

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Updating the Commission's Rules for Over-the Air)	WT Docket No. 19-71
Reception Devices)	
)	
)	

COMMENTS OF THE LEAGUE OF MINNESOTA CITIES

I. Introduction

The League of Minnesota Cities¹ (“LMC”) appreciates the opportunity to file comments on the Notice of Proposed Rulemaking (“NPRM”) in the above-referenced docket. LMC strongly opposes the proposed ruled amendments that would allow wireless providers to install certain over-the-air reception devices (“OTARD”) that transmit wireless signals for off premise use, without concern for local regulations. It is the view of LMC that if the rules are adopted they would effectively preempt local regulations of unwanted structures for the benefit of the wireless industry. In addition, the amendments in the NPRM fail to consider the effect installing multiple antennas on a single structure will have on the surrounding community. Finally, the amendments fail to balance the needs of local governments with those of the wireless industry. For these reasons, LMC strongly opposes the FCC’s NPRM which would limit a city’s ability to regulate OTARD used for commercial purposes beyond the structure to which they are attached.

II. The Commission’s Notice of Proposed Rule Making Preempts Local Control of Zoning.

¹ LMC is a statewide cooperative association representing 833 cities, 11 townships, 61 special districts and one joint power entity. Only 20 cities in Minnesota do not belong to LMC. The LMC was established in 1913 within the school of public affairs at the University of Minnesota. It became an independent association representing and serving cities in 1974. A board of directors, elected by the LMC membership, govern LMC.

In Minnesota, zoning allows a city to control the development of land within the community. Zoning regulates both the type of structures built and the uses to which the land is put.² Cities use zoning to guide private development and to ensure land gets used in a way that promotes both the best use of the land and the prosperity, health, and welfare of the city's residents. Zoning regulations also limit the types and location of structures in order to meet a city's land use goals. The regulations apply equally within each designated zoning district but may vary from district to district.³ The proposed regulations in the NPRM would limit the ability of cities to use their zoning authority to regulate OTARD used for commercial purposes in areas where such a use is not appropriate and conflicts with the local vision of a community.

In Minnesota, when cities adopt zoning regulations, they typically begin with adopting a comprehensive plan. Minnesota statutes grant all cities authority to adopt a formal comprehensive plan for their community that establishes a blueprint for the city's long-range (usually between five and 15 years) social, economic, and physical development.⁴ The comprehensive planning process helps a city develop a plan for creating and maintaining a desirable environment, and a safe and healthy community. Adopting a comprehensive plan is typically the result of many months, if not years, of study and discussion to determine the best interests of a city.

Once a city adopts a comprehensive plan, it needs a means of attaining the development goals stated in the plan. Zoning provides a means for implementing a comprehensive plan. Many cities in Minnesota have adopted zoning regulations that limit the installation of antennas used to transmit signals off site. In these instances, cities have determined that the installation of such antennas, which would be used for a commercial purpose, are not appropriate in certain areas or on certain buildings. The rules stated in the NPRM would deny cities the ability to limit OTARD in areas that

² See Minn. Stat. §§ 462.351 and 462.357.

³ Minn. Stat. § 462.357, subd. 1.

⁴ Minn. Stat. §§ 462.352, 462.353, 462.355.

do not fit the vision of that community. If adopted, the Commission will take away local control of a city's land use plan and substitute the Commission's judgement for the local community. The Commission should respect the land use decisions of local officials and allow them to determine the appropriate location of commercial transmitting OTARD.

Cities should remain responsible for regulating land at the local level. If there is a need for a commercial transmitting OTARD in an area or on particular structures, an applicant can approach the city and explain the need for the OTARD. A city council can then weigh the need of an OTARD with the needs of the surrounding community and the vision of the city. If the city agrees that there is a need for such devices, it can create regulations that properly balance these interests. If the rules in the NPRM are adopted, however, commercial OTARD could be installed without any consideration of the interests of the local community.

III. If Adopted, the Notice of Proposed Rulemaking Would Negatively Change the Established Character of City Neighborhoods.

As noted above, many cities in Minnesota adopt a comprehensive plan and zoning regulations to meet the overall vision of a city. City residents expect an established character within their city, particularly in residential neighborhoods. The rules within the NPRM would result in neighborhoods with rooftops littered with an unlimited amount of OTARD, changing the character of many neighborhoods.

Current regulations prevent a city from limiting OTARD that provide services on the property of which they are located. In allowing OTARD to be used for on site services, the current rules essentially limit the number of OTARD that may be placed on any given structure. It is rare that a property owner would need more than two services on a particular site that would require an OTARD. As a result, the number of OTARD that would be installed on a structure is limited.

If the rules in the NPRM are adopted, however, property owners would be allowed to install OTARD for services they do not use. A homeowner, for example, could rent space on a rooftop to multiple carriers providing small cell wireless services. The result would be blocks of residential areas with multiple OTARD on every rooftop. A homeowner could have OTARD for Sprint, Verizon, AT&T, and T-Mobile, in addition to OTARD for satellite television, and another for internet use. The rules in the NPRM would allow the installation of these multiple antennas even if the homeowner is not using any of the services provided by the OTARD on the structure. The installation of these antennas, even if they are less than one meter in diameter, on multiple homes would dramatically change the aesthetic of a neighborhood and be in contrast with their established character.

If the Commission is insistent on preventing local communities from making their own decisions on how to regulate transmitting OTARD in their area, the Commission should consider limiting the number of OTARD that are provided protection under its rules. If the Commission were to provide protection of up to two OTARD on a given structure, for example, cities would then retain the ability to protect the character of their local communities. A limit would protect against rooftops full of antennas and transmitters which would alter the character of a neighborhood or other area of a city.

IV. Changes in Restrictions to OTARD on Structures Should be Negotiated Between Wireless Providers and Local Governments.

Minnesota Cities understand the importance of increasing access to fast and reliable wireless services. Increasing such access should be achieved by balancing the needs of local communities and the needs of service providers. The proposed rules in the OTARD, fail to recognize the needs of local communities in favor of the business needs of the wireless providers. If wireless providers want to use private structures to provide the commercial small

cell wireless services, they should discuss the issue with local communities and find a solution that works for local communities and the service providers.

In Minnesota, discussion between the wireless providers and local government entities resulted in the 2017 Telecommunications Right of Way User amendments. The amendments established a permitting process for small wireless facilities on municipal structures.⁵ The new law recognized the need for wireless antennas to be placed on city owned structures within a city's right of way. The wireless providers and Minnesota cities were able to negotiate the new law and balance the needs of both parties. A similar process should be used for placing OTARD on structures without restrictions. This process should take place at the local level to ensure the needs of local communities are met.

V. Conclusion

On behalf of our members, LMC strongly disagrees with the Commission's NPRM relating to OTARD. The proposed rules would limit local control of development, change the character of neighborhoods, and do not allow for negotiation between cities and wireless providers. As a result, LMC requests that the Commission refrain from adopting the proposed rules and allow cities and industry to negotiate appropriate regulations. In the alternative, LMC asks that any adopted rules limit the number of OTARD protected under the rules to two devices per structure in order to protect the character of local communities.

Respectfully submitted,

Kyle R. Hartnett, Attorney
League of Minnesota Cities
145 University Avenue West
St. Paul, MN 55103

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⁵ See Minn. Stat. §§ 237.162 and 237.163.

