

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

In the Matters of

Accelerating Wireless Broadband)	WT Docket No. 17-79
Deployment by Removing Barriers to)	
Infrastructure Investment)	
)	
Accelerating Wireline Broadband)	WC Docket No. 17-84
Deployment by Removing Barriers to)	
Infrastructure Investment)	

SPRINT OPPOSITION TO PETITION FOR RECONSIDERATION

Sprint Corporation (“Sprint”) hereby files its Opposition to the Petition for Reconsideration (“Petition”) filed in the above-captioned docket by various municipalities.¹ The Petition seeks to upend the Commission’s carefully measured action to conform local government review processes and fees for small cells with the requirements of federal law under Sections 253 and 332. Those rules reduce regulatory barriers to the deployment of next generation wireless networks by streamlining the review process required by local governments. As explained below, rescinding the Order will cause substantial and material harm to Sprint and would be contrary to the public interest. Accordingly, the Commission should deny the Petition for Reconsideration.

¹ See Petition for Reconsideration of the City of New Orleans, Louisiana; Virginia Municipal League; Kentucky League of Cities; Mississippi Municipal League; Pennsylvania Municipal League; Alabama League of Municipalities; Arkansas Municipal League; Nevada League of Cities and Municipalities; Town of Middleburg, Virginia; Jefferson Parish, Louisiana; and the Government Wireless Technology & Communications Association., WT Docket No. 17-79, WC Docket No. 17-84 (filed Nov. 14, 2018) (“Petition”).

I. The FCC’s Decision Will Speed 5G Deployment

As the FCC recognized in the Declaratory Ruling and Third Report and Order, “5G wireless services, in particular, will transform the U.S. economy through increased use of high-bandwidth and low-latency applications and through the growth of the Internet of Things.”² “To support these performance improvements and to operate over the available high-frequency bands, however, these next-generation wireless networks, in many areas, will increasingly need to rely on network densification, whereby spectrum is reused more frequently through the deployment of far more numerous, smaller, lower-powered base stations or nodes that are much more densely spaced.”³ Densification using small cells allows wireless providers to increase overall capacity while using the same amount of spectrum.⁴

This technological revolution, however, faces a significant hurdle: Rules and regulations written under the old paradigm, which presume the use of a small number of larger and more intrusive facilities. These rules were already overly intrusive and unnecessary, and they now pose a particular threat to the deployment of new small cell facilities. In the Order, the FCC provided much-needed relief from the unnecessary and ineffective regulatory burdens created by the prior regime. On November 14, 2018, petitioners filed a Petition for Reconsideration of the Order issued by the Commission.

The Order adopted rules to streamline the process for state and local review of small

² *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, ¶ 24, 2018 WL 4678555 (rel. Sept. 27, 2018) (FCC 18-133) (“Order”).

³ *Second Report and Order* ¶ 1.

⁴ *Id.* ¶ 41; Sprint Comments (June 15, 2017) at 9-10.

wireless facilities or “small cells.” The new rules are intended to facilitate and expedite the deployment of wireless broadband services, including fifth-generation or “5G” services. After a proceeding lasting more than a year, and based on a comprehensive record, the FCC concluded that 5G holds the promise of revolutionary change in the broadband marketplace, but that deployment is threatened by some state and local governments’ obstruction and rent-seeking. To address this, the Order: (1) resolved divisions of authority about what it means for a state or local legal requirement to have the “effect of prohibiting” services under 47 U.S.C. §§ 253(a) and 332(c)(7)(B); and (2) established new “shot clocks” for “small wireless facilities.”⁵

Winning the race to 5G will bring significant benefits that touch every aspect of American society. The high bandwidth and low latency 5G offers will enable a range of applications that can transform how we live, work, and communicate, and unlock opportunities for all Americans, including low-income individuals, people with disabilities, and those living in rural areas. Indeed, “5G can enable increased competition for a range of services—including broadband—support new healthcare and Internet of Things applications, speed the transition to life-saving connected car technologies, and create jobs.”⁶

The myriad benefits of 5G deployment are evident and significant. This is precisely why, after a lengthy proceeding resulting in a voluminous record, the Commission found an “urgent need to streamline regulatory requirements to accelerate the deployment of wireless infrastructure for current needs and for the next generation of wireless service in 5G.”⁷ Although

⁵ See Order ¶¶ 30–102 (concerning effective prohibition); *id.* ¶¶ 103–147 (establishing shot clocks).

⁶ Order ¶ 2.

⁷ Order ¶ 28.

the harm to the Petitioners from preserving the status quo will continue to be minimal, at best, granting the petition and reinstating the prior regulatory regime will impose substantial harm upon wireless subscribers and providers. The record is clear that a return to the old rules will delay deployment of the infrastructure necessary to provide 5G wireless services and strengthen the wireless economy. Eliminating the currently effective rules will cause direct delays in the provision of wireless services by reinstating a time-consuming approval process while placing a number of pending small wireless deployments in limbo. The rules that became effective on January 14, 2019, have had an impact on the ability of Sprint to approve projects faster and meet aggressive build plans. And the new rules are allowing Sprint to increase the rate of its small cell builds, which will allow it to speed the densification process and deployment of network upgrades. This pace of deployment would not have been possible under the old regime.

II. Petitioner's Objections are Without Merit

Petitioners claim that the \$270 recurring fee is inadequate to recover the costs that a small cell imposes on the right of way.⁸ But Petitioners ignore that the \$270 amount is a presumption and that a municipality can assess charges above that amount if it can document that “such fees nonetheless comply with the limits imposed by Section 253—that is, that they are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory. Allowing localities to charge fees above these levels upon this showing recognizes local variances in costs.”⁹

Petitioners also incorrectly claim that there is a competitive market for locations to install

⁸ *Petition* at 19-22.

⁹ *Order* ¶ 80.

small cells.¹⁰ Due to the small coverage radiuses of small cells and the limited amount of vertical infrastructure, there is frequently no other choice but to deploy in the rights of way.¹¹ There often is no private business or landowner that can provide a suitable alternative.

Finally, the shot clock adopted by the Commission is reasonable because the approvals needed for a small cell are dramatically different than those for a macro site, which are subject to 90 day shot clocks for collocations and 150 days for new towers. Therefore, there is no reason to revisit the reasonable rules the Commission adopted for the shot clocks for small, minimally invasive small cells and support poles.¹²

III. Conclusion

For the reasons stated above, Sprint respectfully requests that the Commission deny the Petition for Reconsideration and refrain from hindering the economic development driven by the new wireless economy by reinstating ineffective rules that erect needless barriers to wireless deployment that contravene the requirements of federal law.

¹⁰ *Petition* at 22.

¹¹ *Sprint Comments* at 39-40.

¹² *Order* ¶ 105.

Respectfully submitted,

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