Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of	)	
Comment Sought on Streamlining	)	
Deployment of Small Cell Infrastructure	)	WT Docket No. 16-421
By Improving Wireless Facilities Siting Policies;	)	
Mobilitie, LLC Petition for Declaratory Ruling	)	
	)	

COMMENT OF THE LEAGUE OF MINNESOTA CITIES

The League of Minnesota Cities ("LMC")[1] and the Minnesota Municipal Utilities Association (MMUA)[2] submit these comments in response to the Federal Communication Commission's ("FCC") December 22, 2016, Request for Comments on Mobilitie's Petition to the FCC for a declaratory ruling. The Mobilitie Petition suggests that wireless infrastructure deployment, including the rollout of 5G, is almost completely dependent on public infrastructure and requires the construction of many new antenna structures. For every existing antenna structure in a municipality, approximately nine (9) additional antennas are needed to support 5G wireless. Each wireless provider and wireless infrastructure provider, like Mobilitie, intend on using and/or altering public assets (like public poles) the public power source at each pole, and the public rights-of-way to bring backhaul fiber to each antenna.

[1] LMC is a statewide cooperative association representing 833 cities, 11 townships, 61 special districts and one joint power entity. Only 20 cities in Minnesota do not belong to LMC. The LMC was established in 1913 within the school of public affairs at the University of Minnesota. It became an independent association representing and serving cities in 1974. A board of directors, elected by the LMC membership, govern LMC.

[2] The MMUA represents the interests of Minnesota's 125 municipal electric utilities and 33 municipal natural gas utilities, as well as its municipal water, wastewater, district heat, and telecommunications utilities. MMUA's mission is to unify, support, and serve as a common voice for municipal utilities.

The LMC and MMUA support wireless deployment, including smart deployment of 5G; however, LMC and MMUA also recognize deployments impact the public assets of each municipality, rely upon public resources (e.g. public poles and power), uses shared antenna systems, necessitates adequate public protections, and warrants receiving fair market consideration. In Minnesota, no municipal roadblocks to the deployment of wireless technology exist. Minnesota municipalities will continue to effectively process applications for wireless facilities, including 5G wireless facilities, under existing federal, state and local laws. The Mobilitie Petition, as well as the enactment of regulations that hold every municipality accountable to the same process, would create a result that would be the polar *opposite of smart deployment* of wireless service and would end up allowing the wireless industry to profit from use of public assets without providing fair compensation to the municipalities and their taxpayers for that use. Therefore, the LMC and the MMUA, in this comment, urge the Commission to not interfere with management of property by local municipalities.

I. BACKGROUND

On November 15, 2016, Mobilitie filed a petition requesting the FCC issue a Declaratory Ruling interpreting the "fair and reasonable compensation" provision of Section 253(c) of the Federal Telecommunications Act (TCA), as amended.[3] Section 253 provides the FCC with some authority to preempt enforcement of any state or local government action that may inhibit the ability of an entity to compete effectively in providing telecommunications services.[4] However, Section 253(c) intentionally preserves the role of state and local authorities to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications carriers to provide their services.[5] Mobilitie, in its petition, focused only on getting clarification about "fair and reasonable compensation" for accessing

[3] Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling, Public Notice, WT Docket No. 16-421 (WTB 2016) (Public Notice).
[4] 47 USC § 253
[5] *Id.*

the rights-of-way (ROW) under Section 253(c) and did not cite to nor ask for any ruling regarding local governmental authorities set forth in Section 332(c)(7).[6] The FCC, in its Request for Comments, independently expanded its inquiry to include Section 332(c)(7) of the TCA, as amended, which specifically addresses the *expansion of wireless facilities*, but which also clearly preserves the authority of state and local governments to decide land use issues, such as the placement, construction and modification of personal wireless facilities[7]. With respect to Mobilitie's petition, Mobilitie asks for declarations that, under Section 253(c)[8]:

- Fair and reasonable compensation means charges for rights of way application and access fees that enable a locality to recoup the costs reasonably related to reviewing and issuing permits and managing the rights of way. Additional charges or those not related to actual use of the right of way, such as fees based on carriers' revenues are unlawful.
- "Competitively neutral and nondiscriminatory" means charges imposed on a provider for access to rights of way that do not exceed the charges imposed on other providers for similar access. Higher charges are unlawful.
- Localities must disclose to a provider seeking access to rights of way the charges that they previously assessed on others for access.

