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September 19, 2018

**EX PARTE NOTICE VIA ECFS**

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 Dkt. No. 17-79; *Accelerating Wireline Broadband  
Deployment by Removing Barriers to Infrastructure Investment*, WC Dkt. No. 17-  
84; *Streamlining Deployment of Small Cell Infrastructure*, WT Dkt. No. 16-421

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile”) strongly supports the Commission’s efforts to promote the deployment of wireless network infrastructure and to deliver on the promise of 5G, including through the issuance of the draft *Declaratory Ruling and Third Report and Order* in these dockets.<sup>1</sup> T-Mobile commends the Draft Item for removing barriers to small wireless deployments, while protecting localities’ valid interests in overseeing deployment of wireless facilities. The Draft Item provides guidance and clarity that will facilitate deployment and benefit Americans, localities, and service providers alike.

***T-Mobile supports the Draft Item’s efforts to facilitate small wireless facility deployments, which are critical to both traditional and new 5G services.*** Small wireless deployments are needed to densify networks, enhance capacity, and support the 5G evolution – all of which will create jobs, boost the economy, and support new life-saving services.<sup>2</sup> Small wireless facilities are a critical component of T-Mobile’s network deployment plans to support both the 5G evolution of wireless services, as well as more traditional services such as mobile broadband and even voice calls. T-Mobile, for example, uses small wireless facilities to densify our network to provide better coverage and greater capacity, and to provide traditional services such as voice calls in areas where our macro site coverage is insufficient to meet demand.

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<sup>1</sup> *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order*, FCC-CIRC1809-02 (White Copy draft rel. Sept. 5, 2018) (“Draft Item”).

<sup>2</sup> *See id.* at ¶¶ 2, 23.

Accordingly, T-Mobile agrees that the removal of barriers to the deployment of small wireless facilities is critically important, as the Draft Item recognizes.<sup>3</sup>

***Small facilities are part of a deployment strategy that continues to rely heavily on macro facilities.*** Small wireless facility deployments are important, but they are not a substitute for facilities that do not meet the definition of small wireless facilities – *i.e.*, macro sites. Deploying macro sites is necessary for reaching the Nation’s 5G goals. This is particularly true for covering rural areas and addressing the FCC’s goal of closing the digital divide,<sup>4</sup> as one infrastructure provider recently explained.<sup>5</sup> In addition, macro sites are the backbone for adding 5G small cells in urban and suburban areas. Yet the record reflects that *both* macro and small deployments are subject to continuing shot clock delays.<sup>6</sup> In order to promote the Commission’s goal to facilitate deployment of the networks that can deliver the promise of faster and more advanced services to all Americans, T-Mobile encourages the Commission to extend the remedy available at the expiration of its two new shot clocks (presumption that a failure to act within the relevant shot clock period is a prohibition of service, with an expectation of injunctive relief)<sup>7</sup> to the Section 332 shot clocks for *all* facilities, and not only small wireless facilities. At a minimum, the Commission should make clear that even though it is expressly adopting a new remedy for violations of its small wireless facility shot clocks, this action does not mean that injunctive relief is inappropriate for violations of the shot clocks applicable to macro sites.

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<sup>3</sup> See *id.* at ¶ 23 (“As more Americans use more wireless services, demand for new technologies, coverage and capacity will necessarily increase, making it critical that the deployment of wireless infrastructure, particularly Small Wireless Facilities, not be stymied by unreasonable state and local requirements.”).

<sup>4</sup> See *id.* at ¶¶ 7, 23.

<sup>5</sup> See, e.g., Letter from Michael H. Pryor, Counsel for American Tower, to Marlene H. Dortch, FCC, WT Dkt. No. 17-79, at 1 (Sept. 13, 2018) (recommending that the FCC make clear that “[a]lthough the bulk of new deployment will consist of small cells, the existing macro cell network infrastructure continues to be the foundation of the network and a key component of its overall efficiency and resiliency”).

