

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

In the Matter of)
Accelerating Wireline Broadband Deployment by) WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)

COMMENTS OF NEXT CENTURY CITIES

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Next Century Cities (“NCC”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking and Notice of Inquiry in the above captioned proceeding (the “NPRM”).¹

Introduction

Next Century Cities is a 501(c)(3) membership organization that supports communities and their elected leaders, including mayors and other municipal officials, as they seek to ensure that all residents have access to fast, affordable, and reliable broadband internet service. NCC has more than 170 member communities, which regulate the installation and maintenance of private infrastructure in their public rights-of-way. Some municipalities own and manage poles and other municipal infrastructure in the rights-of-way, others own institutional networks or have completed partial builds, and more than 20 NCC communities are successfully operating municipal broadband networks. Some of these networks have been operating for as long as 20 years. Thus, NCC brings to this proceeding unique knowledge of the variety of approaches to building out broadband networks

¹ See http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0330/DOC-344161A1.pdf

in the United States, and why it is important that communities are able to seek the broadband solutions that best fit their unique needs.

NCC's member communities share the Commission's goal of "better enable[ing] broadband providers to build, maintain, and upgrade their networks, which will lead to more affordable and available internet access and other broadband services for consumers and businesses alike." To that end, the cities and towns that are members of NCC have adopted a variety of approaches for managing access to their own infrastructure and regulating private infrastructure in their public rights-of-way.

SUMMARY

NCC's member communities are keenly aware that "[r]eforms which reduce pole attachment costs and speed access to utility poles would remove significant barriers to broadband infrastructure deployment and in turn increase broadband availability and competition in the provision of high-speed services." *Id.*, at ¶ 3. For this reason, NCC supports reforming the Commission's rules to make it easier, faster, and less costly to access the poles, ducts, conduits, and rights-of-way necessary for building out next-generation networks. The most important step the Commission could take to advance this goal is the adoption of a One Touch Make Ready (OTMR) policy, which would apply to all those entities subject to the Commission's existing pole attachment regulations.

While the Commission may want to consider other steps to improve local permitting processes and reduce the cost of infrastructure buildout, it should proceed cautiously. In particular, it should not issue regulations automatically preempting local permitting processes, or imposing limitations on the permitting fees imposed on attachers.

In considering any pole attachment process reform, the Commission must consider the unique needs of localities for a level of control over their public rights-of-way. It must take into account the importance of local public safety and aesthetic concerns, and not just the potentially beneficial effects for network operators of the installation of new and emerging technologies. The Commission must ensure that mayors and local elected leaders have a seat at the negotiating table when discussions about deploying technologies take place in order to facilitate public-private partnerships that will benefit both sectors.

I. The Commission Should Adopt a Flexible OTMR Policy

The NPRM specifically seeks comment on “the potential benefits and drawbacks of a pole attachment regime patterned on a ‘one-touch, make-ready’ (OTMR) approach, which includes several . . . concepts . . . as part of a larger pole attachment framework.” NPRM at ¶ 21.

NCC agrees with the Commission that such “OTMR policies ‘seek to alleviate “a significant source of costs and delay in building broadband networks” by “lower[ing] the cost of the make-ready process and speed[ing] it up.”’ Id., quoting Connecting America: The National Broadband Plan at 111, Recommendation 6.2 (2010), <https://www.fcc.gov/general/national-broadband-plan>. As the Commission correctly recognized in both the NPRM and the National Broadband Plan, the make-ready process is a source of substantial delay in the rollout of competitive broadband networks. In most cities, before a new attacher can attach its wire or fiber optic cable to a pole, each existing attacher must be contacted to assess the effect of the new attachment on its existing equipment and, if necessary, move its wires. This process can take months for each attaching entity to complete. As a result, the utility pole and the surrounding area become a recurring construction

site, all for the deployment of a single new wire. This is inconvenient for communities and their residents, who may experience noise, traffic back ups, and temporary service interruptions. Just as importantly, the make-ready process is time and capital intensive for new providers, who must bear the cost of all work. Pole owners and existing attachers may have an incentive to prolong make-ready work in order to delay new, unwanted competition. This delay and the accompanying increased costs create a strong barrier to entry for new entrants and greatly inhibit the incentive to deploy new networks.

