



March 15, 2018

**VIA ELECTRONIC FILING**

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

**Re: Ex Parte Presentation, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79**

Dear Ms. Dortch,

CTIA applauds the Commission's efforts to improve the infrastructure siting process to facilitate densification and enhancement of 4G networks and deployment of 5G. In particular, CTIA supports the finding in the *Draft Second Order* that certain small wireless deployments are not undertakings or major federal actions under the National Historic Preservation Act ("NHPA") or National Environmental Policy Act ("NEPA"), respectively.<sup>1</sup>

Small wireless facilities, particularly under the targeted, technology-neutral definition the Commission proposes, are highly unlikely to have environmental impacts or to affect historic properties.<sup>2</sup> Eliminating unnecessary reviews for this limited set of small facilities will thus help speed investment, job creation, network densification, and delivery of 5G services to consumers without impacting the environment or historic properties.<sup>3</sup>

**Definition of Small Wireless Facility Antenna.** CTIA agrees with the Commission's proposal to adopt a definition of small wireless facility antenna that draws upon elements of

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<sup>1</sup> *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Second Report and Order*, FCC-CIRC1803-01, WT Docket No. 17-79 (draft rel. Mar. 1, 2018) ("*Draft Second Order*").

<sup>2</sup> See, e.g., Comments of CTIA and the Wireless Infrastructure Association, WT Docket No. 17-79 (filed June 15, 2017) (noting that only 0.33 percent of Tribal reviews of proposed wireless facilities surveyed—including both small cells and larger facilities—result in a finding of adverse effect); see also *Draft Second Order* ¶ 74.

<sup>3</sup> See, e.g., *Ex Parte* Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Mar. 13, 2018).



the volumetric definition contained in the Collocation Agreement, as amended in 2016,<sup>4</sup> as well as legislation recently passed in a number of states.<sup>5</sup> Service providers and infrastructure companies are already deploying wireless facilities that fit within these parameters.<sup>6</sup> As a result, network and equipment designs need not be altered or delayed to accommodate a new test.

With slight modifications, this definition also could afford providers flexibility to design their networks, implement buildout efficiently, and integrate 4G and 5G networks. For example, specifying an antenna volumetric limit that pertains to the antenna itself, rather than mandating a particular type or size of enclosure, will afford providers the flexibility to work with local authorities to address local zoning preferences regarding configuration of equipment on the structure.<sup>7</sup> Modifying the language of the proposed definition to clarify this point would afford further assurance to providers that their facilities will not fall outside the scope of the relief simply because the provider is configuring its equipment to satisfy local requests or requirements.<sup>8</sup> Specifically, the Commission should amend the *Draft Second Order's* revised Section 1.1312(e)(2)(ii) to state that "each antenna associated with the deployment, excluding the associated equipment, is no more than three cubic feet in volume."<sup>9</sup>

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<sup>4</sup> See First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, § VI.A.5, 47 C.F.R. Part 1, App. B ("Collocation Agreement").

<sup>5</sup> See, e.g., ARIZ. REV. STAT. §§ 9-591.19, 9-592.I-J; DEL. CODE ANN. tit. 17, §§ 1603(17), 1606(g); FLA. STAT. §§ 337.401(7)(b)(10), 337.401(7)(d)(5); MINN. STAT. §§ 237.162.11, 237.163.3b; N.C. GEN. STAT. §§ 160A-400.51(7a), 160A-400.55(b), 136-18.3A(d); OHIO REV. CODE ANN. § 4939.01(N); R.I. GEN. LAWS § 39-32-1(8); TEX. LOC. GOV'T CODE ANN. §§ 284.003, 284.103; VA. ADMIN. CODE §§ 15.2-2316.3, 56-484.26.

<sup>6</sup> See, e.g., *Ex Parte* Letter from Andre Lachance, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WC Docket No. 17-84, at 2 (filed Feb. 26, 2018) (noting that small cell antenna sizes are typically three cubic feet or less per antenna); *Ex Parte* Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, FCC, WT Docket No. 17-79, at 2 (filed Feb. 23, 2018) ("With each antenna comprising only about 3 cubic feet in volume, small cells indeed are unobtrusive and in harmony with the poles, street furniture, and other structures on which they are typically deployed.").

<sup>7</sup> See *Ex Parte* Letter from Keith C. Buell, Sprint, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Mar. 8, 2018) (noting that the *Draft Second Order* "addresses the application of NEPA and NHPA review of small cells only and does not eliminate local authority over permitting, including aesthetic concerns").

<sup>8</sup> See *Ex Parte* Letter from Andre Lachance, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Mar. 13, 2018).

