Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	**)**	
	)	
Build America: Eliminating Barriers to Wireless Deployments	**)**	**WT Docket No. 25-276**
	)	

AT&T COMMENTS

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AT&T Services, Inc. ("AT&T"), on behalf of its wireless affiliates, files these comments on the Federal Communications Commission's Notice of Proposed Rulemaking ("*NPRM*")[1] exploring ways to eliminate barriers to the deployment of microcell towers and other wireless facilities.

I. INTRODUCTION AND SUMMARY

This rulemaking provides a unique and important opportunity for the Commission to remove barriers to infrastructure deployment and pave the way to densification of 5G wireless networks needed to support advanced services for all Americans. As Chairman Carr explained, this proceeding allows the Commission to "tak[e] a fresh look at how the agency might use [its] authorities under the Communications Act, including Section 253 and Section 332, to streamline regulatory approaches."[2] Wireless providers have invested hundreds of billions of dollars in their networks since the advent of 5G.[3] But the work is not done. Infrastructure investment is ongoing

[1] *Notice of Proposed Rulemaking*, FCC 25-67, Build America: Eliminating Barriers to Wireless Deployments, WT Docket No. 25-276 (Sept. 30, 2025) ("*NPRM*").

[2] Remarks of Chairman Brendan Carr, Federal Communications Commission, Sioux Falls, S.D., *A Build Agenda for America* (July 2, 2025).

[3] CTIA, Wireless Infrastructure Reforms Drive Investment and Connectivity Across the U.S. ("Wireless providers have invested $219B since the launch of 5G …."), available at

and must continue so wireless providers can densify their networks as needed to meet the growing demand nationwide for high-quality wireless services. As the Commission succinctly states, network densification is "[a]t the core of providing new and high quality services" and "enhances capacity and speed, which are necessary to manage growing network congestion."[4] Yet, as the Chairman recognizes, "it still takes too long and costs too much to build infrastructure in so many parts of the country."[5] Accordingly, the Commission should use this proceeding to continue its siting reforms, removing unreasonable barriers to macro tower and other wireless deployments.

First, the Commission should adopt its proposals in the *NPRM* to modify its rules implementing Section 6409 of the Spectrum Act.[6] The Commission found in its *2020 Declaratory Ruling* that localities have misinterpreted aspects of those rules —specifically and as pertinent here, the definition of a "concealment element," what it means to "defeat" a concealment element, and the general siting condition exemption—in ways that wrongfully deny site modifications the status of an eligible facilities request ("EFR") under Section 6409.[7] The Ninth Circuit Court of Appeals vacated on procedural grounds the Commission's attempt to resolve these specific problems by Declaratory Ruling,[8] but it did not contradict the record developed in the proceeding that state and local governments are misapplying the Section 6409 rules or the need to rectify those

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https://api.ctia.org/wp-content/uploads/2025/10/Wireless-Infrastructure-Reforms-Drive-Investment-and-Connectivity-2025.pdf.

[4] *NPRM* ¶71.

[5] *Supra* n.2.

[6] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI (Spectrum Act), §6409(a), 126 Stat. 156 (Feb. 22, 2012) (codified as 47 U.S.C. § 1455(a)).

[7] Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5977, 5994-6000, *Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, WT Docket No. 19-250 (2020) ("*2020 Declaratory Ruling"*).

[8] *League of Cal. Cities v. FCC*, 118 F.4th 995 (9th Cir. 2024) ("*League of Cal. Cities*").

problems. Those "misinterpretations" continue today. The Commission can and should remove all ambiguity by codifying its prior finding that "concealment elements" are intended to make a stealth-designed facility look like something other than a wireless tower or base station, adopt its proposed standard that a modification "defeats" a concealment element if it would cause a reasonable person to view the structure's intended stealth design as ineffective, and provide clarifying guidance and examples.