OTMR is a commonsense policy that would allow a single contractor (or a select group of contractors) agreed upon in advance by existing pole owners and pole attachers to conduct all new make-ready work at one time. NCC published a policy agenda² and fact sheet on OTMR earlier this year in which it noted just some of the many benefits of this type of policy,³ including:

- allowing construction to be completed faster and more safely than having multiple contractors at each pole;⁴
- allowing residents access to new services more quickly;
- decreasing the inconveniences of make-ready work, including noise, traffic disruptions, and service outages;
- decreasing the time and capital cost of construction, which lowers barriers to entry, may incent new investment in a community, and can in turn lead to increased competition and higher speeds;⁵ and
- increasing competition, which generally decreases the cost of service and leads to improvements in customer service from incumbents, benefiting companies and residents in the area.⁶

² <http://nextcenturycities.org/wp-content/uploads/2017NCCPolicyAgenda.pdf>

³ See <http://nextcenturycities.org/2017/02/01/one-touch-make-ready-fact-sheet/>

⁴ See also http://www.ct.gov/broadband/lib/broadband/ctgig_project/attachment_c_ftth_council_makereadywhitepaper25october2015.pdf

⁵ See also http://www.analysisgroup.com/uploadedfiles/content/insights/publishing/broadband_competition_report_november_2016.pdf

⁶ Id.

Above all else, OTMR facilitates deployment and reduces barriers to access, which leads to increased broadband deployment, decreased cost for consumers, and increased service speeds.

Some of NCC's members that own poles are examining implementation of OTMR policies unilaterally, but in most cases NCC's member cities do not own the utility poles in their rights-of-way. Nonetheless, they are aware of and frustrated by the fact that some existing attachers or pole owners have delayed broadband competition, or even service improvements, by making it difficult for new entrants to attach to utility poles.

There is no question that the Commission has jurisdiction over pole attachments, including potential OTMR policies. It already has issued rules regarding the apportionment of make-ready costs between utilities and attachers,⁷ and rules requiring all local exchange carriers (LECs) to “afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications service”⁸

NCC urges the Commission to promulgate OTMR rules, but to ensure that they are a framework and not a straightjacket. Any OTMR rules should apply to all entities governed by the Commission's pole attachment rules, but out of a respect for local authority, they should not apply to entities in those states that have adopted reverse preemption pursuant to Section 224 (c) of the Communications Act, 47 U.S. C. § 224(c). The OTMR rules should not impose arbitrary or totally inflexible timelines, but should leave cities a large degree of flexibility to operate within the timelines and requirements that best fit the needs of their community.

⁷ 47 U.S.C. § 224(h), (i).

⁸ 47 U.S.C. § 251(b)(4).

There are a number of reasons that the Commission should not select a specific OTMR model at this time. At this point, there are only three models in “production mode” – Louisville, Nashville, and San Antonio. As an example, the Louisville OTMR ordinance, which was developed with input from a variety of local and other stakeholders, includes important features such as:

- shortens the timeline for the post-make-ready field inspection for routine make-ready work from 60 days to 14 days;
- requires existing attachers to notify the new attacher of any problems (and the election of how to fix those problems) within 7 days after the field inspection; and
- requires new attachers to correct any problems within 30 days of the notice.⁹

Louisville’s ordinance reflects the judgment of the elected city officials as to how best to balance the concerns of the public, new attachers, existing attachers and utility owners *in Louisville*. It is not, however, a panacea for all cities. Nashville’s approach reflects the same type of judgment by the elected officials of that city, but has resulted in a different process and different timelines.

