

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Streamlining Deployment of Small Cell	)	WT Docket No. 16-421
Infrastructure by Improving Wireless Facilities	)	
Siting Policies	)	

**COMMENTS OF VERIZON**

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**I. INTRODUCTION AND SUMMARY**

The United States led the world in the deployment of 4G LTE technology, yielding significant benefits to our economy and to wireless consumers. The race to enhance 4G LTE and to develop and deploy next-generation, 5G wireless broadband is now on, and the United States is again in the pole position. But to maintain this leadership and realize the countless benefits that 4G densification and 5G offer, swift action by the Commission is needed to ensure that a thicket of ill-fitting, outdated, and overly burdensome local siting ordinances and processes do not impede the rapid deployment of the small cells that will be the cornerstone of next generation wireless networks.<sup>2</sup>

Verizon has invested tens of billions of dollars to build and continually upgrade its 4G LTE network. In recent years, a major focus of these efforts has been on “densifying” the network, by deploying a large number of small cells that can improve service to customers and manage network capacity challenges. We already have built more than ten thousand outdoor

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<sup>1</sup> The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> The term “small cells,” as used herein, encompasses small wireless facilities including small cells, distributed antenna system nodes, and small 5G base station equipment.

small wireless facilities and will more than double that number over the next two years to densify our world-leading 4G LTE network. And because of investments like these, the United States leads the world in 4G. Verizon has equally aggressive plans to lead in 5G; we are already building several hundred 5G small facility sites to begin testing in 11 markets later this year.<sup>3</sup> Building on the small cell infrastructure associated with 4G densification, we plan to ramp up dramatically the deployment and use of small cells and will deploy many tens of thousands of small wireless facilities in our 5G network. Indeed, given the expected technical characteristics of 5G -- including heavy reliance on millimeter wave spectrum that will allow high-speed, low-latency service but over relatively small areas -- reliance on small cells will be a necessity of providing service. The investment in and rapid deployment of these facilities will benefit consumers, create jobs, and unlock the potential for services and capabilities like smart communities, the Internet of things, and smart cars. The Commission has already jump-started the 5G future by making large swathes of high band spectrum available to carriers. Now it must ensure that carriers are able to use that spectrum by removing existing barriers to small facility deployment.

The Commission's Public Notice<sup>4</sup> on how to expedite deployment of next generation wireless infrastructure is both timely and necessary. Existing local ordinances affecting small cell deployment are generally premised on much larger and more intrusive facilities, such as large cell towers, rather than the much smaller facilities that have quickly become more central

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<sup>3</sup> See [http://www.prnewswire.com/news-releases/verizon-to-deliver-5g-service-to-pilot-customers-in-11-markets-across-us-by-mid-2017-300411298.html?tc=eml\\_cleartime](http://www.prnewswire.com/news-releases/verizon-to-deliver-5g-service-to-pilot-customers-in-11-markets-across-us-by-mid-2017-300411298.html?tc=eml_cleartime).

<sup>4</sup> *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, 31 FCC Rcd 13360 (WTB 2016) ("Public Notice").

to wireless broadband service. Understandably, those ordinances and regulations are more demanding than will make sense for this new network architecture. In addition, some localities and their consultants have shown an interest capitalizing on these upcoming changes to wireless network deployment to generate new revenue streams for local government. Regardless of the reason, many local jurisdictions today force carriers to negotiate a minefield of delays, overly burdensome requirements, and excessive fees to gain access to municipal rights-of-way, place facilities on municipally-owned poles, and get zoning approval for small wireless facilities. Similarly, carriers face difficulties gaining timely and reasonable access to investor-owned utility poles and completing historic preservation and tribal reviews in a reasonable period of time. Without relief, many small cell deployments will face long delays and excessive costs, hindering both wireless broadband deployment and U.S. leadership in the race to 5G.

The Commission can provide immediate relief by exercising its statutory authority to establish baseline requirements for small cell siting. Specifically, the Commission should:

- Declare that Section 253 of the Act prohibits states and localities from materially inhibiting or limiting the provision of service, including (1) failure to negotiate timely agreements for access to local rights-of-way and municipally-owned poles; (2) non-cost-based or discriminatory fees to access rights-of-way and poles; and (3) actions that erect substantial barriers to making upgrades to existing service, including densifying networks and deploying new technologies;
- Update and clarify the shot clocks that apply to local approvals of small facility requests to (1) adopt a deemed granted remedy for all shot clocks that apply to small wireless facilities; (2) adopt a new 60-day shot clock for small wireless facilities; and (3) clarify that the existing shot clocks apply to all steps of the approval process, including negotiating agreements for access to rights-of-way and municipal poles;
- Declare that the pole attachment statute and rules require access to all poles, including light poles, owned by covered utilities; and
- Place reasonable limits on tribal historic preservation reviews of small wireless facilities.

These targeted actions, if quickly adopted, will allow the U.S. to maintain its lead in the development and deployment of advanced wireless networks and will accelerate the investment and job creation that these networks and the services enable.

## **II. SMALL WIRELESS FACILITIES ARE CRITICAL TO MEET GROWING DEMAND FOR BROADBAND SERVICES, ADD JOBS, AND IMPROVE THE ECONOMY.**

Providers must deploy small cells to meet the exploding demand for wireless data services. New data intensive capabilities like smart communities, connected cars, smart farming, and the Internet of Things, all made possible by advanced 4G and 5G networks, are driving this demand. Cisco reports that global mobile data traffic has grown 18-fold over the past 5 years<sup>5</sup> and will increase another eight-fold between 2015 and 2020<sup>6</sup>. In North America, mobile data traffic grew 44 percent in 2016 alone.<sup>7</sup> Wireless smartphone data traffic is expected to exceed personal computing traffic by 2020.<sup>8</sup> Globally, data intensive applications such as internet radio, music streaming applications, and information services will generate approximately 6,000 petabytes annually by 2021, equal to 300 billion hours or *34 million years* of music streaming.<sup>9</sup> Accenture estimates that United States telecommunications operators will invest approximately \$275 billion in the next seven years to deploy next-generation technology. That investment will

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<sup>5</sup> See <http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.html> (“Cisco White Paper”).

<sup>6</sup> See <http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/vni-hyperconnectivity-wp.html> (“Cisco Trends and Analysis”).

<sup>7</sup> Cisco White Paper.

<sup>8</sup> Cisco Trends and Analysis.

<sup>9</sup> Juniper Research, M2M: Strategies & Opportunities for MNOs, Service Providers & OEMs 2016-2021, July 27, 2016.

enable new wireless capabilities, create about three million new jobs, and grow the gross domestic product (“GDP”) by \$500 billion.<sup>10</sup>

To meet this demand and unlock the economic promise of more advanced 4G and 5G, carriers’ networks will require an estimated ten to 100 times more antenna locations than today’s 3G or 4G networks.<sup>11</sup> 5G networks also will incorporate millimeter wave spectrum that the Commission recently made available.<sup>12</sup> Millimeter wave spectrum, unlike lower band spectrum traditionally used for wireless service, generally supports service over shorter distances and with direct lines of sight.<sup>13</sup> Thus carriers must deploy small facilities in many more locations that are both closer to the ground (30-50 feet in height) and closer to the customer than traditional wireless cell sites. Existing poles (including utility poles, light poles, traffic control poles, and street signs) in rights-of-way are ideal locations for 5G antennas. These facilities are significantly smaller than traditional “macro” antennas and blend more easily into the environment. Yet, as discussed below, many local ordinances and officials (or their consultants) do not take into account these significant differences, and instead burden the small cell siting process with requirements at least if not more cumbersome than those that apply to much larger facilities.

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<sup>10</sup> See <http://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf> (“Accenture Smart Cities Paper”).

<sup>11</sup> *Id.*

<sup>12</sup> See *Use of Spectrum Bands above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016) (“*Above 24 GHz Order*”).

<sup>13</sup> *Id.* at 7, ¶ 6.



### **III. THE COMMISSION SHOULD REMOVE BARRIERS TO ACCESSING RIGHTS-OF-WAY AND MUNICIPALLY-OWNED POLES.**

Gaining reasonable and timely access to local rights-of-way is the biggest impediment to deploying small wireless broadband facilities. Many small cells deployed to densify 4G networks and for 5G are and will be located on new or existing poles in rights-of-way. But local ordinances -- often written for the much different context of large cell towers -- and aggressive demands from some local officials and their consultants erect significant barriers that can either prevent or substantially delay these deployments. As Chairman Pai has recognized, in Section 253 of the Act, Congress gave the Commission express “authority to ensure that local governments don’t stand in the way of broadband deployment.”<sup>14</sup> Exercising that authority to ensure reasonable access to rights-of-way is the single most important step the Commission can take to accelerate wireless broadband deployment.

#### **A. Action and Inaction by Local Jurisdictions Delay Small Cell Deployment by Denying Reasonable and Timely Access to Rights-of-Way and Municipally-Owned Poles.**

Even in the early stages of small cell deployment, Verizon has encountered a variety of practices that have the effect of delaying or preventing the reasonable deployment of small cells. Individually and collectively, these practices are already burdening the deployment of these facilities, and these burdens -- and the negative consequences of them to consumers -- will only grow as providers transition to more advanced 4G and 5G networks. Federal law, most notably Sections 253 and 332 of the Act, exists to block local actions that threaten important federal

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<sup>14</sup> FCC Commissioner Ajit Pai, “A Digital Empowerment Agenda,” at 7 (Sept. 13, 2016) (<https://www.fcc.gov/document/commissioner-pais-digital-empowerment-agenda>) (“Ajit Pai Digital Empowerment Agenda”); 47 U.S.C. § 253.

interests such as broadband and 5G deployment.<sup>15</sup> The Commission has authority to address these local obstacles to deployment, and it should do so.

### **1. Refusals to Negotiate and Delays in Negotiating Right-of-Way Access Agreements**

One recurring problem confronting Verizon as it seeks to deploy small cell facilities is the refusal or slow-rolling of negotiations by local governments. An unwillingness to engage in productive and timely negotiations is a gating issue that can stop deployment in its tracks. Verizon has repeatedly encountered local jurisdictions that refuse to negotiate agreements to place wireless facilities in rights-of-way or on utility (including light and traffic) poles located in rights-of-way.<sup>16</sup> Most jurisdictions require master lease or license agreements (“MLAs”) before facilities can be placed in a right-of-way. MLAs generally establish the terms, including any one-time fees and per pole lease fees, for placing small cells in rights-of-way and on existing poles in the rights-of-way. But too often local officials simply refuse to negotiate such agreements. The reasons vary. Some jurisdictions take the view that access to rights-of-way is a privilege reserved for traditional utilities such as cable, telephone, power, and light providers. These jurisdictions view access to the right-of-way as a *quid pro quo* for state regulation of the utility and believe that unregulated wireless service providers have no right to place facilities in the right-of-way.<sup>17</sup> Others state they are “not ready” to consider entering into MLAs for small wireless facilities, lack staff, or give no reason at all.

