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January 12, 2017

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: ***WT Docket No. 16-421***
Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies

Dear Ms. Dortch:

Attached is a letter from Mobilitie, LLC, which responds to the December 19, 2016, Public Notice seeking comment on Commissioner Clyburn's #Solutions2020 Call to Action Plan. Because the letter references the above-referenced proceeding, it is being filed in the docket for this proceeding pursuant to the instructions in the Public Notice.

Should there be any questions regarding this submission please contact the undersigned.

Sincerely,

John T. Scott, III

John T. Scott, III

Attachment

mobilitie
intelligent infrastructure

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January 11, 2017

Commissioner Mignon Clyburn
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **#Solutions2020 Call to Action Plan**

Dear Commissioner Clyburn:

I commend you for holding the #Solutions 2020 Policy Forum on October 19, 2016, and in announcing your "Call to Action Plan" on December 19. As I said when I had the privilege of speaking at the Policy Forum, there can be no more important goal for the Commission than to expand the affordability and availability of advanced wireless broadband services to benefit all Americans. The steps you outline in your Action Plan would clearly help accomplish that goal.

I support in particular your conclusion that, "To have affordable service, you must first have service. That is why lowering barriers to deployment are so important." You recognize that these barriers exist, and that they must be removed if broadband is to deliver its enormous benefits to all citizens. You thus recommend "putting in place processes to streamline the permitting process" and "making municipal assets such as fiber, light and power poles, rooftops, street furniture and traffic signals available on a nondiscriminatory basis and attractive terms." (Action Plan at 3, 5.)

I fully agree. These actions are needed to stop localities from creating barriers that threaten the immense promise of broadband. In the face of the clear benefits that broadband offers to their own citizens, many localities are blocking deployment by imposing excessive, unreasonable and discriminatory charges for access to their rights of way and to municipal assets such as light and power poles. Your Action Plan supports forceful Commission actions to outlaw these outrageous charges and practices, and make rights of way and municipal assets available on terms that will trigger the investment needed to build essential infrastructure. Action now is all the more important because the Commission is bringing additional spectrum on line that is needed to ensure broadband is widely available to all. But if barriers to deployment are not removed, the investment that is required to put that spectrum to productive use will not happen – and the public will lose.

* * *

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Wireless broadband is the essential public service for the 21st Century – just as important as landline telephone networks were in the 20th Century. People increasingly depend on access to wireless broadband to get an education, to apply for a job, to obtain health care, and to learn about services their government provides. It is particularly essential for those citizens who depend on wireless to stay connected, including millions of low-income citizens. New technologies and services, including 5G and the Internet of Things, will enhance the capabilities of fire, rescue and police departments to protect the safety of their communities' residents.

But reliable, affordable wireless broadband cannot exist without major new investments in the small cells, antennas, fiber, and other facilities required to transmit the exploding amount of data traffic. Millions of small cells and other wireless transmitters, plus tens of thousands of miles of backhaul and transport, will be needed. As you note, "In order for wireless providers to meet America's growing demand for broadband services, they not only need additional spectrum, but the ability to deploy new or improved wireless facilities or cell sites in a timely manner." (Action Plan at 5.)

Mobilitie was built on the vision that the nation needs a huge investment in telecom networks if it is to reap the benefits that broadband can deliver. We are the largest privately-held infrastructure provider in the United States. We fund and install indoor and outdoor WiFi and wireless networks using small cells, microwave spectrum, and fiber. We are working with communities across the nation to deliver available and affordable broadband services to their residents.

To achieve the promise of broadband, most new networks need to be deployed along local roads and streets. They are by far the best location because every resident and every business is located close to a road. Many of the new wireless broadband technologies will rely on high-band spectrum, which has immense capacity but short signal propagation, again making the use of rights of way essential. Moreover, the network to support many of the new broadband services like connected vehicles and traffic management must be installed along those streets.

While we often think of rights of way as for traditional utilities like electricity, gas and water, historically the purpose of rights of way has been far broader. Centuries ago the principle developed that a government would hold and manage rights of way for the benefit of the public by granting entities a "right" to use the "way." Early uses were for transportation, allowing both private vehicles and public transportation systems like railroads and subways. Next came the traditional utilities, which supplied water, electricity, gas and then telephone service to residents. But regardless of the particular use, the fundamental purpose of a right of way was to provide a physical space for building and operating services that benefit the public.

