July 16, 2018

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: NOTICE OF EX PARTE
WT Docket No. 17-79: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment;*
WT Docket No. 15-180: *Revising the Historic Preservation Review Process for Wireless Facility Deployment;*
WC Docket No. 17-84: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*

Dear Ms. Dortch:

As Competitive Carriers Association ("CCA")[1] has previously noted on record,[2] Sections 253 and 332 of the Communications Act, *as amended*, provide the Federal Communications Commission ("FCC" or "Commission") the necessary authority to address local siting processes that effectively prohibit carriers from providing telecommunications services. While providers continue to negotiate with states and localities to reach agreements that spur next-generation technologies, the record demonstrates, and CCA member experience confirms, that expeditious Commission action to address remaining deployment barriers is necessary to further the United States' position as a leader in 5G development.[3] Indeed, while certain jurisdictions have adopted reasonable legislation[4] and have supported Commission action to streamline siting

[1] CCA is the nation's leading association for competitive wireless providers and stakeholders across the United States. CCA's membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

[2] Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 7, 2018) ("CCA Statutory Authority Letter"). *See also*, Letter from Kenneth J. Simon, Senior Vice President and Senior Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 7, 2018).

[3] *See id*. *See also*, Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed July 2, 2018); Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 21, 2018) ("Verizon Letter"); Letter from Henry G. Hultquist, Vice President, Federal Regulatory, AT&T Services, Inc., WT Docket No. 17-79 (filed June 29, 2018) ("AT&T Letter").

[4] For example, the record reflects that "at the state level, the Virginia Department of Transportation charges $24,000 for each new pole and $12,000 per collocation on an existing pole, without regard for whether the pole is owned by the state or by a third party." *See*, Comments of the Wireless Infrastructure Association, WT Docket No. 17-79 (filed July 17, 2017) (*citing*, Crown Castle Comments at 13; T-Mobile Comments at 28) ("WIA Comments").

policies,[5] many localities continue to charge exorbitant siting fees that vary by jurisdiction and lack basis in actual costs which ultimately prohibits necessary deployments.[6] For example, the record notes that a city in Minnesota sought to charge a $5,000 administrative fee, while another Minnesota city recently assessed an administrative charge of $4,000 to attach to a city structure, in addition to applicable permit fees.[7] As another example, Philadelphia currently charges a $3,000 attachment fee per licensed location, and estimates that this rate could skyrocket to more than $4,000 by 2028. Chicago, San Francisco and New York also charge annual pole attachment fees starting from $4,000 per year.[8] Further, the zoning and permitting costs in one North Carolina town for attaching wireless equipment to existing structures exceeds $10,000, whereas the fees for similar attachments are approximately $200.[9] To ameliorate inflated and unknown fees, "actual costs" should be based on objective and nondiscriminatory factors and exclude licensing or consulting fees.[10]

What's more, rural and regional providers often lack the resources and leverage necessary to attain reasonable siting arrangements with localities intent on charging exorbitant fees. And while some larger providers may enter into individual arrangements, these projects often are finalized at an inflated rate that diverts limited funds from investments in higher-cost areas. Verizon aptly highlights that "[g]iven the finite nature of capital budgets and the need to manage expense budgets, the resulting higher costs mean fewer

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Yet this fee issue was recently addressed through state legislation that caps the fee to $1000 annually for new poles 50 feet and under, and limits fees for collocations on Commonwealth poles to be just and reasonable, cost-based, non-discriminatory and competitively neutral. *See*, VA Code §§ 15.2-2316.3, 15.2-2316.4,15.2-2316.5 (2017). *See also*, VA Code §§ 56-484.25 – 56-484.32 (2017). The Commonwealth also cannot charge an annual fee for colocation on third-party poles but has the ability to charge an administrative fee to process applications of up to $150 for single site permits or up to $750 for district-wide permits.

[5] *See*, Letter from Ramsey English-Cantu, Mayor, City of Eagle Pass, Texas, to Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 (filed May 10, 2018); Letter from Juan Huizar, City Manager, City of Pleasanton, Texas, to Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 (filed June 4, 2018); Letter from Ashton J. Hayward III, Mayor, Pensacola, Florida, to Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 (filed June 8, 2018). *See also, e.g.,* CCA Comments (*citing*, Comments of Competitive Carriers Association, WT Docket No. 16-421 at 7-8 (filed Mar. 8, 2017) ("CCA Streamlining Comments")); Letter from Keith Buell, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1 ("[n]ineteen 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.").

