

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)
Commission, on its Own Motion, to investigate) Application No. C-4807/PI-202
ways to accelerate the deployment of)
broadband consistent with Section 706 of the)
Telecommunications Act of 1996.)

COMMENTS OF SPRINT

Sprint Communications Company L.P., Sprint Spectrum L.P., Nextel West Corp., and NPCR, Inc. (collectively, “Sprint”) respectfully submit the following comments pursuant to the Order Opening Docket and Setting Workshop dated December 15, 2015 (the “Order Opening Docket”) in the above-referenced proceeding.

While the Commission is prohibited by state law from regulating wireless telecommunications service,¹ the Commission can and should support and facilitate good public policies that promote the efficient deployment of broadband infrastructure for the benefit of Nebraskans. To that end, Sprint offers the following comments and suggestions to help reduce or eliminate impediments to broadband deployment.

1. The Commission should support and facilitate policies that promote competitive broadband infrastructure deployment.

In its Order Opening Docket, the Commission stated its intention to improve government policies for access to rights of way to encourage the efficient deployment of broadband by “carriers receiving [federal CAF] support.”² Respectfully, Sprint reminds the Commission that ILECs receiving federal CAF support are not the only providers offering broadband service in Nebraska. Competitive service providers such as wireless carriers play a vital role in providing broadband

¹ Neb. Rev. Stat. Sec. 86-124.

² Order Opening Docket at 1.

access to Nebraskans, as demonstrated by the dramatic increase in mobile broadband usage. According to the Pew Research Center, nearly two-thirds of Americans are now smartphone owners, and 19 percent of American adults are primarily or solely dependent on their smartphones for online access.³ Today, there are more Google searches from mobile devices than from computers.⁴ Between the end of 2013 and the end of 2014, CTIA reports an increase of more than 25 percent of data use on mobile networks – from 3.2 trillion megabytes to more than 4 trillion megabytes.⁵ That is more than 10 times the volume of data reported just 4 years ago.⁶ The world, Nebraska included, is increasingly going wireless. Nebraska consumers benefit from a robust, competitive broadband market. Accordingly, the Commission should support and facilitate policies that promote competitive broadband infrastructure deployment, not just policies that benefit ILECs. Policies that minimize or eliminate impediments to broadband deployment should be competitively and technology neutral and extend equally to all broadband providers.

The Commission also has the ability to influence state policymakers and municipalities on policies related to cities partnering with private corporations on municipal broadband efforts. The Commission should examine efforts by municipalities to foster broadband deployment and support policies that promote, rather than detract from, such efforts; e.g. policies that promote the competitive deployment of mobile wireless broadband solutions in addition to wired and fixed wireless solutions in Nebraska. The Commission should address issues to support mobile wireless competition and infrastructure challenges so wireless carriers can compete on a more equal footing with wireline providers.

³ Aaron Smith, *U.S. Smartphone Use in 2015*, Pew Research Center, 2-3 (April 1, 2015), http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf.

⁴ Alexei Oreskovic, *Mobile devices are now the main source of Google search traffic*, Business Insider (May 5, 2015), <http://www.businessinsider.com/google-search-traffic-mobile-passes-desktop-2015-5>.

⁵ CTIA, Annual Wireless Industry Survey Top Line Results (June 2015), http://www.ctia.org/docs/defaultsource/Facts-Stats/ctia_survey_ye_2014_graphics.pdf?sfvrsn=2.

⁶ *Id.*

2. The Commission should support and facilitate a streamlined, consolidated, and uniform process for management and permitting of ROW.

Siting of wireless towers and small cells in public ROW and other locations would benefit from a coordinated effort by all current permitting authorities in Nebraska. Certainly, municipalities and the State have an interest in managing the rights of way in their localities. But wireless carriers and deployers of wireless infrastructure are faced with conflicting regimes that make the process cumbersome, expensive and untimely. Permitting authorities in Nebraska have slowed down the wireless siting process considerably in some instances, causing costly and time-consuming delays to the build-out of wireless infrastructure.

