19-70123, 19-70124, 19-70125, 19-70136, 19-70144, 19-70145, 19-70146, 19-70147, 19-70326, 19-70339, 19-70341, and 19-70344

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Sprint Corporation,
Petitioner,

City of Bowie, Maryland, et al.,
Intervenors,

vs.

Federal Communications Commission and United States of America,
Respondents.

On Petitions for Review of Orders of the Federal Communications Commission

LOCAL GOVERNMENTS' SUPPLEMENTAL EXCERPTS OF RECORD VOLUME 4

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LOCAL GOVERNMENT SUPPLEMENTAL EXCERPTS OF RECORD

LOCAL GOVERNMENT SUPPLEMENTAL EXCERPTS OF RECORD

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment	)	
By Removing Barriers to Infrastructure	)	WT Docket No. 17-79
Investment	)	
	)	
Revising the Historic Preservation Review	)	WT Docket No. 15-180
Process for Wireless Facility Deployments	)	

COMMENT OF THE LEAGUE OF MINNESOTA CITIES

I. INTRODUCTION

The League of Minnesota Cities ("LMC")[1] submits these comments in response to the Federal Communication Commission's ("FCC") Request for Comments on its Notice of Proposed Rulemaking and Notice of Inquiry, published on 5/10/2017, and entitled *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Revising the Historic Preservation Review Process for Wireless Facility Deployments*. In the Notices, the Commission declared its intent to conduct a comprehensive review of the legal framework for infrastructure deployment, to identify regulatory barriers, to examine the Commission's role in addressing these perceived barriers and to better understand the interaction between Sections 253 and 332(c)(7) of the Telecommunications Act ("TCA")[2].

[1] LMC is a statewide cooperative association representing 833 cities, 11 townships, 61 special districts and one joint power entity. Only 20 cities in Minnesota do not belong to LMC. The LMC was established in 1913 within the school of public affairs at the University of Minnesota. It became an independent association representing and serving cities in 1974. A board of directors, elected by the LMC membership, govern LMC.

[2] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* 82 Fed. Reg. 21761 (May 10, 2017).

the siting requests received by each community for wireless deployment to vary greatly. Indeed, to streamline a deployment process or even limit "fair and reasonable" compensations would disregard the individualized circumstances and challenges of each community and would impede the local governmental unit's well-established police power to regulate their ROWS and deny permits in instances of nonconformance.

In response to LMC inquiries, one city discussed how their community has expended significant time and money on a cityscape that includes decorative poles. Each pole can only handle a specific wind load given a square footage calculations of attachments, and, in that instance, the city decorative poles can handle the lights, one (1) 2'X4' banner and nothing else. Banners come off before Christmas decorations go up and the city had to deny the Chamber of Commerce's (and even their own public works department's) request for additional attachments. If adding something the size of 2'x2' exceeds wind load, then requiring this city to attach small cell or DAS (and possibly more than one due to requirement of allowing functionally equivalent providers) would require new poles, take up additional personnel time, would disrupt the planned cityscape in which the community invested and likely result in unforeseen additional expenditures.

Indeed, a one size deployment process or fee structure does not fit all. Depending on the community or the right of way, wireless facilities could (1) create land use conflicts and incompatibilities including excessive height of poles and towers; (2) create visual and aesthetic blights and potential safety concerns (based on the conditions, issues may arise from the excessive size, heights, noise or lack of camouflaging); (3) create unnecessary visual and aesthetic blight by failing to utilize alternative technologies or collocation because of streamlined process; (4) cause substantial disturbances to rights-of-way through installation and maintenance of wireless facilities; (5) create traffic and pedestrian safety hazards due to unsafe locations which could have been addressed during local government review of siting request; (6) result in a negative impact to the unique quality or character of the city in

general and (7) result in discrimination from an unavoidable prioritization of processing one type of permit over another.[64]

iii. Financial Burden. Local governments have a responsibility to negotiate in good faith to ensure communities are protected and compensated while also benefiting from the technologies that wireless companies can offer. The TCA allows "fair and reasonable compensation" and Section 253 preserves local government's right to manage its rights of way.[65] Courts have found cities have a proprietary or landlord interest in its publicly owned structures. By not recognizing cities' interest as a landowner of municipally owned structures on which small cell facilities attach, the FCC ignores judicial precedence.[66] The resulting limitation on compensation to just strict cost recovery doesn't accommodate the "other" costs related to siting that may arise, including, but not limited to, moving poles, adding poles, repairing equipment, moving other equipment in the ROW and accommodating other collocation requests. Additionally, by using the term "compensation," Congress intended more than mere "cost recovery". To make a different determination would result in cities losing their status as proprietary owners, resulting in taxpayers shouldering unanticipated costs to deployment, while, at the same time, allowing private business owners to decrease costs by using backhaul and electricity in the ROW and to make a profit off the provided service[67]. Without city structures already containing electricity and fiber, the wireless industry would have to pay market rates for locating or "renting" space

[64] Keep in mind, the "small cells" vary themselves. Some small cells have noisy cooling fans for computers; some ground equipment, like cabinets, can equal the size of a coffin or a refrigerator; some small cell facilities have back up batteries mounted on sidewalks or lawns and others use messy diesel generators for their backup.
[65] 47 U.S.C. § 253 (c).
[66] *Omnipoint Communications, Inc. v. City of Huntington Beach,* 738 F.3d 193, 198 (9th Cir. 2013); *Sprint Spectrum L.P. v. Mills*, 283 F.3d 404, 420 (2nd Cir. 2002).
[67] In a recent article, Crown Castle's CEO is reported to have stated that he "believes small cells could account for $9 billion to $10 billion per year". *Crown Castle's small-cell business is paying off, while American Tower remains focused on DAS,* Fierce Wireless (Gibbs, C., 6/8/2017) at http://www.fiercewireless.com/wireless/crown-castle-s-small-cell-business-paying-off-while-american-tower-remains-focused-das

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

In the Matter of:	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
	)	
	)	
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	)	

Comments on behalf of the following cities in Washington State: Bellevue, Bothell, Burien, Ellensburg, Gig Harbor, Kirkland, Mountlake Terrace, Mukilteo, Normandy Park, Puyallup, Redmond and Walla Walla.

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THE ROBBER BARON ERA IS HOPEFULLY OVER

Wireless providers often compare themselves to telephone and other wireline facilities when raising the issue of discrimination and equal access to the right-of-way. In our state, original wireline facilities were installed in the 1880s and 1890s. This was a time when the existence of telephone, telegraph and later electricity was of such benefit to communities that it outweighed any consideration of the impact of these facilities. This was also a time in our national history when environmental or aesthetic concerns were not a consideration. Rivers were dammed, and forests clear cut to further private business interests. Similarly, the telephone and electric companies placed poles in the public rights-of-way at their discretion.

Over time, we as a nation have come to appreciate the need for thoughtful regulation of our environment. With wireline facilities, cities determined that the undergrounding of the wires significantly enhances the public environment by protecting sensitive view corridors and the residential environment in general. These undergrounding activities also occur to enhance public safety and avoid an abundance of structures in the public rights-of-way that are distracting to drivers.[4] Further, undergrounding protects our electrical and telecommunications infrastructure in case of emergencies, such as major windstorms, which are quite common in the Pacific Northwest. Many of our communities have, either at public cost or through private contributions and initiatives, undergrounded substantial areas of the community.[5] While it is reasonable to provide access for small cell deployments to existing utility poles, the installation of new structures dedicated to small cell or macro cell use and the use of replacement structures different from or larger than the originals are subjects which require greater scrutiny. We should be permitted to require providers to assess other reasonable options such as roof-mounted equipment, panel antennas and co-location through "least intrusive means" tests before installing macro tower transmission facilities or new or larger replacement structures in the public rights-of-way, particularly in undergrounded areas, downtown districts, sensitive view corridors, historic districts and environmentally sensitive areas such as the shoreline.

As noted, our cities have made substantial investments in their downtown business core. Many downtown business districts declined in the 1980s due to competition from large malls and other specialty shopping areas. Since then, communities have invested heavily in revitalizing their downtown cores. The current regulatory framework encourages wireless providers to work with local governments to design replacement structures such as lighting fixtures to fit within the cities' designed streetscape. If cities are limited in their ability to require public right-of-way users to adhere to design standards (by unlimited discretion to place new poles in the public right-of-way, or to increase the height of existing poles) then our investment of public and private money will be significantly undercut. Why would a business entity spend the extra money if it has the right to locate its equipment, as it pleases, in any fashion that it pleases? Our

[4] "Traffic on nearly all streets and highways has increased considerably in recent years. With this increase in traffic has come an increase in accidents. Collisions with solid objects in proximity to the traveled portions of our streets and highways enhance the injuries resulting from these accidents. Furthermore, street obstructions created while carrying out improvements or while repairing, replacing, or relocating utility poles and wires increase the risk of accident. Requiring that all wires be placed underground at the same time that the street is improved promotes the public's safety by reducing the number of times a street must be blocked." *GTE v. Edmonds*, 21 Wn. App. 218, 223-224 (1978).

[5] *See* Exhibit A for examples of costs associated with recent undergrounding projects.

efforts to restore the vitality of our central business districts are bearing fruit as more of our citizens return to inner cities to live, shop and work.

One of the members of our larger consortium has undergrounded virtually its entire city and has embraced the dark sky theory to reduce light pollution by using low-rise light standards. Many undergrounding efforts were undertaken at the expense of the abutting property owners through assessment processes known in our state as Local Improvement Districts. In our communities, abutting property owners retain a fee interest in the underlying public right-of-way.[6] They literally "own" the right-of-way abutting their properties. Their concerns should be considered. The right-of-way is their front yard. Many of the regulations being sought in the petition not only harm local governments, but in Washington State, at least, have a significant effect on the ownership interests of abutting private property owners.

CITIES ARE THE STEWARDS OF THE RIGHTS-OF-WAY

As the Washington State Courts have told us, the primary purpose of the public right-of-way is transportation.[7] In addition to the primary transportation use, a wide variety of public utilities and other business interests hold franchises, which permit the use the public right-of-way to conduct business. Railroads, water, sewer, telephone, electricity, backhaul telecommunications providers and a wide variety of other uses have occupied the public right-of-way over the years. Use of the public right-of-way has and will continue to evolve. Any action by the Commission should take into account that continual evolution.

As local governments, we have made an enormous investment in our cityscape. The high-usage areas targeted by the providers for small cell deployments are often areas in which cities have made substantial investments in the form of downtown revitalizations. Our cities have spent hundreds of millions of dollars on their streetscapes. That investment comes in the form of undergrounding utilities, ornamental lighting, street furniture, decorative surfacing and other amenities which are an important part of downtown revitalization. No business entity should be given an individual right to override local communities' efforts to protect their aesthetic environment and undermine their significant investment. The providers often reference the investment they are about to make in the deployment of small cells in the right-of-way, but that substantial investment is dwarfed by our investment of local tax revenue, grant moneys and local private investment in the streetscape.

We believe the Commission may have been misled regarding the aesthetic impact of small cells as evidenced by the following statement: "Due to their size and placement, small cells may have

[6] *Finch v. Matthews*, 74 Wn.2d 161, 167-68 (1968).

[7] "Normally, the interest acquired by the public is but an easement. * * * [Citing cases.] But whatever the nature of the interest may be, it is held in trust for the public, and the primary purpose for which highways and streets are established and maintained is 'for the convenience of public travel' * * * [Citing cases.] In addition to this primary purpose, however, there are numerous other purposes for which the public ways may be used, such as for watermains, gas pipes, telephone and telegraph lines, etc. These are termed secondary uses and are subordinate to, and permissible only when not inconsistent with, the primary object of the highways. * * * [Citing cases]." *Winkenwerder v. Yakima*, 52 Wn.2d 617, 625-26 (1958) (quoting *State ex rel. York v. Board of County Commissioners*, 28 Wn.2d 891 (1947)) (asterisks and brackets in original).

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

In the Matters of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-84
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	

COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION

The American Public Power Association ("APPA"), on behalf of the Nation's publicly-owned electric utilities, submits these consolidated comments in response to the *Wireline Notice of Proposed Rulemaking and Notice of Inquiry* ("*Wireline NPRM/NOI*")[1], and the associated *Wireless Notice of Proposed Rulemaking and Notice of Inquiry* ("*Wireless NPRM/NOI*")[2], issued by the Federal Communications Commission ("Commission"). In these two interrelated

[1] *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking* ("*Wireline NPRM*"), *Notice of Inquiry* ("*Wireline NOI"), and Request for Comment,* WT Docket 17-84, released April 21, 2017. Notably, as published by the Federal Register in the Code of Federal Regulations, the abovementioned issuance did not include the "Request for Comment," so these comments do not directly address inquires in that portion of the document.

[2] *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking ("Wireless NPRM"), and Notice of Inquiry* ("*Wireless NOI*"), WT Docket 17-79, released April 21, 2017.

evidence has been put forward to suggest that careful pole attachment application review and processing is not taking place at a reasonable pace on a widespread, pervasive basis.

Relatedly, it should be recognized that while the wireless industry euphemistically characterizes their wireless facilities as "small," and no larger than a "pizza box," the reality is that these devices are only small *when compared to* traditional macrocell facilities, which are, in fact, very large. Simply calling this equipment "small" doesn't make it so. Indeed, one only need look at the descriptions of "small wireless facilities" introduced by wireless companies in bills submitted to state legislatures around the country to see that these are, by no means, "small" or "unobtrusive." For example, many of these bills would define a "small wireless facility" as having "(1) an antenna with an enclosure exterior displacement volume of no more than six cubic feet;" and "(2) associated equipment with a cumulative enclosure exterior displacement volume no larger than 28 cubic feet."[27] Also, these same bills often exclude many associated facilities, such as power and grounding facilities, from the calculation of the size of the small wireless facilities.

Safely accommodating these attachments on utility poles is much more complex than what is involved in accommodating a traditional horizontal wireline attachment in the communications space. Not only do wireless attachments take up significantly greater vertical space on the pole, but applicants often request that such attachments be situated in or above the electric space, raising significant safety and operational issues. Further, such attachments create issues related to radio frequency ("RF") exposure to linemen working on and around such facilities and create potential

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[27] See, for example, the definition of "small wireless facility" in pending Missouri House Bill H.B.656, "The Uniform Wireless Communication Infrastructure Deployment Act," http://www.house.mo.gov/billtracking/bills171/hlrbillspdf/1391H.02C.pdf

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of

ACCELERATING WIRELESS BROADBAND DEPLOYMENT BY REMOVING BARRIERS TO INFRASTRUCTURE INVESTMENT	))))	WT Docket No. 17-79

COMMENTS OF SMART COMMUNITIES AND SPECIAL DISTRICTS COALITION

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Particularly for residential areas, and for areas where all other utilities are underground, the Commission should recognize that a change from a truly small facility to one that is substantially more massive *is* significant. If local governments can allow small cells and yet keep them small, the initial approval process is simpler. One way for the Commission to address the matter is to recognize that in particular areas, any changes beyond a small percentage change in any component is significant, as is the addition of ground cabinets. Given the examples we now have of the size of some "small cells," this is actually critical to ensuring the Commission's rules comport with the statute. But it also is important for the Commission to interpret Section 6409 in a way that makes it possible for localities to create and enforce safe harbors for dense deployment of wireless facilities. As the CTC Declaration explains, many communities are working to create development processes that allow for more straightforward deployment of wireless facilities, but the viability of those processes depends on being able to enforce adopted design standards for an area.[78]

2. *New Shot Clock Rules Reward Incomplete Applications to the Detriment of Properly Filed Applications*

We have discussed problems with incomplete applications above. Smart Communities believe that some applicants are responding to the fact that the FCC rules reward an applicant that files an incomplete application.

