

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

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

COMMENTS OF CTIA

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I. INTRODUCTION AND SUMMARY.

CTIA¹ commends the Federal Communication Commission (“Commission”) for proposing to further streamline its wireless infrastructure siting regulations. As the Notice of Proposed Rulemaking (“*NPRM*”) highlights, high costs, long delays, and other obstacles deter investment in the larger wireless facilities, wireless collocations, and small cells that are necessary to densify networks and extend wireless coverage.² This infrastructure is integral to expanding wireless service and meeting the American public’s skyrocketing demand for high-speed, reliable wireless broadband services nationwide.

Removing regulatory barriers that impede rapid wireless broadband deployment also is a core objective of Chairman Carr’s Build America Agenda and the Administration’s broadband

¹ CTIA – The Wireless Association® (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless providers, device manufacturers, and suppliers, as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. CTIA represents a broad diversity of stakeholders, and the specific positions outlined in these comments may not reflect the views of all individual members. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² *Build America: Eliminating Barriers to Wireless Deployments*, Notice of Proposed Rulemaking, FCC 25-67 (rel. Sept. 30, 2025) (“*NPRM*”).

and Artificial Intelligence (“AI”) policies.³ A key component to building and enhancing 5G and beyond is the physical infrastructure that serves as the backbone for America’s wireless connectivity. Taking the actions that the *NPRM* proposes will aid in cutting the regulatory red tape that impedes or prohibits investment in wireless facilities required to support broadband connections nationwide, which in turn fuels innovation across all industries and for consumers, including supporting the rapidly evolving and expanding use of AI.⁴

Consistent with the goals of promoting broadband access and streamlining wireless infrastructure deployment, the Commission should:

- **Amend its rules implementing Section 6409 to remove uncertainty as to their application.** Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) was enacted to speed the consideration and approval of applications for non-substantial collocations, removals, or modifications of wireless facilities on existing structures. To further promote the goal of this provision, the Commission should: (1) define the scope of “concealment elements”; (2) clarify that localities may not condition approval of an Eligible Facilities Request (“EFR”) on a provider’s compliance with additional requirements that undermine the purpose of Section 6409; (3) prohibit the imposition of new conditions as part of the renewal process for a permit covering an EFR; (4) clarify that the shot clock applies to all permits a state or local government requires; (5) clarify that a deemed grant is a legally valid permit; and (6) clarify application of the Section 6409 implementing rules to generators and other backup power equipment.
- **Remove the barriers that high fees impose on deployments of macro wireless facilities.** Pursuant to Sections 253 and 332(c)(7) of the Communications Act, the Commission has taken numerous steps to ensure that state and local siting regulations do not prohibit or have the effect of prohibiting the deployment of wireless facilities. To further these efforts, the Commission should: (1) affirm that the *California Payphone Order*’s “materially inhibit or limit” standard applies to all wireless

³ *Id.* ¶ 3; see also The White House, *Winning the Race: America’s AI Action Plan* (July 3, 2025) (“AI Action Plan”), <https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf>.

⁴ See, e.g., Christiaan Segura, *How Wireless Innovation Connects All Consumers*, CTIA Blog (May 16, 2024), <https://www.ctia.org/news/how-wireless-innovation-connects-all-consumers> (providing examples of the products and services that wireless deployments enable); Brian Kennedy et al., *How Americans View AI and Its Impact on People and Society*, Pew Research Center, at 14 (Sept. 17, 2025), https://www.pewresearch.org/wp-content/uploads/sites/20/2025/09/PS_2025.9.15_AI-and-its-impact_report.pdf (finding that “62% of U.S. adults say they interact with AI at least several times a week”).

facilities;⁵ (2) affirm that state and local fees and other charges must be reasonable, competitively neutral, and nondiscriminatory; (3) find that fees associated with the deployment of any type of wireless infrastructure that are above a reasonable approximation of the locality's costs have the effect of prohibiting wireless service; and (4) identify specific fee levels for the deployment of macro and other wireless facilities that are presumptively reasonable.

- **Remove other barriers to wireless infrastructure deployment.** The Commission should promote wireless deployment by advancing a common understanding of Section 253 by: (1) clarifying what types of aesthetics and setback requirements unreasonably discriminate against wireless facilities; (2) clarifying application of its rules to demonstrations of coverage gaps or site suitability; (3) affirming that both express and *de facto* moratoria are unlawful; and (4) adopting a “deemed granted” remedy when localities fail to act on siting applications within reasonable times.
- **Expedite dispute resolution.** The Commission should create an optional process that can be voluntarily used to expedite resolution of siting and deployment disputes between a locality and a provider, where doing so can avoid prolonged and costly litigation and focus on resolutions that benefit all stakeholders.
- **Ensure that state AI laws do not inhibit wireless deployment and that state and local broadband regulations do not impede AI growth.** AI is integral to wireless providers’ efforts to deliver high-quality wireless service to people across the country, and leading in AI increasingly requires the capabilities and infrastructure provided by next-generation wireless technologies. The Commission should facilitate AI advancement by preempting state and local AI and broadband regulations that impede wireless infrastructure deployment.

By taking steps consistent with these comments, the Commission can facilitate widespread and enhanced wireless deployment for both macro facilities and small cells alike, thereby furthering the goals of the Administration and Chairman Carr’s Build America Agenda.

II. REMOVING BARRIERS TO WIRELESS BROADBAND DEPLOYMENT BENEFITS THE U.S. ECONOMY AND CONSUMERS.

The Communications Act’s cardinal objective is to “make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communications service.”⁶ Sections 253 and 332

⁵ See *California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park California, Pursuant to Section 253(d) of the Communications Act of 1934*, Memorandum Opinion and Order, 12 FCC Rcd 14191 (1997) (“*California Payphone Order*”).

⁶ 47 U.S.C. § 151.

of the Communications Act,⁷ together with Section 6409 of the 2012 Spectrum Act,⁸ advance that objective by limiting state and local regulation of wireless infrastructure deployment.

The Commission has been delivering on this objective. Between 2017 and 2020, now-Chairman Carr spearheaded the Commission’s efforts to reform the rules and policies implementing those provisions, including by clarifying the role of state and local governments in the siting process and preempting or restricting actions that impede new or modified wireless deployments.⁹

These efforts have benefited the U.S. economy tremendously. Wireless providers invest tens of billions of dollars every year building, upgrading, and maintaining their networks, averaging more than \$30 billion annually over the last decade.¹⁰ In 2024 alone, America’s

⁷ See *id.* §§ 253, 332.

⁸ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, title VI (“Spectrum Act”), § 6409(a), 126 Stat. 156 (codified as 47 U.S.C. § 1455(a)).

⁹ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, 32 FCC Rcd 9760 (2017) (eliminating historic preservation review for certain replacement utility poles); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd 3102 (2018) (revising the rules and procedures for deployments subject to NEPA and historic preservation review), *aff’d in part, vacated and remanded in part, United Keetoowah Band of Cherokee Indians in Okla. v. FCC*, 933 F.3d 728 (D.C. Cir. 2019); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) (“*Small Cell Order*”) (addressing regulatory barriers at the local level that are inconsistent with federal law), *aff’d in relevant part, City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (“*Moratoria Order*”) (speeding the process and reducing costs of attaching new facilities to utility poles), *aff’d, City of Portland*, 969 F.3d 1020; *Implementation of State and Local Governments’ Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5977 (2020) (“*2020 Declaratory Ruling*”) (clarifying regulations applicable to upgrading the equipment on existing structures), *rev’d in part, denied in part, League of Cal. Cities v. FCC*, 118 F.4th 995 (9th Cir. 2024); *Implementation of State and Local Governments’ Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012*, Report and Order, 35 FCC Rcd 13188 (2020) (further streamlining the state and local review process for modifications to existing wireless infrastructure).

