

**In the Matter of**

## COMMENTS OF SPRINT CORPORATION

Traditional macrocells are increasingly inadequate to meet current consumer data demands, and carriers will need to install more small cell and distributed antenna systems (“DAS”) in more places to satisfy customer needs. In the past when networks were designed primarily for voice, large macrocells at low frequencies located outside the venue were able to meet voice calling needs. But such network architectures are increasingly inadequate as these types of multi-tenant public spaces—shopping malls, sports areas, convention centers, hotels, airports, and the like—are often where network demand is the greatest and signal penetration

from outside antennas into these massive buildings is weakest.

At the same time, public venues are increasingly shifting to private access agreements that require carriers wishing to serve a venue to lease capacity on a single DAS owned and operated either by another wireless carrier or by a third-party. Such arrangements threaten to undermine consumer choice and pose the same risks that led the Commission to issue its original MTE Orders.<sup>1</sup>

The Commission's primary goal since the passage of the 1996 Act has been to foster competition by judicious use of regulatory power. Exclusive arrangements that allow one entity to control the quality and cost of service provided by other carriers are contrary to the Commission's pro-competitive decisions under the 1996 Act. Sprint supports the Commission's decision to investigate the competitive effects of exclusive arrangements in public spaces and urges the FCC to monitor the development of this market to ensure that all carriers are able to provide service to their customers using the technologies of their choice.

## **I. Exclusive Arrangements in Public Spaces can Hamper Competition**

DAS are already installed in the vast majority of large public venues. Sprint's experience in negotiating access to these venues shows that the majority of these DAS are the subject of exclusive arrangements with a DAS provider or another carrier. As the current arrangements expire, more and more venues are seeking to leverage these exclusive agreements to increase

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<sup>1</sup> See *Promotion of Competitive Networks in Local Telecommunications Markets et al.*, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, 15 FCC Rcd 22983, 22985 (2000) (2000 Competitive Networks Order); *Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, Report and Order, 23 FCC Rcd 5385, 5386, (2008) (2008 Competitive Networks Order); *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Second Report and Order, 25 FCC Rcd 2460, (2010) (2010 Exclusive Service Contracts Order).

rents. This leveraging of exclusivity comes at the detriment of competition from carriers that are not parties to the exclusive arrangements and ultimately harms consumers.

All carriers seeking to serve a venue with an exclusive arrangement must strike a deal with that entity, which frequently raises costs unnecessarily and with anti-competitive effects. When the DAS owner is also a carrier, it has little to no incentive to strike a fair deal with other carriers because it's in a "heads I win, tails you lose situation": Either the other carrier pays unreasonable rates to provide service through the exclusive neutral DAS, or the other carrier's service at that venue is substandard. Either way, the carrier with the exclusive arrangement wins and competition and consumers lose.

## **II. Costs for DAS Access Frequently Exceed the Costs to Install Independent Systems**

The primary public interest justification for allowing exclusive arrangements– that they are necessary to encourage investment – is belied by the demonstrated willingness of other carriers to install lower cost independent systems. The cost of installing a DAS can be quite high, running into the multiple millions of dollars for large venues. The companies that install such systems understandably want a return on their investment. Frequently, however, these carriers go further and charge exorbitantly high rates. The carrier seeking access to the venue has no choice but to pay these charges, even when an alternative system could be installed at significantly lower costs. This results in higher costs to consumers and in some circumstances lower levels of service.

The costs imposed on providers to add their service in venues with pre-established exclusive arrangements typically include an initial sign on fee, recurring rental charges (which can be many tens-of-thousands of dollars per month for large venues) on top of the cost to build or adapt the DAS for a new carrier. Previous arrangements required DAS costs to be evenly

divided amongst carriers. Newer exclusive arrangements, however, impose rents far in excess of cost and limit the ability of carriers to install less expensive alternative solutions. Sprint's experience has shown that rents for DAS access have doubled in the past 10 years.

In many cases, Sprint's small cell technology allows it to provide coverage equivalent to that of a legacy "neutral-host" DAS for a small fraction of the cost, in many circumstances as little as 1/10 the cost that the DAS host imposes on Sprint. Sprint's share of an established legacy DAS would therefore be much greater than the cost of installing its own stand-alone system. The Commission should examine closely the practice of imposing costs on carriers where advancements in technology allow for more efficient broadband investment and lower cost provision of services.