Indeed, wireless carriers are often faced with multiple different state, county and municipality regulations and oversight in siting wireless facilities within the ROW. Requirements, materials to be submitted, and timeframes for consideration vary amongst state, county, and municipal ROW. Municipalities have different requirements related to required franchise agreements, zoning, and placement of wireless facilities of varying complexity and burden on the wireless carrier. Locating within the ROW also may result in unexpected costs. For example, if the pole is owned by a utility company, a pole attachment agreement is generally required in addition to the fee in a franchise agreement. Some municipalities may not allow the installation of new poles, or any poles in areas with underground utilities.

To facilitate the placement of wireless facilities and the development of wireless broadband in Nebraska, it is necessary to examine ROW, franchising and permitting regimes throughout the state amongst the various state, county, and municipal jurisdictions and replace them with a streamlined and consistent process for wireless broadband providers in siting their facilities in the state. Consistent rules will do much to reduce cost and expedite deployment. Nebraska should look to other states that have streamlined wireless siting procedures and enacted limitations on the

requirements that can be imposed upon wireless infrastructure, and take similar action. State laws that make wireless siting conform to reasonable statewide procedures are preferable to the patchwork process that applies in Nebraska. For example, Vermont law, 30 V.S.A. § 248a standardizes wireless telecommunications siting on a statewide basis and the Public Service Board of Vermont issues certificates of public good for the modification of existing wireless facilities and for new telecommunications facilities within a specified timeframe and according to statewide standards and procedures.⁷

Other states establish statewide rules and limitations on municipal authority in considering wireless facilities without requiring approvals from the state public service commission or other centralized authority. By way of example, New Hampshire law specifically states that each “authority” (i.e. state, county or city zoning boards or permitting authorities) must comply with uniform requirements to “to ensure uniformity across New Hampshire with respect to the consideration of every collocation application and modification application.”⁸ In addition, new Indiana law effective on January 1, 2016 and a recent Missouri law both impose uniform statewide requirements upon municipalities and other permit authorities in considering applications for the construction of new or modification of wireless support structures and collocations upon existing structures.⁹

⁷ *Third Amended Order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Vermont Public Service Board, Order of 8/19/15. Deadlines of 21, 45, 60, 90, and 180 days apply depending upon the project size and whether objections are received.

⁸ N.H. Rev.Stat. Ann § 12-K:11.

⁹ Engrossed House Bill No. 1318, Indiana Code 8-1-32.3. See also Missouri law RSMo §§ 67.5090 to 67.5103, Uniform Wireless Communications Infrastructure Deployment Act, which requires every “authority” (i.e. state, county, municipal governing board with authority over zoning or building permits) to comply with uniform rules in the consideration of wireless applications for the construction of new or modification of wireless support structures and collocations upon existing structures.

Sprint encourages the Commission to support and facilitate laws incorporating uniform processes that apply statewide to minimize the disruption and costs involved with the disparities among different municipal, county and state authorities. This will do much to promote and accelerate wireless broadband deployment in Nebraska.

3. The Commission should support and facilitate a streamlined process for obtaining permits with clear timeframes and other measures that reduce costs and promote wireless infrastructure deployment.

Bringing broadband to Nebraska citizens should be done efficiently and effectively. This will require a collaborative approach involving both the public and private sector. While it is often the private sector that builds the broadband networks, the public sector, in particular the State of Nebraska, can enable broadband expansion by requiring streamlined and consistent permit processes, clear timeframes, and other measures to reduce unnecessary costs and burdens. While the cities and counties must comport with federal timelines in dealing with new tower placements (150 days) and collocations (90 days), in order to attract investment and facilitate expeditious broadband deployment, many states have supplemented the federal deadlines and declared an application “deemed granted” if the zoning authority does not act.¹⁰ This approach avoids the burdensome cost of litigation on citizens and service providers to enforce the federal shot clock requirements. For example, California and other states declare that the application is deemed granted if the city or county fails to act within the timelines and procedures established by applicable FCC decisions.¹¹ Nebraska should look to laws in other states where wireless

¹⁰ California Assembly Bill 57.