Under the current rules, there is no penalty in time lost for an incomplete application, but there are rewards should the reviewing body miss their 30-day or subsequent 10-day shot clocks. In those cases, the period for review of the application cannot thereafter be tolled for incompleteness,[79] and even if the reviewing body does not miss the 30- or 10-day shot clock, an

[78] CTC Declaration at p. 23.

[79] 2014 Infrastructure Order ¶ 218.

CTC report points out, most of what industry seeks to characterize as "small cell" deployments are not designed to serve areas that lack broadband service. Many of the deployments are occurring in areas where residents have multiple options for high-speed access to the Internet, whether via licensed or unlicensed frequencies. Many of the deployments (in Montgomery County for example) are occurring in areas where hundreds of facilities have already been authorized.[115] The issue is usually the quality of the service, and in some cases, those concerns may have to do with the delivery of services (like video services) that are not the focus of Section 332(c)(7).

The term "small cell" is typically used to describe an installation that serves a small area – not to distinguish between facilities that are "small v. those that are large."[116] For purposes of this NPRM, it is important to recognize that what falls within the rubric of a "small cell" at any given site can actually involve many different pieces of equipment, some of which could be quite large and quite intrusive. Thus, as CTC explains, at any given location, a "small cell" may involve a support structure (ranging in size from a Mobilitie tower to a more conventional utility pole); an antenna; radio units; power supplies/electric meters/disconnects/cabling; and potentially back-up power supplies.[117] Some of these facilities may be mounted on the tower or pole; some may be placed in a vault, and some may be ground-mounted. A facility might look like any of these:

[115] *See* Mobilitie Docket Montgomery County Comments.

[116] CTC Declaration at p. 2.

[117] CTC Declaration at p. 6.

 AT&T "Small Cell," Oakland	 Mobilitie "Small Cell"	 ExteNet "small cell," San Francisco

The CTC report includes additional examples. As CTC explains, small cell sizes may approach or exceed the size of many monopoles or macrocells.[118] Indeed, many small cells may actually utilize the same equipment that is utilized on traditional macrocells, but the equipment may serve a smaller physical area because of placement or powering.

The problems presented by various "small cell" installations can vary dramatically and argue against adoption of a unique and shorter "shot clock" for these applications. The Mobilitie 120 foot "small cell" shown in the photograph above will require installation of a significant foundation that could extend well below ground level and require analysis of the soil underneath the facility and the support required to prevent the tower from falling. It could also, of course, raise Section 106 Historic Preservation Act issues.[119] The AT&T facility pictured on the previous page may create significant aesthetic concerns if proposed in a residential area that

[118] CTC Declaration at pp. 6-8.

[119] Exhibit 5 is a small cell proposal for a historic district in Monroe, Michigan and the City's response to a facility 40" in diameter with a 50" base plate, and rises 100' above ground. The tower and structure are proposed to be located very near a roadway, and with a foundation of unspecified size.

would not be presented if located in an industrial area. The placement of any new structure in the rights of way, whether categorized as a small cell or not, can raise significant issues for roadway engineering, safety, and coordination with other utilities.[120] The time required to address these issues is not easily limited by adopting a definition of "small cell" unless small is literally defined to exclude towers and new structures altogether, to only apply to modifications of existing utility poles where there is no need for any excavation or strengthening, and where all facilities associated with a structure are in fact "small" and not capable of expansion. A more favorable shot clock for "small cells" will add complications without accurately identifying a class of facilities for which review time may logically be shortened. It is worth emphasizing that there have been very few cases that in fact turn on a failure of a community to act in a timely way, particularly once the industry applicant acknowledges local governance rights over their public rights-of-way, and industry has never shown that a shorter time frame is required or would significantly to cut deployment times, given, for e.g., the time required prior to beginning construction (*e.g.*, for make-ready work).

As suggested above, as a factual matter, the deployment of small cells in the public rights-of-way presents problems, including safety problems, that are significant, and may involve significant externalities.

Thus, as Mr. Puuri points out, the placement of new structures in the public rights-of-way creates an ongoing risk to public safety that cannot be avoided.[121] The installation of wireless facilities can also create long-term stresses on the road bed, interfere with drainage, and make it more expensive to maintain and expand the roadway, or to improve other utilities. The cost to

[120] Puuri Declaration at p. 2.

[121] Puuri Declaration at p. 2.

local governments that result from the addition of new structures to the public rights-of-way may be millions or billions of dollars annually.[122]

Moreover, the placement of small cells – depending on their size and visibility – may affect neighboring property values. As Mr. Burgouyne explains, the literature suggests that placement of utility infrastructure aboveground does affect property values.[123] That impact is related to the size and visibility of the installed structures. As even a small reduction in value of homes in a neighborhood may have multi-million dollar effects – it becomes very important to minimize the impacts of proposed installations.

This is particularly so since, as the CTC Declaration points out, providers often do have alternative placement options, and technology may permit provision of advanced services without the negative impacts.[124] Indeed, if localities can respond to the potential problems by establishing placement requirements, that may reward innovators who can design networks that minimize impacts. Rather than discouraging deployment, strong local standards may encourage companies who have traditionally designed and built municipal infrastructure to develop innovative designs for deployment of next generation wireless.[125]

The stakes are enormous. Smart Communities call on the Commission to recognize that actions with a singular focus on facilitating deployment without any consideration of the

[122] The costs associated with using the rights of way can be significant. The Puuri Declaration includes simple example of costs associated with making a roadbed and roadside safe for a single small cell installation where there are almost no competing utilities; the road is a rural road, and the design of the facility will not affect the roadway itself in any way; and no special construction is required for the facility. The costs listed are costs associated with modifying the roadside, and do not include costs associated with reviewing plans and developing specifications for the site; do not include costs associated with inspecting the installation during construction or periodically thereafter. The estimates do not include joint and common costs associated with maintaining the road and the roadside areas so that those are safe for all users, and it does not include special costs that may arise when the roadway or other utilities need to be moved. It does not reflect costs associated with responding to emergencies involving the structure. Those costs translate into time and effort required to review and process applications.

[123] Burgoyne Declaration at p. 3.

[124] CTC Declaration at p. 16.

[125] CTC Declaration at p. 22; ECONorthwest Declaration at p. 5.

community context could have enormous, and negative economic effects, affecting millions (if not billions) of dollars in community investments made not just for aesthetic reasons, but for financial and health and safety reasons.

To provide one example: Myrtle Beach is one of the nation's most popular tourist destinations, and the most popular destination in South Carolina, attracting more than 17 million visitors per year to a city with a permanent population of roughly 30,000. That tourism – primarily driven by the area's beaches, golf courses and attractions – has been the engine for tremendous growth in the City and the nearby entire Grand Strand, in both Horry County and Georgetown County. Myrtle Beach's unemployment rate is below the national average, while the metropolitan area growth rate is the second fastest in the nation (2014-2015 Census estimate).[126]

Myrtle Beach accounted for nearly four percent (3.94 percent) of the state's 2014 retail sales. Tourism is South Carolina's main industry, and the Grand Strand is the engine behind it. Negative impacts on tourism in Myrtle Beach have a ripple effect across state government and state coffers, since Horry County and Myrtle Beach are "donor" locations within the state, providing state funds for other locations that do not have that tourism base. Conversely, positive impacts on tourism generate jobs, sales tax, accommodation taxes, hospitality taxes and economic stability both locally and statewide. The economic impact is astounding. In 2015, tourism generated $20.2 billion in economic activity statewide, a 6.1 percent increase over 2014, and the fourth straight year of growth. Tourism is South Carolina's largest industry, supporting one in 10 jobs and generating $1.5 billion in state and local tax revenues.[127]

[126] See http://www.myrtlebeachonline.com/news/local/article67886402.html.

[127] https://greenvillejournal.com/2017/02/22/officials-tourism-grew-to-a-20-2-billion-for-sc-in-2015/

Maintaining and responding to that growth is a challenge. The City competes nationally with Las Vegas and Orlando at convention center level; but as it attracts most of its non-convention visitors from the East Coast, including the Midwest and Canada, it must compete with other coastal destinations along the east coast shoreline.[128] To compete, the City has developed a comprehensive and holistic approach to enhance its tourism economy that has steadily grown since the 1950s. The public investment includes more than $80 million in the Myrtle Beach Convention Center, the Convention Center Hotel and the Myrtle Beach Sports Center. The City has planned, financed and worked hard to develop the 10 mile commercialized Ocean Boulevard, its public beaches and Boardwalk, investing more than $100 million in public improvements to streets, sidewalks, the boardwalk, underground utilities, deep-water ocean outfalls, public parks, new streets and new recreational spaces. The City of Myrtle Beach partnered with the local electric utility, Santee Cooper, to fund the removal of overhead utility lines from major public streets and thoroughfares, spending more than $30 million on that effort since 1999. The City has aggressively incorporated this holistic approach to growing its tourism economy through long-range capital improvement plans and budgets. The City incorporates aesthetic requirements into every development agreement, every Municipal Improvement District, every Tax Increment Financing District and every approval process. How Myrtle Beach looks is a key determinant of how well its economy will function and grow.

Moreover, and on a practical level, such a holistic approach is required for public safety. The area is subject to hurricanes, so it seeks to avoid preventable damage and limit repair time through strict building codes and adherence to FEMA's and other agencies guidelines. An

[128] http://www.myrtlebeachareachamber.com/research/docs/24theditionstatisticalabstract.pdf

obvious goal is to limit the number of structures that can create hazards to the public and to property during high winds. Moving utilities underground was part of those efforts.

Most of the tourists who visit Myrtle Beach arrive by automobile, but they rightly expect to walk and bicycle through the central beach areas and residential districts, which means that the City has a significant interest in minimizing obstructions in the public rights-of-way. Looking ahead, the City has identified as much as $2 billion of required road improvements,[129] while facing significant reductions in available state and federal funding – additional infrastructure that may make improvements more difficult simply adds to those costs.

Indeed, understanding these future growth issues, the City met with all interested utilities during the underground conversion discussion to ensure that the underground infrastructure would include sufficient conduit and other structures to avoid future trenching, road blockages or other retrofitting.

The City is now receiving requests that it allow installation of above-ground towers on its beach public right-of-way. Installation in the public right-of-way is *not* needed to provide service. The beachfront is lined with multi-story buildings and private parking lots (with lighting structures) that could easily support placement of wireless facilities. In fact, off-road placement on private property may lead to more coverage, as it would enable a provider to better serve the hotels that line the beach. The main reason providers wish to use the public property appears to be cost – the idea that it will be cheaper for them to place facilities in the public's public rights-of-way, rather than to secure appropriate private property, even if the impact on surrounding businesses, tourism and employment could have long-term negative consequences that are far greater than the cost of negotiating to use private property.

[129] http://www.myrtlebeachonline.com/news/local/article67886402.html

EXHIBITS
WT DOCKET NO. 17-79

EXHIBIT A

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

In the Matter of	)	
	)	
Streamlining Deployment of Small Cell Infrastructure By Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling	)	WT Docket No. 16-421

COMMENTS OF THE CITIES OF SAN ANTONIO, TEXAS; EUGENE, OREGON; BOWIE, MARYLAND; HUNTSVILLE, ALABAMA; AND KNOXVILLE, TENNESSEE

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March 8, 2017

Indeed, neither Section 253 nor Section 332(c)(7) "preempt[s] nonregulatory decisions of a local governmental entity . . . acting in its proprietary capacity."[36] Thus, neither provision applies to small cell/DAS or other wireless requests for access to municipal buildings, towers, light poles, or utility poles. Construing Section 332(c)(7) or Section 253 to limit a municipality's ability to permit or deny access to municipal property for wireless siting would render either provision an impermissible interference with and burden on the municipality's control of its own property.[37]

Whether the proprietary exception to Sections 332(c)(7) and 253 applies to wireless requests to access the local ROW in a particular jurisdiction depends on whether or not the local ROW is subject to the municipality's proprietary control.[38] This is a matter of state or local property law concerning the status of the ROW, which varies not only from state to state, but also from locality to locality within a state, and sometimes even from street to street within a locality.[39] This is therefore not an area where there is, or legally can be, uniformity, or on which the Commission legally can or should attempt to impose uniformity. The Commission simply lacks the authority, under Section 332(c)(7) or any other provision of law, to rewrite or remold the state property law status of local ROW that belongs neither to the FCC nor any other arm of the federal government.

Mass./R.I., Inc., 507 U.S. 218, 226-27 (1993) ("When a State owns and manages property . . . it must interact with private participants in the marketplace. In so doing, the State is not subject to pre-emption by the [federal statute], because pre-emption doctrines apply only to state *regulation*." (emphasis in original)).

[36] *Sprint Spectrum, L.P. v. Mills,* 283 F.3d 404, 421 (2nd Cir. 2002) ("[W]e conclude that the Telecommunications Act does not preempt nonregulatory decisions of a local governmental entity or instrumentality acting in its proprietary capacity[.]"); *Omnipoint Commc'ns, Inc.*, 738 F.3d at 200; *see also N.Y. State Thruway Auth. v. Level 3 Commc'ns, LLC*, No. 1:10-cv-0154, 2012 U.S. Dist. LEXIS 45051, at *18-19 (N.D.N.Y. March 30, 2012) (considering proprietary exemption in the context of Section 253); *Coastal Commc'ns Serv., Inc. v. City of New York*, 658 F. Supp. 2d 425, 443 (E.D.N.Y. 2009) same).

[37] *See Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency,* 535 U.S. 302, 335-36 (2002).

[38] Municipal decisions regarding access to other municipal property, such as light poles, are clearly proprietary activities, and accordingly, there can be no serious suggestion that either Section 332(c)(7) or Section 253 applies to those types of decisions.

[39] *See, e.g., Ill. Bell Tel. Co. v. Vill. Of Itasca*, 503 F. Supp. 2d 928, 934-35 (N.D. Ill. 2007) (discussing Illinois law concerning municipal interests in public streets).

STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

June 15, 2017

The Honorable Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

RE: Notice of Proposed Rulemaking (NPRM) on Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.
WT Docket No. 17-79

Dear Secretary Dortch:

The State of Delaware, Department of Transportation (DelDOT) is submitting the attached comments concerning Docket Number 17-79, Notice of Proposed Rulemaking (NPRM) on Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.

Although Docket Number 17-79 poses many questions toward county and local governments, DelDOT is submitting these comments from the perspective of the State of Delaware. Delaware is the second smallest state in the nation at only 1,982 square miles. However, DelDOT has responsibility for 5,464 centerline miles of roadway. That is almost ninety percent of all the roadways in Delaware. DelDOT has by far the greatest involvement in the State of Delaware with respect to the issues being contemplated in your public notice. The county governments in Delaware have no responsibility for roadways or own roadway rights of way. Each of the 57 municipalities in Delaware does have the responsibility for municipal roads and may respond separately to your public notice.

Thank you for the opportunity to offer comment. Should you wish to discuss any of our comments more fully, please feel free to contact me at 302-760-2305.

