



State and Local Governments Webinar

Wireless Infrastructure

Notice of Proposed Rulemaking and Notice of Inquiry

WT Docket No. 17-79

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Overview of Presentation

- Today's presentation will cover the following topics:
 - Need for FCC action
 - Rapidly growing consumer demand → need for more infrastructure
 - Technology changes: small cells and DAS
 - Challenges for state/local siting review processes
 - Legal and regulatory background
 - Statutory provisions and past FCC actions
 - Related pending matters
 - Wireless Infrastructure Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI)
 - "Shot clock" deadlines (reasonable periods of time for siting review) for various categories
 - "Deemed granted" remedy for missing deadlines
 - Moratoria
 - Broad state/local issues explored in Notice of Inquiry
 - Environmental and historic preservation review
 - Filing comments and reply comments
- Questions and answers

Please email questions to IGA@fcc.gov



Need for FCC Action

Rapid growth in demand for broadband wireless services



24/7



24X



120X

Data-Hungry Devices

Mobile wireless data consumption is expected to grow six-fold by 2022, and smartphone subscriptions are predicted to increase from 324 million in 2017 to 380 million by 2022. (Source: Ericsson Mobility Report, Nov. 2016)

Growth in demand must be matched by increased network capacity

Capital is needed to invest in the infrastructure, technology, and spectrum to support this capacity



Addressing Consumers' Needs

- Demand will grow more as 5G broadband technologies and services become available
 - “5G” = the next (fifth) generation of deployed wireless services
 - Higher speeds, greater capacity and lower latency than existing services
 - New networks will rely on lower power, higher frequency devices and will provide services over a smaller geographic area per site.
- Proliferation of the Internet of Things (IoT)
 - Internet-connected devices such as cars, utility meters, “smart grid” sensors, mobile healthcare monitoring devices, etc.
 - The number of IoT devices connected to the Internet via wireless networks is projected to grow from 400 million at year-end 2016 to 1.5 billion by 2022 (Source: Ericsson Mobility Report, Nov. 2016)



Challenges

- More infrastructure is needed to satisfy growing demand
 - Increased network capacity to strengthen network reliability
 - Preparing for 5G
- Wireless providers are increasingly deploying small cells and Distributed Antenna Systems (DAS)
 - Low-powered wireless base stations that function like cells in a mobile data wireless network – differ from the macro cells developed for voice
 - Designed to augment or fill gaps in data capacity, coverage, or both



Small Cells/DAS

- Typically 1-2 small antennas per site, with a nearby equipment box on the pole or on the ground nearby
- Antennas often placed on existing structures in the rights of way
 - Power poles
 - Street lamps
 - Traffic signals
 - Existing buildings
- Benefits of small cells
 - Smaller and less obtrusive than traditional cell towers and antennas
 - Less costly and more efficient for increasing capacity and coverage
- Must be deployed more densely



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Small Cells/DAS



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Small Cells/DAS



Please email questions to IGA@fcc.gov



Macrocells



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Concerns About State/Local Siting Review

- Challenges facing state and local governments
 - Large number of small cells to be deployed → substantial increase in volume of applications
- Service providers' concerns
 - Speed and cost of obtaining site approval may hinder their ability to deploy needed infrastructure
 - Increased costs due to protracted siting review process → reduces resources available to invest in network facilities
- FCC's Wireless Infrastructure NPRM/NOI is intended to
 - reduce impediments to deployment of broadband wireless facilities...
 - while respecting important interests of state/local governments



Statutory/Regulatory Background

- **Telecommunications Act of 1996**

- Preempts state/local regulatory practices that—
 - “Prohibit or have the effect of prohibiting” provision of service
 - “Unreasonably discriminate against providers of functionally similar services”
- Preserves state and local governments’ authority over decisions on placement, construction, and modification of wireless facilities
 - Requires state/local governments to act on wireless facilities siting requests within a “reasonable period of time”
 - Allows disappointed applicants to file lawsuits against state/local governments within 30 days of adverse “action or failure to act”

- **FCC “Shot Clock” Order (2009)**

- “Reasonable period of time” for state/local government to act
 - 90 days on collocation applications
 - 150 days on other applications
- “Failure to act” on application within 90/150 day deadline → triggers applicant’s opportunity to file lawsuit



