

FCC Seeks Data and Comment About Ways to Streamline and Expedite Local Approval of Small Cell Wireless Infrastructure Deployment

December 27, 2016

On December 22, 2016, the Federal Communications Commission's (FCC or Commission) Wireless Telecommunications Bureau released a Public Notice that invites interested parties to submit data showing whether and to what extent local siting processes are delaying or hindering the deployment of wireless infrastructure and requests input about actions that the FCC could take to streamline and expedite the process.

The Public Notice includes a summary of the technological developments that have created an increased demand for small cell infrastructure deployment, an overview of the applicable legal framework, and a series of questions on which the Commission would like public comment. Industry input on these questions will be vitally important as it has the potential to positively impact the deployment of needed wireless infrastructure in a cost-effective and timely manner.

Technological Developments

The Public Notice begins with a summary of the technological developments that have increased the demand for small cell infrastructure deployment. Wireless data consumption by smartphones, tablets, and mobile-enabled PCs have exponentially increased the demand on wireless networks. And that consumption is expected to grow with the proliferation of the Internet of Things (IoT) and next generation 5G services. The Public Notice acknowledges that these advances require significant densification of small wireless facilities, including distributed antenna systems (DAS) and small cells,

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so that the facilities can provide higher quality connections through locations closer to the end user. The demand could require, according to one estimate, deployment of up to 800,000 small cells in the next decade, with 150,000 small cells needed by the end of 2018 alone.

Legal Framework

The Public Notice includes an overview of the relevant statutes and Commission authorities governing the siting of wireless facilities, including Sections 253 and 332 of the Communications Act, Section 6409 of the Spectrum Act, and the Commission's 2009 *Shot Clock Order* and 2014 *Infrastructure Order*. The Notice explains that the statutes were enacted in order to address concerns about unduly restrictive local zoning rules, unfounded denials or delays in the processing of wireless facility permit applications, and demands for excessive and unreasonable fees for use of the rights of ways. Sections 253 and 332, in particular, impose a statutory mandate on the Commission to facilitate deployment of network facilities needed to deliver more robust wireless services throughout the United States. While these statutes explicitly preserve state and local authority over the placement, construction, and modification of wireless facilities and the management of the rights of way, the Commission has authority to resolve ambiguities in the statutory scheme in a way that furthers broadband deployment, as it did with its 2009 *Shot Clock Order* and 2014 *Infrastructure Order*.

Request for Comment

The Public Notice acknowledges that the industry continues to report that their wireless siting applications are met with excessive delays, high initial fees, and excessive recurring charges. The Commission seeks data to determine the extent of these problems and input on various potential solutions.

Data Requested

The Public Notice seeks information that quantifies the extent of the delays and burdens that the industry faces in its efforts to deploy wireless infrastructure. For example:

- What specific local action (or inaction) has hindered the introduction of new services?
- How much time typically elapses between the filing of a complete small cell wireless facility siting application and its approval or denial?
- Are there greater coverage gaps in localities where applications are processed more slowly?
- How often do local land-use authorities approve or deny siting applications and for what reason?
- Are applications for some applicants granted more often or considered more expeditiously?
- How often are siting denials challenged in court?
- What examples of local legislation, ordinances, or regulations have been successful or unsuccessful in reducing administrative burdens, costs, and delays?
- What fees have been charged or demanded for use of the rights of way, including up-front application fees and recurring use fees?

- Are the fees charged by local jurisdictions cost-based or based on some other measurement, such as percentage of gross revenue?

Comments Requested

The Public Notice also seeks input about various ways to further expedite deployment consistent with the applicable legal framework. For example:

- Does a siting denial that prevents a technology upgrade “have the effect of prohibiting” wireless service for purposes of Section 253 or 332?
- Should the “shot clock” presumptive timeframes (90 days for processing collocation applications and 150 days for processing all other applications) apply in the small-cell context?
- Should the presumptive timeframe for reviewing small-cell siting applications vary based on the number of small cells involved in the application?
- What is “fair and reasonable compensation” for purposes of Section 253(c)?
- Should Commission rules governing the computation of cost-based rates for pole attachments and access to private utility-owned rights of way serve as an example for setting “fair and reasonable compensation” for purposes of Section 253(c)?
- What is “competitively neutral and non-discriminatory” for purposes of Section 253(c)?

Comments are due on February 6, 2017 and reply comments are due on March 8, 2017.

Wiley Rein has extensive experience promoting wireless and wireline infrastructure deployment, both at the FCC and in the courts. This blend of experience gives us unique insight into the issues involved in this proceeding. Our attorneys are available to provide guidance regarding the opportunities presented by the Public Notice and assist those interested in submitting written comments.