¹¹ California AB 57, Cal Stat. Government Code, Section 65964.1 (A collocation or siting application for a wireless telecommunications facility ... shall be deemed approved if ... the city or county fails to approve or disapprove the application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions”); New Hampshire law, N.H. Rev.Stat. Ann § 12-K:10 (“if the authority fails to act on a collocation application or modification within the 45 calendar days review period, the collocation or modification application shall be deemed approved.”); Michigan, Mich. Comp. Laws §125.3514 (“the body ... shall approve or deny the application not more than 60 days after the

infrastructure siting has been reformed and take similar action. Specific deadlines to consider wireless siting requests will prevent providers in Nebraska from facing situations where wireless deployment can be delayed for months and years before a city addresses an application or permit or where a provider is forced to bring court action.

In addition to establishing hard deadlines for considering requests for wireless infrastructure, many states have enacted other provisions that promote wireless broadband deployment. To prevent municipalities or other authorities from requiring wireless providers to justify why they may want to place a facility in a particular location, which can lead to delay and potential litigation, some states have enacted provisions that prohibit such inquiries. Such provisions eliminate extraneous obligations imposed on applicants to justify their proposals for locating wireless equipment based on radiofrequency, technical, or business needs, and thus reduce the potential for unnecessary disruption or delay of deployment.¹²

Other provisions intended to neutralize the perception of ROW as a profit generator, such as a requirement that fees be capped or based upon the actual costs of managing the ROW, also incent more rapid deployment of wireless broadband.¹³ Providers need relief from the imposition of onerous fees in order to make it economically feasible to deploy denser wireless networks that rely on small cells covering less area. Federal law has incorporated this concept. In the Middle

application is considered to be administratively complete. If the body ... fails to timely approve or deny the application, the application shall be considered approved ...”) Wisconsin, Wis. Stat. §66.0404(2)(d) and (3)(c) (90 days or deemed approved for new structures or 45 days or deemed approved for collocations). This is not an exhaustive listing of all state laws but provides examples of states in different parts of the U.S. all addressing this issue.

¹² Pennsylvania SB 1345, 53 PS § 11702.3(a) (Local zoning authority cannot place an additional requirement upon an applicant “to provide any sort of justification of radio frequency need”); Wisconsin, Wis. Stat. §66.0404(4)(h); Missouri, RSMo §67.5094(1) (authority shall not evaluate applicant’s “business decisions with respect to its designed service, customer demand for service, or quality of its service to or from a particular area or site.”)

¹³ Missouri, RSMo §67.5094(11); Wisconsin, Wis. Stat. §66.0404(4)(d) –(f); Iowa House File 655, Iowa Statute 8c.3.9

Class Tax Relief and Job Creation act of 2012,¹⁴ Congress established that the fee for easements and rights of way on federal buildings and lands must be based on direct cost recovery.¹⁵

Finally, Colorado and Washington have allowed providers to combine multiple small cell facility placements within a particular municipality in a single consolidated application, thereby expediting the process of the deployment of multiple small cell facilities in a particular municipality.¹⁶ Deployment of small cells to densify carrier networks is crucial in meeting the wireless capacity challenges of ever-exploding wireless data usage.

The above is a non-exhaustive list of state laws that can be reviewed to promote more efficient wireless siting policy in Nebraska. In order to promote wireless broadband deployment, the Commission should support laws to streamline the permitting process and implement other measures to reduce the cost and burdens of deploying wireless broadband infrastructure.

