though small cells can provide higher capacity by utilizing higher bands of spectrum, the physical properties of high-band spectrum simply will not allow for propagation at the distances that are more customary for macro cells that are using lower band spectrum. Therefore, small cells are generally used to increase capacity in certain areas of high demand as well as for filling in gaps that may exist between macro cells. They are particularly useful for deployments in mid-to-high spectrum bands, which will be crucial to meet the speed and coverage demands of 5G. As a result, providers will need to deploy hundreds of thousands of small cells for continuous service with higher band spectrum to properly facilitate the faster speeds and lower latency that will be characteristic of 5G networks. As the Commission noted in the *Mobilitie PN*, “small cell

⁴ Cisco, *VNI Complete Forecast Highlights Tool, 2016-2021*, http://www.cisco.com/c/dam/assets/sol/sp/vni/forecast_highlights_mobile/index.html#~Country (last visited June 14, 2017); see also *Ericsson Mobility Report*, <https://www.ericsson.com/assets/local/mobility-report/documents/2016/ericsson-mobility-report-november-2016.pdf> (last visited June 14, 2017) (forecasting that mobile traffic will increase 8-fold by 2022).

deployments are expected to reach 455,000 by 2020 and nearly 800,000 by 2026.”⁵

CCIA agrees that “providers will need flexibility”⁶ as the adoption of next generation 5G service will be dependent on network densification with small cells as well as distributed antenna systems (DAS), but their efforts are frequently stymied at the local level. Not only will it be expensive to buy the equipment necessary to deploy 5G, but providers will also need to locate these hundreds of thousands or even millions of small cells on hundreds of thousands or even millions more sites and then connect them to their networks. The majority of wireless siting requests go through local government for approval, and there are about 40,000 local bodies with such land use authority,⁷ which creates a plethora of different regimes and processes for applications, including fees, requirements, approval timelines, and review processes. Compliance with such an extensive nationwide patchwork of processes for siting approval is a substantial burden on providers and amounts to a massive obstacle to deployment.

Small cells are unique because they can be placed on a wide variety of structures, like street lights, sides of building roofs, bus shelters, utility poles, etc., yet they can be relatively unobtrusive, especially compared to antennas that are commonly found on macro cell towers. A relatively common comment that has arisen in the context of small cell siting is that it does not make sense to apply macro cell rules to small cells that are the size of a pizza box or fire extinguisher. CCIA agrees, and believes that, in particular, municipalities and States should not apply existing requirements, rules of rights of way (ROWS), and fees designed for macro cells to small cells. Instead, requirements and processes should be streamlined, and fees should only be based on the reasonable costs that states or municipalities incur for processing applications.

⁵ Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilite, LLC Petition for Declaratory Ruling, *Public Notice*, WT Docket No. 16-421 (“*Mobilite PN*”) (rel. Dec. 22, 2016) at 5.

⁶ *Wireless NPRM* at ¶ 32.

⁷ Fed. Commc’ns Comm’n Intergovernmental Advisory Comm., Report on Siting Wireless Communications Facilities (July 12, 2016), <https://transition.fcc.gov/statelocal/IAC-Report-Wireless-Tower-siting.pdf> at 2.

property.”³⁷ The Commission should address a locality’s refusal to consider applications and delays in allowing small cell deployments in public ROWs. In particular, the Commission should decide that barriers to small cell placement in ROWs, like moratoria, above-ground facility prohibitions, location-specific constraints, and outright prohibitions violate Section 253.

Although Section 253 allows States and localities to seek “fair and reasonable compensation” for public ROWs they manage, it also requires that such management and compensation be “competitively neutral and nondiscriminatory” and “publicly disclosed.”³⁸ States and localities are further restricted from acting in ways that “prohibit or have the effect of prohibiting” the provision of “telecommunications” or “personal wireless service.” Moreover, Section 332 requires that States and local authorities “shall act” act on wireless siting applications within a “reasonable period of time,” and they may not “unreasonably discriminate among providers of functionally equivalent services.” Therefore, the Commission should clarify that Sections 253 and 332 apply to municipal poles and ROW siting requests. The terms and conditions of access to municipal poles and ROWs are regulatory not proprietary functions,³⁹ so Sections 253 and 332 should apply.

As stated earlier, regulations and review processes that were written for macro cells are not necessarily the best solutions for small cells. On the other hand, some localities have enacted additional review requirements for small cells, which can be more onerous and have the effect of unnecessarily burdening deployment. For example, T-Mobile has found that many jurisdictions “require DAS and small cell deployments to undergo zoning review; many require aesthetic

³⁷ Reply Comments of Wireless Infrastructure Association, WT Docket No. 16-421 (filed Apr. 7, 2017), at 4.

³⁸ 47 U.S.C. § 253(c) (2012).

³⁹ See, e.g., *New Jersey Payphone Ass’n v. Town of West New York*, 130 F. Supp. 2d 631, 638 (D.N.J. 2001) (“Distinct from public parks or government buildings, the municipality does not possess ownership rights as a proprietor of the streets and sidewalks. Consequently, the Town’s analogies and hypotheticals likening the effect of the Ordinance to the Town’s management of public parks and buildings are inapt. Likewise, the Town’s citation of various state-law authorities supporting its right-of-way management powers simply beg the question, because these authorities are only controlling to the extent they are not preempted by federal law.”).

review; and some restrict wireless deployments to city-owned assets, have specific form factor guidelines, allow only a single company to attach to a particular pole or structure, and/or require unreasonable minimum distances between wireless facilities in ROWs.”⁴⁰ Some counties demand proof from carriers of their need to increase capacity or coverage.⁴¹ For example, the Village of Skokie in Illinois has enacted regulations on ROW siting that place unnecessary limits on collocations. Skokie allows that just “one personal wireless telecommunication facility may be located on a single utility pole,” it limits wireless telecommunications facilities to “Village/governmental-owned infrastructure”, and goes so far as regulating the facility’s color and potential for reflecting light.⁴² In San Francisco, applications must undergo a review by the Department of Public Health before an aesthetic review by the Planning and/or Recreation and Park Departments.⁴³ As T-Mobile pointed out, “Litigation over the lawfulness of the ordinance is now entering its seventh year, curtailing critical wireless buildout.”⁴⁴

Some localities have enacted location-specific constraints, like spacing requirements, which “have the effect of prohibiting” the provision of “telecommunications” or “personal wireless service.” Indeed, the City of Newport Beach in California has banned telecom facilities from placement “[o]n traffic control standards (traffic signal poles).”⁴⁵ These restrictions stifle technological innovation and unnecessarily burden the ability of a provider to use the best

⁴⁰ Comments of T-Mobile, WT Docket No. 16-421 (filed Mar. 8, 2017), at 7.

⁴¹ Comments of Sprint, WT Docket No. 16-421 (filed Mar. 8, 2017), at 19.

⁴² VILLAGE OF SKOKIE, ILL., CODE OF ORDINANCES § 103-2(6)(f) (2017), *available at* https://library.municode.com/IL/skokie/codes/code_of_ordinances?nodeId=COOR_CH103SMCEAN_S103-2REST (“A personal wireless telecommunication facility, including all related equipment and appurtenances, shall be a color that blends with the surroundings of the pole, structure or infrastructure on which it is mounted and use non-reflective materials which blend with the materials and colors of the surrounding area and structures.”).

⁴³ S.F., CAL., PUB. WORKS CODE art. 25 § 1500 et seq. (2015), *available at* [http://library.amlegal.com/nxt/gateway.dll/California/publicworks/publicworkscodes?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/publicworks/publicworkscodes?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1).

⁴⁴ Comments of T-Mobile, WT Docket No. 16-421 (filed Mar. 8, 2017), at 3 (citation omitted).

⁴⁵ NEWPORT BEACH, CA., MUN. CODE § 21.49.040(B)(1), *available at* http://www.newportbeachca.gov/pln/LCP/LCP_Zoning/30A_Chapter%2021.49%20-%20Wireless%20Telecommunications%20Facilities.pdf.

available technological to serve a particular area. For example, 5G technology will require higher band spectrum for greater network capacity, yet some millimeter wave spectrum simply cannot propagate long distances over a few thousand feet—let alone a few hundred. Therefore, a local requirement of, for example, a thousand-foot minimum separation distance between small cells would unnecessarily forestall any network provider seeking to use higher band spectrum with greater capacity when that provider needs to boost coverage in a specific area of a few hundred feet. Such action from States and localities that artificially constrains the ability of providers to compete and improve the quality of their wireless service directly implicates Section 253, and the Commission has the requisite authority to limit these abuses.

E. Fees Should be “Fair and Reasonable” and Cost-Based.

The Commission should explain that under Section 253(c) a “fair and reasonable” fee for using a right of way is “cost-based.” As Sprint noted, there are “extremely wide variations in the structure and level of fees” for ROWs.⁴⁶ Wading through a patchwork of processes, regulations, and variable fees, makes it very difficult for carriers to effectively serve their customers by deploying new technologies. As Sprint pointed out in its comments on the *Mobilitie* proceeding, “In some cases . . . permitting and review fees exceed that costs of the small cell hardware, support structure, installation, backhaul and power combined.”⁴⁷ It should not cost more to file a permit than purchasing, installing, and powering telecommunications equipment.

A “fair and reasonable” fee under Section 253(c) should be based on the locality’s direct and actual costs that are reasonably related to reviewing and processing the application, managing the structure upon which the antenna would be attached, and managing the ROW. Any additional charges, such as those based on the carrier’s revenue or number of subscribers,

⁴⁶ Comments of Sprint, WT Docket No. 16-421 (filed Mar. 8, 2017), at 24.

⁴⁷ *Id.* at i.

have nothing to do with processing the application or managing the site.⁴⁸ They are not “competitively neutral,” and in fact, they are “[d]iscriminatory” because they are applied differently to each carrier.⁴⁹ Therefore, the Commission, should also clarify that “competitively neutral and nondiscriminatory” means that a State or locality cannot charge rates to different providers (e.g. wireless providers, cable operators) for similar kinds of access.

Cost-based fees will help ensure that fees are actually tied to the application and do not service as an additional revenue generator that a locality uses for unrelated purposes. Fees and practices vary widely by jurisdiction. Sometimes the few feet separating one from another could result in thousands of dollars of difference in fees, meaning residents of one jurisdiction will enjoy faster speeds and better network coverage while residents of the neighboring jurisdiction won't. For example, Sprint has posited the example of a Western city that “imposes a \$9,500 application fee per site” while a neighboring jurisdiction “imposes considerably lower fees of \$350 per application and \$742 per year.”⁵⁰ However, fees for easements and ROWs on Federal buildings or lands are required by statute to be “based on direct cost recovery.”⁵¹ Cost-based fees will be more predictable and unlikely to suddenly increase, which will improve the ability of providers to allocate resources and deploy their networks to more areas. In accordance with Section 253(c), these fees should also be “publicly disclosed” and readily available.

III. Pole Attachment Reforms.

Section 224 clearly states that utilities must afford telecommunications carriers

⁴⁸ See Comments of T-Mobile, WT Docket No. 16-421 (filed Mar. 8, 2017), at 12 (“[A]t least seven cities in California are requiring providers to pay a license fee based on a percentage of their revenue attributable to their local cell towers”).

⁴⁹ See 47 U.S.C. § 253(c) (2012).

⁵⁰ Comments of Sprint, WT Docket No. 16-421 (filed Mar. 8, 2017), at ii.

⁵¹ 47 U.S.C. § 1455(b)(3) (2012).

only lead to faster, more reliable networks, it will assure that telecommunications networks continue to be catalysts for innovation, economic growth, and jobs.

June 15, 2017

Respectfully submitted,

/s/ John A. Howes, Jr.
Computer & Communications Industry
Association (CCIA)
655 15th Street, NW Suite 410
Washington, DC 20005
(202) 783-0070
jhowes@ccianet.org

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
)	

COMMENTS OF CTIA

Thomas C. Power
Senior Vice President, General Counsel

Scott K. Bergmann
Vice President, Regulatory Affairs

Brian M. Josef
Assistant Vice President, Regulatory Affairs

Kara D. Romagnino
Director, Regulatory Affairs

CTIA
1400 Sixteenth Street, NW, Suite 600
Washington, DC 20036
(202) 736-3200

Dated: June 15, 2017

Commission will foster broadband investment, promote its availability to all Americans, and advance the United States' leadership in 5G.

III. LOCALITIES ARE IMPOSING BARRIERS THAT THREATEN THE RAPID DEPLOYMENT OF BROADBAND AND 5G.

Many localities are partnering with the wireless industry to enable needed enhanced network infrastructure to be built. They have modified their wireless siting review procedures to accommodate the transition from cell towers to numerous, closely spaced small cells. However, despite the clear national interest in promoting wireless broadband and 5G, some localities are erecting multiple barriers to new and upgraded wireless deployment. These barriers frustrate and deter investment in wireless networks and can suppress new competition and the benefits it brings by deterring new entrants.

Laws, regulations, and practices that impede deployment warrant immediate Commission action because they threaten the deployment of broadband and, soon, 5G networks that are needed to provide advanced services. In its prior comments and reply comments in WT Docket No. 16-421,¹² which are attached hereto and incorporated by reference, CTIA submitted numerous examples of these barriers. Other parties submitted dozens more. The record demonstrates that these barriers have been erected in jurisdictions across the country, and take many forms. Some directly block new service through moratoria, outright prohibitions on

towers to include thousands of densely-deployed small cells, operating at lower power.”); Statement of Commissioner Mignon Clyburn, *Wireline NPRM/NOI* at 3328 (“The time is ripe for opening up pole attachment reform, for taking a look at how we can work with local governments to remove barriers to deployment, and for generally evaluating how we can further streamline processes for rolling out new services.”); Statement of Commissioner Michael O’Rielly, *Wireless NPRM/NOI* at 3388 (“The Commission can continue to release spectrum into the marketplace, but wireless services only become a reality if the infrastructure is in place to deliver them to the American consumer.”).

¹² *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, 31 FCC Rcd 13360 (2016); Comments of CTIA, WT Docket No. 16-421 (filed Mar. 8, 2017) (“CTIA PN Comments”); Reply Comments of CTIA, WT Docket No. 16-421 (filed Apr. 7, 2017) (“CTIA PN Reply Comments”).

facilities, failures to act on permit applications, and interminable delays that can extend more than a year. Other barriers take the form of onerous conditions and restrictions that make deployment far more difficult and costly, such as detailed site design requirements, location restrictions, minimum site separation rules, and burdensome showings of the need for each facility, type of facility, or technology. Many jurisdictions impose exceedingly high charges in the form of upfront application fees, annual rental fees, or both, that make deployment cost-prohibitive. And frequently, these barriers and requirements were not imposed on other ROW users, thus discriminating against wireless providers and new entrants. Since CTIA filed its previous comments, its members have seen no lessening of these barriers.

IV. THE COMMISSION SHOULD TAKE MULTIPLE ACTIONS TO STRENGTHEN ITS SHOT CLOCKS TO PREVENT DELAYS.

As a first step toward updating its infrastructure siting processes, the Commission should (1) adopt a “deemed granted” remedy for applications that are not processed within the time periods set by the siting review “shot clocks,”¹³ and (2) modify and strengthen its current shot clocks to make them more effective in preventing unreasonable siting delays, as proposed in the *Wireless NPRM/NOI*.¹⁴

Adoption of the Section 332(c)(7) shot clocks in 2009 helped expedite wireless deployment,¹⁵ but the shot clocks do not reflect the evolution of the industry toward small cells, which warrants modifying the timelines that are now more than seven years old. Moreover, the wireless industry’s experience with the shot clocks has demonstrated that they often fail to

¹³ *Wireless NPRM/NOI* ¶ 9

¹⁴ *Id.* ¶ 18.

¹⁵ *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 (2009), *aff’d sub nom. City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, 133 S. Ct. 1863 (2013) (“Shot Clock Declaratory Ruling”).

E. The Commission Should Allow Providers to Submit Applications for A Group of Similar Facilities.

The Commission asks whether it should adopt different shot clocks for localities to review and act on (1) different types of wireless facilities based on the height or other characteristics of the proposed facilities, or (2) applications for multiple facilities (what it refers to as “batch” processing).⁴⁰ The Commission should not adopt additional shot clocks for facilities that differ in terms of height. Doing so would require it to draw additional, potentially arbitrary distinctions, which would add unnecessary complexity to the existing shot clocks without helping to streamline approvals. For example, what heights would trigger longer (or shorter) shot clocks? How many different time periods would be warranted? What would each be based on?