Second, the Commission should adopt its proposal to apply its findings from the *2018 Small Cell Order*[9] to all wireless facilities, whether macro towers, small wireless facilities, rooftop sites or other wireless facilities. In the *2018 Small Cell Order*, the Commission clarified that state and local government requirements effectively prohibit the provision of service in violation of Sections 253 and 332 of the Communications Act[10] when they "materially limit or inhibit the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[11] It then explained how Sections 253 and 332 are applied to fees, aesthetic restrictions, and other requirements various state and municipal jurisdictions impose on small cell facilities.

But state and local governments apply fees, aesthetic restrictions, and other requirements to all types of wireless facilities, not just small wireless facilities. Macro towers and other wireless facilities are crucial to providers' efforts to densify their networks to meet the continued escalation in wireless service use that shows no signs of abating. Yet in many ways, state and local

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[9] Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79* (2018) (*2018 Small Cell Order*).

[10] 47 U.S.C. §§253, 332.

[11] *2018 Small Cell Order*, 33 FCC Rcd at 9102, 9117.

requirements are layered, presenting multiple hurdles for macro towers and other wireless facilities, and thus, can be more extensive than for small wireless facilities. Those types of requirements continue to present in a myriad of ways, such as, but certainly not limited to, fees not based on state or local government's actual costs of processing siting permits, right-of-way ("ROW") use fees for macro tower and other wireless facilities location outside the public ROW, onerous permitting application requirements, unsupported minimum setback requirements between wireless facilities and public areas, minimum separation requirements between wireless facilities, and onerous technical demonstrations of compliance with the Commission's radiofrequency ("RF") exposure rules.

State and local governments that impose these types of requirements act contrary to "Congress's stated intent in the Telecommunications Act of 1996 to 'provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans by opening all telecommunications markets to competition . . . .'"[12] More locally, they do a disservice to their communities by delaying infrastructure deployments, using excessive fees that siphon monetary resources that could otherwise be applied to increase wireless deployments in those communities, and at its most basic level, discouraging providers from deploying in their jurisdictions except as absolutely necessary. To be sure, AT&T and other providers do shift their deployments away from communities with unreasonable siting rules and policies. To reduce these types of regulatory barriers to deployment, the Commission should clarify that its findings from the *2018 Small Cell Order* apply to all wireless facilities and provide guidance and examples of how to apply those findings in the context of macro towers and other wireless facilities.

[12] *NPRM* ¶3.

II. DISCUSSION

A. Codifying the NPRM's Section 6409 Proposals Will Clarify the Bounds of an EFR and Reduce the Potential for Conflict.

1. The "Concealment Element" Exception is Narrowly Scoped.

The Commission proposes to revise rule §1.6100(b)(7)(v) to codify the definition of a "concealment element" and the standard to test if a modification "defeats" a concealment element, as adopted in its *2020 Declaratory Ruling*.[13] Specifically, the Commission proposes to define "concealment elements" as those elements intended to make a stealth-designed facility look like something other than a wireless tower or base station; adopt a standard that a modification "defeats" a concealment element if it would cause a reasonable person to view the structure's intended stealth design as ineffective, i.e., not if its stealth-design elements would continue to make the structure not appear to be a wireless facility; and provide clarifying guidance and examples. AT&T agrees with this proposed definition of "concealment elements," with the proposed standard for identifying what type of modification "defeats" a concealment element, and with codifying guidance and examples on how to apply that standard.

Congress passed Section 6409 to facilitate rapid deployment of wireless facilities by mandating the approval of network modifications that are not substantial and thus qualify as EFRs.[14] Under the Commission's Section 6409 implementing rules, a modification is "substantial" and thus, not an EFR qualifying for Section 6409 protection, if it defeats a "concealment element" of the existing structure.[15] As documented in the Commission's *2020 Declaratory Ruling*, a number of localities have interpreted "concealment element" in §1.6100(b)(7)(v) expansively to

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[13] *Id.* ¶¶21-22.

[14] Report and Order, 29 FCC Rcd 12865, 12872, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-238 (2014) ("*2014 6409 Order*").