Whatever form and force a Commission OTMR rule would have – whether a minimum framework or a guideline – it must leave room for modification by the individual cities. Within reason, they must be able to lengthen or shorten the timelines, or modify requirements such as the steps in the process or the minimum number of qualified contractors. Obviously, the Commission’s OTMR rules should not preempt local OTMR policies that are more favorable to new attachers (and thus broadband competition) than whatever rule the Commission promulgates.

II. There is No Need for New Regulations Preempting Local Permitting Processes

In the Notice of Inquiry portion of the NPRM, the Commission asked for comment “on

⁹ See Louisville Ordinance No. O-427-15, § 116.72(D)(2).

whether we should enact rules, consistent with our authority under Section 253 of the Act, to promote the deployment of broadband infrastructure by preempting state and local laws that inhibit broadband deployment.” NPRM at ¶ 109. It also sought comment on whether it has jurisdiction under Section 253 to enact rules that prospectively prohibit the enforcement of local laws that would otherwise prevent or hinder the provision of telecommunications service. *Id.*, at ¶ 118. With regard to specific areas of concern, it sought comment on rights-of-way negotiation problems (*id.*, at ¶ 112), permitting approval process delays (*id.*) and excessive permitting fees and other excessive costs (*id.*, ¶ 113).

Pole attachments are a nuanced issue, and one that is vitally important to mayors and elected city leaders who are on the civic front lines daily, and who must ensure that the safety of their residents and the character of their community are protected. Even if the Commission had the jurisdiction to preempt some or all local permitting processes, it should be very hesitant to do so. In most cases, local permitting processes have a negligible effect on broadband investment decisions, including where and whether or not to deploy small cells. As a recent report from CTC Technology & Energy notes:¹⁰

In our experience, the permitting process and local government coordination can help and facilitate deployment. When it is done effectively, it protects the integrity of existing infrastructure and public safety, and provides certainty and predictability to wireless carriers and wireless infrastructure companies....The optimal way to facilitate and smooth the wireless siting process is for wireless companies to work with localities by filing complete, accurate, timely siting applications—and by collaborating with the localities in an efficient, mutually-beneficial process of pre-planning, specification development, and reasonable staging of the deployment. In city after city and county after county, we have found that localities are highly

¹⁰<http://www.ctcnet.us/blog/how-the-local-oversight-process-addresses-the-concerns-of-the-public-sector-in-small-cell-siting/>

motivated to facilitate and incentivize broadband build-out, and are willing to use permitting and other processes to enable and smooth the deployment process as much as possible.

The experiences of Google Fiber and Ting Fiber demonstrate that municipalities are very willing to modernize and streamline their permitting processes in order to facilitate broadband infrastructure rollout. See, e.g., the agreement between Kansas City and Google Fiber at http://www.tellusventure.com/downloads/bank/google_fiber_project_development_agreement_2014.pdf. The biggest stumbling block for those companies has been the pole make-ready process and incumbent intransigency, not city regulations. See, e.g. <http://www.dsreports.com/shownews/Google-Fiber-Comcast-Bicker-Over-Utility-Poles-in-Nashville-137534>.

A broad preemption of local regulations is a bad solution in search of a problem. Cities are uniquely incented to expedite approval processes because they know firsthand how important ubiquitous high-speed broadband service is for education, economic development and their future prosperity. Additionally, if specific cities' regulations present barriers justifying preemption, the Section 253(d) preemption process provides the appropriate mechanism for redress.

NCC's member communities are working diligently to ensure that their residents have the best possible broadband service, and a crucial factor in that rollout is the growing demand for access to infrastructure in municipal rights-of-way, including pole and other fixture access for small cell deployments. Left unimpeded – and that includes freedom from restrictive state anti-municipal broadband laws – cities are experimenting with a variety of policies to determine which will best facilitate broadband deployment and improve their capacity to manage the coming deluge of pole

attachment requests that next generation technologies are creating.

