

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband)	WC Docket No. 17-79
Deployment by Removing Barriers)	
to Infrastructure Investment)	
)	

**Reply Comments of
Communications Workers of America**

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The Communications Workers of America (CWA) submits these Reply Comments in response to the Commission's *Notice of Proposed Rulemaking (NPRM)* and *Notice of Inquiry* seeking comment on how local authority rules and processes affect the speed and cost of wireless infrastructure deployment.¹ CWA represents 700,000 workers in telecommunications and information technology, the airline industry, news media, broadcast and cable television, education, health care and public service, law enforcement, manufacturing and other fields. CWA members have a direct interest in this proceeding as workers, consumers, and citizens.

CWA strongly supports policies to encourage job-creating investment in high-speed, next-generation communications networks, while at the same time recognizing local governments' responsibility to protect public assets and safety. While CWA commends the Commission for seeking ways to accelerate wireless infrastructure deployment to support growing demand for mobile services and next-generation wireless activities, the record does not support proposed Commission action in a number of key areas. The *NPRM* seeks comment on multiple important topics – shortening wireless siting application timelines; automatically deeming granted applications that exceed Commission timeframes; and prohibiting certain local authority review processes, including temporary moratoria while localities develop a comprehensive siting plan – all of which rely on unnecessary, inappropriate, and, in some cases, legally unsupported preemption of state and local authority.

Local governments have a responsibility to protect their residents' safety, health, and welfare in leasing access to public facilities and rights-of-way. Local authorities have a legitimate

¹ See, *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79 (rel. Apr. 21, 2017).

public interest in protecting their transportation networks, street lighting and signal systems, as well as urban planning and historical preservation mandates. Commentators representing states, cities, and local governments from across the country emphasize their responsibility to protect their residents, as well as public assets and property, through state law and local statutes, ordinances, and regulations. In addition, local authorities have the expertise and experience to tailor solutions to their communities' unique conditions and priorities.

The record in this proceeding demonstrates broad opposition to the Commission's proposals. State and local authorities from across the country detail their opposition to many of the proposals in the *NPRM*, urging collaboration over federal overreach.² As the City of New York writes, the local authority issues in the *NPRM* "directly affect the ability of state and local governments to manage their rights-of-way for use by all their citizens" and that "the decisions that state and localities make on these issues are heavily influenced by the resources they have available, and new regulations by the Commission will not change those realities."³ New York supports the Commission's Broadband Deployment Advisory Council (BDAC) as an appropriate venue for collaborative work, adding that collaboration would be enhanced with additional representation of local governments on the BDAC. Smart Communities concurs with the City of New York, noting that "the Commission should promote cooperative efforts and share creative solutions or models through efforts such as the Commission's Broadband Deployment Advisory

² See Comments of the City of New York, Comments of the City of Irvine, CA, Comments of the City of Chicago, Comments of the City of Philadelphia, Comments of the City and County of San Francisco, Comments of the Virginia Joint Commenters, Comments of the City of New Orleans, Joint Comments of League of Arizona Cities and Towns, et al., Comments of Austin, TX, Comments of the Cities of San Antonio, TX, et al., Comments of Arlington, TX, Comments of the City of Springfield, OR, Comments of the League of Minnesota Cities, Comments of the National League of Cities, Comments of Smart Communities and Special Districts Coalition, WT Docket No. 17-79 (June 15, 2017).

Council and other initiatives rather than mandate a top-down, one-size-fits-all, set of national rules that will in the end be counterproductive.”⁴ Tribes, native groups, and historic preservationists from across the country urge respect for tribal sovereignty, tribal, historical, and cultural resources, as well as religious and culturally significant land and recommend the Commission adopt a more collaborative approach.⁵ In addition, there is significant concern in the record regarding radio-frequency emissions. Broader deployment of wireless infrastructure, ever closer to the public, raises public health concerns regarding radio-frequency emissions. This is an important area of research that the Commission must address without further delay.

The record in this proceeding does not provide evidence that state and local authority statutes and regulations present systematic and widespread barriers to wireless infrastructure deployment. In this proceeding, wireless carriers provided only isolated and vague anecdotes, but failed to introduce comprehensive data. For example, AT&T’s examples were vague, without naming specific locations or accounting for duplicative examples, and therefore it is impossible for the Commission, the public, or local communities to verify the accuracy of AT&T’s allegations.⁶ Verizon cited only about a dozen municipalities where it has faced challenges deploying wireless infrastructure.⁷ As Smart Communities points out in the *Mobilitie* proceeding,

³ Comments of the City of New York, p. 1.

⁴ Comments of Smart Communities and Special Districts Coalition, p. ii.

⁵ See Comments of the National Congress of American Indians, et al., Comments of Bad River Band of the Lake Superior Tribe of Chippewa, Comments of the Creek Nation, Comments of the Navajo Nation and Navajo Telecommunications Regulatory Commission, Comments of Mohegan Tribe of Indians of Connecticut, Comments of the Seminole Tribe of Florida, Comments of the Seminole Nation of Oklahoma, Comments of Tonkawa Tribe of Oklahoma, Comments of the Standing Rock Sioux Tribe, Comments of the Upper Sioux Community, Comments of the Colorado River Indian Tribes, Comments of the National Association of Tribal Historic Preservation Officers, Comments of Northern Cheyenne Tribal Historic Preservation, Comments of the Advisory Council on Historic Preservation, Comments of the National Trust for Historic Preservation, WT Docket No. 17-79 (June 15, 2017).

