June 18, 2018

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

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

Dear Ms. Dortch:

On June 14, Charles McKee, Ken Schifman (by telephone), and I of Sprint met with the following FCC Wireless Telecommunications Bureau staff members: Darrel Pae, Emily Bieniek, Suzanne Tetreault, John Visclosky, Colin Williams, David Sieradzki, Jiaming Shang, Jennifer Salhus, Patrick Sun, Joseph Wyer, Jonathan Campbell, and Garnet Hanly.

Sprint supports the Commission's efforts to establish guardrails on the state and local permitting process for small cells. As the nation moves toward 5G, wireless carriers will deploy vast numbers of new small cell sites. To boost capacity and coverage, carriers are deploying small cells on street lights, utility poles, and similar structures. These new deployments are unobtrusive, but the regulatory and fee demands from local governments are based on relics of earlier technologies. Unfortunately, the regulatory process is still premised on the deployment of huge macro towers that cover a wide area rather than small deployments of equipment that can fit in a backpack and are less obtrusive than the countless other apparatus that serve various aspects of modern life currently in public rights of way, such as power transformers, street lights, traffic signals, and traffic cameras.

Nineteen states have enacted legislation to reform the local permitting process related to small cells. These legislative efforts have helped immeasurably as the streamlined processes and lower costs are enabling carriers to accelerate deployment. The Commission should build on these efforts to ensure all localities across the United States similarly benefit from infrastructure deployment procedures and fees that comport with the Act. Sprint reaffirms its earlier comments in this proceeding that the Commission must guarantee access to public rights of way under Section 253, harmonize costs consistent with Section 253, and require government consideration of application timelines under Section 332. Below, Sprint provides additional commentary on how the Commission should address these issues.

Access to Public Rights of Way

Carriers must be able to access public rights of way in order to effectively deploy small cells. Sprint is installing small cells primarily to boost capacity within its network. Using antenna locations with small coverage areas allows the same limited spectrum to serve more customers in

the same geographic area. Small cells have much smaller service areas than traditional macro cells that were generally placed on elevated rooftops or tall towers. In urban areas, rooftop locations are usually too high and too far apart to propagate small cell coverage down to the streets and sidewalks and into buildings. Accordingly, to serve customers on the streets and sidewalks with high-capacity wireless coverage, the small cells must be deployed along those streets and sidewalks. Utility poles street lights, and public rights of way are ideal for these deployments and are often within the exclusive control of local governments. Because of the interplay between coverage needs and spectrum utilization, the inability of a carrier to deploy small cells on public rights of way and vertical structures has the effect of prohibiting a carrier from providing service in that area.

Application Review Timeframes

The shot clock requirements that the Commission established have proven to be a valuable incentive for localities to act promptly to review applications for macro cell sites. But to meet the accelerating pace of the enormous growth in customer demand for faster data and more ubiquitous coverage that can only be addressed by the deployment of small cells, these timelines are too long and the enforcement mechanism too weak.

Sprint supports review periods of 60 days for small cell attachments and 90 days for new poles. Many state bills passed in the past several years have included shot clocks with "deemed granted" remedies, and they have proved effective. So effective, in fact, that in Sprint's experience it has not been necessary to invoke the remedy in practice. Instead, the availability of the remedy encourages prompt, cooperative review of small cell applications. It is the availability of carriers to proceed after the deadline that keeps the process moving forward, thereby making "deemed granted" an essential part of the reform even if it is rarely invoked. Like the deemed granted remedy under the Commission's rules for eligible facilities requests (47 CFR §1.40001(c)(4)), it is appropriate for the carrier to notify the local government in writing that the timeframe has expired before proceeding.

Sprint does not want the deemed granted remedy to be a burden on local governments where they may be faced with numerous applications from multiple carriers. Such situations can be addressed through reasonable extension requests and a sliding scale for timelines that takes into consideration the number of applications and the size of the locality. Sprint understands that multiple carriers submitting applications simultaneously may create more difficulty for a small town, whereas a large city could readily handle the load. At the same time, for localities that are not responsive or have an informal moratorium on small-cell deployment, the ability of carriers to move forward promptly if the locality fails to act will create incentives for the locality to establish procedures and be responsive so that it can raise legitimate concerns, such as aesthetics, exact location, and safety.

