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September 19, 2018

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

On September 17, 2018, Tamara Preiss and Andy Lachance of Verizon met separately with Erin McGrath, legal advisor to Commissioner O'Reilly, and with Michael Carowitz, legal advisor to Chairman Pai, and Suzanne Tetreault, Deputy Chief of the Wireless Telecommunications Bureau. On September 18 and 19, 2018, Tamara Preiss and Andy Lachance met with Will Adams, legal advisor to Commissioner Carr, and Umair Javed, legal advisor to Commissioner Rosenworcel, respectively. Will Johnson of Verizon also met with Mr. Javed on September 18. At each meeting we discussed issues raised in the above-referenced proceedings and in the draft Declaratory Ruling and Third Report and Order (FCC-CIRC 1809-02) ("draft item") in those proceedings.

Verizon's supports the Commission's continued efforts to modernize wireless facilities siting and pave the way for enhanced 4G and 5G networks. The Commission's recent infrastructure reforms have made significant progress in addressing regulatory barriers to broadband deployment. For example, with the benefit of the Second Report and Order and its reduction in the scope of required federal historic preservation and environmental reviews, providers are able to deploy 5G more quickly and at lower cost. Verizon's experience so far has shown 5G deployment timelines reduced by 60-90 days, and that at least 60 percent of 5G deployments do not require historic preservation or environmental reviews. The draft item that the Commission will consider next week takes the critical next step of addressing state and local processes that may impede the deployment of advanced wireless networks. Building on the work of many states to update processes for reviewing small cell deployments, the draft item would establish meaningful guidance for state and local governments, while preserving their role in those reviews.

In the meetings, we recommended targeted changes to the draft item and rules. First, consistent with our prior advocacy, we asked the Commission to adopt a "deemed granted"

remedy when localities fail to act on applications before expiration of the relevant shot clock.[1] We also explained that the new remedy for violations of the small wireless facility shot clocks – the Commission's determination that allowing the shot clock to lapse without action is a presumptive prohibition of service – should apply to all of the Section 332(c)(7) shot clocks.

Second, we asked the Commission to clarify that the declaratory ruling applies to terms in signed agreements (not just demands in the context of negotiations) that violate federal law. As we have explained elsewhere,[2] providers may be compelled to enter into agreements with states or localities that contain non-negotiable terms and conditions, including, for example, price terms. Providers may have little choice but to sign these "take it or leave it" agreements, similar to contracts of adhesion, as the only practical means of entering a market. The Commission should make clear that signatories may challenge unlawful terms in these agreements, which could be found to prohibit or have the effect of prohibiting the provision of service.[3]

Third, consistent with our *ex parte* letter addressing cost-based rates, we discussed record evidence that supports a safe harbor recurring fee limit well below the $270 per small wireless facility per year limit in the draft item.[4] By adopting a safe harbor at the high end of recurring charges reflected in state legislation, the draft item more than ensures adequate cost recovery by state and local governments; there should be few instances where a state or local government seeks to demonstrate that a fee above the limit is cost-based. We also discussed, in response to a question about whether a higher non-recurring charge should apply to applications proposing new poles, that only seven of the 20 states that adopted small wireless facility legislation treat new pole applications differently than other small facility applications. Thus, the weight of the record evidence does not support a higher new pole fee.

Fourth, we proposed a few edits and clarifications to the language in the draft item:

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[1] *See* Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed Jul. 26, 2018).

[2] *See* Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79, WC Docket No. 17-84 (filed Aug. 10, 2018), Attachment at 2-3 ("Verizon Cost Ex Parte").

[3] This is analogous the Commission's "sign and sue" rules for pole attachments subject to Section 224 of the Act. *See, e.g.*, 47 C.F.R. § 1.1410 (allowing the Commission, after determining that a pole attachment rate, term, or condition is unjust or unreasonable, to "(a) [t]erminate the unjust and unreasonable rate, term, or condition; and (b) [s]ubstitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the Commission . . . "); *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, ¶ 119 (2011) (referring to "the Commission's long-standing 'sign and sue' rule" that "allow[s] an attacher to challenge the lawfulness of terms in an execut[ed] pole attachment agreement that the attacher claims it was coerced to accept in order to gain access to utility poles").

[4] *See* Verizon Cost Ex Parte, Attachment at 11-12.

- Eliminate the requirement in the definition of small wireless facility (in note 3 and draft rule Section 1.6002(l)) that the structure does not require antenna structure registration under part 17 of this chapter;
- Delete the phrase "Relevant to Small Wireless Facility Deployment" from the title of Section III.A;
- Make clear that the safe harbor limit for application fees in paragraph 76 applies to all non-recurring fees;[5]
- Make clear in paragraph 77 that a carrier can challenge a fee that is at or below the safe harbor fee limits if it can show that the fee is not based on reasonable costs or is applied in a discriminatory manner;[6]
- Take care not to suggest in paragraph 86 that an undergrounding requirement that falls short of requiring all small wireless facilities to be placed underground cannot be found to have the effect of prohibiting wireless service; and
- Modify paragraph 88 so that the end of the first sentence reads, ". . . such ROW, such as new, existing, or replacement light poles, traffic lights, utility poles, and similar property suitable for hosting Small Wireless Facilities."

Finally, Verizon confirmed that telecommunications services can be provided over small cells, and Verizon has deployed Small Wireless Facilities in its network that provide telecommunications services.

Sincerely,

cc: (via e-mail)

Michael Carowitz
Erin McGrath
Will Adams
Umair Javed
Suzanne Tetreault

[5] *See id.,* Attachment at 11.

[6] *Id.,* Attachment at 12.