Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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

INITIAL COMMENTS OF LIGHTOWER FIBER NETWORKS

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SUMMARY

As described herein, Lightower has been subject to a patchwork of local processes that delay and/or effectively prohibit small cell deployment. Lightower has experienced significant delay across numerous municipalities when seeking to deploy small cells in the public right of way ("ROW"), which delays are ever-increasing. The reasons for delays range from municipalities not having an application process, to requiring that small cell permitting be handled through a zoning process, as well as moratoria imposed while cities draft ordinances to address small cells. Additionally, many jurisdictions demand arbitrary amounts of money or "donations" in exchange for use of the ROW for telecommunications infrastructure with no clear relationship to a jurisdiction's costs of ROW management. These burdensome requirements, lengthy processes and delays, arbitrary fees, and unfair demands are imposed only on *wireless* equipment in the ROW, and are not required of other users of the ROW.

Because the challenges faced when deploying communications infrastructure in the ROW within numerous municipalities across the country have become so onerous, Lightower encourages the Commission to issue a declaratory ruling interpreting sections 253 and 332 that directs the use of a streamlined process when evaluating applications for fiber and small cell attachments, and clarifies the limited role of local jurisdictions created by the Telecommunications Act of 1996 ("1996 Act").

The Commission should declare that local regulatory regimes that impose a burdensome, time consuming process or vest the local government with unfettered discretion over deployment are preempted by Section 253. In so doing, the Commission should declare that preemption under Section 253(a) does not require a total ban on service or a requirement that is

"insurmountable," but rather that the original *Auburn* standard is the correct standard for determining whether a requirement might have the effect of prohibiting the ability of an entity to provide telecommunications services. The Commission should also declare that imposing different requirements on small cells than on other ROW users is discriminatory and that such local regulations violate and are preempted by Section 253(a).

Further, the Commission should declare that unreasonable delay effectively prohibits the provision of telecommunications service in violation of Section 253. The Commission should also declare that, for DAS and small cell installations on existing utility poles in ROW, a reasonable time for action on an application is 60 days. Additionally, the Commission should clarify that in situations of inaction by jurisdictions when processing such applications, the application is deemed approved at the expiration of the legal timeframe for consideration of the application. In the alternative, the Commission should provide guidance that, at a minimum, injunctive relief is the appropriate remedy for violation of the Shot Clock Order.

Finally, the Commission should declare that municipal fees imposed on DAS and small cell access to the ROW must be limited to recovery of the municipality's actual cost of managing the ROW in relation to the deployment, and that such fees must be no more than the fees, if any, imposed on other telecommunications equipment for occupation of the ROW. The Commission should also reinforce the statutory language requiring that any such fees must be publicly disclosed in advance.

Local regulations and actions that thwart deployment are in conflict with the letter and spirit of the 1996 Act. The Commission should take action in this proceeding to ensure continued investment in and the rapid deployment of wireless networks and services.

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I. INTRODUCTION

Lightower Fiber Networks I, LLC, Lightower Fiber Networks II, LLC, and Fiber Technologies Networks, L.L.C. (collectively, "Lightower"), is a competitive provider of fiber network services that serve enterprise, government, carrier and data center customers. Lightower has over 17 years of experience providing all-fiber solutions, and its network consists of approximately 27,000 route miles providing access to over 15,000 service locations in the Northeast, Mid-Atlantic and Midwest. Lightower also improves and expands its fiber footprint every month by approximately 175 route miles.

In 2013, Lightower began exploring adding a wireless small cell component to its service offerings. Part of this evaluation involved exploring how quickly it could meet customer deployment timeframes. After careful evaluation, Lightower determined it would be able to deploy small cells within a four to six month timeframe (inclusive of design, permitting, construction, and activation), and the company had a great deal of success doing so throughout 2014.

Building new fiber and wireless infrastructure in the public rights of way ("ROW") has always had its challenges regarding speed to market, such as utility pole attachment make-ready; however some of the new challenges faced by companies deploying communications infrastructure in the ROW, including municipal roadblocks, have proven effectively insurmountable. As the last three years have progressed, Lightower has noticed a concerning trend of jurisdictional permitting time frames growing longer, requiring complex and time-consuming zoning processes, and sometimes grinding completely to a halt for months, if not years.

Lightower's involvement in both fiber and wireless network solutions has enabled it to see the value, firsthand, of the progress the Commission can bring about when it creates a regulatory environment that ensures consistency in policies, procedures, and processes, particularly regarding pole attachments and the "*Shot Clock Order*."[1] These policies have assisted telecommunications companies in the development of robust networks in large portions of the country. Given that wired and mobile broadband technology is critical to consumers, businesses, and public safety for connectivity, service, and functionality across the nation, Lightower believes that it is important for the Commission to act, when necessary, to prevent unlawful impediments to the implementation of these critical telecommunications services. Commission action to curb the extreme deployment delays faced in a growing number of municipalities is necessary to continue to promote connectivity, safety, and other important communications goals throughout the nation.

Because the challenges faced when deploying communications infrastructure in the ROW within numerous municipalities have become so onerous, Lightower respectfully requests that the Commission issue a declaratory ruling interpreting sections 253 and 332 that provides the following: (a) clear directives to municipalities considering applications for deployment of wireline and wireless communications infrastructure within their jurisdictions, and (b) remedies

[1] *See generally Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, 26 FCC Rcd. 5240 (2011); *Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(b) to Ensure Timely Siting Review & to Preempt Under Section 253 State & Local Ordinances That Classify All Wireless Siting Proposals As Requiring A Variance*, 24 FCC Rcd. 13994 (2009) ("*Shot Clock Order*"); and *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies and Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting*, 29 FCC Rcd. 12865 (2014). ("*2014 Infrastructure Order*").

for companies attempting to deploy such infrastructure that will ensure prompt and equitable resolutions when municipalities fail to comply with the regulations.