An additional measure to aid the expansion of broadband is enacting legislation that would require all state construction projects to implement “dig once”¹⁷ practices. Construction of roads and bridges provide an opportunity to enable, simplify, and ease broadband expansion. Broadband network construction typically requires the installation of broadband facilities such as fiber optic cable that can be used to serve retail customers, provide backhaul for cell towers, or provide middle mile access. Gaining access to ROW alone and crossing roads and bridges each present significant impediments to fiber optic cable installation, driving up costs and greatly increasing installation intervals. “Dig once” practices can reduce both fiber optic cable installation costs and intervals. In addition, such practices can also reduce or minimize day-to-day traffic or workplace disruptions.

¹⁴ 47 U.S.C. § 1455

¹⁵ 47 U.S.C. § 1455(b).

¹⁶ Colorado Revised Stats §29-27-404, Washington Revised Stats § 80.36.375.

¹⁷ Dig once is a collection of approaches that collectively aim to get conduit, fiber, and other assets, placed at a very low cost as part of other projects. See http://nextcenturycities.org/wp/wp-content/uploads/2015/07/NCCPolicyAgenda_Web.pdf

For example, placing conduit when a bridge is being constructed or repaired will make the future installation of fiber optic cable less expensive, quicker, and less disruptive to traffic.

Nebraska law should require “dig once” practices on state construction projects. Likewise, county and city agencies should consider and adopt streamlined permitting processes and “dig once” requirements for local construction projects. Decreasing costs and shortening installation intervals are both in the public interest. They lead to faster broadband expansion, lower rates and more effective use of public funding.

4. **The Commission should support making state-owned buildings, structures, and land, including park land, available for wireless facilities on an expedited basis.**

In addition to easing fees for placing wireless facilities in the ROW or easements on buildings or land owned by the federal government, Congress required the GSA to make it easier for wireless carriers to site on federal buildings or land. Under the Middle Class Tax Relief and Job Creation act of 2012, the GSA is required to develop master contracts for the placement of wireless equipment on federal buildings and land.¹⁸ Nebraska should take steps to expedite the placement of wireless facilities on state-owned property and state ROW. Standardized forms and clear limitations on times to consider applications for placement of facilities on state property and state parks will help improve wireless coverage in more rural areas of the state and expand wireless broadband to unserved or underserved areas. Vermont has taken this step and requires its Secretary of Administration to be the exclusive agent for wireless siting on state structures and to develop a standard contract for wireless facility development on state-owned buildings, structures and land that must be considered within 60 days of completeness.¹⁹ Nebraska should consider similar ways to standardize deployment on state buildings and land.

¹⁸ 47 U.S.C. § 1455(c).

¹⁹ Vermont Statutes, Title 30, Chapter 5, § 227b.

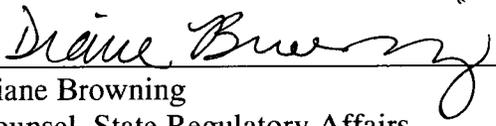
5. **Conclusion.**

Sprint believes the Commission can play a role in facilitating and shaping the policies that will impact the way Nebraskans communicate with each other, conduct business, and interact with the world via the Internet for decades to come. As reflected in Sprint's comments, it is imperative for Nebraska laws and regulations to reflect policies that promote competitive broadband infrastructure deployment in order to keep pace with the increasing consumer demand for broadband service. This includes, among other things, the removal of impediments to wireless broadband infrastructure deployment, and improvements to streamline and create more efficient processes to reduce the costs and burdens that hinder wireless broadband development.

If Nebraska is to be on the leading edge of the technological revolution that is already taking place, and if Nebraskans are to enjoy the full benefits of new and innovative telecommunications and broadband service, it is of paramount importance to reform and streamline Nebraska laws and regulations. Sprint appreciates the opportunity to provide these comments for the Commission's consideration, and strongly urges the Commission to consider Sprint's suggestions.

Respectfully submitted this 20th day of January, 2016.

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