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May 31, 2019

Chairman Ajit Pai
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Commissioner Geoffrey Starks
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: WT Docket No. 19-71; FCC 19-36
Proposed Expansion of Over-the-Air Reception Devices Rule

Honorable Chair Pai and Commissioners O'Rielly, Carr, Rosenworcel and Starks:

The City of Costa Mesa ("City") strongly opposes the proposed expansion of Over-the-Air Reception Devices ("OTARD") Rule which proposes to effectively eliminate the requirement that OTARD be directed towards serving an on-premises customer. The proposed rule authorizes the construction of hub and relay antennas and removes existing restrictions to hub and relay antennas.

In 1996, Congress passed the Over-the-Air Reception Devises Rule which prohibits laws, regulations, or restrictions imposed by State or local governments or private entities that impair the ability of antenna users to install, maintenance, or use over-the-air reception devices on their owned property. The OTARD Rule prohibits most restrictions that (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal. In 2000 and 2004, the OTARD Rule was amended to cover customer-end antennas that receive and transmit fixed wireless signals and to protect equipment capable of processing network functionality. Despite these additions, the OTARD Rule required that the installed equipment had to primarily serve a user at the premises.

As proposed, the OTARD Rule would likely allow cellular network providers to install antennas, including 5G equipment, on private property without notifying a local agency or being subject to local community control, provided they obtain consent of the property owner or resident and meet the size limitations. This would effectively eliminate the requirement that equipment be directed towards serving an on-premises customer.

The City questions whether the FCC has the legal authority to use OTARD rules to bypass a city's zoning regulations for hub devices over which Congress reserved local zoning authority. As a result, it requests the following of the FCC:

- Confirm that an OTARD overhaul would require service providers and wireless-infrastructure installers to file a permit application with the city to confirm the small cell installs meet local public safety, historic preservation and radiofrequency emissions requirements.
- Clarify the applicable size requirements. Absent clarification, hub sites could mean multiple OTARDs are installed at one location. Otherwise, there could be substantial unforeseen impacts as a result of this proposed rule.
- A revised OTARD rule should not automatically stay local enforcement upon a provider's application. At a minimum, the FCC should establish a time frame in which the commission must act upon a complaint.

Sincerely,

Kathya M. Firlik
Deputy City Attorney
For the City of Costa Mesa