The Commission should, however, establish a process to allow providers to submit applications for similar facilities in batches, because it will make the review process more efficient for both providers and reviewing government agencies. Small cell deployments are typically planned for multiple, closely-spaced, interdependent sites to ensure that coverage and service quality are optimized. Reviewing agencies would also benefit from batch processing because small cell deployments typically involve identical or very similar equipment in a discrete area that can be reviewed as a group (for example, the same antenna design may be installed on ten poles of similar height along a single street). Moreover, in the event the agency has issues with multiple or all facilities within a single application, those may be resolved for all sites together. For these reasons, batch processing will speed deployment.

⁴⁰ *Wireless NPRM/NOI* ¶ 18.

There is, however, no need for the Commission to establish different shot clocks for batch processing of similar facilities, because reviewing agencies' workloads are actually reduced by batch applications; reviewing, for example, ten sites within a single application is more efficient than reviewing ten individual applications. As numerous parties pointed out in WT Docket No. 16-421, attempting to set a variety of shot clocks would also require the Commission to draw fine distinctions, such as how many sites would trigger the different time periods and how many different time periods should be created, which would create unwarranted confusion and complexity without speeding deployment.⁴¹ For these reasons, the shot clocks applicable to batched applications should be the same as for individual applications.

In sum, the Commission should shorten the overall shot clock periods to 60 and 90 days, provide for voluntary batch application processing within those shot clock periods, and ensure those time periods effectively streamline siting deployment by adopting the deemed granted remedy for all siting reviews that are not completed within those time periods. And it should clarify that the shot clocks apply to ROW access, to municipal-owned ROW structures, and to the entire local agreement and permitting process.

⁴¹ CTIA PN Reply Comments at 22; *see also* Comments of Verizon, WT Docket No. 16-421, at 27 (filed Mar. 8, 2017) ("Verizon PN Comments"); Comments of Crown Castle International Corp., WT Docket No. 16-421, at 37-38 (filed Mar. 8, 2017) ("Crown Castle PN Comments"); Comments of Sprint Corporation, WT Docket No. 16-421, at 43-44 (filed Mar. 8, 2017) ("Sprint PN Comments").

V. THE COMMISSION SHOULD INVOKE ITS AUTHORITY TO INTERPRET SECTIONS 253 AND 332 TO REMOVE BARRIERS TO BROADBAND DEPLOYMENT.

A. A Declaratory Ruling Will Provide All Parties With Needed Guidance and Speed Needed New Facilities.

A principal objective of the Telecommunications Act is to promote the deployment of new and expanded telecommunications services.⁴² Section 253 implements that objective by prohibiting state or local laws or regulations that “may prohibit or have the effect of prohibiting” telecommunications services, which includes both wireless or wireline services;⁴³ Section 332 contains similar language to promote “personal wireless service facilities.”⁴⁴ At their core, Sections 253 and 332 share the same objective: to encourage deployment and remove barriers to providers’ ability to do so.

The Commission and courts have applied Sections 253 and 332 to adjudicate the validity of specific laws, regulations, or local agency decisions.⁴⁵ But the Commission has not to date interpreted these provisions to proactively address the many regulatory obstacles to wireless broadband deployment demonstrated in the record in WT Docket No. 16-421. And courts necessarily adjudicate only the specific controversy presented to them. Moreover, a number of judicial decisions reviewing denials of specific wireless facilities applications address whether the locality can require the applicant to demonstrate a coverage gap or other need, or to show that

⁴² See *Wireless NPRM/NOI* ¶ 5 (citing Telecommunications Act of 1996, S. Rep. 104-230, at 1 (Feb. 1, 1996) (Conf. Report) (“Congress enacted the Telecommunications Act of 1996 as a ‘pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans.’”)).

⁴³ 47 U.S.C. § 253(a).

⁴⁴ 47 U.S.C. § 332(c)(7)(B)(i).

⁴⁵ See, e.g., *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 (2009), *aff’d sub nom. City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, 133 S. Ct. 1863 (2013).

the site is the “least intrusive” location.⁴⁶ Given the coverage achieved by the wireless industry, it is inappropriate to require any such showing, and these requirements can block wireless providers from making the upgrades to their networks needed to offer advanced services.

The Commission should issue a declaratory ruling, as outlined below, that interprets Sections 253 and 332 consistent with their common language and purpose. This ruling will foster the deployment of broadband infrastructure. It will provide clarity and certainty to providers and localities, which will forestall disputes that delay deployment and consume all parties’ resources, and provide expert agency guidance to the courts.

B. The Commission Should Resolve Conflicting Caselaw and Confirm that Section 253(a) Prohibits Laws and Practices that Impose Substantial or Discriminatory Barriers That Thereby Limit Providers From Competing in a Fair and Balanced Regulatory Environment.

In its 1997 *California Payphones Order*, the Commission declared that a law “may prohibit or have the effect of prohibiting” service, and thus violates Section 253(a), if it “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”⁴⁷ Although some laws (*e.g.*, moratoria or undergrounding ordinances) block deployment outright, others impose regulations or fees that make it more economically difficult for new entrants to compete.⁴⁸ The *California Payphones*

⁴⁶ See, *e.g.*, *Wireless NPRM/NOI* ¶ 91 (citing *Sprint Spectrum, LP v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999); *APT Pittsburgh Ltd. P’ship v. Penn Township*, 196 F.3d 469, 480 (3d Cir. 1999); *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1056-57 (9th Cir. 2014); *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995-99 (9th Cir. 2009)).

⁴⁷ *California Payphone Association Petition for Preemption of Ordinance No. 576NS of the City of Huntington Park, California*, Memorandum Opinion and Order, 12 FCC Rcd 14191, 14195, 14206 (1997) (“*California Payphone Order*”).

⁴⁸ CTIA PN Reply Comments at 8-9.

Order prohibited those ordinances as equally inimical to the language and purpose of Section 253(a).⁴⁹

Some courts have adopted the Commission’s interpretation, but others have deviated from it, asserting a far narrower reading of Section 253(a) and deciding that the law or regulation must explicitly or actually prohibit service to be an unlawful barrier.⁵⁰ The split has sowed uncertainty over the respective rights of providers and localities, which only generates additional litigation and deployment delays.

The Commission should squarely address and resolve that uncertainty. It should confirm its longstanding interpretation of Section 253(a) in the *California Payphones Order* and reiterate that this provision makes unlawful any law or regulation that materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment. The Commission should confirm that this standard captures not only regulations that actually prohibit service, but also those that “effectively prohibit” service by imposing substantial barriers to deployment. As discussed in more detail below,⁵¹ such barriers include restrictions or requirements that discourage deployment by increasing costs or imposing other obligations, or by discriminating against a provider by subjecting it to restrictions, fees, or requirements that were not imposed on other providers. Such one-sided regulations are antithetical to a “fair and balanced legal and regulatory environment.” They injure consumers directly by deterring deployment of competing providers, thus denying consumers the price and service benefits that only competition can create.

⁴⁹ See *California Payphone Order*.

⁵⁰ See *Wireless NPRM/NOI* ¶ 91, n.176 (citing *Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571, 578 (9th Cir. 2008) (en banc); *Level 3 Commc’ns, L.L.C. v. City of St. Louis*, 477 F.3d 528, 532–33 (8th Cir. 2007)).

⁵¹ See *infra* Section V.D.

C. The Commission Should Resolve Conflicting Caselaw and Rule that Section 332(c)(7) Bars Localities from Requiring a Showing of a Gap in Coverage or Other Business Need for a Particular Site or Technology.

The Commission should also rule that Section 332(c)(7) does not allow localities to require as a condition for approving a wireless facility that the applicant demonstrate the facility, or type of facility or technology, is necessary to fill a geographic “gap” in coverage or that it is the “least intrusive means” to provide coverage. Some courts have interpreted Section 332(c)(7) to allow localities to impose these requirements but have issued diverse and conflicting rulings on how they apply in practice.⁵² The range of judicial rulings evaluating whether a facility fills a coverage gap or is the least intrusive means to secure coverage has generated enormous uncertainty as to how these tests apply to particular situations. Worse, these types of requirements have drawn localities and courts into second-guessing providers’ decisions as to how best to serve their customers. Local governments and courts should not be making technical assessments of how a provider can best provide service. That is the task of the provider. The most obvious evidence of this is that many local governments only recognize a gap in coverage as warranting additional deployment. However, the concept of determining the need for coverage is anachronistic, because wireless providers are generally deploying small cells, DAS, and other small facilities to increase capacity to handle the massive growth in traffic generated by the public’s exploding use of smartphones and other devices, not to expand coverage. For this reason, interpreting Section 332(c)(7) to permit a locality to block a new wireless site unless the provider can demonstrate the site is needed to cover an area where there is no coverage

⁵² *Wireless NPRM/NOI* ¶ 91, n. 178 (citing *Sprint Spectrum, LP v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999); *APT Pittsburgh Ltd. P’ship v. Penn Township*, 196 F.3d 469, 480 (3d Cir. 1999); *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1056-57 (9th Cir. 2014); *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995-99 (9th Cir. 2009)).

would effectively deny needed service—an interpretation that is flatly at odds with the purpose of that provision. The Commission should put an end to local government and judicial evaluations of whether a wireless provider has adequately shown a site is needed. It should interpret Section 332 to prohibit those evaluations and declare that localities may neither consider the need for service in their siting decisions nor require providers to prove that need.

D. The Commission Should Build on the Above Interpretations to Prohibit Specific Actions or Practices That Impede Deployment or that Discriminate Against Wireless Providers.

The Commission recognizes that Sections 253 and 332 have been interpreted by the courts in a variety of ways, and asks whether it should supply additional guidance on how to apply these statutory mandates to specific types of laws, regulations, or other governmental restrictions.⁵³ Although it is important that the Commission announce interpretations of Sections 253 and 332 that will effectuate those provisions and resolve uncertainty resulting from disparate court decisions, it is equally important that it apply those interpretations now to address the legality of specific local siting practices.

Announcing “guideposts” as to practices that violate Sections 253 and/or 332 will provide needed certainty and clarity to the industry and localities, head off disputes, and provide practical guidance to courts that may be called on to adjudicate disputes over the application of these statutes. The Commission should declare that the following actions and requirements are unlawful:

Express and *de facto* moratoria. Some localities have imposed siting moratoria that block wireless deployment.⁵⁴ Although some claim they need time to develop regulations

⁵³ *Wireless NPRM/NOI* ¶¶ 88-91.

⁵⁴ CTIA PN Comments at 12 (providing five examples of express and *de facto* moratoria); CTIA PN Reply Comments at 14; Comments of Mobilitie, LLC, WT Docket No. 16-421, at 10-12 (filed Mar. 8,

governing small cell deployments, that justification does not warrant the indefinite, open-ended moratoria that CTIA’s members are encountering.⁵⁵ For example, the record in WT Docket No. 16-421 showed:

- Three localities in Florida enacted moratoria—two of the laws were enacted in 2014 and the other in September 2016.⁵⁶
- A locality in Iowa issued moratorium against small cells in August 2016.⁵⁷
- A locality in California passed a moratorium in August 2016.⁵⁸
- A locality in Minnesota passed a moratorium prohibiting wireless and small cell/DAS systems in August 2016.⁵⁹
- A locality in Washington passed a moratorium in September 2016 that is expected to remain in place until August 2017 or later.⁶⁰

The Commission previously held that moratoria do not toll the running of Section 332 shot clocks, but it did not ban all moratoria under Section 332.⁶¹ Moreover, the Commission did

2017) (“Mobilitie PN Comments”); Initial Comments of Lighttower Fiber Networks, WT Docket No. 16-421, at 10 (filed Mar. 8, 2017) (“Lighttower Fiber Networks PN Comments”); Comments of Mobile Future, WT Docket No. 16-421, at 3-4 (filed Mar. 8, 2017) (“Mobile Future PN Comments”); *see also* *Wireless NPRM/NOI* ¶ 22; *Wireline NPRM/NOI* ¶ 102.

⁵⁵ *E.g.*, Karsten Burgstahler, *Council confirms Cell Tower Moratorium*, JOURNAL GAZETTE & TIMES COURIER (Nov. 10, 2014) (describing a “newly passed” moratorium on “new cellphone towers” in Charlestown, Illinois that will last “for at least six months.”); Kimberly Jordan, *Commissioners Vote On Cell Tower Moratorium*, LEBANON DEMOCRAT (Dec. 7, 2015) (describing a “moratorium on new cell tower applications” in Lebanon, Tennessee for a period “up to 365 days”); BJ Bangs, *Eustis Cell Tower Public Hearing Heated, Moratorium Extended*, THE IRREGULAR (Oct. 31, 2012) (discussing a “moratorium on cell towers” within the city of Eustis, Maine that could be extended indefinitely “if needed”).

⁵⁶ Mobilitie PN Comments at 10-11.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Wireless NPRM/NOI* ¶ 22 (citing *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12971 ¶ 265 (2014)).

not there address the legality of moratoria under Section 253(a). It now asks whether it should “take any additional actions necessary, such as issuing an order or declaratory ruling providing more specific clarification of the moratorium ban or preempting specific State or local moratoria.”⁶² It should rule that any ordinance or regulation that expressly blocks processing of siting applications is unlawful under Sections 253(a) and 332(c)(7)(B)(i), both of which outlaw regulations that have the effect of prohibiting wireless service.

Although laws and regulations that expressly prohibit deployment clearly violate Section 253(a), *de facto* moratoria, where localities do not enact an ordinance but instead freeze or decline to act on applications for wireless facilities, have the same harmful impact.⁶³ CTIA’s members have experienced localities that refuse to process applications, or that tell applicants to wait until the locality develops siting policies, without making any commitment as to whether, if ever, they will do so. There is no reason why localities cannot act on applications for individual sites while they are also developing general siting policies. The Commission should thus also rule that *de facto* moratoria through failures to act are equally unlawful.

Undergrounding requirements. Some jurisdictions require facilities to be placed underground. Undergrounding ordinances are obviously not feasible for wireless networks, which require over-the-air transmission.⁶⁴ These ordinances operate as *de facto* prohibitions on wireless service and discriminate against wireless technologies, violating Sections 253(a) and

⁶² *Id.*

⁶³ CTIA PN Reply Comments at 8; Lighttower Fiber Networks PN Comments at 10; Mobile Future PN Comments at 3-4; Mobilite PN Comments at 11-12.

⁶⁴ See *Wireless NPRM/NOI* ¶ 98 (“Obviously, it is impossible to operate wireless network facilities underground. Undergrounding of utility lines seems to place a premium on access to those facilities that remain above ground, such as municipally-owned street lights.”).

332(c)(7)(B)(i).⁶⁵ Undergrounding mandates are particularly arbitrary to the extent that cities have poles in their ROWs on which small cells can be installed without impeding the flow of traffic or pedestrians. Nothing in these provisions justifies cities in restricting deployment through undergrounding requirements. To the contrary, Congress intended to preserve localities' authority to impose "time, place and manner" regulation to "manage" deployment, not bar it entirely.⁶⁶ For example, the record in WT Docket No. 16-421 showed:

- A western city required equipment cabinets to be placed underground, with few exceptions.⁶⁷
- A city in California required all facilities to be underground and would not allow for the installation of new poles or small cells on existing poles.⁶⁸
- Two localities in Michigan required all facilities to be installed underground and would not allow Mobilitie to deploy any small cells.⁶⁹

Denial of access to municipal infrastructure in ROWs. The Commission asks whether it should address the practice undertaken by some localities prohibiting access to their own

⁶⁵ CTIA PN Comments at 26-27; CTIA Reply Comments at 8; Sprint PN Comments at 20-21; WIA PN Comments at 70; Verizon PN Comments at Appendix A; Comments of AT&T, WT Docket No. 16-421, at 10-11 (filed Mar. 8, 2017) ("AT&T PN Comments") (citing *Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571, 580 (9th Cir. 2008)).

⁶⁶ See, e.g., Town of Edgewood, New Mexico Ordinance 2003-11 ("All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town."); City of Gadsden, Alabama Ordinance 2015/015 ("All utilities at a facility site shall be installed underground and in compliance with all laws."); see also Lu Ann Franklin, *State vs. Local Control of Cell Tower Placement*, NORTHWEST INDIANA TIMES (Apr. 29, 2017), http://www.nwitimes.com/news/local/state-vs-local-control-of-cell-tower-placement/article_53643ad9-9e66-5abf-bd14-ff91586d9763.html (discussing Town of Schereville, Indiana - Ordinance #1904, which established "an underground and buried utility district," and Town of Dyer, Indiana - Ordinance #2017-03, which established an "underground and buried utilities district." The latter will be in effect "in all areas of the Town.").