In the December 22, 2016, FCC Notice, the FCC requested comment on Mobilitie's Petition, but also asked for input on additional issues related to deployment of next generation wireless infrastructure, including how federal law applies to local government review of wireless facility siting applications and local requirements for gaining access to rights of way. Specifically, the FCC seeks information, among other things, regarding (1) local governments' practices that "prohibit or have the effect of prohibiting" provision of service; (2) the necessity of the FCC to reconcile existing differing judicial interpretations on practices; (2) the appropriateness of the "reasonable period of time" for small cell siting differing from a reasonable period of time for macro cell siting; (3) the appropriateness of

[6] *See* Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (filed Nov. 15, 2016) (Mobilitie Petition).
[7] *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling, Public Notice*, WT Docket No. 16-421 (WTB 2016) (Public Notice).
[8] *See* Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (filed Nov. 15, 2016) (Mobilitie Petition).

batch request processing; and (3) the definition of what qualifies as a "small cell".[9] On January 17, 2017, the FCC extended the dates for comments to March 8, 2017, and the time for replies to comments to April 7, 2017.[10] Accordingly, LMC and the MMUA submit the following comments.

II. INTRODUCTION

Specifically, LMC and MMUA file these comments to explain ROW and facility management practices in Minnesota, to argue Congress intended to defer to local controls, and to highlight how the different types and needs of communities in Minnesota necessitate each community maintaining local control. The LMC and the MMUA urge the Commission to refrain from interfering with local ordinances and practices, as well as, when applicable, the application of Minnesota's state zoning and Local Telecom ROW Act.[11] Imposing a new federal regulatory overlay not only would create confusion and administrative burden upon communities (many with limited resources and personnel); but also, would create unnecessary costs and would undermine important local policies.

III. MINNESOTA LAW

The State of Minnesota supports municipal planning, stating "[m]unicipalities can prepare for anticipated changes and by such preparations bring about significant savings in both private and public expenditures."[12] Zoning represents an integral part of such planning.[13] For decades, Minnesota municipalities have been authorized to use local zoning authority to act upon wireless cell tower applications.[14] This process has been efficient and effective and will continue to be in the smart

[9] *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling, Public Notice*, WT Docket No. 16-421 (WTB 2016) (Public Notice).
[10] *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling, Public Notice*, WT Docket No. 16-421 (WTB 2017) (Order).
[11] Minn. Stat. §§ 237.162 and237.163 and 462.357.
[12] Minn. Stat. § 462.351.
[13] *See* Minn. Stat. § 462.357.
[14] *Id*.

deployment of future wireless services, including 5G, as it has been for the deployment of previous generations of wireless technologies.

In Minnesota, cities have a long-standing responsibility to manage public rights of way, and that responsibility represents a matter of public trust that cannot be delegated.[15] For the construction of fiber optic cable in the public rights-of-way, Minnesota has had laws and rules related to underground construction in place for twenty years[16] ("Local Telecom ROW Act"). This Local Telecom ROW Act regulates use of the ROW by "telecommunications rights of way users." Under the Act, a "telecommunications right-of-way user" may "construct, maintain and operate conduit, cable, switches and related appurtenances and facilities along, across, upon, above and under any public right of way".[17] Telecommunication ROW users' access to the ROW is subject to the local government authority's right to manage its public rights of way, including requiring permits and permit application fees; establishing and defining facilities locations and relocation requirements; and creating construction coordination and timing requirements.[18] In essence, the law regulates usage of the ROW but leaves, intact, the ability of cities to manage its public assets in the ROW. The Local Telecom ROW Act addresses ROW permit fees and other management fees, which may include the cost of inspecting job sites, moving facilities during ROW work, restoring work inadequately performed or revoking permits; but do not include payment to use the ROW.[19]

Minnesota's common law and statutory scheme already address the issues raised in Mobilitie's petition, as well as those related to the siting of facilities both in and out of the ROW generally.

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[15] *State ex Rel. City of St. Paul v. Great Northern Railway Company*, 158 N.W. 972 (Minn. 1916), *State ex Rel. City of St. Paul v. Minnesota Transfer Railway Company*, 83 N.W. 32, 35 (Minn. 1900).
[16] Minn. Stat. §§ 237.162 – 237.163.
[17] *Id.*
[18] *Id.*
[19] *Id.*

Accordingly, further federal intervention would offend the sovereign status of states and their political subdivisions.

