



November 9, 2017

**VIA ELECTRONIC FILING**

Ms. 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 Docket No. 17-79.**

Dear Ms. Dortch,

CTIA applauds the Commission for its focus on modernizing its infrastructure policies in light of changing technologies, which will enable the more rapid and efficient buildout of wireless infrastructure across the country and support our 5G future. In particular, we fully support the Commission's objective in the *Draft Order* in this proceeding "to streamline the process of deploying wireless broadband by eliminating the need for historic preservation review in instances where there is no potential effect on historic properties."<sup>1</sup> We are pleased that the Commission is proposing to adopt the *Draft Order* and take other actions that seek to accelerate broadband deployment.

The *Draft Order* seeks to facilitate deployment by excluding certain replacement poles from the requirements under Section 106 of the National Historic Preservation Act ("NHPA") where such replacement has no potential to affect historic properties. CTIA applauds this goal and agrees that, where there is no potential for effects, "requiring an individual historic preservation review can impose needless burdens and slow infrastructure deployment."<sup>2</sup>

The exclusion of replacement poles has the promise of meaningfully benefitting deployment. To further advance this goal, CTIA encourages the Commission to incorporate certain changes into the *Draft Order* so that it can better achieve its stated purpose.

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<sup>1</sup> *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Draft Report and Order, FCC-CIRC1711-003 ¶ 1 (rel. Oct. 26, 2017) ("*Draft Order*").

<sup>2</sup> *Id.* ¶ 2.



Specifically, CTIA encourages the Commission to revise the *Draft Order* and the respective draft rules regarding the “same hole” limitation and the height limitation. Importantly, the targeted changes CTIA proposes would not affect the Commission’s correct finding that it has full authority to adopt an exclusion for pole replacements consistent with its obligations under the NHPA.<sup>3</sup>

*First, the Commission should eliminate or revise the “same hole” limitation.* Draft rule 1.1320(b)(3)(ii)(A) requires the new pole to fit into the “same hole” as the original pole. Industry practice, however, is generally to dig a *new* hole near the original hole, install the new pole, move wires or other equipment from the old pole to the new pole, then remove the old pole. The old pole usually cannot be removed first to allow its use for the new pole, as this would leave no existing pole to hold the wires and other equipment.<sup>4</sup>

To address these realities, the Commission should revise the rule to delete the “same hole” requirement, and instead state that the exclusion applies where the replacement pole is located in the immediate vicinity of the original pole (e.g., up to 10-15 feet from the replaced pole) and the original pole is removed once the replacement is complete. Because the new pole is placed close to the old pole, and a separate part of the rule prohibits new ground disturbance of previously undisturbed land,<sup>5</sup> the Commission can and should find that such facilities have no potential effect on historic properties—and thus that the exclusion may be adopted through new rules without undergoing the process to negotiate a new or amended programmatic agreement.

If the Commission declines to eliminate the “same hole” requirement, it should, at a minimum, afford flexibility to allow for *de minimis* expansions of the existing hole. Because new ground disturbance is otherwise prohibited under the exclusion, the Commission can

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<sup>3</sup> As the Commission notes, “[w]here an agency determines that a type of activity has no potential to affect historic properties under any circumstance, the agency may eliminate the review process for such undertakings.” *Draft Order* ¶ 4. The modest changes CTIA proposes to the *Draft Order* do not affect the Commission’s finding that adopting an exclusion for poles that replace other poles (instead of towers) will have no potential to affect historic properties.

<sup>4</sup> Indeed, such practice is driven by the utilities, as it ensures the maintenance of existing services during the replacement period.

<sup>5</sup> In order to enable expeditious broadband deployment without otherwise affecting historic properties, the Commission could limit the exclusion to replacement poles that are located in an active right of way (where the ground has already been disturbed) or do not otherwise involve any new ground disturbance.



and should make the finding that *de minimis* expansions of the existing hole do not “occupy appreciably more space” and thus have no potential effect on historic properties.<sup>6</sup> Such a clarification likewise can be made within the limits of the Commission’s jurisdiction and would further the Commission’s goals in this proceeding.

*Second, the Commission should revise the height limitation.* Draft rule 1.1320(b)(3)(ii)(B) restricts the height of a replacement pole to no more than 10 percent higher than the original pole. CTIA appreciates inclusion of the *de minimis* expansion in height, as replacement poles often need to be taller than the original pole in order to accommodate electric utilities.<sup>7</sup> However, a 10 percent increase in height may not be sufficient for these purposes. Moreover, such expansion may be limiting in practice given that poles are usually manufactured in five-foot increments, yet the height limitation would permit, for example, only a four-foot increase for a standard 40-foot telephone pole or a three-foot increase for a 30-foot pole. Although custom pole sizes could be ordered or the pole may be cut, this would increase pole costs and slow the deployment process, potentially deterring the use of replacement poles and undermining the Commission’s goal of promoting the use of replacement poles to facilitate broadband deployment.

In light of these facts, the Commission should revise the rule to state that the replacement pole “does not exceed the height of the original pole by more than ten feet or 10 percent of the height of the original pole, whichever is greater.” The *Draft Order* finds that a 10 percent increase “would be *de minimis* and thus would have no potential to affect historic properties.”<sup>8</sup> The Commission can make this small change and still make that finding, while also promoting the goal of broadband deployment by increasing the utility of the exclusion.

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Minor modifications to the *Draft Order* consistent with CTIA’s recommendations will better reflect the way in which replacement facilities are deployed, thereby making the revised rules more useful for providers and helping speed new infrastructure deployment without creating any greater potential to impact properties of historic interest. CTIA

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<sup>6</sup> See *Draft Order* ¶ 14.

<sup>7</sup> See, e.g., Letter from Verizon to Marlene H. Dortch, Secretary, FCC, WT Docket No. 17-79 (filed Nov. 7, 2017).

<sup>8</sup> *Id.* ¶ 18.



appreciates the Commission's indication that the *Draft Order* is the first in a series of steps designed to achieve the overall objective of accelerating broadband deployment by removing unwarranted regulatory barriers. CTIA encourages the Commission to work expeditiously to adopt other proposals in this proceeding related to, among other things, the modernization of historic preservation review obligations, including by adopting exclusions for facilities in active rights of way and on small cells that are more than 50 feet from the boundary of a historic district or are located on structures that previously received local approval.<sup>9</sup> It should also exclude all indoor wireless facilities that are not already excluded, as well as all collocations on existing structures that involve no ground disturbance or new ground disturbance and no substantial increase in the structure's size.<sup>10</sup>

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this letter is being electronically submitted into the record of this proceeding. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Scott K. Bergmann

Scott K. Bergmann  
Vice President, Regulatory Affairs

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<sup>9</sup> See Remarks of Commissioner Brendan Carr, at 3 (Oct. 26, 2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db1026/DOC-347433A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1026/DOC-347433A1.pdf) (noting that the *Draft Order* is "the first of a series of orders that will streamline the deployment of wireless infrastructure"); see also *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking, 32 FCC Rcd 3330 ¶¶ 69, 73 (2017); CTIA Comments at 38-39 (filed June 15, 2017); AT&T Comments at 30-32 (filed June 15, 2017); Sprint Comments at 32-33 (filed June 15, 2017); T-Mobile Comments at 61-63 (filed June 15, 2017); Samsung Comments at 9 (filed June 15, 2017); Verizon Comments at 54-57 (filed June 15, 2017); Wireless Infrastructure Association Comments at 66-70 (filed June 15, 2017).

<sup>10</sup> CTIA Comments at 39; T-Mobile Comments at 62; Verizon Comments at 58-61; WIA Comments at 70-72.