⁶⁷ Verizon PN Comments at Appendix A.

⁶⁸ Mobilitie PN Comments at 12.

⁶⁹ *Id.* at 13.

facilities in ROWs.⁷⁰ The record provides examples of such prohibitions. For example, one California community refused to allow any small cell installations on municipal infrastructure in ROWs, and a Florida community prohibited any small cell installations on municipal light poles.⁷¹ The Commission should declare that these restrictions are unlawful barriers to deployment. Neither Sections 253 nor 332 empower localities to deny access to their facilities in ROWs. Conversely, allowing localities to deny access would undermine those provisions, which seek to *promote* ROW access. Moreover, as noted above, localities' management of their ROWs is a regulatory function and thus must comply with the requirements of Sections 253 and 332.⁷²

Requirements to prove a coverage gap or other business need for a site or technology. As noted above, compelling a wireless provider to prove a site is needed for geographic network coverage is improper and has no place in current siting policy.⁷³ Ensuring customers can obtain adequate wireless services requires not merely coverage but sufficient network capacity; denying a new site can thus also prevent service or degrade it by slowing data speeds or increasing latency. Yet there are, for example, multiple cities in California that require wireless providers to demonstrate gaps in service coverage as a condition of ROW access.⁷⁴ Other localities compel providers to demonstrate a business need for the facility, or defend the

⁷⁰ See *Wireless NPRM/NOI* ¶ 96.

⁷¹ CTIA PN Comments at 14.

⁷² See *supra* Section IV.C.

⁷³ CTIA PN Reply Comments at 25-26; see also Comments of Competitive Carriers Association, WT Docket No. 16-421, at 35-37 (filed Mar. 8, 2017) (“CCA PN Comments”); Comments of NTCH, Inc., WT Docket No. 16-421, at 1 (filed Mar. 8, 2017) (“NTCH PN Comments”); Comments of NTCA—The Rural Broadband Association, WT Docket No. 16-421, at 5 (filed Mar. 8, 2017) (“NTCA PN Comments”).

⁷⁴ CTIA PN Comments at 14, Reply Comments of T-Mobile USA, Inc., WT Docket No. 16-421, at 11-12 (filed Apr. 7, 2017) (“T-Mobile PN Reply Comments”).

type of equipment or the technology the provider seeks to deploy. Localities have no legal right to compel providers to demonstrate a business need for a particular site or to justify the type of equipment or the technology chosen.⁷⁵ These mandates improperly intrude on providers' technical judgement as to how best to serve their customers. The Commission should declare that any requirements to prove a site is needed to fill a coverage gap or meet any business need, or to justify the equipment or technology to be deployed, violate Sections 253(a) and 332(c)(7)(B)(i). Beyond violating these provisions, regulations that police the technology or service the provider seeks to deploy are clearly preempted by the Commission's plenary jurisdiction under Title III of the Communications Act to regulate the licensing and operation of radio facilities.⁷⁶

Distance separation requirements. Some localities require wireless facilities to be at least a certain distance apart, even from competing providers' facilities. For example, one city in Florida limited the number of small cell installations to 13 sites in one square mile regardless of the provider. There are also several Illinois jurisdictions that imposed minimum distance requirements of up to 1,000 feet between small cell installations, even when the installations serve different providers.⁷⁷ These requirements effectively block efficient network design and impose arbitrary limits on where sites can be built. As with the "business need" regulations discussed above, these requirements unlawfully intrude on a provider's rights under the Act to deploy and operate radio facilities. Moreover, they clearly discriminate against new providers and violate Sections 253 and 332 for that reason as well. The first provider in a locality can

⁷⁵ CTIA PN Reply Comments at 25-26; *see also* CCA PN Comments at 35-37; NTCH PN Comments at 1; NTCA PN Comments at 5.

⁷⁶ 47 U.S.C. § 303.

⁷⁷ CTIA PN Comments at 14; AT&T PN Comments at 12-13.

deploy sites anywhere subject to the locality's site separation rules, but subsequent providers will be constrained not only by those rules but by where incumbent providers built their sites, making its deployment far more difficult if not impractical. As long as the provider complies with safety-related and similar requirements for deployment, it should be able to deploy cells to meet its network needs, regardless of the proximity to other sites.

Discriminatory requirements. The clear command of both Sections 253 and 332 is to prohibit localities from imposing differing obligations on similarly situated providers, or on new entrants but not on incumbents. Some localities impose requirements on wireless providers for use of ROWs that they do not impose on others, for example, utilities that install wireless monitoring devices along ROWs. Some discriminate against wireless providers by requiring them to meet multiple, arbitrary requirements, such as a franchise agreement, zoning approvals (typically following the delay and expense of public hearings), and permits for individual sites. The record in WT Docket No. 16-421 contains numerous examples of such discriminatory regulations and practices. One provider reported that nearly 50 communities imposed different standards on it compared to other ROW users, even though those other users deployed similarly sized or even larger facilities.⁷⁸ The Commission correctly states that singling out providers for more processes or obligations than other ROW users can violate Sections 253 and 332.⁷⁹ It should prohibit such discrimination.

Unbounded subjective aesthetic restrictions. Some localities grant reviewing agencies discretion to deny a siting application based on vaguely worded or subjective visual or other

⁷⁸ See ExteNet PN Comments at 9; *see also, e.g.*, T-Mobile PN Reply Comments at 10 (listing examples of discriminatory practices in other localities).

⁷⁹ *Wireless NPRM/NOI* ¶¶ 97, 99.

aesthetic interests.⁸⁰ As the Commission notes, consideration of the aesthetic impact of a facility is not inherently improper.⁸¹ However, small cells and DAS systems are designed to blend in to the streetscape with minimal if any visual impact. In any event, a “we know it when we see it” standard is no standard at all, because it unlawfully fails to supply sufficient advance notice to providers as to the restrictions they must build to. Unbounded, subjective limits also cannot be justified as related to a locality’s interest in managing the use of the ROW to address traffic, safety, or related concerns. The Commission should deem such regulations unlawful and require localities that want to consider the visual impact of facilities to craft objective rules.

Procurement requirements. The Commission also asks whether it should address local requirements that compel providers to purchase or use muni-owned facilities, or to furnish services to the locality for free or at a discount.⁸² The Commission should deem that these requirements are unlawful barriers to service. They are irrelevant to a locality’s legitimate interest in managing the use of its ROWs. Rather, they improperly leverage localities’ monopoly control of ROW access to generate additional revenues.

VI. THE COMMISSION SHOULD PROHIBIT SITING FEES THAT ARE UNREASONABLE OR THAT DISCRIMINATE AMONG PROVIDERS.

In WT Docket No. 16-421, the Commission compiled an extensive record that demonstrates localities are imposing excessive fees on wireless providers seeking to construct needed facilities, and those fees are impeding deployment. Localities often request multiple separate payments, including up-front application fees, recurring site fees, charges based on a

⁸⁰ CTIA PN Reply Comments at 8-9; CTIA PN Comments at 12-14; AT&T PN Comments at 4, 15-16; Crown Castle PN Comments at 12-13; CCA PN Comments at 29-30.

⁸¹ *Wireless NPRM/NOI* ¶ 92.

⁸² *Wireline NPRM/NOI* ¶ 106.

percentage of the provider's revenues, and more.⁸³ High per-site fees are particularly burdensome because providers may need to deploy dozens or even hundreds of small cell sites in an area to provide sufficient coverage and capacity.⁸⁴ And fees based on some percentage of gross revenues tax providers without regard to ROW use. For example, the record in WT Docket No. 16-421 showed:

- A city in the northeast required fees of \$6,000 per year for attachments to third-party poles in the ROW.⁸⁵
- A city in the west charged an annual fee of \$2,300 per pole in the ROW.⁸⁶
- A city in California adopted an ordinance recommending a baseline annual rent of \$10,800 per node site.⁸⁷
- A town in New York required an escrow fee of \$3,000 per new small cell pole and \$1,000 per collocation for "consultant review."⁸⁸
- A county in Virginia required a \$15,000 application fee per utility pole.⁸⁹

The Commission now revisits this issue more broadly, asking whether governmental fees are not "fair and reasonable" as Section 253(c) requires.⁹⁰ It asks whether it should prohibit excessive fees and require them to be based on governmental costs. In WT Docket No. 16-421, the wireless industry uniformly urged the Commission to interpret Section 253(c) to require that

⁸³ See CTIA PN Reply Comments at 10; CTIA PN Comments at 14; Crown Castle PN Comments at 11-14; AT&T PN Comments at 21; Sprint PN Comments at 25-26; CCA PN Comments at 16.

⁸⁴ CTIA PN Comments at 15-16.

⁸⁵ Verizon PN Comments at Appendix A.

⁸⁶ *Id.*

⁸⁷ Crown Castle PN Comments at 11.

⁸⁸ *Id.* at 13.

⁸⁹ *Id.* at 14.

⁹⁰ See *Wireline NPRM/NOI* ¶¶ 104-105.

fees for facilities within the ROW be limited to a locality's costs incurred in issuing permits and managing ROWs.⁹¹ It should issue that ruling, and also address the application of Sections 253(a) and 332(c)(7) to fees for facilities to be located outside of ROWs.

The Commission has the authority to take these actions related to Sections 253(a), 253(c), and 332(c)(7). Sections 201(b) and 303(r), as well as other provisions of the Communications Act, empower the Commission to issue declaratory rulings or adopt rules to implement the substantive provisions of the Act, and the courts have repeatedly upheld the Commission's authority to act either through a declaratory ruling or by rule.⁹²

A. The Commission Should Clarify That “Fair and Reasonable” ROW Fees Under Section 253(c) Must Be Cost-Based.

Section 253(c) allows localities to impose charges with respect to facilities to be located in the ROW that constitute “fair and reasonable compensation.”⁹³ The Commission can and should interpret that language to mean that localities may recover the costs to review and issue siting permits, supervise the installation of facilities that impact rights of way, and ensure those

⁹¹ CTIA PN Reply Comments at 2, 17-18; Comments of Globalstar, Inc., WT Docket No. 16-421, at 14 (filed Mar. 8, 2017); Lightower Fiber Networks PN Comments at 27, 29; Mobile Future PN Comments at 6; Mobilite PN Comments at 17; Sprint PN Comments at 23, 33, 36-37; WIA PN Comments at 69; AT&T PN Comments at 17, 20-21; Verizon PN Comments at 11.

⁹² See, e.g., *City of Arlington*, 668 F.3d at 241, 249 (affirming Commission's authority to adopt rules or issue a declaratory ruling to implement Section 332); *Central Texas Cooperative Inc. v. FCC*, 402 F.3d 205, 210 (D.C. Cir. 2005) (affirming its authority to issue declaratory rulings).

⁹³ 47 U.S.C. § 253(c).

over . . .” poles that are regulated by the states. That language is clearly the language of exception—making clear that the agency has no authority where states regulate pole attachments and meet the other statutory requirements. If Congress wished to adopt a categorical exclusion from poles owned by municipalities, it would have done so in Section 224(c) or another similarly worded provision expressly limiting agency authority or jurisdiction.¹²⁶

The word “utility” in Section 224(a)(1) is better read, in the context of the statutory structure and purpose, as exempting poles only from the rules the Commission is expressly required to regulate in Section 224(b). Congress could not have intended to limit agency authority in an oblique way, particularly when the true exceptions in the statute use the language of exception clearly and unambiguously in Section 224(c). Accordingly, Section 224 did not expressly exempt poles owned by municipalities from any Commission jurisdiction, nor did the definition in Section 224(a)(1) rob the Commission of its ability to take lawful actions consistent with its broader statutory authority to regulate interstate telecommunications by wire or radio and its authority or ensure timely deployment of broadband facilities.

Using well-settled canons of statutory construction, it is clear that poles owned by municipalities are excluded only from the specific directives in Section 224, but not from the Commission’s general authority over telecommunications, or any ancillary authority it has under Sections 4(i), 201(b), and 303(r). Municipal poles are certainly not excluded from the authority the Commission has under Section 253 to preempt state or local laws that prohibit or have the effect of prohibiting telecommunications services. Nor could the definition of “utility” in Section 224 preclude the exercise of grants of authority that post-date Section 224. Section 253

¹²⁶ Congress generally acts intentionally when it uses particular language in one section of a statute, but omits it in another. *Russello v. United States*, 464 U.S. 16, 23 (1983).

clearly gives the Commission authority over poles, to the extent that a state or local law or regulation contravenes the prohibition in 253(a). In addition, if Section 706 is an independent grant of authority, as the D.C. Circuit has held, the Commission could reach pole attachments, regardless of ownership, if the matter threatened investment and deployment of broadband facilities.¹²⁷

The legislative history of Section 224 is consistent with the statutory interpretation outlined above. Congress was less concerned about municipalities because it assumed these types of utilities would welcome cable services to their communities and had little incentive to charge high rates or extract unreasonable terms and conditions.¹²⁸ In the legislative history, the Commission itself suggested that state and local entities were in a better position to determine appropriate rates, terms, and conditions for the poles they owned. At the time, there was no evidence of abuse of monopoly power by municipalities.

Much has changed since Congress enacted Section 224. Today, telecommunications and cable service providers consistently face abuses by municipalities, including abrupt contract terminations followed by unilateral rate increases of several times the prior rate. These unilateral rate increases are frequently made without any attempt at showing a cost-based justification. Providers seeking to attach to pole tops complain of being denied access, or of being offered access at rates so high as to effectively deny access altogether.¹²⁹ Some states have attempted to

¹²⁷ See *Verizon v. F.C.C.*, 740 F.3d 623, 637 (D.C. Cir. 2014).

¹²⁸ See S. REP. NO. 95-580, at 18 (1977); 124 CONG. REC. S963-70 (daily ed. Jan. 31, 1978) (statement of Sen. Hollings). The reasoning was that, unlike private utilities, municipal utilities are closer to “grassroots level of government” and are already required to act with the interests and needs of their customers and constituents in mind.

¹²⁹ See, e.g., *P.R. Tel.Co. v. Municipality of Guayanilla*, 450 F.3d 9 (1st Cir.2006) (challenging ordinance charging five percent of gross revenue for use or physical occupancy of rights of way controlled by municipality).

resolve these issues through the enactment of statutes, but even these measures have had mixed results.¹³⁰ And, since 1978, Congress has enacted statutes with broader mandates encouraging competition and deployment and granting the Commission broader powers to achieve these important goals. These later-enacted statutes provide the agency with broader authority, and here, there is ample evidence of the need for intervention.¹³¹

The history of Section 224, its text, its purpose, and subsequent grants of authority to the Commission all point in one direction—the Commission does have authority to address impediments to the provision of telecommunications services caused by municipal-owned poles. As discussed in greater detail in Sections V and VI herein, Section 253 provides the Commission with ample authority to address state and local laws that impede access to poles or apply discriminatory rates or fees to pole attachments.¹³² The Supreme Court has held that the Commission has the power to interpret the scope of its own statutory authority, if ambiguity is found in the statute.¹³³ To the extent the Commission perceives any ambiguity in jurisdiction

¹³⁰ See, e.g., N.C. GEN. STAT. § 62-350 (requiring municipalities to allow communications service provider to utilize its poles, ducts, and conduits at just, reasonable, and nondiscriminatory rates, terms, and conditions adopted pursuant to negotiated or adjudicated agreements); *Memphis Light, Gas & Water Div. v. Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc.*, No. 2:14-cv-02713, 2016 WL 8376738, at *2–3 (W.D. Tenn. Mar. 30, 2016) (challenging unilateral pole attachment rates increase to \$34.37 when prior rate was \$8.45 and ordinance fixed rate at \$11.00); *Time Warner Entm't Advance/Newhouse P'ship v. Town of Landis*, No. 10 CVS 1172, 2014 WL 2921723, at *13 (N.C. Sup. Ct. June 24, 2014); *City of Chattanooga, Tenn. v. BellSouth Telecommunications, Inc.*, 1 F. Supp. 2d 809, 811 (E.D. Tenn. 1998) (declaratory action seeking judgment on rights-of-way ordinance that imposed franchise fee of five percent of gross revenues and required franchisees to provide the City an exclusive underground duct, pole space, dark fiber optic fibers, and engineering assistance). See also Complaint, *NextG Networks of CA v. City of Carlsbad, et al*, Case No. 3:06-CV-00650, Dkt. No. 1 at ¶ 74 (filed Mar. 23, 2006) (seeking relief from pole attachment fees of \$12,000 per pole per year).

