

February 15, 2018

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: NOTICE OF EX PARTE**

**WT Docket No. 17-79:** *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment;*

**WT Docket No. 15-180:** *Revising the Historic Preservation Review Process for Wireless Facility Deployment;*

**WC Docket No. 17-84:** *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*

Dear Ms. Dortch:

On February 13, 2018, Courtney Neville and I of Competitive Carriers Association (“CCA”)<sup>1</sup> met with Rachael Bender, Advisor, Wireless and International, and Jay Schwarz, Advisor, Wireline, to Federal Communications Commission (“FCC” or “Commission”) Chairman Ajit Pai to discuss the above-referenced proceedings.

CCA applauds the FCC’s work to substantively address barriers to infrastructure deployment. CCA reiterated that small cells and ancillary equipment are materially different than their predecessors, regarding both size, and visual or actual impact on historic or environmental property.<sup>2</sup> To that end, CCA referenced Verizon’s recent ex parte which explains that 5G and next-generation deployments may encompass both radio and antenna components in a single piece of equipment.<sup>3</sup> CCA agrees that it will be increasingly difficult to separately allocate the volume measurement of an antenna with the volume of associated equipment. For this reason, CCA underscores its prior advocacy encouraging the FCC to adopt a definition of “small cell” that takes into account carrier’s current and future deployment needs.<sup>4</sup> The Commission also should exercise its authority to amend current law to expedite small cell deployment by determining that small cells and Distributed Antenna System (“DAS”) deployments are outside the scope of a “federal undertaking” under the

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<sup>1</sup> CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

<sup>2</sup> See, Letter from Rebecca Murphy Thompson, EVP & GC, Competitive Carriers Association, WT Docket No. 17-79, WC Docket No. 17-84, WC Docket No. 17-84 (filed Feb. 9, 2018) (*attaching*, “Proposed FCC Rule 1.1320”). See also, 47 CFR § 1.1320.

<sup>3</sup> See, Letter from Andre J. Lachance, Associate General Counsel – Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Feb. 8, 2018).

<sup>4</sup> See *supra*, note 2.

National Historic Preservation Act (“NHPA”).<sup>5</sup> This conclusion is in line with the Commission’s authority and underlying statutes,<sup>6</sup> and would support the Administration’s and the Commission’s policy goals.<sup>7</sup>

Additionally, CCA encouraged the FCC to explicitly state that paying Tribal fees, either for review or for subsequent consultation activities, is not required under the NHPA nor the National Programmatic Agreement (“NPA”).<sup>8</sup> CCA reiterated that FCC practices requiring siting applicants to pay Tribal fees and secure Tribal consultations are not based in the NHPA nor the NPA, and were never adopted as an actual rule through notice and comment. Tribal fees and administrative burdens attached to the historic review process have escalated sharply in recent years,<sup>9</sup> and these costs and delays will continue to rise as CCA members deploy wireless infrastructure to meet consumers’ increasing data demands.<sup>10</sup> Streamlining the process for Tribal fees, and collecting uniform information of all culturally significant areas will expedite the siting process and assuage confusion for all stakeholders.

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<sup>5</sup> A federal “undertaking” under NHPA includes projects, activities, or programs that “requir[e] a Federal permit, license, or approval[.]” See, 54 U.S.C. § 300320(3); see also 40 CFR § 1508.18(b).

<sup>6</sup> See, 36 CFR § 800.3(a)(1). Based on its authority under Section 800.3(a)(1), the Commission has established targeted unilateral exclusions from historic preservation review requirements for certain small facility collocations on utility structures and on buildings and other non-tower structures, provided they meet certain specified criteria. *2014 Infrastructure Order*, 29 FCC Rcd at 12901-12, ¶¶ 76-103.

<sup>7</sup> See, e.g., White House, “Legislative Outline for Rebuilding Infrastructure in America,” (rel. Feb. 12, 2018) (“White House Infrastructure Plan”); Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 17-38 (2017) ¶ 26 (“Wireless NPRM”).

<sup>8</sup> See Comments of Competitive Carriers Association, WT Docket No. 17-79, WC Docket No. 17-84, at 24-25 (filed June 15, 2017) (“CCA Comments”) (explaining that “[n]either the NHPA’s or ACHP implementing rules require payment of Tribal fees, or indicate paying Tribal fees is required to comply with the NHPA; both regulations are silent on that account. As the Commission points out, the ACHP issued guidance regarding fees, first in a memorandum in 2001; this advice was reiterated in ACHP handbooks ever since, most recently in 2012. The ACHP 2001 Fee Guidance explains that “[w]hen the Federal agency or applicant is seeking the views of an Indian tribe to fulfill the agency’s legal obligation to consult with a tribe under a specific provision of ACHP’s regulations, the agency or applicant is not required to pay the tribe for providing its views,” and that “[i]f the agency or applicant has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult and is free to move to the next step in the Section 106 process.” Most importantly, the guidance provides that “[No] portion of the NHPA or the ACHP’s regulations require[s] an agency or an applicant to pay for any form of tribal involvement.”).

<sup>9</sup> See Comments of Competitive Carriers Association, WT Docket No. 17-79, WC Docket No. 17-84, at 18, 25-35 (filed June 15, 2017) (“CCA Comments”); *Clearing the Path for America’s Wireless Future*, Competitive Carriers Association (filed June 8, 2017) (“CCA White Paper”).

<sup>10</sup> See *id.*

CCA looks forward to continued work with the Commission and industry to streamline and update infrastructure siting policies to reflect changes in technology. This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's rules.

Respectfully submitted,

*/s/ Rebecca Murphy Thompson*

Rebecca Murphy Thompson  
EVP & General Counsel  
Competitive Carriers Association

cc (via email): Rachael Bender  
Jay Schwarz