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

COMMENTS OF ORLANDO UTILITIES COMMISSION

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I. INTRODUCTION

Pursuant to the Federal Communication Commission's ("Commission") Wireless Telecommunications Bureau's Public Notice seeking comments[1] in the above-referenced docket the Orlando Utilities Commission ("OUC") respectfully submits comments addressing Verizon's Petition for a Declaratory Ruling ("Petition") and related comments from various parties, including ExteNet, and in opposition to ExteNet's requests that the Commission issue a Declaratory Ruling clarifying its previous orders regarding just and reasonable fees for access and attachments.

OUC is a statutory commission created by the Florida State Legislature pursuant to Chapter 9861, Laws of Florida, Special acts of 1923, as amended and supplemented, and made a part of the government of the City of Orlando, Florida. OUC operates, maintains and controls a municipal water and electric system that supplies and distributes water and electricity within the City of Orlando and adjoining portions of Orange and Osceola Counties including the provision of electric service to the City of St. Cloud.

II. COMMENTS

OUC opposes the proposition, advanced in the above-captioned proceeding, that the Commission's 2018 Small Cell Order's presumptively reasonable safe harbor fee levels bear any relationship to the costs localities incur in managing the public rights-of-way. Specifically, OUC objects to any reference to its rates being excessive, as its rates are cost based and are just and reasonable. Several commenters assert that Clark County's fees cannot be cost-based in part because they exceed the safe harbor amounts established in the 2018 Small Cell Order.[1] This is an inaccurate recitation of the Commission's ruling, and the

[1] *See Comments of ExteNet at 5; Comments of CTIA at 8; Comments of the Competitive Carriers Association at 6; Comments of T-Mobile at 8-9.*

presumptively reasonable rates are not an accurate representation of the costs our community is incurring in facilitating small cell deployments, as well as the long term maintenance and replacement of the facilities on which these devices are located.

In adopting presumptively reasonable safe harbor fee levels, the Commission did not conclude that the amounts it chose were a reasonable approximation of objectively reasonable costs. It merely declared that fees at or below those levels would be deemed presumptively reasonable. No study of local government costs was conducted by the Commission, nor was any evidence cited relating the safe harbor amounts adopted to actual local government costs. The Commission's assertion that it anticipated only very rare circumstances in which fees would exceed those safe harbors, is based solely on the fact that a number of states have imposed fee caps below the Commission's safe harbor rates.[2] The FCC rate is not based on an estimation that *costs* will exceed those safe harbor amounts in only limited circumstances, nor does it suggest, as several commenters imply[3], that any fee above that level is presumptively not based on costs.

ExteNet's request that the Commission impose a punitive "deemed granted" remedy on localities for alleged violations of the Commission's shot clocks is improperly raised in this proceeding, unsupported by evidence of need, and impermissible under the statute. Congress provided a judicial remedy for violations of Section 332(c)(7), and the Commission should not put itself in the role of the courts by imposing such a remedy. Furthermore, such a remedy raises significant public safety concerns, and there is no indication the changes adopted in the

[2] *See In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* WT Docket No. 17-79, WC Docket No. 17-84, 33 FCC Rcd. 9088 (2018) ("Small Cell Order") at n.233.
[3] *See, e.g. Comments of T-Mobile at 8-9 (arguing that the mere fact that a rate exceeds the safe harbor amount is "a further reason preemption is clearly warranted").*

Commission's Small Cell Order are insufficient to address such alleged problems if theytruly exist. This oft-repeated demand must be dismissed by the Commission here, and in other relevant proceedings.

III. CONCLUSION

OUC opposes Verizon's Petition in this matter and respectfully requests that the Commission maintain its Small Cell Order without expanding upon said order as requested by both Verizon and commenters. The Commission must reject the interpretation advanced by the Petition and several commenters in this proceeding that charging more than a safe harbor rate is, standing alone, sufficient evidence to prove that a community is charging above its costs for recurring charges. Local governments are entitled to recover a reasonable approximation of their objectively reasonable costs, and the mere fact of charging a fee above a safe harbor threshold which itself was not set based on costs, cannot constitute proof that fees are not cost-based. OUC strongly urges the Commission to reject this misinterpretation of the Small Cell Order suggested by parties in this proceeding.

Respectfully submitted,

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