IV. COMMENTS TO FCC REQUEST

A. Additional FCC Statutory Interpretations Overstep Authority

In the Request for Comments, the FCC states that "[w]e are issuing this public notice to develop a factual record that will help us assess whether and to what extent the process of local land-use authorities' review of siting applications is hindering, or is likely to hinder, the deployment of wireless infrastructure. In turn, such a data-driven evaluation will make it possible to reach well-supported decisions on which further Commission actions, if any, would most effectively address any problem, while preserving local authorities' ability to protect interests within their purview."[20] The FCC indicated it may use this information to make specific interpretations related to local authority's treatment of siting requests.[21] Finally, the FCC's notice also generally seeks comments on Mobilitie's request for declarations regarding *fairness and reasonableness of fees and access to fee information*.[22]

The Notice raises concerns of the FCC overstepping the authority granted it in the TCA in order to streamline nationwide deployment. The U.S. Supreme Court has interpreted the 10th Amendment--and the Commerce Clause--in favor of states, municipalities and our "dual system of governance" so as to strike down federal statutes which improperly intrude on state and local rights and authority.[23] Additionally, the Supreme Court has stated that "the Federal Government may not compel the States to enact or administer a federal regulatory program due to the blurring of lines of political

[20] *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, Mobilitie, LLC Petition for Declaratory Ruling, Public Notice*, pp. 2-3, WT Docket No. 16-421 (WTB 2016) (Public Notice).
[21] *Id.*
[22] *Id.*
[23] *See, e.g*. *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers*, 531 U.S. 159 (2001) (construing Federal Clean Water Act so as not to preempt state and local authority because statute likely would be unconstitutional if so construed).

accountability".[24] At least one circuit, when reviewing wireless towers, provided some insight into what is means to "compel local governments to administer a federal regulatory program" by allowing federally directed administration only when the language of a federal law itself (not regulations interpreting a law) unambiguously and specifically requires further interpretation of some aspect of wireless siting.[25]

Although the purpose of the Federal TCA of 1996 was "to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced information technologies and services to all Americans by opening all telecommunications markets to competition...."[26], Congress did not intend for the FCC to have unfettered authority to accomplish this goal. In fact, William E. Kennard, Chairman of the FCC from 1997 to 2001, clearly stated that it is not FCC's "intention of turning the FCC into a national zoning board," as "that is neither in the FCC's interest, nor the industry's interest." .[27] Since the Tenth Amendment to the United States Constitution protects state authority and local controls, including allowing local government to have authority over their own land use processes and public assets (enabling each community to deploy small cell facilities in a manner that makes sense for their specific community), local laws should govern the siting of wireless facilities.[28]

i. Section 253. Section 253(a) prohibits state and local governments from imposing any legal requirement that may "prohibit or have the effect of prohibiting the ability of any entity to provide any

[24] *New York v. United States,* 505 U.S. 144, 168-169 (1992) (in case involving review of federal act regulating low level radioactive waste, Courts stated that Congress may not commandeer the States' legislative processes by directly compelling them to enact and enforce a federal regulatory program).
[25] *Montgomery County Md. V. F.C.C.*, 81 F.3d 121 (4th Cir. 2015).
[26] H.R. Rep. No. 104-458 (1996)
[27] *See,* Remarks by William E. Kennard, Chairman, Federal Communications Commission, to WIRELESS 98, Atlanta, Ga., (February 23, 1998) at http://www.fcc.gov/Speeches/Kennard/spwek805.html.
[28] See *Cellular Telephone Co. v. Town of Oyster Bay*, 166 F.3d 490, 494 (2d Cir.1999) ("[T]he TCA does not affect or encroach upon the substantive standards to be applied under established principles of state and local law".)

interstate or intrastate telecommunications service" within the locality, but does not require provision of this service within the ROW.[29] Subsections(b) and (c) of Section 253 also clearly state that certain powers of state and local governments are not impeded or affected by subsection (a).[30] Specifically, Section 253(c) preserves the "authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."[31] In subdivision (d), Congress intentionally omitted explicit FCC preemption of subsection (c), indicating that no authority exists for the FCC to preempt powers of local government either to manage public rights of way or to require fair and reasonable *compensation* for use of public rights of way on a nondiscriminatory basis.

ii. 332(c)(7)(a). Section 332 has a similar local controls provision to Section 253. Section 332(c)(7)(a) expressly states "[N]othing in this [Act] shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.".[32] Under the general rules of statutory construction, Section 332(c)(7)(A)'s "nothing in this chapter" language guides the reading of the balance of Section 332(c)(7),[33] demonstrating that Congress did not intend preemption of local and State land use.[34] The First Circuit, in reviewing possible preemption of a state regulation by a different section of the TCA,