[15] 47 C.F.R. §1.6100(b)(7).

include "any attribute that minimizes the visual impact of a facility,"[16] such as tower height or facility location. The Commission then correctly rejected that expansive interpretation, clarifying instead that a "concealment element" is an element intended to make a facility look like something other than a wireless tower or base station and that to defeat a concealment element, the proposed modification must cause a reasonable person to view the structure's intended stealth design as no longer effective after the modification.[17]

The Ninth Circuit Court of Appeals invalidated the Commission's conclusions in this respect, finding they must be resolved by a rulemaking.[18] But the Ninth Circuit left undisturbed the Commission's findings in its *2020 Declaratory Ruling* that state and local governments are misinterpreting the "concealment element" exception in the Commission rule §1.6100(b)(7)(v). This proceeding presents the Commission with the opportunity by rulemaking to codify in Commission rule §1.6100(b)(7)(v) its findings in the *2020 Declaratory Ruling* as to how a "concealment element" is defined and how a modification might "defeat" such a concealment element. Adopting the proposed definitions and clarifications would ensure fidelity to the language of Section 6409 and prevent tortured readings that would allow the concealment exception to nullify the Section 6409(a) protections adopted by Congress.

These codifications are necessary. Municipalities continue to interpret the term "concealment element" in Commission rule §1.6100(b)(7)(v) broadly in ways that inhibit the timely modification of wireless facilities. For example, one New York town denied EFR status to a lattice tower modification because the new cable run needed on the tower exterior defeated the

[16] *2020 Declaratory Ruling*, 35 FCC Rcd at 5994.

[17] *Id.* at 5994, 5996.

[18] *League of Cal. Cities*, 118 F.4th at 1024-31.

tower's ability to conceal all cable runs on its interior (i.e., its "concealment element"). To its credit, the town eventually reversed its decision, but not until after AT&T retained outside counsel, created materials demonstrating the structural reasons why cables needed to run on the exterior of the tower, and made detailed presentations demonstrating the need for the modification, all of which imposed the added costs and months of delays Section 6409 was enacted to avoid. As another example, a City on Oregon considers antenna height limits and locations, such as on the inside of, and not extending above, a parapet wall, to be concealment elements. In that City, a modification to add new or larger antennas that are more visible above a parapet wall does not qualify as an EFR. Common sense dictates that these tower and facility environments are not concealment elements. The Commission should adopt its proposals to make that clear in its rules.[19]

2. Modifications Specifically Allowed by Section 6409 Rules Are Not Prohibited by the General Siting Conditions Exception.

AT&T also supports the Commission's proposal to codify in its rules and provide guidance that a siting approval condition—including an aesthetics-related condition or any other condition designed to address the visual impact of a facility—under §1.6100(b)(7)(vi) cannot be used to prevent modifications that are specifically allowed under §§1.6100(b)(7)(i)-(iv). If there is a conflict between a locality's general ability to impose conditions under §1.6100(b)(7)(vi) and modifications specifically deemed not substantial under §§1.6100(b)(7)(i)-(iv), the conditions under §1.6100(b)(7)(vi) should be enforced only to the extent that they do not prevent the modification in §1.6100(b)(7)(i)-(iv). Absent this clarification, some municipalities will take a contrary, and expansive, interpretation that would deny EFRs that are explicitly allowed under the Commission's Section 6409 rules. This would result in absurd results where a siting approval

[19] We agree with the Commission that even placing coaxial cable on the outside of a *stealth facility* would not defeat its stealth design because cables are small in size. *NPRM* ¶21.

condition could be used to swallow the specific rule. Codifying the interpretation proposed in the NPRM will reduce disputes between municipalities and service providers seeking to modify their facilities.

