

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of Section 6002(b) of the Omnibus)	WT Docket No. 18-203
Budget Reconciliation Act of 1993)	
)	
Annual Report and Analysis of Competitive Market)	
Conditions With Respect to Mobile Wireless,)	
Including Commercial Mobile Services)	

COMMENTS OF MOBILITIE, LLC

Mobilitie, LLC (“Mobilitie”) submits these comments in response to the Wireless Telecommunications Bureau’s Public Notice which seeks information on mobile wireless competition, including regulatory barriers that affect competition, for the “Communications Marketplace Report.”¹

As one of the leading providers of wireless and backhaul infrastructure, Mobilitie knows first-hand how intense competition is driving the deployment of ever-expanding and improving broadband networks, and how those networks benefit the public and help power the economy. But its experience also underscores how regulatory barriers can distort competition and impede broadband deployment. The Commission has taken important steps to reduce regulation, and should take further action. It should grant Mobilitie’s 2016 Petition for Declaratory Ruling interpreting Section 253 of the Communications Act,² by supporting cost-based fees necessary to process small cell applications and prohibiting excessive siting fees that frustrate competition

¹ Public Notice, *Wireless Telecommunications Bureau Seeks Comment on the State of Mobile Wireless Competition*, DA 18-663, WT Docket No. 18-203 (WTB rel. June 26, 2018) (“Public Notice”).

² Mobilitie, LLC Petition for Declaratory Ruling, Promoting Broadband for All Americans by Prohibiting Excessive Charges or Access to Public Rights of Way (Filed Nov. 15, 2016) (“Mobilitie Petition”); see Public Notice, *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*; Mobilitie, LLC Petition for Declaratory Ruling, WT Docket No. 15-421, 32 FCC Rcd 13360 (2017).

and deter deployment. Competition thrives in jurisdictions with fee structures to recover costs. Removing the barriers created by excessive costs in outlier jurisdictions will allow competition to drive faster and more expansive investment across the entire country in the broadband infrastructure so essential to America's future.

Mobilitie was founded on the vision that the United States needs billions of dollars of investments in communications networks if the nation is to reap the economic and social benefits that broadband can deliver. Broadband is the essential public service for the 21st century, equally as important to citizens and the economy as landline telephone networks were in the 20th century. People increasingly depend on it to obtain education, job training, health care, and government services. In the most economically challenged communities, mobile broadband is often the only communication tool.

To meet the accelerating demand for broadband, Mobilitie is partnering with cities and towns across the country to deploy next-generation small cell networks, which provide local residents with enhanced mobile connectivity and broadband access. It develops innovative solutions for wireless service and backhaul using small cells, communications towers, indoor and outdoor neutral host systems, and WiFi networks. It has installed these solutions across many communities and leads the industry in technological solutions and deployments for large, complex venues, including arenas, stadiums, and corporate and educational campuses. It is committed to providing state-of-the-art wireless service to meet the public's demand for ever-faster, more reliable and robust communications. Mobilitie's dedication and expertise in this space for over a decade has borne fruit for users across the country. Mobilitie enjoys close partnerships with many forward leaning cities, private and public venue operators, and major educational institutions.

Mobilitie pursues its vision of fast, high-quality and ubiquitous service in a fiercely competitive market, where hundreds of firms seek to deploy wireless infrastructure and provide related services. Mobilitie vies with many companies to secure contracts to deploy, manage and operate cell towers, small cells facilities, WiFi networks and other infrastructure. The Commission noted in its 2017 *Mobile Wireless Competition Report* that there are more than 120 tower and DAS operators in the U.S., nearly all of them (like Mobilitie) independent companies rather than mobile service providers.³ These firms continually compete in the business of constructing, leasing and maintaining the more than 300,000 cell towers (including small cells) that have been constructed across the nation.⁴ Exploding broadband traffic and the capacity demands 5G technologies will put on networks will require hundreds of thousands of additional sites, plus enormous investments in wireless and fiber-based backhaul to connect those sites to a provider's network and other networks including the Internet. A recent study by Accenture predicted up to 800,000 new facilities will be needed to supplement the hundreds of thousands already deployed.⁵

There is, however, a regulatory “drag” on competition in the infrastructure market, caused primarily by onerous and costly requirements that some outlier localities impose on deploying essential new broadband infrastructure. While many communities recognize the benefits to their citizens and the local economy that flow from expanded and enhanced wireless broadband, and work cooperatively with Mobilitie so it can build new network infrastructure, others impede deployment through high fees, unreasonable restrictions, and long delays.

³ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, 32 FCC Rcd 8968 (2017), at ¶ 44.

⁴ *Id.* at ¶ 43.

⁵ *The State of Wireless 2018*, CTIA, at 2 (July 2018), <https://www.ctia.org/news/the-state-of-wireless-2018>.

The Commission has repeatedly declared that regulation can stymie and distort competition in various ways, and has sought to alleviate regulatory burdens to drive more competition. For example, in one of its recent actions to promote broadband deployment, the Commission held that by reducing regulatory burdens, “we make it more economically feasible for carriers to extend the reach of their networks, including competition among broadband providers to communities across the country.”⁶ The Public Notice initiating this proceeding reflects that bedrock Commission policy, because it “requests comment on whether laws, regulations, regulatory practices or demonstrated marketplace practices pose a barrier to competitive entry into the mobile wireless marketplace, or to the competitive expansion of existing providers.”⁷

Infrastructure providers such as Mobilitie face two separate competitive burdens from regulation. First, requirements, excessive fees and delays drive up costs and generate uncertainty as to when, and not so rarely whether, a project can be accomplished. Mobilitie is forced to expend capital and resources to comply with costly and lengthy regulatory requirements unnecessary to protect or serve the public. These are absolute costs regulation imposes on all providers. Second, regulation makes it harder for newer entrants such as Mobilitie to compete against more established competitors that constructed networks years or decades ago. Parties in the Commission’s proceeding to explore ways to expedite the deployment of advanced wireless infrastructure have explained how incumbent providers were able to construct poles and attach

⁶ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, 32 FCC Rcd 11128 (2017) at ¶ 3. *See also Amendments to Harmonize and Streamline Part 20 of the Commission’s Rules Concerning Requirements for Licensees to Overcome a CMRS Presumption*, 32 FCC Rcd 10731 (2017) at ¶¶ 15 (eliminating rule “will allow licensees to respond more quickly to consumer demand and competitive forces.”).

⁷ Public Notice at 1.

equipment under lighter and less costly regulatory regimes.⁸ The disparate regulatory costs and burdens newer entrants confront can further impair and distort competition, by incenting them not to deploy in particular markets or to deploy less extensive infrastructure.

The deleterious impact of regulation is particularly severe for the small cell facilities critical to 4G and soon 5G networks. Many localities years ago enacted extensive zoning regulations and processes for macro cell towers. Where one macro tower could provide service coverage to a large portion of a community, providers were able to build the associated costs into their business plans. However, many jurisdictions have applied those burdensome zoning regimes to small cells, even though small cells serve a tiny fraction of the area supported by each macro tower, do not raise the same issues that macros towers present, and must be deployed in far greater numbers than traditional macro cells – often measured in orders of magnitude. Many forward leaning jurisdictions developed appropriate and reasonable streamlined procedures that enable relatively speedy review and deployment. But others have not updated their processes, resulting in delays of many months (even over a year in some communities) for approving a small cell permit. Others have struggled for a year, or two, or even longer to develop a small cell ordinance, and have put all deployment on hold in the meantime. Neither the public need nor the business case for small cells can tolerate the cost and uncertainty resulting from such drawn-out regulatory processes.

In short, the overhang of regulatory delays, excessive fees and restrictions in these outlier communities impairs the ability of Mobilitie and other companies, especially newer entrants, to compete in the infrastructure market. These excessive fees not only hinder deployment in these

⁸ See, e.g., Extenet Systems, Inc. Comments, WT Docket No. 17-79, at 17 (filed June 15, 2017) (“Extenet’s facilities must often go through discretionary, lengthy and burdensome zoning processes, but other non-wireless attachers in the public ROW do not.”); T-Mobile Comments, WT Docket No. 17-79, at 17 (filed June 15, 2017) (“many localities request fees that unlawfully discriminate against wireless technology, resulting in the impairment of new or improved service”).

jurisdictions themselves, they also harm the many communities with appropriate cost-based fees because they represent a massive drain on the finite time and financial resources of both infrastructure providers and carriers – which results in less and slower overall deployment. Commission action to address this regulatory overhang will benefit competition and all consumers and businesses across the country.