<sup>6</sup> See Draft Item at ¶ 26 & n.48, citing Comments of T-Mobile USA, Inc., WT Dkt. No. 17-79 & WC Dkt. No. 17-84, at 8 (June 15, 2017) (stating that “roughly 30% of *all* of its recently proposed sites (including small cells) involve cases where the locality failed to act in violation of the shot clocks”) (emphasis added); see also *Up State Tower Co., LLC v. Town of Kiantone*, 2016 U.S. Dist. LEXIS 170827 (W.D.N.Y. 2016), *aff’d*, 718 Fed. Appx. 29 (2d Cir. 2017) (case involving a locality’s failure to act on a tower application within the 150-day shot clock, resulting in multi-year litigation).

<sup>7</sup> See Draft Item at ¶ 112-23. Specifically, the Draft Item would find that a violation of two new small wireless facility shot clocks constitutes a presumptive prohibition of service contrary to Section 332(c)(7)(B)(i)(II), with an expectation courts will grant injunctive relief in those cases. See *id.* at ¶¶ 13, 116-17, 119.

*The Draft Item carefully balances interests and provides useful parameters for consideration of other requirements applicable to deployments.* The Draft Item balances localities' role in overseeing deployment, including the impact on aesthetics that such deployment may have, with the goal of promoting broadband deployment. The Draft Item sets out a standard to be applied when considering whether an aesthetic requirement may constitute an effective prohibition of service contrary to Section 253(a) – specifically, the requirement must be (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) published in advance.<sup>8</sup> The Draft Item provides further elucidation, noting that aesthetic requirements are reasonable if “they are reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments.”<sup>9</sup> This standard and the Commission’s further explanation should provide some clarity and reduce disputes regarding local aesthetic requirements.

The Draft Item states that this standard also applies to specific types of requirements, such as minimum separation distance requirements, but does not provide additional explanation and only notes that some of these requirements may be permissible and some may not.<sup>10</sup> Accordingly, T-Mobile recommends that the Commission provide additional clarification concerning when a minimum separation or undergrounding requirement violates Section 253(a) versus when it is a “reasonable” aesthetic requirement. With respect to separation distances, the Commission should confirm that where a minimum separation requirement prohibits or effectively prohibits service, taking into consideration the smaller coverage area of small wireless deployments and that multiple providers may not be able to occupy the same location because of loading, interference, or other restrictions, that requirement is not “reasonable” and is thus prohibited by Section 253(a). In addition, the Commission should find that application of a minimum separation distance requirement to collocation applications to attach to existing structures or replace existing structures with comparable structures is not reasonable, because it is not “reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments.” The existing structure is already part of the physical character of a particular area, so adding to it or replacing it would not create out-of-character deployments.

Similarly, with respect to undergrounding, the Commission appropriately finds that “a requirement that *all* wireless facilities be deployed underground would amount to an effective prohibition given the propagation characteristics of wireless signals.”<sup>11</sup> The Draft Item does not address, however, similarly prohibitive requirements that certain pieces of wireless equipment be undergrounded. Such requirements can be equally problematic from a deployment perspective, as the vaulting of sensitive transmission equipment can interfere with the proper operation of such equipment. Particularly for equipment operating over high-band spectrum, an antenna must be located within close proximity to the transmitter for it to function properly. So a requirement that a transmitter be located below-grade while the antenna is placed at the top of a pole would

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<sup>8</sup> See *id.* at ¶¶ 83, 87.

<sup>9</sup> See *id.* at ¶ 84.

<sup>10</sup> See *id.* at ¶ 87.

<sup>11</sup> See *id.* at ¶ 86.

entirely frustrate the purpose of the deployment. T-Mobile therefore urges the Commission to clarify that partial undergrounding requirements such as those described here can also operate as effective prohibitions by materially inhibiting the deployment of wireless service.

These additional targeted steps will help Commission meet its goal of “ensur[ing] that every community in the country gets a fair shot at the opportunity next generation wireless services can provide.”<sup>12</sup>

Pursuant to Section 1.1206 of the Commission’s rules, we are filing an electronic copy of this letter in the above-captioned dockets. Please direct any questions regarding this filing to me.

Respectfully submitted,

*/s/ David M. Crawford*

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<sup>12</sup> See *id.* at ¶ 8.