II. LOCAL REGULATIONS AND ACTIONS CONTINUE TO EFFECTIVELY THWART DEPLOYMENT

The Commission has requested that telecommunications carriers provide as much specific and clear data as possible in these comments regarding the barriers to timely deployment they have experienced. The figures presented by Lightower herein reflect a largely complete data set from 2013, when Lightower first offered small cell services, through the present.[2]

A. Lightower Has Experienced Significant Delay.

Since it began providing small cell service in 2014, Lightower has seen a steady increase in the time required to obtain necessary municipal approvals. In 2014, many jurisdictions embraced small cell technology and acted quickly to issue any necessary permits, thereby allowing the expeditious deployment of new wireless technology. In 2015, Lightower experienced a noticeable slowdown, as average permit timeframes doubled from the previous year. By 2016, as the need for network densification became more critical, the average timeframe ballooned to approximately 300 days on average, with some jurisdictions far exceeding that number. As more and more municipalities resist deployment of small cells, timeframes for 2017 are trending toward ever-increasing delays. As of the date of this filing, Lightower has 190 applications that have been pending for 475 days on average. Unfortunately, at this juncture, there is no way to predict when, if ever, the requisite permits will be issued.

[2] The data included herein reflects information as of March 8, 2017, and does not include two large projects that are in their initial deployment phases and as a result are too early to provide data.

The reasons for delays range from municipalities not having an application process, to requiring that small cell permitting be handled through a zoning process, as well as moratoria imposed while cities draft ordinances to address small cells. In some cases Lightower has submitted numerous applications, only to have them sit without municipal action for months or years.

Currently, Lightower has approximately 46 jurisdictions that have exceeded the Commission's directive specifically designed to combat municipal delays that "impede the promotion of advanced services and competition that Congress deemed critical in the Telecommunications Act of 1996."[3] This figure represents jurisdictions that have exceeded the longer, 150 day timeframe for new poles,[4] even though many of the applications submitted by Lightower were for collocations on existing utility poles, which are subject to the shorter 90 day timeframe under the *Shot Clock Order*.

In 12 of the 46 municipalities exceeding 150 days in their consideration of Lightower's deployment request, representing 101 small cells, more than a year has passed. In five of these 46 jurisdictions, representing 34 pending small cells, Lightower has spent more than two years trying to gain approval. Some of these jurisdictions have been in such extended holds that it is unclear whether Lightower will ever be able to obtain the permits necessary for deployment. Timeframes for some of these jurisdictions are currently nearing three years. In a single municipality, 12 small cells have been pending for 993 days despite repeated efforts by Lightower to comply with a long series of city requests.

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[3] *Shot Clock Order*, 24 FCC Rcd. at 14007-08 ¶ 35.

[4] *See 2014 Infrastructure Order*, 29 FCC Rcd. at 12974 ¶ 272 (noting that "DAS and small-cell deployments that involve installation of new poles will trigger the 150-day time period for new construction").

One might question why Lightower has not brought a complaint against the jurisdictions that have failed to act within the timelines contemplated by the *Shot Clock Order*. That question, however, must be placed into a broader context. If Lightower brought suit against every jurisdiction in which permitting timeframes extended beyond those authorized in the *Shot Clock Order*, it could be litigating 46 lawsuits against 46 different municipalities. Even if Lightower pursued actions against only those jurisdictions in which timeframes exceed 12 months, it would be embroiled in 17 separate lawsuits. Given the significant amount of time, resources and expense associated with litigating even one federal lawsuit, it is neither practical nor an efficient use of time for Lightower to litigate against each and every jurisdiction that effectively prohibits Lightower's deployment of facilities. Having to bring suit in every such case would, in and of itself, effectively prohibit Lightower from providing telecommunications service. Instead, Lightower continues to try to work cooperatively with each jurisdiction, even when some timeframes will soon exceed three years.

B. A Patchwork Of Local Processes Delay And/Or Effectively Prohibit Deployment Of Wired And Wireless Broadband Infrastructure.

One of the most significant impediments to Lightower being able to meet its customers' demands for speed to market is the patchwork of permitting timeframes existing at the local level. Various policy makers and industry participants have suggested that small cell deployment should become more streamlined.[5] Unfortunately, a level of predictability will never be possible without consistent treatment across states and jurisdictions, which is why Lightower is offering these comments to the Commission for its consideration and possible action.

[5] *See* J. Sharpe Smith, "T-Mobile's Mayo Points Out Pain Points," AGL Media Group (May 25, 2016) ("We need to make it really screamingly easy for the operators to add small cells to their networks and that is going to take a lot of work with the municipalities"), http://www.aglmediagroup.com/mayo-reveals-t-mobiles-tower-pain-points.

1. Jurisdictions Have Refused To Apply Existing/Standard ROW Processes To Small Cells In The ROW, Instead Requiring Traditional, Lengthy Macro Site Zoning Processes For Small Cells In The ROW.

In addition to the delays discussed above, Lightower has encountered extensive delays due to process. A number of jurisdictions have decided not to follow their existing ROW permitting processes when considering small cell applications, but electing, rather, to put small cell node applications through a zoning process. With each year since Lightower has offered small cell service, it has experienced an increase in the number of jurisdictions requiring applications to go through a zoning process. These regulatory gauntlets consume extreme amounts of time and create significant confusion regarding expectations for applicants embroiled in the process, as well as those on the outside attempting to gain clarity regarding licensure requirements.

Lightower is currently working with approximately 19 municipalities that have decided to depart from their standard ROW processes and impose land use zoning regulations on small cell applications, either as an addition or an alternative, the latter requiring a dual application process. For a traditional fiber optic network company like Lightower, this has required a great deal of internal and external staffing considerations, including a number of attorneys and consultants in multiple states, which would not have been needed for the deployment of fiber alone. In Lightower's experience, those communities have not likewise required other communications or utility installations in the ROW to be ushered through a zoning process. Of these 19 jurisdictions, Lightower has encountered four jurisdictions that originally allowed, and even approved, small cell nodes under a ROW process, only to later change course and shuffle applicants into a zoning process, even when such a change resulted in a requirement to remove previously approved utility poles in the ROW.