Some venue owners may claim that these restrictions and exclusive arrangements are necessary to avoid "visual clutter." Small cell systems are unobtrusive and easily attached to existing structures, leaving them unobservable to the typical venue goer. Current small cell radio units can be the size of a shoebox. In a sports arena, for example, the radio units and antennas would be unnoticed up among the lights and speakers in the rafters. If a venue has a unique need to limit the number of antennas or radio units, the cost to access the DAS should not be more than the cost a carrier would otherwise incur to deploy its own stand-alone system.

### **III. Many Venues With DAS Don't Readily Accommodate the Higher Spectrum Bands being Deployed for Data Growth**

Legacy DAS do not typically accommodate higher band spectrum. While higher spectrum bands can be added to legacy DAS, the cost tends to be much higher than installing an independent system that does not utilize already installed hardware. Higher band frequencies are useful for handling the large data demands at large venues. Deployment of new systems using

higher frequencies should be encouraged within such venues. Whether it's a sports arena with layers of concrete hindering off-site signals or a large college campus that is simply too expansive to be adequately covered by outside antennas, existing macro cells do not have the ability to provide the coverage and capacity needed by today's users in large venues, let alone the data demands of wireless users as demand increases in the future. The coverage solution—recognized by the FCC and industry—is an expansive deployment of small cells that must be closer to the users they serve than existing macro cells. To provide strong coverage, these small cells simply must be inside the venues where demand is highest.

#### **IV. MTEs owned by State and Local Governments are Subject to Section 253**

Many large venues are owned or operated by state and local governments, or agencies of those governments. These venues include airports, sports stadiums, college campuses, and convention centers. Section 253 preempts state and local statutes or regulations that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” In the past, government entities prevailed against carriers claiming access rights under Section 253. Those decisions, however, were based upon the premise that carriers could access public venues through facilities deployed off-site. As consumer demand has increased and the technology needed to provide service has changed, that premise is no longer valid.

In *T-Mobile v. Crow*, 2009 WL 5128562 (D. Ariz. Dec. 17, 2009), the Arizona District Court upheld a contract between Arizona State University and NextG network, in which NextG had an exclusive contract to install a DAS on the Arizona State campus. NextG then sold access to the DAS to wireless providers. T-Mobile challenged the contract because it preferred to install its own facilities rather than use the DAS installed by NextG.

The court determined that NextG was a common carrier and that the Campus was a “multiunit premises” under the Commission’s rules. The court nevertheless ruled against T-Mobile, holding that because it has access to the DAS and can also serve the campus through facilities located off-campus, the contract between NextG and Arizona State was not an invalid exclusive contract because it did not prevent T-Mobile from “access[ing] and serv[ing]” customers on campus.

Even if the District Court was correct based on the voice-centric nature of the service being provided and the characteristics of the mobile technology in use at that time, the rationale for the court’s ruling is no longer valid. Given current demand for wireless services, carriers can no longer rely on a single cell site located off premises to meet the consumer demand in a large venue. Additionally, as described above, legacy DAS are often not set up to accommodate the wider array of spectrum bands being deployed today to handle the exploding growth of demand for mobile data. The major modifications needed to bring these systems up to par can far exceed the cost of an independent carrier installing its own equipment. Unfortunately, exclusive access agreements do not allow it, leaving a provider that is not party to the exclusive arrangement paying exorbitant rates to ensure that its customers can access its services in MTE and other large venues, including MTEs and other venues owned by a government entity subject to Section 253.

## **V. Conclusion**

Sprint supports the FCC’s inquiry into the competitive issues arising in this area. The FCC has long placed a high value on competition to provide quality wireless services at low prices for American customers. Coverage from all service providers is in the public interest and consistent with FCC’s goal to provide broadband access wherever American’s live, work, or

play. The FCC's rules should recognize and encourage such competition. The Commission should ensure its MTE rules encourage competition among wireless carriers in venues where customers of those wireless carriers routinely visit. The Commission should also clarify that the access requirements under Section 253 apply to MTEs and other large venues owned by state and local governments, and subdivisions or entities of those governments.

Respectfully submitted,

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July 24, 2017