[6] For example, CCA member Crown Castle recently highlighted varied and unreasonable costs associated with deployments in New York. Specifically, "the Town of Hempstead requires an escrow fee of $3,000 per new small cell node pole and $1,000 per collocation to cover 'consultant review.' At this rate, a typical network deployment results in escrow fees of $150,000 or more. In addition, the Town charges an application fee of $900 for each new pole and $650 for each new node on an existing pole. Hempstead also imposes a $450 fee to modify an existing site, which is in addition to the $650 fee charged by the Highway Department for a new pole application. All of these fees are in addition to the annual "voluntary" 5% gross revenue share for the Town." Comments of Crown Castle, WT Docket No. 17-79 at 12 (filed June 15, 2017) ("Crown Castle Comments").

[7] *Id.* at 6 (*citing,* AT&T Comments at 18).

[8] CCA Comments at 25.

[9] *See*, WIA Comments at 6 (*citing*, Lightower Comments at 22; *and*, T-Mobile Comments at 27 (noting that one Western city imposes a $9,500 per site application fee, whereas a nearby community only charges $350 per application)).

[10] The FCC also should clarify that it is discriminatory and unreasonable to charge additional fees if a provider has previously paid the locality as a result of an existing fiber deployment or macro deployment agreements. The Commission must prevent "double dipping" and fee surpluses.

resources are available for network infrastructure deployment in other parts of the country."[11] What's more, dated even as far back as March 17, 2010, the FCC's National Broadband Plan anticipates that "[f]ee structures should be consistent with the national policy of promoting greater broadband deployment. A fee structure based solely upon the market value of the land being used would not typically take into account the benefits that the public as a whole would receive from increased broadband deployment, particularly in unserved and underserved areas. […] The cost and social value of broadband cut across political boundaries; as a result […] best practices must reach across those boundaries and be developed with the broader public interest in mind."[12] While competitive providers are willing to pay actual costs, and collaborate in good faith with localities, the considerable weight of record evidence suggests that wireless carriers are often charged more, and reviewed differently than, other siting applicants which stymies infrastructure investment and dilutes efforts to close the digital divide. The Commission can and should end these discriminatory practices.

The record also highlights that recent agreements between cities and providers, like those in San Jose, California, are intricate, unique, and arguably inflated.[13] Indeed, AT&T highlights "[t]he rate structure in the San Jose agreement runs up to $2,500 per site. If conservative industry projections accurately estimate small cell deployments at 800,000 by 2026, San Jose's rate structure when applied to cities nationwide would cost approximately $2 billion incrementally, leading by necessity to less expansive small cell deployment in communities across the nation."[14] Smaller carriers may be unable to pay similar upfront fees and the result could mean fewer choices and less competition in certain hard-to-serve areas. The FCC must act to streamline inflated siting fees to ensure next-generation infrastructure deployment is widespread throughout urban and rural areas alike.

To that end, the Commission should interpret the "fair and reasonable compensation" language in Section 253 to clarify that fees charged by state and local governments must be cost-based, nondiscriminatory, and publicly available.[15] As CCA has emphasized, competitive carriers are willing to pay actual costs to ensure timely processing of federally-compliant siting applications. But some jurisdictions continue to charge fees clearly designed for outsized profit. These wide variations in fees constitute barriers to deployment and divert limited investment dollars from next-generation networks in rural and remote areas.[16] The Commission should act now to right the ship and ensure all consumers have access to the future of 5G services.

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[11] Verizon Letter at 2.

[12] FCC, Connecting America: National Broadband Plan at 113 (rel. Mar. 17, 2010), *available at* https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf.

[13] AT&T Letter at 1.

[14] *Id*.

[15] Some examples of fair and reasonable compensation for applications include: $50 attachment rate (Indiana); $20 annual attachment rate (Oklahoma); $50 per pole, $50 right-of -way access fee, $100 application fee cap for first 5 sites then $50 for subsequent sites (Arizona). As a general threshold, CCA members are comfortable with application fees below $150. *See, e.g.*, CCA Comments.

[16] *See, e.g.*, AT&T Letter.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission's rules. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Courtney Neville

Courtney Neville
Associate General Counsel
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cc (via email): Rachael Bender
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