⁶ Comments of AT&T, pp. 6, 13-19, 35-36.

⁷ Comments of Verizon, pp. 6-8.

wireless carriers provided only 25 specific examples of allegedly egregious local government wireless siting policies. Given that there are over 90,000 local governments in the United States, these 25 complaints represent only 0.02 percent of all the local governments in this country.⁸ Contrast this with the record developed in the Commission's 2009 shot clock *Declaratory Ruling* which detailed thousands of specific examples.⁹ In sum, commentators and the Commission have not provided evidence of common and widespread barriers to wireless deployment to justify the Commission's preemption proposals. The Commission should not make policy by anecdote.

Rather than portray local authorities' statutes, rules, and processes as barriers to wireless deployment, the Commission should encourage wireless carriers and others in the industry to work collaboratively with communities. We are at the beginning of small cell deployment and now is the time to allow local governments to work with industry to develop collaborative procedures. In the same way that local authorities developed cooperative procedures for macro-tower deployments (such as colocation timelines), industry and state and local authorities should engage in collaborative processes regarding deployment of next-generation small cell wireless equipment. In many places this cooperation is already taking place. For example, Smart Communities cites the fact that Boston has approved nearly 400 small cell installations, Atlanta has approved 257 applications, and Houston has approved 350 locations.¹⁰ In addition, local authorities across the country are signaling their intent to work with wireless carriers to facilitate

⁸ Comments of Smart Communities and Special Districts Coalition, p. 9.

⁹ See *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring Variance*, Declaratory Ruling, WT Docket No. 08-165 (rel. Nov. 18, 2009), para. 33. (Shot Clock Order)

¹⁰ Comments of Smart Communities and Special Districts Coalition, p. 25.

deployment.¹¹ The Commission should not apply new shot clock rules to small cell technology, which in many cases is not “small” and which is still in its nascent stages. Several commentators, such as the City of New York, the United States Conference of Mayors, and Smart Communities, specifically mention the Commission’s Broadband Deployment Advisory Committee as an appropriate venue to encourage this collaborative environment, although they also encourage the Commission to increase local authority representation on the BDAC and its subcommittees.¹²

Not only do the *NPRM*’s one-size-fits-all preemption proposals pose dangers to local governments’ ability to protect their residents’ safety, health, and welfare in leasing access to public facilities and rights-of-way, the record makes clear that the Commission lacks the legal authority to adopt several of its proposals.¹³ The Commission does not have the authority to adopt a deemed granted remedy for application shot clocks under Section 332(c)(7) of the Communications Act. The remedy for shot clock violations is left to the courts to determine based on case-specific facts. As the Commission explained in 2009:

Section 332(c)(7)(B)(v) states that when a failure to act has occurred, aggrieved parties should file with a court of competent jurisdiction within 30 days and that “[t]he court shall hear and decide such action on an expedited basis.” This provision indicates Congressional intent that courts should have the responsibility to fashion appropriate case-specific remedies. As the Petitioner notes, many courts have issued injunctions granting applications upon finding a violation of Section 332(c)(7)(B). However, the case law does not establish that an injunction granting the application is always or presumptively appropriate when a “failure to act” occurs. To the contrary, in those cases

¹¹ Comments of the City and County of San Francisco, p. 1; Comments of the City of Philadelphia, p. 1.

¹² See *Comments of the City of New York, In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (June 15, 2017); Comments of the United States Conference of Mayors, WT Docket No. 17-79 (June 15, 2017), p. 4; Comments of Smart Communities and Special Districts Coalition, pp. 3-4.

¹³ Comments of the City of New York, p. 2-3; Comments of the City of Philadelphia, p. 2-3; Comments of City and County of San Francisco, pp.13-18; Comments of the City of Irvine, CA, pp. 3-6; Comments of the Virginia Joint Commenters, pp. 2; Comments of Smart Communities and Special Districts Coalition, p. 4.

where courts have issued such injunctions upon finding a failure to act within a reasonable time, they have done so only after examining all the facts in the case. While we agree that injunctions granting applications may be appropriate in many cases, the proposals in personal wireless service facility siting applications and the surrounding circumstances can vary greatly. It is therefore important for courts to consider the specific facts of individual applications and adopt remedies based on those facts.¹⁴

While CWA supports Commission initiatives to facilitate investment in next-generation wireless and wired technology, we emphasize that a wireless connection is not yet a substitute for high-speed fiber networks. Wireless service is less reliable and more expensive, and people cannot do many vital online activities from a small screen device. Our communities need both high-speed wired and wireless networks. Instead of proposing federal government overreach, the Commission should work to facilitate collaborative problem-solving among local governments, community stakeholders, and industry to ensure equitable investment across the country and to promote programs to close the digital divide.

In conclusion, the Commission should refrain from shortening wireless siting application timelines, automatically deeming granted applications that exceed Commission timeframes, and prohibiting certain local authority review processes, including moratoria while localities develop comprehensive plans for wireless siting. The Commission's proposals undermine state and local governments' responsibility to protect the public trust in public assets. The record is too sparse to justify changes in wireless siting timelines, particularly given the fact that "small" cell deployments are still in their early stage. Commission authority to adopt deemed granted and other wireless siting rules hang on weak legal authority. Now is the time to encourage collaborative process to move forward to ensure that all Americans have access to the best

¹⁴ Shot Clock Order, para. 39.

modern communications networks – wireless and wired – while at the same time preserving local governments’ ability to manage public resources for the benefit of their communities.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Debbie Goldman". The signature is written in black ink and is positioned above a horizontal line.

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