For example, one such jurisdiction in North Carolina has been particularly resistant to wireless infrastructure, resulting in very poor wireless coverage for those who live, work and travel through the community. Lightower has been trying to work with this jurisdiction to obtain approval for deployment of its small cells for over a year and a half (approximately 598 days).[6] For the first 18 months, the jurisdiction told Lightower it would operate under its ROW code. After aesthetically pleasing utility poles were legally placed in the ROW, the jurisdiction changed its zoning code to encompass the ROW, which then required the removal of such previously lawfully installed poles. As of these comments, Lightower has still not been able to deploy a single small cell within the jurisdiction because the jurisdiction's process itself has been a moving target that continues to frustrate deployment efforts.

When a municipality makes a decision to apply a zoning regulation drafted for tower locations on private property to small cells in the ROW, it can result in insurmountable barriers to entry. For example, when a small city in North Carolina applied its code to the ROW as if it were private property, a new metal utility pole was interpreted to be a "new tower," which would be prohibited in a historic district. The city owned the only existing structures in the ROW—metal streetlights—and chose not to allow wireless attachments on its poles, thus foreclosing all paths forward without going to federal court.

[6] First contact was made approximately 824 days ago, but a number of months were spent before Lightower could present anything resembling an "application," because the city wanted more information about the small cell equipment first and to discuss the different types of equipment configurations. The jurisdiction continues to contend that Lightower has never provided a "complete application," even though Lightower has submitted applications and provided extensive information for each small cell location; the jurisdiction has (1) never recognized an application as being complete, and (2) changed its processes, procedures, interpretation and zoning code in the last 824 days.

Other times, the application of a zoning code creates a substantial hurdle to approval. For example, Lightower is currently seeking approval from a city for a new utility pole in the ROW with a fiber and power connection that was previously lawfully approved by the State of North Carolina. When the jurisdiction decided to apply its zoning code to the previously-approved utility pole, the city took the position that addition of an antenna turned the utility pole into a "non-concealed tower," which required certain setbacks from the ROW (although the pole was *in* the ROW), triggering the need for a variance. Lightower is still uncertain whether it will be able to secure the variance. Additionally, according to the city, the wooden utility pole, which has been lawfully placed for many months in an area with many existing utility poles, now needs to go through an additional layer of review regarding ground disturbance, ***even though no other utility poles in the area have been required to do the same.***

The sole difference between the Lightower utility pole referenced above and others in its proximity is that Lightower intends to attach "wireless facilities" to it. If Lightower wished to place this pole solely for the attachment of fiber optic cable, the additional review discussed above and attendant delays would not have occurred. Indeed, fiber attachment permits from local governments, where required, are typically issued in less than four weeks, and often within days. However, the affixation of an antenna on the pole has created the need for a three-part zoning application, which Lightower has been told will likely be denied because it will not meet the legal standard under the zoning regulations as an "unconcealed wireless tower." As described earlier, the structure at issue is a 30-foot wood utility pole in the ROW, surrounded by other utility poles of much greater height with numerous attachments. Lightower explored the possibility of using the nearby utility poles, but they were unavailable for wireless attachment due to the complexity of their existing electrical attachments.

Again, given the time, expense and resources that must be expended to prosecute a federal lawsuit, as well as the risk of potential repercussions occasioned by the threat of litigation, Lightower has made the difficult choice to continue working with this and similar jurisdictions when attempting to secure a favorable result. Lightower stands by its commitment to deploy small cells because of the need for competition in the small cell market, which is something the Commission has encouraged many times.[7] It also stands by its commitment to customer service. Lightower and other similarly situated companies would, however, be much more successful in meeting customer requirements regarding speed to market if there were not such an extreme patchwork of differing standards regarding review and timing for consideration from jurisdiction to jurisdiction.

Lightower, as a telecommunications provider in innumerable municipalities that treat its ever-expanding fiber deployments as standard utility facilities, requests that its wireless facilities be treated in a similar manner with respect to permit processes. Jurisdictions embrace wireless facilities every day for purposes of public safety. Lightower's wireless facilities also improve and increase public safety, but because they also support personal wireless communication, local governments subject them to a level of local approval that has never been required for other types of telecommunications or utility infrastructure deployed in the ROW. This treatment has led to prohibitions of service, a competitively inequitable result, and significantly delayed deployment efforts for important advanced broadband technologies. Lightower is concerned this trend will only grow as the nation approaches 5G.

[7] *See generally 2014 Infrastructure Order*, 29 FCC Rcd. at 12867-68 ¶ 5 (applauding policies promoting increased competition between DAS and small cell providers).

2. Many Local Governments Are Either Re-Writing Their Permitting Processes Regarding Small Cells in the ROW Or Claiming They Have No Process Whatsoever For Small Cell Licensure, Resulting In A De Facto Moratorium On The Deployment Of Small Cell Technologies.

Lightower is currently trying to deploy small cells in nine jurisdictions that have decided to either re-write their local municipal code for deployment of small cells in the ROW or simply have not decided what type of process they want to follow for small cell permits. Both of these situations have resulted in an indefinite hold in these jurisdictions, either by means of the jurisdiction enacting a formal moratorium or going into a de facto moratorium. Although the number of jurisdictions in this circumstance may not appear to be extremely great, the issue impacts approximately 85 nodes in four states. These types of obstacles have also added between one to three years of delay to Lightower's deployment efforts and, in certain cases, have fostered delays without a foreseeable end.

Ironically, as small cells grow in necessity, the process for securing approval is becoming *more* extended. For example, in Lightower's experience, a very large city in Indiana was formerly one of the best places in the country to deploy small cells, and Lightower successfully deployed approximately 90 small cells there between 2014 and 2016. However, today, despite a new state law passed in support of making small cells easier to deploy,[8] deployment of small cells in the city has come to a complete halt for new locations where no existing poles (streetlight or utility) can be used for collocation because the city is in the process of drafting new local code governing the placement of new utility poles in the ROW.