¹⁰ CTIA, *2025 Annual Survey Highlights*, at 3 (Sept. 2025) (“CTIA 2025 Annual Survey Highlights”), <https://api.ctia.org/wp-content/uploads/2025/09/2025-Annual-Survey-Highlights.pdf>.

wireless providers spent nearly double the amount of their European counterparts per capita, underscoring why modernizing regulation along with a national framework is so vital to bringing better wireless services to Americans.¹¹ Wireless industry investment is enhancing competition and choice in the broadband marketplace, and consumers have responded by embracing 5G to connect at home.¹² A key part of the wireless industry’s success is also providing value to consumers, with the price per megabyte of data dropping 62 percent from 2020 to 2024. Indeed, wireless data continues to cost less even as the cost of many other consumer goods and services steadily increase.¹³ The siting reforms the Commission adopted during the first Trump administration were instrumental to CTIA members’ ability to deploy nationwide 5G faster than any other generation of wireless and enable network densification to promote these benefits and support increased capacity for both mobile and fixed wireless broadband growth.¹⁴

Congress has recognized that Americans demand more and better wireless connectivity. For that reason, in the One Big Beautiful Bill Act (“OB3”), Congress restored the Commission’s spectrum auction authority and established a pipeline of at least 800 megahertz of mid-band spectrum to be made available for licensed use over the next decade.¹⁵ The Commission’s efforts

¹¹ *Id.*

¹² Indeed, for the third year in a row, 99 percent of new home broadband subscribers chose 5G. *Id.* at 6.

¹³ *Id.* at 5. Wireless infrastructure deployment also benefits consumers in non-quantifiable ways, including by supporting public safety services—which is critical considering that 80 percent or more of 911 calls are from wireless devices in some areas. See Industry Data, CTIA (citing NENA, 9-1-1 Statistics, <https://www.nena.org/page/911statistics> (last visited Dec. 31, 2025)), <https://www.ctia.org/the-wireless-industry/infographics-library> (last visited Dec. 31, 2025).

¹⁴ See CTIA 2025 Annual Survey Highlights at 7; see also *NPRM* ¶ 2 (discussing that wireless data traffic continues to increase year over year).

¹⁵ Pub. L. No. 119-21, § 40002, 139 Stat. 72 (2025). The law as passed does not have an express “short title,” but while under debate commonly was known as the One Big Beautiful Bill Act. See also The White House, *Winning the 6G Race*, Presidential Memorandum (Dec. 19, 2025), <https://www.whitehouse.gov/presidential-actions/2025/12/national-security-presidential-memorandum-nspm-8-0bda/>.

to implement OB3, including making Upper C-band spectrum available for full-power terrestrial licensed use,¹⁶ are critical to enabling the wireless industry to continue to innovate and to meet the soaring consumer demand for mobile and fixed wireless connectivity across the country. And the need for substantially more network infrastructure to meet this demand is pressing. As an Accenture study recognizes, “by 2027 networks will be unable to meet nearly a quarter of traffic demand in high-traffic areas during peak hours,” putting at risk both the ability of providers and manufacturers to support innovations in next-generation technologies and applications, including AI, and the ability to meet U.S. consumers’ constantly increasing demand for wireless data.¹⁷

Acting now to streamline wireless infrastructure siting rules is a necessary next step to ensure that the spectrum to be auctioned as part of the OB3 pipeline can be put to use as quickly and cost-effectively as possible to the benefit of American consumers and enterprises. Specifically, further clarifying the Commission’s siting regulations and removing regulatory red tape for every kind of wireless facility will spur more and faster deployment of a broader array of wireless facilities, enable wireless providers to densify their networks to provide urgently needed capacity, enhance competition, facilitate connectivity to support manufacturers’ technological innovations, and help more Americans connect more reliably in more places at faster speeds.

III. THE COMMISSION SHOULD AMEND ITS RULES IMPLEMENTING SECTION 6409 TO STREAMLINE COLLOCATION MODIFICATIONS.

The Commission’s 2014 *Section 6409 Order* was instrumental in establishing a framework for promoting the deployment of wireless facilities on existing wireless

¹⁶ *Upper C-band (3.98-4.2 GHz)*, Notice of Proposed Rulemaking, FCC 25-78 (rel. Nov. 21, 2025).

¹⁷ Accenture, *Securing the Future of U.S. Wireless Networks, The Looming Spectrum Crisis*, at 3, 17 (Mar. 2025) (“Accenture Study”), <https://api.ctia.org/wp-content/uploads/2025/03/Looming-Spectrum-Crisis-Accenture.pdf>.

infrastructure.¹⁸ In its *2020 Declaratory Ruling*, the Commission clarified aspects of its 2014 rules,¹⁹ which the Ninth Circuit largely upheld.²⁰

The Commission appropriately seeks comment on the discrete aspects of the *2020 Declaratory Ruling* that the Ninth Circuit remanded and on other clarifications that may be needed to ensure Section 6409 is applied consistent with Congressional intent.²¹ Acting now will provide further needed certainty to both localities and providers and remove barriers to modifying existing sites that inhibit upgraded wireless service to the public.

A. The Commission Should Codify the Definition of “Concealment Elements” for Purposes of Section 6409.

In the *2020 Declaratory Ruling*, the Commission clarified that concealment elements (“CEs”) are “elements of a stealth-designed facility intended to make the facility look like something other than a wireless tower or base station.”²² The Commission adopted this clarification in response to record evidence showing that some localities were treating permitting requirements that did not involve the structure itself as CEs, thereby excluding non-substantial modifications from the streamlined Section 6409 process.

The Ninth Circuit in *League of California Cities* vacated this part of the *2020 Declaratory Ruling*, holding that it was “inconsistent with the unambiguous text” of the *Section*

¹⁸ *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865 (2014) (“*Section 6409 Order*”), *aff’d*, *Montgomery Cty. v. FCC*, 811 F.3d 121 (4th Cir. 2015).

¹⁹ *2020 Declaratory Ruling*, 35 FCC Rcd 5977.

²⁰ *League of Cal. Cities*, 118 F.4th at 1024-28, 1030-31.

²¹ *NPRM* ¶¶ 27-28.

²² *2020 Declaratory Ruling*, 35 FCC Rcd at 5994 ¶ 34.

6409 Order and thus should have been adopted by rulemaking.²³ Notably, the Court did not opine on the Commission’s reasoning.

The Commission should now address that procedural issue and codify the substance of the *2020 Declaratory Ruling* in a rule. Specifically, the Commission should adopt its proposal to define CEs “as those elements intended to make a stealth-designed facility look like something other than a wireless tower or base station.”²⁴ Taking this action will address the Ninth Circuit’s requirement that the Commission adopt the definition through a rulemaking. It also will help prevent some localities’ practice of broadly defining a CE to exclude modifications that do not involve substantial changes to the structure from the streamlined process that Section 6409 enacted. Finally, it will provide certainty to industry and state and local regulators when planning and reviewing EFRs that include CEs.

B. The Commission Should Codify Its Rules Associated with Conditions of Approval.

In the *2020 Declaratory Ruling*, the Commission stated that where there is a conflict between a locality’s general ability to impose conditions and Section 6409’s specific requirement to grant modifications that are not substantial, conditions may be enforced only to the extent that they do not conflict with the triggers in the Commission’s rules regarding what constitutes a “substantial” modification, such that they then exclude an eligible modification from Section 6409 processing and the deemed granted remedy.²⁵

²³ *League of Cal. Cities*, 118 F.4th at 1025.