Sincerely,

Robert B. McCleary, P.E.
Chief Engineer

RM:cf/ls

Cc: Honorable Jennifer Cohan, Secretary, Department of Transportation
Bob Cunningham, Chief of Right of Way Section, DelDOT
Monroe Hite III, Manager, Right of Way Engineering, DelDOT
Eric Cimo, Utilities Engineer, DelDOT

constructed. DelDOT does not perform the NHPA and/or NEPA application process for utilities who operate within the State ROW nor does DelDOT approve these requests. Delaware State Historic Preservation Office (DE SHPO) is a division of the Delaware Department of State[3], not the Department of Transportation. DelDOT does not have jurisdiction over DE SHPO. DelDOT again does not have any authority over the Delaware Department of Natural Resources and Environmental Control for environmental permitting. To the extent that NHPA or NEPA permitting requirements were waived or relaxed by the FCC only for the wireless industry; this action would be discriminating to all other entities (persons or businesses) that must follow these same rules for any construction project. All utilities in the State ROW must follow these same rules as specified in the DelDOT Utilities Manual regulation section 3.4.5 OTHER PERMITS[4]. The utility is solely responsible to acquire these permits before any work is performed within the ROW.

To the extent that a combined process could be developed which accounts for the protection of the many natural and cultural resources under the many federal and State level statutes, DelDOT would support such an approach.

Response to Paragraph 93: Del DOT does not currently charge an up-front application fee for utility permits or for use and occupancy agreements or a reoccurring fee for use of the State ROW. However, Delaware House Bill 189 is currently under review by the Delaware General Assembly. This bill, written and supported by the wireless industry could allow DelDOT to charge up to $100.00 per small cell facility. Delaware House Bill 189 states"…*wireless providers shall pay the actual, reasonable costs borne by the Department attributable to the processing and administration of a program to authorize the accommodation, review and issuance of construction permits, and conduct inspections of wireless facilities in the ROW if necessary. Such fees shall not exceed $100 for each small cell facility on a permit application. If there are additional non-recurring expenses associated with inspections for new installations or construction, wireless providers shall pay the actual, reasonable cost borne by the Department attributable to each provider's inspections where it exceeds the permit fee collected.*" [5] DelDOT urges the FCC to consider adoption of similar language at the federal level.

Responses to Paragraph 96: DelDOT has both proprietary and regulatory authority over the State's rights of way (ROW) in Delaware. All the State-owned ROW in Delaware was acquired by DelDOT in fee simple on behalf of the State of Delaware through Delaware Code, Title 17, §137 (a) (1) [6]. Further, all existing easements were extinguished at the time of the original acquisition. DelDOT does not grant new easements, so no other entity has a real property interest within DelDOT ROW. The Department owns all real property interests and rights in the ROW. However, DelDOT has granted many public utilities

[3] http://history.delaware.gov/index.shtml

[4] http://deldot.gov/information/business/drc/manuals/utilities_manual_2008_may_5.pdf pg. 25

[5] http://legis.delaware.gov/json/BillDetail/GenerateHtmlDocument?legislationId=25823&legislationTypeId=1&docTypeId=2&legislationName=HB189

[6] http://delcode.delaware.gov/title17/c001/sc03/

franchise rights within the ROW, which is a license for use and can be revoked. DelDOT's regulatory control over the State-owned ROW derives from Delaware Code, Title 17, §131 (a), which states, "*All the public roads, causeways, highways and bridges in this State which have been or may hereafter be constructed, acquired or accepted by the Department of Transportation shall be under the absolute care, management and control of the Department.*"[7]

The FCC has asked," *How should the line be drawn in the context of properties such as public rights of way (e.g., highways and city streets), municipally-owned lampposts or water towers, or utility conduits? Should a distinction between regulatory and proprietary be drawn on the basis of whether State or local actions advance those government entities' interests as participants in a particular sphere of economic activity (proprietary), by contrast with their interests in overseeing the use of public resources (regulatory)?"* "Economic Activity" is not allowed in the State of Delaware ROW. ROW is first and foremost a transportation corridor, not a utility or economic corridor. When Title 23 federal funding is used to acquire real property it must be for the transportation project in an approved Statewide Transportation Improvement Program (STIP) as per 23 CFR §710.203(a)(1), not for economic projects.[8] Because DelDOT has both proprietary and regulatory authority over the State's rights of way (ROW) any utility that is placed, within the ROW has been placed based upon the provisions of 23CFR §645.209, Utility Accommodation[9] and the DelDOT Utility Manual regulation. The Department does not allow utility attachment to any transportation equipment without a full engineering analyses of the utility and how it will impact the Department's structure. Lamp posts, traffic signal poles, and traffic informational structures, have not been designed or tested with wireless industry equipment attachments. As such, these poles and structures may or may not perform as they were originally engineered to perform should they be impacted by errant vehicles or high winds with new wireless attachments on existing poles. For the reason of safety, only Department equipment is authorized and approved to be installed on these poles and structures.

Even though DelDOT could enter into economic interests as the proprietor of the ROW, the Department does not do so over concerns that accommodation of private uses in the ROW will become unmanageable. While wireless services offer significant benefit to their customers, wireless providers are not public utilities under Delaware Code, Title 26, §102 (2) [10]. They are private corporations operating for a private use. As such, DelDOT cannot extend franchise rights to them. If the Department were to enter into a Use & Occupancy agreement with wireless providers, the Department would be

[7] http://delcode.delaware.gov/title17/c001/sc03/

[8] https://www.ecfr.gov/cgi-bin/text-idx?SID=8b40366d308a8d8f5b088dc37f1b6fcb&mc=true&node+se23.1.710_1203&rgn=div8

[9] https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=c5f1ebfb6613c31cafd46f49f5b9e434&ty=HTML&h=L&r=PART&n=23y1.0.1.7.26#se23.1.645_1209

[10] http://delcode.delaware.gov/title26/c001/sc01/index.shtml

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

IN THE MATTER OF Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	WT Docket No. 17-79

JOINT COMMENTS OF LEAGUE OF ARIZONA CITIES AND TOWNS, LEAGUE OF CALIFORNIA CITIES and LEAGUE OF OREGON CITIES

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Filed: June 15, 2017

EXHIBIT 1

Joint Comments of Arizona Cities and Towns, League of California Cities, California State Association of Counties, New Mexico Municipal League, League of Oregon Cities & Scan NATOA, Inc. Filed in WT Docket No. 16-421

[appears behind this cover]

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

IN THE MATTER OF	
Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Practices	WT Docket No. 16-421
Mobilitie, LLC Petition for Declaratory Ruling	

JOINT COMMENTS OF LEAGUE OF ARIZONA CITIES AND TOWNS, LEAGUE OF CALIFORNIA CITIES, CALIFORNIA STATE ASSOCIATION OF COUNTIES, NEW MEXICO MUNICIPAL LEAGUE, LEAGUE OF OREGON CITIES & SCAN NATOA, INC.

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Filed: March 8, 2017

the following (anecdotal) examples since the *2009 Declaratory Ruling* and the *2014 Infrastructure Order*:

Misrepresenting Legal Authority and/or Proposed Facilities. The Commission's rules prohibit applicants from making false or misleading statements to the Commission.[33] "[I]t is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency."[34] Yet, the Commission's rules neither punish nor prohibit false or misleading statements made to local governments.

Although local laws often prohibit such falsehoods and authorize a denial as a consequence, federal bans on effective prohibitions under both § 253 and § 332(c)(7) may allow an applicant who knowingly lied to a State or local government to obtain an order from a federal court to order the permits to be issued. Without real consequences for misrepresentations in permit applications, the review process is often delayed as local governments sift through applications to separate facts from falsehoods.

The following examples illustrate common misrepresentations about the applicant's legal authority and/or proposed facilities:

- Mobilitie notoriously operated under various alter egos with governmental-sounding names. Figure 1 contains annotated project plans presented to the City of Thousand Oaks, California, and depicts the type of alter ego name that Mobilitie has used for plans presented to many cities in various other states.

[*space intentionally left blank*]

[33] *See* 47 C.F.R. § 1.17.
[34] *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000) (citing *Swan Creek Commc'ns, Inc. v. FCC*, 39 F.3d 1217, 1221–1224 (D.C. Cir. 1994) and *Garden State Broad. Ltd. v. FCC*, 996 F.2d 386, 393–94 (D.C. Cir. 1993)).

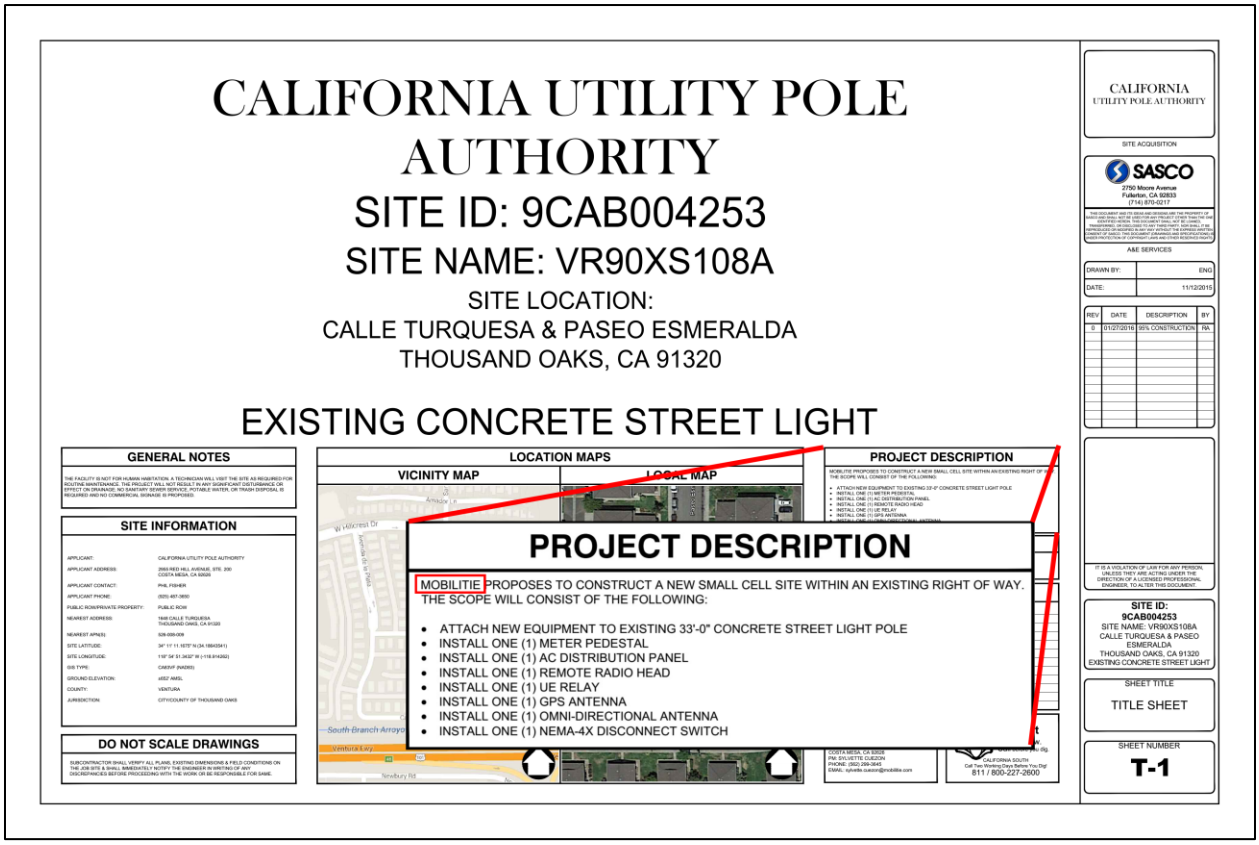

Figure 1

One plausible reason why a deregulated, private corporation that installs and operates wireless equipment on utility poles would assume a name like the "California Utility Pole Authority" is that may have hoped to convince some actual governmental authorities to grant special benefits or exemptions, or to perceive that only state-level oversight is required, precluding local jurisdiction approvals.

- Numerous entities, which include Mobilitie, Crown Castle, ExteNet and Verizon Wireless, misrepresent that their status as either a "telephone corporation" or "CLEC" under state law entitles them to the same regulatory treatment as electric, water and natural gas corporations.[35]

[35] *See, e.g.*, Letter from Michael van Eckhardt, AT&T, to John Conley *et al.*, City of Vista, Cal., at 3 (Feb. 8, 2017) (objecting to any concealment requirements for new small cells in the public rights-of-way); Letter from Paul Albritton, Counsel for Verizon Wireless, to John Conley *et al.*, City of Vista, Cal., at 3 (Feb. 8, 2017) (contending that state law prohibits any inquiry into the technical reasons why an applicant desires a new small cell in a particular location); Letter from Michael Shonafelt, Counsel for Crown Castle, to Mayor Clyde Roberson *et al.*, City of Monterey, Cal., at 4 (Oct. 17, 2016) ("Crown Castle's special regulatory status as a CLEC gives rise to a vested right under Public Utilities Code section 7901 to use the ROW . . . [and] . . . Crown Castle contends that a discretionary use permit – like that required by the City in this case – constitutes an unlawful precondition for a CLEC's entry into the ROW") (citing *See T-Mobile W. LLC v. City and Cnty. of San Francisco*, 208 Cal. Rptr. 3d 248 (Ct. App. 2016) (review granted by California Supreme Court on 12/21/16, S238001); Letter from Paul Albritton, Counsel for Verizon Wireless, to Chair Daniel Fletcher *et al.*, City of Monterey, Cal., at 1-2 (Sept. 13, 2006) ("[R]ight-of-way wireless facilities should be permitted through an encroachment permit, not a use permit,

- In August 2016, the Minnesota Department of Commerce sent a letter to Mobilitie demanding that "Mobilitie cease from asserting that PUC authority has exempted it from the regulatory requirements of local government units."[36] News stories about similar misrepresentations to cities and counties seem to follow Mobilitie in several other states, as well.[37]

- In Clayton, California, Mobilitie initially contacted city staff to request information on permitting procedures and a potential right-of-way use agreement.[38] After city staff provided Mobilitie with guidelines and instructions for each process, Mobilitie ended contact with city staff.[39] Several months later, a representative from CA Transmission Network, LLC (one of Mobilitie's corporate alter egos) contacted the city engineer and falsely asserted that CA Transmission Network, LLC was a California Public Utilities Commission-regulated public utility.[40] To date, the California Public Utilities Commission still has not granted CA Transmission Network, LLC's application for a Certificate of Public Convenience and Necessity ("CPCN").[41] Mobilitie's representative further indicated that it would submit construction permit applications for two 120-foot transport poles rather than follow the procedures initially outlined by city staff. When questioned about the proposed locations, staff discovered that the permits that Mobilitie requested from Clayton to deploy a 120-foot transport pole were for a location in an adjacent jurisdiction.[42]

- Mobilitie's representatives falsely claimed to city staff in Pleasanton, California, that it received approvals from the City of Thousand Oaks, California, to install unconcealed facilities on streetlights in a residential neighborhood. Mobilitie also provided project

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because Verizon Wireless, as a telephone corporation, is authorized to use the right-of-way under California Public Utilities Code § 7901."); Letter from David Bronston, counsel for Mobilitie, LLC, to Andrew J. Benelli, City of Fresno, Cal., at 1 (Apr. 8, 2016) ("Applicant has been granted a Certificate of Public Convenience and Necessity by the California Public Utilities Commission and is a utility under the laws of the state. As a public utility, Applicant is entitled to access to the public rights of way.").

[36] Letter from Diane Dietz, Minn. Dept. of Commerce, to Chester Bragado, Mobilitie, LLC (Aug. 4, 2016).