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<sup>15</sup> 47 U.S.C. §§ 253, 332(c)(7).

<sup>16</sup> For ease of review, Verizon has attached to these comments an Appendix containing specific examples and descriptions of the numerous siting challenges it has experienced. This includes a description of issues with right-of-way access agreements. See Appendix A, Examples of Siting Issues.

<sup>17</sup> See League of Minnesota Cities, “Small Cell Talking Points,” at 2 (Feb. 27, 2017) available at <https://www.lmc.org/media/document/1/talkingpointssmallcellwireless.pdf?inline=true>, (“LMC

Even where a local jurisdiction is willing to negotiate an MLA, negotiations often drag on for years, effectively denying access to the right-of-way and preventing deployment. One Midwestern suburb, for example, initially negotiated an MLA to place small cells on city-owned poles in the right-of-way in 2013. But the suburb subsequently refused to grant permits for accessing those poles and later also denied permits to place facilities on investor-owned utility poles on major thoroughfares -- where they are needed most. It took more than three years to reach agreement on the MLA. Delays of a year or more are not uncommon in trying to negotiate MLAs.<sup>18</sup> These delays and outright refusals to negotiate agreements to place facilities in rights-of-way prevent wireless carriers from densifying 4G wireless networks and threaten to stifle 5G build plans.

## **2. Excessive and Discriminatory Fees to Access Rights-of-Way or to Attach to Municipally-Owned Poles**

Even when carriers are able to access rights-of-way, the fees charged for that access or for attaching small cells to municipally-owned utility, light, and traffic poles are often prohibitive. Regrettably some local jurisdictions (or their consultants) view right-of-way access and pole rent as opportunities to raise revenues, rather than an opportunity to encourage investment and deployment to bring robust wireless broadband services to their communities.<sup>19</sup> Indeed, fee disputes cause many of the delays in reaching agreement on MLAs. For example,

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Small Cell Talking Points”) (This league of cities opposes proposed state small cell legislation because “[p]roposed legislation would allow unregulated industry with access to public right-of-way. Would private industry be interested in being subjected to the same regulatory standards as utility entities that use the PROW [public right-of-way], in the interest of competitive fairness?”).

<sup>18</sup> See Appendix A, Examples of Siting Issues for other examples where localities have refused or delayed negotiating right-of-way access agreements.

<sup>19</sup> See LMC Small Cell Talking Points at 2 (listing “revenue generation” among the reasons for opposing proposed state legislation that would limit fees).

two cities, one in the Midwest and one in the Northeast, are seeking annual rent of \$6,000 per year per pole to place facilities on municipally-owned poles in the right-of-way.<sup>20</sup> Verizon's efforts to negotiate MLAs with these cities to place 11 and 50 small cells, respectively, in each city's rights-of-way have stalled for more than two years and one year, respectively, largely due to disagreement over the proposed fees. By comparison, the Commission's cost-based pole attachment formula -- which, unfortunately, does not currently apply to municipally-owned poles -- would yield an annual rent for wireless attachments in the range of \$10 to \$20 per pole in many cases. So carriers subject to these unreasonable demands face an unfortunate choice: pay excessive rates (thus reducing the number of facilities the carrier can deploy), delay deployment while attempting to negotiate a fair rate, or abandon plans to locate small facilities in the jurisdiction altogether.

In addition to excessive rates, wireless carriers often face discriminatory rates and terms to access rights-of-way or municipally-owned poles in the rights-of-way. For example, two Northeastern state departments of transportation require a burdensome application process and annual pole attachment fees of \$9,000 and \$37,000, respectively, for wireless attachments in the right-of-way. These same processes and fees do not apply to attachments by non-wireless utility companies. In another case, a Southwestern city recently adopted a right-of-way access ordinance requiring a franchise agreement to construct any wireless facilities in the right-of-way. The ordinance requires carriers seeking access to the right-of-way to pay an excessive fee, not based on cost, regardless of how many facilities the carrier places in the right-of-way or the level

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<sup>20</sup> See Appendix A, Examples of Siting Issues for these and other examples of excessive fees.

of disturbance to the right-of-way associated with those facilities. Fees such as this that fail to account for the level of incursion to the right-of-way can be discriminatory.<sup>21</sup>

### **3. Unreasonable Conditions on Access to Rights-of-Way and Municipally-Owned Poles**

Some localities also impede small cell siting by imposing unreasonable requirements as a condition of accessing public rights-of-way. These requirements include minimum separation distances between wireless facilities (which apply to all facilities, not just those to be installed by the requesting carrier); unreasonable antenna and equipment size restrictions (which in many cases are smaller than size limits the Commission adopted for historic preservation reviews); and set-back requirements from residential properties adjacent to the right-of-way. For example, one Midwestern suburb requires a 1000 foot minimum separation distance between wireless facilities, equipment size limits of 15 cubic feet, antenna height limits of 35 feet, and 100 feet of separation from any residential building. Size limits that are too small to accommodate the equipment needed to provide service effectively prohibit the provision of service. And restrictions on the number and location of small cells make it difficult if not impossible to provide adequate small cell coverage and capacity and may well preclude 5G coverage along residential streets.<sup>22</sup>

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<sup>21</sup> See Appendix A, Examples of Siting Issues for these and other examples of discriminatory fees and conditions.

<sup>22</sup> See Appendix A, Examples of Siting Issues for these and other examples of unreasonable conditions.

**B. The Commission Should Interpret Section 253 to Ensure Reasonable and Timely Access to Rights-of-Way and Municipally-Owned Poles.**

The Commission should make clear that Sections 253(a) and (c) of the Act<sup>23</sup> prohibit actions or requirements imposed by local authorities that substantially inhibit small cell deployment. It should declare (1) that actions that materially inhibit or limit small facility siting have the effect of prohibiting wireless service under Section 253(a); and (2) that fees for right-of-way and pole access that exceed the costs incurred by the locality are not “fair and reasonable compensation” under Section 253(c).

**1. The Commission Should Declare that an Action Prohibits Service Under Section 253(a) Where It Erects a “Substantial Barrier” to Providing Service.**

The Commission should exercise its authority to interpret provisions of the Communications Act to reaffirm that Section 253(a)<sup>24</sup> bars any local government action that “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”<sup>25</sup> Because that standard is open to differing interpretations, and has engendered disagreement in the courts of appeals,<sup>26</sup> the Commission

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<sup>23</sup> 47 U.S.C. § 253(a), (c).

<sup>24</sup> Section 253(a) provides that “[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a).

<sup>25</sup> *California Payphone Ass’n Petition for Preemption*, Memorandum Opinion and Order, 12 FCC Rcd. 14191, 14206, ¶ 31 (1997) (*California Payphone*).

<sup>26</sup> Compare, e.g., *Level 3 Commc’ns, L.L.C. v. City of St. Louis, Mo.*, 477 F.3d 528, 534 (8th Cir. 2007) (finding that a right-of-way fee, in connection with other restrictions, does not materially inhibit the provision of service), with *Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 450 F.3d 9, 18 (1st Cir. 2006) (“*Puerto Rico Tel. Co.*”) (holding that a right-of-way fee, in connection with other restrictions, does “materially inhibit[] or limit[]” the provision of service) (citation and internal quotation marks omitted).

should provide additional guidance on its meaning to ensure that the types of local actions described above do not frustrate national goals for broadband and 5G deployment.

The Commission should interpret the phrase “materially inhibits or limits” to mean that a locality violates section 253(a) where it erects a “substantial barrier” to a carrier’s ability to compete in a fair and balanced market.<sup>27</sup> Specifically, the Commission should declare that local regulation presents a “substantial barrier” to, and therefore has “the effect of prohibiting,” the provision of telecommunications service where it (1) significantly increases a carrier’s costs;<sup>28</sup> or (2) otherwise meaningfully strains the ability of a carrier to provide telecommunications service.<sup>29</sup> This interpretation finds support in a decision of the First Circuit, which rejected a locality’s five percent franchise fee to use a right-of-way, finding that it constituted an effective prohibition because it would “negatively affect [the provider’s] profitability;” give rise to “a substantial increase in costs for [the provider];” and “place a significant burden on [the provider],” thereby “strain[ing the provider’s] ability to provide telecommunications services.”<sup>30</sup>

The Commission should further declare that, in making this determination, all aspects of the locality’s siting scheme should be evaluated together.<sup>31</sup> And because of the cumulative effect

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<sup>27</sup> See, e.g., *Federal-State Joint Bd. on Universal Serv.*, Report and Order, 12 FCC Rcd. 8776, 8847, ¶ 129 (1997) (state designation of “an unreasonably large service area could greatly increase the scale of operations required of new entrants” and “may prohibit or have the effect of prohibiting the ability of entities to provide local exchange service” and “could, therefore, violate section 253 as a market entry barrier”).

<sup>28</sup> See *Puerto Rico Tel. Co.*, 450 F.3d at 19 (noting that the regulations at issue would lead to “a substantial increase in costs” to the carrier); *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1270-71 (10th Cir. 2004) (“*City of Santa Fe*”) (noting that where a requirement will lead to a “massive increase in cost,” it acts as an effective prohibition under 253(a)).

<sup>29</sup> See *Puerto Rico Tel. Co.*, 450 F.3d at 19 (noting that the requirements at issue would “strain [the carrier’s] ability to provide telecommunications services”).

<sup>30</sup> *Id.*, 450 F.3d at 18-19.

