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

In the Matter of	)	
	)	
	)	
Petition for Declaratory Ruling Regarding Fees Charged by Clark County, Nevada for Small Wireless Facilities	)	WT Docket No 19-230

REPLY COMMENTS OF THE MAYOR AND CITY COUNCIL OF BALTIMORE

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I. INTRODUCTION

The Mayor and City Council of Baltimore ("the City" or "Baltimore") submits these comments in response to the Comments of ExteNet Systems, Inc., dated September 25, 2019, concerning the *Petition for Declaratory Ruling Regarding Fees Charged by Clark County, Nevada for Small Wireless Facilities.* Baltimore seeks to correct the record in regard to ExteNet's allegations about the City's small cell pole attachment fees. The City also wishes to share its perspectives as to matters involving the proposed "deemed granted" remedy discussed in ExteNet's Comments.

II. COMMENTS

A. ExteNet's Comments About Baltimore's Pole Attachment Fee

On pages 5 and 6 of its comments, Extent claims that the City charges an annual attachment fee for placing small cell wireless facilities on City-owned poles. It asserts that the fees charged exceed the Commission's fee limitations. It claims the City employs a sliding scale for charging its annual fee, starting at $2400. ExteNet concludes that the City's sliding scale discriminates against those companies installing fewer facilities than may be realized by other companies.

Each of these claims is false. The City does not charge an annual attachment fee, and the City does not charge a fee with a sliding scale. The fees charged do not discriminate between different service providers. The City's fees do not exceed the Commission's fee limitations.

In response to the Commission's September 26, 2018 small cell ruling,* Baltimore conducted a thorough study of the City's costs associated with administering and permitting the deployment of small cells on public right-of-way. The study was completed in December of 2018.

* *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* Declaratory Ruling and Third Report and Order, 33 FCC Rcd. 9088 (F.C.C. 2018).

A revised fee scheduled was approved the following month, on January 9, 2019, by the City's Board of Estimates – a week ahead of the effective date of the Commission's September ruling.

The revised schedule requires providers to pay a one-time installation fee for the deployment of a small cell installation. As permitted in the September ruling, the fee is grounded on the actual and reasonable costs incurred by the City, based upon the City's experience in permitting more than 600 small cell installation over the last several years.

In furtherance of our belief that the City is engaged in a close partnership with its small cell providers, Baltimore sent the cost data to certain service providers for their review and comment, although ExteNet was omitted inadvertently from the list of recipients. None of the questions and comments received from those receiving the data attacked or undermined the validity of the cost study, its data or the resulting fee schedule. Verizon and AT&T, however, claimed that their future installations would not involve the same reliance upon City-owned conduit that had characterized the installations in Baltimore to date. They wanted the cost data reexamined to reflect what they considered the realities of their future deployments.

The City agreed. Baltimore recently completed the requested reexamination and have sent the results to the companies for their review. In accordance with the data, the City intends to slightly revise its existing fee schedule. The schedule under consideration contains a one-time fee for node construction and a separate one-time fee for conduit construction. The City expects to continue to charge a fee for recurring costs in accordance with the Commission's September 2018 ruling.

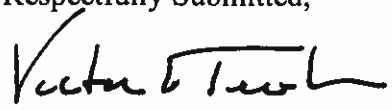
B. Deemed Granted Remedy

ExteNet urges the Commission to create a "deemed granted" remedy for small cell applications in instances where the reviewing authority fails to act within the "shot clock"

timelines. Baltimore urges the Commission to dismiss this recommendation. The recommendation puts the public at risk and would therefore be contrary to the public interest if acted upon. A review of an application is, among other things, a review as to whether a small cell, with a given design and engineering characteristics at a given location, is safe to install. If an application has not been acted upon within the "shot clock," it means the government has yet to fully establish that an installation will be installed and operated within reasonable safety standards.

Ensuring public safety is the principal duty of every government of any size, whether the government is local, state or national in scope. While a "deemed granted" remedy certainly advances corporate interests, and while it may also advance the national interest in some respects by encouraging rapid deployment of potentially transformative technology, a "deem granted" remedy unmistakably harms the public interest. The public interest, in this instance, is best served by balancing the need for safety against the need for a speedy deployment. A "deemed granted" remedy wholly ignores the public safety aspect at the heart of the regulatory process. Public safety must be deemed by any responsible governing body to be at least as important as a fast-track approval process, if not accorded more weight in a fair balancing of interests. A "shot clock" violation brought before a court, in contrast to a deemed granted remedy, ensures that the violation can be judged to be a reasonable exercise of the public trust or not.

Respectfully Submitted,



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