¹³¹ See *United States v. Fausto*, 484 U.S. 439, 453 (1988) (“[The] classic judicial task of reconciling many laws enacted over time, and getting them to ‘make sense’ in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute.”).

¹³² As stated above, Congress generally acts intentionally when it uses particular language in one section of a statute, but omits it in another. *Russello v. United States*, 464 U.S. 16, 23 (1983).

¹³³ *City of Arlington, Tex. v. F.C.C.*, 133 S. Ct. 1863, 1874 (2013).

over poles owned by municipalities, it should exercise its prerogative to effectuate the core purpose of the statute.

B. The Commission Should Amend its Regulations to Cover Poles Owned by Municipalities.

Based on the Commission's statutory authority and ancillary authority detailed above, the Commission should amend its existing regulations that govern investor-owned utilities, including complaint processes, to cover poles owned by municipalities. This result would be an appropriate means of harmonizing regulations to ensure both fairness and effectiveness. As discussed above, past justifications for excluding municipalities from any Commission pole attachment regulations no longer apply, and the Commission has a strong mandate to remove barriers that impede and delay network expansion. It is undeniable that poles owned by municipalities play an integral role in the nationwide telecommunications network. Providers seeking to attach to these poles must have some assurance that rates are non-discriminatory and cost-based, and that terms and conditions of attachment are just and reasonable. They should also have a forum within the Commission when pole attachment disputes arise.

If the Commission decides to interpret its authority more restrictively, the Commission should exercise its authority under Section 253 to adopt guidelines to govern municipal pole attachments. At a minimum, such guidelines should declare that municipal rates that are consistent with the federal rate calculation are presumptively reasonable, and further, that any municipal pole attachment rate must be cost-based. Municipalities must be prohibited from charging attachers percentages of gross revenues. The Commission should also harmonize shot clock deadlines to ensure attachment agreements for municipal-owned poles are signed and approvals for attachments are received within the 60-day timeline for collocation. Attachers

should also have their choice of fora where applications are not granted within the 60-day timeline, as proposed above in Section IV.C.

IX. CONCLUSION.

Consistent with the goals of promoting and streamlining wireless broadband deployment and removing obstacles to that deployment, the Commission should take the following actions: (1) speed deployment by alleviating delays in the local approval process; (2) adopt interpretations of Sections 253 and 332 to achieve the objectives of those provisions; (3) declare that specific laws, regulations, and practices that impede or discourage deployment, or place discriminatory burdens on wireless providers, are unlawful; (4) require local government fees to be cost-based; (5) streamline the NEPA and NHPA processes by adopting exclusions for facilities that do not raise environmental issues or adversely affect historic properties; and (6) adopt additional measures to ensure timely access to poles at reasonable rates, terms, and conditions.

Respectfully submitted,

/s/ Brian M. Josef

Brian M. Josef
Assistant Vice President, Regulatory Affairs

Thomas C. Power
Senior Vice President, General Counsel

Scott K. Bergmann
Vice President, Regulatory Affairs

Kara D. Romagnino
Director, Regulatory Affairs

CTIA
1400 Sixteenth Street, NW, Suite 600
Washington, DC 20036
(202) 736-3200

Dated: June 15, 2017

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
)	

COMMENTS OF CTIA

Thomas C. Power
Senior Vice President, General Counsel

Scott K. Bergmann
Vice President, Regulatory Affairs

Brian M. Josef
Assistant Vice President, Regulatory Affairs

Kara D. Romagnino
Director, Regulatory Affairs

CTIA
1400 Sixteenth Street, NW, Suite 600
Washington, DC 20036
(202) 736-3200

Dated: June 15, 2017

Attachment

I. INTRODUCTION AND SUMMARY.

Wireless broadband services are creating unprecedented opportunities for American consumers and businesses. They enable people to identify and pursue job opportunities, obtain education and training, secure government services, and stay connected with family and friends through video as well as voice, messaging, and email. And the next generation of wireless – 5G – promises even more advanced capabilities that will enable the Internet of Things, connected vehicles, and other new services to deliver additional benefits to American consumers, create jobs, and add billions of dollars to the U.S. economy. Speeding the rapid deployment to broadband and 5G is appropriately a Commission priority. Indeed, Chairman Pai recently announced the establishment of a Broadband Deployment Advisory Committee to recommend reforms to encourage and expedite broadband deployment across the country. CTIA urges the Commission to take steps to facilitate the build out of networks that support this connectivity.

5G will require dense wireless networks, deployment of hundreds of thousands of new small cells, and expanded backhaul and transport facilities to provide needed capacity and coverage. Rapid, affordable access to state and local ROWs and other locations is critical to the successful deployment of these services. This access is particularly important because of the signal propagation limits of the high-band radio spectrum that are viewed as an initial platform for 5G. High-band signals offer tremendous capacity but also travel short distances. Moreover, the backhaul and transport facilities required to connect small cells with core networks and provide customers with reliable Internet connectivity need to be located in ROWs.

The tremendous promise of 5G is, however, threatened by a growing web of local siting restrictions and requirements that delay, discourage, or outright block the new infrastructure needed to accommodate the public's growing demand. Many local requirements were adopted to regulate large macrocell towers and are not appropriately applied to small cell deployments,

given the fact that small cells are far less visually intrusive and that most can be installed on existing structures with no ground disturbance. Rather than remove or at least minimize these requirements, some localities are imposing *higher* barriers, *more* burdensome regulations, and *higher* charges. They are stalling deployment, declining to process permit applications, imposing long waiting periods, or telling wireless providers that they must wait indefinitely for the locality to develop a long-term plan for ROWs use (without committing that such use will ever be allowed). Some are effectively prohibiting the installation of facilities through moratoria, bans on upgrading existing facilities, or ordinances that require all telecommunications infrastructure to be placed underground. Some of those that do allow access are charging very high up-front access fees as well as recurring rents and other charges, deterring broadband investment and deployment. Of course, some localities are modifying their siting policies to embrace new wireless deployments, which CTIA commends. The Commission should take action, however, to ensure that reasonable policies are implemented in all localities.

CTIA agrees with the Public Notice that “the Commission has a statutory mandate to facilitate the deployment of network facilities needed to deliver more robust wireless services to consumers throughout the United States,” and that it has the “responsibility to ensure that this deployment of network facilities does not become subject to delay caused by unnecessarily time-consuming and costly siting review processes that may be in conflict with the Communications Act.”³

The Public Notice correctly states that Sections 253 and 332 of the Communications Act and Section 6409 of the Spectrum Act “are designed, among other purposes, to remove barriers to deployment of wireless network facilities by hastening the review and approval of siting

³ Public Notice at 13361.

applications by local land-use authorities.”⁴ These provisions reflect Congress’s recognition that expanding the reach and capacity of networks directly benefits the public and the economy. The Commission has both the authority and the responsibility to apply these provisions to foster the national policy goal of promoting ubiquitous, advanced, and affordable wireless services.

Consistent with this goal, CTIA urges the Commission to:

- **Declare that Section 253(a) prohibits regulations that inhibit or limit the ability of a wireless provider to compete.** The Commission held twenty years ago that a regulation “may prohibit or have the effect of prohibiting” service, and is thus unlawful under Section 253, if it “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” But some courts have interpreted Section 253 more narrowly, finding that to be unlawful the regulation must actually prohibit service. The Commission should remove the uncertainty resulting from these rulings and reaffirm its interpretation of Section 253 to prohibit laws that physically block wireless deployment as well as those that indirectly deter deployment by imposing requirements or charges that make it cost-prohibitive or economically difficult to offer service.
- **Declare that Section 253(a) prohibits moratoria.** Whether localities adopt an express moratorium, or refuse to act on siting applications through a *de facto* moratorium, Section 253 prohibits these barriers to service.
- **Declare that Section 253(a) prohibits a locality from requiring facilities to be placed underground or from preventing technology upgrades.** Such regulations in effect prohibit wireless broadband services.
- **Declare that Section 253(c) does not permit localities to impose charges for ROW access that exceed their incremental costs to manage the siting process and supervise use of ROWs, and/or discriminate among providers.** That section allows localities to obtain “fair and reasonable compensation” that is “competitively neutral and nondiscriminatory.” The Commission should declare these provisions to mean that fees must be no more than necessary to cover a locality’s actual costs to manage its ROWs and that localities must not impose different charges on different providers seeking similar ROW access.
- **Interpret Section 332(c)(7) to include a new 60-day shot clock for collocations not covered by Section 6409(a).** Collocations on non-tower structures that would otherwise be covered by Section 6409(a) but for the absence of an existing approved

⁴ *Id.*

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment	)	WT Docket No. 17-79
by Removing Barriers to Infrastructure)	
Investment)	
)	
Accelerating Wireline Broadband Deployment	)	WC Docket No. 17-84
by Removing Barriers to Infrastructure)	
Investment)	

COMMENTS OF EXTENET SYSTEMS, INC.

H. Anthony Lehv
Brian S. Kirk
Jay Noceto
Michael Hill
ExteNet Systems, Inc.
3030 Warrenville Road
Suite 340
Lisle, IL 60532
(630) 245-1905

June 15, 2017

1. Local Governments Discriminate Against DNS Facilities.

DNS providers are subject to discriminatory treatment by local governments.³⁹

ExteNet's survey bears this out: in 2015 and 2016, 49% of the surveyed communities subjected ExteNet to processes and standards that differed from those required of wireline providers and utilities in public ROWs, even though ExteNet's attachments are similarly-sized and impose no greater ROW management burden than their wireline or utility counterparts. Also, 17% of the surveyed communities refused to allow ExteNet to proceed under a standard rights-of-way permitting process, at least in part because ExteNet's facilities use an antenna. Again, this is not a legitimate basis for treating ExteNet's attachments differently than wireline or utility attachments that are the same size or larger.

Perhaps most egregious is the fact that ExteNet's facilities must often go through discretionary, lengthy and burdensome zoning processes, but other non-wireless attachers in the public ROW do not. As noted by the Wireless Infrastructure Association, "[i]t is essentially unheard of for other entities with facilities in the same rights-of-way to be subject to such zoning requirements. Wireline providers and electric companies installing on utility poles are generally either exempted from zoning altogether, or else, they are deemed to be 'permitted uses' in every zone.⁴⁰ Crown Castle has described the "real world" impact of such discrimination:

In most jurisdictions, an existing utility, including an incumbent telephone carrier, can place poles in the public right-of-way without any zoning review. Once those poles are installed, an affiliated wireless provider can often attach small wireless facilities – such as small cell nodes – with minimal or no scrutiny, thereby avoiding both the delays and costs experienced by other infrastructure providers. For providers such as Crown Castle that

³⁹ See, e.g., *Wireless NPRM/NOI* ¶ 97 (requesting comment on "any State or local regulations that single out telecom-related deployment for more burdensome treatment than non-telecom deployments that have the same or similar impacts on land use").

⁴⁰ WIA Public Notice Comments at 10 (citation omitted).

do not provide incumbent, wireline services to end users, however, the experience can be much different. In one central Pennsylvania city, for example, officials recently required Crown Castle to follow the zoning process normally reserved for new macro towers, even though other telecommunications providers only needed to obtain engineering permits. Although Crown Castle was able to obtain a special exemption for half its nodes, the added procedural hurdle resulted in a 3-4 month delay that the incumbent could have avoided.⁴¹

Discrimination is also manifest in the deployment restrictions local governments impose on DNS providers but not on other occupants of ROW poles. In ExteNet's experience, such restrictions have included (but are not limited to): minimum distances from residential buildings; minimum distances (*e.g.*, 300 or 500 feet) between small cell antennas; arbitrary limitations on equipment dimensions; screening, camouflage and tree planting requirements; submissions of "as-built" plans every year; prohibitions of new facilities within entire zoning classifications; restrictions on proximity to parks, schools and other specific uses; and submissions of a five-year plan to the local government every six months.⁴²

ExteNet has been prohibited from constructing new poles solely because it is facilitating provision of wireless service. And, some local governments insist that ExteNet cannot upgrade its facilities or change its equipment without having to go through the entire permit approval process all over again. Other local governments are trying to carve out selected areas within

⁴¹ Comments of Crown Castle International Corp., WT Docket No. 16-421, at 9 (filed Mar. 8, 2017) ("Crown Castle Public Notice Comments").

⁴² See WIA Public Notice Comments at 41-42 ("Repeatedly, WIA members encounter local governments that allow installation of telecommunications and other utility facilities on utility poles in the public rights-of-way subject only to permits that are granted on a ministerial basis, frequently 'over the counter.' Indeed, some cities require no permit whatsoever before installation on existing utility poles. Yet, those same communities refuse to apply the same rules if there is an antenna involved. Rather, when equipment is "wireless" in nature, those communities demand that "wireless" equipment on utility poles in the right-of-way be subject to myriad additional requirements and/or limitations, including discretionary aesthetic zoning permit requirements and limits on the ability to deploy in residential areas.") (citation omitted).

their jurisdictions that would be subject to stricter siting standards for DNS, even where the equipment deployed by ExteNet is the same in all areas.

The Commission correctly observes that “[u]ndergrounding of utility lines seems to place a premium on access to those facilities that remain above ground, such as municipally-owned street lights.”⁴³ Mandatory undergrounding of utility facilities materially inhibits DNS deployment in two respects. First, DNS deployments are inhibited where local governments prohibit ExteNet from installing new poles in “undergrounded” areas.⁴⁴ Second, mandatory undergrounding necessarily leaves DNS providers with fewer locations on which to install their facilities. This, in turn, typically results in substantial increases in the attachment fees local governments charge for access to existing above-ground facilities, which in turn substantially increases the overall cost of DNS deployment.

2. Localities Impose Restrictions on DNS Deployments that Have Nothing to Do with ROW Management.

Many local governments seek to regulate all aspects of wireless deployments under the guise of their residual authority under Section 253(c) to “manage the public rights-of-way.”⁴⁵ As discussed in greater detail below,⁴⁶ Section 253(c) authority is narrow in scope – it was not intended to be an opening for local governments to regulate all aspects of wireless deployments

⁴³ *Wireless NPRM/NOI* ¶ 98.

⁴⁴ The Commission should declare that such restrictions “prohibit or have the effect of prohibiting” DNS service in violation of Section 253(a). *See infra* Section III.B.

⁴⁵ 47 U.S.C. § 253(c).

⁴⁶ *See infra* Section III.C.1.

A 75-day shot clock should also apply to non-access related complaints. Disputes over non-access issues (particularly rates) can have the same chilling effect on deployment as disputes over access, and thus non-access complaints should be afforded a similar shot clock under the Commission's rules.

VI. CONCLUSION.

DNS providers are a critical link to the rapid and successful deployment of the next generation of wireless services, but they cannot fulfill that role without timely access to infrastructure in public rights-of-way. The current regulatory framework provides them little assurance of such access, and the result has been excessive delays and other substantial barriers to deployment. The *Wireless NPRM/NOI* and *Wireline NPRM/NOI* are essential steps towards removing those barriers. To realize the promise of DNS, the Commission must act now on its proposals in both dockets, in accordance with the comments set forth above.

Respectfully submitted,

/s/ H. Anthony Lehv
H. Anthony Lehv
Brian S. Kirk
Jay Noceto
Michael Hill
ExteNet Systems, Inc.
3030 Warrenville Road
Suite 340
Lisle, IL 60532
(630) 245-1905

June 15, 2017

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Accelerating Wireless Broadband Deployment by	)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)	
)	
Accelerating Wireline Broadband Deployment by	)	WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)	

COMMENTS OF MOBILITIE, LLC

MOBILITIE, LLC

Christopher Glass
Senior Vice President and General Counsel
D. Kirk Jamieson
Senior Vice President, Government Affairs
Mobilitie, LLC
2220 University Drive
Newport Beach, CA 92660
(877) 999-7070

Bryan N. Tramont
John T. Scott, III
Wilkinson Barker Knauer LLP
1800 M Street, NW, Suite 800N
Washington, D.C. 20036
(202) 783-4141

June 15, 2017

III. A DECLARATORY RULING WILL ACHIEVE SECTION 253(c)'S OBJECTIVES BY CLARIFYING ITS APPLICATION TO RIGHTS OF WAY CHARGES.