<sup>31</sup> See *id.*, 450 F.3d at 19; *City of Santa Fe*, 380 F.3d at 1270-71.

of ordinances and actions of multiple localities that limit carrier access to rights-of-way, the Commission should make clear that carriers can demonstrate that local requirements significantly increase costs, or otherwise meaningfully strain their ability to provide service, by showing the effect of numerous municipalities employing similar restrictions.<sup>32</sup>

This articulation of the substantial barrier standard would provide a workable test to address the types of municipal actions described above. A locality's refusal to negotiate or unreasonable delays in negotiating access to public rights-of-way would constitute a substantial barrier. Likewise, actions or conditions that prevent or substantially inhibit a carrier from making necessary upgrades (such as deploying small cells to densify networks or to deploy 5G) to its network in those localities would constitute a substantial barrier.<sup>33</sup> And other unreasonable conditions on right-of-way access -- such as large separation distances between facilities, overly restrictive equipment size limits, and unreasonably large set-back requirements from residential properties, would similarly strain a carrier's ability to provide service.<sup>34</sup>

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<sup>32</sup> See *Puerto Rico Tel. Co.*, 450 F.3d at 17-18 (taking into account that a carrier could face not just the restriction at issue from a single municipality, but also from other localities in which it operated).

<sup>33</sup> The 60-day shot clock proposed by Verizon under Section 332(c)(7) (see Section IV.A.2.(b), *infra*) serves as a useful guide for a reasonable timeline to negotiate right-of-way access under Section 253(a) as well. Where a municipality's negotiations over right-of-way access -- which often precede or can even replace individual siting decisions -- stretch beyond the 60-day threshold, a presumption should attach that the municipality is erecting a substantial burden to the provision of wireless access.

<sup>34</sup> One court of appeals rejected its own previous use of a "substantial burden" test under Section 253(a). See *Sprint Telephony PCS, L.P. v. Cnty. of San Diego*, 543 F.3d 571, 577-78 (9th Cir. 2008) (rehearing *en banc*) (overruling *City of Auburn v. Qwest Corp.*, 260 F.3d 1160 (9th Cir. 2001)). But this decision does not preclude the Commission from adopting the "substantial burden" standard. As the Commission noted before the Supreme Court, the Ninth Circuit accepted that *California Payphone* provides the relevant standard for effective prohibition under Section 253(a), though it applied that standard in a way that was arguably unduly narrow. See Brief of United States as Amicus Curiae on Petitions for Writs of Certiorari at 18-19, *Level 3 Commc'ns, LLC v. City of St. Louis*, United States Supreme Court No. 08-626 (Jun. 26, 2008)



Many right-of-way fees charged by municipalities likewise would constitute substantial burdens on carriers. As described above, localities charge carriers a wide variety of fees for the use of rights-of-way and access to municipally-owned poles, and those fees often are unrelated to the actual cost to municipalities. Under the standard articulated above, fees that significantly increase a carrier's costs operate as a substantial burden and run afoul of Section 253(a). This is especially true when considering the impact of these fees if imposed on a carrier by numerous localities.

Clarifying that the substantial barrier test applies to right-of-way fees would ensure that where municipalities charge fees for access to rights-of-way, they justify those fees as fair, cost-based compensation for a carrier's use of local resources as explained below. This limit achieves the balance that Congress struck in Section 253 between the deployment of fast and reliable telecommunications service, and protecting the reasonable exercise of local authority.

**2. Section 253(c) Limits Localities to Fees that Recoup Administrative Costs and Costs for Managing Rights-of-Way.**

The Commission should interpret Section 253 to require cost-based fees. Although Section 253(a) prohibits states and localities from imposing substantial barriers that “have the effect of prohibiting” the provision of service, Section 253(c) makes clear that they are entitled to “require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way.”<sup>35</sup> To give

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*(cert. denied, 557 U.S. 935 (2009)).* If the Commission now explains the proper application of that standard -- that it requires a substantial burden test -- the Ninth Circuit should continue to apply the *California Payphone* standard, but with the added benefit of the Commission's additional interpretation. The Commission's interpretation would be entitled to deference under *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 984-85 (2005) “*Brand X*”).

<sup>35</sup> 47 U.S.C. § 253(a), (c).

meaning to both provisions, the Commission should interpret the statute to permit localities to impose fees that cover their reasonable costs for managing the rights-of-way, but not fees that raise additional revenues above and beyond those costs. The phrase “fair and reasonable compensation” as used in Section 253(c) is ambiguous, giving the Commission discretion to interpret it.<sup>36</sup> Compensation is defined as “[r]emuneration . . . in return for services rendered” or a payment that “makes the injured person whole,”<sup>37</sup> which suggests the recoupment of costs or recovery of what was lost. In numerous contexts, the Commission and other agencies have found that cost-based fees are “reasonable.”<sup>38</sup> This interpretation often is adopted in situations where the provider does not operate in a competitive market -- which is directly analogous to localities’ monopoly control of public rights-of-way and municipally-owned structures. In many other cases, market forces are sufficient to ensure reasonable rates.<sup>39</sup> But those competitive options do not exist for access to rights-of-way.

The legislative history of the Telecommunications Act supports this interpretation. Senator Feinstein made clear in a floor statement that Section 253(c) would permit a town to “[r]equire a company to pay fees to recover an appropriate share of the increased street repair

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<sup>36</sup> See *Brand X*, 545 U.S. at 980.

<sup>37</sup> *Black’s Law Dictionary*, at 342-43 (14th ed. 2014).

<sup>38</sup> See, e.g., *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd. 2533 (2005), *aff’d*, *Talk Am., Inc. v. Michigan Bell Tel. Co.*, 564 U.S. 50 (2011) (requiring that a local exchange carrier provide access to entrance facilities at cost-based rates where the statute states that rates must be “just, reasonable, and nondiscriminatory”); *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (upholding a Federal Power Commission order setting “just and reasonable” rates as a method of cost recovery); *Missouri ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm’n of Mo.*, 262 U.S. 276, 291 (1923) (espousing that a utility obliged to provide service to the public ought to be able to recover “the reasonable cost of conducting the business”).

<sup>39</sup> See *Orloff v. FCC*, 352 F.3d 415 (D.C. Cir. 2003).

and paving costs that result from repeated excavation.”<sup>40</sup> And the Commission has expressed skepticism of fees not tied to costs, stating that there “is a serious question whether a gross revenues based fee is ‘fair and reasonable compensation ... for use of [a public right-of-way]’ within the meaning of section 253(c).”<sup>41</sup>

Fees that are based on a carrier’s revenues, or that otherwise charge carriers amounts not clearly attributable to a city’s costs, would be unlawful under this standard. In order to enforce this standard, the Commission should provide guidance about the kinds of costs a locality can recover under Section 253(c). The Commission has authority to provide such guidance.<sup>42</sup>

In developing this guidance, the Commission can look to the examples provided by some states that have limited municipalities to listed costs that they may recoup from utilities.<sup>43</sup> The Commission could limit localities to the recovery of costs incurred through the review of applications and issuance of permits, review of facilities plans, inspection of installation and repair work conducted in the public rights-of-way, and any costs incurred by the failure of a provider to repair any affected portion of the public rights-of-way.<sup>44</sup> Such a list would prevent

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<sup>40</sup> Congressional Record, The Telecommunications Competition and Deregulation Act, 141 Cong. Rec. S8134, S8172 (daily ed. June 12, 1995) (statement of Sen. Feinstein).

<sup>41</sup> Brief of FCC and United States as Amici Curiae at 14 n.7, *TCG N.Y., Inc .v. City of White Plains*, (2d Cir. Nos. 01-7213, 01-7255, Jun. 13, 2001).

<sup>42</sup> See *Verizon Commc ’ns Inc. v. FCC*, 535 U.S. 467, 493 (2002) (affirming the FCC’s authority to impose a rate-setting methodology for “just and reasonable” rates) (internal quotation marks omitted).

<sup>43</sup> See, e.g., Ind. Code Ann. § 8-1-2-101 <http://iga.in.gov/legislative/laws/2016/ic/titles/008/> (Indiana Code 2016) (listing six inputs to “management costs” that utilities are permitted under state law to charge) (last visited Mar. 3, 2017).

<sup>44</sup> See Christopher R. Day, *The Concrete Barrier at the End of the Information Superhighway: Why Lack of Local Rights-of-Way Access Is Killing Competitive Local Exchange Carriers*, 54 Fed. Comm. L.J. 461, 488 (2002) (suggesting these categories).

municipalities from inventing new categories of fees to drive up costs to carriers while also protecting their ability to recover fair and reasonable compensation.

The Commission should also restrict the amount that localities can spend on third-party consultants for the siting of small cells. It should declare that “fair and reasonable compensation” limits fees to those that cover only those costs reasonably necessary to compensate the city for the review of the application and the use of the public rights-of-way. If carriers challenge third-party fees, the Commission or the courts should determine whether, for purposes of deploying small wireless facilities -- as opposed to large towers -- the use of a third party consultant is a reasonable use of city funds. Where these fees are not reasonably necessary for a city to handle siting applications for small facility deployments, the third-party fees are not “fair and reasonable.” In making that determination, the Commission or the courts could look to what similarly situated communities charge for the same administrative and management services. Where a city wishes to charge thousands of dollars above what other municipalities charge in order to have an outside third-party handle small-cell siting, it is “fair and reasonable” for the city -- and not the provider -- to shoulder those additional costs.

### **3. Right-of-Way and Attachment Fees Must Be Nondiscriminatory.**

The Commission should declare that fees for accessing rights-of-way and attaching to municipally-owned poles are “competitively neutral and nondiscriminatory” under Section 253(c) if localities charge similar (cost-based) fees for similar incursions to the right-of-way.<sup>45</sup> A fee assessed to a wireless service provider to place small facilities on poles within a right-of-

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<sup>45</sup> See *Mobilite Petition for Declaratory Ruling, Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way*, WT Docket No. 16-421, at 36 (Nov. 15, 2016) (“Mobilite Petition”) (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”).

way should be compared to other fees to attach to poles in the right-of-way. At the same time, fees can and should vary with the level of disruption to the right-of-way. A carrier that trenches city streets and sidewalks to lay fiber to connect facilities should not pay the same fees as a carrier that does little or no trenching and that does not disrupt rights-of-way. And to enable carriers to determine whether fees are discriminatory, the Commission should declare that localities must disclose the charges they assess to others for access to rights-of-way and municipally-owned poles.<sup>46</sup>

#### **IV. THE COMMISSION SHOULD STREAMLINE APPROVAL PROCESSES FOR SMALL WIRELESS FACILITIES.**

Delays in local approvals continue to plague small cell deployment in many areas. Local zoning requirements often apply in addition to the requirements to access rights-of-way discussed above. Some zoning authorities have small cell-specific right-of-way access ordinances that, once satisfied, eliminate the need for zoning approval.<sup>47</sup> Unfortunately, such ordinances are still the exception. So the time it takes for local approval of a small cell site often includes both the time to negotiate access to the right-of-way and the time for local zoning

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<sup>46</sup> *See id.*; *see also* 47 U.S.C. § 253(c) (state and local governments can require fair and reasonable compensation “if the compensation required is publicly disclosed by such government”).

