

Via ECFS

***EX PARTE NOTICE***

March 15, 2018

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

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

Dear Ms. Dortch:

On March 13, 2018, the undersigned met with Will Adams, Legal Advisor to Commissioner Carr; Erin McGrath, Legal Advisor to Commissioner O’Rielly; and Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Rosenworcel. On March 14, 2018 the undersigned met with Rachael Bender, Legal Advisor to Chairman Pai.

In the meetings, INCOMPAS expressed support for the draft *Wireless Infrastructure Streamlining Order* (“Draft Order”).<sup>1</sup> The Draft Order provides a balanced approach in protecting and preserving cultural and historic interests of Tribal Nations, while modernizing the application of the NHPA and NEPA rules to prevent unnecessary costs and delays in the deployment of next generation networks. Ensuring that federal historic preservation and environmental review rules (which were designed for much larger structures) no longer apply to small cell deployments, streamlining the rules that will continue to apply to larger facilities, and clarifying when associated fees may be appropriate, are significant steps in fostering the deployment of 5G networks and bringing broadband to more Americans. The application of outdated processes have substantially delayed the deployment efforts of wireless providers, as well as carriers that support the provision of voice and broadband wireless services.<sup>2</sup> Speed to

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<sup>1</sup> Draft Second Report and Order, *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC-CIRC1803-01, WT Docket No. 17-79, rel. Mar. 1, 2018 (“Draft Order”).

<sup>2</sup> See, e.g., Letter of Ronald W. Del Sesto, Jr. on behalf of Uniti Fiber, to Marlene H. Dortch, WT Docket No. 17-79 and WC Docket No. 17-84, dated Mar. 1, 2018 (describing how Uniti Fiber, a leading provider of wireless infrastructure solutions for the communications industry, incurs “needless costs and substantial delays due to a process ill-suited for the practical reality associated with small cell installations....[stating] such review can add as many as 100 days to

deployment is important to the economy and to the country with respect to being the leader in advanced wireless broadband services.<sup>3</sup>

The Draft Order provides a critical step in spurring much needed broadband deployment. INCOMPAS supports the rules and processes as outlined in the Draft Order. Nonetheless, as discussed by other parties, and/or INCOMPAS in its meetings, the Commission should make the following slight modifications to the exemption and Section 106 review process to further ensure the rules operate with the certainty, flexibility and efficiency that is intended by the reform.

- Exemption for small cell facilities from the NHPA and NEPA reviews. The Commission should specifically clarify that the size limitation for the antenna associated with the deployment, proposed by section 1.1312(e)(2)(ii), is only applicable to the antenna—and not the enclosure.<sup>4</sup> The reference to the enclosure in the proposed rule, as currently drafted, may lead some to believe that the size limitation applies to the enclosure as well. As some localities require slightly larger enclosures, carriers need the clarification so as not to face a potential conflict in their compliance with local deployment requirements. The Commission should also provide more flexibility in pole height as suggested by Verizon.<sup>5</sup> However, the attempts of NCTA to limit the relief as suggested in its proposed section 1.1312(e)(2)(v) should be rejected since, among other reasons, they fail to provide sufficient specificity or justification.<sup>6</sup>
- Section 106 review process. The Commission should consider providing parameters to ensure that the 15-day reminder notices are sent promptly and that

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deploying small cells.”); *See also*, Letter of Jeff Strenkowski, Uniti Fiber, WT Docket No. 17-79 and WC Docket No. 17-84, dated Mar. 14, 2018 (“The Commission’s regulations that apply environmental and historic review to small cell deployments are being leverage in a way that imposes staggering costs and time delays, but in turn provide no discernable historic preservation or environmental public benefits.”)(“Uniti Fiber March 14 Letter”)

<sup>3</sup> *See* Letter of Scott K. Bergmann, CTIA, to Marlene H. Dortch, WT Docket No. 17-79, at 2, dated Mar. 13, 2018 (“[T]he true opportunity costs imposed by outdated NEPA and NHPA requirements also extend to delays in deploying next generation networks and realizations of the societal benefits that 5G will enable.”)

<sup>4</sup> *See* Uniti Fiber March 14 Letter at 1-2; Letter of Keith C. Buell, Sprint, to Marlene H. Dortch, WT Docket No. 17-79, dated March 14, 2018; Letter of Andre J. Lachance, Verizon, to Marlene H. Dortch, WT Docket No. 17-79, WC Docket No. 17-84, at 1, dated Mar. 13, 2018 (“Verizon March 13 Letter”).

<sup>5</sup> Verizon March 13 Letter at 2.

<sup>6</sup> Letter of Rick Chessen, NCTA, to Marlene H. Dortch, WT Docket No. 17-79, dated Mar. 9, 2018 (“NCTA March 9 Letter”). *But see*, Uniti Fiber Letter March 14 Letter at 2.

there is evidentiary support when triggering the consultation phase of the review process.<sup>7</sup>

The Commission should reject the anti-competitive proposal put forth by NCTA and a few of its member companies to redefine “facilities” and “wireless equipment” and to specifically exclude wireline elements from the definition.<sup>8</sup> NCTA’s proposal undermines the very goal it claims it wants to achieve—regulatory parity. Cable facilities are not subject to NEPA and NHPA review. There is no justification for introducing an exclusion to the exemption from these reviews that could lead to confusion, and potentially result in the application of NEPA and NHPA reviews to wireline elements of wireless deployments, *i.e.*, cable companies’ competition. Instead of seeking regulatory parity, it would seem NCTA wants to have an unfair regulatory advantage in the provision of backhaul services. Moreover, such modification would thwart the pro-deployment and deregulatory objectives of the Draft Order.

In addition to supporting the adoption of this Draft Order, INCOMPAS expressed the need for the Commission to move expeditiously to address certain aspects of the permitting processes of state and local governments, which can also substantially impact deployment. In particular, during the meetings, INCOMPAS expressed its support for a reduction in the current shot clocks for wireless siting applications, adoption of a “deemed granted” aspect to the shot clocks, and limiting right-of-way use charges and siting applications fees to the recovery of direct and actual costs associated with processing the application.<sup>9</sup> The Commission should also promptly adopt pole attachment reforms that would allow new attachers the option of using a one-touch make-ready process to help speed fiber and small-cell deployment, as was recommended by the Commission’s Broadband Deployment Advisory Committee.

Respectfully submitted,

*/s/ Karen Reidy*

Karen Reidy  
Vice President, Regulatory Affairs

cc: Rachael Bender  
Will Adams  
Erin McGrath  
Travis Litman  
Louis Peraertz

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<sup>7</sup> See Sprint March 14 Letter.

<sup>8</sup> See Uniti Fiber March 14 Letter at 2-3; *See also* Letter of Keith C. Buell, Sprint, to Marlene H. Dortch, WT Docket No. 17-79, dated Mar. 15, 2018.

<sup>9</sup> See Reply Comments of INCOMPAS, WC Docket No. 17-79, at 7-10, filed Jul. 17, 2017.