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June 9, 2017

The Honorable Ajit Pai, Chairman
c/o Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

**Re: Notice of Proposed Rulemaking and Notice of Inquiry — WT Docket No. 17-79:
Wireless Infrastructure NPRM and NOI**

Dear Chairman Pai,

The East Bay Municipal Utility District ("District") submits this formal comment on the Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79. Specifically, paragraph 96 of the Notice invites commentary on "the extent to which these statutory provisions [regulating local control over wireless service installations] apply to States and localities acting in a proprietary versus regulatory capacity, and on what constitutes a proprietary capacity." It asks if the FCC should "affirm or modify" the 2014 Infrastructure Order that distinguished local government entities acting in their regulatory vs. proprietary landowner capacities.

The District would be strongly opposed to any regulatory change or interpretation that would extend FCC regulations in a manner that limited the ability of local government entities to act in their proprietary capacity as land owners and managers. The District requests reaffirmation of the 2014 Infrastructure Order's characterization of the distinction between State and local governments' regulatory roles versus their proprietary roles as "owners" of public resources.

The District is a California municipal utility district providing water and wastewater services to 1.3 million customers in the San Francisco east bay area. It owns and manages approximately 59,000 acres of watershed land in the East Bay and the Sierra foothills. Portions of this land are open to the public for recreation, and all of it is managed and maintained in line with the District's stated mission "to manage the natural resources with which the District is entrusted; to provide reliable, high quality water ... for the people of the East Bay; and to preserve and protect the environment for future generations."

The District does lease several small tower sites at reasonable market value to wireless service providers and wireless infrastructure owners. Though the District requires wireless service providers and facility owners to comply with all local permitting requirements, the District does not regulate the permitting for those wireless facilities – such permitting is left to local cities and

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counties. Importantly, in determining the locations in which to allow leases for wireless infrastructure sites, the District carefully considers the potential impact of such sites on our watershed environment and water quality. It also leases such sites at market rates in order to maximize the financial returns generated by District lands to the benefit of District ratepayers.

Any application of FCC regulations to local government entities in their capacity as landlords would be untenable. This is particularly true if, as discussed in paragraph 95 of the NOI, any “decision” by a local entity is given the same legal weight under FCC regulations as a “regulation” and therefore preempted. Such preemption could limit the District’s ability to control the disposition of its watershed lands in furtherance of watershed protection. To the extent any FCC regulation preempted a District lease so as to limit the “fees” or other income the District could derive from allowing the use of its land under the lease, such a regulation would effectively force the District to subsidize the business of well-capitalized telecommunications companies with District ratepayer funds.

Federal preemption of the decisions of local government entities in their capacities as landlords would likely be an unconstitutional taking. The District would oppose any such preemption, and it requests reaffirmation of the 2014 Infrastructure Order.

The District appreciates the opportunity to comment on this matter. We are available to answer any questions you may have about the District’s leases with wireless service providers or the use and stewardship of our watershed land.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Derek McDonald', with a long, sweeping flourish extending to the right.

Derek McDonald
Attorney

DM:vsh

cc: Richard G. Sykes, Director of Water & Natural Resources
Matt Elawady, Manager of Real Estate Services