[29] 47 U.S. Code § 253.
[30] *Id.*
[31] *Id.*
[32] 47 U.S.C. § 332(c)(7)(A)
[33] *See La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 373 (1986).
[34] H.R. Rep. No. 104-458, at 207-08 (1996), as reprinted in 1996 U.S.C.C.A.N. 222 (Conference Report).

cautioned that the interplay represents "a deliberate compromise between two competing aims – to facilitate nationally the growth of wireless telephone service and to maintain local control over siting".[35]

iii. Interpretation of Telecommunication Act provisions generally. To the extent Congress intended to allow FCC oversight of local government through Section 253 and Section 332, it did so specifically in the language of the statute. For example, the statute specifically provides that local government cannot unreasonably discriminate between wireless service providers of functionally equivalent services and cannot outright prohibit wireless services in the city in general.[36] However, with respect to Mobilitie's current request and the FCC's expansion of it, the FCC suggests it is gathering information to go beyond what Congress prescribed them to do and promulgate additional directives on local government with respect to siting of wireless facilities. To do so would oppose the Supreme Court's warning that, "no legislation pursues its purposes at all costs . . . and it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law."[37] Just recently, in July 2016, the Intergovernmental Advisory Committee to the Federal Communications Commission (IAC) presented a paper to the Commission on "siting wireless communications facilities" in which it urged the FCC not to interfere with local controls.[38] Congress had no intention of allowing the FCC to get into the weeds of how local government sites wireless or small cell facilities or what fees and revenues are appropriate for each community. To do so would make no sense and would ignore the vast differences among communities, like low density versus high density

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[35] *Town of Amherst v. Omnipoint Commc'ns Enters*., Inc., 173 F.3d 9, 13 & n.3 (1st Cir. 1999) (discussing initial House version of provision that would have charged the FCC with developing a uniform national policy for the deployment of wireless communication towers that was rejected in favor of a bill that rejected such a blanket preemption of local land use authority).

[36] 47 U.S.C. §§253, 332(c)(7)(B).

[37] *Rodriguez v. United State*s, 480 U.S. 522, 525-26 (1987) (emphasis in original).

[38] *Report on Siting Wireless Communications Facilities*, presented to the Federal Communications Commission, July 12, 2016 at https://transition.fcc.gov/statelocal/IAC-Report-Wireless-Tower-siting.pdf. The Intergovernmental Advisory Committee, created in 1997, provides guidance to the Commission on issues of importance to state, local and tribal governments, as well as to the Commission. The IAC is composed of 15 elected and appointed officials of municipal, county, state, and tribal governments.

population, less crowded rural ROWs versus ROWs in urban settings, undergrounded utilities, specific city planning and designated cityscapes.

B. A FCC Declaratory Ruling Would Unjustly Burden Cities and Public Resources

i. Public Duty to Police Right of Way. Both federal and state legislatures, as well as courts, have long recognized and respected cities' rights through its police power to promote and ensure order, safety, health and the general welfare of their community.[39] Indeed, the Supreme Court has stated that the Telecommunication Act intends to generally preserve the traditional authority of local government to regulate rights of way and the Court has cautioned against rules that unduly burden localities.[40]

ii. One Size Does Not Fit All. When passing the 1996 Act, Congress indicated that wireless siting requests may involve "a zoning variance or a public hearing" and noted that "[i]t is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests.".[41] Then, just over two years ago, in an October 20, 2014 Report, the FCC recognized that municipal property preferences vary depending on the community and cautioned that each must be looked at on a case-by-case basis.[42] The IAC recently reported that "[t]here are approximately 40,000 local governments nationwide with land use authority, varying greatly from local governments with as little as a few dozen residents to those with millions of residents."[43] Further, the IAC recognized that "there are likely hundreds of wireless service providers and members of the wireless infrastructure industry that seek to install wireless facilities, also varying greatly from wireless service providers with millions of customers to those that serve only one property, and from infrastructure owners with

[39] Minn. Stat. § 412.221.
[40] *T-Mobile South, LLC v. City of Rosewall, Ga.,* 135 S.Ct. 800, 817 (2015).
[41] H.R. Conf. Rep. No. 104-458, at 207-08 (1996), reprinted in 1996 U.S.C.C.A.N. 142, 222.
[42] *In re Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, WT Docket No. 13-258, Report and Order, FCC 14-153 (rel. Oct. 21, 2014).
[43] *IAC Report on Siting Wireless Communications Facilities*, presented to the Federal Communications Commission, July 12, 2016, at https://transition.fcc.gov/statelocal/IAC-Report-Wireless-Tower-siting.pdf.

millions of facilities to those with only a handful."[44] As the IAC already has pointed out to the FCC, priorities and needs vary greatly by locality and a "one size fits all" approach never would work for processing land use development applications nor would it ensure harmonious and efficient buildout of wireless communications facilities.