A. The Commission's Clarification of Section 253(c) Is Needed Now.

In the Telecommunications Act of 1996, Congress directed the FCC to promote rapid deployment of telecommunications services and promote competition by outlawing state and local requirements that deter the deployment of those services. Section 253(a) provides, "No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." While Section 253(c) preserves the rights of municipalities to charge access fees for their rights of way, those rights are expressly limited:

Nothing in this section affects the authority of a State or local government to manage the public right-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

Thus Section 253(c) requires that any charges localities impose must be limited to "fair and reasonable compensation" and be imposed "on a competitively neutral and nondiscriminatory basis." The charges described above clearly violate Congress' directive because they are not tied in any way to actual costs of issuing permits and managing rights of way.²⁸ Instead they confirm that localities are leveraging their control over the public streets to raise revenues and profit from that control – precisely the incentive to impose "artificially high rates" that courts have invalidated.²⁹

²⁸ See discussion in Section IV.A, *infra*.

²⁹ *TCG N.Y., Inc. v. City of White Plains*, 305 F.3d 67, 79 (2d. Cir. 2002).

Given the vital importance of new wireless infrastructure to achieving the national policy objective of universal broadband availability, and the threat that unreasonable and discriminatory charges pose to that objective, the Commission should provide guidance on how Section 253(c) applies to rights of way charges.³⁰ To facilitate the nationwide deployment of densified infrastructure in rights of way, the Commission should lay down “markers” that will provide more certainty to localities and carriers as to what charges Section 253(c) does and does not allow. Guidance will yield significant benefits:

- It will help to stop localities from imposing charges designed not to cover costs but to profit from the public’s growing demand for more and faster wireless services.
- It will resolve many of the controversies over charges that have delayed infrastructure deployment and consumed resources of localities and carriers. Both will benefit from Commission guidance that sets metes and bounds for those charges.
- A mandate from the Commission can have broad, national impact, providing clarity to all affected parties. It is a far more efficient and effective remedy than case-by-case adjudications and better fits the national need for prompt action.
- It will provide guidance to courts when they adjudicate claims that localities have violated the requirements of Section 253.

B. A Declaratory Ruling Is the Right Course to Provide the Needed Guidance.

A declaratory ruling clarifying the application of Section 253(c) would square with Commission precedent. Historically the Commission has issued declaratory rulings to provide interested parties with guidance as to their respective obligations under the Act or the Commission’s rules, particularly where conflicting interpretations or other factors have created uncertainty. Declaratory rulings efficiently provide certainty to all affected parties across the

³⁰ See, e.g., *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 (2009) (interpreting the statute’s phrase, “reasonable period of time”).

entire country, rather than the piecemeal approach of court adjudications. For example, the Commission issued a declaratory ruling to “clarify statutory rights under Section 251 of the [Act], in light of apparently conflicting determinations in several states.”³¹ In another declaratory ruling the Commission noted that guidance “would be helpful to avoid future disputes.”³² Courts have also specifically noted the Commission’s particular role in interpreting Section 253.³³

The Commission has also issued declaratory rulings interpreting the Act and its rules as they apply to other wireless facilities siting issues, and grounded its action each time on achieving its goal to foster new wireless services. In 2006 it granted a petition for declaratory ruling that an airport authority’s restrictions on the deployment of wireless access points was preempted by the agency’s “OTARD” rule, which is intended to promote the deployment of those antennas to improve service to the public.³⁴ And in 2009 the Commission issued a declaratory ruling interpreting language in Section 332(c)(7) of the Act to impose “shot clocks” for local zoning action on wireless siting applications. That ruling was designed to “promote[]

³¹ *Petition of CRC Communication of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of the Communications Act*, Declaratory Ruling, 26 FCC Rcd 8259 ¶ 1 (2011) (“[O]ur decision will provide clarity and guidance to incumbent local exchange carriers (LECs), competitive providers and state commissions about the rights and obligations regarding negotiation and arbitration under Section 251.”); *Time Warner Request for Declaratory Ruling*, Memorandum Opinion and Order, 22 FCC Rcd 3513, 3517 ¶ 8 (2007) (declaratory ruling clarifying that telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs pursuant to Section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services).

³² *Network Affiliated Stations Alliance (NASA) Petition for Inquiry into Network Practices and Motion for Declaratory Ruling*, Declaratory Ruling, 23 FCC Rcd 13610, 13611 ¶ 5 (2008).

³³ *See, e.g., BellSouth v. Town of Palm Beach*, 252 F.3d 1169, 1188 n.1 (6th Cir. 2001) (“As the federal agency charged with implementing the Act, the FCC’s views on the interpretation of Section 253 warrant respect.”).

³⁴ *Continental Airlines, Petition for Declaratory Ruling Regarding the Over-the-Air Reception Devices (OTARD) Rules*, Memorandum Opinion and Order, 21 FCC Rcd 2525 (2006).

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of

Accelerating Wireless Broadband	)	WT Docket No. 17-79
Deployment by Removing Barriers to)	
Infrastructure Investment)	
)	
Accelerating Wireline Broadband	)	WC Docket No. 17-84
Deployment by Removing Barriers to)	
Infrastructure Investment)	

COMMENTS OF SPRINT CORPORATION

Charles W. McKee
*Vice President, Government Affairs
Federal & State Regulatory*

Keith C. Buell
*Senior Counsel, Government Affairs
Federal Regulatory*

Sprint Corporation
900 7th Street, NW
Suite 700
Washington, DC 20001
Tel: (703) 592-2560

June 15, 2017

captioned dockets and the Public Notice in the Mobilite Declaratory Ruling docket are important first steps in achieving this reform.⁷ The FCC is now positioned to accelerate the deployment of mobile broadband services to American consumers.

A. Data Usage is Exploding

Data use by wireless users continues to explode. Industry data shows that mobile data use increased by 63 percent last year worldwide, and 18-fold over the last five years.⁸ Cisco estimates that mobile traffic will increase seven-fold over the next five years.⁹ The installation of small cells to complement macro sites and to provide customers with more capacity to post, Tweet, stream, and download is the most effective means of addressing this demand. The Super Bowl represents an excellent example of this increase. Sprint customers used more than five terabytes of data inside and directly around NRG Stadium in 2017. Total data usage on the Sprint network increased more than three times compared to the 2016 Super Bowl and about eight

clear, but to get there, we need to ensure that commercial wireless companies have adequate spectrum and the necessary infrastructure, such as site antenna towers and base stations, to deploy that spectrum.” Testimony of Commissioner Mignon L. Clyburn Before the United States House Of Representatives Committee on Energy & Commerce Subcommittee on Communications & Technology “Oversight of the Federal Communications Commission” March 22, 2016. In a separate address, Commissioner Clyburn emphasized the need for infrastructure deployment to be at the “lowest cost and quickest pace.” Keynote Remarks of Commissioner Mignon L. Clyburn, #Solutions2020 Policy Forum, Oct. 19, 2016.

⁷ Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilite, LLC Petition for Declaratory Ruling, Public Notice, WT Docket No. 16-421 (“Mobilite Public Notice”).

⁸ <http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.pdf>, at 1.

⁹ *Id.* at 5.

times that of the 2015 Super Bowl. Sprint deployed 23 small cells around NRG Stadium in Houston in anticipation of this growth in demand.

B. The Only Solution to Exploding Growth in Data Demand is Densification

Carriers can add capacity by adding spectrum or by building additional antenna locations so that the same frequencies can be used by multiple sites to provide services to additional users. The infill of small cells to reuse the same frequency bands more often and in smaller areas is called densification. Although small cells do increase coverage, their main purpose is to increase overall capacity while using the same amount of spectrum. The FCC recently observed that “deploying ten small cells in a coverage area that could be served by a single macrocell could result in a tenfold increase in capacity while using the same quantity of spectrum.”¹⁰

Given the rapid growth in customer demand for increased speed and capacity and the fact that this growth cannot be met solely through macro cells, Sprint and other carriers must expeditiously densify their networks in the next few years, both to augment their existing 4G networks and to prepare for the deployment of 5G. Sprint has begun a massive deployment of small cells to meet rising consumer demand. These cells are usually located on new and existing utility poles and other structures in the public rights of way such as traffic signals and streetlights.

C. Three-Legged Stool

The Commission’s reform efforts on infrastructure siting must address all three barriers that wireless carriers face when dealing with state and local government permitting authorities:

¹⁰ Mobilite Public Notice at 4.

1) access to public rights of way to place new poles and attach to existing structures; 2) reasonable fees for both applications and usage of the rights of way from both local governments and tribes that demand payment for historic review; and 3) timely action on access agreements and individual site permits, as well as prompt action by tribes that require historic review.

Without removal of all three barriers, rapid, economical infrastructure deployment is threatened.

Many of these regulations and fees were created when carriers were deploying voice-centric networks that entailed establishing large macro cells that cost hundreds of thousands of dollars, and carriers could more readily justify waiting through the process, litigating adverse decisions, and, if required, paying fees that were a much smaller share of the total cost of each site. The new infrastructure is radically different, however, and the old siting paradigm no longer applies. The cost per cell has dropped to the low tens of thousands of dollars and the number of sites needed has multiplied. Most importantly, the physical size and visual effect of deploying a small cell is dramatically less than traditional towers. In this environment, carriers cannot engage in a protracted regulatory struggle for each individual site. Given that all carriers face limited capital budgets, they are forced to limit the number and pace of their deployment investments to areas where the delays and impediments are the least onerous, to the detriment of their customers and, ultimately and ironically, to the very jurisdictions that imposed obstacles in the first place.

D. Small Cell Technology Primer

Small cells are wireless base stations that have the same basic functionality as the familiar macro cells, but are much smaller physically and cover smaller geographic areas. They cover a radius of approximately $\frac{1}{4}$ mile or less, compared to the multi-mile radius of traditional macro cells. A traditional macro site consists of a tall support tower with numerous separate antennas mounted on top. The ground area is often fenced and contains one or more equipment

easier for carriers to install new wireless facilities, to relocate or reposition antennas to meet revised spectrum and radio needs, or to move cells to new locations based on the carrier's own evaluation of its network needs.

Carriers plan their networks based on balancing the costs of installing or upgrading their facilities against the benefits of increasing coverage and capacity in certain areas at the expense of other areas. This type of economic evaluation is no different than what all businesses do. However, unlike all other businesses, some local governments insist on making wireless carriers justify their ordinary business decisions. The jurisdictions mentioned above, for whatever reason, apparently think Sprint would go to the trouble and expense of building new network architecture to provide increased coverage or capacity where it is not needed. Carriers have no incentive to place facilities where they are not needed, and the Commission should not countenance efforts by local government to impose requirements that substitute the government bureaucrat's opinion for the carrier's engineers.

C. Excessive Delays

Some municipalities are causing excessive delays to small cell deployment. These delays happen in two ways. Some cities will not consider any siting applications until there is a master agreement with the city. The other type of delay is the post-application delay by violating the shot clock timelines.

Sprint and Mobilitie have tabulated the delays they have observed in reaching master agreements with jurisdictions across the United States. Mobilitie has sought access agreements in hundreds of jurisdictions. Of those as of March 2017, 343 have taken more than six months to reach agreement. Of those 343 jurisdictions, 75 have taken more than a year, 11 have taken more than 18 months, and two have taken more than two years. Some of the delay is certainly caused

Respectfully submitted,

SPRINT CORPORATION



Charles W. McKee
*Vice President, Government Affairs
Federal and State Regulatory*

Keith C. Buell
*Senior Counsel, Government Affairs
Federal Regulatory*

900 Seventh St. NW
Suite 700
Washington, DC 20001
(703) 592-2560

June 15, 2017

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment	)	WT Docket No. 17-79
by Removing Barriers to Infrastructure)	
Investment)	
)	
Accelerating Wireline Broadband Deployment	)	WC Docket No. 17-84
by Removing Barriers to Infrastructure)	
Investment)	

COMMENTS OF T-MOBILE USA, INC.

Cathleen A. Massey
Steve B. Sharkey
William J. Hackett
David M. Crawford
T-MOBILE USA, INC.
601 Pennsylvania Ave., NW
North Building, Suite 800
Washington, DC 20004
(202) 654-5900

June 15, 2017

different than another—constitute an effective prohibition.¹⁷² San Francisco, for example, has adopted an ordinance that singles out wireless facilities in public ROWs for discretionary pre-deployment “aesthetic” review not imposed on similarly-sized landline or utility facilities.¹⁷³ Litigation over the lawfulness of the ordinance is now entering its seventh year,¹⁷⁴ curtailing critical wireless buildout.

No other substantial barriers. The FCC should declare that state or local action or inaction that creates a substantial barrier to the provision of any telecommunications service—including new advanced wireless services like 5G, which will rely heavily on small cell ROW deployments—is an effective prohibition that violates Section 253.¹⁷⁵ Such barriers include, *e.g.*, bans against the installation of wireless facilities in residential areas, as well as requirements that effectively preclude future collocations or upgrades at existing facilities.

For example, some localities are requiring wireless providers who seek to collocate or upgrade equipment on *existing* towers properly constructed pursuant ANSI Class II structural reliability criteria to certify that the tower meets more stringent Class III structural requirements.¹⁷⁶ This is happening even where the state has incorporated the ANSI Class II

¹⁷² *Cf. Auburn*, 260 F.3d at 1176-78; *Qwest*, 380 F.3d at 1269-70; *see also Wireless NPRM/NOI*, 32 FCC Rcd at 3363 ¶ 92.

¹⁷³ S.F. Ord. No. 12-11 (as amended by S.F. Ord. No. 18-15) requires compliance with aesthetics-based compatibility standards, determined solely by the location of the facility. The ordinance was initially adopted in January 2011.

¹⁷⁴ *See T-Mobile West LLC v. City and County of San Francisco*, 3 Cal. App. 5th 334 (Cal. App. 1st Dist. 2016), *review granted*, 385 P.3d 411 (Cal. 2016); *see also* Brief of Plaintiffs-Appellants, *T-Mobile West LLC v. City and County of San Francisco*, S238001 (Cal. filed Jan. 20, 2017).

¹⁷⁵ *See Wireless NPRM/NOI*, 32 FCC Rcd at 3338-39 ¶ 21; *Wireline NPRM/NOI*, 32 FCC Rcd at 3299 ¶ 106.

¹⁷⁶ Class II standards are those commonly used for commercial wireless and broadcast services, whereas Class III standards apply to structures used primarily for essential communications like civil or national defense and military facilities. *See* William Garrett & Bryan Lanier, *Wireless*

CONCLUSION

By taking the steps described herein, the Commission will facilitate the siting of wireless facilities and help expedite the deployment of broadband where American consumers need it most.

Respectfully submitted,

T-MOBILE USA, INC.

By: /s/ Cathleen A. Massey

Cathleen A. Massey

Steve B. Sharkey

William J. Hackett

David M. Crawford

601 Pennsylvania Ave., NW

North Building, Suite 800

Washington, DC 20004

(202) 654-5900

Dated: June 15, 2017

ATTACHMENT A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Streamlining Deployment of Small Cell	)	WT Docket No. 16-421
Infrastructure By Improving Wireless Facilities)	
Siting Policies)	
)	
Mobilitie, LLC Petition for Declaratory Ruling)	

COMMENTS OF T-MOBILE USA, INC.

Cathleen A. Massey
Steve B. Sharkey
William J. Hackett
David M. Crawford
T-MOBILE USA, INC.
601 Pennsylvania Ave., NW
North Building, Suite 800
Washington, DC 20004
(202) 654-5900

March 8, 2017

for local governments,” but those challenges must be overcome “to bring connectivity to those areas in need.”¹⁰

While the FCC has taken a number of steps in recent years to accelerate the siting process—including adopting shot clocks and streamlining environmental reviews—and some states and localities have amended their siting processes to speed deployments, significant local zoning and permitting barriers remain. T-Mobile has encountered these and other challenges as it continues to upgrade existing facilities and deploy new ones, including small cells, across the county. These include:

Delays. It is not uncommon for it to take two years or more from small cell project initiation to completion. For example:

- *Many municipalities require carriers to sign a master license agreement (“MLA”) for ROW access that can take six months to a year or more to approve. These MLAs must be negotiated prior to submitting an application to install small cells in a municipal ROW, and often include a number of unfavorable provisions/conditions (e.g., subject to termination if a higher priority user would benefit from the cessation of carrier use; and requiring the carrier to be responsible for all costs associated with inspections and approvals of construction work, with high costs for third-party consultants).*
- *Approval of an application to install small cells on municipal poles can take 120 days or more. In some cases, as many as six different departments (not including taxing districts) must approve the application prior to building permit submission, and it is not uncommon for departments to contradict each other.¹¹ Some localities also require public notice for each node, plus a full hearing if responses are received. It can take months to sort this process out: If the city has a working small cell review process in place, the application can be approved in a matter of weeks—but if the city uses a traditional macrocell approach or no process is in place, half a year or more is the norm. And there are several jurisdictions that have had moratoriums or effective moratoriums in place for the past two years.*

¹⁰ Mignon L. Clyburn, Comm’r, FCC, Keynote Remarks at the #Solutions2020 Policy Forum, Georgetown Univ. Law Center, at 3 (Oct. 19, 2016).

