



April 26, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Presentation, *Accelerating Broadband Deployment*, GN Docket No. 17-83

Dear Ms. Dortch,

CTIA fully supports Chairman Pai's creation of the Broadband Deployment Advisory Committee ("BDAC") and its mission "to make recommendations to the [Federal Communications Commission ("Commission")] on how to accelerate the deployment of high-speed Internet access, or 'broadband,' by reducing and/or removing regulatory barriers to infrastructure investment."¹ CTIA appreciates the opportunity to serve on the BDAC's Model Code for States Working Group ("Working Group").

The Working Group's cooperative efforts and hard work have yielded the draft State Model Code for Accelerating Broadband Infrastructure Deployment and Investment ("State Model Code"). The State Model Code delivers on many of the Commission's goals for BDAC, particularly through its adoption of Article 9, which addresses siting issues for communications service providers' infrastructure. CTIA applauds these efforts and supports most of the Model Code's provisions. In particular, CTIA is pleased that the State Model Code:

- Maintains local control over siting for communications infrastructure while ensuring that wireless providers have reasonable access to public rights-of-way and publicly owned infrastructure that can be put to productive use to expand and improve wireless service across the country;

¹ FCC News Release, FCC Chairman Ajit Pai Announces Broadband Deployment Advisory Committee Members, Working Groups and Leadership (Apr. 6, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-344285A1.pdf.



- Adopts reasonable deadlines, deemed-granted remedies, and other local control procedures to ensure timely deployment of new and enhanced wireless service;
- Recognizes the unique nature of small wireless facilities and deems them to be a permitted use in public rights-of-way;
- Authorizes localities to charge fees on a non-discriminatory basis to recover their actual, direct, and reasonable costs of overseeing deployment; and
- Enables providers to consolidate requests for similar facilities, which minimizes administrative impacts while improving efficiency.

These achievements were made possible by the significant efforts by members of the Working Group to discuss and incorporate solutions to many interrelated issues. The resulting draft represents the diverse views of members on many sides of the issues. CTIA appreciates the Working Group's efforts to find consensus where possible, while recognizing that not every provision of the State Model Code reflects CTIA's views. As with any such document, there are individual provisions with which individual members likely disagree. For example, CTIA is unable to support the State Model Code in its entirety because some of its provisions conflict with the BDAC's mission to recommend ways to lower barriers to deployment. CTIA thus votes to approve the State Model Code in part, to dissent in part, and to abstain in part, for the reasons discussed below.

Broadband Should Be Defined to Recognize the Value of Mobile Wireless Deployment. We are pleased that the preamble to the State Model Code was amended to explicitly recognize the value of mobile broadband to consumers. The State Model Code, however, adopts a landline-centric definition of "broadband" that excludes many wireless services, a determination that is in keeping neither with the Commission's repeated findings that wireless plays an integral part in delivering broadband nor its two proceedings to explore ways to reduce regulatory barriers that stand in the way of mobile broadband deployment.² The public increasingly relies on wireless for its broadband connectivity, with Commission data showing that there were roughly 106 million fixed connections as of December 2016 compared to more than 270 million wireless connections as of December 2016. Yet Article 2(13) of the State Model Code defines broadband in unserved and rural areas by imposing speed metrics that effectively exclude many of today's highly valued wireless offerings. That wireline-centric definition will in fact impede deployment to areas that lack broadband – flatly at odds with consumer demands and

² *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies*, Public Notice, 31 FCC Rcd 13360 (WTB 2016); *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 3330 (2017).



with Commission policy, which includes support mechanisms and performance criteria targeted to the unique benefits and characteristics of mobile broadband.

The Narrow Definition of “Utility Pole” Will Impede Broadband Deployment. One of the most significant provisions of the Model State Code concerns the types of poles to which communications service providers may attach communications facilities. Indeed, each of the provisions drafted by the Working Group’s three original subcommittees (Standardization, Rural, and Franchising) included a definition that broadly defined “utility pole” to cover many types of structures, including poles capable of holding electric or communications lines, lighting, and traffic control signs and signals. Regrettably, the definition was substantially narrowed to exclude all poles other than those used to hold electric or communications lines. This narrowed definition ignores that many communities are harnessing light poles, traffic poles, and other structures to support broadband facilities. A narrowed definition is not necessary, as the State Model Code contains other provisions that ensure that such poles can safely hold such facilities. Moreover, in areas where utility lines have been undergrounded, poles used for lighting and traffic control are the only available poles along rights-of-way, making access to them essential to robust broadband service. Particularly as the size of wireless facilities continues to shrink, the State Model Code misses a critical opportunity here: the State Model Code should have defined “utility pole” to promote – not hinder – broadband service.

Establishment of New State Entities to Regulate Broadband Will Not Lower Barriers to Deployment. CTIA supports the concept of a state-level official or public-private council to promote broadband deployment – a role that is similar to other economic development efforts that seek to encourage investment to benefit a state’s economy. Article 13, however, goes much farther by empowering a new manager with extensive regulatory, enforcement, and dispute resolution powers. Creating a new layer of regulatory bureaucracy does not align with the BDAC’s charter to recommend ways to lower regulatory barriers. Such an agency would need to be funded, and is likely to increase costs and delays, not reduce them. Moreover, the creation of a new state-level regulator is inconsistent with the Commission’s own bipartisan precedent on avoiding state broadband regulation.³

³ See, e.g., *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, ¶ 433 (2015); *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, ¶ 194 et seq. (2018) (“*Restoring Internet Freedom Order*”); *id.* ¶ 199.