Data from the U.S. Census Bureau demonstrates how the amounts of resources and expertise available to local governments vary drastically between localities of different sizes and in different locations.[45] The 2012 Census data concluded that 71% of municipalities and townships do not have more than one full-time paid employee, and 33% of that group have no more than one part-time paid employee as well. Additional federal processes or limitation on fees would impact communities very differently, creating significant burden on some with small budgets and no personnel. Thus, each community should have the discretion, in light of the personnel and other resources of each community, to decide how to best site wireless structures for their community.

As an example of differences, in Minnesota, many communities have expended significant dollars developing cityscapes with decorative poles and main streets. Others have invested in undergrounding everything in their rights-of-way. In planning their communities, cities expend not only significant dollars on city design and planning, but also staff and elected official time. These types of planning decisions create an aesthetic look and feel relied upon by the residents and potential residents. In comparison, other cities, not uncommonly more rural in nature, may not have such intricate cityscapes, may still have wood poles and may have less crowded ROWs. These factors, along with the population differences of Minnesota's communities and the existing location of macro networks, cause the siting requests received by each community for wireless deployment to vary greatly. Indeed, to

[44] *Id.*

[45] U.S. Census Bureau, 2012 Census of Governments: Employment, 2012 Local Government: Individual Government Data and ID File, found at Census.gov

streamline a deployment process or even limit “fair and reasonable” compensations would disregard the individualized circumstances and challenges of each community and would impede the local governmental unit’s well-established police power to regulate their ROWS and deny permits in instances of nonconformance.

In response to LMC inquiries, one city discussed how their community has expended significant time and money on a cityscape that includes decorative poles. Each pole can only handle a specific wind load given a square footage calculations of attachments, and, in that instance, the city decorative poles can handle the lights, one (1) 2’X4’ banner and nothing else. Banners come off before Christmas decorations go up and the city had to deny the Chamber of Commerce’s and even their own public works department’s request for additional attachments. If adding something the size of 2’x2’ exceeds wind load, then requiring this city to attach small cell or DAS (and possibly more than one due to requirement of allowing functionally equivalent providers) would require new poles, take up additional personnel time, would disrupt the planned cityscape in which the community invested and likely result in unforeseen additional expenditures.

Indeed, a one size deployment process or fee structure does not fit all. Depending on the community or the right of way, wireless facilities could (1) create land use conflicts and incompatibles including excessive height of poles and towers; (2) create visual and aesthetic blights and potential safety concerns (based on the conditions, issues may arise from the excessive size, heights, noise or lack of camouflaging); (3) create unnecessary visual and aesthetic blight by failing to utilize alternative technologies or collocation because of streamlined process; (4) cause substantial disturbances to rights-of-way through installation and maintenance of wireless facilities; (5) create traffic and pedestrian safety hazards due to unsafe locations which could have been addressed during local government

review of siting request; and (6) result in a negative impact to the unique quality or character of the city in general.[46]

iii. Due Process Implications. Congress recognized that, in some instances, the public may have a right to due process in siting requests, when wireless siting requests involve "a zoning variance or a public hearing".[47] Indeed, a federally promulgated process from the FCC about local authority practices or batch treatment of applications may require a change in zoning and could impact the public's rights to have notice and give feedback.

iv. Financial Burden. The TCA allows "fair and reasonable compensation" and Mobilitie has requested a declaration limiting what the cities can charge under this provision.[48] By defining compensation in the manner requested by Mobilitie, the FCC would limit cities' recovery to the actual costs of reviewing and issuing permits, as well as actual costs to manage that facility in their rights-of-way. Doing so would result in financial burden to the city and would impede on the cities' proprietary interest in the use of public assets. As stated above, limiting compensation to just strict cost recovery ignores the "other" costs related to siting that may arise, including, but not limited to, moving poles, adding poles, repairing equipment, moving other equipment in the ROW and accommodating other collocation requests. Additionally, by using the term "compensation," Congress intended more than mere "cost recovery". To make a different determination would result in cities losing their status as proprietary owners and result in taxpayers having to shoulder the ultimate costs to deployment, while, at the same time, private business owners decrease costs by using backhaul and electricity in the ROW and make a profit off the provided service. Mobilitie and others would have to pay for rights to locate on

