

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Acceleration of Broadband Deployment: ) WC Docket No. 11-59  
Expanding the Reach and Reducing the Cost of )  
Broadband Deployment by Improving Policies )  
Regarding Public Rights of Way and Wireless )  
Facilities Siting )

**REPLY COMMENTS OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (“NTCA”) hereby submits these reply comments in response to the above captioned Notice of Inquiry (“NOI”).<sup>1</sup> NTCA supports the Commission’s efforts to improve government policies for access to rights-of-way and wireless facilities siting.

All of NTCA’s members are “rural telephone companies” as that term is defined in the Communications Act of 1934, as amended.<sup>2</sup> NTCA members have a demonstrated tradition of providing cutting-edge telecommunications services in some of the most rural and remote areas of the country. The Commission and this administration are likewise committed to deploying broadband in previously unserved and underserved areas. Building the necessary infrastructure in a timely manner is crucial to this end goal, and, in certain areas, this depends upon the service provider’s ability to access rights-of-way. The current patchwork of federal, state, and local municipal regulations slows down the application review process, delays the build out of infrastructure, and increases the associated network costs. The telecommunications industry is in

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<sup>1</sup> *Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment*

<sup>2</sup> 47 USC § 153(37).

need of clear, concise and uniform regulations to streamline the review and approval of applications.

The Commission has multiple avenues to establish its authority to regulate the public rights-of-way and wireless facilities siting process. NTCA recommends that the Commission open a Notice of Proposed Rulemaking (NPRM) on these issues and explore further enforceable regulatory action.

#### **I. RURAL SERVICE PROVIDERS REPORT SIGNIFICANT DELAYS ASSOCIATED WITH APPLICATION REVIEW**

As NTCA asserts in its initial comments<sup>3</sup>, some of the association's members report significant delays associated with obtaining rights-of-way and wireless tower siting approval from land management agencies. For example, NTCA member Sacred Wind Communications, Inc. filed initial comments in this proceeding detailing its first-hand experience with the local permitting process. Sacred Wind is an incumbent local exchange carrier and eligible telecommunications carrier which provides voice and broadband services on Navajo lands in the state of New Mexico. Sacred Wind has experienced routine delays in the processing and review of its applications. An application involving one section, one land owner, and one authorizing jurisdiction commonly takes 2-4 years to complete.<sup>4</sup> In contrast, for an application which

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<sup>3</sup> Comments of the National Telecommunications Cooperative Association, *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No 11-59 (filed July 18, 2011), ("NTCA comments") at 2.

<sup>4</sup> Comments of Sacred Wind Communications., Inc., *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No 11-59 (filed July 18, 2011), ("Sacred Wind comments") at 8.

involves more than one land section spanning multiple authorizing jurisdictions, the process commonly takes anywhere from 4-8 years to complete.<sup>5</sup>

The problem is not relegated to small, rural telephone service providers; other telecommunications providers also have experienced application delays. The National Cable and Telecommunications Association (NCTA) asserts that, “in some cases, cable companies have encountered significant delays in obtaining permission to access rights of way, including delays that can last for more than a year before requests for access are approved.”<sup>6</sup>

In a November 2009 Declaratory Ruling, the Commission created a shot clock for state and local zoning action on co-location and other wireless facility siting requests.<sup>7</sup> This was a significant first step in eliminating barriers to wireless tower siting; however, additional regulation is needed to combat impediments to obtaining right-of-way approval for wireless facilities and wireline broadband network infrastructure. Agencies need to adhere to a reasonable timeline to review and respond to right-of-way requests.

NTCA agrees with CTIA’s initial comments in this proceeding which recommend that the Commission extend a Section 33(c)(7)-like shot clock to local right-of-way procedures.<sup>8</sup> In its *Shot Clock Declaratory Ruling*, the Commission found that obtaining state and local

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<sup>5</sup> *Id* at 8

<sup>6</sup> Comments of The National Cable & Telecommunications Association, *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No 11-59 (filed July 18, 2011) at 2.

<sup>7</sup> *Petition for Declaratory Ruling To Clarify Provisions of Section 332©(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, Declaratory Ruling, 24 FCC Rcd. (2009) (“Shot Clock Declaratory Ruling”) at 13994, ¶ 4.

