

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

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

REPLY COMMENTS OF EXTENET SYSTEMS, INC.

Pursuant to the Federal Communication Commission’s (“Commission”) Wireless Telecommunications Bureau’s Public Notice seeking comments¹ in the above-referenced docket ExteNet Systems, Inc. (“ExteNet”) herby submits its reply comments in the above-captioned proceeding. The record supports Verizon’s Petition for a Declaratory Ruling (“Petition”). ExteNet agrees with the numerous commenters who, like ExteNet, suggest that Clark County, Nevada (“Clark County”) and other municipalities are charging recurring fees for both Small Wireless Facilities and fiber backhaul that are not based on a reasonable approximation of their actual reasonable costs. Where such costs have not been sufficiently established by a report of an independent auditor according to clear standards established by the Commission, entities may not charge recurring fees that exceed the presumptively reasonable annual rate of \$270 established by

¹ Wireless Telecommunications Bureau Seeks Comment on Verizon’s Petition for Declaratory Ruling Regarding Fees Charged by Clark County, Nevada for Small Wireless Facilities, WT 19-230, DA 19-823, Aug. 26, 2019.

the Commission’s extensive review and findings and as set forth in the Commission’s Third Report and Order.²

I. COMMISSION AUTHORITY

Several commenters addressed the Commission’s authority to act in this proceeding. On September 9, 2019, Clark County submitted a letter to the Commission requesting a suspension of this proceeding to allow Verizon and Clark County to “negotiate a resolution.”³ Notably, Clark County did not make a formal motion for stay of the proceeding and, according to the language of the letter, Verizon merely “represent[ed] that they have no objection to the request,”⁴ as opposed to concurring or joining in the request. As the Commission noted in denying the request, “deployment by other providers in the County may also be deterred if Clark County’s practices are not consistent with the Communications Act” and “deployments outside the County could also be adversely affected.”⁵

The City and County of San Francisco alleged that “there is currently no controversy between Verizon and Clark County for this Commission to consider” because the parties are operating under an interim arrangement while negotiating a settlement.⁶ San Francisco argued that an interim arrangement and negotiations mean there can be no controversy to be terminated

² 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 17-79, WC 17-84, FCC 18-133, Sept. 26, 2018. (“TRO”). The TRO became effective as of January 14, 2019. 83 Fed. Reg. 51,867 (2019).

³ Comments of Clark County, Nevada, WT Docket No. 19-230 (Sept. 25, 2019).

⁴ Id.

⁵ Order, WT Docket No. 19-230, DA 19-927 (Sept. 18, 2019).

⁶ Comments of the City and County of San Francisco, p. 2, WT Docket No. 19-230 (Sept. 25, 2019).

and no uncertainty to be removed,⁷ requirements of the Commission’s regulations for Declaratory Rulings.⁸ Such a position is divorced from economic and business realities. Simply because Verizon chooses to continue operating in Clark County while negotiating a resolution to this dispute does not moot or negate the underlying dispute. In the absence of a formal withdrawal of the Petition for Declaratory Ruling, the Commission undeniably has before it a pending “controversy” or “uncertainty” as those words are used in 47 C.F.R. § 1.2.

As stated in T-Mobile’s Comments, “the Commission has ample authority to issue the requested declaratory ruling.”⁹ The Commission had broad discretion in considering Clark County’s request to hold this proceeding in abeyance, and, through a written Order, chose to allow the proceeding to proceed.

II. REPLY TO THE MAYOR AND CITY COUNCIL OF BALTIMORE

On October 7, 2019, the Mayor and City Council of Baltimore (the “City”) filed Reply Comments in this proceeding.¹⁰ In those Reply Comments, the City alleged that each of ExteNet’s allegations regarding the rates and fees charged by the City¹¹ are false. The City’s assertion that “each of these claims is false” is incredulous in light of the City’s later admission 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.¹²

⁷ Id.

⁸ 47 C.F.R. § 1.2.

⁹ Comments of T-Mobile USA, Inc., p. 9, WT Docket No. 19-230 (Sept. 25, 2019).

¹⁰ Reply Comments of the Mayor and City Council of Baltimore, WT Docket No. 19-230 (Oct. 7, 2019).

¹¹ Comments of ExteNet Systems, Inc., pp. 5-6, WT Docket No. 19-230 (September 25, 2019).

¹² Reply Comments of Baltimore at p 3.

ExteNet has been conducting business in the City for at least five (5) years. ExteNet has a Franchise Agreement with the City dated July 20, 2015, and a Conduit Lease Agreement dated July 1, 2015 and, a License Agreement for Attachment to City Poles dated August 6, 2015. All assertions made by ExteNet with respect to the City's rates are based on the language in those Agreements. ExteNet considers itself to be a valued partner with the City of Baltimore and is saddened to learn through Reply Comments that the City, inadvertently or otherwise, failed to notify ExteNet of changes to its rates and neglected to include ExteNet in a subsequent rate review. The City cannot find ExteNet to blame for raising in its Comments the only rates that have been made known to it to date if ExteNet was not included in the City's rate review and updates.

III. CONCLUSION

ExteNet supports Verizon's Petition in this matter and based on its statutory authority to interpret the Communications Act, and its own orders, respectfully requests that the Commission declare Clark County, and any other municipality charging recurring fees for both Small Wireless Facilities and fiber backhaul that are not based on a reasonable approximation of its actual reasonable costs, as sufficiently established by a report of an independent auditor according to clear standards established by the Commission, may not charge recurring fees that exceed the

presumptively reasonable annual rate of \$270 established as reasonable by the Commission's extensive review and findings and as set forth in the *TRO*.

Respectfully submitted,

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Dated: October 10, 2019