B. Commission Action Under Sections 253 and 332 is Needed to Remove Continuing Barriers to Wireless Deployments.

1. The Commission is Authorized to Identify State and Local Actions Preempted by Sections 253 and 332.

The Commission has the authority to preempt artificial barriers to wireless facility deployments under Sections 253 and 332(c)(7) of the Communications Act in order to foster the critical national policy goal of promoting broadband services. Sections 253 and 332 bar state and local actions that "prohibit or have the effect of prohibiting" service[20] and the Commission reads those sections in harmony with each other.[21] And, "Section 253 represents a 'broad preemption of laws that inhibit competition.'"[22] In its *2018 Small Cell Order*, the Commission undertook a thorough review of its authority to address state and local actions that impact infrastructure deployment. It concluded that it had "authority to interpret Sections 253 and 332 of the Act to further elucidate what types of state and local legal requirements run afoul of the statutory parameters Congress established" and it has unique expertise to "issue a clarifying interpretation … that accounts both for the changing needs of a dynamic wireless sector … and for state and local oversight that does not materially inhibit wireless deployment."[23] The Ninth Circuit upheld the Commission's jurisdiction to issue these Section 253 and 332 rulings.[24]

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[20] 47 U.S.C. §§253, 332(c)(7).

[21] *2018 Small Cell* Order, 33 FCC Rcd at 9123-24.

[22] *Id.* at 9092 (quoting *Puerto Rico Tel. Co. v. Telecomm. Reg. Bd. of Puerto Rico*, 189 F.3d 1, 11 n.7 (1st Cir. 1999)).

[23] *Id.* at 9095.

[24] *City of Portland v. U.S.*, 969 F.3d 1020 (9th Cir. 2020).

Though those rulings pertain to the application of Section 253 and 332 to small wireless facilities, the *NPRM's* proposals are consistent with those findings. The Commission is charged with administering the Communications Act and has the authority, responsibility, and expert judgement to interpret how Sections 253 and 332 are to be applied to all types of wireless facilities, whether they be macro towers, small wireless facilities, rooftop facilities, or any of the other myriad of facilities through which wireless services are provided. "Such interpretations are particularly appropriate where the statutory language is ambiguous, or the subject matter is 'technical, complex, and dynamic.'"[25] The Commission has ample authority to adopt all proposals in the *NPRM*.

2. Continued Impediments to Macro Tower and Other Wireless Facility Deployments Warrant Reform.

The *NPRM* asks if the Commission should extend the reforms adopted in its *2018 Small Cell Order* to macro cell towers and other wireless facilities.[26] Unquestionably, it should. In its *2018 Small Cell Order*, the Commission recognized the forward-looking policies of some state and local governments to facilitate the deployment of wireless infrastructure in their communities and the services they support.[27] At the same time, it observed that Section 253 and 332 reforms were "necessary and appropriate" because of the importance of wireless services broadly to the American economy and more specifically to the Nation's consumers and because "legal requirements in place in other state and local jurisdictions [were] materially impeding that deployment in various ways."[28] Those same factors exist for all wireless facilities.

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[25] *2018 Small Cell Order*, 33 FCC Rcd at 9095.

[26] *NPRM* ¶31.

[27] *2018 Small Cell Order*, 33 FCC Rcd at 9096.

[28] *Id.* at 9096-98.

The Commission recognizes "the importance of ensuring the timely buildout of macro cell towers and other wireless facilities" to promote competition and secure higher-quality services for Americans.[29] Americans used 132T megabytes ("MB") of data last year, a 32T increase from 100T MB the previous year.[30] That was the single largest annual increase in data usage in U.S. history and shows no signs of abating.[31] For its part, AT&T's global network, including its wireless networks, carries one exabyte – one billion gigabytes – of data on average every day, an increase of more than 1,000% over the past decade.[32] To meet these continuing demands, AT&T will continue to require a balance of more exclusive use spectrum and additional macro facilities to densify its wireless networks. And it will require additional macro facilities to meet public safety needs, as directed by The First Responder Network Authority.[33] Other providers are likewise facing the massive demands for data usage and are undoubtedly making similar plans to densify their networks.

We all need the Commission's support to realize those deployments on a timely basis. Although many state and local jurisdictions have adopted permitting processes that are predictable, reasonably timely, and cost effective, not all have done so. And the sheer number of jurisdictions across the country translates into a large number of them that continue to impose unreasonable

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[29] *NPRM* ¶30.