<sup>8</sup> Comments of CTIA-The Wireless Association, *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No 11-59 (filed July 18, 2011), (“CTIA-the Wireless Association comments”) at 37.

governmental approvals is a “critical requirement” for wireless network deployment.<sup>9</sup> CTIA maintains that the same assertion can be applied to a wireless service provider’s use of the public rights-of-way. NTCA also agrees with AT&T’s recommendation that the Commission extend the same rules to *wireline* deployments.<sup>10</sup> NTCA recommends that the Commission seek additional comments on broadening and extending a Shot Clock to the review of right-of-way and wireless facilities siting permit applications.

## **I. RURAL SERVICE PROVIDERS ALSO FACE DIFFICULTY WITH EXCESSIVE PERMITTING COSTS AND UNCLEAR, INCONSISTENT APPLICATION PROCEDURES**

In addition to the time it takes to review and approve an application, in certain jurisdictions permitting costs are another impediment to broadband network deployment. Sacred Wind maintains that, in many instances, right-of-way and usage fees are the single largest expense associated with an infrastructure project, often adding 20-100% to its construction costs.<sup>11</sup> In discussions regarding this NOI and prior state-of-the-industry inquiries, NTCA members report consistently that costs associated with rights-of-way, including the expenses related to obtaining a permit and the annual levied fees, are often excessive.

A cross-section of the telecommunications industry reported experiences similar to those of NTCA’s members<sup>12</sup> with some jurisdictions charging unreasonable fees. For instance, CenturyLink asserts that “local governments have imposed excessive, discriminatory, and/or

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<sup>9</sup> Shot Clock Declaratory Ruling, 24 FCC Rcd at 13995, ¶ 3.

<sup>10</sup> Comments of AT&T, *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No 11-59 (filed July 18, 2011), (“AT&T comments”) at 20.

<sup>11</sup> Sacred Wind comments at 10.

<sup>12</sup> NTCA comments at 2.

unfair and unbalanced fees and other terms of access for the use of PROW [public rights-of-way] that have little or no relationship to the actual cost of managing a PROW.”<sup>13</sup> These fees negatively impact a service provider’s ability to offer a competitively priced and affordable broadband service.

NTCA re-asserts its position that the cost for obtaining access to a right-of-way should be reasonably associated with the administrative cost to review and process an application, as opposed to a revenue generator for the land management agency.<sup>14</sup> In addition, the requirements for approving an application should be directly related and relevant to the intended right-of-way usage. In its comments, Verizon states that certain local jurisdictions set in-kind requirements for the approval of a right-of-way permit. Verizon declares, “In exchange for access to rights-of-way, localities may require donations of equipment, network connectivity, service or dark fiber,” requirements which may be “as costly – or even more so – as the excessive fees.”<sup>15</sup> As detailed in NTCA’s initial comments, land management agencies should not be allowed to enforce extraneous requirements such as the provision of free laptops or free connectivity to government buildings in exchange for the approval of a permit.<sup>16</sup>

In information obtained from a qualitative selection of its membership, rural telephone companies also report that right-of-way application procedures often are unclear and inconsistent, creating confusion and delays in the application review process. Sacred Winds

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<sup>13</sup> Comments of CenturyLink, *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No 11-59 (filed July 18, 2011) at 2.

<sup>14</sup> NTCA comments at 2.

<sup>15</sup> Comments of Verizon and Verizon Wireless, *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No 11-59 (filed July 18, 2011), (“Verizon and Verizon Wireless comments”) at 23.

<sup>16</sup> NTCA comments at 2.

agrees, stating that the overseeing authorities “maintain no written set of procedures or requirements governing the permitting process on which can applicant can rely.”<sup>17</sup> Sacred Wind continues, “Not only may the requirements differ from one regulating authority to the next, but from one BIA office to another, and from one BIA employee to another.”<sup>18</sup> NTCA members also report that the patchwork of governing federal, state, and local legislation and regulation creates additional uncertainties and complexities in the application process. For instance, when an application is reviewed by multiple land management agencies, NTCA members report that there often is a lack of coordination in regard to timing, status, and requirements. In addition, NTCA members report to the association that typically all permit applications are placed through the same stringent procedures, studies and routine delays—regardless if the application refers to a new right-of-way, a collocated facility, an area where the environmental and archeological affects have previously been assessed, or or an area that already has been disturbed by utility construction. NTCA recommends that the Commission open a further proceeding to streamline the application review and approval process through the creation of enforceable, uniform, consistent regulation.

