

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF THE NATIONAL LEAGUE OF CITIES, ALABAMA LEAGUE OF MUNICIPALITIES, ALASKA MUNICIPAL LEAGUE, LEAGUE OF ARIZONA CITIES AND TOWNS, ARKANSAS MUNICIPAL LEAGUE, LEAGUE OF CALIFORNIA CITIES, COLORADO MUNICIPAL LEAGUE, CONNECTICUT CONFERENCE OF MUNICIPALITIES, DELAWARE LEAGUE OF LOCAL GOVERNMENTS, FLORIDA LEAGUE OF CITIES, GEORGIA MUNICIPAL ASSOCIATION, ASSOCIATION OF IDAHO CITIES, ILLINOIS MUNICIPAL LEAGUE, INDIANA ASSOCIATION OF CITIES AND TOWNS, IOWA LEAGUE OF CITIES, LEAGUE OF KANSAS MUNICIPALITIES, KENTUCKY LEAGUE OF CITIES, INC., LOUISIANA MUNICIPAL ASSOCIATION, MAINE MUNICIPAL ASSOCIATION, MARYLAND MUNICIPAL LEAGUE, MASSACHUSETTS MUNICIPAL ASSOCIATION, MICHIGAN MUNICIPAL LEAGUE, LEAGUE OF MINNESOTA CITIES, MISSISSIPPI MUNICIPAL LEAGUE, MISSOURI MUNICIPAL LEAGUE, MONTANA LEAGUE OF CITIES AND TOWNS, LEAGUE OF NEBRASKA MUNICIPALITIES, NEVADA LEAGUE OF CITIES AND MUNICIPALITIES, NEW HAMPSHIRE MUNICIPAL ASSOCIATION, NEW JERSEY STATE LEAGUE OF MUNICIPALITIES, NEW MEXICO MUNICIPAL LEAGUE, NEW YORK STATE CONFERENCE OF MAYORS AND MUNICIPAL OFFICIALS, NORTH CAROLINA LEAGUE OF MUNICIPALITIES, NORTH DAKOTA LEAGUE OF CITIES, OHIO MUNICIPAL LEAGUE, OKLAHOMA MUNICIPAL LEAGUE, LEAGUE OF OREGON CITIES, THE PENNSYLVANIA MUNICIPAL LEAGUE, RHODE ISLAND LEAGUE OF CITIES AND TOWNS, MUNICIPAL ASSOCIATION OF SOUTH CAROLINA, SOUTH DAKOTA MUNICIPAL LEAGUE, TENNESSEE MUNICIPAL LEAGUE, TEXAS MUNICIPAL LEAGUE, UTAH LEAGUE OF CITIES AND TOWNS, VERMONT LEAGUE OF CITIES AND TOWNS, VIRGINIA MUNICIPAL LEAGUE, ASSOCIATION OF WASHINGTON CITIES, WEST VIRGINIA MUNICIPAL LEAGUE, LEAGUE OF WISCONSIN MUNICIPALITIES, AND WYOMING ASSOCIATION OF MUNICIPALITIES

April 7, 2017

These reply comments are respectfully submitted to the Federal Communications Commission in response to the Public Notice, released December 22, 2016, on behalf of the National League of Cities and the following state municipal leagues: the Alabama League of Municipalities, Alaska Municipal League, League of Arizona Cities and Towns, Arkansas Municipal League, League of California Cities, Colorado Municipal League, Connecticut Conference of Municipalities, Delaware League of Local Governments, Florida League of Cities, Georgia Municipal Association, Association of Idaho Cities, Illinois Municipal League, Indiana Association of Cities and Towns, Iowa League of Cities, League of Kansas Municipalities, Kentucky League of Cities, Inc., Louisiana Municipal Association, Maine Municipal Association, Maryland Municipal League, Massachusetts Municipal Association, Michigan Municipal League, League of Minnesota Cities, Mississippi Municipal League, Missouri Municipal League, Montana League of Cities and Towns, League of Nebraska Municipalities, Nevada League of Cities and Municipalities, New Hampshire Municipal Association, New Jersey State League of Municipalities, New Mexico Municipal League, New York State Conference of Mayors and Municipal Officials, North Carolina League of Municipalities, North Dakota League of cities, Ohio Municipal League, Oklahoma Municipal League, League of Oregon Cities, The Pennsylvania Municipal League, Rhode Island League of Cities and Towns, Municipal Association of South Carolina, South Dakota Municipal League, Tennessee Municipal League, Texas Municipal League, Utah League of Cities and Towns, Vermont League of Cities and Towns, Virginia Municipal League, Association of Washington Cities, West Virginia Municipal League, League of Wisconsin Municipalities, and Wyoming Association of Municipalities.

Together, the National League of Cities and state municipal leagues represent nearly all municipalities in the United States, home to the vast majority of Americans. Municipal leagues advocate on behalf of local governments on state and federal matters to help city leaders build better communities.

We reiterate our firm opposition to overreach by the Commission in further restricting local authority over their own rights-of-way. As Chairman Ajit Pai stated on March 29, a “light touch” regulatory approach by the Commission “embraces regulatory humility, knowing that this marketplace is dynamic and that preemptive regulation may have serious unintended consequences.”¹ We agree, and urge the Commission to take heed of the large number of comments submitted to the docket, not just from industry, but also from cities, their representatives, state utility and transportation agencies, and concerned citizens. Regulation further preempting the local decision making and planning authority of communities will impact all Americans.