[30] CTIA, 2025 Annual Survey Highlights, available at https://www.ctia.org/news/2025-annual-survey-highlights.

[31] *Id.*

[32] AT&T News, *AT&T's Daily Data Traffic Tops One Exabyte* (Dec. 23, 2025), available at https://about.att.com/blogs/2025/one-exabyte-daily-data-traffic.html.

[33] FirstNet Authority Press Release, *FirstNet Authority to Expand Network, Boost Coverage for Public Safety with More Sites, Satellite Connectivity* (Dec. 19, 2025) ("[T]he FirstNet Authority is directing the network contractor, AT&T, to deploy more than 135 new, purpose-built cell sites across the country."), available at https://firstnet.gov/newsroom/press-releases/firstnet-authority-expand-network-boost-coverage-public-safety-more-sites.

costs and burdens on macro tower and other wireless facility deployments. As with small wireless facilities, state and local requirements for siting macro towers and other wireless facilities can "materially inhibit" the provision of service even if they do not present an insurmountable barrier,[34] can impose a financial burden or competitive disparity that effectively prohibits the provision of service,[35] and can prevent a variety of activities relating to the provision of service, such as provider efforts to introduce new or enhance coverage, fill a coverage gap (even when it is to meet a public safety need), densify a wireless network, and introduce new services or service capabilities.[36] Some state and local governments even seek to exploit what they perceive to be an absence of Sections 253 and 332 clarity for macro facilities by vigorously arguing against the applicability of the *2018 Small Cell Order* to proposed deployments. For example, a municipality in Tennessee spent months arguing that issue with AT&T, ostensibly avoiding the clear limits that *Order* imposes. The Commission can reduce the frequency of such gamesmanship by clarifying the limits Sections 253 and 332 puts on state and local government regulation of macro towers and other wireless facilities deployments.

Neither Section 253 nor Section 332 are limited by the size of the wireless facility providing service, and it would be inappropriate to add such a limitation to those statutes without Congressional direction. Thus, both Sections 253 and 332 apply to small wireless facilities, macro towers, and all other wireless facilities.[37] And, the Commission's standard for evaluating state and local regulation under Section 253 should be the same for all wireless facilities, deriving from its

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[34] *2018 Small Cell Order,* 33 FCC Rcd at 9108-09.

[35] *Id.* at 9106, 9117.

[36] *Id.* at 9104-05.

[37] We agree that macro towers and other wireless facilities are merely those that do not fit the definition of a small wireless facility.

finding in *California Payphone*—does the requirement materially inhibit or limit the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.[38] Applying this same standard would facilitate timely infrastructure build-out. As the Chairman explained, the *2018 Small Cell Order* generated "record breaking capital investment and network buildout."[39] Similar dividends are likewise possible if the Commission adopts its proposals in the *NPRM* to dictate and clarify the limits Congress imposed on state and local governments through Sections 253 and 332 of the Communications Act.

3. State and Local Governments Continue to Impose Unreasonable Fees on Applications to Deploy Macro Towers and Other Wireless Facilities.

Section 253(c) allows state and local governments to charge "fair and reasonable compensation" for wireless facilities' use of the public ROW.[40] In its *2018 Small Cell Order*, the Commission found that this section allowed state and local governments to charge fees for the placement of wireless facilities that are nondiscriminatory and represent a reasonable approximation of the locality's reasonable costs.[41] Nevertheless, AT&T continues to experience state and local governments imposing non-cost-based fees on macro tower and other wireless facilities deployments, even when they are not located within the public ROW. The Commission should apply the same cost-based fee principles from the *2018 Small Cell Order* to state and local government fees imposed on the deployment of macro towers and other wireless facilities.

Like we discovered for small cell facilities, state and local governments processing AT&T's applications to deploy macro towers and other wireless facilities charge an assortment of fees,

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[38] Memorandum Opinion & Order, 12 FCC Rcd 14191, 14209, *California Payphone Ass'n*, CCB Pol. 96-26 (1997); *2018 Small Cell Order*, 33 FCC Rcd at 9102-05.