Article 11’s State Universal Service Provisions Impermissibly Seek to Assess Contributions on Broadband Services and Improperly Discriminate Among Different Types of Providers. CTIA agrees that deploying broadband to unserved and rural areas should be a national priority and appreciates states’ keen interest in achieving this goal. However, CTIA believes that making modern communications networks universally available is best achieved through a clear, consistent, properly administered federal regulatory framework. In addition, the specific universal service mechanisms proposed in Article 11 are materially flawed.

Particularly troubling, the proposed Article 11 impermissibly seeks to apply state universal service contributions on providers of broadband services. In particular, Article 11 would require every provider of communications services in the State – including providers of broadband services – to contribute to a newly-established Rural Broadband Deployment Assistance Fund. Requiring state universal service contributions from broadband providers, however, directly conflicts with the Communications Act, the Commission’s implementing regulations, and federal prohibitions on state regulation of interstate commerce. The Commission has repeatedly stated that states may not impose such assessments on broadband providers.⁴

In addition, as with the broader State Model Code, Article 11 defines broadband in ways that do not recognize the value of mobile wireless deployments. It creates funding mechanisms that effectively preclude wireless providers from receiving grants from the state universal service fund regardless of whether they were required to contribute. Again, this approach is out of line with consumers’ preferences and with policymakers’ desire to see mobile broadband broadly deployed in rural areas.

Permitting Provisions Should Allow Communities to Adapt Their Policies Considering a Technology’s Scope and Use of Rights-of-Way. CTIA appreciates and supports the Working Group’s efforts to facilitate rapid and efficient deployment of broadband connectivity across the country, regardless of the technology by which such broadband is provided. Indeed, the provisions of Article 9 enable this effort by promoting cost-based and non-discriminatory fees, enforceable timelines for review, and reasonable access to public rights-of-way and publicly owned facilities. These provisions have been crafted broadly in the State Model Code to streamline the infrastructure siting process for all types of communications services, regardless of the type of technology used. While the Committee has

⁴ See, e.g., *Restoring Internet Freedom Order* at n.736 (“We note that we continue to preempt any state from imposing any new state universal service fund contributions on broadband Internet access service.”).



correctly focused on streamlining regulatory barriers for all type of communications facilities, CTIA expects that some states and communities, in considering their own infrastructure modernization efforts, may wish to take into account differences in technologies that affect their scope and scale, and thus their relative impact on the public rights-of-way, when applying the State Model Code, including the streamlined permitting provisions.

CTIA is pleased that the draft State Model Code reflects some important distinctions in the deployment of broadband facilities. For instance, Articles 3's asset registry provisions and Article 4's network access provisions apply to public, rather than private, infrastructure, a key distinction that recognizes the critical national security and proprietary concerns of making an inventory of private infrastructure assets publicly available. The State Model Code likewise declines to impose new and unnecessary regulatory burdens such as franchising requirements on providers that are not and should not be subject to such requirements given their limited scope of use of the rights-of-way, their obligation to incur the costs of federal authorizations, and the localized permitting requirements that continue to exist.

The Revised Approach to State Franchising Raises Questions. Article 10 correctly declines to mandate franchising requirements on providers and instead properly makes election of a state-wide franchise an option at the discretion of the communications provider. This approach is consistent with the provisions of the Communications Act, which exempts services provided by radio communications from Title VI regulation, and efforts to standardize infrastructure siting. Wireless carriers have deployed 4G LTE to more than 99 percent of the U.S. population without a franchise model, and there is no evidence that a franchise model leads to more widespread or robust deployment of broadband.

Because Article 10's proposed statewide franchising provisions were substantially re-drafted at the eleventh hour, a number of important questions remain unanswered about the scope of services that it applies to, the rights that it confers, and the costs and burdens associated with its provisions. For example, for providers of certain communications services, it is unclear what services will be encapsulated within the scope of the franchise obtained under Article 10 and whether communications providers continue to need to comply with the provisions of Article 9 in order to access the public rights-of-way. Thus, for example, to the extent a specific communications service is subject to a state-wide franchise under Article 10, it is unclear how localities would address the safety, aesthetic, and other safeguards set out in Article 9. Questions also remain regarding the authority that would act on applications for state-wide franchises and how fees would be determined.



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The State Model Code can serve as a constructive framework and building block for state efforts to promote broadband deployment, building on the momentum already achieved over the past few years in more than a dozen states that have taken steps to modernize their regulatory frameworks for infrastructure deployment. CTIA looks forward to continuing to work with the Commission, states, and localities to achieve the nationwide deployment of next-generation wireless services that are essential to the American public and the nation's economy.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Scott K. Bergmann

Scott K. Bergmann
Senior Vice President, Regulatory Affairs