¹¹ For example, a locality’s Traffic and Light Department may reject use of a traffic light and recommends a non-city-owned structure, but then the Zoning Department rejects a non-city-owned structure as against the local code.

Barriers. Local government actions may also hinder the introduction of new services, obstruct improvements to existing services, or deter prospective new entry. In T-Mobile’s experience:

- *Many municipalities require the same zoning process for small cell applications as used for macro tower sites—or have no clear application process.* Often municipalities still review small cells the same way they review macrocells because they have either a telecommunications siting process designed for macrocells or no special process for telecommunications facilities—forcing applicants to contend with a long and costly process.¹² At least half of all jurisdictions fall into this category. Other municipalities (at least 15, in T-Mobile’s experience) have no clear application process at all, and some (five jurisdictions and growing) refuse to process small cell requests under ROW permitting processes.
- *Most jurisdictions impose different processes for DAS/small cell deployments compared to other ROW occupants.* Eighty percent of jurisdictions in T-Mobile’s experience treat DAS and small cell deployments on poles in ROWs differently than they treat similar installations by landline, cable, or electric utilities. For example, most require DAS and small cell deployments to undergo zoning review; many require aesthetic review; and some restrict wireless deployments to city-owned assets, have specific form factor guidelines, allow only a single company to attach to a particular pole or structure, and/or require unreasonable minimum distances between wireless facilities in ROWs.¹³

Excessive Fees. Some localities impose high initial fees and excessive recurring charges for the deployment of infrastructure on public ROWs. For example:

- *Localities are charging fees that exceed their actual incremental costs to manage the ROWs.* As Mobilitie has explained, many localities impose fees that recover what they believe is the “market rate” for the use of their ROW rather than simply the “fair and reasonable compensation” for their expenses.¹⁴ These ROW use fees can run \$1,500 per year.
- *Localities are using fees to generate revenue or fund third-party consultants.* Some localities view cell site deployment as a revenue stream, using fee-setting formulas of their own creation, which bear no relationship to their costs. For example, some local

¹² *Notice*, 31 FCC Rcd at 13366.

¹³ *Id.* at 13367.

¹⁴ *See* Mobilitie, LLC, Petition for Declaratory Ruling, Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way, at 14-17 (Nov. 15, 2016) (“Mobilitie Petition”), *cited in Notice*, 31 FCC Rcd at 13366.

municipalities are demanding that T-Mobile obtain business licenses for cell sites, the cost of which bears no rational relationship to application processing or ROW management. Still others impose consultant fees and/or “franchise” their siting to third-party paid consultants, who act as gatekeepers.

Denials/effective denials. Unfounded denials or rejections—or municipal push-back that stops application processing—are further impediments to the successful deployment of wireless networks, including small cells. The most common bases for rejection or push back are aesthetics and claims of incompleteness, and a number of local governments prohibit or are moving to prohibit any wireless facility installations in residential areas. Local inaction is a related impediment—roughly thirty percent of all recently proposed T-Mobile sites (including small cells) involve cases where the locality simply fails to act, in violation of the shot clocks. It is unrealistic, though, to actually sue for every shot clock violation; this is why a deemed granted remedy, as proposed below, is so important.

II. THE FCC SHOULD EXERCISE ITS STATUTORY AUTHORITY TO FACILITATE AND SPEED WIRELESS FACILITY DEPLOYMENTS.

The Commission should act now to adopt “guardrails” that better define the scope and application of Sections 253 and 332. Specifically, the Commission should exercise its authority under Sections 253 and 332 to eliminate unreasonable application and ROW fees, further streamline wireless facility deployments, and improve access to the public poles and ROWs that are critical to next generation deployments, including small cells.¹⁵

¹⁵ Sections 253 and 332(c)(7) of the Act were enacted to remove deployment barriers and speed the review and approval of siting applications by local land-use authorities. *See* Telecommunications Act of 1996, Pub. L. No. 104-104, §§ 101, 704, 110 Stat. 56, 70, 151 (codified at 47 U.S.C. §§ 253, 332(c)(7)); Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156, 232-33 (“Spectrum Act”) (codified at 47 U.S.C. § 1455(a)). The Commission has used its authority under Section 332 to clarify the maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them, and that authority has been upheld by courts. *Petition to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting*

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by	)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)	
)	
Accelerating Wireline Broadband Deployment by	)	WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)	

COMMENTS OF VERIZON

William H. Johnson
Of Counsel

Tamara L. Preiss
Andre J. Lachance
1300 I Street, N.W.
Suite 500-East
Washington, D.C. 20005
(202) 515-2540

Henry Weissmann
Munger, Tolles & Olson LLP
350 Grand Avenue
Suite 5000
Los Angeles, CA 90071
(213) 683-9150

Celia Choy
Jonathan Meltzer
Munger, Tolles & Olson LLP
1155 F Street N.W.
Washington, DC 20004
(202) 220-1105

Dated: June 15, 2017

Each of these actions is well within the Commission’s authority under Sections 253 and 332(c)(7) of the Act and applicable historic preservation and environmental law. Each action also strikes the appropriate balance between preserving state, local, and tribal authority to review and act upon applications and eliminating requirements that impose unnecessary and costly burdens on wireless small cell deployment.⁸ And collectively, these steps would remove many of the regulatory impediments to broadband investment and encourage more robust deployment of and investment in broadband, including 5G.

II. SMALL WIRELESS FACILITIES ARE CRITICAL TO MEET GROWING DEMAND FOR BROADBAND SERVICES, ADD JOBS, AND IMPROVE THE ECONOMY.

Providers must deploy small cells to meet the exploding demand for wireless data services. New data intensive capabilities like smart communities, connected cars, smart farming, and the Internet of Things, all made possible by advanced 4G and 5G networks, are driving this demand. Cisco reports that global mobile data traffic will increase sevenfold between 2016 and 2021.⁹ The total traffic in mobile networks increased by 70 percent between the end of the first

⁸ Many of the issues raised in these proceedings were raised in the December 2016 Public Notice issued by the Wireless Telecommunications Bureau. *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, 31 FCC Rcd 13360, 13371 (WTB 2016) (“*WTB Infrastructure Notice*”). Verizon addressed many of these same issues in its comments and reply comments in that proceeding and incorporates each filing by reference into this proceeding. See Comments of Verizon, WT Docket No. 16-421 (Mar. 8, 2017) (“Verizon Small Facility Comments”); Reply Comments of Verizon, WT Docket No. 16-421 (Apr. 7, 2017) (“Verizon Small Facility Reply Comments”).

⁹ See Cisco, *The Zettabyte Era: Trends and Analysis* (updated Jun. 7, 2017), <http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/vni-hyperconnectivity-wp.html> (“Cisco Trends and Analysis”).

quarter in 2016 and the end of the first quarter in 2017.¹⁰ Wireless smartphone data consumption in North America is expected to reach 6.9 gigabytes per device per month by the end of 2017 and 26 gigabytes per month by 2022.¹¹ Video is the largest contributor to mobile traffic volumes.¹² Globally, video traffic will be 82 percent of all IP traffic by 2021, and it would take more than five million years to watch the amount of video that will cross IP networks each month in 2021.¹³ Accenture estimates that United States telecommunications operators will invest approximately \$275 billion in the next seven years to deploy next-generation technology. That investment will enable new wireless capabilities, create about three million new jobs, and grow the gross domestic product (“GDP”) by \$500 billion.¹⁴

To meet this demand and unlock the economic promise of more advanced 4G and 5G, carriers’ networks will require an estimated 10 to 100 times more antenna locations than today’s 3G or 4G networks.¹⁵ Many 5G networks also are likely to incorporate millimeter wave spectrum that the Commission recently made available.¹⁶ Millimeter wave spectrum, unlike lower band spectrum traditionally used for wireless service, generally supports service over

¹⁰ Ericsson Mobility Report, (Jun., 2017), <https://www.ericsson.com/assets/local/mobility-report/documents/2017/ericsson-mobility-report-june-2017.pdf>, at 2 (“Ericsson Mobility Report”).

¹¹ *Id.* at 14.

¹² *Id.* at 13.

¹³ Cisco Trends and Analysis at 2.

¹⁴ See Majed Al Amine et al., Accenture Strategy, Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities 3 (2017), <http://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf> (“Accenture Smart Cities Paper”).

¹⁵ *Id.* at 1.

¹⁶ See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016) (“*Above 24 GHz Order*”).

shorter distances and with direct lines-of-sight.¹⁷ Thus carriers using millimeter wave bands will need to deploy small facilities in many more locations that are both closer to the ground (30-50 feet in height) and closer to the customer than traditional wireless cell sites. Existing poles (including utility poles, light poles, traffic control poles, and street signs) in rights-of-way are ideal locations for 5G antennas. These facilities are significantly smaller than traditional “macro” antennas and blend more easily into the environment. Yet, as discussed below, many local ordinances and officials (or their consultants) do not take into account these significant differences, and instead burden the small cell siting process with requirements at least if not more cumbersome than those that apply to much larger facilities.

III. THE COMMISSION SHOULD CLARIFY THAT THE COMMUNICATIONS ACT BARS STATE AND LOCAL ACTION THAT ERECT SUBSTANTIAL BARRIERS TO WIRELESS FACILITIES DEPLOYMENT.

A. State and Local Requirements and Fees Effectively Prohibit Providing Advanced Broadband Service to Customers.

Even in the early stages of small cell deployment, Verizon has encountered a variety of practices that have the effect of delaying or preventing small cell deployment. These include barriers in gaining access to state and local rights-of-way, and municipally owned poles within them, and outdated local zoning requirements. These practices are already slowing the deployment of 4G small cells, and costs and delays will only grow as providers transition to more advanced 5G networks. Federal law, most notably Sections 253 and 332 of the Act, exists to block local actions and requirements that threaten important federal interests such as broadband and 5G deployment.¹⁸ The Commission has authority to address these local obstacles to deployment, and it should do so expeditiously.

¹⁷ *Id.* at 8020, ¶ 6.

¹⁸ 47 U.S.C. §§ 253, 332(c)(7).

- Subjective or vague aesthetic requirements – reasonable aesthetic concerns should be addressed in the list of requirements and not adjudicated on an ad hoc basis;
- Requirements to install additional facilities not planned by the applicant or to provide services at a discount or free of charge as a condition of approval to access rights-of-way or municipally owned poles;
- Requirements that favor or require placement of facilities on state or municipally owned structures within rights-of-way; and
- Requirements that impose conditions that conflict with the Commission’s copper retirement rules or impose unreasonable conditions beyond what the Commission’s rules require.

Rules prohibiting these impediments to broadband deployment would strike an appropriate balance between preserving state and local authority over public rights-of-way and speeding deployment by clearly proscribing actions or requirements that unreasonably prohibit applicants from providing service.

C. The Commission Should Use Its Section 253 Authority to Regulate Access to Municipally-Owned Poles and to Require Baseline Standards in States that Regulate Pole Attachments.

The Commission should use its Section 253 authority to ensure access to poles owned by railroads, states, municipalities, and cooperatives in situations where actions by these entities prohibit or effectively prohibit the provision of telecommunications service.¹⁰⁸ Section 224(a)’s definition of “utility” excludes, among other things, “any railroad, any person who is cooperatively organized . . . or any person owned by . . . any State.” The definition of “State” includes “any political subdivision, agency, or instrumentality” of a state.¹⁰⁹ Thus, poles owned by railroads, cooperatives, and states (including municipalities) generally are not subject to the Commission’s pole attachment jurisdiction. But in some instances these entities’ actions could amount to a prohibition of service under Section 253(a). The Commission should find that

¹⁰⁸ See *Wireline Infrastructure Notice* ¶ 108.

¹⁰⁹ See 47 U.S.C. § 224(a)(3).

Section 253 applies and allows it to assert jurisdiction over access to poles owned by railroads, cooperatives, and states (including municipalities) in those instances.

More generally, the Commission should use its Section 253 authority to ensure that reverse-preemption states are effectively regulating the rates, terms, and conditions of pole attachments. Under Section 224(c)(1), the Commission does not have jurisdiction over pole attachments in the states that have certified that they regulate pole attachments. But if a state's pole attachment regulations allow utilities or others to set rates, terms, and conditions that prohibit or effectively prohibit the provision of telecommunications service, then the Commission should stand ready to act on a case-by-case basis.

V. THE COMMISSION SHOULD ADOPT RULES UNDER SECTION 332(c) TO PROMOTE WIRELESS INFRASTRUCTURE DEPLOYMENT.

A. The Commission Should Adopt a Deemed Granted Remedy for the Section 332(c) Shot Clocks.

1. Carriers Continue to Experience Delays Getting Approvals for Small Cells.

Wireless carriers continue to experience delays in deploying small cells primarily because local zoning processes developed for larger, “macro” towers have not been updated to account for the smaller profile and limited effects of small cells. For example, many localities, such as Duluth, Minnesota, Amherst, New York, and Pasco, Washington, require special use permits involving multiple layers of approval to locate small cells in some or all zoning districts. Many others require site-by-site approval for small facilities, even after reaching agreement to place facilities in public rights-of-way.¹¹⁰ The ordinances in many localities impose requirements that are either not suited for small cells or are overly restrictive. These include multiple layers of review for each site, overly broad property owner notification requirements,

¹¹⁰ See Verizon Small Facility Comments at 18-19.

fall protection requirements, landscaping and fencing requirements, proof of need and the lack of suitable alternative structures, engineering consultant review requirements, property value impact analyses, overly restrictive height and equipment size limits, and minimum separation and set back requirements. As a result of these outdated and burdensome requirements, many zoning authorities fail to review and act on zoning applications within the shot clock time periods.¹¹¹ And carriers are generally reluctant to initiate court action to enforce the shot clock.¹¹²

The existing shot clocks, if appropriately modified, can be effective in reducing delays. In some locations, where ordinances are tailored to small facilities and skilled staff monitor the Commission shot clock periods, the shot clocks have reduced delays and eliminated contentious processes. For example, the town attorneys in Draper, Utah, and Jackson, Wyoming understand the Commission shot clocks and how they apply. Applicants are generally able to work with these jurisdictions to gain approval of small cells in a timely manner. Commission action to modify the existing Section 332(c)(7) shot clock by adopting a deemed granted remedy and to shorten the shot clock for small cells should encourage more localities to streamline processes to facilitate timely reviews. And shorter shot clocks for small cells will likewise encourage localities to adopt appropriately tailored zoning ordinances to address small cells.

2. The Commission Has Authority to Adopt a Deemed Granted Remedy.

The Commission has authority to deem applications granted if not acted upon in a reasonable period of time. Section 332(c)(7) requires that state and local governments act on siting requests “within a reasonable period of time” and states that applicants are “adversely

¹¹¹ *Id.*

¹¹² *See id.*, at 23.

affected” by a “failure to act.”¹¹³ Pursuant to this authority, the Commission adopted shot clocks of “presumptively, 90 days to process personal wireless service facility siting applications requesting collocations, and, also presumptively, 150 days to process all other applications.”¹¹⁴ But these shot clocks currently lack teeth, making them largely ineffective. The Commission should reconsider its decision not to adopt a deemed granted remedy for state or local government failures to act within the presumptively legal time limits under Section 332(c)(7).¹¹⁵

The Supreme Court confirmed the Commission’s authority to adopt rules implementing Section 332(c)(7) in *City of Arlington v. FCC*, rejecting claims from state and local governments that the adoption of shot clocks for siting decisions impinged upon state and local authority.¹¹⁶ Adopting a deemed granted remedy when there is a “failure to act” by localities fits squarely within this Commission authority.