Additionally, there are two jurisdictions that have not provided any way forward, which creates an effective prohibition on deployment of small cells in the ROW. Lightower has been

[8] *See* 2015 Ind. Acts 1288 (Pub. L. No. 145-2015) (Ind. House Enrolled Act No. 1318, 119th General Assembly (2015)), effective Jan. 1, 2016.

trying to work with one such jurisdiction, a suburb of Indianapolis, for approximately 993 days—nearly three years—without being able to secure permits. Applications were submitted in June 2014, but the jurisdiction has refused to take any action. Lightower has requested a simple denial, but the jurisdiction will neither approve nor deny the pending applications. As discussed above, some would argue that filing a *Shot Clock Order* lawsuit would be the best means to secure action from this jurisdiction. However, in line with the considerations outlined above, Lightower would rather work with jurisdictions toward a positive result rather than litigate.

3. Some Jurisdictions Require The Submission Of Excessive Fees Or Other In-Kind "Donations" In Exchange For Access To The ROW For Both Fiber And Wireless Infrastructure, Hampering Deployment Efforts.

Lightower and other similarly situated providers have always been required to obtain some form of approval from jurisdictions to deploy fiber and wireless infrastructure the ROW. As mentioned above, Lightower builds approximately 175 miles of new fiber every month, regardless of wireless facilities. Unfortunately, a growing number of jurisdictions are using the increased need for new fiber, aside from wireless components, as an opportunity for revenue generation or to request "donations."

Currently, many jurisdictions demand arbitrary amounts of money for use of the ROW for telecommunications infrastructure with no clear relationship to a jurisdiction's costs of ROW management. Lightower strongly suggests, for the Commission's consideration, that all jurisdictional fees associated with telecommunications infrastructure in the ROW be based on or connected to actual costs incurred by the jurisdiction to regulate telecommunications providers' use of the ROW.

Additionally, there is often no available evidence that all telecommunications providers are being charged in an equitable manner, so it is further important that there be full cost

transparency in these circumstances, such that providers can ascertain that they are being treated fairly. This would be a simple solution to ensuring equal treatment, but it would not solve the issue of excessive fees, particularly those asking for "donations."

Lightower has had the unfortunate experience with a small but growing number of jurisdictions that have requested "donations" before they will agree to approve a telecommunications franchise or equivalent agreement. Sometimes these requests can be extreme, such as requesting that Lightower construct an entire fiber network on behalf of a jurisdiction, regardless of the actual scope of Lightower's own network to be deployed therein. Other times, such jurisdictions will simply refuse to process an application until they receive payment of some sort of arbitrary fee. Regardless of the form of these arbitrary fees or donations, they often significantly delay deployment of telecommunications infrastructure unless a provider agrees to pay without question, regardless of whether the fee is fair or reasonable.

III. THE COMMISSION SHOULD ISSUE A DECLARATORY RULING INTERPRETING SECTION 253 AND SECTION 332

The examples discussed above demonstrate the need for the Commission to clarify the law so that fiber and small cell deployments have predictability and consistency across the nation, rather than the random patchwork that exists today. Lightower encourages the Commission to issue a declaratory ruling interpreting sections 253 and 332 that directs the use of a streamlined process when evaluating applications to jurisdictions for fiber and small cell attachments, and clarifies the limited role of local jurisdictions created by the Telecommunications Act of 1996 ("1996 Act").

Some states have or are in the process of passing laws that create a standard permitting process across all jurisdictions. Some such laws have proven more effective than others. For example, Ohio recently passed a law designed to streamline the wireless deployment process

across the state's municipalities and provide clear jurisdictional timeframes for consideration of applications to deploy wireless technologies in the ROW.[9] The law generally provides 90 days for a municipality's consideration of an application to install a "micro wireless facility," which sets out certain size parameters for a DAS node or small cell.[10] Municipalities must grant or deny an application no later than 90 days after the filing of a completed request to attach micro wireless facilities to a wireless support structure, and construct, modify, or replace a wireless support structure associated with a micro wireless facility.[11] If a municipality does not take action on a complete application within 90 days, the application is deemed approved.[12] Further, the law exempts such applications from local zoning review.[13] Lightower believes that the solutions provided by this new law will greatly assist with deployment and alleviate the extended delays Lightower has encountered in Ohio. The Virginia Legislature also recently passed a law which provides that localities must approve or disapprove small cell applications within 60 days, and an application is deemed approved if the locality fails to act within that time.[14] Although Lightower submits that the 90 day consideration period adopted in Ohio is more lengthy than necessary and considers the 60 day timeframe adopted in Virginia to be more reasonable,[15] Lightower strongly encourages the Commission to take a similar approach to that taken by Ohio

[9] *See generally* Ohio Substitute S.B. 331, 131st General Assembly (2016), effective Mar. 21, 2017 (codified at Ohio Rev. Code Ann. §§ 4939.01-4939.08).

[10] *Id*. §§ 4939.031, 4939.01(D), (N).

[11] *Id*. § 4939.031.

[12] *Id*. § 4939.037.

[13] *Id*. § 4939.033.

[14] SB 1282, 2017 Sess. (Va. 2017).

[15] *See infra* Section III.B.2.

and Virginia on the federal level, i.e., to implement a firm timeframe for action by jurisdictions so that greater market efficiencies can be realized, no matter the state.

A. The Commission Should Define Actions That Effectively Prohibit The Provision Of Telecommunications Services.

Congress passed the 1996 Act to establish "a pro-competitive, deregulatory national policy framework" for the telecommunications industry, and "to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans *by opening all telecommunications markets to competition*."[16] The Supreme Court has found that the 1996 Act "fundamentally restructures local telephone markets. States may no longer enforce laws that impede competition . . . ."[17]

Section 253 of the 1996 Act is a cornerstone to implementing this free market vision of the 1996 Act.[18] Section 253(a) of the 1996 Act provides that

> (a) In General – No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.[19]

Section 253(c) reserves limited authority to local governments to "manage the public rights-of-way . . . on a competitively neutral and nondiscriminatory basis. . . ."[20]

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[16] S. Rep. No. 104-230, at 1 (1996) (Conf. Rep.) (emphasis added).

[17] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371 (1999).

[18] *See, e.g., Cablevision of Boston, Inc. v. Pub. Improvement Comm'n of Boston*, 184 F.3d 88, 97-98 (1st Cir. 1999) (explaining that Section 253 implements Congress's "free market vision" by preventing states and localities from maintaining the "monopoly status of certain providers, on the belief that a single regulated provider would provide better or more universal service").

