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August 10, 2018

Ex Parte Communication

VIA ELECTRONIC SUBMISSION
Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
Washington, DC 20554

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

Dear Ms. Dortch:

AT&T's August 6, 2018, *ex parte* filing in these dockets explains how excessive fees charged by many municipalities to access rights-of-way ("ROW") and/or municipally-owned ROW structures are barriers to small cell deployments. AT&T provided multiple supporting examples, including its experience with the City of Lincoln, Nebraska, where high fees have delayed its residents the benefits of AT&T's small cell deployments—improved network capacity, expanded broadband deployment in difficult to serve areas, and the foundation for 5G. The high fees in Lincoln and the generalized inertia in negotiations and unpredictable permitting processes for small cell deployments in Omaha and other Nebraska cities arise from faulty policy. As a result, AT&T has for now focused more of its small cell operational resources in the region on Des Moines and other Iowa communities, where cost-based fees and other predictable benefits of small cell legislation have created a more favorable environment for small cell deployments. As another example, AT&T has not deployed any small cell sites in Portland, Oregon due to its annual recurring ROW access fee of $7,500 per node plus annual recurring fee to attach to city-owned infrastructure in the ROW in the amount of $5,500 per node downtown/$3,500 per node in other areas of the City.

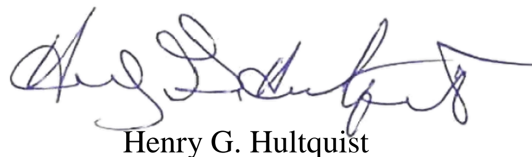
The Commission should also adopt a 60-day shot clock under Section 332 for small cells collocated on existing poles and 90 days for small cells placed on new poles. The shot clock should begin at the first action the municipality requires the carrier to perform to file a siting application, such as notice of a pre-application meeting or filing the siting application. Failure of a municipality to take action during this shot clock period should trigger a deemed granted remedy. Absent such a remedy, carriers must resort to litigation to obtain relief, which injects unnecessary expense and delays. This gives substantial leverage to municipalities, many of which will not take action until litigation occurs. In the past, AT&T has brought suit for violation of the Section 332 shot clock against the Village of Islandia, New York, which resolved the dispute after the suit was brought. In other situations, AT&T must retain outside counsel to draft litigation complaints or demand letters. Forcing carriers to threaten or bring suit to lawfully deploy wireless facilities undermines

broadband deployment and the competitive framework that the Communications Act seeks to promote. Instead, the Commission should allow carriers to invoke a deemed granted for shot clock violations. The mere threat that a carrier can deem an application as granted would encourage municipalities to take action within the shot clock period or to work out a reasonable extension and amicable resolution with the carrier.

Moreover, the Commission should clarify that in municipalities with multi-stage administrative processes, e.g., review by a combination of planning board, zoning board, architectural board, and/or appellate boards, Section 332 imposes a single shot clock on siting applications, not a shot clock for each stage.[1] For example, the Town of East Hampton, NY applies sequential shot clocks by refusing to deem an application submitted to the Town Planning Board as "complete" until the Town Zoning Board has rendered its determination. This can result in Planning Board reviews that are completed beyond the applicable shot clock. Similar fact patterns play out in South Nyack, Clarkstown, Rye, Greenburgh, and other New York municipalities and in municipalities across the country that bifurcate jurisdiction over cell siting between different agencies. AT&T typically seeks concurrent approval from each agency. Where concurrent approval is not possible because one agency's review is dependent on approval by the other agency, agencies in some instances can still work together to meet a single shot clock. For example, although most municipalities in Connecticut will not process a building permit application concurrent with review by the Connecticut Siting Council ("CSC"), AT&T has not experienced a problem with sequential shot clocks because the CSC and municipalities tend to resolve pending applications in a total of 60-90 days. Unfortunately, many municipalities are unable, unwilling, or do not make it a priority to act on applications within the shot clock period. Commission clarification that a single shot clock applies would resolve this question and incent those municipalities to act on siting applications within a reasonable time.

Pursuant to Section 1.1206 of the Commission's rules, an electronic copy of this letter is being filed for inclusion in this docket.

Sincerely,



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[1] *See, e.g., Global Tower Assets, LLC v. Town of Rome*, 810 F.3d 77, 85-86 (1st Cir. 2016) ("[T]hat presumptive time-limit applies no matter how cumbersome or streamlined a state or local government (or an instrumentality thereof) chooses to make its administrative process.")