

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)**

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June 15, 2017

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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.

The industry would greatly benefit from streamlined State and local permitting processes, but so would States and localities. Although released five years ago, a report prepared by GSMA, Deloitte, and Cisco found that “[a] doubling of mobile data use leads to an increase in the GDP per capita growth rate of 0.5 percentage points.”⁸ With global data usage set to grow seven-fold in the next five years⁹ and connectivity increasingly crucial, it is abundantly clear that faster, denser, more reliable networks are catalysts of economic development. States and localities that seek to facilitate broadband deployment will have greater economic activity. Clearing regulatory hurdles will ensure successful deployment, faster speeds, opportunities for innovation, and more jobs.

II. Streamlining State and Local Review.

Under Section 253(d), the Commission has an obligation to preempt State or local laws when it finds, after notice and comment, that a provision “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”¹⁰ Furthermore, Section 332(c)(7)(B) requires that States and localities act on wireless siting requests “within a reasonable period of time,”¹¹ it prevents discrimination among providers of functionally equivalent services, and siting regulations “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”¹² In 2009, the Commission interpreted Section 332(c)(7) as requiring localities to act on application for new sites within 150 days and

⁸ GSMA, Deloitte, and Cisco, *What is the impact on mobile telephony on economic growth?* (Nov. 2012), <https://www.gsma.com/publicpolicy/wp-content/uploads/2012/11/gsma-deloitte-impact-mobile-telephony-economic-growth.pdf>.

⁹ *See supra* note 3.

¹⁰ 47 U.S.C. § 253 (2012).

¹¹ 47 U.S.C. § 332(c)(7)(B)(ii) (2012).

¹² 47 U.S.C. § 332(c)(7)(B)(i)(II) (2012).

ninety days for collocations on existing structures -- commonly referred to as “shot clocks.”¹³ Five years later, the Commission interpreted Section 6409(a) as having a “deemed granted” remedy if within sixty days a locality does not approve a collocation request that does not substantially change the physical dimensions of eligible facilities.¹⁴ These decisions have proven effective; however, there are still many gaps and areas where Commission action is needed to promote the buildout of networks for the provision of telecommunications services.

Under Sections 253(a) and 332(c)(7)(B), the Commission has the requisite authority to preempt many local and State practices that have delayed or outright blocked network providers from deployment. U.S. Courts of Appeals have espoused different standards on the relationship between Sections 253 and 332,¹⁵ but the application of 253(a) should not be limited to blatant, outright prohibitions on service because there are many other actions a locality can take—and many have¹⁶—which in effect inhibit or limit the ability a provider’s or potential competitor’s ability to compete in a fair environment. Indeed, governments have often impose requirements on applicants that result in unfettered discretion over applications and produce lengthy delays. The Commission should clarify and update its interpretation of Section 253 to say that a regulation prohibits or effectively prohibits service if it “materially inhibits or limits” the ability

¹³ Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review, *Declaratory Ruling*, 24 FCC Rcd 13994 (2009) (*2009 Declaratory Ruling*), *aff’d*, *City of Arlington v. Fed. Commc’ns Comm’n*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, *City of Arlington, Tx. v. Fed. Commc’ns Comm’n*, 133 S. Ct. 1863 (U.S. 2013).

¹⁴ Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, *Report and Order*, 29 FCC Rcd 12865 (2014) at ¶¶ 135-242 (“2014 Wireless Infrastructure Order”).

¹⁵ See generally *TCG New York v. City of White Plains*, 305 F.3d 67, 73-76 (2d Cir. 2002); *TCG Detroit v. City of Dearborn*, 206 F.3d 618, 622-24 (6th Cir. 2000); *City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1172, 1175 (9th Cir. 2001), *abrogated on other grounds*, *Sprint Telephony PCS L.P. v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008) (*en banc*); *Level 3 Communications, L.L.C. v. City of St. Louis, Mo.*, 477 F.3d 528 (8th Cir. 2007); *BellSouth Telecomm’s, Inc. v. Town of Palm Beach*, 252 F.3d 1169, 1189 (11th Cir. 2001); *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1265-67 (10th Cir. 2004).

¹⁶ See Comments of Sprint, WT Docket No. 16-421 (Mar. 8, 2017), at 14-15 (detailing a number of these practices).

of any competitor to provide service¹⁷ or creates a “substantial barrier” or impedes a provider from providing service.¹⁸ Therefore, under Section 253, providers should not be required to show an actual or insurmountable prohibition of service.