[19] 47 U.S.C. § 253(a).

[20] 47 U.S.C. § 253(c).

The Commission has addressed the purpose of the 1996 Act and its implications many times. In *TCI Cablevision of Oakland County*, the Commission stated that "Congress intended primarily *for competitive markets to determine which entrants shall provide telecommunications services demanded by consumers*, and by preempting under section 253 sought to ensure that State and local governments implement the 1996 Act in a manner consistent with these goals."[21] In *Classic Telephone, Inc.*, the Commission stated that the 1996 Act "is intended to pave the way for enhanced competition in all telecommunications markets, by allowing *all* providers to enter *all* markets."[22]

The previously described examples of local regulations and actions that thwart deployment are in conflict with the letter and spirit of the 1996 Act and Section 253, which opened entry into the telecommunications marketplace by removing state and local authorities from the role of gatekeeper. Under the 1996 Act, it is not the role of cities to choose what services will be provided, what technologies or equipment will be used, which companies will be allowed to deploy facilities, or which companies will provide service.

1. The Commission Should Declare That The 8th And 9th Circuits Misinterpret Section 253(a).

In 2001, the United States Court of Appeals for the Ninth Circuit in *City of Auburn v. Qwest Corp.* held that Section 253's "purpose is clear—certain aspects of telecommunications regulation are uniquely the province of the federal government and Congress has narrowly circumscribed the role of state and local governments in this arena."[23] Accordingly, the Ninth

[21] 12 FCC Rcd. 21396, 21440-41 ¶ 102 (1997) (emphasis added).

[22] 11 FCC Rcd. 13082, 13095-96 ¶ 25 (1996).

[23] 260 F.3d 1160, 1175 (9th Cir. 2001), *overruled by Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571 (9th Cir. 2008).

Circuit found that Section 253(c) "saves" only those municipal requirements that are "directly related to management of the public rights-of-way."[24] Much like the unreasonable municipal demands Lightower has increasingly faced when seeking to deploy its facilities, the ordinances preempted in *Auburn* sought to require telecommunications providers to: pay an application fee of up to $5000; file an application containing detailed information unrelated to the ROW; obtain a franchise; negotiate certain terms of the franchise with the cities; undertake extensive reporting and approval processes for transfers of ownership and stock; provide the municipalities with network capacity; and offer the municipalities favorable rates.

Importantly, the Ninth Circuit in *Auburn* held that requirements imposed by municipalities need not "'prohibit' *outright* the ability of any entity to provide telecommunications services" to merit preemption under Section 253.[25] Rather, requirements (alone or in combination) such as an onerous application process, a franchise requirement, and/or a long approval process can amount to "a regulatory structure that allows a city to bar a telecommunications provider from operating in the city," which prohibits or has the effect of prohibiting the company's ability to provide telecommunications services under Section 253(a).[26] Other courts have agreed.[27] All of these cases recognize the standard announced by the Commission in a ruling soon after the 1996 Act was enacted that a local requirement "'has

[24] *Id.* at 1178.

[25] *Id.* at 1175 (emphasis added).

[26] *Id.* at 1176.

[27] *See, e.g., TCG N.Y., Inc. v. City of White Plains*, 305 F.3d 67, 76 (2d Cir. 2002) (agreeing that "a prohibition does not need to be complete or 'insurmountable' to run afoul of § 253(a)") (citing *RT Commc'ns, Inc. v. FCC*, 201 F.3d 1264, 1268 (10th Cir. 2000)); *Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 450 F.3d 9, 18 (1st Cir. 2006) ("'[A] regulation need not erect an absolute barrier to entry in order to be found prohibitive.'") (quoting *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1269 (10th Cir. 2004).

the effect of prohibiting' the ability of any entity to provide" telecommunications service if it "*materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment*."[28]

Unfortunately, some federal courts have misinterpreted Section 253(a) and eroded the protections afforded by that section to ensure municipalities do not thwart deployment and competition contrary to the universally recognized purpose of the 1996 Act.

The Eighth Circuit in *Level 3 Communications, L.L.C. v. City of St. Louis* interpreted Section 253(a) by stating that "a plaintiff suing a municipality under section 253(a) must show actual or effective prohibition, rather than the mere possibility of prohibition."[29] Although the Eighth Circuit cited the Commission's *California Payphone Order* the court went even further and held that a provider "must show an *existing* material interference with the ability to compete in a fair and balanced market."[30] In *Sprint Telephony PCS, L.P. v. County of San Diego*, the Ninth Circuit "overruled[d] *Auburn* and joine[d] the Eighth Circuit in holding that 'a plaintiff suing a municipality under section 253(a) must show actual or effective prohibition, rather than the mere possibility of prohibition.'"[31] Indeed, the court in *Sprint* went further. By relying on an incorrect standard for "facial challenges," the court effectively required that a provider prove that the challenged local requirement prohibits the provision of any telecommunications service *under any circumstances*.[32] That standard, of course, is inconsistent with the purpose of Section 253 and the 1996 Act, prior Commission orders, and is essentially impossible to ever satisfy.

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[28] *California Payphone Ass'n*, 12 FCC Rcd. 14191, 14206 ¶ 31 (1997) (emphasis added).

[29] 477 F.3d 528, 532 (8th Cir. 2007).

[30] *Id.* at 533 (emphasis added) (citation omitted).

[31] 543 F.3d 571, 578 (9th Cir. 2008) (citation omitted).

[32] *Id.* at 578-79.

Despite their ultimately diverging interpretations, the circuit courts are in agreement that the Commission's standard announced in *California Payphone* is the starting point for the effective prohibition standard under Section 253(a). However, given the inconsistent interpretations and outcomes among the circuits, coupled with the mounting evidence from providers such as Lightower, demonstrating how certain local processes effectively prohibit deployment and competition, the Commission should restore uniformity by issuing an authoritative ruling that preemption under Section 253(a) does not require a total ban on service or a requirement that is "insurmountable," but rather that the original *Auburn* standard is the correct standard for determining whether a requirement might have the effect of prohibiting the ability of an entity to provide telecommunications services. Local regulatory regimes that impose a burdensome, time consuming process or vest the local government with unfettered discretion over deployment are preempted by Section 253.

