

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	WT Docket No. 19-230
Petition for Declaratory	)	
Ruling Filed by Verizon	)	
Regarding Fees Charged	)	
by Clark County, Nevada	)	
for Small Wireless Facilities	)	

**COMMENTS OF UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation (“USCC”) hereby files these Comments on the above captioned Petition for Declaratory Ruling (“Petition”) filed by Verizon.<sup>1</sup> USCC supports the Petition and joins Verizon in asking the FCC to grant the requested declaratory ruling preempting the recurring fees that the Petition describes.

**I. BACKGROUND AND INTRODUCTION**

USCC, founded in 1983, and headquartered in Chicago, Illinois, is one of the nation’s few remaining mid-sized wireless carriers, serving approximately five million customers nationwide, most of whom are located in rural areas of the United States. USCC has sought to compete with other carriers, including the national carriers, by means of a superior network and excellent customer service.<sup>2</sup>

---

<sup>1</sup> See *Public Notice* “Wireless Telecommunications Bureau Service Comment on Verizon’s Petition for Declaratory Ruling Regarding Fees Charged by Clark County, Nevada for Small Wireless Facilities,” WT Docket No. 19-230, DA 19-823, released August 16, 2019.

<sup>2</sup> In 2019, USCC had the “Highest Wireless Network Quality Performance in the North Central Region,” comprised of Wisconsin, Illinois, Indiana, Michigan, and Ohio, according to the J.D. Power U.S. Wireless Network Performance Study – Volume 2.

In order to maintain its network quality and deliver state of the art service to its customers, USCC is now deploying 5G technology. For USCC, as for other wireless carriers, it is vital that it be able to build out the small cell architecture which is integral to 5G wireless service. And, as a mid-sized, rural-based carrier, it is especially important to USCC that it be able to do so at a reasonable cost.

The FCC has supported the development and deployment of 5G technology, in part by issuing the declaratory ruling and order at issue in this proceeding.<sup>3</sup> However, unfortunately the *Small Cell Order* has met with resistance from various local zoning authorities. USCC agrees with Verizon that the FCC should uphold the *Small Cell Order* by issuing the declaratory ruling requested in the Petition.

## **II. THE PETITION HAS MADE THE CASE FOR PRE-EMPTION UNDER THE FCC'S RULES AND THE COMMUNICATIONS ACT**

In the *Small Cell Order*, the FCC used its authority under Section 253 of the Communications Act to declare that certain state or local fees imposed on wireless carriers for small cell deployments in public rights of way could be sufficiently excessive as to amount to a “prohibit[ion]” on the provision of wireless service in contravention in Section 253(a) of the Communications Act. It further held, in accordance with Section 253(d) of the Act, that it would pre-empt such excessive charges.

Specifically, in the *Small Cell Order*, the FCC interpreted Section 253 to require that a state or local government’s fees for use of public rights-of-way and attachments to municipally owned assets: (1) had to be a reasonable approximation of the government’s actual and direct

---

<sup>3</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, et al.*, 33 FCC Rcd 9088 (“*Small Cell Order*”). As the Petition notes, the *Small Cell Order* is under appeal. However, the United States Court of Appeals denied a request for a judicial stay of the *Small Cell Order* and it remains in full effect. See, *City of San Jose, California et al.*, and *City of New York v. FCC*, Order No. 18-9568 (10<sup>th</sup> Cir, January 10, 2019).

costs “specifically related to or caused by the deployment” of the provider’s facilities in the state or local government’s right-of-way;<sup>4</sup> must include only objectively reasonable costs; and must be nondiscriminatory.<sup>5</sup> The FCC also adopted a “presumption” that if the total of all recurring fees, including “any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW” were \$270 or less per year per small wireless facility the fees would not violate Section 253.<sup>6</sup>

The Petition demonstrates both that Clark County’s “recurring fees” far exceed the presumptively acceptable fees for small cell deployment and fail to meet each of the Section 253 “acceptability” criteria established by the FCC. The recurring fees are not cost-based, are not objectively reasonable and are discriminatory.<sup>7</sup> Consequently, as Verizon concludes, and as USCC agrees, the FCC should pre-empt the recurring fees described in the Petition.

### **III. THIS PROCEEDING HAS A BROAD SIGNIFICANCE AND ITS OUTCOME WILL HAVE WIDE-RANGING EFFECTS**

As the Petition notes, many local governments are “excellent partners” in carrier efforts to deploy small wireless facilities and upgrade to 5G technology.<sup>8</sup> But some communities have not cooperated in this effort. On the contrary, they have attempted to extract as much in fees as possible from those carriers seeking to work with them to bring advanced wireless service to their citizens. Carriers understand the need for good relations with the communities which they serve and would always prefer to negotiate reasonable solutions with those communities. They

---

<sup>4</sup> Section 253(d) provides that, [i]f... the Commission determines that a state or local government has permitted or imposed a statute, regulation, or local requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency, 47 U.S.C. § 253(d).

<sup>5</sup> *Small Cell Order*, ¶50.

<sup>6</sup> *Id.*, at ¶70.

<sup>7</sup> Verizon Petition, pp. 18-26.

<sup>8</sup> Verizon Petition, p. 9.

also recognize the need to reimburse municipalities for the actual costs imposed by their use of municipal property and rights of way. But they will resist, as Verizon has here, municipal fee demands which are not cost-based and are thus contrary to the law.

And that is when the FCC's willingness to enforce its prior orders facilitating the construction of small cells becomes crucial. If the FCC adopts the declaratory ruling requested by Verizon, that will provide the strongest possible impetus to reasonable and fair agreements between wireless carriers and municipalities with respect to 5G wireless deployment throughout the country. However, if the FCC fails to act on the Petition or denies it, that will have the opposite effect, encouraging municipal price gouging from coast to coast, egged on by consultants unconcerned with the common good. More important, the effect of a failure to preempt would be to diminish the scale of 5G deployment nationwide, thus doing harm to the present and future economic position of the United States. The stakes are high and the FCC should act now.

## **CONCLUSION**

For the foregoing reasons and those given in the Petition, we ask the FCC to grant the requested declaratory ruling.

Respectfully submitted,

**UNITED STATES CELLULAR  
CORPORATION**

By: Grant Spellmeyer *bypc*  
Grant B. Spellmeyer  
Vice President  
Federal Affairs and Public Policy  
United States Cellular Corporation  
500 N. Capitol Street, N.W., Suite 210  
Washington, DC 20001  
Phone: 202-290-0233  
Email: [grant.spellmeyer@uscellular.com](mailto:grant.spellmeyer@uscellular.com)

**UNITED STATES CELLULAR  
CORPORATION**

By: Peter M. Connolly  
Leighton T. Brown  
Peter M. Connolly  
Holland & Knight LLP  
800 17<sup>th</sup> Street, N.W., Suite 1100  
Washington, DC 20006  
Phone: 202-862-5989  
Email: [peter.connolly@hklaw.com](mailto:peter.connolly@hklaw.com)  
*Its Attorneys*

September 25, 2019