<sup>9</sup> See, e.g., *id.*



**Definition of Small Wireless Facility Support Structures.** CTIA also supports the Commission’s proposal to define (for purposes of the relief here) the structures on which small wireless facilities may be mounted as those that are no taller than 50 feet or that involve only an incremental increase in height over existing or nearby structures. Consistent with the record<sup>10</sup> and recently enacted state laws,<sup>11</sup> however, we urge the Commission to modify its proposed definition to permit an incremental increase over the existing facility or nearby structures of no more than 10 percent or ten feet, whichever is greater—rather than simply 10 percent as the *Draft Second Order* currently proposes. Such an approach provides for ease of application, would align with industry practice,<sup>12</sup> and would provide flexibility for providers to deploy the infrastructure necessary to support 5G, including the installation of top-mounted antennas.<sup>13</sup>

CTIA also notes that the *Draft Second Order* is not internally consistent with regard to the structures on which facilities may be mounted. Paragraph 70 speaks to facilities “in the

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<sup>10</sup> See, e.g., *Ex Parte* Letter from Scott K. Bergmann, CTIA, to Marlene H. Dortch, FCC, WT Docket No. 17-79, at 3 (filed Nov. 9, 2017); Comments of Verizon, WT Docket No. 17-79, at 55 (filed June 15, 2017) (urging the Commission to adopt an exclusion for poles that do not increase the height by more than 10 percent or 10 feet above the height of the original pole, whichever is greater); Comments of AT&T, WT Docket No. 17-79, at 22 (filed June 15, 2017); *Ex Parte* Letter from John T. Scott III, Counsel to Mobilitie, LLC, to Marlene H. Dortch, FCC, WT Docket Nos. 16-421, 17-79, at 3 (filed Nov. 13, 2017); *Ex Parte* Letter from Rebecca Murphy Thompson, CCA, to Marlene H. Dortch, FCC, WT Docket Nos. 17-79 and 15-180, WC Docket No. 17-84, at Attachment (filed Feb. 9, 2018).

<sup>11</sup> See *Ex Parte* Letter from Keith C. Buell, Sprint, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Mar. 8, 2018).

<sup>12</sup> See *Ex Parte* Letter from Andre Lachance, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WC Docket No. 17-84, at 2 (filed Feb. 26, 2018) (noting that small cells are mounted predominantly on existing or replacement structures at a height of 60 feet or less); *Ex Parte* Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, FCC, WT Docket No. 17-79, at 2 (filed Feb. 23, 2018) (“[T]he vast majority of small cell antennas are placed at a height of less than 60 feet on structures located near similarly sized structures in previously disturbed rights-of-way, greatly reducing the likelihood of adversely impacting the surrounding environment”).

<sup>13</sup> See *Ex Parte* Letter from Andre Lachance, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 17-79, at 2 (filed Mar. 13, 2018); *Ex Parte* Letter from Cathleen A. Massey, T-Mobile, to Marlene H. Dortch, WT Docket No. 17-79, at 5 (filed Nov. 17, 2017) (“Electric utilities often require a separation distance between communications equipment and power lines of between 3 and 6 feet. A 10 percent increase in height of a replacement pole may not be sufficient to allow for a new antenna (which can itself be several feet) and the required separation distance. T-Mobile therefore supports the proposals submitted into the record by other parties that the exemption apply when the new pole is no greater than 10 percent or 10 feet higher than the existing pole.”); *Ex Parte* Letter from Joshua A. Turner, Counsel to Crown Castle, to Marlene H. Dortch, FCC, WT Docket Nos. 16-421 and 17-79, WC Docket No. 17-84, at 2 (filed Nov. 10, 2017) (noting that a ten-foot increase is necessary to provide separation between electric power space and pole-top antenna).



area” for purposes of the height limitation, whereas draft Rule 1.1312(e)(2)(i) is limited to “other adjacent structures.” CTIA urges the Commission to amend the draft rule to be consistent with the text of the *Draft Second Order* and clarify that the height limitation applies to incremental increases over existing facilities “in the area.” Such a reference point to nearby facilities is a useful limitation on height increases, and this revision would provide consistency in application across the *Draft Second Order*.

***The Revisions Proposed by NCTA Should Not Be Adopted.*** The Commission should decline to revise the definition of small wireless facility as recently requested by NCTA—The Internet and Television Association (“NCTA”).<sup>14</sup> While NCTA professes to seek “technology neutral” rules, its proposal would do the opposite by perpetuating the competitive disparity that exists today—*i.e.*, that wireless providers deploying small facilities on licensed spectrum are subject to NEPA and NHPA review, while facilities that are similar in size and function—or even far larger—that are deployed by the cable industry on unlicensed spectrum are exempt from these costly and time consuming requirements.<sup>15</sup> The *Draft Second Order*’s actions to streamline NEPA and NHPA review for small wireless facilities would eliminate that competitive disparity with respect to those small deployments, and would have no impact whatsoever on the cable industry’s Wi-Fi services.<sup>16</sup>

NCTA’s misplaced proposal is not only in direct conflict with the Commission’s overarching objectives to promote competition and facilitate broadband deployment, it is

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<sup>14</sup> *Ex Parte* Letter from Rick Chessen, NCTA—The Internet and Television Association, to Marlene H. Dortch, WT Docket No. 17-79 (filed Mar. 9, 2018) (“NCTA *Ex Parte*”).