Verizon agrees that the Commission has sufficient authority to convert the rebuttable presumption adopted in the *332 Shot Clock Ruling* into an irrebuttable presumption.¹¹⁷ Although the *332 Shot Clock Ruling* stated that Section 332(c)(7)(B)(v) indicated congressional intent that courts fashion “case-specific” remedies in “individual” cases, the Fifth Circuit in *City of*

¹¹³ 47 U.S.C. § 332(c)(7)(B)(ii), (v).

¹¹⁴ See *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994, 14005 at ¶ 32 (2009) (“*332 Shot Clock Ruling*”), *aff’d City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff’d City of Arlington v. FCC*, 133 S.Ct. 1863 (2013).

¹¹⁵ See *id.* at 14009 at ¶ 39; *2014 Infrastructure Order*, 29 FCC Rcd at 12978 at ¶ 284.

¹¹⁶ *City of Arlington v. FCC*, 133 S. Ct. 1863, 1871-73 (2013).

¹¹⁷ See *Wireless Infrastructure Notice* at ¶¶ 10-13.

Los Angeles, CA 90071
(213) 683-9150

Celia Choy
Jonathan Meltzer
Munger, Tolles & Olson LLP
1155 F Street N.W.
Washington, DC 20004
(202) 220-1105

Dated: June 15, 2017

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
)	

COMMENTS OF THE WIRELESS INFRASTRUCTURE ASSOCIATION

D. Zachary Champ
Director, Government Affairs

D. Van Fleet Bloys
Senior Government Affairs Counsel

Sade Oshinubi
Government Affairs Counsel

Wireless Infrastructure Association
500 Montgomery Street, Suite 500
Alexandria, VA 22314
(703) 739-0300

June 15, 2017



Even larger equipment is often installed by electric companies on poles in the public ROWs without zoning. A and B in the picture below are equipment installed by an electric company in Newport News that did not go through zoning for these electrical deployments.



Small wireless facilities are consistent with such existing installations, as the next photograph of a Crown Castle node in Newport News demonstrates. Crown Castle's node is on the pole on the left side of the road, across from the line of poles that are of equivalent height. Indeed, at least one of those other poles has a group of large electric transformers.

WIA encourages the Commission to support additional actions by policymakers to achieve streamlined access to federal lands for wireless infrastructure siting, and looks forward to providing continuing support in furtherance of these important efforts.

CONCLUSION

The deployment of wireless networks and services is a critical element of America's present and future economy. By acting now to take the steps recommended herein, the Commission can take meaningful steps to remove barriers to wireless infrastructure deployment and ensure that American consumers can reap the benefits of 5G and future wireless technologies.

Respectfully submitted,

/s/

D. Zachary Champ
Director, Government Affairs

D. Van Fleet Bloys
Senior Government Affairs Counsel

Sade Oshinubi
Government Affairs Counsel

Wireless Infrastructure Association
500 Montgomery Street, Suite 500
Alexandria, VA 22314
(703) 739-0300

June 15, 2017

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
)	

REPLY COMMENTS OF CTIA

Thomas C. Power
Senior Vice President, General Counsel

Scott K. Bergmann
Vice President, Regulatory Affairs

Brian M. Josef
Assistant Vice President, Regulatory Affairs

Kara D. Romagnino
Director, Regulatory Affairs

CTIA
1400 Sixteenth Street, NW, Suite 600
Washington, DC 20036
(202) 736-3200

Dated: July 17, 2017

act on an application waive their right to do so.¹⁷ Commenters also demonstrate that, because municipal poles and ROWs are public property held in trust and intended to serve as the locations for public services, municipal oversight serves a regulatory (not proprietary) function. The Commission should therefore rule that Section 332(c)(7), the shot clocks that implement that provision, and the deemed granted remedy fully apply to facilities that are attached to municipal poles or installed in ROWs.

Localities' arguments against a deemed granted remedy are invalid. Their claim that the Commission lacks authority to adopt a deemed granted remedy ignores court rulings that the Commission has authority to implement Section 332(c)(7)(B) in a way that may override local or state law.¹⁸ Others argue that the judicial relief provision of Section 332(c)(7)(B) requires applicants to go to court when a locality fails to act, precluding the Commission from adopting a deemed granted rule.¹⁹ To the contrary, while Section 332 provides for a court remedy, such remedy is neither exclusive nor mandatory. Further, a deemed granted remedy would not render the judicial relief provision superfluous, as some localities claim. The Commission would not be making a decision to grant a siting application. Rather, the expiration of the shot clock would result in the siting permit being deemed granted. The judicial remedy in Section 332 will allow a locality to challenge a deemed grant when it believes the applicant was not eligible for that relief.

¹⁷ AT&T Comments at 26-27; CCA Comments at 6; CTIA Comments at 10-11; ExteNet Comments at 12-14; Samsung Comments at 6-7; Sprint Comments at 46-47; Comments of the Telecommunications Industry Association, WT Docket No. 17-79, at 2-4 (June 15, 2017); T-Mobile Comments at 13-18; Verizon Comments at 37-40; Comments of the Computer & Communications Industry Association, WT Docket No. 17-79 & WC Docket No. 17-84, at 8-9 (June 15, 2017) ("CCIA Comments").

¹⁸ *City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013).

¹⁹ Comments of the National League of Cities, WT Docket No. 17-79 & WC Docket No. 17-84, at 3-4 (filed June 15, 2017) ("NLC Comments"); Comments of Smart Communities and Special Districts Coalition, WT Docket No. 17-79, at 41-43 (June 15, 2017) ("Smart Communities Comments").

One party argues that the deemed granted remedy would violate the Tenth Amendment.²⁰ But the Commission and the courts both rejected that argument when it was raised against the Commission's adoption of the deemed granted remedy in 2014.²¹ Finally, some localities threaten that a deemed granted remedy would cause them to deny siting permits rather than let the shot clock expire. To the extent that localities consider taking that obstructionist approach, the Commission should remind them that Section 332(c)(7)(B)(iii) requires that denials be based on "substantial evidence" and a written record. Localities would thus have to prove that their denial complied with both of these requirements.

C. The Shot Clocks Should Apply to the Full Siting Process.

Local requirements that providers negotiate a franchise or city-wide license agreement as a prerequisite to filing individual site applications cause exceedingly long delays. For example:

- It took more than six months for two providers to negotiate a franchise or license agreement in nearly 350 jurisdictions, and it took more than a year to negotiate an agreement in 75 of those jurisdictions.²²
- "Some jurisdictions, such as Greenwood Village, Colorado, require lengthy and burdensome 'pre-submission' procedures before they will even accept an application triggering the 'shot clock' timeframes."²³
- "A large Southwestern city requires applicants to obtain separate and sequential approvals from three different government bodies before it will consider issuing a temporary license agreement to access city rights-of-way."²⁴

²⁰ Comments of the Virginia Joint Commenters, WT Docket No. 17-79, at 2-3 (June 15, 2017) ("City of Alexandria Comments").

²¹ *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12961-62 ¶ 228 (2014), *aff'd*, *Montgomery County v. FCC*, 811 F.3d 121, 128-29 (4th Cir. 2015) ("[W]e readily conclude that the FCC's 'deemed granted' procedure comports with the Tenth Amendment.").

²² Sprint Comments at 44-45.

²³ Comments of Crown Castle International Corporation, WT Docket No. 17-79, at 21 (June 15, 2017) ("Crown Castle Comments").

²⁴ Verizon Comments at 6.

- “Local governments currently have little incentive to complete negotiations within a reasonable period of time, as there is no penalty for stalling negotiations. In one city in a mid-Atlantic state, it took ExteNet three years to successfully negotiate a license agreement, and its negotiation with a large city in the southwest is now three years old and counting. Elsewhere, negotiation periods of a year or more are not uncommon.”²⁵

To address these drawn-out processes that undermine the shot clocks, the Commission should rule that the new shot clock periods apply to all local authorizations a locality may require, and are triggered when a provider seeks the first of those authorizations, whether in the form of a franchise, agreement, or permit.²⁶ This ruling properly construes Section 332(c)(7)(B)(ii), which requires that a locality must “act on any request for authorization to place, construct or modify personal wireless facilities within a reasonable period of time after the request is duly filed” When a locality compels a provider to request a franchise or other agreement, it is a “request for authorization.” To read Section 332 otherwise would enable localities to subvert the “reasonable period of time” mandate by imposing a pre-application agreement requirement that is not time-limited.

D. The Commission Should Allow Batch Processing of Applications.

The record supports CTIA’s proposal to allow providers to file applications for similar facilities in groups, under the same shot clock periods that exist for individual site applications.²⁷ Allowing batch processing for sites that are similar in size and nature and within a specified proximity can reduce burdens on both providers and localities.²⁸ Commenters and CTIA also agree that the Commission should rule that batch processing should not lengthen the shot clock

²⁵ ExteNet Comments at 15.

²⁶ CTIA Comments at 15; Mobilitie Comments at 6-7; WIA Comments at 24; T-Mobile Comments at 21-22; Verizon Comments at 42.

²⁷ CTIA Comments at 15-16.

²⁸ AT&T Comments at 21-22; CCIA Comments at 11; T-Mobile Comments at 21-22.

adopting exclusions for facilities that do not raise environmental issues or adversely affect historic properties and adopting shot clocks to resolve environmental disputes.

Respectfully submitted,

/s/ Brian M. Josef

Brian M. Josef

Assistant Vice President, Regulatory Affairs

Thomas C. Power

Senior Vice President, General Counsel

Scott K. Bergmann

Vice President, Regulatory Affairs

Kara D. Romagnino

Director, Regulatory Affairs

CTIA

1400 Sixteenth Street, NW, Suite 600

Washington, DC 20036

(202) 736-3200

Dated: July 17, 2017



June 7, 2018

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Development*, WT Docket No. 17-79; *In the Matter of Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules,¹ Crown Castle hereby submits these *ex parte* comments regarding the FCC's authority to issue regulations promoting the rapid deployment of next generation wireless networks through streamlining the deployment of network infrastructure, pursuant to Sections 253 and 332 of the Communications Act.

Crown Castle is at the forefront of our country's broadband revolution, deploying fiber optic and wireless infrastructure and developing the small cell networks² that will serve as the backbone for the broadband networks of the future. With more than 40,000 towers, 60,000 small cells constructed or under contract, and over 60,000 miles of fiber, Crown Castle is the country's largest independent owner and operator of shared wireless infrastructure. Notably, Crown Castle does not hold commercial mobile radio service ("CMRS") licenses, and does not itself provide personal wireless services; rather its network offerings are predominantly wireline. Utilizing its fiber networks, Crown Castle provides (among other service offerings) wholesale wireline transport services to its wireless carrier customers.³ These fiber networks provide the necessary

¹ 47 C.F.R. § 1.1206.

² Except as otherwise specified, the term "small cell" as used herein includes both small cells and distributed antenna systems ("DAS").

³ Crown Castle entities currently hold utility certifications in 47 states, the District of Columbia, and Puerto Rico. In all of these jurisdictions, utility commissions have issued Crown Castle entities certificates to provide its wholesale transport services. However, the status of these service offerings has recently come into question in Texas and Pennsylvania. *See Complaint of Extenet Network Sys., Inc. Against the City of Houston for Imposition of Fees for Use of Public Right of Way*, Proposal for Decision, SOAH Docket No. 473-16-1861, PUC Docket No. 45280 (Tex/ State Office of Admin. Hearings Feb. 24, 2017), attached to Crown Castle's initial comments as Exhibit A (finding that unswitched point-to-point transport service to retail CMRS

agency found that a deemed granted remedy would fulfill the important mission of “ensuring rapid deployment of commercial and public safety wireless broadband services.”²⁴

B. Delays in Approvals of Wireless Infrastructure Threaten to Disrupt the Nation’s Transition to 5G

The arrival of next-generation wireless broadband networks has the potential to revolutionize the way Americans communicate, whether person-to-person, person-to-machine, or machine-to-machine. According to the FCC’s most recent wireless competition report, demand for wireless services has never been greater. From 2015 to 2016, the total number of mobile wireless subscriber connections grew by approximately five percent, from 378 million to 396 million.²⁵ In addition, the amount of wireless data consumed in 2016 reached 13.7 trillion MB, an increase of approximately 42 percent from 9.6 trillion MB in 2015, and an increase of approximately 238 percent from the 4.1 trillion MB reported in 2014.²⁶

5G wireless services will continue the transformation of the U.S. economy through increased use of high-bandwidth applications, expanded capacity of wireless communications, and the realization and growth of the Internet of Things.²⁷ While our country’s existing wireless infrastructure was first built using macrocells, with relatively large antennas mounted on towers, as usage has grown and capacity needs have exploded, these networks have increasingly also required the deployment of small cell systems and fiber transport. This is a trend that will only increase with next-generation networks, as demand continues to accelerate and 5G services are deployed around the country. As the Commission properly has recognized, “[b]ecause providers will need to deploy large numbers of wireless cell sites to meet the country’s wireless broadband needs and implement next-generation technologies, there is an urgent need to remove any unnecessary barriers to such deployment, whether caused by Federal law, Commission processes, local and State reviews, or otherwise.”²⁸

Crown Castle is at the forefront of efforts to improve spectrum utilization through network densification. Over the past several years, Crown Castle has invested more than \$15 billion in small cell and fiber networks. Crown Castle builds telecommunications networks that allow this massive increase in data to flow from the wireless node back to its destination, and vice versa. The company has deployed and is currently working to deploy small cell networks in New York

²⁴ *Id.* ¶ 228.

²⁵ *See In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Twentieth Report, 32 FCC Rcd. 8968 ¶ 5 (2017).

²⁶ *See id.* (citing CTIA Wireless Industry Indices Year-End 2016, at 96. Appendix I: Trends in Consumer Usage, Chart 1 shows annual minutes, messages, and megabytes of wireless traffic from 2008 through 2016).

²⁷ *See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd. 3330 ¶ 1 (2017).

²⁸ *Id.* ¶ 2.

City, Philadelphia, Atlanta, Miami, New Orleans, Houston, Nashville, Chicago, Vail, Scottsdale, Los Angeles, San Francisco, Seattle, and many other cities across the country.

Unfortunately, Crown Castle frequently faces resistance from state and local governments that inhibits its ability to deploy the facilities necessary to provide telecommunications services that support next-generation broadband networks.²⁹ This resistance is particularly acute when it comes to locating telecommunications networks in the public ROW—an issue that is increasingly critical for 5G deployment. Many municipalities charge fees to access the ROW that are completely unrelated to their maintenance or management, and instead serve merely to increase government revenues. Such fees are per se excessive and unreasonable, and serve as little more than a stealth user fee for broadband services. Still other municipalities discriminate by erecting barriers that make it difficult for independent network and telecommunications service providers to deploy next-generation broadband networks in public ROW, for example by restricting access to the ROW only to providers of commercial mobile services or applying onerous zoning requirements on small cell installations when other similar ROW utility installations are erected with simple building permits. Left unaddressed, these impediments challenge the United States’ role as a leader in delivering broadband services.

The records in both this proceeding and the complementary proceeding before the Wireline Competition Bureau³⁰ are replete with examples of the imposition of unreasonable fees and review procedures precluding the deployment of infrastructure to support advanced wireless services. Many municipalities impose unreasonable fees on the placement and operation of infrastructure to support wireless networks that are completely unrelated to the cost of reviewing applications or maintaining the ROW. Commenters to the wireless infrastructure proceeding chronicled excessive application and permit fees,³¹ right-of-way usage fees,³² municipal structure attachment fees,³³ and gross-revenue fees.³⁴ Municipalities have adopted or applied a range of overly restrictive requirements that actually or have the effect of prohibiting the provision of wireless services.³⁵ The Township of Upper St. Clair, Pennsylvania, for example, passed an ordinance in 2015 requiring a zoning application to place small cells in the public ROW,

²⁹ See Comments of Crown Castle, WT Docket Nos. 17-79 (June 15, 2017) at 6-7 (“Crown Castle Comments”).

³⁰ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84.

³¹ Comments of Nokia, WT Docket No. 17-79 at 9 (filed June 15, 2017).

³² Comments of Mobilitie, WT Docket No. 17-79, WC Docket No. 17-84 at 5 (filed June 15, 2017).

³³ Comments of Verizon, WT Docket No. 17-79 at 6-7 (filed June 15, 2017).

³⁴ Crown Castle Comments at 12.