[37] *See, e.g.*, Alyssa Stahr, *Minnesota Utilities Warn Mobilitie About Misrepresentation*, INSIDETOWERS, *available at*: https://insidetowers.com/cell-tower-news-minnesota-utilities-warn-mobilitie-misrepresentation/ (last visited Feb. 27, 2017) (describing controversies in Virginia); *Officials Feel Mobilitie is Disingenuous as Moratoriums Mount Throughout the Nation*, WIRELESSESTIMATOR (Nov. 26, 2016), *available at*: http://wirelessestimator.com/articles/2016/officials-feel-mobilitie-is-disingenuous-as-moratoriums-mount-throughout-the-nation/ (describing controversies in Florida, California and Connecticut); J. Sharpe Smith, *Municipalities, Mobilitie have a Meeting of the Minds*, AGL (Oct. 11, 2016), *available at:* http://www.aglmediagroup.com/municipalities-mobilitie-have-a-meeting-of-the-minds/ (describing controversies in Connecticut).

[38] *See, e.g.*, Email from Savir Punia, Mobilitie, LLC, to Mindy Gentry, City of Clayton, Cal. (Aug. 31, 2015, 9:48 AM); Email from Mindy Gentry, City of Clayton, Cal., to Savir Punia, Mobilitie, LLC (Sept. 17, 2015, 9:55 AM).

[39] *See* Email from Richard Tang, Mobilitie, LLC, to Mindy Gentry, City of Clayton, Cal. (Oct. 27, 2016, 5:00 PM).

[40] *See* Email from Alexander Paul, Interstate Transport and Broadband, LLC for CA Transmission Network, to Rick Angrisani, City of Clayton, Cal. (Mar. 21, 2016, 7:23 AM).

[41] *See In the Matter of the Application of CA Transmission Network, LLC*, Docket No. A1608012 (Aug. 19, 2016).

[42] *See* Email from Rick Angrisani, City of Clayton, Cal., to Alexander Paul, Interstate Transport and Broadband, LLC for CA Transmission Network, LLC (Mar. 21, 2016, 7:30 AM).

plans to Pleasanton city staff for the alleged Thousand Oaks facilities as evidence. When Pleasanton contacted Thousand Oaks, they discovered that Mobilitie had not yet even contacted Thousand Oaks, much less applied for city permits for those facilities. A similar scenario occurred in San Dimas, California, when Mobilitie falsely claimed that other nearby jurisdictions had approved 120-foot poles in the public rights-of-way.

- In La Crosse, Wisconsin, Mobilitie's representatives presented information about Mobilitie's facilities that falsely represented their physical size and scale.[43] The presentation included the slide shown in Figure 2, below.

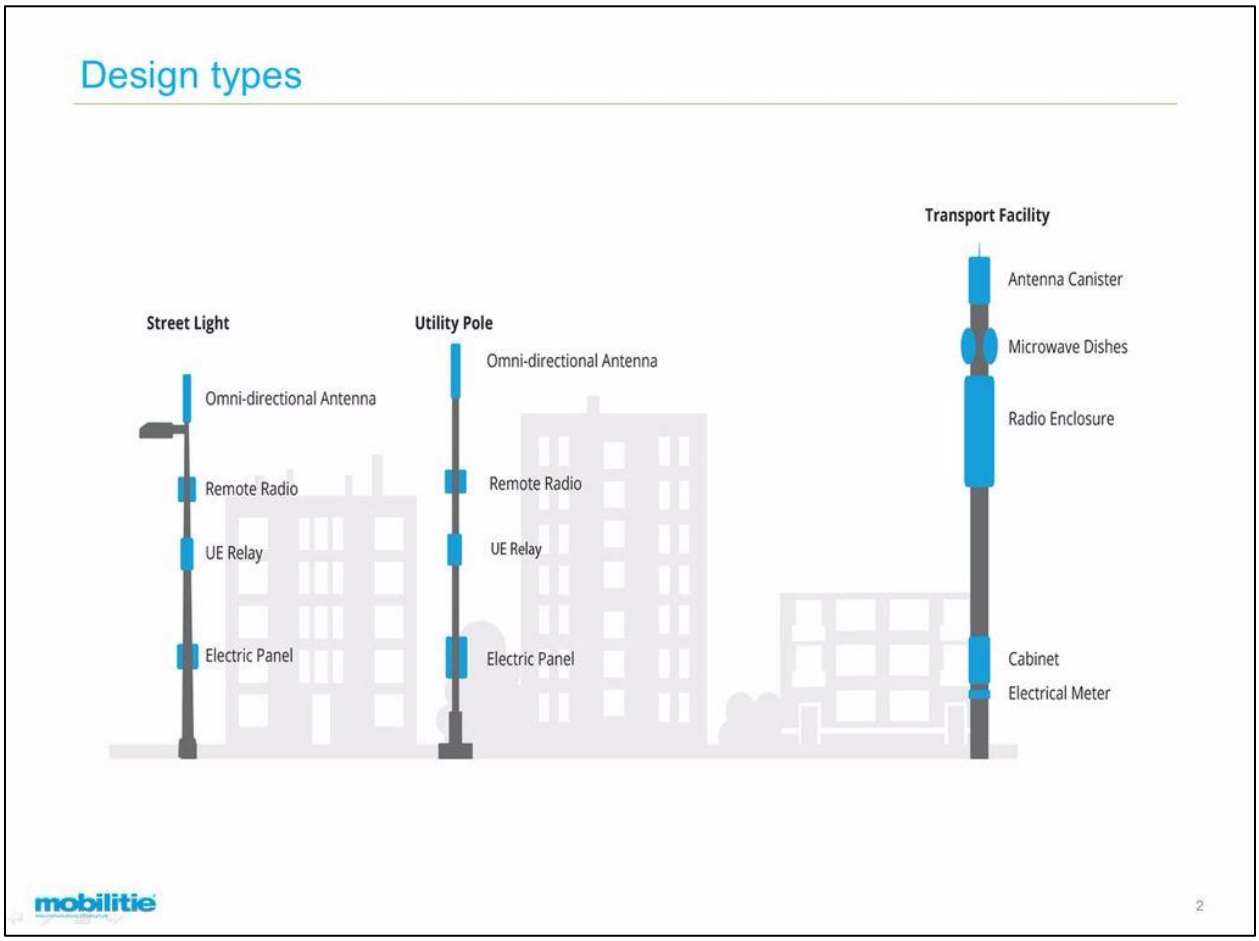

Figure 2: Power Point Slide Presented by Mobilitie to La Crosse, Wisconsin, Public Works Board on Jan. 23, 2017.

Figure 2 suggests that all Mobilitie's facilities are approximately the same size. However, as illustrated in the scaled graphic in Figure 3, below, the graphic grossly understates the actual differences between Mobilitie's facilities.

[43] *See* "Mobilitie Presentation" at 10 (Jan. 23, 2017), *available at*: http://cityoflacrosse.legistar.com/LegislationDetail.aspx?ID=2930404&GUID=D4B0E9C5-A313-48D1-97B4-EABD788E7E5B&Options=&Search=.

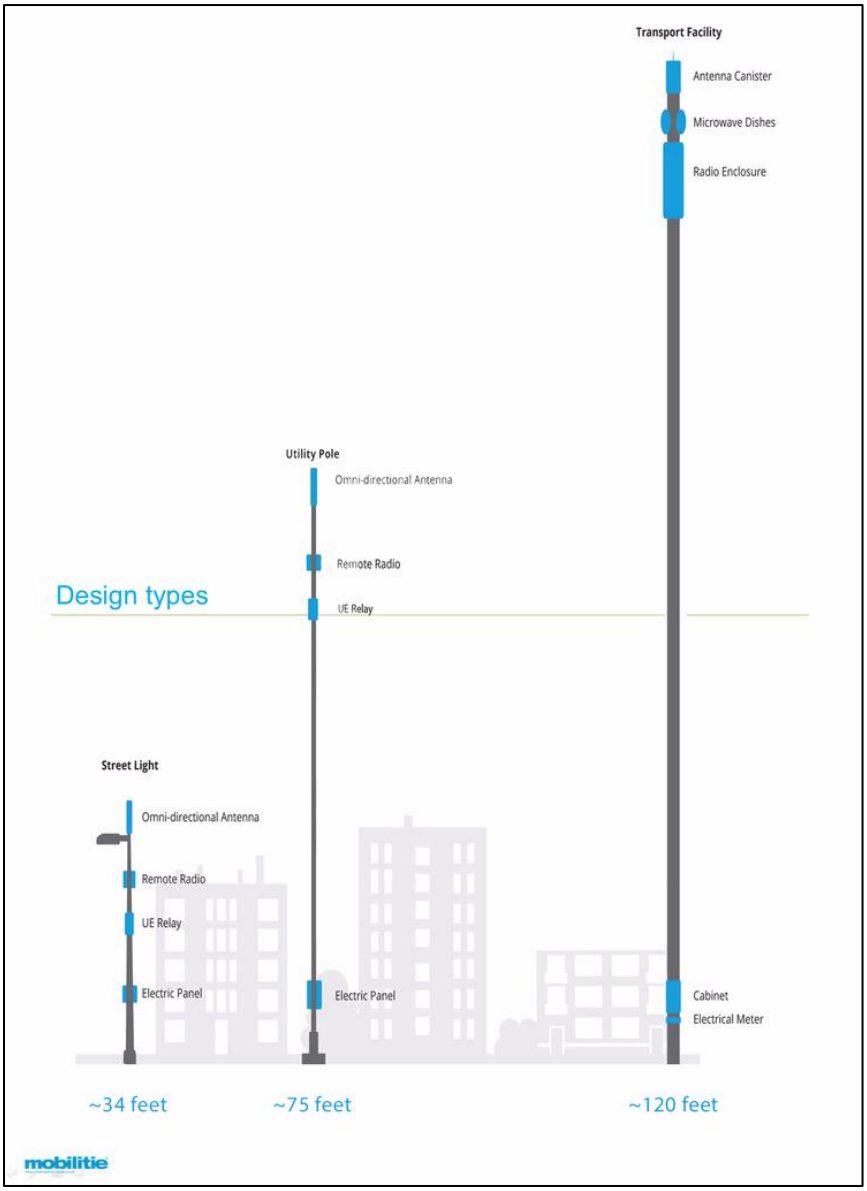

Figure 3: Mobilitie Slide Modified to Show Actual Scale Relative to the Street Light Installation.

Even wireless industry members find this misrepresentation "absurd" because the 120-foot transmission towers "dwarf [the] other options . . . ."[44] Misrepresentations of this magnitude justifiably cause local governments to scrutinize Mobilitie's applications.

Disregarding Local Process and Gaming the Shot Clock. A pattern has emerged since the Commission adopted the *2014 Infrastructure Order* in which applicants flaunt local

[44] *See Mobilitie's DAS Marketing Illustrations are Labeled as "Quite Deceptive"*, WIRELESSESTIMATOR (Feb. 17, 2017), *available at*: http://wirelessestimator.com/articles/2017/mobilities-das-marketing-illustrations-are-labeled-as-quite-deceptive/.

processes and submit woefully inadequate "applications" for multiple sites, often to an incorrect department within the municipality. Ambiguous letters from applicants with multiple preliminary site plans often arrive on Friday afternoons or before a long holiday weekend. These applicant behaviors appear to be geared toward gaming the shot clock—submitting just enough to start the clock and then lying in wait for time to expire as the local officials attempt to make heads or tails from a cover letter with multiple site plans that arrived in the mail.

- The California Street Light Association ("CALSLA") compiled comments from its constituent California cities and counties documenting, among other things, that Mobilitie has (1) failed to provide accurate project descriptions or equipment specifications upon request by local officials, (2) submitted incomplete applications, (3) terminated communications with local officials after submitting incomplete applications, (4) erroneously claimed exemptions from permitting procedures, local regulations and state environmental compliance laws and (5) complained of high fees without explaining why the fees would be unreasonable.[45] Their full responses appear in **Exhibit A** to these comments.

- In Albuquerque, New Mexico, Mobilitie approached that city with proposals for small cells on poles without identifying the owner of the poles.[46] After Mobilitie confirmed that it desired to attach to certain city-owned poles, Mobilitie failed to respond to the city's requests that Mobilitie enter into lease negotiations to obtain the required property rights for attachments to city-owned poles.[47]

- Mobilitie's representative hand-delivered to the City of Pleasanton, California, a letter styled as an introduction with 12 plan sets for new facilities attached.[48] Rather than follow the city's publicly-stated application process, Mobilitie treated the letter as a single application filed for all 12 sites. The letter was dated and delivered on a Friday. Under California state law, any application for a wireless installation may be deemed-approved if the local government fails to act within the Commission's presumptively reasonable timeframe for review.[49] The apparent intent behind the letter was to submit an "application" that would trigger the shot clock but not be seriously reviewed by the local government staff, which would likely result in a deemed-approval. The same scenario played out in several other Northern California cities, including Antioch, Brentwood, Concord,

[45] *See* Letter from Jean A. Bonander, CALSLA, to Michael Johnston, Telecom Law Firm PC (Feb. 15, 2017).
[46] *See* Email from Kathleen T. Ahghar, City of Albuquerque, N.M., to Kevin Winner, ITB Utility (May 17, 2016, 1:35 PM).
[47] *See* Email from Jane L. Yee, City of Albuquerque, N.M., to Brenna Moorhead, Goodwin Procter LLP, counsel for Broadband Network of New Mexico, LLC (Jan. 18, 2017, 2:05 PM).
[48] *See* Letter from Richard Tang, Mobilitie, LLC, to Jenny Soo, City of Pleasanton, Cal. (Oct. 14, 2016).
[49] *See* CAL. GOV'T CODE § 65964.1.

Richmond, San Pablo, and Pittsburg. Mobilitie's representative also delivered a letter to the City of Fresno, California, which at that time did not require a special permit for installations on unpaved road shoulders, on a Friday.[50]

- In Richmond, California, Mobilitie's representative submitted encroachment applications for 13 new wireless facilities even though the Richmond Municipal Code expressly required a prior authorization from the Community Development Department.[51] A month later, Mobilitie emailed the city project plans for three additional sites but did not submit any additional applications or fees. Two sites were proposed to be located on city-owned streetlights without prior authorization from the city. City staff also discovered that one site was proposed to be located on private property. Although city staff suggested some potential alternative locations on private electric company poles, Mobilitie ultimately withdrew its applications.

- In Brentwood, California, Mobilitie's representative submitted a letter to the city's Public Works Department with project plans, an insurance certificate and a check for $144, but not an application for a use permit as expressly required by the Brentwood Municipal Code.[52] Again, Mobilitie tendered the "application" on a Friday. Although the letter described the project plans as "construction drawings," the attached plans stated on each page: "PRELIMINARY NOT FOR CONSTRUCTION."[53]

- In Goleta, California, Mobilitie's representative emailed that city project plans for six new wireless facilities, but with no application or fees. The email acknowledged that the city requires a "Right-of-Way Access Agreement" (*i.e.*, a standard document required for all entities that carry on operations in the public rights-of-way that sets out maintenance, insurance, safety and other operational requirements, but does not require any fees), but Mobilitie claimed that "our CPCN which can serve in lieu of a City-specific ROW Access/Franchise Agreement."[54] The email also requested that the city confirm who owns the poles to which Mobilitie wanted to attach their equipment.[55] This email made clear that Mobilitie did not positively know who owned the pole before it submitted applications for attachments.