The shot clock should begin to run when the application is complete, and a locality that does not review for completeness within the first 15 days of receipt waives the right to object on that basis. If a locality does not have an established application form or is not accepting applications, the shot clock period should nevertheless begin to run upon a carrier's certification to the locality that it is submitting the information necessary to conduct a review and payment of

the safe-harbor fee (discussed below) regardless of whether that submission is accepted by the locality. Such a procedure is a necessary safeguard to incentivize localities that are, in essence, imposing an informal moratorium through inaction.

The shot-clock timetables should be for complete approval of all types of permits required by the local government. For example, after a land-use permit or attachment permit is received, many localities still require electric permits, road closure permits, aesthetic approval, and other types of reviews that can extend the time required for final permission well beyond just the initial approval. The Commission's shot clocks should include everything a local government requires for actual construction to begin.

Application and Recurring Fees

Many municipalities have imposed fees that dramatically exceed a reasonable approximation of the costs a city incurs to review an application or to maintain the public rights of way. These unregulated fees for small cells dramatically exceed the regulated charges for other types of pole attachments.

Section 253(a) requires that local regulation not have the effect of prohibiting a carrier from providing service, and Section 253(c) requires that compensation for use of the public rights of way be "fair and reasonable." As outlined in Sprint's comments, fair and reasonable should mean the direct and actual costs of processing the application or managing the right of way.

In order to avoid the lengthy time and significant resource drain of full-fledged rate making proceedings on all stakeholders—the carriers, the localities, or regulators—to calculate direct and actual costs a locality incurs in processing applications or managing the rights of way, the Commission should establish a safe harbor of fees that a locality can impose without proving their costs. Sprint suggests that presumptively reasonable fees are as follows:

- Application Fee: $500 per batch for up to 5 sites, with a $50 per site fee thereafter
- Right-of-Way Usage Fee for New Poles in Public Rights of Way: $50 per year
- Attachment Fee to Attach to Publicly Owned Vertical Structures: $50 per year

These fees are within the range established by the 19 state bills that have been enacted over the last two years. Localities that believe their costs to exceed these safe harbor amounts are permitted to request more, but carriers can challenge those fees under Section 253(d). If the Commission determines that a locality's proposed fees exceed its costs, the Commission shall preempt the locality's fees and apply fees of the safe harbor amount or the actual costs, whichever is lower.

Sprint recognizes that some localities will have difficulty processing the volume of applications that wireless carriers will submit in the next several years. Some localities will need outside assistance, and Sprint has no objection to localities contracting for process or review assistance. The costs for that review, however, should not be passed on to carriers in the form of additional or higher fees. The fees charged by contractors and consultants are replacements for

work that would otherwise be done by the locality and the safe-harbor fee structure, which is based on a reasonable approximation of costs, should be adequate to cover application review and annual maintenance regardless of whether those services are performed by the locality or by a contractor. The agreements between localities and their contractors should not contain revenue sharing or incentive agreements that raise costs on carriers and, ultimately, their customers.

Unrelated Local Demands

The deployment process should be one of cooperation between local government and wireless carriers. Reasonable demands imposed by local governments, such as aesthetic concerns, safety issues, and worksite restoration, are justified and acceptable within reason. But demands by cities that go beyond what is needed to guarantee proper installation and clean up are unreasonable. For example, it is justified that a carrier should restore any damage to public property, such as street cuts, when installing a small cell. But local governments should not be allowed to require carriers to repave streets well beyond the areas affected by installation.

Reasonable aesthetic demands should be accommodated, but local governments and carriers must work cooperatively since carriers have limited equipment choices from their suppliers and cannot economically obtain unique equipment and concealment shrouds that differ significantly from the demands from other municipalities.

Finally, demands unrelated to wireless network deployment should be presumptively unreasonable. At least one large metropolitan area has insisted that wireless carriers install facilities for a Wi-Fi network when carriers install their small cells. Wrangling over this demand delayed negotiations over an agreement for many months, and as a result, the city is lagging comparably sized cities in small cell deployment.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced docket. If you have any questions, please feel free to contact me at (703) 592-2560.

Sincerely,

/s/ Keith C. Buell

Keith C. Buell
Senior Counsel

cc:

Darrel Pae	Jennifer Salhus
Emily Bieniek	Jiaming Shang
Suzanne Tetreault	David Sieradzki
John Visclosky	Colin Williams
Patrick Sun	Jonathan Campbell
Joseph Wyer	Garnet Hanly