Wireless Infrastructure Streamlining Report and Order, WT Docket No. 17-79

FCC-CIRC1803-01

Colorado State Historic Preservation Office comments, 15 March 2018 (Part 1)

Our office concurs with the Commission’s statement that technology (and the infrastructure that supports it) is continually changing over time. We are pleased to have the opportunity to work together with other states, the Commission, Tribal Historic Preservation Offices, the telecommunications industry, and others to continually work towards the goal of advancing wireless services and development across the United States. In the past, we have worked with the Commission and other parties to craft the Nationwide Agreement for the Collocation of Wireless Antennas (2005), as well as the First Amendment to that Agreement in 2016. We have also worked continually with companies, consultants, and Tribes to further improve the review process and to identify areas where streamlining would be beneficial to all parties.  
  
With that in mind, we note that the 2016 *First Amendment to (the) Nationwide Programmatic Agreement*, now in its 20th month of operation, seems to address many of the concerns raised by the Commission in the Order’s introduction. Those concerns include the following: the cost of implementing the standard Form 620/621 reviews stipulated in the 2005 Agreement; the potential (or lack thereof) of small cell antennas to affect historic properties; the industry trend towards rolling out many more small cell antennas to increase capacity; and the public need/benefit of advancing wireless broadband technology and service. Accordingly, the Amendment’s language attempted to streamline or eliminate review of small cell projects that did not have the potential to affect historic properties.

We believe that the Amendment has already resulted in a significant increase in cost savings and efficiency in planning and developing small cell antennas. For example, we note that many of Chairman Pai’s concerns regarding the preparations for Super Bowl LI (as noted on Page 56 of FCC 17-38, 20 April 2017) will likely not be an issue when Super Bowl LIII arrives in Atlanta in early 2019. The numerous small cell antennas, range extenders, indoor antennas, and utility pole collocations that were installed around Santa Clara in advance of the 2017 big game[[1]](#footnote-1) would all be exempt from review today under the revised guidelines and amendments that the Commission, working with its partners, has developed in the past two years.

Other legal measures are also in place to help speed the development of small cell wireless antennas. In April 2017, the Colorado State Legislature passed House Bill 17-1193, which allowed for the deployment of small cell wireless facilities in city and county right-of-way access points. Stipulation III.E of the Nationwide Agreement allows for the review-free development of towers within right-of-ways if such development is allowed by local, state, or federal law; with one law, the State of Colorado streamlined the review process for hundreds of new small cell antennas (“cell poles,” as they are commonly known). In the City of Denver alone, “(d)ozens have been installed already, 90 more are approved for construction, and 85 are in review.”[[2]](#footnote-2) Even more poles are planned for the right-of-ways across the Front Range metro area, where demand for broadband is greatest.

Between the 2016 Amendment, the Commission’s recent rulings regarding the collocation of antennas on utility poles, and laws such as House Bill 17-1193, we are left with only a small number of small cell wireless deployments that would actually be subject to any sort of review under the National Historic Preservation Act. We believe that it is misleading to characterize the process as burdensome (as described in Section 65 and 66 of the Order) when the data presented by Sprint, Verizon, and AT&T does not reflect the current regulatory framework. Much as Super Bowl LIII will be easier, faster, and cheaper to “upgrade” for small cell broadband access than Super Bowl LI, so too will Colorado be easier, faster, and cheaper to expand in advance of new small cell technologies and placement strategies.   
  
As such, we question whether the Commission needs to visit the issue of determining whether small cell deployment is a “federal undertaking,” given that the majority of these placements (in Colorado, at least) are already exempted from review thanks to the previous streamlining efforts. We note that, once all of these “minimal” cell poles and small cells are removed from consideration, the percentage of installations that have the potential to affect historic properties rises. Under current regulations, the only small cells in Colorado that are now subject to review are:  
  
1) Small cell deployments within a National Register Historic District or a National Register property;  
2) Installations that do not meet the “small cell” definition provided in the First Amendment to the Nationwide Programmatic Agreement;  
3) Installations that are not in a right-of-way or do not meet the definition of “small cell” as defined by Colorado Revised Statutes 29-27-402, as amended.  
  