²⁴ *NPRM* ¶ 20.

²⁵ *2020 Declaratory Ruling*, 35 FCC Rcd at 5998-99 ¶ 42.

The Ninth Circuit held, however, that this clarification was inconsistent with the Commission's rules and should have been adopted by rulemaking instead.²⁶ Again, the Court based its holding on procedural error, not on substantive concerns with the *2020 Declaratory Ruling*.

The Commission should therefore amend its rules to codify that Section 6409 does not authorize a locality to impose conditions on an EFR grant where the modification does not trigger any of the other Section 1.6100(b)(7) substantial change criteria. The rule also should state that, to the extent a locality attempts to impose conditions on an EFR, those conditions should be deemed void and not considered as conditions for purposes of determining whether future modifications to the facility qualify as EFRs.²⁷

C. The Commission Should Adopt a Rule Regarding Conditions of Renewal.

The *NPRM* correctly points out that some localities include time limits on wireless facility permits.²⁸ Some localities then leverage those time-limited permits to condition their renewal on the provider's acceptance of new requirements or restrictions on an EFR.

But localities' imposition of new conditions in connection with permit renewals violates Section 6409(a). The statute is unequivocal: a State or local government "may not deny, and shall approve, any eligible facilities request."²⁹ The statute does not permit localities to impose conditions on previously approved EFRs in subsequent proceedings.

²⁶ *League of Cal. Cities*, 118 F.4th at 1027-28.

²⁷ Localities may require applicants to comply with codified health and safety codes to the extent they do not conflict with issues over which the Commission has plenary authority.

²⁸ *NPRM* ¶ 27 & n.64.

²⁹ 47 U.S.C. § 1455(a)(1).

The Commission should thus adopt a new rule stating that a state or local jurisdiction may not impose new conditions as part of the renewal process for a permit covering an EFR.

D. The Commission Should Amend Its Rules to Make Clear that the Section 6409 Shot Clock Applies to All Required Permits.

While certain states have undertaken efforts to reduce wireless permitting burdens,³⁰ CTIA's members have nevertheless experienced issues regarding application of the Section 6409(a) shot clock. Those include some localities taking the position that the shot clock applies only to the permit application and not to other permits the locality requires. Such an approach can delay wireless deployment and lead to gamesmanship of the streamlined process Congress envisioned for EFRs.

While the Commission held in the *Small Cell Order* that the shot clocks it adopted pursuant to Section 332 apply to local actions on all permits,³¹ it has not issued a similar clarification that the Section 6409 shot clocks apply to all permits for EFRs.

To address this issue, the Commission should amend its rules to clarify that the Section 6409 shot clock applies to all permits a state or local government requires by inserting the italicized language in Rule 1.6100(c)(2): “. . . the State or local government shall approve the application *and all other required applications* unless it determines that the application is not covered by this section.” Adding this language will promote Section 6409's goal of expediting infrastructure deployment by ensuring that localities cannot delay the permitting process by requesting permits outside the scope of Section 6409's streamlined review.

³⁰ See, e.g., N.C. Gen. Stat. §§ 160D-930—160D-935 (limiting the application material that providers must file); Wis. Stat. § 66.0404 (limiting the permitting application material providers must file and prohibiting denial of an application solely on grounds of aesthetics).

³¹ *Small Cell Order*, 33 FCC Rcd at 9155-59 ¶¶ 132-137.

To make this rule change effective, the Commission should also clarify that requests beyond the scope of determining whether an application is an EFR cannot be made as a backdoor to toll the shot clock. For example, if a state or local authority engages with a consultant for permitting review, that review should be subject to and addressed within the shot clock period. There is no reason for such reviews to delay the permitting process beyond the shot clock deadlines.

E. The Commission Should Amend Its Rules to Clarify that a Deemed Granted Notice Is a Legally Valid Permit.

Section 1.6100(c)(4) of the Commission’s rules provides that if a locality fails to approve or deny an EFR within the time allowed, the request is deemed granted, and the deemed grant becomes effective upon the applicant’s written notice to the locality.³²

However, some localities refuse to accept the notice as a valid permit for purposes of site work such as utility delivery and construction. That refusal violates Section 6409’s mandate that the locality “approve” a qualifying EFR. It also violates Section 1.6100(c)(4), which makes the approval effective upon notice to the locality. And it delays wireless deployment because utilities and other third parties may require a physical permit prior to beginning the work needed to modify the facility for deployment. The provider is therefore left without any practical recourse to make the required modification.

The Commission therefore should amend Rule 1.6100(c)(4) to make plain that the provider’s notice to the locality following the locality’s failure to act within the shot clock period is a legally valid permit and should be considered as such by the locality and all third parties involved in connection with the modification at issue.

³² 47 C.F.R. § 1.6100(c)(4).

F. The Commission Should Amend Its Rules to Confirm Their Application to Generators and Other Backup Power Equipment.

Section 1.6100(b)(3) defines an EFR to include the collocation or replacement of transmission equipment,³³ and that term is defined to include “backup power supply.”³⁴ Some state and local governments nonetheless have declined to apply the Section 6409 shot clock and rules to the installation of backup power equipment that is installed on-site, even where the work qualifies as an EFR. That refusal not only violates the Commission’s rules; it also undermines the critical national objective to strengthen the resiliency of communications networks.

The Commission should therefore amend Section 1.6100(b)(8) to clarify that generators and other backup power equipment are included in the definition of transmission equipment and that their installation is therefore entitled to the streamlined Section 6409 process, including the 60-day shot clock and deemed granted remedy.

IV. THE COMMISSION SHOULD CLARIFY APPLICATION OF SECTIONS 253 AND 332 TO STATE AND LOCAL FEES FOR ALL WIRELESS FACILITIES.

In the 2018 *Small Cell Order*, the Commission addressed the application of Sections 253 and 332 with respect to fees that localities assessed in connection with the deployment of small wireless facilities. Recognizing that “state and local fees and other charges associated with the deployment of wireless infrastructure can unlawfully prohibit the provision of service” under sections 253 and 332(c)(7),³⁵ the Commission established specific fee levels that presumptively complied with that standard.³⁶ CTIA commends these actions, which helped combat unreasonable state and local fees for deploying small cells and were instrumental in facilitating

³³ *Id.* § 1.6100(b)(3).

³⁴ *Id.* § 1.6100(b)(8).

³⁵ *Small Cell Order*, 33 FCC Rcd at 9091 ¶ 11.

³⁶ *See id.*; *id.* at 9129 ¶¶ 78-79.

the rapid rollout of 5G nationwide to meet consumer demand for wireless services and to promote innovation.³⁷

The Commission now appropriately seeks comment on the application of Sections 253 and 332 to fees for macro and other wireless facilities.³⁸ Clarifying how these sections apply to all wireless facilities will enhance the benefits of the Commission’s earlier reforms and promote additional wireless deployment.³⁹

A. Extending the Commission’s Earlier Actions to All Wireless Facilities Is Appropriate Under Law and Precedent.

In the *Small Cell Order*, the Commission explained in detail why the *California Payphone Order* “is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332.”⁴⁰ That standard assesses whether state or local regulation “materially inhibits” the provision of service. Numerous courts, including the Ninth Circuit in upholding the *Small Cell Order*, have affirmed this longstanding interpretation.⁴¹

³⁷ See *supra* Section II.

³⁸ *NPRM* ¶ 29.