[46] Keep in mind, the "small cells" vary themselves. Some small cells have noisy cooling fans for computers; some ground equipment, like cabinets, can equal the size of a coffin or a refrigerator; some small cell facilities have back up batteries mounted on sidewalks or lawns and others use messy diesel generators for their backup.
[47] H.R. Conf. Rep. No. 104-458, at 207-08 (1996), reprinted in 1996 U.S.C.C.A.N. 142, 222.
[48] *See* Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (filed Nov. 15, 2016) (Mobilitie Petition).

private property so it just makes sense that they should have to pay for similar rights on public property. In many instances, cities, for safety reasons of crowded or narrow ROWs or because of zoning limitation, want to site facilities on private property as an alternative option. However, cities get push back on this from the wireless industries because siting on the ROW presents a cheaper install and use of existing backhaul.

v. Conflict with Other Regulations. Other adopted industry standards also may apply to small cell/DAS deployment since the small cell equipment installed oftentimes becomes mounted on existing structures and uses existing backhaul. An FCC mandated process or limitation on fees would not take into consideration these other applicable standards. For example, the National Electric Safety Code (NESC) applies to deployment in many instances. These standards address both working clearance, structural design, and placement of telecommunication facilities on utility poles. The NESC standards specifically regulate clearances between energized live parts and telecommunications equipment. All wireless facilities must comply with the like requirements, as well as climbing and working space requirements and wind loading requirements for attachments. Without having local authority to negotiate placement or deny, if necessary, mandatory siting may result in noncompliance with other standards or end up costing cities a lot of money to move existing structures or rework existing landscapes to ensure compliance.

C. No Deployment Roadblocks Exist

Additional FCC intervention is unnecessary since deployment is happening. In its July, 2016 report, the IAC reported to the FCC that "the good news is that the process for siting wireless communications facilities is not broken" and that "[i]ndeed, with relatively few exceptions since competition was introduced in the wireless industry with the passage of the 1996 TCA, the wireless industry and governmental entities with the land use and right of way authority have worked quite well

to facilitate the robust wireless broadband networks we enjoy today"[49]. In fact, the IAC found that "[b]oth industry and Commission data suggests that the site applications, whether they be for new sites or collocations, do not focus on filling in gaps in coverage; but rather, are seeking to upgrade equipment, incorporate technologies and expand network capacity" and that "to date, the number of disputes between industry members and local governments has been relatively small."

According to analyst firm Mobile Experts, small cell deployments grew 140% in 2015, including both indoor and outdoor units.[50] Mobile Experts further reported that it expects enterprise small cell shipments to double this year, with a 270% spike in sales growth.[51] In a recent article, Rick Edwards, President of CityScape Consulting, stated, "I know of no local communities that want to stop new facilities" . . . "they want to get it right and to provide what is needed without creating a porcupine landscape".[52] There are no current roadblocks to the deployment of wireless services in Minnesota. In a local meeting in Minnesota, on January 31, 2017, Mobilitie presented to a group of representatives from local cities and reported that it currently has 35 existing small cell sites in place and has plans to develop roughly 500 sites over the next 18 months. Clearly deployment is happening and preserving local controls allows it to happen within the confines of each community's unique set of circumstances.

V. CONCLUSION

LMC and MMUA do not believe that Minnesota common law, statutes, rules or local ordinances have discouraged or created barriers to small cell or wireless deployment. Minnesota cities welcome and desire smart planning and deployment of wireless services and our policies allow us to work with

[49] Report on Siting Wireless Communications Facilities, presented to the Federal Communications Commission, July 12, 2016 at https://transition.fcc.gov/statelocal/IAC-Report-Wireless-Tower-siting.pdf.
[50] Small Cell Forum, Market Status Report, February 2016, at www.smallcellforum.org/site/wp-content/uploads/2016/03/050_Market_Status_Report_2016.pdf
[51] *Id*.
[52] *Cities walk a fine line with small cell providers,* September 20, 2016, at nexius.com/cities-walk-a-fine-line-with-small-cell-providers.

companies willing to work with us to provide services. Evidence of this exists in the networks and deployment already in place in Minnesota, as well as the ongoing deployment continuing to happen. Additional federal regulations or limitations on fees would prove costly and disruptive to Minnesota cities and, as such, LMC and MMUA urge the FCC to not make any declarations further interpreting the TCA requirements on how local government handles and charges for wireless siting in their communities.

Respectfully Submitted,

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