- In Richmond, California, ExteNet submitted 31 encroachment permit applications for small cells without first obtaining a use permit from the city, which was required by the

[50] *See* Letter from Rebecca Eichinger, Mobilitie, LLC, to Andrew Benelli, City of Fresno, Cal. (Jun. 3, 2016).
[51] *See* Letter from Richard Tang, Mobilitie, LLC, to City of Richmond, Cal. (Aug. 29, 2016). This letter was dated on a Monday, but Mobilitie's representative hand delivered the applications on a Wednesday (the city closes on Fridays due to State budget shortfalls).
[52] *See* Letter from Richard Tang, Mobilitie, LLC, to City of Brentwood, Cal., Public Works Department (Aug. 2, 2016). The letter was received on August 19, 2016, as evidenced by the city's in-take stamp.
[53] *See id.*
[54] *See* Email from Ben Johnson, Mobilitie, LLC, to Marti Milan, City of Goleta, Cal. (Jan. 31, 2017, 4:13 PM).
[55] *See id.*

City's recently adopted ordinance that was effective and published before ExteNet submitted its applications.[56] These applications were received by the city on a Thursday.

- ExteNet submitted 10 applications to Concord, California, for facilities throughout both residential and commercial neighborhoods that it alleged should all be subject to administrative approval, despite local regulations that required public notice with a possible public hearing for highly visible wireless facilities placed in close proximity to residential uses.[57]

- In Gresham, Oregon, Mobilitie submitted a single application for six of its sites without addressing the criteria clearly set out in the local code. Subsequently, a Mobilitie representative acknowledged that the applications were submitted without reviewing the applicable code provisions.[58]

- In Monterey, California, on the day before an appeal to the city council from a permit denial, legal counsel for Crown Castle sent a letter to legal counsel for the city that stated:

> . . . in the event the City Council departs from the recommendations of the Staff Report [to grant the appeal and approve the permit] and adopts new conditions or otherwise raises concerns that have the potential for a denial of the Appeal, ***Crown Castle hereby requests a continuance of the hearing***. Crown Castle makes this request on the record now . . . . Please include this letter in the administrative record of the Appeal. Crown Castle's representatives will be on hand at tonight's meeting to answer any questions.[59]

That night, the Monterey city council heard evidence that the proposed site would potentially obstruct view of the historic Cannery Row and decided to schedule a special meeting at the project site to assess first hand whether and to what extent the proposed location might impact historic assets.[60] A different attorney for Crown Castle stood up and objected to the continuance. When the mayor asked whether the attorney knew that its client already requested a continuance for exactly this purpose, the attorney said he did, but that he withdrew consent to the continuance because he claimed that shot clock had expired and wished to pursue a deemed-approved remedy under state law.

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[56] *See* Letter from Yader Bermudez, City of Richmond, Cal., to Matt Yergovich, ExteNet Sys. (Cal.) LLC (Nov. 15, 2016).

[57] In this case, ExteNet's representative submitted both the initial applications and his responses to the city's incomplete notices on Mondays. Although the applications were misfiled and incomplete, it does not appear that their representative attempted to intentionally game the shot clock in the same manner as those who routinely submit on Fridays.

[58] *See* Email from David R. Ris, City of Gresham, Or., to Michael Johnston, Telecom Law Firm PC (Jan. 23, 2017, 3:56 PM).

[59] Letter from Michael Shonafelt, counsel for Crown Castle, to Robert May, counsel for City of Monterey, Cal., at 2 (Oct. 4, 2016) (emphasis in original).

[60] *See* Monterey City Council, Meeting Minutes at 5 (Oct. 4, 2016), *available at*: http://isearchmonterey.org/cache/2/yvx5igkacsotydo441kqyukq/366444022820170918125 44.PDF.

- In early April 2016, Mobilitie submitted four encroachment permit applications to the City of Antioch, California, for installations on city-owned streetlights without any prior authorization from the city to use its streetlights. The applications listed the owner as "N/A."

- In Sacramento, California, Mobilitie requested to meet with Public Works staff and brought 40 incomplete applications, which included applications for fifteen 120-foot steel poles. When staff informed Mobilitie that it could not accept 40 incomplete applications, Mobilitie's representative left the packet on the security desk in the lobby in an apparent attempt to be able to later claim that the shot clock had been started.[61]

- In Yuma, Arizona, after receiving a letter from the city that outlined how Mobilitie's initial application failed to satisfy the city's code for obtaining a city telecommunications license, Mobilitie resubmitted its application with general responses that appeared intended to avert answering the city's questions. After a second letter from the city, Mobilitie's third submission continued to provide vague and inadequate responses to the city's questions on items as basic as what infrastructure Mobilitie intended to install in the city's right-of-way. When the city sent a third letter to Mobilitie explaining the deficiencies, Mobilitie never responded.

Unpermitted Installations. Until recently, local officials would only occasionally discover unpermitted modifications to existing wireless facilities. Totally unpermitted sites were rare. However, as one author predicted, "[t]he scary proposition may be that, in the interest of time-to-market, [Mobilitie] does not ask for permission, but simply puts up the new poles and then deals with the backlash later."[62] This prediction proved to be correct:

- In March 2016, in Baltimore, Maryland, Mobilitie installed a new, "a roughly three-story-tall utility pole" without permits that obstructed access to an ADA sidewalk ramp.[63] The city commenced a code enforcement action and fined Mobilitie for the violation.[64]

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[61] *See* Email from Darin Arcolino, City of Sacramento, to Omar Masry, City of San Francisco (July 7, 2016, 12:35 PM).

[62] *See* Iain Gillott, *Analyst Angle: Sprint Network Plan Equals 'Network Suicide'*, RCRWIRELESS (Jan. 25, 2016), *available at*: http://www.rcrwireless.com/20160125/opinion/analyst-angle-sprints-network-plan-equals-suicide-2-tag9.

[63] *See* Ryan Knutson, *Sprint's Wireless Fix? More Telephone Poles: Wireless Provider's Innovative Plan to Boost Cell Service Runs into Local Hurdles*, WALL ST. J. (Jun. 7, 2016, 6:03 PM), *available at*: https://www.wsj.com/articles/sprints-drive-to-improve-coverage-faces-permit-delays-1465337015.

[64] *See One Company Fined for Not Getting a Small Cell Permit, Another for not Permitting Inspectors*, WIRELESSESTIMATOR (Apr. 4, 2016), *available at*: http://wirelessestimator.com/articles/2016/one-company-fined-for-not-getting-a-small-cell-permit-another-for-not-permitting-inspectors/.

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

In the Matter of	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79

Comments of the City of Philadelphia

I. INTRODUCTION:

The City of Philadelphia ("City") respectfully submits these Comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry in the above matter ("Wireless NPRM") and in the matter captioned *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 ("Wireline NPRM") (collectively, the "Broadband Proceedings").

As the nation's sixth most populous city with over 1.5 million residents, hub of a metropolitan region of over 6 million, and home to many technology companies, Philadelphia is committed to promoting broadband technology and broadband deployment for its residents. Philadelphia has long recognized that ubiquitous, affordable broadband service, wireless and wireline, is critical for our economic development and a critically important resource for our citizens. This commitment is reflected in its many policies and initiatives, including a major effort to bring the advantages of broadband to lower income residents. The presence of the many broadband service providers in the public rights-of-way throughout Philadelphia is testament to the fact that City policies have facilitated the development of broadband in the past and continue to do so now. However, Philadelphia also strongly believes that ubiquitous broadband service can and must always be accomplished without impairing the City's ability to regulate its rights of way, preserve its historic sites and districts, and maintain the public safety. To accomplish these goals, it is essential that control over these central government functions remain with the City.

Philadelphia has authorized many small cell and DAS installations in its public rights-of-way and, for a number of years, has worked with providers to develop creative solutions to

impossible and ensure that reasonable and appropriate review simply cannot happen, to the detriment of the safety of our citizens.

The Commission's suggestion that a one-size-fits-all federal timeframe is appropriate for small-cell siting applications ignores the fact that states and localities vary drastically in size, climate, historic architecture, infrastructure, and volume of siting applications. The level of review reasonable for one municipality will not be appropriate for others with very different conditions. Local governments are best suited to address these different conditions since they have the particularized knowledge about their rights-of-way necessary to determine whether a specific installation in a specific location would be safe.

In this regard, it should be noted that "small cell" typically does not mean facilities weighing a few pounds and a cubic foot or so in size. This technology typically uses pole-mounted antennas of up to three or even six cubic feet in volume with equipment cabinets of 17 cubic feet or more.[5] Equipment cabinets of that volume can measure two feet by two feet by over four feet, and are not "small" – or *de minimus* in weight – by any accounting, particularly when multiple antennas and cabinets are mounted on a single pole. Some small cell/DAS providers seek to place large numbers of poles with such antennas and cabinets in the public rights of way of congested, densely populated cities like Philadelphia. The safety concerns they present to our citizens are very real and can be addressed only by adequate engineering review. "Deemed granted" remedies, including all of those described by the Commission, will preclude that review.

The Commission asks commenters to address whether the Commission should consider adopting different time frames for review of facility deployments not covered by the Spectrum Act.[6] The Commission then suggests "harmonizing" the period deemed reasonable for non-Spectrum Act collocation applications by reducing the time from 90 to 60 days.[7]

The City strongly opposes any attempt to "harmonize" reasonable time periods that would further shorten the reasonable period that cities have to act on wireless applications. As

[5] *See e.g.* RCW 80.36.375, a recently enacted Washington statute, and CO HB1193, a bill recently signed into law by the Governor of Colorado, each defining "small-cell" wireless technology facilities as those using pole-mounted antennas of up to three cubic feet in volume with equipment cabinets of seventeen cubic feet. The California Senate recently passed SB-649 that would allow for six and twenty-one feet for the antenna and equipment cabinets, respectively. These statutes were crafted with full industry participation, including, we can be sure, industry input on the size requirements of its small cell facilities.

[6] *Wireless NPRM* at pages 8-9, paras 18.

[7] *Id.*

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Deployment	**WT Docket No. 17-79**

COMMENTS OF THE CITY AND COUNTY OF SAN FRANCISCO

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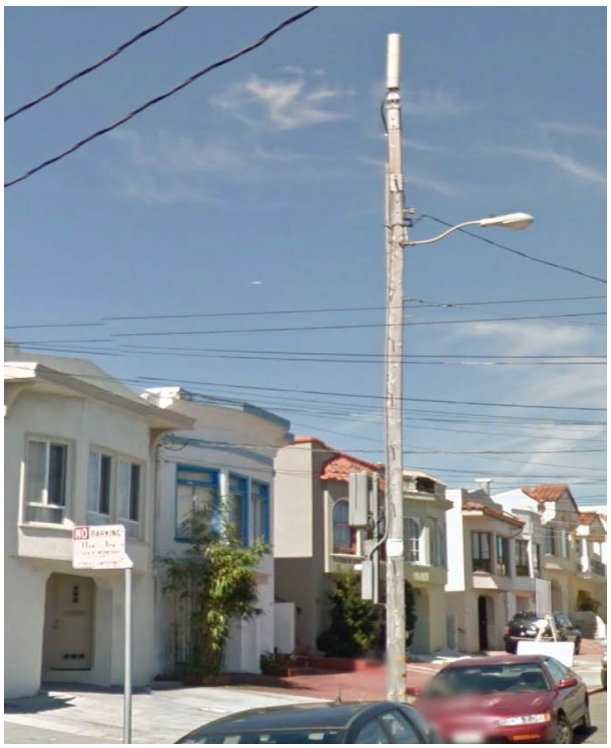
This is in contrast with designs the Planning Department approved under Article 25:



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

In the Matters of	)	
	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
	)	

REPLY COMMENTS OF THE CITY OF BALTIMORE, MARYLAND

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July 17, 2017

instances[10] it appears to us that the system is basically working.

C. The Proliferation of Wireless Facilities Within the Public Right of Way Implicates Core ROW Management Obligations of Local Governments.

Contrary to the remarks of some commenters, small cells – especially in numbers – will have a meaningful and possibly dramatic impact on the public right of way. The prospect of extensive deployment of small cell facilities presents very real and very significant right-of-way management concerns for local governments. These primarily include, but are not limited to, public safety and aesthetic concerns.

AT&T in its comments asserted that "[t]here is no sound reason for any municipality to subject small cell deployments to the same review process that apply to macro cells. Because of their unobtrusive size, small cells simply do not pose similar considerations as to environmental or aesthetic impacts."[11]

In fact, as several commenters noted, "small cells" are not necessarily "small," and are not necessarily "unobtrusive."[12] "Small cell" refers to the size of the RF propagation footprint, not the size of the equipment.[13] As the City of Philadelphia noted:

> "[S]mall cell" typically does not mean facilities weighing a few pounds and a cubic foot or so in size. This technology typically uses pole-mounted antennas of up to three or even six cubic feet in volume with equipment cabinets of 17 cubic feet or more. Equipment cabinets of that volume can measure two feet by two feet by over four feet, and are not "small" – or de minimus in weight – by any accounting, particularly when multiple antennas and cabinets are mounted on a single pole. Some small cell/DAS providers seek to place large numbers of poles with such antennas and cabinets in the public rights of way of congested, densely populated cities like Philadelphia. The safety concerns they present to our citizens are very

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10 It must be noted that wireless facility owners are sometimes the cause of delays as well. *See* Comments of the City of Austin, Texas, WT 17-79, at 4.

11 Comments of AT&T, WT 17-79, at 7.

12 *See* Comments of the American Public Power Association, WT 17-79, at 16; Comments of City of Philadelphia, WT 17-79, at 4.

13 *See* Comments of Smart Communities Coalition, WT 17-79, at 44.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

IN THE MATTER OF	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	WT Docket No. 17-79
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	WC Docket No. 17-84

CONSOLIDATED JOINT REPLY COMMENTS OF LEAGUE OF ARIZONA CITIES AND TOWNS, LEAGUE OF CALIFORNIA CITIES & LEAGUE OF OREGON CITIES

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Filed: July 17, 2017

AT&T and ExteNet also define a small cell deployment to be no more than 50 feet above ground level or 10 feet taller than the tallest utility pole within 500 feet from the installation, *whichever is greater*.[45] An average streetlight, traffic signal or utility pole in a typical neighborhood stands approximately 35 feet above ground level, which would mean that ExteNet's facilities would be 15 feet taller than virtually all other neighboring structures. This seems absurd when ExteNet's facilities would be only 10 feet taller than all other neighboring structures in areas where the average pole height exceeds 50 feet.

Small cells in the public rights-of-way are closer to the general public's view with fewer opportunities for concealment. Local Governments does not necessarily oppose voluntary streamlined practices for truly small cells, but the facilities described by ExteNet and Verizon are anything but small and should not be treated differently than other new installations. Representatives from Local Governments' coalition would be willing to collaborate with the BDAC, IAC and other interested parties on reasonable, community-appropriate recommended practices and standards for streamlined small-cell deployments.

4. The Commission Should Reject Industry Proposals to Reinterpret "Collocations" to Include New Installations on Non-Tower Structures without Any Previously Approved Wireless Facilities

Several industry commenters asked the Commission to re-interpret "collocation" to include new facilities on structures not previously approved as a wireless support structure and support structure replacements.[46] The proposed definition conflicts with the ordinary definition for

[45] *See* AT&T Comments at 22–23; ExteNet Comments at 2.
[46] *See, e.g.*, Lightower Comments at 12; *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, *Comments of Crown Castle Int'l Corp.*, at 15 (June 15, 2017) [hereinafter "Crown Castle Wireline Comments"].

