

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

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

REPLY COMMENTS OF THE CITY OF PORTLAND, OREGON

I. INTRODUCTION.

The City of Portland, Oregon (“Portland”) submits these Reply Comments to correct misleading statements that have been submitted as part of the record in this proceeding.

Specifically, Portland strongly objects to ExteNet’s mischaracterization of Portland’s policies, to repeated mischaracterizations of the Commission’s 2018 Small Cell Order (“Order”), and ExteNet’s calls for a “deemed granted” remedy. In addition to being misleading, the majority of issues raised by ExteNet – and other commenters in this proceeding – fall outside the proceeding’s scope.

In summary, the Commission must reject efforts by wireless companies to make collateral attacks on localities like Portland and to use this proceeding to rewrite the Commission’s Order.

II. PORTLAND’S POLICIES DO NOT PROHIBIT SMALL WIRELESS FACILITY DEPLOYMENT.

ExteNet used its comments in this proceeding to attack uninvolved localities, including Portland.¹ However, ExteNet omitted the fact that it is moving forward with installing small wireless facilities in Portland under ExteNet’s existing franchise. ExteNet’s contractors spoke with Portland as recently as September 12, 2019 about submitting the required applications.

¹ See Comments of ExteNet at 6.

Furthermore, the rates Portland charges for small wireless facilities do not effectively prohibit the provision of telecommunications or personal wireless service because at least one major provider is deploying facilities and providing service under this rate structure and other providers are finalizing preparations to do so, as well. ExteNet's complaint ignores the fact that major providers and ExteNet itself are deploying, or preparing to deploy, small wireless facilities in Portland. ExteNet's unfounded complaint is not evidence of any improper action by Portland.

Finally, attacks on Portland and other localities nationwide are squarely outside the scope of this proceeding and are not properly before the Commission.

III. SEVERAL COMMENTERS INACCURATELY DESCRIBE THE COMMISSION'S PRESUMPTIVELY REASONABLE FEE STRUCTURE.

Several commenters advance the proposition that the Commission's 2018 Small Cell Order's presumptively reasonable safe harbor fee levels accurately reflect the costs localities incur in managing the public rights-of-way. They 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.² This is an inaccurate recitation of the Commission's ruling and an inaccurate representation of the actual costs of accommodating small cells within the rights-of-way.

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

² 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.

exceed those safe harbors, is based solely on the fact that a number of states have imposed fee caps below the safe harbor limits.³ It 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, that any fee above that level is presumptively not based on costs.

That is precisely the interpretation advanced by the Petition and several comments in this proceeding.⁴ Such an interpretation must be rejected by the Commission. Even under the FCC's Small Cell Order, which Portland has appealed to the 9th Circuit, local governments are entitled to recover a reasonable approximation of their objectively reasonable costs. Charging a fee above a safe harbor threshold, which itself was not set based on researched costs and broad national experience, cannot constitute proof that fees are not cost-based. Portland strongly urges the Commission to reject this misinterpretation of the Small Cell Order.

IV. IMPOSITION OF A “DEEMED GRANTED” REMEDY IS NEITHER JUSTIFIABLE NOR LEGALLY PERMISSIBLE.

ExteNet's comments repeat a call for the Commission to impose a punitive “deemed granted” remedy on local governments. A “deemed granted” remedy is unjustified and outside both the scope of this proceeding and the Commission's authority to adopt. The imposition of a “deemed granted” remedy for shot clock violations, while understandably convenient from the perspective of industry, wholly ignores the importance of public safety and rights-of-way management activities with which local governments are charged. Portland supports the discussion of this issue raised by the City of Baltimore, Maryland, in its Reply Comments,⁵ and emphasizes further that a “deemed granted” remedy is also squarely outside the Commission's

³ See Small Cell Order n.233.

⁴ 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.

⁵ See Reply Comments of the City of Baltimore (filed Oct. 8, 2019).

authority to adopt. The shot clocks (other than those for eligible facilities requests) are adopted pursuant to Section 332(c)(7), in which Congress specifically prescribed a judicial remedy for providers allegedly aggrieved by local action. That providers would prefer to ignore a statutory process, and instead jump to the end, is of no legal consequence. The law is clear and the Commission has not and cannot ignore that Congress prescribed the remedy of the courts.⁶

Portland urges the Commission to: reject the unfounded claims leveled against localities not a part of this proceeding; reject industry's distortions of the Commission's legal standards, and reject providers' demands for relief inconsistent with the statute.

Respectfully Submitted,

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⁶ 47 U.S.C. §332(c)(7)(B)(v).