

United States Senate

September 25, 2018

COMMITTEES:
BANKING, HOUSING, AND
URBAN AFFAIRS
COMMERCE, SCIENCE, AND
TRANSPORTATION
ENERGY AND NATURAL RESOURCES
AGING
INDIAN AFFAIRS
RULES AND ADMINISTRATION

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

742

Dear Chairman Pai,

I am writing to express concern regarding the changes to the interpretation of Sections 253 and 332(c)(7) of the Communications Act proposed in the Declaratory Ruling and Report and Order titled *Streamlining Deployment of Next Generation Wireless Infrastructure*.

Communities in Nevada have raised serious concerns that these proposals, to be considered by the Commission on September 26, 2018, will excessively roll back many key aspects of local control over decision-making. The rushed and opaque process by which the FCC has worked to alter these regulations, which will have major implications for the building of telecommunications infrastructure, has not allowed adequate time for stakeholders to address their concerns.

As the FCC understands, the rollout of 5G will help power economic growth and unlock new and exciting applications for consumers and businesses. This next generation wireless service will require an incredible amount of new and unique infrastructure, and modernizing regulations will be a crucial component of building out 5G and ensuring the United States leads the world in this exciting technology. However, this Order contains a number of troubling provisions.

First, the FCC's proposal seeks to clarify Sections 253 and 332(c)(7) to disallow localities from charging fees on wireless infrastructure installments in the rights-of-way that are more than a "reasonable approximation of actual and direct costs incurred by the government." The reasoning behind this clarification is to lower the costs of installing infrastructure. While this is a noble goal, it ignores that taxpayers spend significant resources in building and maintaining public rights-of-way.

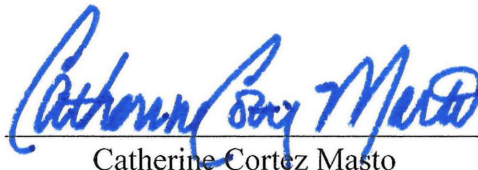
This provision allows industry to access this property under a federally mandated cost structure that will undermine a local community's use of market-based pricing and their responsibility to ensure their communities benefit from their own property. For example, cities often use their ability to set fees to negotiate with providers to ensure broad access to services for their residents. A fair cost reimbursement mechanism also allows localities to access resources for building out infrastructure in areas where it may not be feasible for private entities. Closing the digital divide has long been a professed goal of the FCC under your leadership, but this provision would directly contradict that important mission.

Additionally, this order also imposes “shot clocks” on local governments to approve or deny applications for certain wireless infrastructure installments. The FCC would “expect any locality that misses the deadline to issue any necessary permits or authorizations without further delay.” However, these shot clocks, 60 and 90 days depending on the facility, are significantly shorter than those for the federal government, which were implemented as part of the bipartisan MOBILE NOW Act that was signed into law in March 2018 (Pub.L. 115–141). As you are aware, the MOBILE NOW Act grants federal agencies 270 days to approve or deny applications for an easement, right-of-way, or lease on federal property. If the FCC proposal is approved, local governments, which must balance multiple needs in the rights-of-way, would see the FCC impose more restrictive timelines on local communities than the federal government imposed on itself.

I share your commitment to facilitating 5G, which is why I been heavily engaged in legislative efforts to modernize telecommunications regulations. While Congress considers these and other relevant pieces of legislation, the FCC should not rush to act over the objections of numerous stakeholders, multiple of whom in Nevada have reached out to me directly to express grave concern about this Order.

As the FCC considers this proposal, I urge the Commission not to act in a way that jeopardizes broadband access, puts unfair constraints on local communities, and takes the debate out of Congress at a time when lawmakers have focused heavily on addressing this issue in a bipartisan and open way.

Sincerely,



Catherine Cortez Masto
United States Senator

CC:

Commissioner Michael O’Rielly

Commissioner Brendan Carr

Commissioner Jessica Rosenworcel



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

December 27, 2018

The Honorable Catherine Cortez Masto
United States Senate
204 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Cortez Masto:

Thank you for your letter regarding Commission efforts to modernize our wireless infrastructure regulations. Our wireless infrastructure rules have been a poor fit for the 5G networks of the future, and our efforts to unleash spectrum for consumer use will be meaningless without the physical infrastructure needed to bring next-generation services to the American people. That's because 5G networks will not depend on a few large towers but on numerous small cell deployments—deployments that are only beginning.

The Telecommunications Act of 1996 mandates that we act to ensure a pro-competitive, de-regulatory national policy framework to accelerate this process. That's why we acted earlier this year to modernize our regulations and make the federal regulatory review process for wireless infrastructure 5G less onerous.

Many states and localities have similarly taken positive steps to reform their own laws so that their citizens can benefit from 5G. And I applaud municipalities that have prioritized mobile broadband deployment and recognized a streamlined process is necessary for 5G.

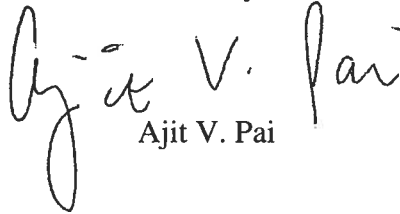
But in too many places, local regulations continue to impede necessary build-out. Accordingly, we took action in September to address local regulations that are inconsistent with federal law. Exorbitant fees on 5G deployment effectively operate as taxes that slow down deployment there and jeopardize the construction of 5G networks elsewhere. Accordingly, we set guard rails to ensure cities can recover their costs but not discriminate against new deployments. On a bipartisan basis, we also set reasonable shot clocks tailored to small wireless facilities while respecting the need for longer timelines when dealing with 200-foot towers. And we recognized the role that reasonable municipal regulations can play in ensuring the aesthetic character of a community. I believe the rules we adopted strike a reasonable balance between deployment and appropriate regulatory review and will help ensure American leadership in 5G.

As with all of our decisions, we reviewed a broad range of comments and listened carefully to the concerns of stakeholders. And thanks to this Commission's transparency initiative, they not only had a chance to comment when we opened this proceeding in 2017, but again when we released the full text of our proposed decision three weeks before our vote.

Page 2—The Honorable Catherine Cortez Masto

Thank you again for your correspondence, which we have included in the record of this proceeding. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ajit V. Pai". The signature is written in a cursive style with a large initial "A" and a long, sweeping underline.

Ajit V. Pai