"collocation," which refers to multiple wireless facilities in a shared space.[47] Installations on non-tower structures without any previously approved wireless facilities are not "collocations" in the commonly understood sense.

Collocation as a regulatory concept first appeared in the Telecommunications Act as a mandate to allow competitive local exchange carriers into the incumbent carriers' facilities.[48] Later, the *2009 Declaratory Ruling* utilized the term to distinguish "collocation applications" for additions to previously approved sites from applications for "new facilities or major modifications" and all other facilities.[49] Indeed, the state statutes the Commission cited as support in the *2009 Declaratory Ruling*—and even some the Commission omitted—define "collocation" as multiple wireless facilities in a shared location.[50] Although the Commission's interpretation in the *2014 Infrastructure Order* deviated from the traditional definition because it no longer contemplated multiple equipment owners but rather additional equipment without respect to ownership, it nevertheless confirmed an "existing wireless tower or base station" as a fundamental prerequisite for a collocation.[51]

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[47] *See* 47 U.S.C. § 251(c)(6); *2009 Declaratory Ruling*, *supra* note 22, at ¶ 43 (distinguishing between collocation applications and applications for "new facilities or major modifications"); *2014 Infrastructure Order*, *supra* note 34, at ¶ 178 (defining "collocation" as the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes"); *see also* HARRY NEWTON, NEWTON'S TELECOM DICTIONARY 315 (27 ed. 2013) (defining "collocation" as "the sharing of an antenna tower by two or more wireless operators").

[48] *See* 47 U.S.C. § 251(c)(6).

[49] *See 2009 Declaratory Ruling*, *supra* note 22, at ¶ 43.

[50] *See id.* at ¶ 47–48 (citing CAL. GOV'T CODE § 65850.6(d)(1) ("'Collocation facility' means the placement or installation of wireless facilities, including antennas, and related equipment, on, or immediately adjacent to, a wireless telecommunications collocation facility."); FLA. STAT. ANN. § 365.172(3)(f) ("'Collocation' means the situation when a second or subsequent wireless provider uses an existing structure to locate a second or subsequent antennae."); KY. REV. STAT. § 100.985(3) ("'Co-location' means locating two (2) or more transmission antennas or related equipment on the same cellular antenna tower."); N.C. GEN. STAT. ANN. § 160A-400.51(4) ("The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks."); *see also* IND. CODE. ANN. § 8-1-32.3-4 ("As used in this chapter, 'collocation' means the placement or installation of wireless facilities on existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement, or modification of wireless facilities within an approved equipment compound.").

[51] *See* 47 C.F.R. § 1.40001(b)(2) ("The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.").

The proposed reinterpretation would unreasonably extend the definition to cover applications for new installations on structures without any previously approved wireless facilities.[52] Even when the Commission has classified installations on towers without existing antennas to be a collocation, the tower itself received a prior approval as a structure solely intended to support FCC-licensed or authorized equipment.[53] Accordingly, the Commission should reject the proposal to reinterpret the phrase collocation to include new installations on support structures without any previously approved wireless facilities.

C. The Commission Should Reject Proposals to Effectively Shorten the Shot Clock by Including Pre-Submittal Conferences and Post-Approval Health and Safety Reviews in the Timeframe for Review

Several industry commenters asked the Commission to declare that the shot clock timeframes encompass the entire local review process—which includes both pre-submittal conferences and ministerial review for compliance with health and safety codes.[54] As discussed in Local Governments' principal comments, the "reasonable" timeframe for a decision commences when the State or local government receives a "duly filed" application and terminates when the reviewing authority "acts" on the request.[55] Accordingly, conduct that occurs before a duly filed application is received (such as pre-submittal conferences) or after the reviewing authority acts (such as ministerial health and safety review) falls outside the shot clock's scope.

An "eligible support structure" means a tower (a structure built solely or primarily to support FCC-licensed or authorized equipment) or a base station (a non-tower structure locally approved as a support for FCC-licensed or authorized equipment). *See id.* §§ 1.40001(b)(1), (4) and (9).

[52] *See* Lightower Comments at 11-12; Crown Castle Wireline Comments at 15; Verizon Comments at 41.

[53] *See 2014 Infrastructure Order*, *supra* note 34, at ¶ 174.

[54] *See*, *e.g.*, CTIA Comments at 8, 15.

[55] *See* Local Gov'ts Comments at 8.

Figure 5: AT&T "small cell" (San Diego, California) with large, unconcealed equipment placed in prominent view.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-79
	)	
and	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WT Docket No. 17-84
	)	

REPLY COMMENTS OF THE COLORADO COMMUNICATIONS AND UTILITY ALLIANCE, THE RAINIER COMMUNICATIONS COMMISSION, THE CITIES OF SEATTLE AND TACOMA, WASHINGTON, KING COUNTY WASHINGTON, THE JERSEY ACCESS GROUP AND THE COLORADO MUNICIPAL LEAGUE

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July 17, 2017

E. Aesthetics.

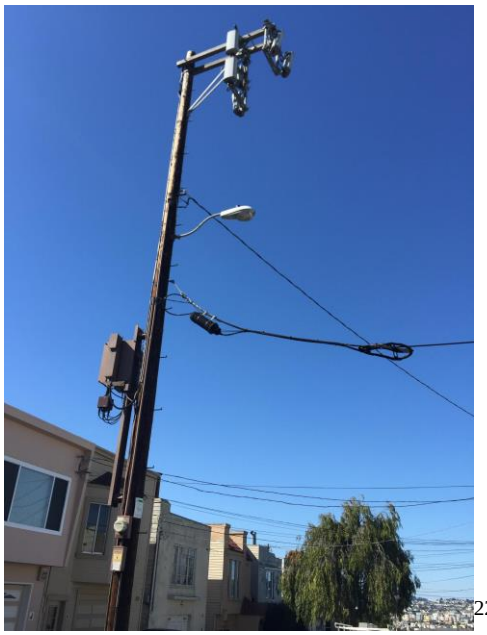
Verizon acknowledges that a local authority may deny an application aesthetic reasons, and notes that the decision should not erect a substantial barrier so long as other sites are available that do not present such concerns.[18] But suggesting that the Commission can address through a federal rule how to determine when any denial based on aesthetics would "meaningfully strain" a carrier's ability to provide service is simply not feasible. Congress clearly intended a judicial remedy for siting disputes where a local regulation prohibits or has the effect of prohibiting service. These decisions are inherently local, fact-specific determinations, and the Commission has no role substituting a federal one size fits all rule in exchange for the judicial remedy Congress determined was the appropriate method for addressing disputes over these local decisions.

Problematically, Verizon seeks a rule exempting certain small cell facilities from review by local authorities for aesthetic concerns. Specifically, it asks the Commission to hold that where a small cell meets size limits previously adopted by the Commission and is mounted on an existing structure or a similar replacement structure designed to accommodate small cells, it will ***never*** present an aesthetic concern that will justify denial of a siting application.[19] Additionally, CTIA argues that "small cells and DAS systems are designed to blend in to the streetscape with

[18] Verizon Comments, p. 16.
[19] *Id*. at p. 20 (emphasis added).

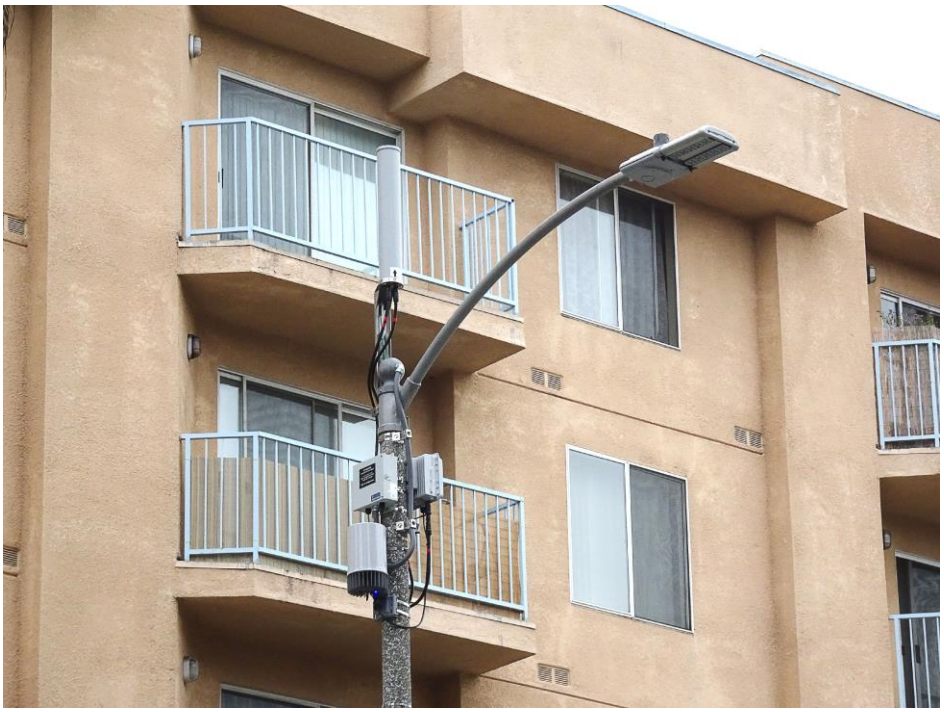
minimal is any visual impact."[20] While many small cell sites do in fact create minimal aesthetic concerns and can be made to blend in with the surrounding requirements, others that clearly fall within the Commission's definition of small cells could not be considered aesthetically acceptable in almost any setting. A few examples of small cells that clearly demonstrate the flaws in Verizon's claim that small cells will "never" present aesthetic concerns, and CTIA's claims that all small cell sites are designed to aesthetically "blend in" are as follow:

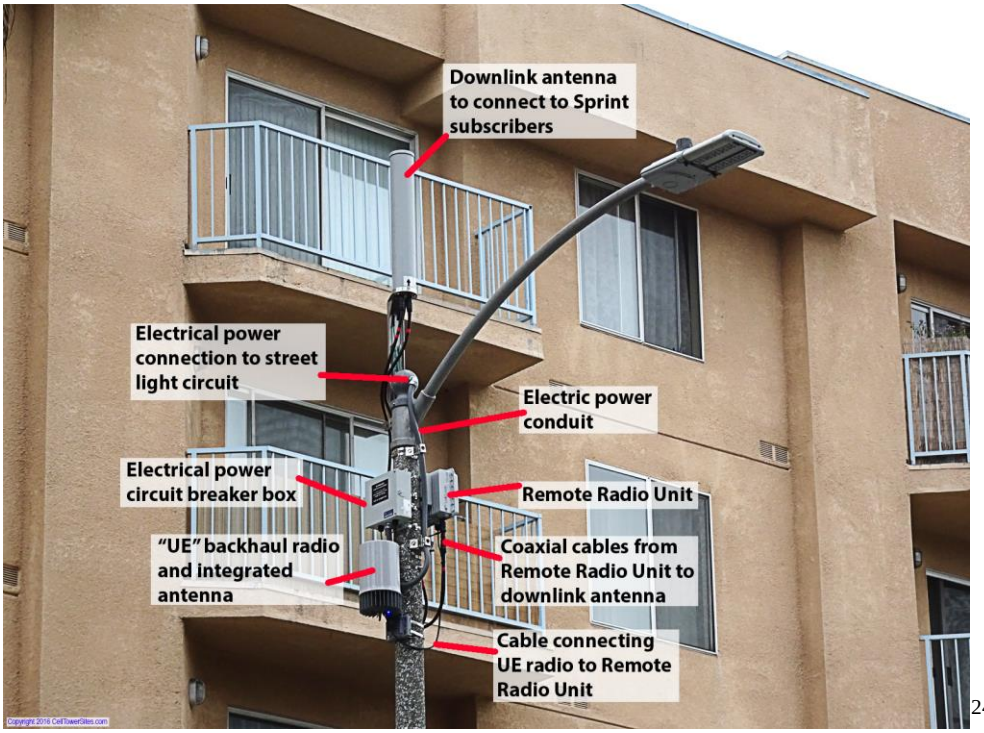

[21]


[22]


[23]

[20] CTIA Comments, p. 29.
[21] Small cell site in Oakland, California. Source: Omar Masry. Provider: AT&T.
[22] Small cell site in San Francisco, California. Source: Omar Masry. Provider: Crown Castle.
[23] Small cell site in Los Angeles, California. Source: Dr. Jonathan Kramer. Provider: Mobilitie.





[24]

[24] Small cell site in Los Angeles, California. Source: Dr. Jonathan Kramer. Provider: Mobilitie.

There is no justification for exempting small cell facilities from a local jurisdiction's police power authority to address aesthetic issues.

F. Demand for 5G Technology as a Basis for Federal Preemption.

Verizon argues that "Broadband is the critical infrastructure of the 21st Century. Government action to speed deployment will unlock transformative economic and social benefits – from smart cities and access to education and healthcare to gains in productivity, sustainability, and public safety."[25] It is hard to argue with that statement and indeed, the Local Governments agree with it. The Local Governments also agree that industry action "to speed deployment" – in urban, suburban ***and rural environments*** is necessary to "unlock transformative economic and social benefits."

The Commission must know that there is very little interest today in the industry for significant investment of 5G technology in rural America. CTIA makes this clear when it argues that local governments should not be permitted to consider the need to close coverage gaps in siting decisions. "However, the concept of determining the need for coverage is anachronistic, because wireless providers are generally deploying small cells, DAS, and other small facilities to increase capacity to handle the massive growth in traffic generated by the public's exploding use of smartphones and other devices, not to expand coverage."[26]

In the past the Commission adopted shot clock rules and other rules preempting local control, with the belief that the rules would lead to additional deployment of broadband networks over an expanded coverage area. Here, the industry admits that rules are necessary to increase

[25] Verizon Comments, p. 2.
[26] CTIA Comments, p. 21.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20555

In the Matters of	)	
	)	
Accelerating Wireline Broadband Deployment	)	WC Docket No. 17-84
by Removing Barriers to Infrastructure Investment	)	
	)	
Accelerating Wireless Broadband Deployment	)	WT Docket No. 17-79
by Removing Barriers to Infrastructure Investment	)	

REPLY COMMENTS OF THE FLORIDA COALITION OF LOCAL GOVERNMENTS

Submitted on behalf of a coalition of Florida local governments comprised of the following:

City of Coral Gables
City of Gainesville
Town of Gulf Stream
Town of Jupiter Island
Town of Palm Beach
Town of Pembroke Park
City of Tallahassee
City of Tampa
City of Winter Haven
Florida Association of Counties, Inc.
Florida League of Cities, Inc.

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certified by the state of Florida as a local government meeting the criteria for administering federal and state historic preservation programs.

