

September 19, 2018

BY ELECTRONIC FILING

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

Re: NOTICE OF EX PARTE

WT Docket No. 17-79: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*;

WC Docket No. 17-84: *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*

Dear Ms. Dortch:

On September 18, 2018, Rebecca Murphy Thompson and I of Competitive Carriers Association (“CCA”)¹ met with Will Adams, Legal Advisor to Federal Communications Commission (“FCC” or “Commission”) Commissioner Brendan Carr; Michael Carowitz, Special Counsel to Chairman Ajit Pai; Umair Javed, Legal Advisor, Wireless and International to Commissioner Jessica Rosenworcel; and Erin McGrath, Legal Advisor, Wireless, International, and Public Safety to Commissioner Michael O’Rielly, to discuss the above-referenced proceedings.

CCA applauds the FCC’s draft Declaratory Ruling and Third Report and Order (“draft Order”) which proposes smart policies to further the deployment of advanced technologies for consumers in rural and urban areas.² The draft Order aptly highlights certain jurisdictions that have adopted reasonable legislation³ and support Commission action to streamline siting policies.⁴ But many localities continue to advance

¹ CCA is the nation’s leading association for competitive wireless providers and stakeholders across the United States. CCA’s membership includes nearly 100 competitive wireless providers ranging from small, rural carriers serving fewer than 5,000 customers to regional and national providers serving millions of customers. CCA also represents associate members including vendors and suppliers that provide products and services throughout the mobile communications supply chain.

² *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Draft Declaratory Ruling and Third Report and Order, WT Docket No. 17-79 (rel. Sept. 5, 2018).

³ See, Letter from Kara R. Graves, Director, Regulatory Affairs, CTIA and D. Zachary Champ, Director, Government Affairs, Wireless Infrastructure Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018) (attaching a summary document highlighting the “twenty states [that] have adopted legislation to facilitate infrastructure deployment”).

⁴ See, Letter from Wallowa County Board of Commissioners, Wallowa County, Oregon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 20, 2018); Letter from Andy Thompson, State Representative – Ohio House District 95, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 24, 2018); Letter from Ramsey English-Cantu, Mayor, City of Eagle Pass, Texas, to Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 (filed May 10, 2018); Letter from Juan Huizar, City Manager, City of Pleasanton, Texas, to Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 (filed June 4, 2018); Letter from Ashton J. Hayward III, Mayor, Pensacola,

unreasonable policies that effectively prohibit necessary deployments.⁵ For these reasons, CCA provided tailored recommendations during the meetings to further strengthen the Commission’s approach.

While providers continue to negotiate with states and localities to reach agreements to deploy next-generation technologies, further reforms are necessary to secure the United States’ position as a leader in 5G development.⁶ For this reason, CCA applauds the Commission’s proposal to address state and local siting procedures by shortening shot clocks for the deployment of small cells.⁷ To promote even greater deployment, CCA encourages the Commission to extend the proposed injunctive relief available at the expiration of a small cell shot clock to all types of deployments. While the draft Order correctly notes that upwards of 80 percent of all new deployments will be small cells,⁸ the record reflects that networks often are designed around existing macro towers and facilities to add to “overall efficiency and resiliency.”⁹ Indeed, next-generation and 5G deployments will require a panoply of network infrastructure to support low-, mid-, and high-band spectrum use. What’s more, the Small Business Administration’s (“SBA”) Office of Advocacy found that the Commission’s proposed reforms could benefit “small businesses that deploy *both* fiber and wireless networks.”¹⁰ The Commission should therefore include language that explicitly applies the FCC’s

Florida, to Brendan Carr, Commissioner, FCC, WT Docket No. 17-79 (filed June 8, 2018). *See also, e.g.*, CCA Comments (*citing*, Comments of Competitive Carriers Association, WT Docket No. 16-421 at 7-8 (filed Mar. 8, 2017)); Letter from Keith Buell, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 at 1.

⁵ *See, e.g.*, Letter from Keith Buell, Senior Counsel, Sprint, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 13, 2018) (highlighting discrepancies in fees and processes in the adjacent jurisdictions of the City of Los Angeles and Los Angeles County). *See also*, Comments of Crown Castle, WT Docket No. 17-79 at 12 (filed June 15, 2017) (“Crown Castle Comments”).

⁶ As CCA and others have previously noted on record, Sections 253 and 332 of the Communications Act, as amended, provide the FCC the necessary authority to address local siting processes that effectively prohibit the provision of telecommunications services. *See*, Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 7, 2018); Letter from Kenneth J. Simon, Senior Vice President and Senior Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 7, 2018); Letter from Scott K. Bergmann, Senior Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed July 2, 2018); Letter from Katharine R. Saunders, Managing Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed June 21, 2018); Letter from Henry G. Hultquist, Vice President, Federal Regulatory, AT&T Services, Inc., WT Docket No. 17-79 (filed June 29, 2018). CCA also supports the FCC’s decision to reaffirm the *California Payphone* decision as the appropriate standard for determining that a state or local law operates as an effective prohibition when it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” To further fortify this standard, the FCC should provide additional guidance as to how the “materially inhibits” language of the *California Payphone* standard should be applied in the context of a specific siting application under Section 332 of the Communications Act, as amended.

⁷ Draft Order ¶ 101.

⁸ *Id.* ¶ 3.

⁹ Letter from Michael H. Pryor, Attorney at Law, Brownstein Hyatt Farber Schreck, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Sept. 13, 2018). As another example, CCA member Crown Castle cites “more than 40,000 towers, 60,000 small cells constructed or under contract, and over 60,000 miles of fiber” as part of its infrastructure deployment efforts. *See*, Letter from Kenneth J. Simon, Senior Vice President and General Counsel, Crown Castle, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018).

¹⁰ Letter from Major L. Clark, Acting Chief Counsel, Office of Advocacy, SBA, and Jamie Belcore Saloom, Assistant Chief Counsel, Office of Advocacy, SBA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Aug. 10, 2018).

process for seeking relief for shot clock expirations to all deployments. In the alternative, the Commission should make clear that injunctive relief is an appropriate mechanism to remedy expired applications for other deployments, and could be extended to applications for macro cells under a similar analysis in the future.

Finally, the Commission should further address requirements for the spacing of wireless installations as certain standards continue to impede next-generation deployments. Specifically, CCA encourages the FCC to find that the application of minimum separation distance requirements in a way that creates an effective prohibition to deployment, given the limited coverage range for small cells, cannot be “reasonable” under the review standards the FCC is establishing for aesthetic requirements.¹¹ Indeed, applying minimum separation distances to *collocation* applications, in particular, fails to satisfy the “reasonable” prong of the aesthetic review test because the requirements are not “reasonably directed to avoiding the intangible public harm of unsightly or out-of-character deployments,”¹² given that existing structures and/or equipment are already in the vicinity. For this reason, the FCC should add clarifying language to the draft item that states that, at a minimum, applying spacing requirements to applications seeking to collocate on existing structures constitutes an effective prohibition on deployment. Alternatively, the FCC should explain the process for determining next steps in the event an aesthetic requirement passes the three-prong test, but is still an effective prohibition. Together, these reforms will spur next-generation deployment across all corners of the United States for the benefit of consumers and the economy.

This *ex parte* notification is being filed electronically with your office pursuant to Section 1.1206 of the Commission’s rules. Please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

/s/ Courtney Neville

Courtney Neville
Associate General Counsel
Competitive Carriers Association

cc (via email): Will Adams
Michael Carowitz
Umair Javed
Erin McGrath

¹¹ See, Draft Order ¶¶ 83, 87.

¹² *Id.* ¶ 84.