

address the number and complexity of issues raised in the Petitions and effectively precludes local agencies from participating—including those named and unnamed communities alleged to be “bad actors” by the industry. As more fully discussed below, the comment schedule is inconsistent with prior Commission practice and does not give maligned communities and other interested parties a meaningful opportunity to respond. Granting an extension would serve the public interest by developing a more complete record on the highly technical issues raised in the Petitions.

I. Additional Time is Needed to Address the Numerous Issues and Significant Deviations from the Commission’s Existing Rules Raised by the Petitions

The Petitions seek *inter alia* to eliminate public participation in local decisionmaking procedures, change the standards for the Commission’s existing “substantial change” test, impose new procedural requirements on local decisionmaking and alter the remedies for noncompliance with the Commission’s existing shot clock regulations for eligible facilities requests. Several requested changes conflict with prior Commission policies and representations made to the Fourth Circuit.³

These are not modest changes or mere “clarifications”. WIA raises five discrete issues, one of which involves a six-prong substantial change rule that took the Commission 20 paragraphs of text and 69 footnotes to articulate in the 2014

³ Compare, e.g., WIA Petition at 3 (requesting that the Commission find a change in overall height cannot defeat concealment so long as it remains within the cumulative height limit), with Brief for Respondent, *Montgomery Cty. v. FCC*, Nos. 15-1240 and 15-1284, Dkt. No. 60 at 40-41 (4th Cir. 2015) (explaining that a change in overall height to a facility concealed as a fake tree would defeat concealment if the new height would be disproportionate with natural trees in the vicinity).

Infrastructure Order. These significant deviations from the Commission's existing policies and regulations would also have harmful impacts on hundreds of new facilities deployed both before and after the *2014 Infrastructure Order*. For example, the proposal to require specific findings that could not possibly be known to local governments to enforce concealment elements in future modifications threatens to undo the careful efforts by communities to conceal new facilities.

Substantial comments will be needed to fully and properly address the significant issues and rule changes posed by the Petitions. Interested parties will also need time to assemble a factual record that illustrates how the Petitions' proposals would impact modifications and collocations to existing facilities. Those comments will require more time than currently afforded by the deadlines set by the Public Notice.

II. The Comment Schedule Breaks with Prior Practice and is Inconsistent with Public Interest in the Commission's Infrastructure Deployment Proceedings

Public interest in the Commission's rulemakings on infrastructure deployment is high. In the *2014 Infrastructure Order*, the Commission received 241 comments. The Commission received no less than 860 comments in the *Mobilitie Petition*⁴ and 850 comments in the most recent *Small Cell Order* proceeding.⁵

Robust participation in these proceedings was due in part to the Commission establishing a more reasonable comment schedule. For instance, in the *Mobilitie*

⁴ *In the Matter of Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies. Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421.

⁵ *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79.

Petition the Commission originally provided interested parties 30 days more than the Commission now establishes. In that proceeding, the Commission provided public notice on December 22, 2016, 37 days after Mobilitie filed the petition, and originally established February 6, 2017 and March 8, 2017 as the respective comment and reply dates – 46 days and 76 days after posting notice.⁶ Here, the Commission posted noticed 17 days after receiving the WIA Petition, four days after receiving the CTIA Petition and would conclude the entire comment schedule within 47 days, approximately the same time originally allotted for just the opening comments in the *Mobilitie Petition*.

From the time Mobilitie filed its 36-page petition to the end of original reply period, 113 days would have elapsed. The Commission now asks parties to evaluate and respond to the Petitions' 58 combined pages in 49 fewer days. This break from prior practice substantially reduces the opportunity for interested parties to participate and ignores the level of public interest in infrastructure deployment to more fully develop the administrative record.

III. Current Deadlines Effectively Preclude Participation by the Parties Adversely Affected by Potential Rulemakings

The WTB issued the Public Notice on a Friday, merely four days after posting the CTIA Petition, and set a comment deadline 30 days from the following Monday. Most local councils and boards meet only every other week, some only monthly, and

⁶ The Commission subsequently extended the comment and reply dates to March 8, 2017 and April 7, 2017 upon a motion for time extension. *See In the Matter of Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling*, Order, WT Docket No. 16-421 (Jan. 12, 2017).

most require several days' notice for an item to be placed on a public agenda for consideration. Even if local public agencies could know about this issue on the day the WTB issued the Public Notice and were able to properly notice the item on their own agendas, their comment period could be effectively reduced by as much as two or three weeks.

As the potential parties adversely impacted by the Petitions' proposed rules, the Commission should afford them a meaningful opportunity to consider participation. The current comment deadlines effectively preclude participation by local governments who must approve their participation in the proceeding by a vote. The Commission should extend the deadlines for comments and replies as requested above to allow local communities a meaningful opportunity to participate.

IV. Additional Time is Needed to Evaluate the Proposed Changes and Identify Unnamed Communities

The industry's continued practice of alleging misconduct by unnamed local communities in their filings is sufficient to justify an extension of time. Communities alleged as "bad actors" in generic terms must have time to review the allegations, determine whether those allegations pertain to them, investigate the facts and present the Commission with the full story as to whether the allegations are true, whether any delay actually occurred, why a delay occurred (including industry failures that may have contributed) and defend current practices that do not hinder deployment. Communities specifically named in the Petitions and in the comments will likewise need additional time to fully address the claims against them.

The Commission’s Public Notice “invite[s] interested parties to submit factual data and economic analysis of the costs and benefits of the specific declaratory rulings, clarifications, and rule amendments discussed in the Petitions (or any alternative policies)”⁷ Data-driven analysis that fully evaluates the implications of such rule changes or clarifications cannot reasonably be completed under the current comment periods, and data-driven decisions simply cannot be achieved through a reliance on abstract, unverified allegations. The current comment deadlines do not afford maligned communities a meaningful opportunity to respond, which will undercut the credibility of any decisions the Commission may reach.

V. Additional Time Is Required if the BDAC Concerns Are to Be Heard

The Commission has relied heavily upon the input of the BDAC as it has considered prior wireless infrastructure proposals. At the September 19, 2019 BDAC meeting, both local government and industry representatives supported the formation of a working group to provide the Commission with input into the Petitions.

Providing the additional time requested in this Motion would make such BDAC input, and further public comment on BDAC input, possible and argues in favor of granting such an extension.

⁷ *WIA Petition for Rulemaking, WIA Petition for Declaratory Ruling and CTIA Petition for Declaratory Ruling*, Public Notice, WT Docket No. 19-250, WC Docket No. 17-84, RM-11849 (WTB/WCB 2019).

For the reasons stated above, the Commission should grant (1) an extension of time to file comments through and including November 14, 2019 and (2) an extension of time to file reply comments through and including December 16, 2019.

Respectfully submitted,

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