³⁹ The Commission asks whether it should define “macro” cell facilities simply as “wireless facilities that do not qualify as Small Wireless Facilities” as that latter term is defined in the Commission’s rules. *Id.* ¶ 32. CTIA supports that definition. Because providers and localities have experience with the use of the term Small Wireless Facilities, defining macro facilities as all other facilities will increase certainty during the permitting process. While the Commission justifiably raises questions on whether it should, for example, consider the height, width, and volume of a tower, such detailed categorization would not provide any commensurate benefit for purposes of Sections 253 and 332. To the contrary, adding new definitional categories would likely delay the permitting process by increasing complexity and creating a potential new issue. Additionally, the approach described in the *NPRM* would generally align with Congress’s efforts in the American Broadband Deployment Act of 2025 (H.R. 2289, 119th Cong.), which, if enacted, would distinguish simply between a “personal wireless service facility” and a “small personal wireless service facility” for purposes of Section 332(c)(7).

⁴⁰ *Small Cell Order*, 33 FCC Rcd at 9100 ¶ 31.

⁴¹ See, e.g., *City of Portland*, 969 F.3d 1035; *Cellco P’ship v. The White Deer Twp. Zoning Hearing Board*, 74 F.4th 96, 104-05 (3d Cir. 2023); *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67, 76-77 (2d Cir. 2002).

To continue to advance the Commission’s objectives to promote broadband deployment by removing regulatory barriers, the Commission should make explicit that the *California Payphone Order* is the appropriate standard for determining whether a state or local law operates as a prohibition or effective prohibition within the meaning of Sections 253 and 332, regardless of the size of the facility. Making plain that the “materially inhibit” standard applies to all wireless facilities is appropriate, as neither the Commission’s implementing actions nor the relevant statutory provisions distinguish among facilities based on their size.

First, neither Section 253 nor the *California Payphone Order* (which the Commission applied in the *Small Cell Order* to fees that states or localities charge for small wireless facilities) distinguishes among sizes of communications facilities. Section 253(a) preempts any state or local regulations that “prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service,” without regard to the type of facility. And, in the *California Payphone Order*, the Commission clarified that Section 253(a) preempts fees that “materially inhibi[t] or limi[t] the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment”⁴²—a general interpretation that likewise should apply regardless of a facility’s size.

Second, the Commission correctly interpreted Section 332(c)(7), which preempts state and local regulations that have the effect of prohibiting deployment, to apply the same “materially inhibit” standard based on that provision’s parallel language to Section 253(a).⁴³ Section 332(c)(7) likewise does not distinguish among facilities based on size.

⁴² *California Payphone Order*, 12 FCC Rcd at 14206 ¶ 31.

⁴³ *Small Cell Order*, 33 FCC Rcd at 9102-03 ¶ 35.

Finally, making clear that the *California Payphone Order* applies to all wireless facilities will help promote wireless facility deployment by minimizing disputes over what legal standard to apply. Providers, localities, and courts will instead have a single standard. Conversely, there is no statutory basis for the standard to turn on the size of a wireless facility.

B. State and Locality Fees for Wireless Facilities Must Be Reasonable, Competitively Neutral, and Nondiscriminatory, Regardless of Facility Size.

The Commission should once again rule that one-time and recurring fees imposed by state and local governments for applications to site facilities (whether within or outside of the right-of-way), or to access or use the right-of-way, or for access to municipally owned property within the right-of-way, must be reasonable, competitively neutral, and nondiscriminatory, and it should make clear that this is true irrespective of the size of the wireless facility.

In the *Small Cell Order*, the Commission found that a fee for a small wireless facility that is based on a reasonable approximation of the locality's reasonable costs is lawful.⁴⁴ It applied that finding to application and review fees for facilities located both within and outside of the right-of-way and to access fees for ongoing use of the right-of-way and municipally-owned property within the right-of-way:

We conclude that ROW access fees, and fees for the use of government property in the ROW, such as light poles, traffic lights, utility poles, and other similar property suitable for hosting Small Wireless Facilities, as well as application or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of Small Wireless Facilities inside and outside the ROW, violate Sections 253 or 332(c)(7) unless these conditions are met: (1) the fees are a reasonable approximation of the state or local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than

⁴⁴ *Id.* at 9112-13 ¶ 50.

the fees charged to similarly-situated competitors in similar situations.⁴⁵

That finding is firmly grounded in Section 253(c), which unambiguously mandates “fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis[.]”⁴⁶

As the Commission previously found, an assessment of whether a fee violates Section 253(c) turns on whether it recovers a reasonable approximation of a state or local government’s objectively reasonable costs of maintaining the right of way, maintaining a structure within the right of way, or processing an application or permit.⁴⁷ Conversely, a fee that exceeds those reasonable costs is unlawful.

The Commission properly concludes in the *NPRM* that “its implicit rationale” for prohibiting state and local governments’ disproportionate and unreasonable fees to small cells “applies with equal force to macro facilities and other wireless facilities.”⁴⁸ Indeed, deploying wireless infrastructure entails nearly identical steps at the state and local level—e.g., planning and permitting—albeit at a different scale. And, as with other provisions of Section 253 and with Section 332, Section 253(c) does not distinguish its application to communications facilities based on the facility’s size.

⁴⁵ *Id.* (citations omitted). The Commission also stated that “[b]y costs, we mean those costs specifically related to and caused by the deployment. These include, for instance, the costs of processing applications or permits, maintaining the ROW, and maintaining a structure within the ROW.” *Id.* at 9113 ¶ 50, n.131.

⁴⁶ 47 U.S.C. § 253(c).

⁴⁷ *Small Cell Order*, 33 FCC Rcd at 9125 ¶ 72.

⁴⁸ *NPRM* ¶ 44.

C. Fees for Macro and Other Wireless Deployments Must Be Cost-Based in Order to Be “Reasonable.”

The Commission should further clarify that fees for macro and other wireless deployments must be cost-based to be “reasonable.” Specifically, fees should be a reasonable approximation of the jurisdiction’s objectively reasonable costs.

In the *Small Cell Order*, the Commission based its rationale for limiting lawful fees to the jurisdiction’s reasonable costs on its finding that fees above a reasonable approximation of costs inhibit and have the effect of prohibiting wireless service—not only in the locality that was charging above-cost fees, but also in other jurisdictions.⁴⁹ Although those other jurisdictions may have lower fees, the inhibitive impact of high fees on those other jurisdictions has the effect of prohibiting deployment.

The Ninth Circuit in *City of Portland* agreed with the Commission’s justification. As the Court stated, the Commission reasonably determined that above-cost state and local fees have a prohibitive effect on small cell deployment nationwide.⁵⁰ That applies to all wireless deployments, not just small cell deployment. High permitting and renewal fees—i.e., those that are divorced from actual costs—add significant expenses to wireless deployment, which can inhibit that deployment in several ways. First, they deter investment in a specific facility where the fees make investment financially infeasible—i.e., the rate of return is insufficient to justify the investment. Second, even if the fees for that facility do not preclude its construction, the wireless provider will have less funding available to build other facilities, inhibiting or delaying their overall deployment. Indeed, as above-cost permitting and renewal fees increase providers’ deployment costs, investment is likely to decrease because the return on that investment will be

⁴⁹ *Small Cell Order*, 33 FCC Rcd at 9118-20 ¶¶ 60-61.

⁵⁰ *City of Portland*, 969 F.3d at 1038.

lower and because providers have limited capital budgets, meaning that spending too much in one deployment will reduce funds for other deployments.⁵¹ Therefore, the Ninth Circuit’s conclusion that fees that exceed a locality’s costs have a prohibitive effect on small cell deployment should not be limited to small cells.