## **II. BEST PRACTICES COULD SERVE AS THE FOUNDATION FOR ENFORCEABLE REGULATION**

The Commission also is seeking comment on the creation of industry best practices for the review and approval of right-of-way and wireless facilities permitting.<sup>19</sup> NTCA suggests that the Commission should create a forum by which stakeholders such as the Commission,

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<sup>17</sup> Sacred Wind comments at 5.

<sup>18</sup> Sacred Wind comments at 5.

<sup>19</sup> NOI at 13, ¶4.

broadband and wireless service providers, and federal, state, and local agencies can share information and expertise in regard to the permitting process.

The FCC's Technical Advisory Committee (TAC) issued a report on April 22 with specific recommendations for streamlining the right-of-way permitting process and encouraging broadband infrastructure deployment.<sup>20</sup> NTCA agrees with CTIA<sup>21</sup> and PCIA-The Wireless Infrastructure Association<sup>22</sup> who suggest that the Commission should consider implementing some the TAC's Recommendations, chief among them among them Recommendation #1, in which the FCC should create a Municipal Race-to-the-Top awards/recognition program to provide top rankings for municipalities based on being the most broadband-friendly in terms of infrastructure planning, accommodation, and the permitting/approvals processes.<sup>23</sup> As the TAC asserts, "cities and towns would have an incentive to compete for this designation, making it a tool to further new investment and economic development."<sup>24</sup>

At the Commission mentions in the NOI, the National Telecommunications and Information Administration (NTIA) released a report in 2004, based upon recommendations from the Federal Rights of Way Working Group, that suggested improvements to federal right-

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<sup>20</sup> See Memorandum from Tom Wheeler, Chairman, Technical Advisory Council, to Chairman Genachowski and Commissioner Coops, McDowell, Clyburn and Baker (April 22, 2011), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-306065A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306065A1.pdf) ("Memo from TAC.")

<sup>21</sup> CTIA-the Wireless Association comments at 28.

<sup>22</sup> Comments of PCIA-The Wireless Infrastructure Association and the DAS Forum (A Membership Section of PCIA), *In the Matter of Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, WC Docket No 11-59 (filed July 18, 2011) at 52.

<sup>23</sup> Memo from TAC at 1.

<sup>24</sup> *Id.* at 1.

of-way policies, information collection requirements, and access fee standards.<sup>25</sup> Unfortunately, as CTIA notes in its initial comments, NTIA’s standard application form is of “limited utility” as it is often “supplemented by individual agencies” and NTIA’s targeted timeframe is often extended by the land management agency.<sup>26</sup>

Although the best practices discussed above will encourage land management agencies to streamline the permitting process, the industry is in need of clear, concise, and uniform regulations that are enforceable. Toward that end, these best practices could serve as the foundation for the development of that regulation.

#### **IV. CONCLUSION**

Universal broadband deployment, a central tenant of this administration and the Commission, depends upon the service provider’s ability to access public rights-of-way in a timely and affordable manner. NTCA continues to support increased uniformity in obtaining access to rights-of-way and in the wireless facilities siting process. NTCA recommends that the

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<sup>25</sup> See *Improving Rights-of-Way Management Across Federal Lands: A Roadmap for Greater Broadband Deployment*, Report by the Federal Rights-of-Way Working Group (2004), the U.S. Department of Commerce, National Telecommunications and Information Administration, available at [http://www.ntia.doc.gov/files/ntia/publications/frowreport\\_4-23-2004.pdf](http://www.ntia.doc.gov/files/ntia/publications/frowreport_4-23-2004.pdf).

<sup>26</sup> CTIA-the Wireless Association comments at 24-25.



Commission open a further proceeding to streamline the process of obtaining access to public rights-of-way and remove impediments to efficiently deploying broadband.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I, Adrienne L. Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 11-59, FCC 11-51, was served on this 30<sup>th</sup> day of September 2011 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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