As the number of applications that localities face will only multiply in the years ahead, given the number of small cells need for 5G, the Commission should use its authority under Sections 253 and 332 to preempt laws that are unreasonably hindering the ability of providers from improving their services. The Commission should also promote policies that improve deployment capabilities like shot clocks and deemed granted remedies.

A. The Commission Should Establish a Deemed Granted Remedy for Non-Spectrum Act Siting Applications.

Siting decisions are usually made by localities, yet there is a wide variety in processes, fees, and other requirements with which a provider must comply before deployment. CCIA supports shot clocks and deemed granted remedies as a means of speeding up application processes and providing more certainty. The Commission should establish a deemed granted remedy for non-Spectrum Act siting applications if States or localities do not comply with the Section 332(c)(7)(B)(ii) shot clocks.¹⁹ This will help alleviate time delays and costs of litigation.

Although it may seem that Section 332(c)(7)(B)(v) only provides relief in the form of judicial review of a State or locality action or failure to act, a shot clock would not be inconsistent with the statute as the judicial review provision is preceded by the permissive “may,” and the shot clock would not foreclose an aggrieved applicant from pursuing judicial

¹⁷ See California Payphone Ass’n Petition for Preemption, *Memorandum Opinion and Order*, 12 FCC Rcd 14191 (1997) (“California Payphone”).

¹⁸ See *City of Auburn v. Qwest Corp.*, 260 F.3d 1160 (9th Cir. 2001). Although the 9th Circuit has more recently adopted the “actual or effective prohibition” test, CCIA believes that the 9th Circuit’s standard from *Auburn* would better promote deployment.

¹⁹ See *Wireless NPRM* at II.A.1 (seeking comment on a deemed granted remedy for missing shot clock deadlines).

review. For example, currently a carrier’s recourse is suing the municipality in federal court and seeking an “injunction granting the application.”²⁰ However, that has the potential of dragging out the process even longer at the expense of consumers who are demanding faster and more reliable mobile service.²¹ Moreover, as providers have to deploy hundreds of thousands of small cells, requiring them to challenge every shot clock violation in court would be incredibly burdensome. Chairman Pai expressed his awareness of this problem last year.²² The Supreme Court affirmed the Fifth Circuit’s decision that the Commission has the requisite authority to write rules and carry out Section 332(c)(7)(B).²³ Therefore, a deemed granted remedy would be an appropriate means of carrying out the Section 332(c)(7)(B)(ii) shot clocks.

Furthermore, the Commission should clarify that shot clocks continue to run, after the applicant has filed the requisite information for the proposed site, when a locality has enacted an official or de facto moratorium (by not accepting applications) on the use of public rights of way or municipally owned structures.

B. Reasonable Period of Time to Act on Applications.

The Commission should clarify the term “reasonable period of time” and harmonize the shot clocks for non-Spectrum Act applications.²⁴ As T-Mobile has noted, “[i]t is not uncommon for it to take two years or more from small cell project initiation to completion.”²⁵ However, in

²⁰ See *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113 (2005).

²¹ See, e.g., *Crown Castle NG East, Inc. v. Town of Greenburgh*, 2013 U.S. Dist. LEXIS 93699, *6-*8 (S.D.N.Y. 2013) (“*Greenburgh*”), *aff’d*, 552 Fed. Appx. 47 (2d Cir. 2014) (illustrating the difficulty of pursuing judicial review as Crown Castle finally received permits, pursuant to the District Court’s decision, after three years).

²² See Ajit Pai, Fed. Comm’ns Comm’n, Remarks at the CCA 2016 Annual Convention, Seattle, WA, at 2 (Sept. 21, 2016) (“[T]he FCC has already established a shot clock within which local governments are supposed to review wireless infrastructure applications. But if a city doesn’t process the application in that timeframe, a company’s only remedy is to file a lawsuit. We should give our shot clock some teeth by adopting a ‘deemed-grant’ remedy, so that a city’s inaction lets that company proceed.”).

²³ *City of Arlington v. Fed. Comm’ns Comm’n*, 133 S. Ct. 1863 (2013), *aff’g* *City of Arlington*, 668 F.3d at 249.

²⁴ *Wireless NPRM* at II.A.2.

²⁵ Comments of T-Mobile, WT Docket No. 16-421 (filed Mar. 8, 2017) at 6.

many cases, localities act more expeditiously than the shot clock deadlines.²⁶ As the Commission itself has noted, sometimes these deadlines are “longer than necessary and reasonable”²⁷—this is especially true for small cells. As discussed above, small cells are different from macro cells, and it is wholly unreasonable for a small cell installation to take longer than a macro cell.