Local governments have long been trusted with the protection of finite public resources, such as the public rights of way, for good reason. As noted by the League of Minnesota Cities in its comments, “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.”² A “light touch” in the current landscape would not involve “imposing a new federal regulatory overlay [that] not only would create confusion and administrative burden upon communities (many with limited

¹ See, Remarks of FCC Chairman Ajit Pai at the U.S. – India Business Council on March 29, 2017.

² See, Comments of the League of Minnesota Municipalities (filed March 8, 2017), at 2.

resources and personnel); but also, would create unnecessary costs and would undermine important local policies.”³

Commenters also note the many comments submitted that highlight the diverse needs and priorities of communities around the country. Numerous commenters discussed the significant community investments already made to underground utilities in the rights-of-way or develop planned cityscapes with decorative street furniture, as contrasted with the numerous other more rural communities that have wooden poles and less crowded rights-of-way.”⁴ No one-size-fits-all edict can possibly address the needs of all of these communities adequately.

Further preemption of local authority in this area is not the solution to innovation, broadband access, or economic development. The existing regulatory incentives for wireless providers to “game” the federal shot clock requirements and cry foul when cities struggle to process incomplete or incorrectly filed applications makes the siting process worse, not better. For example, “A pattern has emerged since the Commission adopted the *2014 Infrastructure Order* in which applicants flaunt local processes and submit woefully inadequate ‘applications’ for multiple sites, often to an incorrect department within the municipality. Ambiguous letters from applicants with multiple preliminary site plans often arrive on Friday afternoons or before a long holiday weekend. These applicant behaviors appear to be geared toward gaming the shot clock – submitting just enough to start the clock and then lying in wait for time to expire as the local officials attempt to make heads or tails from a cover letter with multiple site plans that arrived in the mail.”⁵

³ See, Comments of the League of Minnesota Municipalities (filed March 8, 2017), at 4.

⁴ See, Comments of the League of Minnesota Municipalities (filed March 8, 2017), at 11.

⁵ See, Comments of the League of Arizona Cities and Towns, *et al.*, (filed March 8, 2017), at 17.

These are not the actions of an industry with the best interests of cities and their residents in mind. We note the many comments that profiled an industry acting in bad faith – from bombardments of “cookie-cutter” applications without further dialog in Pennsylvania,⁶ to aggressive and deceptive misrepresentations of other jurisdictions’ actions or even the identity of the applicant in California,⁷ to providers failing to follow up on municipal requests for additional information in Colorado.⁸ As noted by the League of Arizona Cities and Towns, *et. al*, “significant delays in small cell deployment have arisen from applicant misrepresentations and misconduct. Even wireless industry members publicly acknowledge that aggressive and deceptive tactics by applicants, in particular those employed by Mobilitie, are among the primary impediments to deployment.”⁹

Commenters also wish to spotlight the many municipalities and municipal organizations already working to smooth the deployment of wireless infrastructure. For example, as early as 2007, the Illinois Municipal League drafted a model ordinance based in best practices to address public utilities siting, and updated it in 2016 to address small cell antennas.¹⁰ The Georgia Municipal Association has worked collaboratively with Mobilitie to develop a model licensing agreement for use in the cities and counties of that state.¹¹ A consortium of Washington jurisdictions are working together to develop model code updates to facilitate small cell deployment.¹² Many other local governments, including several in Colorado, are actively working to develop master agreements with providers.¹³ And several large cities in Texas,

⁶ *See*, Comments of the Pennsylvania Municipal League, *et. al.*, (filed March 8, 2017), at 8.

⁷ *See*, Comments of the League of Arizona Cities and Towns, *et al.*, (filed March 8, 2017), at 2.

⁸ *See*, Comments of the Colorado Communications and Utility Alliance, *et. al.*, (filed March 8, 2017), at 8.

⁹ *See*, Comments of the League of Arizona Cities and Towns, *et al.*, (filed March 8, 2017), at 2.

¹⁰ *See*, Comments of the Illinois League of Municipalities (filed March 6, 2017), at 2.

¹¹ *See*, Comments of the Georgia Municipal Association (filed February 28, 2017), at 1.

¹² *See*, Comments of the Colorado Communications and Utility Alliance, *et. al.*, (filed March 8, 2017), at 7

¹³ *See*, Comments of the City of Bellevue, *et. al.* (filed March 6, 2017), at 13.

including Dallas, Houston, and San Antonio, have issued hundreds of permits for small cell deployment under standard temporary license agreements.¹⁴

Ultimately, cities are capable of planning for the future and working with infrastructure providers and investors – without federal overreach or intrusion. The Commission has the capacity to further this collaboration through its Intergovernmental Advisory Committee and Broadband Deployment Advisory Committee. We urge the Commission to support these bodies and these collaborative processes, and not muddy the waters further with additional regulation at this time.

Respectfully Submitted,

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¹⁴ See, Comments of the Texas Municipal League (filed March 8, 2017), at 18-19.

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