<sup>47</sup> For example, Spokane, Washington requires administrative review only (no zoning review) for small cells located on existing structures within the city. *See* Spokane Municipal Code 17C.355A.040, <https://my.spokanecity.org/smc/?Section=17C.355A.040>. Minneapolis, Minnesota, and Wheaton, Illinois also only require administrative review once the applicant has a right-of-way agreement in place. *See* Minneapolis, Minnesota Code of Ordinances, Chapter 451 – Use of City Owned Infrastructure, [https://www.municode.com/library/mn/minneapolis/codes/code\\_of\\_ordinances?nodeId=MICOO R\\_TIT17STSI\\_CH451USCINEIN](https://www.municode.com/library/mn/minneapolis/codes/code_of_ordinances?nodeId=MICOO R_TIT17STSI_CH451USCINEIN); Wheaton, Illinois Code of Ordinances, Chapter 58, Article VIII – Construction of Facilities in the Public Ways, [https://www.municode.com/library/il/wheaton/codes/code\\_of\\_ordinances?nodeId=CH58STSIOT PUBL\\_ARTVIIIICOFAPUWA](https://www.municode.com/library/il/wheaton/codes/code_of_ordinances?nodeId=CH58STSIOT PUBL_ARTVIIIICOFAPUWA).

approval. The Commission should revisit its interpretation of federal statutes that limit state and local facility placement decisions to speed consideration and approval of wireless cells. As explained below, it should interpret Section 332(c)(7)<sup>48</sup> consistent with its interpretation of similar language in Section 253, adopt a deemed granted remedy, and shorten the shot-clock for small cells. It should also expand the scope of Section 6409,<sup>49</sup> which requires localities to approve certain collocation applications, by reinterpreting the term “existing base station” to apply to small cells placed on existing utility poles and similar structures. And it should clarify that both the Section 332 and Section 6409 shot clocks apply to all aspects of the local approval process.

**A. The Commission Should Revise Its Interpretation of Section 332(c)(7) to Speed Small Cell Deployment.**

The Commission should reconsider its interpretation of Section 332(c)(7) to promote small cell deployment. Section 332(c)(7) was adopted to remove barriers to wireless facilities siting by preempting local siting decisions that have the effect of prohibiting wireless service.<sup>50</sup> But the Commission’s interpretation of that statute has not kept pace with the evolution of wireless networks. To speed small cell deployment and encourage local jurisdictions to update local approval processes, the Commission should likewise update its interpretation of Section 332(c)(7).

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<sup>48</sup> 47 U.S.C. § 332(c)(7).

<sup>49</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) (codified at 47 U.S.C. § 1455(a) (“Section 6409”).

<sup>50</sup> Section 332(c)(7) states that “[t]he regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof ... shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i).

**1. The Commission Should Clarify the Meaning of “Effect of Prohibiting the Provision of Wireless Services” Under Section 332(c)(7).**

The Commission should make clear that Section 332(c)(7) bars local siting decisions that erect substantial barriers to small cell deployment. Most local zoning authorities have failed to adopt small cell specific zoning ordinance provisions and continue to treat small cell siting requests the same way they treat requests to construct new poles and deploy larger, “macro” antennas. In these cases, zoning applicants are required to meet a number of burdensome conditions, such as demonstrating that a proposed facility is needed to close a gap in coverage, holding community meetings, and obtaining special use permits, that are neither relevant to nor necessary for small cells.<sup>51</sup> Verizon and others in the industry are working at the state and local level to encourage the adoption of small cell specific zoning provisions, but more work needs to be done.<sup>52</sup>

The Commission should make clear that Section 332(c)(7) applies to all local decisions that erect a substantial barrier to deploying wireless service. In addition to preempting (under Section 253) local action that has the effect of prohibiting the ability of carriers to provide all forms of telecommunications service, the Act also specifically preempts local action that has the effect of prohibiting the ability of a carrier to provide wireless service.<sup>53</sup> The Commission should construe Sections 253 and 332 in harmony. It can and should make clear that, in addition

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<sup>51</sup> In most cases, small cells are added to provide additional capacity and throughput, not to increase geographic service coverage. *See* Appendix A, Examples of Siting Issues for these and other examples of local zoning delays and unreasonable conditions.

<sup>52</sup> The Commission should work through the recently created Broadband Deployment Advisory Committee to encourage localities to update their local ordinances to adopt small cell specific provisions. *See* FCC News Release, “Chairman Pai Forms Broadband Deployment Advisory Committee” (Jan. 31, 2017).

<sup>53</sup> 47 U.S.C. § 332(c)(7)(B)(i).

to the obligation to craft local permitting ordinances in a way that conforms to Section 253, localities must also process individual siting applications for wireless services in a way that does not erect a substantial barrier.

In reaching this conclusion, the Commission should interpret Section 332(c)(7) in light of current and future technology, and, in so doing, depart from the interpretation of that provision previously adopted by some courts. Most courts of appeals have held that a local action will have the effect of prohibiting the provision of wireless service under Section 332(c)(7) if and only if a carrier has a “significant gap” in wireless service, and where it lacks other feasible siting options to close that gap.<sup>54</sup> The courts reached this conclusion, however, without any guidance from the Commission and when considering earlier wireless technology. The courts also did not find that this conclusion was mandated by the text of the statute or that this is the only permissible construction of the statute.

As interpreted by the courts, the “significant gap” test requires that a wireless provider show that an unfavorable siting decision both prevents it from providing *any* coverage to a particular area and that its proposed site is the least intrusive means of filling the gap. This unreasonably onerous standard means that an adverse siting decision is treated with more

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<sup>54</sup> See, e.g., *MetroPCS, Inc. v. City & Cnty. of S.F.*, 400 F.3d 715, 731-34 (9th Cir. 2005); *Sprint Spectrum, L.P. v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999). Courts have agreed that the significant gap analysis is highly fact-specific, but have generally found that in order for such a gap to exist, there must be a substantial area -- larger than a mere “dead spot” -- where a provider does not have *any* coverage. See, e.g., *Second Generation Props., L.P. v. Town of Pelham*, 313 F.3d 620, 631 (1st Cir. 2002); *Willoth*, 176 F.3d at 643. Meanwhile, courts are split on what kind of showing is necessary for the second prong of the analysis. Some require the carrier to show not only that its application has been rejected, but also that efforts to find another solution will be fruitless, see, e.g., *Green Mountain Realty Corp. v. Leonard*, 750 F.3d 30, 40 (1st Cir. 2014), while others require only that the applicant show that its proposed siting is the least intrusive means of filling the gap, see, e.g., *American Tower Corp. v. City of San Diego*, 763 F.3d 1035, 1057 (9th Cir. 2014).



deference than is a local ordinance under Section 253(a), even though those sections employ the same language. This makes no sense. Section 332(c)(7) applies only to wireless providers, and it supplements but does not displace Section 253(a). As a result, Section 332(c)(7) can and should be construed to establish additional restrictions on local actions that impede the provision of wireless services, beyond those set forth in Section 253(a).

To harmonize these provisions, the Commission should interpret Section 332(c)(7) to preempt local actions on wireless siting applications that create a “substantial barrier” to the deployment of wireless service. A siting decision would create such a barrier if it meaningfully strains the carrier’s ability to provide service. For example, where a permitting decision prevents a carrier from densifying its existing network in order to provide or enhance broadband-speed service, that act meaningfully strains that carrier’s ability to provide wireless service.

The “significant gap” test is not only contrary to the structure of the Act, but also out of step with technological developments. As noted above, the significant gap test has generally required a carrier to demonstrate that there is a substantial area where it lacks *any* coverage. That test is anachronistic at best; it makes little sense to define a gap as the absence of any coverage whatsoever. The Commission has made clear that all wireless consumers require wireless broadband to have meaningful access to the Internet, which means coverage, speed, and capacity beyond that of 3G networks.<sup>55</sup>

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<sup>55</sup> See, e.g., *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 706–07, ¶ 17 (2016).

## 2. The Commission Should Modify the Section 332(c)(7) Shot Clocks.

The shot clocks adopted by the Commission under Sections 332(c)(7) are not effective in speeding small cell deployment and should be revised to include a deemed granted remedy and to add a shorter (60-day) shot clock for certain small cells.

### (a) Deemed Granted

The Section 332(c)(7) shot clocks lack a sufficient remedy and the timelines are not tailored to small wireless facilities.<sup>56</sup> Unlike the Section 6409 shot clock, applications subject to the Section 332(c)(7) are not deemed granted if the locality fails to act within the specified time period. Rather, the applicant must bring legal action in court to enforce the shot clock, a particularly burdensome and unwieldy process as carriers seek to deploy thousands of small cells, rather than a few macro cells.<sup>57</sup> Applicants will often conclude that it is quicker and more effective to grant local authorities additional time to review applications than to sue to enforce a remedy, and doing so ensures better relations with the local authority.

The Commission should reconsider its decision not to adopt a deemed granted remedy for state or local government failures to act within the presumptively legal time limits under Section 332(c)(7).<sup>58</sup> As an initial matter, the Commission has the authority to adopt a deemed

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<sup>56</sup> See *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994, 14003-14005 ¶¶ 27-32 (2009) (“332 Shot Clock Ruling”), *aff’d City of Arlington v. FCC*, 668 F.3d 229 (5<sup>th</sup> Cir. 2012), *aff’d City of Arlington v. FCC*, 133 S.Ct. 1863 (2013). In general, the Section 332 shot clocks impose a deadline of 90 days for placing or modifying facilities on existing structures (“collocations”), and 150 days for new towers.

<sup>57</sup> *Id.*, 24 FCC Rcd at 14008-14009, ¶¶ 37-40.

<sup>58</sup> See *id.*, 24 FCC Rcd. at 14009, ¶ 39; *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12978, ¶ 284 (2014)

granted remedy. Section 332(c)(7) requires that state and local governments act on siting requests “within a reasonable period of time” and states that applicants are “adversely affected” by a “failure to act.”<sup>59</sup> The Supreme Court confirmed the Commission’s authority to adopt rules implementing Section 332(c)(7) in *City of Arlington v. FCC*, and rejected claims from state and local governments that the adoption of shot clocks for siting decisions impinged upon state and local authority.<sup>60</sup> Adopting a deemed granted remedy when there is a “failure to act” by localities fits squarely within this Commission authority.