Statutory/Regulatory Background

- **Spectrum Act (2012)**

- State/local governments “may not deny, and shall approve” requests to collocate new transmission equipment (or replace old equipment) on an existing structure—
 - ...as long as the requested modification does not “substantially change the physical dimensions” of the structure

- **FCC Infrastructure Order (2014)**

- 60 days: “reasonable period of time” to act on applications subject to the Spectrum Act
- “Failure to act” on application within 60 day deadline → application is “deemed granted”



Citations and Links

- Telecommunications Act of 1996
 - 47 U.S.C. § 253(a)
 - 47 U.S.C. § 332(c)(7)

- Spectrum Act (2012)
 - 47 U.S.C. 1455(a)

- Shot Clock Order
 - 24 FCC Rcd 13994 (2009)
 - https://apps.fcc.gov/edocs_public/attachmatch/FCC-09-99A1_Rcd.pdf
 - Affirmed:
City of Arlington v. FCC,
668 F.3d 229 (5th Cir. 2012),
aff'd, 133 S. Ct. 1863 (2013)

- Infrastructure Order
 - 29 FCC Rcd 12865 (2014)
 - https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-153A1_Rcd.pdf
 - Affirmed:
Montgomery County v. FCC,
811 F.3d 121 (4th Cir. 2015)

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Streamlining (Mobilitie) Public Notice (Dec. 2016)

- Public Notice (Wireless Telecom Bureau) sought comment on streamlining siting review process for small cell facilities
 - *[Some of these issues were raised in a Petition for Declaratory Ruling filed by Mobilitie]*
 - How to interpret statutory provision preserving state/local governments’ “fair and reasonable compensation” for use of public rights-of-way
 - Must up-front application fees or ongoing recurring fees be based on costs incurred by the local/state government?
 - May fees be based on percentage of gross revenues?
 - Do some types of fees improperly discriminate against wireless companies?
 - Whether to change “shot clock” deadlines for state/local governments to act on small cell siting requests –
 - ...either submitted one-by-one or in “batches”
 - How to assess allegations that state/local government restrictions “prohibit or have the effect of prohibiting” wireless service



Broadband Deployment Advisory Committee (BDAC)

- **FCC formed BDAC in January 2017**

- Goal is to develop specific recommendations on ways to accelerate deployment of high-speed Internet access nationwide and close the digital divide
- Consists of 27 members representing a broad range of interests, including state and municipal governments as well as various industry sectors
 - *Note: Kelleigh Cole, Utah Governor's Office of Economic Development, is Vice-Chair of BDAC*

- **BDAC assisted by 5 working groups, each focused on a specific project**

- 1) Model municipal ordinance to facilitate broadband deployment (covering local franchising, zoning, permitting, and rights-of-way regulations)
 - *Note: Sam Liccardo, Mayor of San Jose, California, is Vice-Chair of this working group*
- 2) Model state statute (addressing similar issues)
 - *Note: Karen Charles Peterson, Commissioner, Massachusetts Dept. of Telecom. & Cable (representing NARUC) is Vice-Chair of this working group*
- 3) Promoting competitive access to broadband infrastructure (e.g., further reforms of FCC's pole attachment rules)
- 4) Streamlining federal agencies' review of siting requests on federal land
- 5) Advising FCC on identifying and removing any other state/local regulatory barriers



Citations and Links

- Streamlining (Mobilitie) Public Notice,
 - *Streamlining of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie LLC Petition for Declaratory Ruling*, Public Notice, 31 FCC Rcd 13360 (WTB 2016)
 - https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1427A1_Rcd.pdf
- Broadband Deployment Advisory Committee
 - <https://www.fcc.gov/broadband-deployment-advisory-committee>
- Wireless Infrastructure NPRM/NOI
 - *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79, FCC 17-38 (released April 21, 2017)
 - https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-38A1.pdf



Wireless Infrastructure NPRM/NOI (April 2017)

Notice of Proposed Rulemaking (NPRM) and Notice of Inquiry (NOI)

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

- Seeks comment on how to expedite wireless infrastructure deployments
 - Speeding up state and local government review of siting applications
 - Revising FCC processes that implement National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA)



Wireless Infrastructure NPRM

- NPRM seeks comment on proposals to further expedite state and local governments' review processes
 - Modify “reasonable period of time” to act on various types of applications (*i.e.*, shot clock deadlines)
 - Implement “deemed granted” remedy for missing shot clock deadlines
 - Address some state/local governments’ “moratoria” on considering or reviewing siting applications



Wireless Infrastructure NPRM

Modify “Shot Clock” Requirements

- NPRM seeks comment on
 - Shorter deadlines for acting on various categories of siting requests – *e.g.*,
 - 60 days (instead of 90 days) for certain collocation requests?
 - Varying deadlines for narrowly defined classes of deployments – *e.g.*,
 - Based on height of towers?
 - Based on size of collocated equipment?
 - Based on whether area is zoned for residential, commercial, or industrial use?
 - Small cells vs. macrocells?