But not all those cities are able to proceed at the same speed or adopt the same processes. NCC works daily with representatives of its 170+ member communities to ensure that everyone in their communities has access to fast, affordable, and reliable broadband service. All of those representatives are locally elected officials, responsible to their constituents. NCC sees firsthand the unique nature and problems of each of its member cities, and knows that it is of paramount importance that their individual attributes, problems and capabilities are taken into account.

This is particularly true when it comes to the costs and processes for deploying broadband and regulating infrastructure access, especially pole attachments. To assume that the costs and problems of permitting access to poles in historic Boston are comparable to those for poles in downtown Los Angeles or Islesboro Maine (population 566) is a tremendous mistake. The circumstances in each city are completely different. For example, the cost and time frame to review permits and the volume of expected pole attachment requests associated with a 5G rollout in a flat, densely populated urban area such as downtown Austin, Texas will be vastly different from those involved in a sprawling exurban area such as Lake Oswego, Oregon or one with hilly terrain in San Francisco or Seattle. Even within a particular city, there can be numerous valid reasons for a historic district or capitol district to have different infrastructure access requirements or processes. The Commission should recognize that states and localities have legitimate reasons for adopting various levels of fees, and thus its regulatory focus should only be on guarding against truly excessive fees that have the effect of cutting off competition.

The Commission should not attempt to establish a “one size fits all” preemption regulation that would cut off the ability of cities to act as the proverbial laboratories for democracy. Every city

is different.

Leaving room to account for local differences does not mean the Commission is in any way abdicating its responsibility. The size and resources of a city and of its permitting staff play a significant role in determining the reasonableness of the timeframe in which requests can be processed and in the costs cities will incur per pole attachment or other permitting request. A small part-time or even volunteer staff cannot be expected to keep up with requests at the same speed as a dedicated permitting department. If the Commission sets a timeframe for permit reviews that is unmanageable by a small staff, a city could be faced with the choice of either hiring more staff (which it may not have the financial resources to do) or losing oversight of its rights-of-way when a request is deemed granted because the city could not process it in a timely manner. For this reason, any timeline adopted by the Commission should have built in flexibility, including a limited presumption of reasonableness that could be rebutted by a city in any challenge to a city-adopted permitting process.

If the Commission considers promulgating regulations to limit the costs that cities may charge for permitting, those regulations must be flexible enough to allow the recovery of all costs incurred by a city, including the cost of additional staff necessitated by increased requests for right of way and pole attachment permits. This is not a theoretical issue. Some NCC member communities have already had to hire additional permitting staff just to sort through the influx of permitting requests arising from small cell deployments. For example, requests from telecommunications companies to attach to the poles of City Light, Seattle's publicly owned electric utility more than doubled in just a year, from just 4,405 in 2015 to over 10,191 in 2016. In response, City Light has added eight engineers and four field reviewers to its staff, and has allowed the large telecom

companies to hire their own consulting engineering firms to do the pre-application design work. Those companies have hired sixteen full time equivalent staff members dedicated to this effort to date.

Similarly, Montgomery County, Md. has seen a huge increase in the number of permitting requests over the past year, and as a result has been forced to change internal proceedings and shift its allocation of resources. Marjorie Williams, Chair of the Transmission Facilities Coordinating Group in Montgomery County said in an email:

Montgomery County, Md. has had more requests for replacement poles filed within the past eight months than we had in the past 18 years. This has caused a drastic shift in the allocation of internal resources, and as a result we have also had to expand our use of contract engineers to manage the engineering review required to support the permit process. Our engineering, permit and zoning hearing fees are cost-based. But we anticipate that if reductions in time limits, required batching, or deemed granted preemptive zoning are imposed, that may require us in the near future to significantly raise fees to support the additional engineering and permitting resources required.