The Commission previously adopted a deemed granted remedy in comparable circumstances, and its authority to do so was affirmed by the courts. Section 621(a)(1) of the Communications Act prevents local cable franchising authorities from “unreasonably refus[ing] to award an additional competitive franchise.”<sup>61</sup> The Commission adopted a shot clock under this section and provided that if a franchising authority did not render a decision on a franchise application within the applicable time period, the franchising authority would be deemed to have granted the application.<sup>62</sup> The Sixth Circuit denied a challenge to the order, rejecting the argument that the deemed granted remedy exceeded the Commission’s authority and “den[ie]d]

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(“2014 Infrastructure Order”), erratum, 30 FCC Rcd 31 (2015), *aff’d* *Montgomery County v. FCC*, 811 F.3d 121 (4<sup>th</sup> Cir. 2015).

<sup>59</sup> 47 U.S.C. § 332(c)(7)(B)(ii), (v).

<sup>60</sup> *City of Arlington v. FCC*, 133 S. Ct. 1863, 1871-73 (2013).

<sup>61</sup> 47 U.S.C. § 541(a)(1).

<sup>62</sup> *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 5101, 5103, ¶ 4, 5127-28, ¶ 54, 5132, ¶ 62, 5134-35, ¶ 68, 5139, ¶¶ 77-78 (2007) (“*Cable Franchising Report and Order*”).

community needs and interests.”<sup>63</sup> The court upheld the Commission’s determination that the chosen shot clock was reasonable and that enforcing it through the deemed granted remedy was proper in order to prevent potential market entrants from abandoning the market altogether due to “excessive delays” and “unreasonable refusals.”<sup>64</sup>

The Commission should follow the Section 621(a)(1) precedent and adopt a deemed granted remedy for Section 332(c)(7). *City of Arlington* establishes the Commission’s authority to adopt rules to enforce this section of the Act. Moreover, further action is necessary to ensure that localities act upon applications in a reasonable time. As noted above, the lack of a deemed granted remedy often leads carriers to grant local authorities additional time to review applications instead of suing for injunctive relief, as that solution is often faster and more cost-effective.<sup>65</sup> Consequently, absent a deemed granted remedy, Section 332(c)(7)’s shot clock often goes unenforced, rendering it ineffective.

The Commission has in the past contended that the presence of a judicial remedy in Section 332(c)(7)(B)(v) -- which states that where there has been a failure to act, aggrieved parties should file with a court of competent jurisdiction and “[t]he court shall hear and decide such action on an expedited basis”<sup>66</sup> -- suggests that remedies for violations of the Section 332 shot clock should be case-specific.<sup>67</sup> Section 621(a) of the Communications Act likewise

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<sup>63</sup> *Alliance for Cmty. Media v. FCC*, 529 F.3d 763, 778 (6th Cir. 2008), *cert. denied*, 557 U.S. 904 (2009).

<sup>64</sup> *Id.*, 529 F.3d at 780 (citation and internal quotation marks omitted).

<sup>65</sup> *See Cable Franchising Report and Order*, 22 FCC Rcd. at 5112-13, ¶ 24 (noting in establishing a deemed granted remedy that many applicants brought costly and time intensive lawsuits to compel local franchising agency action on their applications, while others either accepted what they considered unreasonable terms or walked away in order to avoid such costs).

<sup>66</sup> 47 U.S.C. § 332(c)(7)(B)(v).

<sup>67</sup> *See 332 Shot Clock Ruling*, 24 FCC Rcd. at 14009, ¶ 39.

contains a provision for appeal of an adverse decision to a court of competent jurisdiction, however, and the Commission nonetheless found that a deemed granted remedy was proper for that statute.<sup>68</sup> Moreover, adopting a deemed granted remedy would not render Section 332(c)(7)(B)(v) superfluous, because where a state or municipality fails to issue a permitting decision within the timing provided by the shot clock -- thereby triggering the deemed granted remedy -- applicants might still need to resort to injunctive relief to compel the issuance of the required permit.

**(b) New Small Cell Shot Clock**

The Commission should adopt a 60-day shot clock for action on applications to place small cells, provided that the facility meets certain size limits.<sup>69</sup> At the time of adoption, the Section 332(c)(7) shot clock for placements and modifications on existing structures did not specifically contemplate small cells.<sup>70</sup> A shorter shot clock is warranted, because, “due to their size and placement, small cells may have less potential for aesthetic and other impacts than macrocells.”<sup>71</sup> A 60-day shot clock is consistent with the Section 6409 shot clock and with recent state legislation providing for shot clocks of not more than 60 days for covered small

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<sup>68</sup> See 47 U.S.C. §§ 541(a)(1), 555 (providing that any applicant whose application was finally denied may appeal that decision within 120 days in federal district court or state court).

<sup>69</sup> The Commission should apply the size limits applicable to small facility exclusions from historic preservation reviews -- 3 cubic feet per antenna, no more than 6 cubic feet for all antennas, and 28 cubic feet for associated equipment. See *Wireless Telecommunications Bureau Announces Execution of First Amendment to the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas*, Public Notice, 31 FCC Rcd 8824 (WTB 2016), codified at 47 U.S.C. Part 1, Appendix C, Section VI.A.4 (a) and (b)(i) (“*Collocation Agreement Amendment*”).

<sup>70</sup> See Public Notice at 11-12.

<sup>71</sup> *Id.* at 12.

wireless facilities.<sup>72</sup> The Commission should not adopt a longer review period for applications proposing multiple facilities -- so called “batch applications.”<sup>73</sup> Instead, the Commission should follow the lead of states that have recently adopted small facility statutes that apply the same shot clock to batch applications that applies to single applications.<sup>74</sup>

**B. The Commission Should Revisit the Scope of the Section 6409 Shot Clock to Ensure that It Applies to Small Cells.**

Contrary to the intent of both Congress and the Commission, the Section 6409 shot clock currently is not effective at speeding the local approval process. The statute states that localities “shall approve” wireless facilities located on existing structures provided that the facilities do not substantially change the underlying structure. And the Commission adopted a “deemed granted” remedy to effectuate this mandate. Unfortunately, the Commission interpreted this provision narrowly to apply to placing or modifying facilities on existing towers or other structures (referred to in the statute as “base stations”) only if the base station *already* houses other wireless

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<sup>72</sup> See Burns Ind. Code Ann. § 8-1-32.3-22(e),(f) (“Indiana Small Facility Law”) (amending the Indiana code to require approval of covered small cell applications in 55 days); K.S.A. § 66-2019 (“Kansas Small Facility Law”) (amending the Kansas code to require approval of covered small cell facility applications within 60 days); 2016 Bill Text VA S.B. 1282 (“Virginia Small Facility Bill”) (legislation passed and pending Governor’s signature that will require approval of covered small cell facilities in 60 days).

<sup>73</sup> See Public Notice at 12.

<sup>74</sup> See Indiana Small Facility Law, § 8-1-32.3-22(c) and 3-26 (requiring local jurisdictions to allow applicants to submit one application with same 55-day review period for multiple small cell facilities that constitute a single small cell network); Kansas Small Facility Law, § 66-2019 (requiring local jurisdictions to allow applicants to submit one application with the same 60-day review period for a small cell network involving no greater than 25 individual small cell facilities of a substantially similar design); Virginia Small Facility Bill (allowing applicants to submit up to 35 permit requests with the same 60-day review period in a single application); ORC Ann. 4939.031 (“Ohio Small Facility Law”) (allowing applicants to submit one application with the same 90-day review period for multiple micro wireless facilities).

facilities that were reviewed and approved by the locality.<sup>75</sup> But most 4G small facilities and 5G facilities are (and will be) located on utility structures, including light and traffic poles, in rights-of-way. And because many of these structures may not be capable of housing more than one wireless installation -- due to structural limitations and the need to place antennas at the pole top -- this interpretation unnecessarily restricts the utility of Section 6409 in facilitating small cell deployment.

The Commission should reconsider its definition of the term “existing base station” in Section 6409 to apply to small wireless facilities located on existing utility structures and similar structures. Under the statute, a state or local government “may not deny, and shall approve,” an eligible facilities request -- including “collocation of new transmission equipment” -- for a modification to an “existing wireless tower or base station.”<sup>76</sup> In the *2014 Infrastructure Order*, the Commission defined “base station” to include any structure (including, for instance, buildings or poles) that already supports wireless equipment at the time the request is made.<sup>77</sup> And it defined “existing” as only those base stations previously reviewed and approved through a state or local siting process, thus restricting the small wireless facilities that qualify under the section.<sup>78</sup> The Commission should reconsider these definitions and instead adopt a reasonable alternative interpretation that accounts for changed technology and advances federal policies promoting broadband and 5G.

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<sup>75</sup> See 47 C.F.R. § 1.140001(b)(1)(iii).

<sup>76</sup> 47 U.S.C. § 1455(a).

<sup>77</sup> See *2014 Infrastructure Order*, 29 FCC Rcd. at 12937, ¶ 172.

<sup>78</sup> *Id.*, 29 FCC Rcd. at 12937, ¶ 174.

The Commission should define the terms in Section 6409 to achieve the congressional and Commission goal of streamlining the deployment of broadband networks.<sup>79</sup> It should define “base station” to include structures that historically have been used by state and local governments to support wireless facilities, including utility poles, light stanchions, and water towers. When Congress adopted Section 6409 in 2012, it would have been aware that these structures routinely support wireless facilities, and it is proper for the Commission to presume that Congress would have understood them to be included in the term “base station.” Although the Commission did not adopt this interpretation in the *2014 Infrastructure Order*, it recognized that the term “base station” referred to a category of structures, rather than creating a test to determine whether each individual facility qualifies.<sup>80</sup>

In addition, the Commission should revisit its definition of “existing.” Because Congress would have been aware of the importance of collocation on utility poles, light stanchions, and water towers for the effective deployment of broadband-speed networks, the Commission should define “existing” to include those structures that had already been built at the time of the application. State and local governments have long used utility poles, light stanchions, and water towers for wireless facilities, so this interpretation does not run afoul of the Commission’s concerns that wireless facilities might be deployed on structures not reasonably anticipated by state and local governments to support those facilities.<sup>81</sup>

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<sup>79</sup> See *Above 24 GHz Order*, 31 FCC Rcd. 8014.