2. The Commission Should Declare That Imposing Different Requirements On DAS Or Small Cells Than On Other ROW Users Violates 253(a).

As Lightower has described, and other telecommunications providers will undoubtedly echo, an increasing number of jurisdictions impose burdensome requirements, lengthy processes and delays, arbitrary fees, and unfair demands only on *wireless* equipment in the ROW. Those requirements are not required of other users of the ROW. These examples of discriminatory local regulations and processes are in conflict with the letter and spirit of the 1996 Act, which opened entry into the telecommunications marketplace by removing state and local authorities from the role of gatekeeper. Congress preserved only local "competitively neutral and

nondiscriminatory" "manage[ment]" of the public rights-of-way.[33] Under the 1996 Act, it is not the role of cities to choose what services will be provided, what technologies or equipment will be used, which companies will be allowed to deploy facilities, or which companies will provide service.

Yet, as Lightower has described, municipalities are imposing regulatory regimes based solely on the fact that the equipment installed includes a radio frequency element, even when the equipment is installed on existing utility facilities in the public rights-of-way. The cities do not impose the same type of regulatory burden on purely wireline telecommunications or utility facilities occupying the same public rights-of-way, even though those other facilities are frequently much larger and more visually intrusive than the equipment installed by Lightower. As Lightower explained, these regulatory regimes vastly increase cost and time to market, which "materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced regulatory environment" under the standard announced in *California Payphone*. Accordingly, the Commission should declare that such discriminatory local regulations violate and are preempted by Section 253(a).

In so doing, the Commission should clarify that Section 253 does not reference "unreasonable discrimination" "among providers of functionally equivalent service," as does Section 332(c)(7)(B)(i)(I). Moreover, the Commission should make clear that even if those terms were involved, the small cell and DAS wireless facilities being deployed in the ROW by Lightower and others are no different than the communications and utility equipment and facilities already installed on poles by other companies. In the *Public Notice*, the Commission

[33] 47 U.S.C. § 253(c); *TCI Cablevision*, 12 FCC Rcd. at 21443 ¶ 109; *City of White Plains*, 305 F.3d at 79.

uses language regarding fees for "similar access to the rights of way."[34] In the context of DAS and small cell access to the ROW, "similar" access means deployment of equipment on poles in the ROW—i.e., the requirements and process imposed on Lightower to access the ROW to install equipment on utility poles should be no greater than those imposed on other entities (such as wireline telecommunications or electric utilities) installing equipment on utility poles. "Similar" does *not* simply mean treating all "wireless" installations in the ROW the same. Municipal regulation pursuant to Section 253 must be technology neutral "to pave the way for enhanced competition in all telecommunications markets, by allowing *all* providers to enter *all* markets."[35]

B. The Commission Should Take Additional Action To Prevent Delay.

As discussed above, Lightower has encountered significant and growing delay. The Commission should issue a declaratory ruling addressing such municipal barriers to entry.

1. The Commission Should Declare That Unreasonable Delay Effectively Prohibits Provision Of Telecommunications Service In Violation Of Section 253.

Several courts and the Commission have emphasized that municipal delay violates Section 253(a). In *City of White Plains,*[36] the Second Circuit affirmed the district court's ruling that the city's unreasonable delay in allowing TCG to access the ROW had the effect of prohibiting it from providing telecommunications services in violation of Section 253(a).

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[34] Public Notice, Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies and Mobilitie, LLC Petition for Declaratory Ruling ("*Public Notice*"), 31 FCC Rcd. 13360, 13373 (2016).

[35] *Classic Tel.*, 11 FCC Rcd. at 13095-96 ¶ 25.

[36] 305 F.3d at 76.

In *AT&T Communications of the Southwest, Inc. v. City of Austin*, the court recognized that the present telecommunications marketplace is highly competitive and constantly changing and, as a result, even the slightest delay can cause a provider to lose significant opportunities as compared to those already operating in the market—particularly against well-entrenched ILECs.[37] In *PECO Energy Co. v. Township of Haverford*, the court held that the challenged ordinance violated Section 253, among other reasons, because there was no guarantee that a franchise application "once submitted, will be processed ***expeditiously***."[38]

The FCC has also recognized the potential adverse effects of local government delay, explaining:

> If a potential entrant is unable to secure the necessary regulatory approvals within a reasonable time, it may abandon its efforts to enter a particular market based solely on the inaction of the relevant government authority. . . . More specifically, in certain circumstances a failure by a local government to process a franchise application in due course may "have the effect of prohibiting" the ability of the applicant to provide telecommunications service, in contravention of section 253.[39]

These concerns are a reality for Lightower, as described above. The various obstacles posed by certain local requirements have added between one to three years of delay to Lightower's deployment efforts, and in certain cases, have fostered delays without a foreseeable end. These delays of a year or more, coupled with the uncertainty of whether a network will be built at all in the end, have the effect of prohibiting Lightower's ability to provide

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[37] 975 F. Supp. 928, 938 (W.D. Tex. 1997), *vacated on other grounds*, 235 F.3d 241 (5th Cir. 2000).

[38] No. 99-4766, 1999 WL 1240941, at *8 (E.D. Pa. Dec. 20, 1999) (emphasis added).

[39] *Classic Tel. Co.*, 12 FCC Rcd. 15619, 15634 ¶ 28 (1997); *see also TCI Cablevision*, 12 FCC Rcd. at 21441-42 ¶ 105 (FCC concerned with "unnecessary delays" caused by local governments).

telecommunications service in violation of Section 253. Even if Lightower ultimately is able to access the ROW at the end of the long delay, the reality is that for the entire duration of that delay it was prohibited from providing telecommunications services and competing in the market. Lightower has no remedy for the damage caused to it or the public by that period of prohibition. In a time when technology is changing rapidly and consumer demands change even more rapidly, speed to market is critical, and as a result, municipal delays are unlawfully protecting the incumbent providers at the expense of new competitors, such as Lightower. Left unfettered, cities will continue to impose burdensome, delaying, overreaching requirements that will deter or prevent investment in new technologies and competitive services, contrary to the purpose and intent of the 1996 Act.