The City's designation process protects properties that have been found to be of distinctive character, architectural value, and cultural significance to the City. Structures from a few remaining farm houses in now inner city neighborhoods to the grand Tampa Bay Hotel to modest shotgun structures built by the hundreds to support the City's early cigar industry, every structure represents a physical piece of Tampa's history. Historic designation by the City helps ensure "sensitive building treatment and discourages unsympathetic changes from occurring."[48] For example, the Ybor City Historic District is a U.S. National Historic Landmark District, containing a total of 956 historical buildings. The Latino Barrio Commission, made up of neighborhood community and business leaders, architects, and local residents, is responsible for "preserving the historic fabric of the District and maintaining its architectural integrity."[49]

Notwithstanding Tampa's strong efforts to preserve its historic character, the City enjoys a vibrant economy and is highly regarded for blending development and innovation. Regarding use of the public rights-of-way, Tampa allows both pass through providers and communication companies providing services within the City to install facilities in the City's rights-of-way. Tampa City Code §22-332(1) requires currently that all communication facilities be placed underground, but §22-332(2) provides for the City to allow the installation of poles in the rights-of-way for communication facilities after approval by the City.[50]

As expected of a very large, urban metropolitan area that processes thousands of development applications at any given time, Tampa has committed extensive capital and

[48] The City's Development Review and Compliance Procedures Related to Historic Preservation can be found at the City's website: www.tampagov.net.
[49] Information related to the Barrio Latino Commission can be found on the City's website at: https://atg.tampagov.net/sirepub/boardresults.aspx?return=positions|boardinfo&boardid=14
[50] Tampa City Code § 22-332.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of

ACCELERATING WIRELESS BROADBAND DEPLOYMENT BY REMOVING BARRIERS TO INFRASTRUCTURE INVESTMENT	)	WT Docket No. 17-79
ACCELERATING WIRELINE BROADBAND DEPLOYMENT BY REMOVING BARRIERS TO INFRASTRUCTURE INVESTMENT	)	WC Docket No. 17-84

REPLY COMMENTS OF SMART COMMUNITIES AND SPECIAL DISTRICTS COALITION

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July 17, 2017

Second, some commenters suggest modifying how shot clocks may be tolled. CGI proposes that shot clocks would no longer be tolled while applications remain incomplete. Specifically, CGI proposes that incomplete applications would be subject to a three-day grace period where applicants could provide supplemental information without tolling the shot clock.[72] As explained in Smart Communities' Wireless Comments, communities routinely receive incomplete applications.[73] These applications require disproportionate attention and resources from local agencies that contribute to delays for other applicants. Creating a grace period for incomplete applications would simply encourage game-playing and lead to longer delays. Under CGI's proposal, applicants would have an incentive to submit applications in batches to receive multiple grace periods to slow "bleed" the shot clock. This perverse incentive would harm diligent applicants and divert local resources to monitoring these applications.

Third, commenters support creating separate shot clocks for small cells and processing batch applications. Commenters support shorter shot clocks for small cells based on the assumption that these facilities are less complex than macrocells or that traditional zoning processes are not applicable within the right-of-way. They assume batch applications will be easier to process due to the similarity.

These commenters are mistaken. Small cells, especially those within the right-of-way are not necessarily easier to process or review. As we pointed out in initial comments no one can seriously argue that the term "small cell" means "small physically" as opposed to "serving a small area."[74] Small cells may involve substantial amounts of equipment, including a support structure (ranging in size from a Mobilitie tower to a more conventional utility pole); an antenna;

[72] GCI Comments at 5-6.

[73] Smart Communities Wireless Comments at 31-32.

[74] Smart Communities Wireless Comments at 44.

radio units; power supplies/electric meters/disconnects/cabling; and potentially back-up power supplies.[75] These sites can approach or exceed the size of many monopoles or macrocells.[76] In addition, small cells locating within the right-of-way can present unique challenges, and in many ways, these applications are as, if not more, challenging that traditional macrocells. These facilities can raise significant issues for roadway engineering, safety, and coordination with other utilities.[77]

In addition, processing applications in batches does not warrant a shorter shot clock. Commenters suggesting that batch applications are necessarily easier to review gloss over the practical realities of most applications. While it may be possible to reduce review time for some aspects of batch applications (i.e., if the same design is used in the same zoning area, that design may be approved for the entire area), the majority of sites must be evaluated independently. This is especially true if applications within a batch are located on different structures (i.e., new poles vs. existing poles), differ in size or visibility and require coordination with other utilities (i.e., existing electric poles and underground utilities), and may require planning to avoid harming roadside trees and other vegetation .[78]

Lastly, some commenters, most notably Crown Castle, suggest that the Commission should reverse its decision and expand the scope of "eligible facilities" under Section 6409 to include all utility poles, whether or not they currently contain transmission equipment. Crown Castle suggests, "[w]hether the equipment is being collocated on a pole currently used for telecommunications services or one used for some other purpose is a distinction without a

[75] Smart Communities Wireless Comments at 44-45; CTC Declaration at 6.

[76] CTC Declaration at 6-8.

[77] Puuri Declaration at 2.

[78] As we pointed out in our comments, the new large poles proposed by Mobilitie required sinking a pole a substantial distance into the ground, but even placement of ordinary utility poles must be planned so that they do not interfere with sewer lines, water lines and storm sewer drainage. Smart Communities Wireless Comments at 44-47.

Sprint's ability to compete with land-line based services simply is not part of the inquiry under subsection B [of Section 332(c)(7)]. Subsection B(i)(I) speaks only to Sprint's ability to compete with "functionally equivalent services," which does not include land-line services. See H.R. Conf. Rep. No. 104-458, at 208, reprinted in 1996 U.S.C.C.A.N. at 222 ("When utilizing the term 'functionally equivalent services' the conferees are referring only to personal wireless services that directly compete against one another."). Because subsection B(i)(II) only considers whether a town's decision will have the effect of prohibiting personal wireless services in a given area, Sprint's reliance on that subsection to contend that it cannot be prohibited from competing effectively with land-line systems is misplaced.

Indeed, neither Section 253 nor Section 332(c)(7) require local governments to treat different types of telephone or personal wireless companies identically.[245] The concern in Section 253(c)'s safe harbor is on a competitively neutral and nondiscriminatory basis between telecommunications competitors, not between telecommunications providers and others.[246] Even if Section 253(c)'s safe harbor is applicable to "asymmetric treatment" between telecommunications and non-telecommunications providers, Section 253(c)'s safe harbor is applicable unless there is a significant imbalance; and if the difference in treatment is not justified.

[245] What wireless providers are seeking really is quite different. Smart Communities really have traditionally approved only wires, running along the roadway, where facilities are allowed aboveground; and only as a secondary use. Traditionally, headend, central offices and the other operating elements have been placed off the public rights-of-way. Here, wireless providers are placing many of those permanent facilities in the public rights-of-way, in ways that require much larger deployments. It is not discrimination to treat such different facilities differently, and to focus on their impacts.

[246] Smart Communities Wireless Comments at 70-71.

Wireless Infrastructure Streamlining Report and Order, WT Docket No. 17-79

FCC-CIRC1803-01

Colorado State Historic Preservation Office comments, 15 March 2018 (Part 1)

Our office concurs with the Commission's statement that technology (and the infrastructure that supports it) is continually changing over time. We are pleased to have the opportunity to work together with other states, the Commission, Tribal Historic Preservation Offices, the telecommunications industry, and others to continually work towards the goal of advancing wireless services and development across the United States. In the past, we have worked with the Commission and other parties to craft the Nationwide Agreement for the Collocation of Wireless Antennas (2005), as well as the First Amendment to that Agreement in 2016. We have also worked continually with companies, consultants, and Tribes to further improve the review process and to identify areas where streamlining would be beneficial to all parties.

With that in mind, we note that the 2016 *First Amendment to (the) Nationwide Programmatic Agreement*, now in its 20th month of operation, seems to address many of the concerns raised by the Commission in the Order's introduction. Those concerns include the following: the cost of implementing the standard Form 620/621 reviews stipulated in the 2005 Agreement; the potential (or lack thereof) of small cell antennas to affect historic properties; the industry trend towards rolling out many more small cell antennas to increase capacity; and the public need/benefit of advancing wireless broadband technology and service. Accordingly, the Amendment's language attempted to streamline or eliminate review of small cell projects that did not have the potential to affect historic properties.

We believe that the Amendment has already resulted in a significant increase in cost savings and efficiency in planning and developing small cell antennas. For example, we note that many of Chairman Pai's concerns regarding the preparations for Super Bowl LI (as noted on Page 56 of FCC 17-38, 20 April 2017) will likely not be an issue when Super Bowl LIII arrives in Atlanta in early 2019. The numerous small cell antennas, range extenders, indoor antennas, and utility pole collocations that were installed around Santa Clara in advance of the 2017 big game[1] would all be exempt from review today under the revised guidelines and amendments that the Commission, working with its partners, has developed in the past two years.

Other legal measures are also in place to help speed the development of small cell wireless antennas. In April 2017, the Colorado State Legislature passed House Bill 17-1193, which allowed for the deployment of small cell wireless facilities in city and county right-of-way access points. Stipulation III.E of the Nationwide Agreement allows for the review-free development of towers within right-of-ways if such

[1] For an outline of the preparations (and technology) used for the 2017 Super Bowl, see the Digital Trends article "Here's how every major carrier is bracing for data-hungry fans ahead of Super Bowl 51" (https://www.digitaltrends.com/mobile/carrier-prep-super-bowl-51/)

been reported by KMGH Channel 7 [5], the *Denver Post*[6], KUSA Channel 9 [7], and the *Fort Collins Coloradoan*[8], and other media outlets. We presume that similar public sentiment is to be found elsewhere in the United States, particularly in areas where the deployment of small cell antennas is expected to be relatively intense.

We encourage the Commission to consider the effect of small cell deployments, particularly "cell pole" installations, in areas such as historic districts and historic properties where setting, feeling, and association play a strong role in supporting National Register-eligibility, or where the streetscape and/or landscape is actually part of the historic fabric of the resource. Requiring consultation for this extremely limited set of small cell installations could hardly be considered a regulatory burden in an industry market whose value is measured in billions of dollars.

If the Commission ultimately decides to exclude small cell deployment from its list of regulatory actions, we encourage the Commission to develop and promote more detailed standards for the definition of "small cell" so that all parties can understand how the process works. For example, consider the common definition of "small cell" presented in Section 71: "To qualify as a small wireless facility, the antenna associated with the deployment, excluding the associated equipment, must fit in an enclosure… that is no more than three feet in volume."[9] We note that, in our consultation with Verizon Wireless, this definition refers to each antenna *individually*; a cell pole with two antennas could meet the requirements by being enclosed within a six cubic foot enclosure, and three antennas within a nine cubic foot enclosure. In short, small cell enclosures may be "fatter" or "skinnier" based on the antennas that they carry, and we note that many municipalities misinterpret the definition, assuming that all small cell enclosures must be the same uniform size.

Similarly, we recommend that telecommunication providers work to establish a more standardized system of enclosure sizes to speed local regulatory approval and to prevent confusion.

Finally, we encourage the Commission to promote the sharing and collocation of different company antennas on small cell deployments to discourage the proliferation of such installations in dense urban areas. We note that having four or five cell poles on the same street corner, each serving a separate company, works against the goal of encouraging small cell deployment in a manner that has a de minimis impact on the environment.

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[5] See KMGH, "Denver Residents Upset About Sudden Cell-Signal Poles Installed in Front of Buildings," 13 March 2018, https://www.thedenverchannel.com/news/local-news/denver-residents-upset-about-sudden-cell-signal-poles-installed-in-front-of-buildings

[6] See Murray, Jon, "Denver's 5G Cell-Signal Future Will Rely on Hundreds of 30-Foot Poles Spread Across Many Blocks," 12 March 2018, *Denver Post*, https://www.denverpost.com/2018/03/12/denver-5g-cell-phone-service/

[7] See KUSA, "There's Small Cell Towers Going up in Denver Because So Many People are Using Phones," 1 December 2017, http://www.9news.com/article/news/local/next/theres-small-cell-towers-going-up-in-denver-because-so-many-people-are-using-phones/73-490384107

[8] See Duggan, Kevin, "Fort Collins to Have Open House in 'Small Cell' Facilities," 13 September 2017, *Fort Collins Coloradoan*, https://www.coloradoan.com/story/news/2017/09/13/fort-collins-open-house-small-cell-facilities/662550001/

[9] Section 71 of the Order, page 24

City of Portland Office of Management and Finance
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Broadband & Communications Policy Cable Regulation & Consumer Protection Utility Franchises, Licenses & Wireless

August 21, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW Washington, DC 20554

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79;
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84;
Streamlining Deployment of Small Cell Infrastructure, WT Docket No. 16-421;
Accelerating Broadband Deployment, Broadband Deployment Advisory Committee, GN Docket No. 17-83

Dear Ms. Dortch:

In a July 26, 2018 filing, the City of Portland described its experience operating a small cell pilot program for attachments to investor-owned utility poles.[1] Since making that filing, the City was saddened to read the accusations contained in AT&T and Verizon's August 10, 2018 ex parte filings. Portland writes to demonstrate that the claims made in their August filing does not reflect statements made for the record by both companies. This letter will share those statements and call into question the probative value of the accusations made by the companies.

AT&T and Verizon grossly mischaracterize and obfuscate the efforts in Portland to open the right of way for small cells. Both August 10th filings completely ignore Portland's small cell pilot program, which was active for almost 3.5 years and set annual ROW fees at $1,200 per year per node. During the pilot, Portland approved 55 of Verizon's 60 small cell applications. In addition, Crown Castle installed 11 small cells on behalf of Verizon. Although enthusiastic about the pilot before the Portland City Council, AT&T never submitted an application.

The minutes of the Council meeting on May 21, 2014, reflect Verizon's positive interest:

[1] The City of Portland disagrees with the Commission's finding of August 17th that our July 26th letter referenced here was a prohibited written presentations in the above-referenced proceedings. The City is refiling the letter for inclusion in the record out of an abundance of caution.

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September 19, 2018

ELECTRONICALLY FILED

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW – Lobby Level
Washington, DC 20554

Re: *Smart Communities and Special Districts Coalition – Ex Parte Submission: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79;
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84

Dear Secretary Dortch:

On behalf of the Smart Communities and Special Districts Coalition ("Smart Communities"),[1] we submit this letter and enclosures for inclusion in the above-captioned dockets in response to

[1] Smart Communities are localities, special districts, and local government associations that collectively represent over 31 million residents in 11 states and the District of Columbia.

Individual members: Ann Arbor, MI; Anne Arundel County, MD; Arcadia, CA; Atlanta, GA; Bellevue, WA; Bloomfield Township, MI; Boston, MA; Burlingame, CA; Dallas, TX; District of Columbia; Fairfax, CA; Gaithersburg, MD; Howard County, MD; Kirkland, WA; Los Angeles, CA; Marin Municipal Water District (CA); McAllen, TX; Meridian Township, MI; City of Monterey, CA; Montgomery County, MD, North County Fire Protection District (CA); Ontario, CA; Padre Dam Municipal Water District (CA); Portland, OR; Rye, NY; San Jacinto, CA; Santa Margarita Water District (CA); Scarsdale, NY; Shafter, CA; Sweetwater Authority (CA); Valley Center Municipal Water District (CA).

Organizations Representing Local Governments: Texas Coalition of Cities for Utility Issues (TCCFUI) is a coalition of more than 50 Texas municipalities dedicated to protecting and supporting the interests of the citizens and cities of Texas with regard to utility issues. The Coalition is comprised of large municipalities and rural villages. The Michigan Coalition to Protect Public Rights-of-Way ("PROTEC") is an organization of more than 75 Michigan communities that focuses on protection of their governance and control over public rights-of-way. The Michigan Townships Association promotes the interests of 1,242 townships by

over the last decade,[69] and has done so while paying congressionally-endorsed franchise fees for use of the public rights-of-way equal to 5% of gross revenues, by their own estimates approximately $3 billion per year.[70] Given that the first 5G deployments are projected to focus on delivery of video and Internet services,[71] there is no reason to suppose that charging rents will be "prohibitory" in any meaningful sense.[72] The examples of 5G contracts in the record, including contracts in San Jose and Los Angeles, actually suggest that negotiated contracts, with freely established rents for municipal property, will encourage broadband deployment, not prohibit it.