[39] *See supra* n.2.

[40] 47 U.S.C. § 253(c).

[41] *2018 Small Cell Order*, 33 FCC Rcd at 9091, 9100, 9117.

most that are not cost-based. Fees charged for consultant review and expenses continue to be problematic because consultants have no incentive to keep their fees low. Consultants consistently generate fees that are substantially higher than the processing fees of municipalities that do not use them. In New Mexico, the fees to process siting applications of two municipalities that previously charged approximately $1,000 have increased to over $10,000 since they started engaging consultants to process the applications, even for simple site maintenance like a generator replacement and even if the modification qualifies as an EFR.

A municipality in California requires applicants to deposit funds (typically, between $5,000-$10,000) in advance with the City to cover all consultant fees and expenses, including to testify at a hearing, and to replenish those fees as needed. A County in Indiana requires an up-front $8,500 escrow to cover consultant fees, which must be replenished when reduced to $2,500. These types of consultant fees arrangements, similar to the example of the consultant fee arrangement in Oyster Bay, New York the *NPRM* proposes to deem unlawful,[42] have repeatedly been rejected by courts as unreasonable,[43] yet they continue to be pervasive. Even in states that require cost-based fees, we continue to be charged for not only consultants, but also for attorneys, planners, and other third-party contractors, generating invoices that can exceed tens of thousands of dollars.

Similar to consultant fees, other types of seemingly objective fees can be excessive. For example, two counties in Mississippi charge permit fees per tower, per antenna, and per piece of

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[42] *NPRM* ¶51.

[43] *See, e.g., MetroPCS v. City of Mount Vernon*, 739 F. Supp. 2d 409 (S.D.N.Y. 2010) (Struck down because of "the absence of any guiding standard or limitation on how much the applicant can be charged."); *Landstein v. Town of Lagrange, 166 A.D.3d 100, 86 N.Y.S.3d 155 (N.Y. App. Div. 2018)* ("The escrow … would permit unfettered spending by consultants without regard to the nature of the application and the burden placed upon the applicant, the necessity for consultants in the first instance, and the reasonableness of consultant charges in the light of comparable charges for similar services in connection with similar applications.").

associated equipment (e.g., tower-top amplifier, remote radio unit ("RRU")). Though the fees are objective and disclosed, they are high and accumulate such that in the aggregate a typical facility upgrade can become cost prohibitive. In one of these Mississippi counties, a recent AT&T application to swap new antennas and RRUs on an existing tower ran $8,250 (9 antennas @ $750/antenna = $6,750 + 6 RRUs @ $250/RRU = $1,500). These fees are excessive and bear no relationship to the county's cost for evaluating the application for the work to be done. When multiplied by the number of facilities requiring antenna change-outs to upgrade to 5G and to newly acquired spectrum, costs quickly become prohibitive. AT&T has consciously redirected its resources elsewhere as a result.

In Oregon, multiple jurisdictions charge ROW use fees, even to providers whose facilities are not located in the ROW. Sometimes these fees are charged as a percentage of revenue while other times they are charged as a flat fee. For example, a municipality in Oregon charges a ROW use fee based on a percentage of revenue for macro towers not located in the ROW, while another municipality recently moved from a gross receipts based ROW fee to a $400 annual flat fee.[44] The municipalities justify these ROW use fees on the basis that macro tower transmissions use third-party fiber that is placed in the ROW. But these fees are improper no matter how you cut them, as they represent no cost to the municipality and are merely attempts to generate revenue, collecting unlawful ROW access fees multiple times for the same facilities.

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[44] *See* https://apps.lakeoswego.city/WebLink/DocView.aspx?id=3083061&dbid=0&repo=CityOfLakeOswego:

> Every person that owns, places, operates or maintains utility facilities in the City' s public rights- of-way, and every person that utilizes utility facilities to provide utility service(s) in the City, whether or not the person owns the utility facilities utilized to provide the utility service(s), shall pay the public rights-of-way fee for every utility service provided in the amount determined by resolution of the City Council.

