



September 4, 2018

VIA ELECTRONIC FILING

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

Re: Ex Parte Presentation, *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; *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Siting Policies*, WT Docket No. 16-421

Dear Ms. Dortch:

As CTIA and others have highlighted in this proceeding, eliminating regulatory obstacles to wireless deployment will clear the way for more investment in those services and, as more investment flows into communities nationwide, it will provide more jobs and new services for businesses and consumers across the country. The record demonstrates that one of the most severe impediments to achieving the national goal of increased wireless broadband deployment is the practice of many localities to charge high siting fees.

CTIA therefore continues to urge the Commission to issue a declaratory ruling that Sections 253(a), 253(c), and 332(c)(7)(B)(i) require that application fees both within and outside of the rights-of-way ("ROW") and recurring fees for wireless facilities inside the ROW be based on a locality's costs to review applications and (where applicable) manage ROW use. It should also declare that Section 253(c)'s safe harbor only allows fees that are cost-based, nondiscriminatory, competitively neutral, and publicly disclosed. In order to provide clarity for industry and localities alike, the Commission should identify that certain rates for application and recurring fees are presumptively consistent with the provisions of Sections 253 and 332 provided that they are also not



discriminatory.¹ This balanced action will ensure that localities can recoup their expenses resulting from their management of wireless siting, while helping to accelerate wireless broadband deployment.

As the record demonstrates, a particular barrier to deployment is high recurring fees charged by some localities for small cell attachments and access to the public ROW.² To facilitate the Commission's assessment of what is a presumptively reasonable recurring charge for attachments and ROW access, where applicable, CTIA provides here an analysis by Leonine Public Affairs of fee provisions contained in enacted state small cell legislation. As the Commission is aware, as part of a broader policy to promote expanded wireless services, 19 states have enacted legislation that ensures that up-front wireless siting application fees, annual ROW and pole access fees, or both, are not excessive or unreasonable.³ These charges are a helpful gauge for assessing presumptively reasonable cost-based fees.⁴

As discussed in the attached report, of the states that addressed recurring costs, the simple average for recurring attachment rates is \$87, while the median rate, which tends to be close to the average when there is a normal distribution of figures above and below the average, is \$50 for an attachment rate. For ROW access rates, the simple average is \$58, but notably, the median figure for ROW access is \$0, reflecting that seven of 11 states that address such fees impose a rate of zero.

¹ If a locality sought to assess a rate higher than the safe harbor range, it could do so, but that higher rate could be challenged under Sections 253 and 332. In the event of such a challenge, the locality would bear the burden to show that the rate is cost-based.

² See, e.g., Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed Aug. 6, 2018); Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed Aug. 10, 2018); Letter from Henry Hultquist, AT&T, to Marlene H. Dortch, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed Aug. 10, 2018).

³ See Letter from Kara R. Graves, CTIA, and D. Zachary Champ, Wireless Infrastructure Association, to Marlene H. Dortch, FCC, WT Docket Nos. 17-79 and 16-421, WC Docket No. 17-84 (filed Aug. 10, 2018). An additional state, Hawaii, passed legislation to standardize the siting process and establish timeframes and criteria for evaluating applications for small cell deployment, but did not address fees.

⁴ See, e.g., Tenn. Code Ann. § 13-24-405(3) (noting that the enacted bill “does not . . . authorize the creation of local taxation in the form of ROW taxes, rates, or fees that exceed the cost-based fees authorized under existing law, except that the specific fees or rates established pursuant to this part do not exceed cost”).



Thus, looking at the recurring rates addressed in the recently enacted state small cell legislation, the simple average of the total recurring charges is \$145 and the median is \$50.

* * *

As a whole, the fee provisions in recently enacted state small cell bills can provide helpful reference points for the Commission to adopt presumptively reasonable up-front application and recurring fees. This will ensure that localities are compensated for their costs in managing deployment while advancing our national goal of promoting advanced wireless deployment.

Pursuant to Section 1.1206(a) of the Commission's rules, a copy of this letter is being electronically submitted into the record of these proceedings. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Scott K. Bergmann

Scott K. Bergmann
Senior Vice President, Regulatory Affairs

Attachment



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Analysis of State Small Cell Fee Data

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September 4, 2018

Report Prepared for CTIA

Summary

In the past two years, twenty states have enacted legislation to promote wireless deployment, with 19 of those states adopting provisions governing state and local imposition of application fees, pole attachment fees, and rights-of-way access fees for the placement of wireless “small cell” facilities on public property. This Report analyzes the recurring fee provisions (i.e., attachment rates and right-of-way access fees) of enacted legislation in these states using data provided by CTIA and The Wireless Infrastructure Association. This analysis found that the average and median fees imposed by the states in the two categories are as follows:

<u>Type of Fee</u>	<u>Average Fee (\$)</u>	<u>Median Fee (\$)</u>
Recurring Attachment Rates – Poles and Structures	\$87	\$50
Recurring Rights-of-Way Access Fees	\$58	\$0

Discussion and Methodology

Wireless infrastructure has historically been deployed using large cell towers that provide service over a wide geographic area. These wireless deployments have not required extensive use of public rights-of-way corridors to connect infrastructure via conduit and wires. Instead, wireless providers have historically negotiated with private or public landowners to place facilities on property at monthly lease rates. The fees imposed on wireless providers for processing of these applications and for providers’ limited access to poles and rights-of-way have varied significantly, from FCC-mandated pole attachment rates (designed to recoup the cost of siting equipment on utility poles, including a profit component) of roughly \$20 per year to rates charged for access to municipal poles of thousands of dollars per year.