2. The Commission Should Declare That, For DAS And Small Cell In The ROW On An Existing Pole, The Reasonable Time For Action Is 60 Days.

In the *2014 Infrastructure Order*, the FCC confirmed that because DAS and small cell technologies are used to provide personal wireless service, the *Shot Clock Order* applies.[40] In the *Shot Clock Order*, the Commission determined that 90 days is a presumptively reasonable time for a municipality to act on a collocation application to attach to an existing pole. Lightower believes the Commission should now go even farther. Although it does not meet the definition of an "eligible facilities request" (if there is no existing wireless installation), a DAS or small cell installation on an existing utility pole is more like a collocation under Section 6409 of the Spectrum Act, an application for which a municipality would have 60 days to act or otherwise be deemed to have approved the application.[41] Indeed, in the *2014 Infrastructure*

[40] *2014 Infrastructure Order*, 29 FCC Rcd. at 12973 ¶ 270.

Order, the Commission repeatedly recognized that DAS and small cell equipment can be installed "with little or no impact" on utility poles.[42] In excluding utility poles from historic preservation review requirements, the Commission stated:

> Utility structures are, by their nature, designed to hold a variety of electrical, communications, or other equipment, and they already hold such equipment. Their inherent characteristic thus incorporates the support of attachments, and their uses have continued to evolve with changes in technology since they were first used in the mid-19th century for distribution of telegraph services. Indeed, we note that other, often larger facilities are added to utility structures without review.[43]

Given these acknowledgements, the Commission should declare that, for DAS and small cell installations on existing utility poles in ROW, a reasonable time for action on an application is 60 days. Otherwise, application of the 90 day *Shot Clock Order* timeline that is applicable to traditional macro wireless sites amounts to regulation purely based on the presence of wireless technology and is not technology neutral and nondiscriminatory in violation of Section 253. Moreover, most local governments grant ROW permits to other, non-wireless, telecommunications providers as a ministerial matter, taking a few days, or a few weeks, at most. Thus, even taking 60 days would be continuation of discrimination based purely on technology in violation of Section 253.

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[41] *See* Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act"), Pub. L. No. 112-96, 126 Stat. 156, § 6409(a) (2012) (codified at 47 U.S.C. § 1455(a)).

[42] *2014 Infrastructure Order*, 29 FCC Rcd. at 12866-67 ¶ 3.

[43] *Id.* at 12907 ¶ 91.

3. The Commission Should Provide Guidance That Violation Of The *Shot Clock Order*, Without Supportable Action by the Jurisdiction to Toll the Timeframe, Results in Deemed Approval of an Application to Attach.

Finally, the Commission should take action to provide meaningful relief from local government violations of the 1996 Act. Under Section 332, any disputes regarding a municipality's failure to meet the deadlines set forth in the *Shot Clock Order* must be resolved in court. However, Section 332 does not dictate the remedy where a municipality is found to have violated the *Shot Clock Order*. As a result, even after finding that a city has violated Section 332 by engaging in unreasonable delay, at least one court has perpetuated the delay by simply remanding the case back to the local authority with instructions to act on the application.[44] A lawsuit and subsequent remand are not remedies that serve consumers, competition, or the purposes of the 1996 Act. The Commission should provide a remedy of substance, i.e., deemed approval of an application to attach, in situations where the jurisdiction considering the application has not taken any active, supportable action to toll the timeframe for consideration of the application. The very purpose of Section 332 and the 1996 Act adopting it was to encourage rapid deployment of new telecommunications technologies and accelerate private sector deployment of those technologies.[45] Inaction by jurisdictions in processing applications to deploy telecommunications technologies is prohibited by Section 332; therefore, the

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[44] *Up State Tower Co. v. Town of Kiantone*, No. 1:16-cv-00069, 2016 WL 7178321 (W.D.N.Y. Dec. 9, 2016).

[45] Pub. L. No. 104-104, 110 Stat. 56, 56 (1996) (TCA was designed "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and *encourage the rapid deployment of new telecommunications technologies*") (emphasis added); *see also* H.R. Rep. No. 104-458, at 1 (1996) (Conf. Rep.) (purpose of TCA is "to provide for a pro-competitive, de-regulatory national policy framework designed *to accelerate rapidly private sector deployment of advanced telecommunications and information* technologies and services . . . .") (emphasis added).

Commission should clarify that in situations of inaction by jurisdictions when processing such applications, the application is deemed approved at the expiration of the legal timeframe for consideration of the application.

In addition to needing better remedies under Section 332, the Commission also has broad preemption powers under Section 253(d).[46] In order for 5G to be deployed, it is critical to have an ecosystem of robust fiber and appurtenant wireless facilities in the public right of way. These comments provide ample amounts of data detailing the prohibition and effective prohibition of this critical infrastructure in the ROW, and illustrating how jurisdictions have burdensome regulations that delay and deny entry into new markets.

Lightower requests that the Commission issue an interpretation of Section 253(a) to clarify and provide tangible parameters for identifying situations in which jurisdictions "prohibit or have the effect of prohibiting" the ability of entities, such as Lightower, to deploy telecommunications facilities in the ROW. Lightower proposes that any failure by a local government to act within 60 days of submission of an application is an "effective prohibition" of telecommunications services, which should be deemed approved by the Commission. Without an effective remedy of deemed approval, the advancement of our nation's infrastructure to support 5G will be unnecessarily delayed by a patchwork of jurisdictional approval processes without any predictable timeframes for customer speed to market requirements.

[46] 47 U.S.C. § 253(d) ("If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b) of this section, the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.")

4. In the Alternative, The Commission Should Provide Guidance That Violation Of The *Shot Clock Order* Requires an Injunctive Remedy.