We note that, if the Commission moves forward with declaring small cell projects as non-undertakings, the majority of projects that would be added to the “do not review” list would be small cell projects in historic areas, or on the site of historic buildings- precisely the places where “the benefits associated with requiring such review” is *not* de minimis, either individually or in the aggregate.[[3]](#footnote-3)

Finally, we note that public interest in this issue has been growing, as more small cell “cell poles” have appeared in neighborhoods. The 2017 *Denverite* article “These 30-foot poles are the future of cellular, and you can’t keep them out of your Denver neighborhood”[[4]](#footnote-4) was written in response to a Verizon “cell pole” installation in the right-of-way of a historic apartment building. Residential concerns have also been reported by KMGH Channel 7 [[5]](#footnote-5), the *Denver Post*[[6]](#footnote-6), KUSA Channel 9 [[7]](#footnote-7), and the *Fort Collins Coloradoan[[8]](#footnote-8)*, and other media outlets. We presume that similar public sentiment is to be found elsewhere in the United States, particularly in areas where the deployment of small cell antennas is expected to be relatively intense.

We encourage the Commission to consider the effect of small cell deployments, particularly “cell pole” installations, in areas such as historic districts and historic properties where setting, feeling, and association play a strong role in supporting National Register-eligibility, or where the streetscape and/or landscape is actually part of the historic fabric of the resource. Requiring consultation for this extremely limited set of small cell installations could hardly be considered a regulatory burden in an industry market whose value is measured in billions of dollars.

If the Commission ultimately decides to exclude small cell deployment from its list of regulatory actions, we encourage the Commission to develop and promote more detailed standards for the definition of “small cell” so that all parties can understand how the process works. For example, consider the common definition of “small cell” presented in Section 71: “To qualify as a small wireless facility, the antenna associated with the deployment, excluding the associated equipment, must fit in an enclosure… that is no more than three feet in volume.”[[9]](#footnote-9) We note that, in our consultation with Verizon Wireless, this definition refers to each antenna *individually*; a cell pole with two antennas could meet the requirements by being enclosed within a six cubic foot enclosure, and three antennas within a nine cubic foot enclosure. In short, small cell enclosures may be “fatter” or “skinnier” based on the antennas that they carry, and we note that many municipalities misinterpret the definition, assuming that all small cell enclosures must be the same uniform size.

Similarly, we recommend that telecommunication providers work to establish a more standardized system of enclosure sizes to speed local regulatory approval and to prevent confusion.

Finally, we encourage the Commission to promote the sharing and collocation of different company antennas on small cell deployments to discourage the proliferation of such installations in dense urban areas. We note that having four or five cell poles on the same street corner, each serving a separate company, works against the goal of encouraging small cell deployment in a manner that has a de minimis impact on the environment.

1. For an outline of the preparations (and technology) used for the 2017 Super Bowl, see the Digital Trends article “Here’s how every major carrier is bracing for data-hungry fans ahead of Super Bowl 51” (https://www.digitaltrends.com/mobile/carrier-prep-super-bowl-51/) [↑](#footnote-ref-1)
2. See *Denverite*, 13 March 2018, https://www.denverite.com/denver-orders-review-cell-poles-spread-residential-blocks-49538/ [↑](#footnote-ref-2)
3. See Order section 74. [↑](#footnote-ref-3)
4. See *Denverite*, 1 November 2017, https://www.denverite.com/denver-cell-poles-44976/ [↑](#footnote-ref-4)
5. See KMGH, “Denver Residents Upset About Sudden Cell-Signal Poles Installed in Front of Buildings,” 13 March 2018, https://www.thedenverchannel.com/news/local-news/denver-residents-upset-about-sudden-cell-signal-poles-installed-in-front-of-buildings [↑](#footnote-ref-5)
6. See Murray, Jon, “Denver’s 5G Cell-Signal Future Will Rely on Hundreds of 30-Foot Poles Spread Across Many Blocks,” 12 March 2018, *Denver Post*, https://www.denverpost.com/2018/03/12/denver-5g-cell-phone-service/ [↑](#footnote-ref-6)
7. See KUSA, “There’s Small Cell Towers Going up in Denver Because So Many People are Using Phones,” 1 December 2017, http://www.9news.com/article/news/local/next/theres-small-cell-towers-going-up-in-denver-because-so-many-people-are-using-phones/73-490384107 [↑](#footnote-ref-7)
8. See Duggan, Kevin, “Fort Collins to Have Open House in ‘Small Cell’ Facilities,” 13 September 2017, *Fort Collins Coloradoan*, https://www.coloradoan.com/story/news/2017/09/13/fort-collins-open-house-small-cell-facilities/662550001/ [↑](#footnote-ref-8)
9. Section 71 of the Order, page 24 [↑](#footnote-ref-9)