The deployment of fifth generation (5G) wireless technology has placed strains on this patchwork of inconsistent state and local siting provisions. Next-generation wireless networks are expected to be much smaller than traditional wireless deployments and will require more intensive placement of wireless infrastructure on public property.

Many state legislatures have recognized that the historical approach to wireless siting is not well suited to the deployment of small cell wireless technologies. As a result, legislatures in 20 states have passed new small cell deployment laws to facilitate the rapid deployment of wireless infrastructure. The vast majority of these states have included fee provisions designed to recoup the costs of processing wireless siting applications and managing access to poles and rights-of-way while also creating incentives for wireless deployments. These laws typically require that wireless providers pay one or more of the following:

- One-time application fees;
- Recurring fees for attachment to poles or other existing structures in the rights-of-way; and/or
- Recurring fees for access to the public rights-of-way.

Nineteen of the 20 states that have enacted small cell laws either place caps on the amount of fees that can be charged or require that fees be “cost-based,” reasonable, and non-discriminatory. Sixteen of the 20 states impose fees for attachment to poles or structures. Rights-of-way access fees are less common, with 11 of the 20 states either imposing no fee or a zero fee on rights-of-way access. (In nine states, the law does not address right-of-way fees and in four states the law does not address attachment fees for poles or structures.)

This report analyzes state fees in the two categories described above to derive metrics (*e.g.*, averages and medians) that capture the typical fee provisions in these legislative provisions. A summary of the findings is provided in Table 1 below.

Table 1. Summary Data

<u>Attachment Rates (Authority-Owned Poles and Structures)</u>	
Number of States	16
Maximum Fee	\$200
Minimum Fee	\$20
Average Fee (simple avg)	\$87
Average Fee (population weighted)	\$94
Median Fee	\$50
 <u>Rights-of-Way Access Rates</u>	
Number of States	11
Maximum Fee	\$250
Minimum Fee	\$0
Average Fee (simple avg)	\$58
Average Fee (population weighted)	\$110
Median Fee	\$0

Source: CTIA / WIA data from state statutes.

Assumptions and Methodology

Most of the state laws analyzed in this report reflect a standardization of the process for permitting small cell infrastructure as compared to prior laws. Nevertheless, there remains significant variation in the siting provisions within the 20 state laws. Some states have passed “small cell” laws that complement existing state laws governing pole attachment rates or use of the public rights-of-way, while others have created a new structure for small cell infrastructure. For example, Florida and Utah have broad statutes that allow telecommunications providers to use the public rights-of-way without charge if they levy and collect communications taxes on their customers. Given the complexity of state laws and local ordinances governing use of the public rights-of-way,

this report requires the use of certain assumptions to facilitate “apples-to-apples” comparisons. These assumptions are discussed below.

Attachment fees – For states that use the FCC pole attachment formula, this report uses a \$20 fee because that amount is a generally accepted average when calculating the FCC pole attachment formula. States without an explicit fee (*e.g.*, provisions requiring fees to be cost-based) are excluded from the average and median calculations. Thus, of the 20 states analyzed, four are excluded from the average and median calculations. Of those four, three require reasonable and competitively neutral rates, and two require cost-based rates. In the two states that require cost-based rates, that standard would likely yield a fee similar to the generally accepted average when calculating the FCC pole attachment formula (*i.e.*, \$20). The averages derived from excluding those states is thus a more conservative rate than if the generally accepted cost-based rate been applied.

ROW access fees – If state small cell legislation is silent on rights-of-way fees, that state is excluded from the average and median calculations. If a state law provides that there can be no rights-of-way fees imposed, a zero rate is used in the average and median calculations. As with attachment fees, states without an explicit fee are excluded from the average and median calculations. Of the 20 states analyzed, nine are excluded from the average and median calculations. Of the 11 states that address ROW access rates in some way, seven impose a zero rate and four impose a fee for ROW access.

Use of simple vs. weighted average – The summary in Table 1 shows the simple average, the population weighted average, and median fees in each category. The simple average is the most appropriate value to calculate national averages because it give all states equal weight in determining average fees. The population weighted average gives more populated states a much larger impact on the national average. Population weighting is more appropriate when comparing the impact of collective state policies on individuals. For example, comparisons of wireless taxes on consumers use population weighted averages because there are more consumers paying California taxes than Wyoming taxes.

Median Fees – The median figure is the midpoint figure, with half the state laws imposing fees at or above the median and half the state laws imposing fees at or below the median. The median tends to be close to the average when there is a “normal” distribution of figures above and below the average. However, if a distribution is skewed – meaning that there are a small number of figures significantly higher or lower than the average – the median can be significantly different than the average. In the case of the small cell data for rights-of-way fees, seven of the eleven states have a zero rate while two states – New Mexico and Texas – impose relatively high fees of \$250 per facility. In this case, the median value is zero while the high figures in those two states result in an average value of \$58 per facility.

For a description of state laws used in the compiling of the data for this report, see the recent filing from CTIA and The Wireless Infrastructure Association, available on the FCC’s website here: <https://ecfsapi.fcc.gov/file/10810298508690/180810%20CTIA-WIA%20Ex%20Parte.pdf>.