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[69] NCTA, *Tracking Cable's Investment in Infrastructure* (last accessed Sept. 19, 2018), https://www.ncta.com/chart/tracking-cables-investment-in-infrastructure.

[70] Letter from Rick Chessen, Chief Legal Officer, NCTA, WC Docket No. 17-84 (Jun. 11, 2018) ("collectively paying about $3 billion annually in franchise fees").

[71] Verizon, *5G Ultra Wideband Wireless Home Network,* (last accessed Sept. 19, 2018) https://www.verizonwireless.com/5g/home/?cmp=KNC-C-HQ-NON-R-AC-NONE-NONE-2K0PX0-PX-BIN-71700000040911015&msclkid=bc486d392a2712df37a536a696616805&gclid=CPGA7_Shwt0CFZGWxQIdGiEJLw&gclsrc=ds.

[72] The Commission's reliance on planned investment also seems to assume that the investment would not otherwise occur. Actually, there is a reason to suppose existing planned investments are being diverted to wireless, so that the gain the Commission imagines is illusory. Diana Goovaerts, *Verizon plans fixed 5G launches in* 2018, Mobile World Live (Nov. 29, 2017), https://www.mobileworldlive.com/featured-content/top-three/verizon-plans-fixed-5g-launches-in-up-to-5-markets-in-2018/. In addition, while there are many reasons the Commission's economic analysis is wrong-headed, it actually allows the first market entrant to capture the fair market value of the property at a below-market price and to resell it at any rate desired. Thus, if one provider obtains the right to locate on a particular pole, other companies who wish to use that pole will need to pay that provider for access. Nothing in the Draft Order requires that first provider, or anyone else other than local governments, to limit their fees to costs – that first provider will charge a rate determined by the market. The result, in effect, is shifting that value away from the public and into the hands of wireless infrastructure providers. The Commission may argue that since other companies could place facilities on buildings or on other nearby structures, therefore this is not problematic. But that simply reinforces that the basic assumptions underlying the prohibition analysis (specifically, that access to the public rights-of-way at below-market rates is essential; and that the area served is so small as to not permit significant locational movement, necessitating mandated, price-capped access to poles in the public rights-of-way) are incorrect.

CITY OF LINCOLN NEBRASKA

MAYOR CHRIS BEUTLER
555 South 10th Street - Suite 301 Lincoln, NE 68508
402.441.7511 fax: 402.441.7120 lincoln.ne.gov

September 18, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch,

The City of Lincoln, Nebraska writes to express its concerns about the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment.

The City of Lincoln has a strong track record of partnering with broadband providers. In 2012, the City of Lincoln invested public funds in building a fiber conduit network in our community. The goal was to attract broadband providers and investment by greatly reducing the cost of constructing in the public Right-of-Way (ROW) and improving the speed to market. Following the city's actions, more than $220 million in privately-owned broadband infrastructure has been deployed in our community. These investments are directly attributed to Lincoln's nationally recognized model of "broadband deployment through partnership."

While we appreciate the Commission's efforts to engage with local governments on this issue and share the Commission's goal of ensuring the growth of cutting-edge broadband services for all Americans, we remain deeply concerned about several provisions of this proposal. Local governments have an important responsibility to protect the health, safety and welfare of residents, and we are concerned that these preemptive measures compromise that traditional authority and expose wireless infrastructure providers to unnecessary liability.

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O: 425 372 8922
www.5GAmericas.org

September 19, 2018

Ex Parte

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79

Dear Ms. Dortch:

5G Americas hereby submits its attached white paper *Small Cell Siting Challenges and Recommendations* into the record of the above caption proceeding on accelerating wireless broadband deployment by removing barriers to infrastructure investment.[1] 5G Americas believes the Draft Declaratory Ruling and Third Report and Order in this proceeding appropriately balances local government zoning authority and its interest in public safety and welfare with the Commission's responsibility to make available to all Americans competitive and efficient new radiocommunications services.[2] In the attached white paper, 5G Americas provides its principles on a unified and simplified approach to wireless deployment regulation, and supports the Draft Declaratory Ruling and Third Report and Order to the extent it is consistent with the following:

- Small cell siting should be streamlined where possible to use local infrastructure policies and design guidelines.
- Small cells are similar to Wi-Fi access points–no specific planning permissions should be required to roll out such networks.
- To simplify and provide uniformity of networks, national rules should be established for rights-of-way for the deployment of small cells. This is for both the access to the property as well as the administrative paperwork–the same policies should apply nationally.

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1 5G Americas is an industry trade organization composed of leading telecommunications service providers and manufacturers. Our mission is to advocate for and foster the advancement and full capabilities of LTE wireless technology and its evolution beyond to 5G, throughout the ecosystem's networks, services, applications and wirelessly connected devices in the Americas. Currently chaired by AT&T, 5G Americas Board of Governors includes América Móvil, Cable & Wireless, Cisco, CommScope, Entel, Ericsson, Hewlett Packard Enterprise (HPE), Intel, Kathrein, Mitel, Nokia, Qualcomm, Samsung, Sprint, T-Mobile US, Inc. and Telefónica.

2 *See e.g.*, Communications Act of 1934, 42 U.S.C. §§ 151, 253, and 332; *see also Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure and investment*, Draft Declaratory Ruling and Third Report and Order, WT Docket No. 17-79 and WC Docket No. 17-84, FCC-CIRC1809-02 at ¶¶ 60 and 123 (rel. Sep. 5, 2018) (*"Draft Declaratory Ruling and Third Report and Order"*).

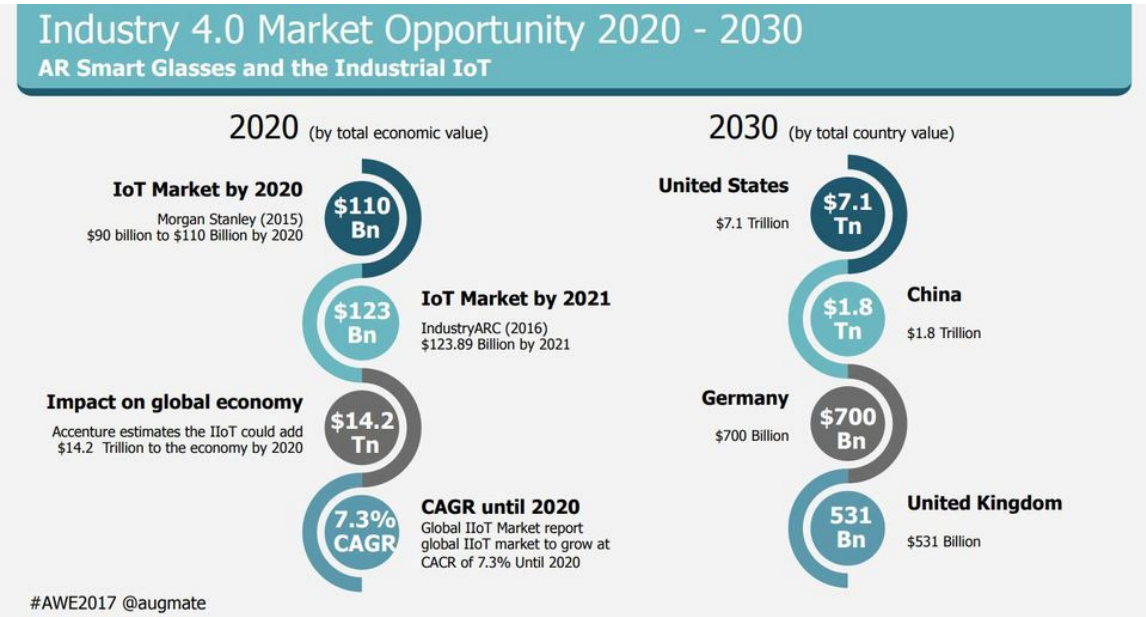

Figure 9 The market opportunity for Industry 4.0. Source: Accenture

The simultaneous rise in smartphone and IIoT usage will mean a huge leap in the number of cellular-connected devices in play by the early 2020s, some of them with critical availability requirements. Very high levels of device density, whether that it is a stadium during a ball game or to support smart lighting in a city, will rely on small cells, close to the user, to maintain good quality of service for so many end points.

Ericsson's latest Mobility Report highlights this trend, finding that:

- In 2018, mobile phones are expected to be surpassed in numbers by IoT devices.
- There will be around 400m IoT devices with cellular connections at the end of 2016.
- Around 29bn connected devices[1] are forecast by 2022, of which around 18bn will be related to IoT.

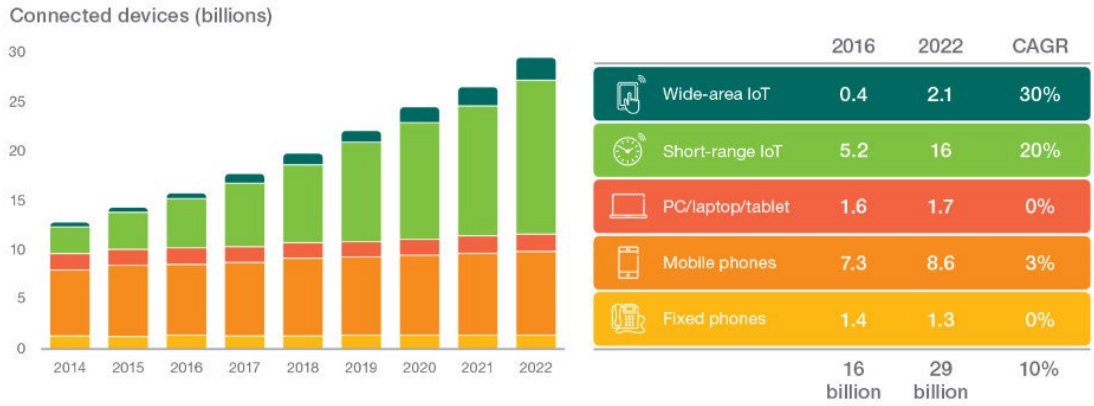

Figure 10 Connected devices in use 2014-2022. Source: Ericsson

2.3 Virtualized architectures will add to small cell site complexities

The 5G networks will have to handle large data sets that are produced by these huge numbers of connected devices, as well as high traffic levels from emerging applications such as virtual reality. To support these efficiently, MNOs will need to adopt new network topologies such as Cloud-RAN, virtualized RAN (vRAN) or open RAN (oRAN), together with integrated edge compute.

These can be implemented in all layers of the network, but in the small cell area, the result is a cluster of radios linked to a common controller, which may be integrated with an edge compute node.

The Cloud-RAN or Centralized RAN architecture separates the base station into two parts, the digital Baseband Unit (BBU) and the Remote Radio Head (RRH), centralizing the baseband processing functions on a 'master base station' to improve radio resource management.

The vRAN is an extension of that architecture, which implements the baseband functions as virtual network functions (VNFs) on standard hardware, supporting flexible allocation of baseband resources to the various cells and reducing operating cost. Operators can pool or adjust radio resources, depending on traffic, for improved performance and user experience. vRAN is an essential step towards a dense 5G network implementation. For instance, data traffic for IoT use cases will require network resources to be under smart control at a granular level to improve utilization efficiency.

Figure 12 shows the SCF/Rethink forecast for the number of small cell 5G connections which will run in each area of the spectrum between 2019 and 2025.

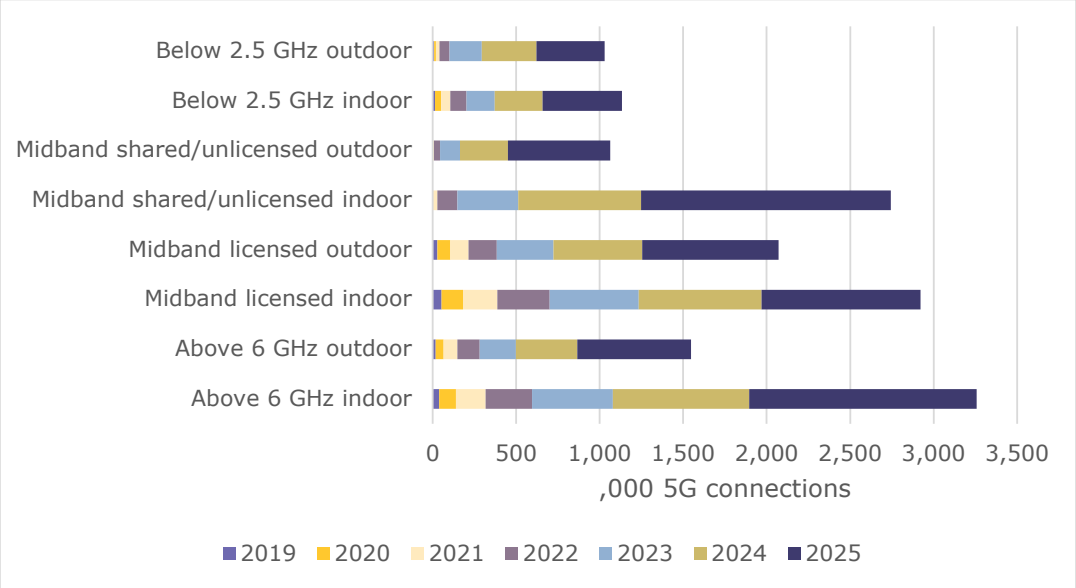

Figure 12 **Number of small cell 5G connections per spectrum band (NB many cells will be multiband so the numbers are larger than the number of access points)**

Sub-6 GHz infrastructure will continue to take advantage of the significant amount of available spectrum from 2.5 to 2.7 GHz, adding frequencies between 3.3 and 3.8 GHz, and, in some geographies at least, from 4.2 to 5 GHz . These will potentially be able to support up to 400 MHz of continuous spectrum enabling wide channel bandwidths. Sub-6 GHz infrastructure promises to increase spectral efficiency for legacy cellular bands, and expand capacity and coverage at data rates that are up to 10 times faster than existing LTE in comparable frequency bandwidths.

Sub-6 GHz and mmW 5G systems will rely on beamforming and phased array technologies to optimize signal link and data rate, leveraging large numbers of antenna elements configured in massive MIMO (multiple input, multiple output) architectures.

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September 14, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch,

The Town of Middleburg writes to express its concerns about the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. **Established in 1787, Middleburg is a small village located in Loudoun County, Virginia. It is one of the oldest and most carefully preserved towns in the state. Much of our identity is rooted in our natural beauty and the historic character of the town. This is something we have carefully cultivated and work hard to protect and is essential to our tourism economy.**

While we appreciate the Commission's efforts to engage with local governments on this issue and share the Commission's goal of ensuring the growth of cutting-edge broadband services for all Americans, we remain deeply concerned about several provisions of this proposal. Local governments have an important responsibility to protect the health, safety and welfare of residents, and we are concerned that these preemption measures compromise that traditional authority and expose wireless infrastructure providers to unnecessary liability.

- **The FCC's proposed new collocation shot clock category is too extreme.** The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60-day shot clock. When paired with the FCC's previous decision exempting small wireless facilities from federal historic and environmental review, this places an unreasonable burden on local governments to prevent adverse historic preservation, environmental, or safety impacts to the community. The addition of up to three cubic feet of antenna and 28 cubic feet of additional equipment to a structure not originally designed to carry that equipment is substantial and may necessitate more review than the FCC has allowed in its proposal. **In our case, we have allowed equipment to be attached to the**

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date:September 4, 2019

By: _*/s/ Joseph Van Eaton*_____
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