Wireless Infrastructure NPRM

Proposed “Deemed Granted” Remedy

- Today, a siting application subject to the 2012 Spectrum Act is “deemed granted” if the state/local government fails to act on it by the applicable shot clock deadline
- Should “deemed granted” remedy apply to *all* siting applications?
- If so, how would this work? Options include:
 - Change litigation rules (“irrebuttable presumption”)
 - Once the applicant (plaintiff) shows that the state/local government (defendant) failed to act on request by the applicable deadline, state/local government could not claim that its delay was justified
 - Adopt automatic “deemed grant” rule
 - If state/local government does not act by applicable deadline, rule could provide that applicant no longer needs to obtain approval



Wireless Infrastructure NPRM



State and Local Review – “Moratoria”

- Are some localities imposing moratoria or other restrictions on filing or processing applications?
 - If so, what should the FCC do?
 - Should the FCC preempt specific state/local governments’ moratoria?



Wireless Infrastructure NOI

Notice of Inquiry: *explores broad issues, but not specific proposals*

- Is there any difference between the duties that two similar sections of the Communications Act impose on state/local governments?
 - Section 253(a): “No State or local statute or regulation, or other ... legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any ... telecommunications service.”
 - Section 332(c)(7): “The regulation of the placement, construction, and modification of ... facilities by any State or local government ... shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”
- What limits do these sections impose on state/local governments’ fees for use of public property *other than* rights-of-way?
 - [Note: Dec. 2016 Public Notice on Mobilitie Petition asked similar questions about fees for use of public rights-of-way]
- When state/local governments offer wireless companies access to their resources, are they acting in their “proprietary” or “regulatory” roles?



Wireless Infrastructure NOI

Notice of Inquiry (continued)

- What is the proper role of aesthetic considerations in the state/local siting review process?
 - Are there legitimate bases for denial on grounds of specific aesthetic impacts as distinct from “generalized concerns”?
- Are there state/local restrictions that improperly discriminate against wireless or in favor of “functionally equivalent services”?
 - For instance, seeking comment on how wireless facilities have been treated in communities that require undergrounding of utilities



Wireless and Wireline Infrastructure Proceedings

Environmental and Historic Preservation Review

- Proposals to modify the process for state historic preservation officers and Tribal Nations to review certain types of proposed wireless deployments
 - Whether the FCC should eliminate or streamline historic preservation review of
 - ✓ Pole replacements
 - ✓ Collocation in transportation rights-of-way
 - ✓ Collocation at least 50 feet outside the boundary of historic districts
 - ✓ Collocation on facilities that were already reviewed and approved by another historic preservation review body
 - Whether costs of historic preservation review by Tribal Nations can be reduced

Wireline Infrastructure (WC Docket No. 17-84)

- A separate pending proceeding is addressing wireline infrastructure issues
 - NPRM seeks comment on proposals including:
 - ✓ Reforming the rules governing utility companies' fees for pole attachments
 - ✓ Relaxing or eliminating rules that require incumbent phone companies to provide advance notice of network changes (*e.g.*, retirement of copper infrastructure) or discontinuing services
 - NOI seeks comment on issues including:
 - ✓ Preempting state/local laws that inhibit broadband deployment



Wireless Infrastructure NPRM/NOI

Public Comments on Wireless NPRM/NOI

- Comments Due: **June 9, 2017**
- Reply Comments Due: **July 10, 2017**

How to file:

- Go to <https://www.fcc.gov/ecfs/filings>
- Fill in docket number (**17-79**) and your organization's name
- Upload PDF or Word document (*no paper!*)

For assistance with using ECFS, please contact the ECFS Help Desk at [202-418-0193](tel:202-418-0193) or via email at ECFSHelp@fcc.gov.



Wireless Infrastructure NPRM/NOI – Questions?

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25