The Commission also should extend to all wireless facilities its ruling in the *Small Cell Order* that fees based on a provider’s gross revenues or otherwise on a provider’s income are inherently unreasonable because they are not cost-based.⁵² The *NPRM* provides numerous examples of localities that charge revenue-based fees for larger facilities.⁵³ The same rationale for concluding that these fees are unlawful applies for macro and other wireless facilities.

Commission action to limit fees that localities can charge to their reasonable costs would be consistent with various state statutes that restrict these fees, most commonly to “actual, direct, and reasonable” administrative costs. Several of those states also limit fees paid to third-party consultants that are hired to review applications to their reasonable costs. Importantly, these statutes apply to localities’ permitting of *all* wireless facilities. For example, Indiana limits fees to a locality’s “actual, direct and reasonable costs incurred,” and places the same limit on consultants’ fees.⁵⁴ Iowa prohibits localities’ and consultants’ fees that are not “based on actual,

⁵¹ *Small Cell Order*, 33 FCC Rcd at 9119 ¶ 60 (“The record is replete with evidence that providers have limited capital budgets that are constrained by state and local fees.”).

⁵² *Id.* at 9124-25 ¶ 70.

⁵³ *NPRM* ¶ 51.

⁵⁴ Ind. Code § 8-1-32.3-16(b) (“A fee associated with the submission, review, processing, or approval of an application for a permit, including a fee imposed by a third party that provides review, technical, or consulting assistance to a permit authority, must be based on actual, direct and reasonable costs incurred for the review, processing, and approval of the application.”); *see also* N.C. Gen. Stat. § 160D-933(d) (“A local government may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site new wireless support structures or to substantially modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services.”).

direct and reasonable administrative costs,” with limits of \$500 for EFRs and \$3,000 for new facilities.⁵⁵ Missouri has the same requirement that fees be limited to “actual, direct and reasonable costs” and it also imposes dollar limits on fees.⁵⁶ Georgia’s siting law provides that fees for new facilities must be based on “the reasonable cost of the actual regulatory activit[ies] performed by the local government,” and prohibits localities from charging more than \$500 for

⁵⁵ Iowa Code § 8C.3(9) (“Fees imposed by an authority or by a third-party entity providing review or technical consultation to the authority shall be based on actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. In no case shall total charges and fees exceed five hundred dollars for an eligible facilities request or three thousand dollars for an application for a new tower” or for facilities modifications other than EFRs); *see also* Ariz. Rev. Stat. § 9-594(E)(3), (4) (“The total application fee, if allowed, may not exceed one thousand dollars for the modification of existing or the installation of new monopoles or utility poles or for the collocation of wireless facilities. . . . Charge a rate or fee for the use of the right-of-way for the installation of a monopole and associated wireless facility that is limited to not more than the direct and actual costs of managing the right-of-way and that is not in the form of a franchise or other fee based on revenue or customer counts.”).

⁵⁶ Mo. Rev. Stat. § 67.5094(11) (“Fees imposed by an authority for or directly by a third-party entity providing review or technical consultation to the authority must be based on actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. Except when mutually agreeable to the applicant and the authority, total charges and fees shall not exceed five hundred dollars for a collocation application or one thousand five hundred dollars for an application for a new wireless support structure or for a substantial modification of a wireless support structure.”); *see also* Kan. Stat. § 66-2019(c)(2) (“An authority shall only assess fees or charges for the actual costs relating to the granting or processing of an application that are directly incurred by the authority and the authority shall not charge any market-based or value-based fees for the processing of an application. Such fees and charges shall be reasonably related in time to the occurrence of such costs.”); Kan. Stat. § 66-2019(c)(4)(B) (“The total charges and fees assessed by the authority shall not exceed: . . . \$2,000 for an application for a new wireless support structure or for a collocation application that is a substantial modification of a wireless support structure.”).

collocations on or modifications to wireless facilities.⁵⁷ Florida requires that fees be “reasonable” and that third-party consultants’ fees be limited to “reasonable expenses.”⁵⁸

These examples stand in stark contrast to fees charged in some other localities, which impose permitting fees that appear divorced from any actual, direct, or reasonable costs that a locality would incur for evaluating applications for wireless deployments. For example, one county in New Mexico imposes non-refundable application and permitting fees of \$17,500 for a new tower and \$9,000 for a collocation, modification, or eligible facility.⁵⁹ A county in New York imposes fees of \$15,000 and an escrow deposit of \$7,500 for new towers and fees of \$10,000 for a small wireless facility.⁶⁰ And a county in Mississippi imposes per-antenna application fees, which quickly add up because each wireless facility deployment generally consists of multiple antennas.⁶¹

⁵⁷ Ga. Code Ann. §§ 36-66B-7(1)-(2), 48-13-9(a) (prohibiting collocation/modification fee “in excess of \$500” and prohibits a fee for new facilities that is “greater than the amount authorized by subsection (a) of Code Section 48-13-9,” which provides that “the amount of a regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government”); *see also* Va. Code Ann. § 15.2-2316.4:1(B) (“A locality may charge a reasonable fee for each application submitted under subsection A or for any zoning approval required for a standard process project. The fee shall not include direct payment or reimbursement of third-party fees charged on a contingency basis or a result-based arrangement. Upon request, a locality shall provide the applicant with the cost basis for the fee. A locality shall not charge market-based or value-based fees for the processing of an application.”).

⁵⁸ Fla. Stat. § 365.172(13)(b)(4) (“A local government may impose a reasonable fee on applications to place, construct or modify a wireless communications facility only if a similar fee is imposed on applicants seeking other similar types of zoning, land use, or building permit review. A local government may impose fees for the review of applications for wireless communications facilities by consultants or experts who conduct code compliance review for the local government but any fees is limited to specifically identified reasonable expenses incurred in the review.”).

⁵⁹ County of Grant, N.M., Grant County Resolution No. R-23-20, at 1 (Apr. 13, 2023), <https://grantcountynm.gov/DocumentCenter/View/822/R-23-20-Wireless-Telecommunications-Facilities-Fees-Establishments-exec>.

⁶⁰ Town of Cortlandt, N.Y., Resolution No. 74-25, at 9 (Feb. 11, 2025), <https://www.townofcortlandtny.gov/documents/Town%20Clerk/RESOLUTION-Master%20Fee%20List%20Adopt-74-2025.pdf>.

⁶¹ Stone County, Miss., Application for Cell Tower Site Plan Review, at 8 (Apr. 25, 2025), <https://www.stonecountymiss.gov/wp-content/uploads/2025/04/PACKET-Cell-Tower-Review-w-Cell->

The Commission should therefore find that fees for macro and other wireless deployments must be cost-based to be reasonable. Additionally, based on information in the record and using state and local laws and regulations as guidance, the Commission should adopt a presumption that fees below certain specific levels are presumptively reasonable. In the *Small Cell Order*, the Commission concluded that fees at or below specific amounts relating to the deployment of small wireless facilities “presumptively do not constitute an effective prohibition under Section 253(a) or Section 332(c)(7), and are presumed to be ‘fair and reasonable compensation’ under Section 253(c).”⁶² Here, the Commission should similarly identify specific fee levels for the deployment of macro and other wireless facilities that presumptively comply with the statutory and regulatory framework.

V. THE COMMISSION SHOULD TAKE ADDITIONAL ACTIONS TO REMOVE BARRIERS TO WIRELESS BROADBAND DEPLOYMENT.

While CTIA is encouraged that certain localities are advancing wireless permitting policies that promote broadband buildout, providers continue to experience barriers to timely deployment that are inconsistent with Sections 253 and 332. The Commission should therefore take the following actions to ensure that localities and applicants have additional clarity when considering applications to deploy wireless infrastructure.