In the event that the Commission is not prepared to extend deemed approval to applicants seeking to deploy telecommunications infrastructure in the ROW when the timeframes for consideration of their applications have expired, the Commission should, at a minimum, provide guidance that violation of the *Shot Clock Order* requires an injunctive remedy. Indeed, Section 332(c)(7)(B)(v) places a premium on the speedy resolution of proceedings considering such issues as violations of the *Shot Clock Order*, directing district courts to "hear and decide such action[s] on an expedited basis."[47] "Congress made clear [in § 332(c)(7)(B)(v)] that it expected expeditious resolution both by the local [zoning] authorities and by courts called upon to enforce the federal limitations [under the 1996 Act]."[48] Driven by that statutory mandate and Congressional purpose, courts have overwhelmingly recognized that an award of injunctive relief for violations of the 1996 Act, rather than a remand for further proceedings, best fulfills this statutory goal.[49]

However, absent authoritative guidance from the Commission, some courts continue to remand cases back to the local authority for further proceedings. A remand in such situations simply exacerbates the delay already experienced by the application. The practical effect is this: an applicant must first wait for the *Shot Clock Order* timeframe to pass (or even longer,

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[47] 47 U.S.C. § 332(c)(7)(B)(v).

[48] *Town of Amherst v. Omnipoint Commc'ns Enters., Inc.*, 173 F.3d 9, 17 n.8 (1st Cir. 1999).

[49] *See, e.g.*, *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 497 (2d Cir. 1999); *Tennessee ex rel. Wireless Income Props., LLC v. City of Chattanooga*, 403 F.3d 392, 400 (6th Cir. 2005); *see also Omnipoint Commc'ns, Inc. v. Town of LaGrange*, 658 F. Supp. 2d 539, 561-62 (S.D.N.Y. 2009) (injunction, rather than remand, was appropriate remedy where applicant's application was "bounced back-and-forth like a ping pong ball" between zoning board and planning board).

depending on the situation); then the applicant must file a lawsuit and engage in litigation (which, even under expedited schedules, can extend for months or years); then, even if the plaintiff/applicant is successful in their claim that the city's delay violated Section 332, the application is remanded back to the city for further proceedings and almost certain further delay. In this situation, a remand is tantamount to no remedy at all.

Accordingly, the Commission should provide guidance that, at a minimum, injunctive relief granted on an expedited basis is the appropriate relief for violation of the *Shot Clock Order*.

C. The Commission Should Clarify Limits On Local Fees Under Section 253(c).

Finally, the Commission should declare that municipal fees imposed on DAS and small cell access to the ROW must be limited to recovery of the municipality's actual cost of managing the ROW in relation to the deployment, and that such fees must be no more than the fees, if any, imposed on other telecommunications equipment for occupation of the ROW. The Commission should also reinforce the statutory language requiring that any such fees must be publicly disclosed in advance.

Section 253(c) allows state and local governments "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."[50]

[50] 47 U.S.C. § 253(c).

First, there can be no dispute that Section 253(c) requires that fees charged to access the ROW to install telecommunications facilities must be publicly disclosed in advance.[51] As the court in *Haverford* noted, "failure to publicize the fees also renders us unable to determine if [the municipality] has complied with § 253(c)'s requirement that compensation be imposed 'on a competitively neutral and nondiscriminatory basis.'"[52] Companies such as Lightower cannot risk investment in the installation of facilities in a given locality if it does not know what the costs of doing so will be. Accordingly, the Commission should declare that any fees for access to the ROW must be publicly disclosed in advance.

The Commission should also issue a declaratory ruling resolving the conflicting interpretations of Section 253(c) as to the actual fees cities may charge. As the Commission notes in the *Public Notice*, the Circuit Courts of Appeals have rendered conflicting interpretations of Section 253(c) respecting fees charged by municipalities for use of the ROW.[53] Specifically, the courts differ in their opinions as to whether such charges must be directly related to the cost to the municipality for managing the use of the ROW.[54] The Commission has acknowledged that fees such as gross revenue franchise fees "are not related to the costs associated with the provider's use of the ROW or 'based upon the construction of new facilities'" and that such fees are "precisely the kind of barrier to competitive entry that congress

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[51] *See Haverford*, 1999 WL 1240941, at *7 ("[T]he Township's failure to publish schedule of fees is in direct violation of § 253(c).").

[52] *Id.*

[53] *Public Notice*, 31 FCC Rcd. at 13372.

[54] *Compare, e.g.*, *Puerto Rico Tel. Co.*, 450 F.3d at 22 (holding that "fees should be, at the very least, *related* to the actual use of rights of way") *with TCG Detroit v. City of Dearborn*, 206 F.3d 618, 625 (6th Cir. 2000) (finding 4% gross revenue fee was fair and reasonable based on amount of use contemplated, amount other providers would be willing to pay, and impact on profitability of the business).

intended section 253 to remove."[55] Accordingly, the Commission should officially declare that municipal fees imposed on DAS and small cell access to the ROW must be limited to recovery of the municipality's actual cost of managing the ROW in relation to the deployment

Finally, the Commission should declare that municipal fees for use of the ROW must be nondiscriminatory—i.e., the fees charged to access the ROW to install wireless facilities should be no greater than the fees imposed on other entities (such as wireline telecommunications) installing equipment on utility poles. As the Commission has acknowledged "discriminatory entry conditions such as [a franchise fee that only applies to new entrants and not to incumbents] make entry more difficult and unlikely, thereby undermining the local competition Congress sought to foster."[56] To hold otherwise would be allowing critics to impose discriminatory and competitively biased fees based solely on the technology used.

IV. CONCLUSION

As Commission Chairman Pai recently remarked at Mobile World Congress, "[T]he key to realizing our 5G future is to set rules that will maximize investment in broadband."[57] The Commission should seize on this opportunity to unshackle the DAS and small cell providers from the discriminatory, anti-competitive practices of many jurisdictions that effectively thwart deployment and stand in the way of realizing our 5G future.

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[55] Brief for Federal Communications Commission and the United States as Amici Curiae, *TCG N.Y., Inc. v. City of White Plains*, No. 01-7213, 2001 WL 34355501, at *14 (2d Cir. filed June 13, 2001).

[56] *Id.* at *8.

[57] Remarks of Federal Communications Commission Chairman Ajit Pai at the Mobile World Congress, Barcelona, Spain (Feb. 28, 2017).

Respectfully submitted,

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