

UTILITIES AND TELECOMMUNICATIONS ALERT

FCC SEEKS COMMENTS REGARDING PREEMPTION OF LOCAL RESTRICTIONS ON SMALL CELL WIRELESS INFRASTRUCTURE

The Federal Communications Commission (“FCC” or “Commission”) recently released a Public Notice seeking comment with respect to “potential Commission actions to help expedite the deployment of next generation wireless infrastructure by providing guidance on how federal law applies to local government review of wireless facility siting applications and local requirements for gaining access to rights of way.”

The FCC has previously been supportive of the deployment of wireless infrastructure, including small cell and distributed antenna system (“DAS”) deployment. The Commission is now requesting further input as to how it can promote such wireless infrastructure deployment by issuing a declaratory ruling. The issues addressed by this most recent Public Notice include those suggested in a Petition for Declaratory Ruling filed by Mobilitie, LLC on November 15, 2016 but go beyond those to other issues of critical importance to encouraging DAS and small cell deployment. Specifically, the Public Notice addresses the following issues:

- Which, if any, local government actions (or inaction) have the effect of hindering the introduction of new services, obstructing efforts to improve existing services or make networks more robust, or deterring prospective service providers from entering markets?
- At present, how much time typically elapses between the filing of complete facility siting applications and the approval or denial of such applications by local land-use authorities?
- How long does it typically take local governments to process macrocell siting applications and how does this compare to the review of small wireless facilities or DAS applications?
- Are there greater coverage gaps in specific states or localities where applications are processed more slowly or where more stringent showings are required?
- How often are applications denied on the basis of (i) their inadequacy or incompleteness; (ii) engineering defects or other technical problems; (iii) environmental impacts; (iv) aesthetic concerns; (v) perceptions of excessive or overly dense deployment of wireless network facilities in particular areas; or (vi) other reasons?
- Are some parties’ applications granted more frequently or reviewed more expeditiously than others, and if so, why?
- What are examples of legislation that has been successful in reducing or restraining administrative burdens, costs and delay? Can such approaches be employed more generally?
- To what extent do problematic local legal requirements unduly restrict:
 - (i) locations where facilities may be deployed; (ii) the technical configurations of

UTILITIES AND TELECOMMUNICATIONS ALERT

network facilities; or (iii) access to rights-of-way owned or controlled by state and local governments?

- What are the types of fees that local governments currently impose on providers for building facilities in rights of way, including both up-front fees for processing applications and recurring usage charges?
- Does a State or local legal requirement that prevents a technology upgrade “have the effect of prohibiting” the provision of service for the purposes of Section 253 or 332 of the Telecommunications Act? Should the Commission address other disputed issues regarding the meaning of the phrase “prohibits or has the effect of prohibiting”?
- Whether the Commission’s interpretation of a “reasonable period of time” under Section 332(c)(7)(B)(ii) should be shorter for state and local governmental review of small cell facility applications than macrocells? The Commission also seeks comment on how it could define “small cell” for this purpose.
- How should the Commission interpret Section 253(c) of the Telecommunications Act for the purpose of ensuring that fees imposed on providers for using rights of way do not exceed fair and reasonable compensation?
- What is the most appropriate definition with respect to fees for the phrase “competitively neutral and non-discriminatory” in Section 253(c) of the Telecommunications Act?
- Should the Commission require that localities disclose to a carrier upon request the charges they have imposed on all carriers for access to rights of way, including not only the amount of the charges but also how the charges were calculated?

Comments are due by February 6, 2017 and Reply Comments are due by March 8, 2017. The full text of the Public Notice can be found [here](#). This proceeding will be of particular interest to carriers trying to reduce the burden imposed by localities on the deployment of small cell, DAS and similar wireless infrastructure facilities. Filing comments and/or reply comments will also ensure that the particular challenges faced by your company will be addressed in the Commission’s declaratory ruling.

If you have any questions regarding the above, please contact Jim Falvey at 202.659.6655 (jfalvey@eckertseamans.com), Eric Page at 804.788.7771 (epage@eckertseamans.com), Brett Freedson at 412.566.1912 (bfreedson@eckertseamans.com), or Rob Gastner at 202.659.6674 (rgastner@eckertseamans.com).

This Utilities and Telecommunications Alert is intended to keep readers current on matters affecting businesses and is not intended to be legal advice.