[Tower-Ordinance.pdf](#) (imposing a per-antenna application fee for antennas on a new tower of \$250 and per-antenna placement or replacement fee of \$750, in addition to other fees). CTIA members also report encountering localities that hire specific third-party contractors that greatly delay the application process (e.g., by asking for numerous equipment inspections unrelated to the application at issue), require that the provider deposit upfront a significant sum (unrelated to actual costs) for contractors to review the provider’s application, or establish “reasonable” costs based on arbitrary calculations (e.g., establishing application fees by adding up all fees received from the prior year and then dividing them by the number of applications for that year).

⁶² *Small Cell Order*, 33 FCC Rcd at 9129 ¶¶ 78-79.

A. The Commission Should Clarify that Unreasonably Discriminatory Aesthetic Requirements Are Unlawful.

Section 332(c)(7)(B) provides that a locality “shall not unreasonably discriminate among providers of functionally equivalent services.”⁶³ However, some localities have broadly used aesthetic requirements to deny or condition siting permits inconsistently.

The Commission declared in the *Small Cell Order* that aesthetics requirements must be “no more burdensome” than those imposed on “other types of infrastructure deployments.”⁶⁴ The Ninth Circuit vacated this standard as exceeding Section 332(c)(7)(B) because it did not limit an unlawful requirement to one that “unreasonably” discriminates and because it did not clarify what other “types” of deployments were covered, thus potentially including non-wireless facilities.⁶⁵ The Court’s discussion did not, however, question the Commission’s conclusion that under *California Payphone*, an aesthetics requirement that “materially inhibits” service is unlawful.⁶⁶

This issue remains problematic for members. As one example, a California county limits wireless facilities’ height to 60 feet or less for “visual impact” reasons.⁶⁷ The Commission can address the Ninth Circuit’s decision by clarifying that unreasonably discriminatory aesthetics requirements are preempted, and then identify certain situations (such as the example above) that

⁶³ 47 U.S.C. § 332(c)(7)(B).

⁶⁴ *Small Cell Order*, 33 FCC Rcd at 9132 ¶ 86.

⁶⁵ *City of Portland*, 969 F.3d at 1042-43.

⁶⁶ *Small Cell Order*, 33 FCC Rcd at 9102-03 ¶ 35.

⁶⁷ Santa Ana, Cal. Mun. Code § 33-245(b) (“Visual impact guidelines . . . (b) No component of a wireless facility shall extend seven (7) feet beyond the top of a pole. However, no facility located within one-hundred and forty (140) feet of a residential property shall exceed thirty-five (35) feet in height. Additionally, no facility shall exceed sixty (60) feet in height from the ground level as measured from the nearest street curb. The Director may waive these requirements if necessary to accommodate General Order 95 of the California Public Utilities Commission or a design permitted by the Guidelines.”).

would *presumptively* violate that standard. This approach would provide needed clarity to localities and providers while simultaneously providing more flexibility to determine what is unreasonable.

B. The Commission Should Clarify Requirements Relating to Minimum Setback Distances.

Setback requirements that relate to the risk that the tower or equipment on it may fall—e.g., minimum setback distances that are based on the tower’s height—may be reasonable safety components of localities’ building codes. However, some localities impose setbacks that exceed any reasonable fall hazard distance and that are so expansive as to prohibit or have the effect of prohibiting wireless deployment and that are therefore unlawful under Section 253. For example, one county in Oregon imposes minimum setback requirements for towers of 1,200 feet from any school or dwellings with limited exceptions.⁶⁸ Another county in California has minimum setback requirements for any wireless communications facility of 500 feet from any residential area or 1,500 from a school.⁶⁹ And a city in California imposes minimum setback requirements for telecommunications facilities of 1,000 feet from any residence and 1,500 feet from any historic district, school, or hospital.⁷⁰ Additionally, as the *NPRM* accurately notes, some of these requirements are based on objections to exposure to radiofrequency (“RF”) radiation and therefore are preempted by federal law.⁷¹

⁶⁸ Lane County, Or. Code § 16.264(4)(e).

⁶⁹ San Benito County, Cal. Code § 7.11.005(A) (“Location preference for wireless communication facilities shall be given to publicly-owned structures, co-location sites, and industrial or commercial sites. New wireless communications facilities shall not locate sites within 500 feet of residential areas or 1,500 feet of public or private schools.”).

⁷⁰ Arcata, Cal. Mun. Code § 9.44.060(A)(3).

⁷¹ *NPRM* ¶¶ 61-62. CTIA agrees with the *NPRM*’s analysis that the Commission has exclusive authority over RF emissions limits. *Id.* ¶ 62; *see also* 47 U.S.C. § 332(c)(7)(B)(iv).

While some states have recognized that such excessive setback requirements should be prohibited,⁷² the examples above illustrate that localities continue to impose setback requirements that exceed their authority. The Commission therefore should clarify that minimum setback requirements that exceed a reasonable fall hazard distance, such as the tower’s height or the area within which the structure is designed to collapse, are unlawful because Section 332(c)(7)(B)(iv) expressly preempts them.

C. The Commission Should Clarify Application of Its Rules to Demonstrations of Coverage Gaps or Site Suitability.

Wireless providers must densify their networks to enhance their service offerings and to help meet the growing demand for wireless data. As the examples in the *NPRM* and elsewhere make clear, however, providers are being asked to justify deployment of wireless infrastructure by showing that a coverage gap exists or that other sites are unsuitable for deployment.⁷³

Such “coverage gap” and “unsuitability” requirements ignore or misunderstand how providers deploy wireless networks to support both mobile and fixed wireless services and satisfy consumer demand. A wireless network is a large, integrated, distributed collection of antennas (including macro sites and small cells) working together to deliver connectivity. As demand for wireless data grows and providers seek to enhance their networks to support new

⁷² See, e.g., Wis. Stat. § 66.0404(4e)(d) (prohibiting setback requirements greater than the height of the proposed structure); Ind. Code § 8-1-32.3-17 (prohibiting setbacks larger than the area within which the wireless infrastructure is designed to collapse).

⁷³ *NPRM* ¶ 74 & n.174; see also Lumpkin County, Ga. Code § 51-3(c) (requiring applicants for new towers to “demonstrate[] with sufficient evidence and to the satisfaction of the commission” that a pre-existing tower cannot “accommodate the applicant’s proposed antennae or facilities” with limited exceptions); Crawfordsville, Ind. Mun. Code § 157.01(D)(4) (requiring applicants to provide evidence “supporting the choice of location for the proposed wireless support structure, including a sworn statement from the individual responsible for the choice of location demonstrating that collocation of wireless facilities on an existing wireless structure is not a viable option because collocation: (a) Would not result in the same wireless service functionality, coverage and capacity; (b) Is technically infeasible; or (c) Is an economic burden to the applicant”); Dearborn County, Ind. Mun. Code § 1512(16) (imposing identical requirements).

innovations, providers must densify the network by adding more antennas throughout their licensed areas. Each added antenna reduces the distance between users and the network, thereby increasing capacity, improving signal quality, and relieving congestion on nearby cell sites. This closer, more numerous antenna deployment allows the same spectrum to be reused more efficiently and creates faster and more reliable service for the provider’s customers. It also facilitates providers’ ability to offer more services, including fixed wireless services. Providers plan their network deployments meticulously, as sites—especially macro cells—are very costly to deploy. Localities’ second-guessing of these investment decisions serves only to slow down deployment and delay providing the public with the wireless services they increasingly demand.

These locality requirements also are preempted under Title III of the Communications Act, which vests the Commission with plenary authority over technical matters related to wireless network design.⁷⁴ Indeed, these requirements are nothing more than disguised demands on technical performance parameters that impinge how wireless licensees use their federal spectrum licenses.

