

**REMARKS OF FCC CHIEF OF STAFF MATTHEW BERRY  
AT THE 7TH ANNUAL AMERICAS SPECTRUM MANAGEMENT CONFERENCE**

**NATIONAL PRESS CLUB**

**WASHINGTON, DC**

**OCTOBER 3, 2018**

In the classic song “Love and Marriage,” which went on to be the theme song for the classic sitcom “Married with Children,” Frank Sinatra crooned that love and marriage “go together like a horse and carriage”—“you can’t have one without the other.”

The same can be said of spectrum and infrastructure. Over the past two days, you’ve heard discussions about the wide range of spectrum management opportunities and challenges in the Americas. But particularly when we think about 5G, the infrastructure piece of the puzzle is crucial. All the spectrum in the world won’t make a difference if there isn’t the physical infrastructure to carry 5G traffic. And conversely, all the wireless infrastructure in the world won’t make a difference if there aren’t the airwaves to transmit 5G traffic. In other words, spectrum and infrastructure: You can’t have one without the other.

The FCC’s 5G strategy recognizes this reality. Two key components of our 5G FAST plan, a plan to Facilitate America’s Superiority in 5G Technology, involve freeing up spectrum for the commercial marketplace and promoting the deployment of wireless infrastructure. So even though this is the 7<sup>th</sup> Annual Americas Spectrum Management Conference, I’m pleased to be with you this afternoon to kick off this important panel on infrastructure.

As I’m sure you know, the infrastructure to support 5G services is going to look very different from the wireless infrastructure of the past. Rather than relying primarily on tall towers, 5G networks will be highly densified and require the deployment of numerous small cells. How many? According to one estimate, the United States will need an additional 800,000 cell sites by 2025. And to put that number in perspective, we currently have fewer than 300,000 cell sites nationwide.

So we have a big challenge in front of us. And at the start of Chairman Pai’s tenure leading the Commission in 2017, we realized that we had to fundamentally rethink wireless infrastructure policy. To realize the promise of 5G, we needed to modernize our rules. Among other things, no longer could our rules be premised on the idea that new cell sites would be 200-foot towers. Rather, we had to take account of the reality that the substantial majority of new deployments are going to be small cells roughly the size of a backpack.

In April 2017, we therefore launched a comprehensive rulemaking proceeding designed to identify regulatory barriers to wireless infrastructure deployment and eliminate or reduce as many of them as possible. And this year, under the leadership of Commissioner Brendan Carr, we have made tremendous progress in modernizing our wireless infrastructure rules, or as Commissioner Carr puts it, making them 5G ready. Most importantly, we have adopted two major orders. The first reformed the federal government’s review process pertaining to wireless infrastructure, while the second addressed barriers to wireless infrastructure deployment erected by state and local governments.

I’ll start with the federal review process. In an order adopted this March, the FCC took a hard look at how federal regulations, in the form of our historic preservation and environmental rules, were impacting the deployment of next-generation networks. Here’s a bit of background for those of you not familiar with those rules. To implement the National Environmental Policy Act and National Historic Preservation Act, the FCC requires providers to take specified steps to consider the impact of deployments on the environment and on historic properties, including those of cultural and religious

significance to Tribes. Those rules were originally crafted in the era of tall towers. And while small cells are inherently different from large towers, our rules treated macro towers and small cells as if they were the same.

The cost of treating all facilities alike was substantial. Indeed, one company told us that 26% of its total small-cell deployment costs, including equipment costs, came from historic preservation and environmental review alone. And what were these review processes accomplishing? Very little. In all but 0.33% of cases, the reviews did not lead to any changes in proposed deployments.

So after considering a robust record, the Commission concluded that “small wireless facilities”—those limited in volume and height—generally do not constitute “federal undertakings” or “major federal actions” requiring environmental review or historic preservation review. This means that the deployment of small cells will no longer incur the costs and delays inherent in those review processes. The Commission found that the burdens associated with those processes outweighed any benefits that would come from continuing to apply them to small wireless facilities.

Of course, 5G isn’t going to eliminate the need for large towers. So while we were at it, the Commission also took steps to streamline the environmental and historic preservation review of larger wireless facilities. One straightforward fix was to no longer require companies to prepare environmental assessments, costing thousands of dollars apiece, simply because wireless facilities were being deployed in a flood plain. Instead, we replaced that expensive environmental assessment with a common-sense obligation that equipment be raised at least one foot above the base flood elevation.

We also addressed the role of Tribal consultation in the historic preservation review process. Beginning some years back, certain Tribes, when given an opportunity by our rules to weigh in on the potential effects of a deployment, began charging upfront fees to companies simply for looking at their proposals. Over time, more and more Tribes had begun charging higher and higher fees before they would even review a wireless deployment—even when the deployment had almost no chance of historical impact, such as installing small cells in the parking lot of a football stadium hosting the Super Bowl. This practice unnecessarily increased the cost of infrastructure deployment and was contrary to guidance from the Advisory Council on Historic Preservation. So, in March, the Commission clarified that providers are not required to pay such upfront fees. To avoid confusion and delay, the Commission also clarified timelines and standardized the set of information that must be provided to Tribal Nations for each deployment. These changes enable Tribes to more efficiently determine whether projects might affect historic properties of religious or cultural significance.