To be sure, these fees do inhibit the deployment of wireless services. In the *2018 Small Cell Order*, the Commission expressed what it and service providers have always known: fees imposed on wireless facility deployments, even fees that may seem small in isolation, can have material and prohibitive effects on deployment, particularly in the aggregate,[45] and that all types of fees "drain limited capital resources that otherwise could be used for deployments."[46] Those economic realities apply to all wireless facility deployments, maybe even moreso to macro facilities because they are more capital intensive. As a result, service providers will direct their facility siting resources toward jurisdictions where there is more certainty, where application fees, timelines, and other requirements are reasonable. Otherwise, they risk lost or delayed investments, which harm consumers and materially inhibit or limit a service provider's ability to provide wireless services.

To avoid this result, the Commission should clarify that a "fair and reasonable" fee for processing an application to place a macro tower or other wireless facility deployment must be cost-based. The Commission should categorically prohibit revenue-based fees as, by definition, they are not cost-based and as a result, usually not reasonable in relation to the necessary review. In these respects, the Commission should, as it did in the *2018 Small Cell Order*, adopt a presumptively reasonable fee for processing applications for the placement of macro towers and other wireless facilities.

4. Other Restrictions Unreasonably Inhibit Infrastructure Deployment.

The *2018 Small Cell Order* clarified that a state and local requirement need not be an insurmountable barrier to deployment to materially inhibit the provision of service in violation of

[45] *2018 Small Cell Order*, 33 FCC Rcd at 9114, 9119-20.

[46] *Id.* at 9115.

Sections 253 and 332,[47] that such an unlawful requirement can apply to a variety of activities relating to the provision of service, including wireless network, and introduce new services or service capabilities,[48] and that state and local jurisdictions cannot dictate the design of a provider's network.[49] Nevertheless, many jurisdictions around the country impose regulations that run afoul of this guidance by requiring providers, as part of the application process, to submit detailed information about their network designs and plans scrutinize them in an attempt to unreasonably influence where deployments occur. For example, a California municipality requires applicants to submit a "master plan" of their sites that are existing and anticipated over the next two years, and refuses to grant an application that deviates from the plan except to fill a service gap or to address changed conditions that could not have been reasonably anticipated.

Many jurisdictions require providers submitting applications to deploy macro towers or other wireless facilities to make rigorous showings as to why they are not instead collocating on an existing tower or base station. AT&T does not object to requiring a general assurance in a siting application that it cannot locate its equipment on an existing tower or base station, but the types of rigorous showings and the scrutiny to which they often are subjected go beyond the limits of Sections 253 and 332. For example, multiple municipalities in Mississippi require an applicant seeking to deploy a 120-feet or taller tower to demonstrate an inability to collocate on an existing structure within a one-mile radius. A jurisdiction in California requires an applicant to show it has undertaken collocation efforts by submitting copies of communications with the owners of existing facilities, along with signal interference and propagation data. Some municipalities even

[47] *Id.* at 9108-09.

[48] *Id.* at 9104-05.

[49] *Id.* at 9104 n.84.

unlawfully give themselves the ultimate authority to dictate the location of facilities. For example, a county in Georgia requires evidence of inability to collocate on an existing structure that meets "the satisfaction" of the county commission, which also "may require the applicant to make reasonable modifications or alterations to its engineering needs, designs or requirements in order to facilitate co-location."[50] These types of requirements are burdensome for providers, go beyond the authority preserved for state and local jurisdictions in Section 253(b), and reflect an attempt to dictate provider's network designs in ways that inhibit the provision of service in violation of Section 253(a) and Section 332 of the Communications Act.

Other municipalities attempt the same result through minimum setback requirements (from any public area) and minimum separation requirements (from other wireless facilities). An Oregon county requires all *towers* to be setback a minimum of 1,200 feet from any school or dwelling with limited exceptions. A municipality in California imposes a minimum setback of 1,000 feet for *any telecommunications facility* from any residence and 600 feet from any historic district, school or hospital. And a California county imposes a minimum setback for *any wireless communications facility* of 500 feet from any "residential areas" or 1,500 from a school. While these are only three examples, they accurately represent the types of setback restrictions that are pervasive across the country.