³⁵ See, e.g. Comments of AT&T, WT Docket No. 17-79 at 14-17 (filed June 15, 2017) (describing how above-ground facility prohibitions, location prohibitions, and unreasonable aesthetic restrictions materially inhibit or limit the ability to provide telecommunications service) (“AT&T Comments”); Comments of the Computer & Communications Industry Association, WT Docket No. 17-79 at 12-15 (filed June 15, 2017) (providing examples of siting constraints that have had the effect of prohibiting the provision of telecommunications service).

blocking small cell deployment in approximately 80% of the Township’s land area.³⁶ Many nearby municipalities have adopted nearly identical versions of this regulation.³⁷ The Commission should act now to clarify the broad scope of its authority under Sections 253 and 332 and rein in municipal conduct which negatively impacts delivery of advanced services to American consumers.

II. THE PLAIN LANGUAGE OF SECTION 253 BROADLY PREEMPTS STATE AND LOCAL ORDINANCES, REGULATIONS, AND LEGAL REQUIREMENTS THAT PROHIBIT OR HAVE THE EFFECT OF PROHIBITING TELECOMMUNICATIONS SERVICE

The language of Section 253 is sweeping in scope and broadly prohibits any state law, regulation, or other “legal requirement” that prohibits or has the effect of prohibiting the ability of a telecommunications carrier to provide any telecommunications service. Consistent with the structure of Section 253, the Commission has determined that it may find a local law or legal requirement runs afoul of Section 253 whenever the agency: (1) determines that “the challenged law, regulation or legal requirement violates the terms of section 253(a) standing alone”; and (2) it is not otherwise permissible under section 253(b) or 253(c).³⁸ Section 253(a) is a far-reaching prohibition on harmful state or local action while Sections 253(b) and (c) are narrow exceptions.³⁹ As discussed below, the Commission should exercise its broad authority under Section 253 to preempt unduly onerous state and local action which impedes the provision of telecommunications service. The proper standard for evaluating whether state and local action is preempted is whether it will “materially inhibit” the provision of services. And Section 253’s use of the term “legal requirement” should be interpreted expansively, to capture all the various ways that a state or locality can hamper efficient infrastructure deployment. These reforms will address the core issues slowing broadband deployment today.

A. The Commission Has Ample Authority to Interpret Section 253

As the agency charged with administering the Communications Act, the FCC has the authority to interpret any ambiguous statutory language in the Act, and to enact implementing regulations that clarify and specify the effect of the Act. Congress gave the Commission wide latitude in how to implement the Communications Act,⁴⁰ and this latitude extends to interpreting statutory

³⁶ See Crown Castle Comments at 9.

³⁷ See *id.*

³⁸ *Pub. Util. Commission of Texas*, Memorandum Opinion and Order, 13 FCC Rcd. 3460 ¶ 42 (1997) (“*Texas PUC*”).

³⁹ See, e.g. *Sandwich Isles Communications, Inc., Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary and Sections 36.611 and 69.2(hh) of the Commission’s Rules*, Memorandum Opinion and Order, 32 FCC Rcd. 5878 ¶ 25 (2017); *Texas PUC* ¶ 43.

⁴⁰ See 47 U.S.C. § 201(b) (“The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.”); *City of Arlington*,

III. CONCLUSION

Crown Castle appreciates the work the Commission has done to date to streamline the deployment of infrastructure to support wireless broadband networks. For the reasons stated above, Crown Castle encourages the Commission to use its authority under Sections 253 and 332 to act swiftly to remove remaining state and local barriers to infrastructure deployment.

Respectfully submitted,

CROWN CASTLE
INTERNATIONAL CORP.

By: /s/ Kenneth J. Simon /s/
Kenneth J. Simon
Senior Vice President and General Counsel

Monica Gambino
Vice President, Legal
Robert Millar
Associate General Counsel

1220 Augusta Drive, #600
Houston, Texas 77057
724-416-2000



August 30, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Presentation, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84; *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Siting Policies*, WT Docket No. 16-421

Dear Ms. Dortch:

The record in these proceedings demonstrates that wireless providers continue to face long delays in securing local approval for deploying network facilities. Although some states and municipalities have taken actions to create a more favorable environment for deployment, many delays continue to exist.¹ Despite the shot clocks the Commission adopted that were intended to streamline action, providers report that they have had to wait many months and sometimes years for action by a locality on a siting request.

¹ See, e.g., Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84, at 1 (filed Aug. 10, 2018) (“AT&T Letter”) (“Unfortunately, many municipalities are unable, unwilling, or do not make it a priority to act on applications within the shot clock period.”); Letter from Keith Buell, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 1-2 (filed Aug. 13, 2018) (“Sprint Letter”); Letter from Katherine R. Saunders, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, at 2 (filed June 21, 2018) (“[L]ocal permitting delays continue to stymie deployments.”); Letter from Kenneth J. Simon, Crown Castle, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WT Docket No. 16-421 (filed Aug. 10, 2018) (“Crown Castle Letter”).



The Shot Clocks Should Be Shortened and Harmonized. As providers create capacity for their existing networks and look ahead to 5G, they are increasingly seeking to deploy small cells. The attributes of small cells should allow localities to process siting applications faster, at most in a few weeks. Moreover, localities have had decades of experience in developing and applying policies for acting on applications for cell towers and other macro facilities – experience that should enable them to act quickly on all applications. For these reasons, the existing 90-day and 150-day shot clocks that apply outside of Section 6409 of the Spectrum Act are much longer than reasonable to process wireless facility applications.⁵ However, data in the record⁶ in these proceedings show that processing continues to take many months or longer.⁷ For example:

- According to one provider, 70 percent of its small wireless facilities applications exceeded the 90-day shot clock and 47 percent exceeded the 150-day shot clock for new towers; another provider reported that almost 50 jurisdictions that it worked with exceeded the 150-day shot clock.⁸

reforms focused on the same impediments, namely cost structure and timelines that are poor fits for next-generation markets. We welcome any proposals from those communities related to the future application of those policies without undermining the Commission’s rightful objective for a workable national framework.

⁵ Comments of T-Mobile USA, Inc., WT Docket No. 17-79, WC Docket No. 17-84, at 20 (filed June 15, 2017).

⁶ Delays cited in this letter were identified in comments and reply comments filed in March and April 2017 in WT Docket Nos. 16-421, and in comments and reply comments filed in June and July 2017 in WT Docket No. 17-79 and/or WC Docket No. 17-84.

⁷ Comments of T-Mobile USA, Inc., WT Docket No. 16-421, at 6 (filed Mar. 8, 2017) (“T-Mobile PN Comments”); Reply Comments of T-Mobile USA, Inc., WT Docket No. 16-421, at 6-7 (filed Apr. 7, 2017) (“T-Mobile PN Replies”); Mobilite Comments, WT Docket No. 16-421, at 14-15 (filed Mar. 8, 2017) (“Mobilite PN Comments”) (stating that 340 jurisdictions have taken over six months to establish a process or agreement for access to the right of way – measured from the time a template process or draft agreement was first exchanged); Comments of Wireless Infrastructure Association, WT Docket No. 16-421, at 5-6 (filed Mar. 8, 2017) (“WIA PN Comments”); Comments of Verizon, WT Docket No. 16-421, at 7-8, Appendix A (filed Mar. 8, 2017) (“Verizon PN Comments”); Reply Comments of CTIA, WT Docket No. 16-421, at 9 (filed Apr. 7, 2017); ExteNet Comments, WT Docket No. 16-421, at 5-6, 11-15 (filed Mar. 8, 2017) (“ExteNet PN Comments”); Comments of Crown Castle International Corp., WT Docket No. 16-421, at 21 (filed Mar. 8, 2017) (“Crown Castle PN Comments”); CTIA Comments at 7-8.

⁸ T-Mobile PN Replies at 7; WIA PN Comments at 5.



- One provider reported a small wireless facilities application that was pending with a New Jersey township for nearly a year; other providers reported small wireless facilities applications that were pending in municipalities in New Hampshire and Maine for more than two years, and three years in five other jurisdictions.⁹
- Localities in New York and Washington have required special use permits involving multiple layers of approval to locate small cells in some or all zoning districts.¹⁰
- Another New York locality subjected a provider to a process that consumed more than one and a half years to review its proposal to serve areas of historically poor service, and ultimately denied the request. The provider filed a lawsuit, which remains pending.¹¹
- Two Pennsylvania jurisdictions refused for more than a year to approve a provider's request to modify existing facilities; the provider was forced to file suit to compel the jurisdictions to act.¹²
- The “protracted and costly” process one California county imposes, which takes a year or more, has deterred broadband deployment in that county.¹³

Shortening the shot clocks to 60 and 90 days for collocations and new facilities, respectively, and harmonizing them with the period that currently applies to non-substantial modifications of wireless facilities under Section 1.40001(c) of the rules, is well supported by the record.¹⁴ Moreover, setting a shorter period for collocation on an existing structure (whether or not

⁹ WIA PN Comments at 6.

¹⁰ Comments of Verizon, WT Docket No. 17-79, at 35 (filed June 15, 2017) (“Verizon Comments”).

¹¹ Crown Castle Letter at 18.

¹² *Id.* at 17.

¹³ Sprint Letter at 1.

¹⁴ See, e.g., T-Mobile PN Comments at 23-24; T-Mobile PN Replies at 16-17; Comments of Mobile Future, WT Docket No. 16-421, at 4-5 (filed Mar. 8, 2017); Competitive Carriers Association (“CCA”) Comments, WT Docket No. 16-421, at 11 (filed Mar. 8, 2017); Mobilitie PN Comments at 19-21; Verizon PN Comments at 3, 26-27; Crown Castle PN Comments at 37-38; ExteNet PN Comments at 19, 36-39; Comments of Crown Castle International



the structure already holds an antenna) than for construction of new structures is consistent with the Commission’s findings in adopting the original shot clocks, which set 90-day and 150-day time periods for collocations and for new structures, respectively. There, the Commission found that a reasonable period under Section 332(c)(7)(B) should be significantly shorter when a new structure did not need to be built. It noted that the principal basis for distinguishing collocations from new structures was that collocations “do not implicate the effects upon the community that may result from new construction. In particular, the addition of an antenna to an existing tower or other structure is unlikely to have a significant visual impact on the community.”¹⁵ This finding applies to all existing structures regardless of whether they already hold an antenna.¹⁶

Taking this action is consistent with many states’ recent efforts to speed wireless deployment by setting deadlines for localities to act on siting applications for small cell collocations and support structures associated with collocations. Eleven states—Delaware, Florida, Indiana, Kansas, Missouri, North Carolina, Rhode Island, Tennessee, Texas, Utah, and Virginia—recently adopted small cell legislation that includes 45-day or 60-day shot clocks for small cell collocations.¹⁷ Some recently enacted state legislation likewise includes shot clocks for

Corp., WT Docket No. 17-79, at 29 (filed June 15, 2017) (“Crown Castle Comments”); Conterra Broadband Services, Southern Light, and Uniti Group Comments, WT Docket No. 17-79, at 21 (filed June 15, 2017).

¹⁵ *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 ¶ 46 (2009), *aff’d sub nom. City of Arlington v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, 133 S. Ct. 1863 (2013) (“2009 Order”).

¹⁶ *Id.*

¹⁷ See 17 DEL. C. § 1609(b)(4) (requiring review of collocation of small wireless facility within 60 days); FLA. STAT. ANN. § 337.401(7)(d)(8) (requiring review of collocations within 60 days of receipt of a complete application); IND. CODE ANN. § 8-1-32.3-26(a)(5) (requiring review of construction, placement, or use of a small cell facility within 60 days of receipt of a complete application); K.S.A. § 66-2019(g) (requiring review within 60 days of submission of an application for up to 25 small cell facilities of a substantially similar design within the jurisdiction of a single authority); R.S.MO. § 67.5113(3)(8), (4) (requiring review of collocations of small wireless facilities within 45 days of receipt of an application, and 60 days if the application is considered by the Missouri department of transportation); N.C. GEN. STAT. § 160A-400.54(d)(4) (requiring review of a small cell facility collocation within 45 days of when the application is deemed complete); R.I. GEN. LAWS § 39-32-4(b) (requiring review of a small wireless facility collocation within 60 days of submission of the application); TENN. CODE ANN. § 13-24-409(b)(5) (requiring review of a small wireless facility within 60 days of receipt of the application); TEXAS LOCAL GOVERNMENT Code § 254.154(d) (requiring review of a network node within 60 days of receipt of a complete application); UTAH



small cell facilities on new structures that are less than or equal to 90 days.¹⁸ As discussed in the record, a number of local jurisdictions have also enacted laws and ordinances that prescribe deadlines for application reviews that are shorter than the Commission's current requirements.¹⁹ Further, although larger macro facilities are still being constructed, the shift toward small cell deployments has simplified local reviews, freeing up resources so that localities can reduce processing times on *all* facilities. These facts confirm that the 60- and 90-day timeframes CTIA proposes are reasonable.

Adopting a 60-day period for collocations on or modifications of existing support structures will also harmonize this period with the 60-day period that currently applies to certain modifications that meet the requirements of Section 6409(a) of the 2012 Spectrum Act and Section 1.40001 of the Commission's Rules. A single shot clock for all collocations and modifications will simplify the process, which in turn will help speed deployment. Moreover, there is no reason to

CODE ANN. § 54-21-302(6)(a) (requiring review of a small wireless facility collocation within 60 days of receipt of a complete application); Va. Code § 15.2-2316.4(B)(1) (requiring applications for small cell facility collocations to be reviewed within 60 days of receipt of the complete application). References to enacted state small cell legislation herein do not address any provisions regarding potential tolling or extensions of time which may be contained therein.

¹⁸ See, e.g., 17 DEL. C. § 1609(b)(4) (requiring the Delaware Department of Transportation to review applications for installations and modifications of utility poles or wireless support structures within 60 days); H.B. 2651, 29th Leg., Reg. Sess. § 6(9) (Haw. 2018) (requiring review of applications for installations, replacements or modifications of utility poles associated with small wireless facilities within 90 days from receipt of the application); IND. CODE ANN. § 8-1-32.3-26(a)(5) (requiring review of applications for the construction, placement, or use of a small cell facility's associated supporting structure within 60 days from receipt of a complete application); R.S.Mo. § 67.5113(3)(8) (requiring review of applications for installation of new, modified, or replacement utility poles associated with small wireless facilities within 60 days of receipt of the application); 11 OKL. ST. § 36-504(D)(7) (requiring that applications to install a new, modified or replacement utility pole associated with a small wireless facility be processed within 75 days from receipt of the application).

¹⁹ Reply Comments of CCA, WT Docket 16-421, at 8 (filed Apr. 7, 2017) (noting that localities in Ohio, Texas, Kentucky, and North Carolina have processed collocation applications in 30 days or less, and a Kentucky jurisdiction has a maximum time of 60 days to act on new facility siting requests); Comments of T-Mobile USA, Inc., WT Docket No. 17-79, WC Docket No. 17-84, at 19-20 (filed June 15, 2017) ("T-Mobile Comments") (noting that Kentucky, Michigan, Minnesota, New Hampshire and Wisconsin previously adopted 45-day or 60-day deadlines).



There is, however, no need for this ruling to encompass voluntary discussions with a locality. Indeed, it may often prove efficient for a provider to meet with local officials to brief them on deployment plans and gain input from those officials prior to filing an application. This consensual give-and-take can speed action on individual permit applications, because the locality will be familiar with the provider's equipment design and planned locations or will have worked through any concerns it may have as to design or locations with the provider. Although such discretionary conversations may help speed deployment, the shot clocks should nevertheless not apply to such voluntary, cooperative pre-application discussions. They should, however, apply when the locality unilaterally imposes pre-application requirements and reviews.

The Commission Should Adopt an Enforceable Remedy for Shot Clock Violations. As CTIA and many other parties have demonstrated, the Commission has the authority to interpret Section 332 of the Communications Act to provide that, where an application is not acted on by the end of the shot clock period, the application is deemed granted.³⁴ Moreover, this remedy is essential to achieving both the purpose of that provision and the Commission's policy objectives.

* * *

Pursuant to Section 1.1206(a) of the Commission's rules, a copy of this letter is being electronically submitted into the record of these proceedings. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Scott K. Bergmann

Scott K. Bergmann

Senior Vice President, Regulatory Affairs

³⁴ See, e.g., Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WC Docket No. 17-84, WT Docket No. 16-421 (filed June 20, 2018); Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed July 26, 2018).