<sup>80</sup> See *2014 Infrastructure Order*, 29 FCC Rcd. at 12937, ¶ 172 (“We thus adopt the proposed definition of ‘base station’ to include a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station at the time the application is filed.”).

<sup>81</sup> See *id.*



The Commission’s more limited definitions of the terms “existing” and “base station” derived in part from its policy judgment at the time that local governments should retain substantial control over initial decisions on wireless siting.<sup>82</sup> Subsequent experience, however, combined with practical realities of 5G deployment support a contrary policy judgment. As the Commission has recognized, the delivery of robust wireless services to consumers requires timely access to existing infrastructure to deploy small wireless facilities, and on a scale not previously contemplated.<sup>83</sup> As discussed above, local ordinances and processes today often thwart that access, frustrating the congressional and Commission goal of robust wireless broadband service for consumers. The policy grounds identified by the Commission in the *2014 Infrastructure Order* no longer weigh in favor of affording municipalities wide latitude to deny carriers access to utility poles, light stanchions, and water towers for purposes of collocation. It is consequently proper for the Commission to revise its definitions of “existing” and “base station.”

**C. The Commission Should Clarify that the Existing Shot Clocks Apply to All Steps in the Facilities Approval Process.**

The Commission should clarify that the Section 332(c)(7) and Section 6409 shot clocks apply to all local government decisions related to the placement of covered wireless facilities. As discussed above, local governments apply a variety of requirements to small facility deployments in rights-of-way. In some cases, local requirements for gaining access to rights-of-

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<sup>82</sup> See *id.* at 12937-38, ¶¶173-74.

<sup>83</sup> See *Above 24 GHz Order*, 31 FCC Rcd. 8014; see also Ajit Pai Digital Empowerment Agenda at 7 (“Future 5G technologies will require ‘densification’ of wireless networks. That means providers are going to deploy hundreds of thousands of new antennas and cell sites . . . . Without a paradigm shift in our nation’s approach to wireless siting and broadband deployment, our creaky regulatory approach is going to be the bottleneck that holds American consumers and businesses back.”).

way either supplant or exist in addition to the local zoning process. Allowing localities to exempt parts of the approval process from the applicable deadlines frustrates the purpose of the shot clocks. Clarifying that the shot clocks apply to all aspects of the approval process, including accessing the rights-of-way, is necessary to speed local siting decisions. The clarification will also provide incentives to local authorities to adopt streamlined approval processes. Clarifying the shot clocks in this manner is consistent with both statutes. Section 332(c)(7) applies to decisions that regulate the placement of wireless facilities, whereas Section 6409 applies to eligible requests for modification of an existing tower or base station.<sup>84</sup> Neither statute limits the terms of the provisions to (or even mentions) the local zoning process.

**V. THE COMMISSION SHOULD TAKE STEPS TO IMPROVE ACCESS TO INVESTOR-OWNED UTILITY POLES.**

In addition to the challenges posed by many localities, difficulties gaining reasonable and timely access to investor-owned utility poles often prevent carriers from deploying small cells in a timely manner. Fortunately, the Commission has authority under the federal pole attachment statute to address these concerns.<sup>85</sup> The obstacles carriers experience when negotiating pole attachments with utility companies are similar to those associated with municipally-owned poles. Utilities frequently refuse to negotiate wireless attachment agreements, and many agreements take more than a year to complete. Some utilities place unreasonable requirements on wireless attachments, such as requiring greater separation of wireless equipment from electric equipment near the top of pole than is required by electric industry standards. As a result, carriers must

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<sup>84</sup> See 47 U.S.C. § 332(c)(7)(B)(i) and (ii); 47 U.S.C. § 1455(a).

<sup>85</sup> 47 U.S.C. § 224. The statute does not apply to cooperatively organized utility companies or to municipally owned structures. See 47 U.S.C. § 224(a)(1). The statute also allows states to assert exclusive jurisdiction over pole attachments, subject to certain conditions. These so-called “reverse preemption states” do not have to adopt the federal pole attachment rate formula or other terms of attachment. 47 U.S.C. § 224(c).

replace the poles to locate facilities on them, which leads to delays and added costs. Many utilities charge a premium for access to utility-owned light poles or deny access altogether, taking the position that the pole attachment statute requires access only to electric distribution poles. Access to light poles is crucial to wireless infrastructure deployment in locations that lack utility distribution poles because power lines are buried underground. And many utilities refuse access to pole tops or are slow to complete make-ready work<sup>86</sup> to enable wireless attachments.<sup>87</sup>

Commission rules implementing the statute already establish rates for attachments to utility poles, grant attachment rights to wireless service providers,<sup>88</sup> and make clear that pole top space is attachable space,<sup>89</sup> but the Commission should take additional steps to improve pole attachment rights in states where the federal rules apply. First, the Commission should declare that Section 224(f)(1) requires access to all poles, including light poles, owned by covered utilities. The statute requires access to “any pole”: “A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to *any pole*, duct,

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<sup>86</sup> Make ready work refers to moving existing attachments, and sometimes replacing poles, to comply with codes and create usable attachment space on the poles.

<sup>87</sup> See Appendix A, Examples of Siting Issues for these and other examples of pole attachment barriers.

<sup>88</sup> See *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 6777, 6798, ¶ 39 (1998) (“1998 Implementation Order” (“Wireless carriers are entitled to the benefits and protection of Section 224. Section 224(e)(1) plainly states: “The Commission shall . . . prescribe regulations to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services.” “This language encompasses wireless attachments.”).

<sup>89</sup> *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5276 ¶ 77 (2011) (“We clarify that section 224 allows wireless attachers to access the space above what has traditionally been referred to as ‘communications space’ on a pole. . . . [W]e clarify that a wireless carrier’s right to attach to pole tops is the same as it is to attach to any other part of a pole. Utilities may deny access ‘where there is insufficient capacity, and for reasons of safety, reliability, and generally applicable engineering purposes.’”).

conduit or right-of-way owned or controlled by it.”<sup>90</sup> The plain language of the statute is broad enough to encompass poles that function exclusively as street lights. Second, the Commission should either establish a specific rate formula for attachments to light poles or clarify that it will address the “just and reasonable” rate for light poles on a case-by-case basis.<sup>91</sup> Third, the Commission should adopt and enforce a procedural rule requiring resolution of pole attachment complaints filed at the Commission in six months or less.

The Commission should also exercise its leadership to improve access to poles in reverse preemption states.<sup>92</sup> Consistent with Chairman Pai’s “Digital Empowerment Agenda,” it should urge Congress to expand federal authority over pole attachments either by granting the Commission authority to set maximum pole attachment rates and attachment terms that are binding on the states or to grant it exclusive jurisdiction over all pole attachments.<sup>93</sup> In the meantime, the Commission should work through the BDAC to encourage reverse preemption states to revise their pole attachment regulation to ensure just and reasonable and non-discriminatory access to all poles for wireless carriers.

## **VI. THE COMMISSION SHOULD RENEW ITS EFFORTS TO STREAMLINE HISTORIC PRESERVATION REVIEWS, INCLUDING TRIBAL REVIEWS, OF SMALL CELLS.**

Historic preservation reviews, particularly reviews by tribes, are a significant source of delays and added costs for small cell deployment. Targeted revisions to the historic preservation

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<sup>90</sup> 47 U.S.C. § 224(f)(1)(emphasis added).

<sup>91</sup> See, e.g., *1998 Implementation Order*, 13 FCC Rcd at 6799, ¶ 42 (“If parties cannot modify or adjust the formula to deal with unique [wireless] attachments, and the parties are unable to reach agreement through good faith negotiations, the Commission will examine the issues on a case-by-case basis.”).

<sup>92</sup> Twenty states plus the District of Columbia have exercised their reverse preemption rights.

<sup>93</sup> See Ajit Pai Digital Empowerment Agenda at 7-8 (urging Congress to expand the Commission’s authority over pole attachments).

and tribal review process could protect legitimate interests and concerns, while ensuring that these processes do not unduly delay or frustrate small cell deployment.

The current tribal review process is not tailored to small cells and, if not changed, will delay many small facility deployments by months if not years. The rules require carriers to submit documentation of proposed projects into a database -- the tower construction notification system or "TCNS."<sup>94</sup> Based on information previously entered by tribes, the database determines whether any tribe has expressed an interest in reviewing projects in the area and then sends the information entered by the carrier to each such tribe. If the tribe responds that it wants to review the project, the carrier cannot begin construction until either the tribe responds or Commission staff notifies the carrier it can proceed. Even if only one tribe delays responding, the entire project is put on hold until the last tribal review is complete.

Currently there are no limits or meaningful Commission guidance on the geographic areas where tribes may express an interest in reviewing projects, on the types of facilities tribes can review, on the time tribes can take to conduct reviews, or when fees can be assessed by tribes or the amount of those fees. Absent such limits, tribal reviews can needlessly delay small cell deployment and increase costs even where the risks to tribal interests are exceedingly small. To illustrate the scope of the problem, one project to install a small facility on an existing utility pole in a Midwestern city, with no ground disturbance, required reviews by 16 tribes. While many tribes responded promptly, the project was significantly delayed because one tribe took 159 days to respond. Ultimately, not one of the tribes found any effect on tribal historic properties. In a

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<sup>94</sup> This process does not apply to projects located on tribal lands or projects that fall within an existing exclusion from historic preservation review. Projects on tribal lands are reviewed only by the tribe on whose land the project will be located, so there is no need to notify other tribes through TCNS. Verizon is not seeking any changes to the process for reviewing projects on tribal lands.

July 2016 examination of 2,450 Verizon requests for tribal review that were pending at the time, more than half had been pending for more than 90 days, almost a third had been pending for more than six months, and 20 had been pending for more than a year. For projects Verizon submitted between 2014 and 2016, the average time for tribes to complete reviews was 75 days. The fees that Verizon has paid to tribes, which range from \$25 to \$1,550 per site, have increased from just over \$300,000 in 2012 to almost \$4 million in 2015. And the average spend per site is now \$2,344. Absent some limits, these costs and delays will only continue to increase as carriers ramp up their siting activities to deploy thousands or millions of small 4G and 5G facilities.