And they ignore the Commission’s prior determination in the *Small Cell Order* that “an effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service.”⁷⁵ According to the Commission, “this test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service.”⁷⁶ The Commission’s conclusions in the *Small Cell Order* concerning localities’

⁷⁴ 47 U.S.C. § 303.

⁷⁵ *Small Cell Order*, 33 FCC Rcd at 9104 ¶ 37.

⁷⁶ *Id.*

intervention into providers' decisions as to optimal ways to densify their networks should apply to all wireless facilities.

The Commission should clarify that state or local requirements that wireless providers demonstrate a coverage gap or that other sites are unsuitable for deployment are unlawful for all wireless facilities because they effectively prohibit wireless infrastructure deployment.⁷⁷

D. The Commission Should Find Unlawful Local Restrictions that Constitute Express or *De Facto* Moratoria.

In its *Moratoria Order*, the Commission found that both express and *de facto* moratoria “are barred by section 253(a) of the [Communications] Act,” and stated that “[w]e reject the argument that all ‘temporary’ moratoria are permissible simply because they are of a limited, defined duration.”⁷⁸ The Ninth Circuit affirmed the Commission’s decision and held that “objections to specific applications of [the *Moratoria Order*] may be made on a case-by-case basis.”⁷⁹

The examples the *NPRM* provides would constitute moratoria and should therefore be prohibited.⁸⁰ Additionally, excessive wireless deployment separation requirements imposed by some localities constitute *de facto* moratoria, as they effectively prohibit deployment within certain areas.⁸¹ As the Ninth Circuit stated, the Commission’s reasoning was carefully crafted to permit “some delay” but prohibit “unreasonably long or indefinite amount of time” delays that

⁷⁷ See *NPRM* ¶ 73.

⁷⁸ *Moratoria Order*, 33 FCC Rcd at 7707 ¶ 4, 7779 ¶ 148.

⁷⁹ *City of Portland*, 969 F.3d at 1048.

⁸⁰ *NPRM* ¶ 67.

⁸¹ See, e.g., Lumpkin County, Ga. Code §51-3(b) (imposing minimum separation distances of 5 miles between towers with limited exceptions); Orlando, Fla. Mun. Code § 58.844(b) (imposing minimum separation distances of 5,000 feet between self-supporting or guyed towers and 1,500 feet between monopoles 75 feet or greater in height); Weston, Fla. Mun. Code § 133.10(A)(13) (imposing minimum separation distances of no less than one mile between towers with limited exceptions).

discourage providers from filing applications.⁸² The cited localities’ temporary bans fall squarely in the second category, as they do not have any time period associated with the ban, leaving providers with no sense of when they could deploy. The same holds true for mandated separation distances and resolutions or other locality efforts that seek to halt wireless deployments until further studies are conducted, which is an indefinite ban by another name. The Commission should find that such requirements constitute unlawful moratoria on wireless deployments.

E. The Commission Should Adopt a “Deemed Granted” Remedy When Localities Fail to Act on Siting Applications Within Reasonable Times.

As the NPRM highlights, Section 332(c)(7) requires that localities act on applications for personal wireless service facilities “within a reasonable period of time.”⁸³ In the *Small Cell Order*, the Commission found that violations of the shot clocks established for small cells under this statutory provision constitute a “failure to act” under Section 332(c) as well as a “presumptive prohibition on the provision of personal wireless services” under Section 332(c)(7)(B)(i)(II).⁸⁴ The Commission went on to state that either the permitting authority would “issue all necessary permits without further delay,” or the applicant would have “a straightforward case” for obtaining relief in court based on violations of Section 332(c)(7).⁸⁵ While the Commission did not adopt a deemed granted remedy at the time, it stated that it might reconsider such an approach in the future as circumstances warranted.⁸⁶

⁸² *City of Portland*, 969 F.3d at 1048 (citations omitted).

⁸³ *NPRM* ¶ 33 n.68; *see also* 47 U.S.C. § 332(c)(7)(B)(ii).

⁸⁴ *Small Cell Order*, 33 FCC Rcd at 9148 ¶ 118.

⁸⁵ *Id.* at 9148-49 ¶ 118; *see also NPRM* ¶ 37.

⁸⁶ *Small Cell Order*, 33 FCC Rcd at 9155 ¶ 130; *NPRM* ¶ 38.

The Commission should now take such action. The Commission has adopted shot clocks containing different time periods to implement Section 332(c)(7), but, in contrast to the deemed granted remedy the Commission adopted under Section 6409(a), the Section 332(c)(7) shot clocks require only that applications be acted on within the established presumptively reasonable time frames and provide that the applicant may go to court if the locality fails to act. By adopting a parallel deemed granted remedy here, including that the deemed granted remedy is a legally valid permit, the Commission will provide a “reasonable backstop” against permitting delays,⁸⁷ and give wireless providers a more effective remedy. As a result, each of the Commission’s shot clocks will be made more effective in achieving their goals to streamline siting. The Commission has ample authority to adopt a deemed granted remedy as part of its broad authority to issue rules implementing Section 332(c)(7).

F. The Commission Should Adopt a Streamlined, Voluntary Dispute Resolution Process.

The Commission should create a an optional process that providers can voluntarily elect that expedites dispute resolution for siting and deployment disputes between a locality and a provider so that the process is more responsive and adaptable.

As the Commission recognizes, litigation is “notoriously costly and time consuming.”⁸⁸ As both providers and localities seek certainty on the meaning of federal regulation, the Commission has the authority and the means to clarify that meaning when parties are disputing them. A streamlined, voluntary dispute resolution process can provide a platform for the Commission to resolve these disputes and promote timely wireless broadband deployment.

⁸⁷ See Letter from Geoffrey G. Why, Counsel to ExteNet Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 25-276 et al. (filed Dec. 5, 2025).

⁸⁸ *NPRM* ¶ 79.

The Commission need not reinvent the wheel. Rather, it should develop a process that providers can voluntarily elect based on the Rapid Broadband Assessment Team (“RBAT”) that the Commission established for mediating disputes between pole owners and attachers that arise under Section 224 of the Communications Act.⁸⁹ RBAT relies on Commission staff-led mediation along with timelines for parties to present their arguments and for Commission staff to act.⁹⁰

This informal process, or a process modeled on it, could be used in some instances to speed resolution of disputes between localities and wireless providers, reducing the need for, and risk of, formal, expensive, and protracted litigation.

G. The Commission Should Examine the Impact of State Laws on AI Innovation and Wireless Network Deployment.

For the United States to lead in AI, it must continue to lead in the deployment of low-latency, next-generation wireless networks. These technologies are undeniably intertwined.⁹¹ Leading in AI increasingly requires the capabilities and infrastructure provided by next-generation wireless technologies, and wireless leadership increasingly requires AI-powered advancements in network efficiency and security. As Chairman Carr has explained: “we want [AI] to develop in the U.S. But to do that, we [must] make sure that it works on our mobile networks. . . . We have to have the spectrum [and] the necessary infrastructure so that AI can be

⁸⁹ 47 U.S.C. § 224; *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd 12379 (2023) (“*Fourth Wireline Infrastructure Order*”) (amending the Commission’s rules to prioritize and expedite the resolution of pole attachment disputes that impede or delay broadband deployment).

⁹⁰ See *Fourth Wireline Infrastructure Order*.

