



June 19, 2018

Ex Parte Notice

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

Dear Ms. Dortch:

On Friday, June 15, 2018, the undersigned and Brian Ford on behalf of NTCA–The Rural Broadband Association (“NTCA”)¹ met with staff from the Federal Communications Commission’s (“Commission”) Wireless Telecommunications Bureau (“WTB”) and Wireline Competition Bureau (“WCB”). Those attending the meeting from the Commission were: Suzanne Tetreault, WTB Deputy Bureau Chief, Garnet Hanly, Chief of the WTB’s Competition & Infrastructure Policy Division (“CIPD”), Elizabeth McIntyre, CIPD Deputy Chief, Jiaming Shang, CIPD Acting Associate Chief, Adam Copeland, Deputy Division Chief of the WCB’s Competition Policy Division, Jonathan Campbell, WTB Legal Advisor, Colin Williams, with the WTB, and Joseph Wyer, Darrel Pae, Stacy Ferraro, Emily Bieniek, and Patrick Sun with the CIPD. The parties discussed various questions raised in rulemaking proceedings in the above-listed proceedings.

NTCA as an initial matter urged the Commission to avoid a “siloes” approach to streamlining broadband infrastructure deployment. Aspirations to deploy and operate the “5G” networks of tomorrow will even more than today’s mobile and fixed wireless services require access to sufficient spectrum *and* robust and dense fiber backhaul networks to deliver service to consumers.² The Commission should therefore work to identify and address barriers to deployment and expansion of broadband facilities of all technologies, rather than approaching infrastructure policy focusing upon mutually exclusive “wireless” or “wired” challenges.

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

² See Remarks of FCC Chairman Ajit Pai at the Mobile World Congress, Barcelona, Spain, February 26, 2018.

With respect to barriers to broadband deployment, NTCA noted that most frustrating to its small broadband provider members is the time, money and effort consumed in trying to construct broadband infrastructure on or across federal lands. NTCA thus appreciates the Commission’s work to identify these barriers by convening the “Streamlining Federal Siting” Broadband Deployment Advisory Committee (“BDAC”) working group.³ NTCA further noted that railroad crossing fees and fees for access to railroad rights-of-way, as well as the other terms and conditions under which broadband providers access such railroad facilities, present a top barrier for small broadband providers. Fees of thousands of dollars for the installation of fiber bored under a railroad crossing are common, and thus the Commission should strongly encourage states to utilize Article VI of the BDAC “State Model Code”⁴ that addresses such fees.

Turning to municipal barriers, NTCA noted that the association’s members report that they have in the past maintained an effective working relationship with many local officials (perhaps in large part due to all parties residing in the same small communities). That said, it is important that the Commission look for any opportunity to streamline deployment and reduce the cost of deployment in rural areas as well as to provide meaningful opportunities for timely expansion. NTCA therefore indicated its support for Commission action to streamline state and local siting procedures and to reduce the costs incurred by providers for access to state and local rights-of-way. Specifically, NTCA supports a revised interpretation of the phrase “reasonable period of time” as found in Section 332(c)(7)(B)(ii) of the Communications Act, as amended, to adopt “shot clocks” as applicable to “small cell” facilities. As the Commission has already recognized, small cells “have less potential for aesthetic and other impacts than macrocells and therefore warrant different treatment.”⁵ As such, shot clock timelines as applicable to “macro sites” are not relevant to the kind of deployment at issue here. Sixty days for “collocations” and 90 days for all other small cell siting applications should provide local officials sufficient time for review of providers’ requests to install small cell facilities in public rights-of-way.

NTCA further supported adoption of a “deemed granted” remedy as applicable to the Commission’s Section 332(c)(7)(B)(ii) “shot clocks.” NTCA’s small business members—already operating in some of the nation’s most-expensive-to-serve rural areas—may lack the resources to litigate in response to failures to act on facilities siting applications. This reality renders shot clocks almost meaningless, and adoption of a deemed granted remedy would put “teeth” into those provisions.

NTCA further stated that fees for applications for and access to public rights-of-way should be “cost-based.” Cost-based should be defined as those direct costs incurred by the jurisdiction involved in reviewing applications, issuing permits, performing physical site inspections (both

³ Broadband Deployment Advisory Committee Streaming Federal Siting Working Group, Final Report, Jan. 24, 2018, available at: <https://www.fcc.gov/sites/default/files/bdac-federal-siting-01232018.pdf>.

⁴ Broadband Deployment Advisory Committee, State Model Code for Accelerating Broadband Infrastructure Deployment and Investment, April 25, 2018 <https://www.fcc.gov/sites/default/files/bdac-model-code-for-states-04242018.pdf>.

⁵ *Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, Public Notice, WT Docket No. 16-421, DA 16-1427 (rel. Dec. 22, 2016), p. 12.

before and after facilities installation), constructing, repairing or maintaining government-owned facilities utilized or disturbed by the installation of broadband related facilities, supervision of installation in the right-of-way (closing off streets and traffic control, for example) or similar expenses that can be directly traced to a provider's use of the right-of-way.

Finally, NTCA asked the Commission to consider provisions to address certain “non-price restraints” that could have the effect of hindering broadband facilities deployment. Aesthetic-based restrictions on small cell siting that are subjective or vaguely worded do not give providers sufficient notice or ability to comply with such requirements and have the effect of prohibiting deployment by granting government entities nearly unbounded authority to deny siting applications. The Commission should therefore state that any aesthetic requirements adopted on applications for small cell siting must be clear and objective. The Commission should also discourage municipalities' use of limits on the number of facilities in a certain geographic area or adoption of requirements for a certain distance between such facilities in a public right-of-way. Such provisions limit competition: the “first-in” provider may have the choice of location for siting purposes and leave providers coming in later insufficient choices or locations for deployment of their facilities. In addition, efficiencies already drive providers toward collocation, and to the extent states or local governments wish to limit the number of small cell sites in the public right-of-way, they should work with providers to encourage/facilitate collocation.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,
/s/ Jill Canfield
Jill Canfield
Vice President – Legal & Industry and
Assistant General Counsel

cc: Suzanne Tetreault
Garnet Hanly
Elizabeth McIntyre
Jiaming Shang
Adam Copeland
Jonathan Campbell
Colin Williams
Joseph Wyer
Darrel Pae
Stacy Ferraro
Emily Bieniek
Patrick Sun