



September 27, 2019

**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Communication, Review of Verizon's Petition for  
Declaratory Ruling, WT Docket No. 19-230**

The Wireless Infrastructure Association ("WIA"),<sup>1</sup> pursuant to Section 1.1206 of the Federal Communications Commission's ("Commission") rules,<sup>2</sup> files this letter, lending its support to Verizon's Petition for Declaratory Ruling ("Verizon Petition").<sup>3</sup> In its petition, Verizon provides evidence that Clark County, Nevada, has deviated from a cost-based model for fees for Small Wireless Facilities ("SWF") within its jurisdiction. WIA and its members work to support the widespread deployment of wireless infrastructure in order to enable wireless broadband everywhere. The core of WIA's membership provides the backbone of our country's telecommunications capabilities—the infrastructure that carries and delivers broadband to consumers, businesses, and more.

WIA applauds the Commission's continued efforts to facilitate broadband deployment, especially those relevant to this proceeding, that were taken in the *Small Cell Order*.<sup>4</sup> Ensuring cost-based fees for the rights-of-way (ROW) is consistent with the

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<sup>1</sup> The Wireless Infrastructure Association (WIA) is the principal organization representing companies that build, design, own, and manage telecommunications facilities throughout the world. WIA's members include infrastructure providers, carriers, and professional services firms.

<sup>2</sup> 47 C.F.R. § 1.1206.

<sup>3</sup> Petition for Declaratory Ruling, VERIZON, RM 19-230 (Aug. 8, 2019).

<sup>4</sup> Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment proceeding, 33 FCC Rcd 9088, WT Docket No. 17-79, WC Docket No. 17-84 (2018) (*Small Cell Order*). See also *City of San Jose v. FCC*, Order, No. 18-9568, 2019 U.S. App. LEXIS 4015 (10th Cir. Jan. 10, 2019) (denying petitioners' motion to stay the implementation of the *Small Cell Order*).

Commission's longstanding interpretations of its authority provided by Congress, as explained in the *Small Cell Order*.<sup>5</sup>

Verizon highlights many instances where the fee structure in Clark County deviates from a cost-based structure. Furthermore, three points deserve additional emphasis. First, Clark County's fee structure is based on recommendations by a third-party consultant, Smart Works.<sup>6</sup> In its presentation material to the County, it is clear Smart Works' recommendations are based on obtaining the "fair market value" for use of the County's ROW.<sup>7</sup> Second, a portion of the fees levied for use in the ROW is directly related to the operator's gross revenue with no consideration given to actual costs that the County incurs.<sup>8</sup> Finally, the County has partitioned its jurisdiction based on geographic area with higher costs in some areas than others.<sup>9</sup> Again, the County provides no evidence that its costs vary based on area. This partition is also at the recommendation of Smart Works and purports to capture a market rate rather than a cost-based rate.<sup>10</sup>

The Commission has made it clear that unreasonably high costs may have a chilling effect on broadband deployment, which will ultimately hurt the United States in the race to 5G.<sup>11</sup> Consistent guidance has stated that state and local governments operate as stewards of the ROW for the public interest, not landlords.<sup>12</sup> In instances such as these, the County is under an obligation to facilitate telecommunication deployment by only

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<sup>5</sup> See, e.g., *Small Cell Order* at paras 34 - 38 [discussing the various interpretations of section 253 by the Commission]; *California Payphone Ass'n*, 12 FCC Rcd 14191, 14206, para. 31 (1997) (stating that an ordinance materially inhibits deployment for the purposes of section 253(a) if it impedes on a fair and balanced legal and regulatory environment).

<sup>6</sup> See Verizon Petition at 13 (explaining the planning process within the municipality and what proposals were considered).

<sup>7</sup> See Board of County Commissioners, Minutes, Item No. 74, CLARK COUNTY N.V., [http://clark.granicus.com/MinutesViewer.php?view\\_id=18&clip\\_id=5686](http://clark.granicus.com/MinutesViewer.php?view_id=18&clip_id=5686) (BCC-Presentation FINAL) (last visited Sept. 27, 2019) [hereinafter Broadband Master Plan Recommendation].

<sup>8</sup> See Verizon Petition at 12.

<sup>9</sup> See *id.* at 11.

<sup>10</sup> Broadband Master Plan Recommendation, *supra* note 7, at 4.

<sup>11</sup> See generally *Small Cell Order*.

<sup>12</sup> See *Am. Tel. & Tel. Co. v. Vill. of Arlington Heights*, 620 N.E.2d 1040, 1044 (Ill., 1993) ("The public streets are held in trust for the use of the public.").

charging cost-based fees for access to the ROW. However, Clark County has strayed from what the Commission set forth in the *Small Cell Order*.

Since 1949, WIA has worked to increase wireless connectivity across the United States. WIA members promote this goal through investment in modern infrastructure ensuring that the United States continues to lead the world in wireless broadband deployment and remains on the forefront of wireless solutions. With this proceeding, the Commission has the opportunity to enforce its clear rules for the road regarding SWFs in public ROWs, promoting a key piece of infrastructure that will facilitate 5G deployment across the country. The evidence presented by Verizon warrants prompt and favorable action by the Commission.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

September 27, 2019

Respectfully submitted,

/s/ Stephen Keegan

Law Clerk

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