The Commission should act to ensure that tribal reviews do not unreasonably burden small cell deployment, even as it protects legitimate tribal interests. The Commission has acted recently to adopt exclusions from historic preservation and tribal review. These exclusions have eliminated the need for historic preservation and tribal reviews for some small facilities on utility poles and other structures.<sup>95</sup> But many small wireless facilities, including new poles in rights-of-way, facilities that do not meet Commission size limits, and placements on many street lights and traffic poles in or near historic districts still require review.

The Commission should exclude from review certain small cell types that do not have the potential to affect any tribal historic property.<sup>96</sup> Wireless facilities siting can affect properties of cultural or religious significance to tribes in two ways: by physically harming properties -- such as tribal artifacts and human remains -- when excavating, or by placing a structure in a location that impedes a sacred tribal viewshed. Neither outcome is possible when locating a

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<sup>95</sup> See *2014 Infrastructure Order*, 29 FCC Rcd at 12901-12913, ¶¶ 76-103; *Collocation Agreement Amendment*.

<sup>96</sup> See 36 C.F.R. § 800.3(a)(1) (stating that federal agencies have no obligation to review agency undertakings that do not have the potential to cause effects on historic properties).

small cell on an existing structure, or when erecting a new pole that involves no new ground disturbance. Verizon's experience with tribal reviews confirms the absence of harm to tribal historic properties in these contexts. Of 8,100 requests for tribal review submitted between 2012 and 2015, only 29 (.3 percent) resulted in findings of an adverse effect to tribal historic properties, and there were *no* adverse effects from projects with no new ground disturbance.

The Commission has several tools available to ensure that tribal reviews (and associated fees and delays) are reasonable. First, the Commission should exclude certain small facility types from tribal reviews in one of two ways. It can revisit previous determinations that certain small wireless facilities siting is a "federal undertaking" subject to Commission historic preservation rules.<sup>97</sup> Specifically, the Commission could find that mounting small cells on existing structures is not a federal undertaking and therefore does not require historic preservation review.<sup>98</sup> Alternatively, the Commission could find that small wireless facilities that do not involve any new ground disturbance have no potential to affect tribal historic properties. This finding would enable the Commission to exclude such facilities from tribal reviews.<sup>99</sup> Second, the Commission should also require the completion of tribal reviews within 30 days -- the same limits placed on reviews by state historic preservation officers. And third, the Commission should adopt guidance stating that tribal fees are appropriate only when providing professional services (such as when a tribal representative is acting as a consultant or contractor) -- not when tribes are merely screening applications to determine whether a tribal

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<sup>97</sup> See *2014 Infrastructure Order*, 29 FCC Rcd at 12904, ¶ 8.

<sup>98</sup> See Comments of Verizon, *2016 Biennial Review of Telecommunications Regulations*, IB Docket No. 16-131, *et al.*, at 6-7 (Dec. 5, 2016).

<sup>99</sup> See 36 C.F.R. § 800.3(a)(1).

property *might* be affected, and the Commission should place reasonable limits on fees where they are appropriate.

**VII. THE COMMISSION SHOULD ADOPT ADDITIONAL MEASURES TO STREAMLINE WIRELESS FACILITIES SITING.**

The Commission should take steps to streamline wireless facilities siting beyond those measures specific to small wireless facilities by eliminating two unnecessary and burdensome requirements. First, it should adopt a process for approving collocations on existing towers built between 2001 and 2005 (so-called “twilight towers”) that lack documentation of historic preservation reviews. Second, the Commission should eliminate the requirement to file an environmental assessment (“EA”) for new towers constructed in flood plains in those cases where a federal agency or local authority implementing a federal flood insurance program reviews the proposed facility and determines it will have no environmental effect.

**A. The Commission Should Exclude Collocations on “Twilight Towers” from Historic Preservation Reviews.**

The Commission should exclude from historic preservation review wireless facilities mounted on towers built between March 16, 2001 and March 7, 2005. This period is significant because March 16, 2001 is the date the *Collocation Agreement* was adopted.<sup>100</sup> That agreement, which was negotiated among the Commission, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, adopted a number of exclusions for wireless facilities. One such exclusion applies to wireless facilities mounted on previously built towers. The idea was that towers built after that date would require

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<sup>100</sup> See Public Notice, *Wireless Telecommunications Bureau Announces Execution of Programmatic Agreement with Respect to Collocating Wireless Antennas on Existing Structures*, 16 FCC Rcd 5574 (WTB 2001).



documentation of a completed historic preservation review.<sup>101</sup> But those formal historic preservation reviews were not possible until the Nationwide Programmatic Agreement, which adopted the rules and process for these reviews, took effect on March 7, 2005.<sup>102</sup> So while many (if not most) facilities built during this four-year period were subject to some form of historic preservation review, those towers generally lack the type of documentation that is generated by reviews under today's rules. And carriers are unable to place additional wireless facilities on these towers without working with Commission staff, state historic preservation officers, and tribes to approve each proposed facility, even though those towers were built more than 10 years ago. To free these long-standing towers for collocations, the Commission should rule that, like towers built before March 16, 2001, collocations on towers built before 2005 are excluded from historic preservation reviews.

**B. The Commission Should Eliminate Redundant Environmental Reviews for Certain New Towers in Flood Plains.**

The requirement to prepare and submit environmental assessments for every new facility constructed in a flood plain imposes unnecessary delays on constructing facilities and should be amended. Commission rules implementing the National Environmental Policy Act (“NEPA”)<sup>103</sup> require applicants to prepare an EA when a proposed facility may significantly affect the environment.<sup>104</sup> For most categories of environmental concern, the Commission defers to the expertise of other federal agencies to determine if there may be a significant effect. So, for

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<sup>101</sup> See *id.* at Appendix A, Collocation Agreement Sections III, IV.

<sup>102</sup> *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004) (codified at 47 C.F.R. Part 1, Appendix B (“NPA”)).

<sup>103</sup> 42 U.S.C. §§ 4321 *et seq.*

<sup>104</sup> See 47 C.F.R. § 1.1307(a).

example, if the United States Fish and Wildlife Service reviews a project and determines that it will not affect endangered species, the Commission does not require the applicant to submit an EA.<sup>105</sup> But the Commission's interpretation of its rule concerning flood plains differs.<sup>106</sup> There, even if the applicant obtains a finding from the expert agency -- the Federal Emergency Management Agency ("FEMA"), the Army Corps of Engineers, or a local authority that participates in the FEMA National Flood Insurance Program -- that the project will not significantly affect the environment, the Commission nonetheless requires the applicant to separately prepare and file an EA. As a result, more than 80 percent of Verizon's EA filings over the last three years have been for facilities in flood plains.

Flood plain EAs are unnecessary and redundant and should be eliminated. When an EA is required, the applicant must hire expert consultants to prepare the EA, then file the EA with the Commission and wait at least 30 days to allow interested parties to comment. But for the three-year period Verizon reviewed, we have not received a single negative comment for facilities receiving approval from any of the expert agencies on flood plains, and the Commission approved every site without change. That is little surprise, given that other agencies with environmental expertise had previously signed off on these projects. So the Commission should eliminate the EA filing requirement for facilities to be located in flood plains either by changing its interpretation of the existing rule, or amending the rule to make clear that EAs are required only when an expert agency finds that a flood plain may be significantly affected.

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<sup>105</sup> See <https://www.fcc.gov/general/tower-and-antenna-siting>.

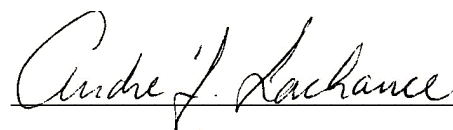
<sup>106</sup> 47 C.F.R. § 1.1307(a)(6).

## VIII. CONCLUSION

As discussed above, the Commission should act quickly to exercise its statutory authority to eliminate barriers to wireless small facility deployment and pave the way for continued leadership in wireless broadband.

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## Appendix A

<b>Rights of Way Access</b> <b>Refuse / Slow to Negotiate</b>	
Mid-Atlantic city	City prohibits placement of small wireless antennas in certain zones and in ROW.
Mid-Atlantic city	The city is delaying our request to access the ROW.
Mid-Atlantic city	The city is not acting on requests to access the ROW until pending litigation is resolved.
Mid-Atlantic state DOT	The state DOT informed us that existing state law does not allow the placement of wireless small facilities in state ROW because wireless is not a public utility.
Midwest suburb	Town refuses to consider small facilities in ROW until a new ordinance is adopted.
Midwest suburb	City refused to honor MLA negotiated in 2013, refused to allow access to city-owned poles and refused to allow access to privately-owned utility poles on major roads.
Midwest suburb	ROW application has been pending for more than two years due to many restrictions/requirements.
Midwest town	The town is unwilling to discuss access to ROW to locate small wireless facilities in the town -- the mayor has said he does not want them.
North city	We've failed to reach agreement on a MLA since 2015 due to the excessive fee request by the city.
Northeast city	We've been trying since August of 2016 to enter an agreement to lease space on poles in the city but still cannot get the appropriate application form from the city.
Northeast city	We've been trying since the Summer of 2016 to negotiate ROW agreements with the city and surrounding county, but the city keeps requesting more time and the county is nonresponsive.
Northeast city	Our request to locate facilities in the ROW has been pending for almost one year.
Northeast city	The city requires providers to submit bids on poles in the ROW. We have been waiting five months for the city to release the bid solicitation notice.
Northeast suburb	We've tried unsuccessfully to negotiate agreements to attach to town-owned light utility poles since mid-2016.
Northeast suburb	Town denied a proposed pole and directed Verizon to fill coverage gap with small facilities on town-owned light poles. The application to locate facilities on those light poles is now delayed so the town can select a turn-key vendor to manage attachments to light poles. The delay is three years and counting.
Northeast town	We've tried unsuccessfully to negotiate agreements to attach to town-owned light utility poles since mid-2016.
Northeast town	The town has suspended all action on small facility requests pending development of a new procedure.
Northeast town	The town has refused to move forward on applications to locate several facilities in the ROW pending action on requests by the town to perform unrelated work.
Northeast town	We filed applications to place facilities in ROW in August of 2016, but the city signaled it would deny the applications while it considered a small facility policy. We withdrew the applications to wait for the policy to be adopted. That policy is still under consideration.