Equally problematic are municipal requirements to maintain minimum separation between wireless facilities. A Georgia county imposes a minimum five-mile separation between wireless towers. A county in Colorado imposes a minimum separation requirement between towers of 8,000 feet (over 1.5 miles) absent a detailed technical demonstration that the tower is the only means to provide required coverage and the county's acceptance of that explanation,. A major city in Florida

[50] Lumpkin County, GA Code of Ordinances Ch. 51, §51-3.

requires a minimum separation of as much as 5,000 ft (nearly 1 mile) between certain towers. A Mississippi county requires a minimum one-half mile separation between towers. A county in Washington State has a similar one-half mile minimum separation requirement between macro towers, even expressly clarifying that costs or contractual provisions precluding collocation within the area are not excuses for deviating from that minimum separation.

All of these requirements—rigorous site collocation and network plan demonstrations, excessively large minimum setback requirements, and tower or facility minimum separation requirement—effectively prohibit the provision of service. They represent state and local efforts to dictate the design of providers' networks by creating multiple hurdles providers must jump to densify those networks. Moreover, they exceed the authority "to protect the public safety and welfare" reserved for state and local governments in Section 253(b) as they bear no reasonable relationship to the fall-risk of a tower. This is especially so for minimum setback and separation requirements that apply to non-tower facilities, which have zero or an insignificant fall risk. As such, they "prevent[] the provision of the level of service Congress intended the Communications Act to protect."[51] Service providers already have significant financial incentives to collocate on existing structures and to deploy their facilities in the most efficient means. Municipalities attempts to inject themselves into providers' network designs do not increase that incentive, and only serve to unnecessarily raise providers' costs and increase the regulatory burdens of network deployments, even to such an extent that it inhibits network deployments.

To the extent these requirements are motivated by a desire to reduce RF exposure from wireless facilities, they are preempted by Section 332(c)(7)(B)(iv).[52] Commission RF exposure

[51] *NPRM* ¶71.

[52] 47 U.S.C. §332(c)(7)(B)(iv).

rules already impose maximum permissible exposure limits and require providers to mitigate exposure, including by preventing access to excess exposure areas.[53] State and local governments have no authority to impose their own setback or separation requirements to address RF exposure.

On a related note, the Commission should clarify that localities also lack authority to require providers submit or pay for RF exposure studies of any kind (predictive and/or measured) as a condition of approval of a siting permit or as a condition of continued operation of a site. Though RF study requirements were rare years ago, state and local governments are increasingly requiring permit applicants to submit technical demonstration of compliance with Commission RF exposure rules, even when there is no objective basis to suspect noncompliance with those rules and even for wireless facilities that are exempt from routine environmental evaluation under Commission rules.[54] Some jurisdictions even impose layered RF study requirements. For example, multiple cities in California require both a preconstruction RF safety report prepared by an engineer and a post-construction RF safety report with measurements. Those costs to prepare a complete application are in addition to the fees the municipality charges.

Some municipalities even hold-up permit approval if the already-submitted RF study, though demonstrating compliance with Commission rules, does not provide the detail they seek. When that happens, providers must re-engage their RF engineers to create additional iterations of the RF studies, amplifying the costs even more. These requirements defy rationality. Requirements to *certify compliance* with Commission RF exposure rules passes muster, but those that require providers to spend hundreds or thousands of dollars to prepare predictive or measured RF studies

[53] 47 C.F.R. §§1.1307(b), 1.1310.

[54] *Id.* §1.1307(b)(1)(A), (3).

do not. The Commission should provide these clarifications to stem the excessive costs and delays that can accompany these RF study requirements.

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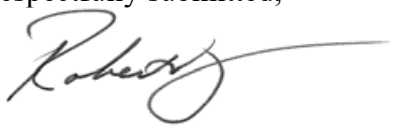
Respectfully submitted,



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