City of Bonita Springs Florida
Small Town Charm. Big Bright Future.

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Marlene Dortch, FCC Commission's Secretary
Office of the Secretary,
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

RE: WT Docket No. 16-421 City of Bonita Springs
Comments on Streamlining Deployment of Small Cell
Infrastructure by Improving Wireless Facilities Siting Policies

Dear Ms. Dortch:

On behalf of the Bonita Springs City Council, this letter is providing our comments as to the Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, resulting from Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (filed November 15, 2016).

The City of Bonita Springs, Florida, is a small governmental jurisdiction located in the Southwest area of Florida. Council has as priorities transportation, community aesthetics and downtown revitalization. In 2015, Bonita Springs overhauled its telecommunications ordinance to facilitate administrative review, to address the growing need for wireless services. The City of Bonita Springs has established expedited review times for sufficiency of zoning applications, with a 45 day review time for administrative applications, which is below the 90 day review time under the Spectrum Act for a reasonable review time. I want to applaud many in the industry who have worked well with the City of Bonita Springs staff.

Nonetheless, the City's Community Development and Public Works departments have recently been addressing various vendors wanting to place poles in the rights-of-way for small cells (microcells) and distributed antenna systems (DAS), or conversely, place the microcells on existing street lights. While these communication systems (facilities) are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – *i.e.*, in many more locations – to function effectively.

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Florida Statutes §337.401(3)(b) the Florida Public Service Commission registered CLEC (Competitive Local Exchange Carrier) "does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in roads or rights-of-way of a municipality or county. *Each municipality and county retains the authority to regulate and manage municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by providers of communications services must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county."*

All Florida cities are statutorily preempted from requiring a communication carrier to have a franchise due to state law. Some of the roads located within the City of Bonita Springs are under FDOT's jurisdiction, which in 2014, signed a Lease and Operating Agreement for commercial telecommunication facilities to allow microcells and DAS on the roads or existing street lights, provide it meets local regulations.

In order to promote wireless service and meet the City's Dark Skies provisions found in §3-269[1], the City encourages placement of microcell and DAS on lighting structures located within commercial developments and / or private residential service facilities or infrastructure, subject to administrative review as set forth in section 4-1219(c).

The City does not want to allow placement of microcell and DAS on streetlights located on its roads and on any roads in which the City funded all or part of the streetlight purchase or maintenance.[2] City staff has reported negative experiences with communications carriers and other utilities in our rights-of-way. Problems include that they rarely have a parking space[3], and when needing to maintain their facility, they park in the right-of-way or on the sidewalk, impeding pedestrians. Once

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[1] The objective of a dark sky ordinance is to reduce light pollution, and the City of Bonita Springs wants to encourage microcell and DAS on private property, which can be mutually beneficial because many current ground mounted light poles need to be replaced with different luminaries by January 1, 2020.

[2] Bonita Springs entered into agreements with other governmental entities to pay for specialty designed streetlights. Placement on these facilities will severely detract from the community aesthetics.

[3] This sometimes blocks the roads, creating traffic problems, a local concern.

they are permitted to use the right-of-way, they violate the federal Clean Water Act by failing to follow NPDES requirements on sodding. Even if they follow NPDES requirements at time of installation, they rarely maintain their facilities without the City staff needing to contact them many times with requests to repair their structure. If the City of Bonita Springs needs to move them out of the right-of-way by virtue of their location on a pole, the City is required when undergrounding to pay the relocation fees for their placement on poles absent any agreement to the contrary[4]. There is also a concern that the carrier will drill through the right-of-way, thus weakening the existing road infrastructure. Finally, the worst problem is safety, where a car can hit an additional pole[5], creating a dangerous situation and overcrowding and conflicting with other utilities.

Bonita Springs continues to embrace new technology and improve the wireless service for our city residents and businesses. Since we updated our code in 2015, the City's laws are not outdated or archaic.

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[4] Florida Public Service Commission requirements under the FPL tariff, who has the majority of poles in the City of Bonita Springs. When relocating communication carriers who only were attached to the pole, the City of Bonita Springs paid $176,224.94 in advance to CenturyLink and $188,504.95 to Comcast. The tariff for pole licenses requires that:

> Before the initiation of any project to provide underground electric distribution facilities pursuant to either an Underground Facilities Conversion Agreement or an the Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver the Applicant shall have executed agreements with all affected pole licensees (e.g. telephone, cable TV, etc.) for the simultaneous conversion of those pole licensees' facilities and provide FPL with an executed copy of the Agreement(s). Such agreements shall specifically acknowledge that the affected pole licensees will coordinate their conversion with FPL and other licensees in a timely manner so as to not create unnecessary delays. Failure to present FPL with executed copies of any necessary agreements with affected pole licensees within 180 days after delivery of the binding cost estimate to the Applicant shall result in the expiration of the binding cost estimate, the return of any CIAC paid, and the termination of any Underground Facilities Conversion Agreement or Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver entered into between the Applicant and FPL.

[5] Attached is a photograph from a Mobilitie permitting representative, in Belleair Beach, Florida (pointing out in his email that this city is "a very upscale beach-front community. Before the small cell pole was added, there were 5 poles in the ROW, now there are 6. Isn't it worth another pole in the ROW if it possibly helps save somebody's life?"

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Bonita Springs is in the process of amending its codes to address deployment of small cell and DAS technologies. As a "smart city" we are embracing this technology, but want it to be embracing our city values, which include environmental considerations and our priorities for aesthetics and quality urban design, which can complement our need for public safety and high quality wireless networking services.

Review and consideration of this letter is appreciated. Please coordinate any questions pertaining to this letter through the City Attorney or Michael Fiigon, at Community Development[6].

Sincerely yours,

Mayor Peter Simmons
City of Bonita Springs

cc: Bonita Springs City Council
Carl L. Schwing, City Manager
Debbie Filipek, City Clerk
Audrey E. Vance, City Attorney
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[6] Audrey E. Vance, City Attorney can be reached at (239) 949-6262 or audrey.vance@cityofbonitasprings.org and Michael Fiigon, Planner I, Community Development can be reached at mfiigon@cityofbonitaspringscd.org or (239) 444-6151.

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Mobilitie's photograph of Belleair Beach, Florida sent to the City of Bonita Springs on December 21, 2016 See footnote 6.