Northeast town	Refused to consider allowing attachments to poles in ROW. We had to obtain a variance to place one single small facility on a utility pole in the ROW.
Northeast town	The town originally granted access to ROW then revoked agreement and is now considering further conditions.
Northeast town	Town refused permission to locate a small facility in the ROW.
Northwest suburb	Our MLA application to locate on municipally-owned poles has been pending for two years.
Southeast city	The city has a moratorium in place.
Southeast county	The urban county has a moratorium in place.
Southeast suburb	The town refuses to engage in any way on our request to place small facilities in the ROW.
Southeast town	Refuses to allow access to ROW for small wireless facilities.
South county	The county which incorporates part of a large city refuses to consider a MLA to access the ROW.
Southwest city	The city will not allow ROW access for small wireless facilities.
Southwest city	The city will not allow ROW access for small wireless facilities.
Southwest city	The city will not allow ROW access for small wireless facilities.
Southwest city	A major city is challenging whether infrastructure vendors, acting on our behalf, are telecommunications providers with rights to access ROWs. There is litigation pending and action likely will not occur until the matter is resolved in court.
West city	We approached the city about a MLA over a year ago, but the city is not sure how to proceed with small wireless facilities. To date the city has not told us it is willing proceed.
West town	The town refused to allow attachments to any municipally-owned poles.
<b>Rights of Way Access Excessive / Discriminatory Fees</b>	
Mid-Atlantic city	The city wants to assess a one-time fee of \$5,000 to access the ROW.
Mid-Atlantic city	The city wants to charge carriers an annual fee per foot for conduit the carrier installs for facilities in the ROW.
Mid-Atlantic community	Attempting to require a franchise agreement to place facilities in the ROW with fees based on annual revenue.
Multiple Northeast towns	Many suburban towns assess franchise fees of 5% of revenues for access to ROW.
Northeast city	Requiring fees of \$6,000/year to locate on poles in ROW not owned by city.

Northeast State DOT	State requires an annual fee of \$37,000/node for attachments to poles in DOT ROWs. Public utilities are exempt from this fee requirement.
Northeast State DOT	State requires applicants to work with turnkey vendor for access to poles along highway ROWs. Vendor requires separate collocation application and charges \$750/month rent. This condition does not apply to wired broadband service providers.
Northeast urban county	County requires applicants to work with turnkey vendor for access to poles along county ROWs. Vendor requires separate collocation application and charges \$750/month rent. This condition does not apply to wired broadband service providers.
North city	The city hired a turnkey vendor that is an infrastructure provider to manage ROW attachments. The provider charges \$500/month per pole attachment in the ROW, but also is planning to build its own network in the city, raising questions as to conflicts.
North city	The city originally agreed to annual rent of \$600 per pole, but subsequently reneged and is now asking for \$7,500-\$8,500 per pole.
North city	We've been trying to reach an agreement to lease space on municipally-owned poles since 2015. The city originally asked for \$8,000 per year per pole, and now seeks \$6,000 per year.
North state DOT	The state DOT hired a turnkey vendor to manage attachments to structures in the ROW. The vendor is charging \$900/month for small wireless antennas.
North state DOT	The state hired a turnkey vendor to manage wireless attachments to structures in state ROWs. The vendor is charging \$150/month for small wireless antennas.
Northwest city	Charges \$10,000/year for an antenna array or \$3,000/year for a single antenna to attach to county-owned poles.
Southwest city	The city adopted a ROW ordinance requiring a franchise and a 2% of gross revenues fee for wireless providers -- the same fee it charges to wireline providers -- regardless of how many facilities are in the ROW.
Southwest city	City is charging \$1,500 per pole per year for access to a limited number of poles in the ROW.
West city	The city is asking for annual pole rent of \$1,000/month.
West city	The city charges annual rent of \$2,300 per pole to attach to poles in the ROW.
<b>Rights of Way Access</b> <b>Unreasonable Conditions</b>	
Eight West cities/towns	The localities require map and proof of need to gain access to ROW structures.
Mid-Atlantic city	The city is attempting to force carriers to enter into a franchise agreement to access the ROW.
Midwest suburb	Requires small facilities to be placed in alley ways in some circumstances.
Midwest suburb	Requires MLA terms similar to utility franchise agreement.
Midwest suburb	Requires multiple meetings, site visits, cash escrow bond, and annual landscaping fees for access to poles owned by town in ROW.

Midwest suburb	Town requires conditions including 1000 feet separation for small facilities, size limitations of 15 cubic feet, equipment at least 8 feet above ground, and antennas no higher than 35 feet.
Midwest suburb	Town requires conditions including: 300 foot separation between facilities, no placement on poles that front residential property, 4 square foot antenna size limit, replacement poles cannot exceed original height, all wiring must be concealed, and no more than one facility per pole.
Midwest suburb	Town requires conditions including: 100 foot separation from any residential property, 1000 foot separation from other small facilities, no antenna higher than 35 feet, and ground equipment must be screened.
Midwest suburb	Town assigns priority to consideration based on pole type thus favoring certain pole types. Other conditions include: no poles in front of residential properties, new poles are prohibited, antennas limited to 4 square feet, minimum separation of 300 feet from all other facilities, no signs of any kind visible from ground, and annual renewal of permit required.
Northeast suburb	The suburb wanted us to replace the traffic signals at major intersections at a cost of \$90,000 per intersection in order to be able to locate on one pole at the intersections. The suburb also wanted us replace all the street lights on a street to locate on one light pole on the street.
Northeast suburb	The suburb's ROW ordinance requires notice to property owners within 800 feet (as compared to 300 feet for other sites) for proposed ROW attachments, distinguishes between a coverage gap for voice and data, and requires a voice coverage gap showing.
Southeast city	The city requires a 400 foot separation distance between facilities and no more than 13 facilities per square mile.
Southeast city	The city is limiting our access to 25 locations on specific traffic poles in the city.
West city	Requires equipment cabinets, with few exceptions, to be placed underground.
West city	The municipally owned power utility will not allow electric meters to be placed on poles. Any required meters must be underground.
<b>Local Zoning</b> <b>Excessive Delays</b>	
Midwest suburb	The suburb requires full zoning review of ROW attachments. We've been waiting since late October for zoning approval and do not expect action until March (5 months).
Northeast town	The town required a full zoning proceeding for a roof top small cell with screened equipment. The process took almost a year to complete.
North city	We've reached agreement to locate facilities on investor-owned utility poles, but the city is assessing application fees of \$8,500 plus additional fees for installation inspection. The sites are on hold as we appeal the decision to require zoning for sites in the ROW.
Northwest suburb	The suburb requires a local zoning application fee of \$5000 for every small facility attachment to an existing utility pole.

Six West jurisdictions	Each jurisdiction requires proposed small facilities to be approved by an architectural review board, which takes 150 days to complete.
<b>Local Zoning</b> <b>Unreasonable Conditions</b>	
Eight West jurisdictions	In addition to going through lengthy and burdensome processes to access rights of way, these jurisdictions also require each facility to go through a separate zoning approval process and require coverage maps to be submitted.
Midwest suburb	The suburb adopted an administrative review-only process for certain small facilities, but still requires applicants to submit the full special use zoning package of information for such reviews.
Northeast town	The town required full zoning for a roof top small cell. The process required a community impact statement and an environmental impact statement -- with review and approval by an environmental commission before the application was considered by the zoning board.
Northwest city	The city's wireless code does not differentiate between macro and small facilities. Due to concerns that some carriers plan to put new tall poles in ROWs, the city adopted a 30-foot height limit on new poles in the ROW.
Northwest suburb	Requires board approval for every pole attachment. The process requires a community meeting before conditional use may be approved.
Northwest suburb	The suburb requires local zoning for every small facility attachment to utility poles. The process is identical to that for new macro wireless poles.
Six West jurisdictions	Each jurisdiction requires proposed small facilities to be approved by an architectural review board, which takes 150 days to complete.
<b>Local Zoning</b> <b>No Small Facility Provisions</b>	
Mid-Atlantic town	Requires the same zoning as a new tower for small facility attachments to utility poles.
Midwest suburb	Requires full zoning approval for every ROW attachment.
Midwest suburb	Requires a special use zoning process for every small facility.
Northwest suburb	The city recently updated its wireless facility zoning code, but rejected efforts to create a more streamlined process for small facilities.
Two Mid-Atlantic cities	Require same zoning process as for macro facilities.
Two Southern cities	Require same zoning process as for macro facilities.
<b>Pole Attachments</b> <b>Refuse / Slow To Negotiate</b>	
Four West utilities	These four utilities refuse to meet with us to discuss access to their utility poles.
Mid-Atlantic utility	It took more than two years to reach an agreement to access poles owned by this utility.
Mid-Atlantic utility	We have trying to negotiate an attachment agreement with this utility for more than a year with little progress to date.
Midwest utility	Some agreements to attach to poles have been waiting more than 400 days.



Northeast utility	We began trying to negotiate a pole attachment agreement in early 2014. We responded to proposed redlines, but are waiting to hear back on those changes. This utility controls about 50% of state utility pole space.
Northwest utility	We've been told the utility is too busy to process applications to attach to their poles.
Two Northeast utilities	The utilities are not responsive, refuse most changes to standard pole agreements, and take very long to complete agreements.
<b>Pole Attachments</b> <b>Access To Pole Tops</b>	
Northeast utilities	Three different utilities in the state refuse to allow access to pole tops to locate wireless small facility antennas.
Several Northeast utilities	Refuse to allow pole top access.
West utility	The utility charges \$6,600/year to lease pole top space.
<b>Pole Attachments</b> <b>Access To Light Poles</b>	
Northeast utility	The utility refuses to provide access to light poles.
Two Midwest utilities	The utilities will not allow access to light poles.
Two Southeast utilities	Both refuse to allow access to light poles.
West utility	Charges 1000% more for access to light poles than it charges for attachments to electric utility poles.
<b>Pole Attachments</b> <b>Unreasonable Conditions</b>	
Four Midwest utilities	Refuse to allow equipment cabinets on poles.
Mid-Atlantic utility	Requires minimum separation of communication facilities from electric company equipment in excess of 40" industry standard resulting in the need to replace many more poles.
Several Northeast utilities	Refuse to provide an electric meter.
Two Northeast utilities	Place separation from electric company equipment requirements in excess of industry standards resulting in the need to replace poles to locate at pole tops.
<b>Pole Attachments</b> <b>Slow Make-ready Work</b>	
Several Mid-Atlantic utilities	Make ready work completion times regularly slip by four to five months.
Two Midwest utilities	These two utilities are very slow to complete make ready work to allow us to attach to their poles.