What has been the impact of the March order? Thankfully, it is already expediting the deployment of wireless infrastructure. One provider, for example, recently reported that during the first 17 days that our new rules were in effect, it cleared about half as many sites for construction as it had in the prior six months. And according to an Accenture analysis, this order will reduce small cell deployment costs by about \$1.6 billion over the next 8 years.

After addressing federal regulatory impediments to wireless infrastructure deployment in March, the Commission turned its attention to problems at the state and local level. To be clear, many state and municipal governments have adopted forward-looking wireless infrastructure policies that make it easier to deploy the 5G networks of the future. States like Arizona and Indiana should be commended for getting their communities 5G-ready. And about 20 states have recognized the potential for local rules to deter deployment and enacted small cell legislation addressing this problem. In figuring out what the Commission should do about this issue, the FCC closely studied these laws and learned from the policies that were working across the United States.

Last week, the FCC adopted an order to address the lengthy delays and exorbitant fees that providers too often face in attempting to deploy facilities in some communities. This order respects the critical role that states and localities have long played in zoning and other decisions impacting

infrastructure deployments while at the same time enforcing the important constraints that Congress has placed on their authority.

For example, the Commission has for several years had “shot clocks” establishing what is presumed to be a reasonable amount of time for a state or locality to act on a request to site wireless facilities. Indeed, our authority to establish such shot clocks was upheld in a case that went all the way up to the U.S. Supreme Court. Recognizing the less significant potential impact of small cells, the Commission last week adopted new, shorter shot clocks for state or local review of proposed small wireless facilities. Once the order takes effect, states and localities will generally have 60 days to review collocations and 90 days to review new construction.

The Commission also established a new remedy for providers to use when a locality misses the shot clock, concluding that missing the shot clock presumptively “has the effect of prohibiting” service, something a locality may not do under the Communications Act.

Turning from time to money, the Commission also tackled the issue of state and local fees for applications to deploy infrastructure, for access to rights of way, and for access to government-owned facilities in the rights of way. While some localities impose only modest fees, others have been using their power to impose fees significantly exceeding their costs. Many large cities, in particular, have been charging extremely high fees, up to \$5,000 a small cell.

Last week, the Commission decided that such fees are permissible under the Communications Act only if they represent a reasonable approximation of a state or local government’s reasonable costs and are no higher than the fees charged to similarly situated competitors in similar situations. In other words, all fees must be “non-discriminatory” and “cost-based.” Limiting fees in this way respects the different circumstances faced by different localities, while ensuring that scarce capital expenditure dollars don’t get used up paying excessive fees in urban areas, at the expense of less densely populated areas. Indeed, the Commission’s decision last week will lower the cost of infrastructure deployment by up to \$2 billion.

As Chairman Pai has mentioned, the FCC’s top priority is closing the digital divide. And when you raise the cost of deploying wireless infrastructure, it is those who live in areas where the investment case is the most marginal—rural areas or lower-income urban areas—who are most at risk of losing out. We don’t want 5G to widen the digital divide; we want 5G to help close that divide.

As a country, the United States is not alone in trying to upgrade our wireless infrastructure to realize the benefits of 5G. The global race is on. Regulators in the Americas, Europe, Asia, and other parts of the world all want to ensure that their countries lead the way in 5G. And in conversations with international counterparts, I’ve heard firsthand how removing barriers to infrastructure deployment for 5G is a shared concern.

In Europe, for example, the new European Electronic Communications Code includes provisions to stimulate investment in 5G infrastructure by limiting the time taken to process applications to install telecommunications infrastructure, proposing a 6-month limit on resolving siting applications, and encouraging the deployment of small cells by removing fees other than administrative charges. In Singapore, the government is updating rules to make it easier for mobile network operators to deploy equipment and mobile infrastructure, including small cells, in buildings.

In the United States, we, too, are doing our part to modernize wireless infrastructure rules. And we believe that the steps we have taken and will continue to take are just as important as to realizing our 5G future as allocating and auctioning spectrum. We carry this message with us when we work with our counterparts in the Americas region and throughout the globe—to encourage both forward-looking spectrum policy and forward-looking infrastructure policy.

\* \* \*

I wanted to close my remarks this afternoon where I began, by referring to a Frank Sinatra song. And I'll admit that I struggled to come up with something appropriate. The defiant lyrics of "My Way" don't really fit the occasion. "New York, New York" isn't on point either (though given some of the Big Apple's wireless infrastructure rules, if you can make it there, you probably can make it anywhere). And the "Summer Wind" has come and gone as autumn has arrived.

So I'll conclude by making this observation: When it comes to wireless infrastructure policy in the United States, I believe that in the years to come, we'll look back at 2018 and say, like Sinatra, "It Was a Very Good Year." And in part because of that, I have no doubt that with respect to our nation's wireless future, "The Best Is Yet To Come."