All collocations, including small cells, should be subject to sixty-day shot clocks; other new sites should be subject to ninety-day shot clocks. Shot clock standardization will help improve certainty for network providers that are hurriedly trying to deploy to new areas and upgrade their networks with more capacity in areas of high demand.

C. Updating NEPA and NHPA.

Providers incur significant and delays in assessing whether they need to involve third parties and consult with State Historic Preservation Officers (SHPOs) and Tribal Nations on the questions of environmental and historic preservation review. If an entity is required to conduct an environmental assessment (EA) based on any of the long list in the Commission’s rules,²⁸ “the application will not be processed and the applicant may not proceed with construction until environmental processing is completed.”²⁹ This could result in unexpected, long delays that threaten deployment in areas of need. Shot clocks on environmental review would help provide certainty and mechanisms for the speedy resolution of environmental disputes would also alleviate some of the problems providers face.

²⁶ See *2009 Declaratory Ruling* at ¶ 43.

²⁷ *Mobiltie PN* at 11.

²⁸ 47 CFR §§ 1.1307(a), 1.1308(a), 1.1312(b).

²⁹ *Wireless NPRM* at ¶27.

1. *Batch Applications.*

The Commission should encourage batch or consolidated applications for multiple small cell facilities within a governmental jurisdiction. In particular, batch applications could help lower the cost of and speed up NEPA and NHPA review.³⁰ However, the Commission should not seek a certain minimal or maximum. The Commission could encourage batch applications through a deemed granted remedy, similar to the law recently enacted in Virginia, if an application is not approved in a timely manner.³¹

2. *Tribal Review.*

Respect for Tribal Nations and the protection of their lands is crucial. However, the tribal review process has become a significant expense and threatens to stifle 5G deployment, and it can have the negative effect of slowing the deployment of wireless service to Native American communities. As Sprint stated in the *Mobilitie* proceeding, its per site costs have “increased 14-fold in the last six years, from less than \$500 per site in 2011 to more than \$6,300 today.”³² Furthermore, Sprint’s experience in deploying 23 small cells near NRG Stadium in Houston for the Super Bowl, yet incurring fees of \$173,305 to a dozen Tribal Nations, illustrates the problems with Section 106 today.³³ The Commission has recognized that part of the problem is the lack of clarity in NHPA and the ACHP regarding a tribe’s ability to seek compensation.³⁴ Furthermore, the ambiguity in the law has led a situation where Tribal Nations could potentially have an overly long reach into areas well beyond their lands. As WIA stated, the Tower

³⁰ Comments of Sprint, WT Docket No. 16-421 (filed Mar. 8, 2017) at ii (“Sprint has spent millions of dollars on environmental review fees and tribal historic consultation fees, and not in a single instance has Sprint received a determination that its antenna deployment would have a significant environmental impact under NEPA or that it would have an adverse effect on an Historic Property protected by the NHPA.”).

³¹ See Va. Code. Ann. § 56-484.28(A) (2017).

³² Comments of Sprint, WT Docket No. 16-421 (filed Mar. 8, 2017), at 45.

³³ Notice of *Ex Parte* Communication from Keith C. Buell, Sprint, WT Docket No. 16-421 (filed May 16, 2017).

³⁴ *Wireless NPRM* at ¶ 43.

Construction Notification System (TCNS) “must facilitate both tribal input on culturally significant properties and the rapid and efficient build-out of our nation’s wireless infrastructure.”³⁵

D. Rights of Way.

Rights of way (ROWs) are vital to building out and densifying networks. ROW access promotes better network coverage because ROWs are often in well-populated areas where users gather and utilize their network connections. Facilities in ROWs, like light poles, traffic light signals and poles, utility poles, and equipment cabinets usually have the necessary infrastructure for wireless service: electricity and access to telecommunications services lines for backhaul. They are also of a height sufficient for broader signal coverage. Put simply, siting facilities in ROWs is effective and could be a more expeditious way of building out a network in areas that need greater capacity or have coverage gaps.