<sup>15</sup> See *Ex Parte* Letter from Keith C. Buell, Sprint, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Mar. 12, 2018) (“Cable operations are not a federal undertaking, and, accordingly, cable operators are already able to deploy the facilities they seek to exclude from the small cell definition without undergoing NEPA and NHPA reviews”); *Ex Parte* Letter from Colleen Thompson, AT&T, to Marlene H. Dortch, FCC, WT Docket No. 17-79 (filed Feb. 27, 2018) (noting that “small cell facilities are unlikely to impact the environment, yet incur significant costs” and that “WiFi and small cell base stations—both wireless facilities deployed on poles, street furniture, and buildings—are similar, yet only one (small cells) requires NEPA and NHPA review”); see also *Acceleration of Broadband Deployment*, Report and Order, 29 FCC Rcd 12865, 12907 ¶¶ 91 (2014) (noting that Wi-Fi and unlicensed deployments occur without NHPA review).

<sup>16</sup> NCTA’s proposed changes would also seemingly exclude fixed wireless services from benefiting from NEPA and NHPA reform, which is without factual, legal, or technological foundation. Such artificial limitations would also risk inhibiting the development of robust competition for home broadband services that Americans benefit from today for mobile wireless services.



also inconsistent with the operations of small wireless facilities. Successful 5G deployment will generally require the use of different antennas than those used for 4G.<sup>17</sup> As the industry launches 5G and begins to build the network infrastructure to support it, the Commission should enable providers to collocate 4G and 5G equipment on the same structure,<sup>18</sup> rather than imposing cumulative limits that could preclude collocation and force construction of new structures. The *Draft Second Order* takes this exact approach by requiring that associated equipment be “no larger than necessary,” providing a flexible and workable framework that will enable wireless providers to design their equipment efficiently and accommodate local preferences.<sup>19</sup> This approach has broad support,<sup>20</sup> whereas a rigid numerical limit is not supported in the record and would not achieve those benefits.

NCTA’s proposed changes to draft rule 1.1312 also would exclude support structures from the small facilities that are no longer subject to NEPA and NHPA review. The installation or modification of those structures is essential to broadband deployment, and exclusion of those structures from the relief afforded by the *Draft Second Order* would significantly curtail its usefulness. Further, the Commission has concluded, based on record evidence, that it is

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<sup>17</sup> See, e.g., *Ex Parte* Letter from Andre Lachance, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed Feb. 8, 2018) (“Unlike 4G small cells where the antenna is a separate and distinct piece of equipment from the radio units, however, 5G small cells will integrate the antenna and the radio into a single piece of equipment”); *Ex Parte* Letter from Rebecca Murphy Thompson, CCA, to Marlene H. Dortch, FCC, WT Docket Nos. 17-79 and 15-180, WC Docket No. 17-84 (filed Feb. 15, 2018) (“[S]mall cells and ancillary equipment are materially different than their predecessors, regarding both size, and visual or actual impact on historic or environmental property.”); *Ex Parte* Letter from Cathleen H. Massey, T-Mobile, to Marlene H. Dortch, FCC, WT Docket Nos. 16-421 and 17-79 (filed Feb. 26, 2018) (definition of small wireless facility should accommodate changes in technologies such as combining equipment and antennas in a single enclosure).

<sup>18</sup> See, e.g., 47 C.F.R. § 1.1306 (use of existing structures is “an environmentally desirable alternative to the construction of new facilities and is encouraged”).

<sup>19</sup> While some state laws providing relief or small wireless deployment also include a six-foot volume limit for either single or multiple antennas, those laws were adopted in the local zoning context and are not dispositive as to federal environmental and historic preservation issues.

<sup>20</sup> See, e.g., Reply Comments of AT&T, WT Docket No. 17-79, WC Docket No. 17-84, at 12 (filed July 17, 2017) (the “Commission should clarify that the limit applies to each carrier’s equipment rather than to all wireless equipment on the pole in the aggregate”); *Ex Parte* Letter from Rebecca Murphy Thompson, CCA, to Marlene H. Dortch, FCC, WT Docket Nos. 17-79, 15-180, WC Docket No. 17-84, at 3 (Feb. 5, 2018) (urging the Commission to “adopt a definition of ‘small cell’ that avoids unintended consequences while adequately addressing carriers’ deployment needs”); see also *Collocation Agreement*, *supra* note 3 (encouraging the “collocation of antennas where technically and economically feasible,” as “the effects on historic properties of collocations of antennas on towers, buildings and structures are likely to be minimal and not adverse”).



not in the public interest to subject such minimally impactful small wireless facilities, including their support structures, to NHPA and NEPA.

Notably, NCTA admits that no state has adopted language consistent with the proposed changes it seeks. In short, the Commission should reject NCTA's proposed changes to the *Draft Second Order*.

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Adopting a definition of small wireless facility as proposed by the Commission and clarified as discussed herein will afford providers flexibility to design their networks for efficiency and effectiveness, address local siting preferences, and integrate 4G and 5G networks, while remaining consistent with the Commission's conclusion that small deployments should not be subject to costly and time-consuming NHPA and NEPA reviews.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this letter is being electronically submitted into the record of these proceedings. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Scott K. Bergmann

Scott K. Bergmann

Senior Vice President, Regulatory Affairs