

January 30, 2019

38

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
Washington, DC 20554

Dear Chairman Pai,

As you know, reports have surfaced that Federal Communications Commission (FCC) staff may have encouraged wireless carriers to file suit against the September 2018 FCC rule on 5G small cell deployment. It has been alleged this was done with the goal of moving litigation out of the Ninth Circuit. What's worse, there are also allegations that FCC staff may have implicitly threatened licensees that were not helpful. If true, this represents an unprecedented level of coordination between an oversight agency and the entities it regulates for the express purpose of preventing a federal circuit court's review. We therefore ask you provide additional information about these cases and the FCC's role in them.

To date, our offices have heard from more than 60 towns and cities throughout California and Connecticut strongly opposing the FCC's *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* Declaratory Ruling and Third Report and Order (Order).<sup>1</sup> Once this rule goes into effect, local governments will lose the ability to make decisions regarding where and how 5G transmission devices are affixed to light poles, traffic poles, and utility poles. The rule will also take away the ability of cities and counties to receive fair and competitive compensation from wireless carriers for use of public property. Consumer advocacy groups have also expressed their opposition to the FCC's ruling, citing the unbalanced benefit it gives to carriers and decrying the lack of commitment from carriers to reinvest cost savings in rural and underserved areas.

As you know, in October 2018, two dozen cities across the country filed suit against the FCC challenging the legality of the Order. Even though additional cases filed by wireless carriers in separate jurisdictions were eventually transferred back to the Ninth Circuit, the reason for their filing in the first place remains a concern. Pressuring entities that are regulated by the FCC to file frivolous litigation in order to

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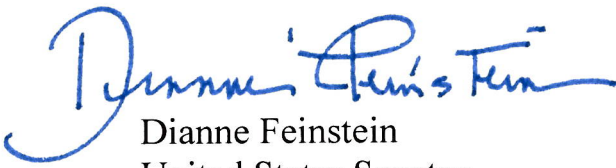
<sup>1</sup> Federal Communications Commission, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket 17-79 and WC Docket 17-84, Declaratory Ruling and Third Report and Order (Sept. 27, 2018).

game the system, and potentially threatening companies if they fail to comply, would be an unacceptable abuse of power and raise serious ethical concerns. Given these concerns, please answer the following questions:

1. Did any individual employed by or otherwise affiliated with the FCC discuss challenging the Order with an FCC licensee? If so, who and what was discussed?
2. Did any individual employed by or otherwise affiliated with the FCC communicate with an FCC licensee regarding that licensee's potential or actual legal challenge of the Order? If so, who and what was discussed?
3. Did any individual employed by or otherwise affiliated with the FCC threaten or take adverse action against any FCC licensee that refused to challenge the Order in court? If so, who and what was discussed?

Please provide answers no later than **Friday, February 8<sup>th</sup>**. We appreciate your responsiveness to these questions.

Sincerely,



Dianne Feinstein  
United States Senator



Richard Blumenthal  
United States Senator



Federal Communications Commission  
Office of Legislative Affairs  
Washington, D.C. 20554

Office of the Director

March 1, 2019

The Honorable Dianne Feinstein  
United States Senate  
331 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Feinstein:

Thank you for your letter regarding the *Wireless Infrastructure Order*, which was released by the FCC on September 27, 2018 and summarized in the Federal Register on October 15, 2018.<sup>1</sup> The action taken by the FCC in the *Wireless Infrastructure Order* was informed by a wide range of stakeholders and represents a reasoned, well-balanced approach to wireless infrastructure deployment that will enable the United States to realize the benefits of 5G technology more expeditiously, thereby improving the lives of all American consumers.

While the Commission firmly believes the *Wireless Infrastructure Order* properly addresses a critical public policy need and is legally sound, section 402 of the Communications Act of 1934, as amended, allows parties alleging to be aggrieved by an FCC order to petition a federal appeals court to review an order issued by the FCC.<sup>2</sup> In instances in which petitions for review are filed in multiple courts of appeals and received by the FCC within ten days, 28 U.S.C. § 2112(a) stipulates that the Judicial Panel on Multidistrict Litigation conducts a random selection to determine the circuit court in which the petitions should be consolidated and heard. With respect to the *Wireless Infrastructure Order*, qualifying petitions for review were filed in the First, Second, Ninth, and Tenth Circuit Courts of Appeals, with the last being randomly selected as the circuit court to hear the consolidated petitions.<sup>3</sup> On motion, however, the consolidated petitions were subsequently transferred to the Ninth Circuit Court of Appeals.<sup>4</sup>

In your January 30, 2019 letter, you asked whether the FCC communicated with any licensee related to challenges to the *Wireless Infrastructure Order*. Chairman Pai has informed me that neither he nor his staff urged any FCC licensee to challenge the *Wireless Infrastructure Order*, nor did they make any threats, implied or otherwise, against any licensee regarding such challenges. The Office of General Counsel only had standard communications with litigants related to its role in collecting petitions for review for transmission to the Judicial Panel on

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<sup>1</sup> See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Declaratory Ruling and Third Report and Order, FCC 18-133 (Sept. 27, 2018).

<sup>2</sup> See 47 U.S.C. § 402; see also 28 U.S.C. § 2342(1) and 28 U.S.C. § 2344.

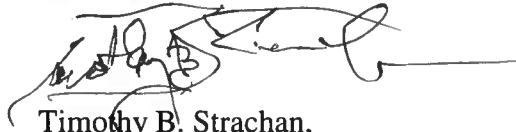
<sup>3</sup> See Consolidation Order, MCP No. 155 (J.P.M.L. Nov. 2, 2018).

<sup>4</sup> See Order, No. 18-9563 (10th Cir. Jan. 10, 2019).

Multidistrict Litigation. As you know, this is a multi-member agency, and Chairman Pai cannot speak on behalf of his colleagues.

The Commission appreciates your interest in this matter, and it looks forward to working with you and the Committee to make widespread deployment of next generation wireless technology a reality for American consumers. Please let me know if I can be of any further assistance.

Sincerely,

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Timothy B. Strachan,  
Director



Federal Communications Commission  
Office of Legislative Affairs  
Washington, D.C. 20554

Office of the Director

March 1, 2019

The Honorable Richard Blumenthal  
United States Senate  
706 Hart Senate Office Building  
Washington, D.C. 20510

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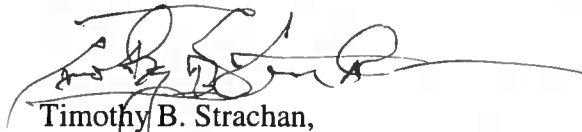
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Page 2—The Honorable Richard Blumenthal

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Timothy B. Strachan,  
Director