⁹¹ See, e.g., Doug Brake, *Growing AI Data Traffic Requires More Licensed Mid-Band Spectrum*, CTIA Blog (Apr. 23, 2025), <https://www.ctia.org/news/growing-ai-data-traffic-requires-more-licensed-mid-band-spectrum>.

mobile.”⁹² Given the interconnectedness of advancing AI and wireless technologies, the United States should eliminate barriers to wireless leadership to advance AI innovation and adoption and vice versa.

The rapid expansion of AI is already driving a surge in data traffic across mobile networks. The CEO of DigitalBridge expects mobile traffic to grow three to five times over because of generative AI.⁹³ Nokia is “preparing for a surge in 5G uplink traffic.”⁹⁴ Ericsson forecasts steep growth in mobile traffic even despite countervailing efficiency gains from AI used within the network.⁹⁵ Given this expansion, however, cellular networks could be “the next AI bottleneck,” as the CEO of Vodafone has warned.⁹⁶ A recent Accenture study highlighted the risk that the growing volume of AI-driven traffic could overwhelm wireless network capacity, constrict innovation, and reduce the effectiveness of AI applications.⁹⁷ Specifically, Accenture found that limited 5G network capacity will mean that more than a third of data traffic from AI-enabled devices will go unmet by 2029. Left unchecked, this drag on AI development from

⁹² CTIA Everything Wireless, *2025 CTIA 5G Summit | Fireside Chat: FCC Chairman Brendan Carr and CTIA’s Ajit Pai*, at 10:27-35 (YouTube, May 9, 2025), https://www.youtube.com/watch?v=8O_9NIQZF08.

⁹³ DigitalBridge Group, Inc., Q4 2024 Earning Calls Transcript (Feb. 20, 2025), <https://seekingalpha.com/article/4760244-digitalbridge-group-inc-dbrg-q4-2024-earnings-call-transcript>.

⁹⁴ Harri Holma, *The AI Revolution: Preparing for a Surge in 5G Uplink Traffic*, Nokia (Dec. 17, 2024), <https://www.nokia.com/blog/the-ai-revolution-preparing-for-a-surge-in-5g-uplink-traffic/>.

⁹⁵ Ericsson, *Impact of GenAI on Mobile Network Traffic*, Ericsson Mobility Report (Nov. 2024), <https://www.ericsson.com/4acd55/assets/local/reports-papers/mobility-report/documents/2024/emr-november-2024-genai-article.pdf>.

⁹⁶ Katie Prescott, *UK’s AI Ambitions at Risk from Poor Mobile Network, Says Vodafone Boss*, The Times (June 24, 2024), https://www.thetimes.com/business/technology/article/uks-ai-ambitions-at-risk-from-poor-mobile-network-says-vodafone-boss-6trzjp9jx?utm_source=.

⁹⁷ Accenture Study at 3.

limited wireless bandwidth threatens to contribute to an overall expected loss of \$1.4 trillion in potential GDP by 2035.⁹⁸

Compounding this challenge, new AI capabilities also may drive evolutions in wireless network design that potentially will require new infrastructure patterns. A global survey earlier this year suggests “significant traffic demand from AI in both metro and long-haul networks over the next three years.”⁹⁹ AI data centers also are driving changes in where more connectivity is needed, including to places typically outside Tier 1 markets.¹⁰⁰ Rapid advancements in AI are not just adding demand; they are redefining network connectivity.

Given these realities, removing regulatory barriers that impede wireless infrastructure deployment is fundamental—not just supportive—to AI. The Commission can chart a path forward on sensible federal policies toward this end, but its efforts will be for naught if states are able to elbow their way back into either AI or broadband regulation. For example, already there are state AI bills that could include internet and/or telecommunications services in a high-risk category of consequential decisions subject to increased regulation and oversight.¹⁰¹ There are also state bills that impose or threaten to impose various forms of rate and other regulation on

⁹⁸ *Id.*

⁹⁹ Sterling Perrin, *The AI Bandwidth Boom and the Future of Network Connectivity*, LightReading (Oct. 17, 2025), <https://www.lightreading.com/ai-machine-learning/the-ai-bandwidth-boom-and-the-future-of-network-connectivity>.

¹⁰⁰ *Id.*

¹⁰¹ *See, e.g.*, Cal. Assemb. Bill No. 1018, 2025-2026 Reg. Sess., § 1(c) (Cal. 2025) (as amended Apr. 10, 2025) (“‘Consequential decision’ means a decision that materially impacts the cost, terms, quality, or accessibility of any of the following to a natural person: . . . Internet and telecommunications access.”); S.B. 25-318, 75th Gen. Assemb., Reg. Sess., § 6-1-1704(9)(b) (Colo. 2025) (“‘High-risk artificial intelligence system’ does not include the following technologies unless the technologies, when deployed, make, or are a substantial factor in making, a consequential decision . . . Internet or computer network infrastructure optimization . . .”).

broadband services.¹⁰² Such proposals are problematic for many reasons, not least because of the onerous obligations they threaten to inflict on broadband providers and the resulting harms to broadband investment, innovation, and competition. And as more of these kinds of proposals proliferate, their adoption would create a patchwork of unnecessary and potentially conflicting state requirements governing both AI and the broadband infrastructure it needs to succeed.¹⁰³ The result would be chilled investment and deployment, the very harm this proceeding seeks to prevent.

Pursuant to the AI Action Plan, as the Commission “evaluate[s] whether state AI regulations interfere with the agency’s ability to carry out its obligations and authorities under the Communications Act of 1934,”¹⁰⁴ it can and should preempt these kinds of state-level AI and broadband measures that have the effect of “obstruct[ing] or burden[ing] a wireless service provider’s ability to provide a network of wireless service coverage”¹⁰⁵ or that could “prohibit or have the effect of prohibiting”¹⁰⁶ service as part of its initiative to further American leadership in AI.

¹⁰² See, e.g., 2021 N.Y. Sess. Laws 202–04 (McKinney) (codified at N.Y. Gen. Bus. Law § 399-zzzzz) (requiring broadband providers to offer service to certain eligible consumers at statutorily fixed prices); Cal. Assemb. Bill No. 353, 2025-2026 Reg. Sess. (Cal. 2025) (as amended July 3, 2025) (proposing to require broadband providers to offer service to certain eligible consumers at statutorily fixed prices); S. 2318, 194th Gen. Ct. (Mass. 2025) (proposing to require broadband providers to offer service to certain eligible consumers at statutorily fixed prices).

¹⁰³ See, e.g., Executive Order 14365 of December 11, 2025, 90 Fed. Reg. 58499 (Dec. 16, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-12-16/pdf/2025-23092.pdf>.

¹⁰⁴ AI Action Plan at 3.

¹⁰⁵ See 47 U.S.C. § 253(a); see also *Johnson v. Am. Towers, LLC*, 781 F.3d 693, 705 (4th Cir. 2015) (internal citations omitted); *Bastien v. AT&T Wireless Svcs*, 205 F.3d 983, 989 (7th Cir. 2000).

¹⁰⁶ 47 U.S.C. § 253(a).

VI. CONCLUSION.

The Communications Act, the Administration’s broadband policies and objectives, and the Chairman’s Build America Agenda all direct the removal of regulatory barriers that impede the deployment of wireless and other communications facilities. They do not distinguish between different sizes of wireless facilities. The Commission should thus extend the actions it took in the *Small Cell Order* to *all* wireless facilities, including requiring that fees be based on jurisdictions’ reasonable costs. It also should clarify its rules that implement Section 6409 to promote rapid modifications to existing facilities, and specifically prohibit some localities’ requirements and practices that are impeding wireless deployments. By taking these actions, the Commission will further its efforts to advance the important national objective of expanding and improving the availability of wireless broadband to consumers and businesses across the country.

Respectfully submitted,

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