

January 22, 2018

Broadband Deployment Advisory Committee
Federal Communications Commission
445 12th Street, SW
Washington, DC 20510

Dear Members of the Broadband Deployment Advisory Committee:

As the nation's city and county leaders, we write to thank you for your ongoing work to expand broadband access in the United States. We ask that your upcoming recommendations to the Federal Communications Commission reflect the best interests not just of broadband service and infrastructure providers, but the needs of the American public. Today 34 million Americans lack broadband access, including 39% of those living in rural areas.¹ Americans also lack choice around broadband providers with the majority of census tracts with only one or two providers.² This lack of competition also results in Americans paying more for broadband access relative to peers.³

Local communities want broadband deployment and competitive broadband choices. We understand the opportunities that broadband presents for our local communities and our residents in terms of public safety, economic development, healthcare, entertainment, and education. For years, communities of all sizes around the nation have taken innovative steps to increase the deployment of broadband infrastructure, while protecting public safety and providing a fair approach to use of the public rights-of-way. Our nation's public rights-of-way in municipalities are paid for and maintained using local tax dollars from the communities we serve.

Given these market failures, we oppose the inherent stance of the Broadband Deployment Advisory Committee's work that assumes that state and local governments present the primary barrier to broadband deployment, while broadband industry provider practices and market structure are a secondary concern. We also urge you to avoid recommendations of preemption of local authority and prescriptive recommendations on fees and costs that tie the hands of local governments and conflict with evolving state law.

The BDAC should seriously consider the remarks made by local representatives during the most recent public meeting concerning the need to go beyond the mere placement of infrastructure when considering broadband in the United States. The digital divide is fueled by lack of education and affordability, and by trends in buildout that lead to first-class, competitive service in wealthy neighborhoods, and uncompetitive or subpar service in poor ones. Speeding the rate at which even more infrastructure is added to profitable areas will not ensure that low-income children can overcome the homework gap, nor will it improve the economic viability of rural communities with limited broadband options for businesses, healthcare providers, and workers.

¹ <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2016-broadband-progress-report>

² <https://arstechnica.com/information-technology/2016/08/us-broadband-still-no-isp-choice-for-many-especially-at-higher-speeds/>

³ <https://www.pbs.org/newshour/world/internet-u-s-compare-globally-hint-slower-expensive>

The premise from which the BDAC was formed is fundamentally flawed: that state and local governments are the major barrier to broadband infrastructure deployment. This issue is further exacerbated by the lack of local government representation on this body, with only three of the nearly 30 voting members representing municipal governments. Local governments are working to improve their operations to streamline permitting, batch process applications, and make it easier for broadband providers to engage with us – but this should not come at the expense of taxpayers subsidizing industry at below market rates, or by compromising public safety without adequate review of structures placed in the public right-of-way.

We are also concerned by and oppose the preemption recommendations included in the Model Code for States and State and Local Barriers Working Groups’ discussion documents published for the November 9th meeting. We urge you to recognize that local governments’ planning and siting review processes are driven by the need to enable universal, affordable broadband access for residents, while responsibly managing the public rights of way and other public properties for all users. We are skeptical that preemption-focused proposals, such as imposing a framework of state franchising that limits local oversight and flexibility in local fee structures, will overcome the market forces keeping broadband investments from being made in low-income or rural communities. We are concerned that this model will limit the ability of local governments to leverage franchising agreements for the public good, through PEG negotiations and buildout requirements that increase digital equity for residents. For example, small cell wireless technology is ill-suited for rural deployment. And, though we welcome 5G in our communities, by-right access will not result in rural build-outs, and will essentially act as a subsidy for industry without requiring them to build out to all Americans.

We appreciate the many hours of work contributed by the individual members of the Broadband Deployment Advisory Committee and the effort they have expended to improve broadband choices available to all Americans. While we disagree with the industry-heavy membership composition of the BDAC and its premise that state and local oversight is a barrier to be overcome, we hope that the final reports of the BDAC working groups will offer new resources for local governments and members of the broadband industry to collaborate on improving broadband affordability and accessibility in all communities.

We ask that in your final recommendations, you protect long-held local authority to manage the public rights of way, honor our Constitutionally guaranteed protection of fair compensation on the use of public assets, and maintain our Congressionally recognized right to govern the siting of cell towers and small cells in our communities. We urge you to carefully consider all of the comments and data shared in the public record through this and other dockets as you finalize the recommendations of the BDAC, and refrain from making decisions based on biased, anecdotal, and incomplete data.

Sincerely,

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