



October 30, 2009

Written Ex Parte Presentation - via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*
WT Docket No. 08-165

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile”) urges the Commission to grant CTIA’s petition for declaratory ruling to establish a federal “shot clock” for action by state and local governments on wireless facility siting requests.¹ When granting the *Shot Clock PDR*, the Commission should make clear that the relief granted applies not only to base station facilities but to the collocation and siting of facilities used for backhaul connections in mobile networks (“mobile backhaul”) whether such facilities are owned by third parties that supply them to mobile carriers or the mobile carriers themselves.

Mobile backhaul connections are the high-capacity links – often fixed microwave – that connect base stations or cell sites to mobile switching centers (“MSCs”) and connect MSCs to the public voice network and the Internet.² T-Mobile and all other mobile carriers rely on mobile backhaul as part of their networks for completing mobile voice calls and providing mobile data services. While T-Mobile historically has purchased the bulk of its mobile

¹ See Petition for Declaratory Ruling of CTIA, *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165 (July 11, 2008) (“*Shot Clock PDR*”).

² The Commission recently described backhaul as one of several types of “middle and second mile transport services and facilities.” FCC Public Notice, *Comment Sought On Impact Of Middle And Second Mile Access On Broadband Availability And Deployment*, NBP Public Notice # 11, GN Docket Nos. 09-47, 09-51, 09-137, DA 09-2186 (Oct. 8, 2009) at 1.

backhaul as special access services from incumbent local exchange carriers (“ILECs”),³ as T-Mobile deploys its 3G network, it has been trying to develop alternative sources of backhaul supply, including wireless. One major obstacle to the use of wireless backhaul today, however, is the delay associated with the siting of facilities.

As mobile data and voice usage explodes,⁴ mobile carriers will need higher-capacity backhaul facilities on an ongoing basis. Almost all mobile carriers purchase backhaul from third-party suppliers such as fixed microwave providers.⁵ In addition, mobile carriers sometimes self-provision backhaul.⁶ To meet growing demand for backhaul, third-party suppliers and mobile carriers will have to collocate or install new facilities such as microwave dishes, transmitters, and towers and, in many cases, will have to obtain authorizations from state and local governments for backhaul facilities siting and collocation.

As T-Mobile explained in its comments on the *Shot Clock PDR*, obtaining zoning and other authorizations from local authorities to build mobile wireless infrastructure has become so cumbersome that targeted regulatory intervention by the Commission is necessary.⁷ To help ensure that new wireless services are deployed expeditiously, the Commission should set a federal shot clock of 45 days for final action on collocation requests and 75 days for ruling on all other state and local facilities siting applications, whether the facilities are for base stations or for mobile backhaul, and whether such facilities are owned by mobile providers like T-Mobile or third-party suppliers.

The *Shot Clock PDR* seeks federal action regarding the “placement, construction, and modification” of “personal wireless service facilities” as outlined in Section 332(c)(7)(B) of the Communications Act (the “Act”).⁸ As explained in detail below, because mobile backhaul facilities are “personal wireless service facilities,” whether they are owned by third-party

³ As T-Mobile has noted frequently in the various proceedings involving special access services, in many markets the ILEC is the only or dominant provider of such services.

⁴ See Hon. Julius Genachowski, Chairman, FCC, “America’s Mobile Broadband Future,” prepared remarks, International CTIA Wireless I.T. & Entertainment, San Diego, CA (Oct. 7, 2009) at 5.

⁵ Other suppliers of various forms of mobile backhaul include the ILECs, as mentioned above, and cable companies.

⁶ T-Mobile obtains the vast majority of its mobile backhaul from third-party suppliers.

⁷ See Comments of T-Mobile, *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, WT Docket No. 08-165 (Sept. 29, 2008) at 9-12.

⁸ See 47 U.S.C. § 332(c)(7)(B); see also *Shot Clock PDR* at 5.

suppliers or by mobile carriers like T-Mobile, any relief granted by the Commission in addressing the *Shot Clock PDR* should apply to mobile backhaul facilities. To avoid any confusion on the part of state or local authorities, the Commission should expressly state that the granted federal relief applies to mobile backhaul facilities as well as base station facilities.

“Personal wireless service facilities” are defined in the Act as “facilities for the provision of personal wireless services.”⁹ Services are considered “personal wireless services” if they meet at least one prong of a three-pronged definition – “commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.”¹⁰ Because mobile backhaul satisfies at least the first prong of the definition, it falls within the “personal wireless services” definition, and facilities used to provide mobile backhaul are “personal wireless service facilities” within the scope of the *Shot Clock PDR*.

With respect to the first prong of the “personal wireless services” definition, T-Mobile and other mobile carriers offer commercial mobile services. For these services to function – *e.g.*, for mobile voice calls to be completed between users – CMRS providers must have sufficient mobile backhaul in place, just as they must have sufficient numbers of base stations. The facilities used for mobile backhaul therefore are “personal wireless service facilities.”

Moreover, some types of mobile backhaul may satisfy the third prong of the “personal wireless services” definition. For example, if a fixed microwave provider offers mobile backhaul on a common carrier basis and the backhaul is used to connect with the public voice network, that mobile backhaul is a “common carrier wireless exchange access service” because it is a common carrier service that offers exchange access in order to originate or terminate wireless calls.¹¹ The facilities used for such services therefore are “personal wireless service facilities” for purposes of Section 332(c)(7)(B).

More generally, as the Second Circuit ruled in 1999, “the plain focus of the statute [47 U.S.C. § 332(c)(7)(B)(i)(II)] is on whether it is possible for a user in a given remote location to reach a facility that can establish connections to the national telephone network...[L]ocal governments must allow service providers to fill gaps in the ability of wireless telephones to have access to landlines.”¹² Because mobile backhaul is essential for mobile users to “establish connections to the national telephone network,” the facilities needed for such

⁹ See 47 U.S.C. § 332(c)(7)(C)(ii).

¹⁰ *Id.* § 332(c)(7)(C)(i).

¹¹ See 47 U.S.C. § 153(16) (“Exchange access” means “the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.”)

¹² *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630, 642-43 (2d Cir. 1999).

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connectivity are “personal wireless service facilities” and the relief requested in the *Shot Clock PDR* applies to them.

T-Mobile respectfully requests that, when the Commission rules on the *Shot Clock PDR*, it makes clear that the granted federal relief applies to the placement, construction, and modification of mobile backhaul facilities as well as base station facilities, whether the facilities are owned by third-party suppliers to mobile carriers or self-provisioned.

Very truly yours,



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Vice President, Government Affairs

cc: Ruth Milkman
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