Congress has recognized that access to state and local rights of way are essential for new communications networks, not just traditional utilities. In amending the Communications Act in 1996, it prohibited barriers that impeded new services. And, it extended access rights well beyond traditional telephone utilities in order to achieve its fundamental goal of promoting new services to benefit all Americans. It balanced local government's traditional authority to manage

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its roads and streets with ensuring that they would be available for new telecom services at affordable prices that would not deter investment. It thus granted rights of way access to all carriers, such as wireless providers and companies like Mobilitie which build and operate the transport networks supporting other carriers.

Many cities recognize the tremendous benefits to their citizens of using rights of way to deliver broadband, and Mobilitie is successfully partnering with them. However, many localities are frustrating deployment – impeding ubiquitous, affordable wireless broadband. They are imposing unreasonable, excessive and discriminatory fees that deter Mobilitie and other providers from building new infrastructure. The exorbitant fees these localities demand to exploit the public's fast-growing need for broadband in fact only deprive their citizens of access to that essential public service.

Mobilitie has thus sought relief from the Commission in a Petition for Declaratory Ruling that it filed on November 15.[1] Its Petition supplies numerous examples of unreasonable and discriminatory charges that preclude deployment. These include requirements that Mobilitie pay a percentage of its gross revenues, which obviously are not based on actual rights of way use or a locality's costs to oversee that use; annual fees in the thousands of dollars for each small cell that again far exceed any possible costs to the locality; and fees that are imposed on Mobilitie but not imposed on competing providers.

In its Petition, Mobilitie explained that Congress enacted Section 253(c) to achieve its cardinal goal of preventing barriers to the deployment of new services by limiting the charges that can be imposed for rights of way access. Such charges must be "fair and reasonable compensation" for the use of that public resource, and must also be "competitively neutral and nondiscriminatory." And they must be "publicly disclosed" by governments, so that they are transparent to the public and to carriers. By clarifying these provisions, the Commission will prevent excessive and discriminatory rights of way charges from impeding the deployment of critically needed wireless services. Mobilitie specifically asked the Commission to declare that:

- "Fair and reasonable compensation" means charges for rights of way application and access fees that enable a locality to recoup the costs reasonably related to reviewing and issuing permits and managing the rights of way. Additional charges or those not related to actual use of the right of way, such as fees based on carriers' revenues, are unlawful.

[1] On December 22, 2017, the Wireless Telecommunications Bureau sought comments on Mobilitie's Petition and on other actions the Commission could take to interpret Sections 253 and 332 of the Communications Act to expedite wireless deployment. Public Notice, Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling, WT Docket No. 16-421, DA 16-1427. The Public Notice aligns with the broadband infrastructure objectives of the Call to Action Plan.

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- "Competitively neutral and nondiscriminatory" means charges imposed on a provider for access to rights of way that do not exceed the charges imposed on other providers for similar access to the same rights of way. Higher charges are discriminatory and therefore unlawful.

- Localities must disclose to a provider seeking access to rights of way the charges that they previously assessed on others for access.

These rulings interpreting Section 253(c) to remove barriers will directly help to deliver on your Call to Action's objectives of "putting in place processes to streamline the permitting process" and "making municipal assets such as fiber, light and power poles, rooftops, street furniture and traffic signals available on a nondiscriminatory basis and attractive terms." The simple fact is that if charges for access to rights of way and to these municipal assets are neither attractive nor nondiscriminatory, infrastructure will not be built. And that is the reality today as localities put their desire for maximizing revenue ahead of the benefits that more robust networks provide their citizens.

You identified an additional action to help streamline broadband deployment: "ensuring there is transparency on both sides of the table." Mobilitie's request for a ruling that local charges must be disclosed is fully in line with your recommendation. Today, many localities are totally non-transparent, because they refuse to identify the charges and terms on which they have granted access to their rights of way and municipal assets before. While they may hope that by hiding past charges they can extract ever-higher charges as demand for new infrastructure increases, they should not be allowed to do so.

* * *

At Mobilitie, we are ready to build and operate the wireless broadband networks that will benefit all Americans, and look forward to working with the Commission to achieve that important national objective. Again, thank you for inviting me to participate in the Policy Forum, and for this opportunity to support your Call to Action.

Sincerely,

Gary Jabara
Founder and Chief Executive Officer