The availability of structures like poles on public ROWs creates more options for providers, and ROW access allows for more flexibility and therefore the ability of a provider to meet coverage demands in a certain area. Moreover, using ROWs can be more effective than negotiating thousands of individual contracts with private landowners. As 5G technology develops and our technology becomes even more connected with IoT devices and autonomous vehicles, public rights of way will become even more important for facilitating connectivity.³⁶

Unfortunately, some localities have seen their authority over public ROWs as a means of raising revenue. As WIA explained, “cities (and localities) hold the public rights-of-way in trust for the public—which includes communications facilities—not as landlords monetizing private

³⁵ Reply Comments of Wireless Infrastructure Association, WT Docket No. 16-421 (filed Apr. 7, 2017), at 74.

³⁶ See Comments of T-Mobile, WT Docket No. 16-421 (filed Mar. 8, 2017), at 2 (“Of these, 6,000 nodes/installations are located in public rights-of-way (‘ROWs’) in 24 different states today, and this number is expected to grow to 50,000 nationwide in five years.”).

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).

nondiscriminatory access to poles under “just and reasonable” rates, terms and conditions.⁵²

Furthermore, the Commission should recognize that under Section 253(a), a State’s or locality’s failure to provide access to or delay in providing access to public rights of way or government-owned vertical structures for small cells inherently prohibits “the ability of any entity to provide any interstate or intrastate telecommunications service.”⁵³ As a result, there are important actions that the Commission can take in this proceeding to speed access to poles, attachment of antennas, and better connectivity.

As the Commission noted, the current timeline for processing pole attachment requests can be up to a five-months long “assuming all contemplated deadlines are met.”⁵⁴ But, that is not always the case. Shortened timelines will help providers speed deployment. A major impediment is the make-ready process—the sixty-day maximum period for existing attachers’ make-ready work can be burdensome.⁵⁵ The Commission has promoted a one-touch make-ready (OTMR) policy,⁵⁶ and should implement it through this proceeding. OTMR reduces the cost and speed of deployment of new networks by maximizing efficiency in the make-ready process by limiting the multiple truck rolls that would otherwise occur. It also gives the existing pole owner a say in the make-ready work as the attacher would have to use engineering designs and contractors approved by the pole owner. Furthermore, localities with OTMR policies will be more attractive to providers because of the decreased costs and increased efficiencies. OTMR should be presented as an option for new attachers, so they can decide for themselves whether they want to pursue that solution or not.

⁵² 47 U.S.C. § 224 (2012).

⁵³ 47 U.S.C. § 253(a) (2012).

⁵⁴ *Wireline NPRM* at ¶ 6.

⁵⁵ 47 CFR § 1.1420(e)(1)(ii).

⁵⁶ Letter from Howard J. Symons, General Counsel, Fed. Comm’n Comm’n, to Benjamin C. Mizer, Principal Deputy Assistant Attorney General, Civil Division, U.S. Dep’t of Justice, at 5-6 (Oct. 31, 2016), *available at* <https://assets.documentcloud.org/documents/3211861/Fcc-AttLouisville.pdf> (noting that OTMR is “consonant with the goals of federal telecommunications policy”).

OTMR would be better than the so-called “right touch make-ready” (RTMR) proposal,⁵⁷ which does not solve gatekeeper problems. RTMR does not solve the problem where incumbents have the incentive to draw out the process and prevent competitors from attaching, especially if the penalty is \$500 per month cited by the Commission.⁵⁸ RTMR will still dissuade new entrants from even trying to attach. It does not address the inherent inefficiencies where make-ready is usually done sequentially which in reality requires multiple truck rolls.

Under Section 224(b)(1), make-ready charges must be just and reasonable. Therefore, make-ready fees should be cost-based. Moreover, pole owners should provide a statement of charges for make-ready work and make location data publicly available. This will improve the ability of providers, particularly new attachers, to forecast their costs and better plan their deployments.

IV. Conclusion.

CCIA agrees with the Commission that “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.”⁵⁹ It is imperative that the Commission remove these barriers so the U.S. will have fewer hurdles in the global race to 5G. CCIA applauds the Commission for seeking comment on reforms of review processes, fees, and other impediments to wireless and wireline deployment because new networks will require greater access to backhaul. The United States has led the world in connectivity and network technology, but we will surely fall behind if network providers continue to face mounting fees and arbitrary delays at the state and local levels. Clearing these impediments that have stymied deployment will not

⁵⁷ See *Wireless NPRM* at ¶¶ 25, 27 (seeking comment on “right touch make-ready” proposals).

⁵⁸ *Id.* at ¶ 25.

⁵⁹ *Wireline NPRM* at ¶ 2.

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,

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