Mobilitie commends the Commission for recognizing the direct linkage between regulatory barriers and the speed and extent of broadband deployment. As the Commission declared in the recent order in its *Accelerating Wireless Broadband Deployment* proceeding to streamline the rules applying the National Historic Preservation Act and the National Environmental Policy Act, “Failure to act now and speed deployment and pave the way for enhanced 4G and 5G networks could cost the United State leadership in advanced wireless broadband services, have negative effects on job and economic growth, and risk leaving many behind in today’s technology revolution, particularly those in unserved and underserved areas of rural America.”⁹ And as Chairman Pai stated in voting for that Order, “If the United States is going to lead the world in 5G, we need to modernize our wireless infrastructure regulations.”¹⁰

Mobilitie agrees, and it is for these reasons that the Commission should take additional actions to lower regulatory obstacles to broadband deployment. The Commission’s draft order preempting moratoria and streamlining its pole attachment rules is an important next step.¹¹ Mobilitie urges the Commission to follow that action with an order that grants the company’s 2016 Petition for Declaratory Ruling. In that petition, Mobilitie demonstrated how excessive

⁹ *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, FCC 18-30 (rel. Mar. 30, 2018), at ¶ 2.

¹⁰ *Id.*, Statement of Chairman Ajit Pai, at 1.

¹¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Draft Third Report and Order and Declaratory Ruling, FCC-CIRC1808-03 (June 12, 2018).

local wireless siting fees for deploying facilities along rights of way were severely impacting needed investment. It also explained why interpreting Section 253 to mean that fees should be based on a locality's costs, and requiring them to be "competitively neutral and nondiscriminatory" as well as "publicly disclosed,"¹² were actions that are well within the Commission's legal authority.¹³ Numerous parties supported Mobilitie's petition, demonstrating that excessive up-front and recurring access fees are impeding deployment.¹⁴ The record on the petition was echoed by the record in the *Accelerating Wireless Broadband Deployment* proceeding, where once again, many parties documented high siting and access fees imposed by some jurisdictions and explained how they obstruct needed new infrastructure.¹⁵

Requiring fees to be cost-based would ensure that localities are made whole, and would support the resources needed to enable this massive deployment, because they would allow cities to continue to structure fees to recover their costs in reviewing siting applications and overseeing construction. To the extent a locality needs to hire and train additional personnel to process the larger volume of small cell permit applications, it would be able to recoup those increased costs. Local governments, providers and the community all benefit – localities recover their costs, and providers secure faster action on permits that enables them to invest in the infrastructure that

¹² See 47 U.S.C. § 253(c).

¹³ Petition at 10-14.

¹⁴ See, e.g., examples in Competitive Carriers Association Comments, WT Docket No. 16-421, at 15-19 (filed Mar. 8, 2017); Extenet Systems Inc. Comments, WT Docket No. 16-421 (filed Mar. 8, 2017), at 10-11; Sprint Corp. Comments, WT Docket No. 16-421, at 23-27 (filed Mar. 8, 2017); T-Mobile Comments, WT Docket No. 16-421, at 10-15 (filed Mar. 8, 2017); Verizon Comments, WT Docket No. 16-421, at 14-18 (filed Mar. 8, 2017)

¹⁵ See, e.g., examples in CTIA Comments, WT Docket No. 17-79, at 30-32 (filed June 15, 2017); AT&T Comments, WT Docket No. 17-79 (filed June 15, 2017), at 17-19; Competitive Carriers Association Comments, WT Docket No. 17-79, at 17-18 (filed June 15, 2017); Computer & Communications Industry Association Comments, WT Docket No. 17-79, at 15-16 (filed June 15, 2017); Mobilitie Comments, WT Docket No. 17-79, at 8-12 (filed June 15, 2017); T-Mobile Comments, WT Docket No. 17-79, at 27-29 (filed June 15, 2017); Verizon Comments, WT Docket No. 17-79, at 7 (filed June 15, 2017); T-Mobile Ex Parte, WT Docket No. 17-79, Attach. at 9 (filed Sept. 21, 2017)

provides the community the benefits of improved service. Granting Mobilitie's petition is, in short, solidly grounded in the factual record and in the Commission's legal authority to interpret the Communications Act. That action will lower a significant regulatory barrier and thus promote even more robust completion – competition that will drive even greater investment in the broadband networks that are so critical to America's future.

Respectfully submitted,

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