Another factor weighing against the imposition of a single national timeframe or cost structure is the uncertainty over medium-term developments. Much of the debate about the need for pole attachment process changes is being driven by the impending rollout of 5G technologies. Notwithstanding hype from AT&T and others, commercial rollout of 5G has not yet begun, and may not begin until 2020. Thus, there is time for the associated issues to be dealt with thoughtfully and with an eye on the long-term implications. As explained in a recent report from the Baller Herbst Law Group:¹¹

The looming FCC rules, and corresponding timeframe limitations, will severely challenge the ability of local governments to constructively address the many issues presented by wireless facility installations in the PROW [public rights-of-way]. At the same time, the potential for

¹¹http://www.baller.com/wp-content/uploads/BSL-wireless-facility-Alert-5-11-17-FINAL.pdf?mc_cid=b8c2e243c3&mc_eid=007029c252

extensive wireless facility installations in the PROW, within a short timeframe, suggests that local governments would benefit from a thoughtful, holistic approach to what is, for many, an entirely new category of PROW usage.

Local governments must be trusted and encouraged to create their own standards for the timing and cost of permitting processes that are reasonable and realistic given their unique circumstances. Cities are working diligently to encourage broadband deployment and will not set the cost of approving permits so high that it constitutes a barrier to such deployment.

Local leaders uniquely know the assets their communities possess and the problems they face, and must be included in any conversation regarding regulation that would affect their cities. Furthermore, the ability of each locality to thoroughly review pole attachment and rights-of-way requests allows them to protect public safety and critical infrastructure. Any attempt by the Commission to change permitting rules on a nationwide basis could lead to public safety concerns, technology design inefficiencies, and significant complications to the local review process.¹²

III. Expediting Broadband Infrastructure Rollouts Can Best be Achieved by Public-Private Collaboration

Most cities, and certainly NCC's members, share the Commission's goal of better enabling broadband providers to build, maintain, and upgrade their networks, which will lead to more affordable and available internet access and other broadband services for consumers and businesses alike. The best way to achieve that goal is not through preemption of local regulation, but by encouraging cities to explore collaborative partnerships with private sector entities that ensure that

¹²<http://www.ctcnet.us/wp-content/uploads/2017/03/Streamlining-Deployment-of-Small-Cell-Infrastructure-by-Improving-Wireless-Facilities-Siting-Policies.pdf>

public safety and aesthetic concerns are addressed prior to deployment.

When mayors and city leaders have a seat at the negotiating table, they are able to create public-private partnerships that benefit both communities and businesses through access to public assets, private innovation, and service delivery. There is empirical evidence to support this position. A recent CTC Technology & Energy LLC report demonstrated that deployment of wireless technologies is actually fastest and most efficient in areas where private businesses work with the public sector to “plan adequately and comprehensively for design, permitting, and staging of construction — and [when] all private entities will collaborate with each other and the public sector to plan ahead in ways that will make construction more efficient for all.”¹³

Lincoln, Nebraska and Boston are two examples of successful negotiations with service providers which have resulted in the installation of small cells through mutually beneficial agreements. As NCC wrote in a recent small cells fact sheet for its members:¹⁴

Although Boston’s municipal government does not own the utility poles, it does have other structures, such as street lights, to which small cells can be attached. City leaders used this to their advantage, and entered into a deployment agreement with Verizon whereby the city makes its property easily accessible to Verizon in exchange for an increased city role in the types of poles and equipment Verizon uses.¹⁵ For example, once Boston officials agree to Verizon’s design for a specific type of pole, Verizon can submit a list of locations to install it instead of having to go through block-by-block reviews and public hearings for every installation. The city benefits from the ability to review locations in historic districts more closely, Verizon benefits from the ability to more easily deploy attachments, and citizens benefit by receiving improved services more quickly.

¹³<http://www.ctcnet.us/wp-content/uploads/2017/03/Streamlining-Deployment-of-Small-Cell-Infrastructure-by-Improving-Wireless-Facilities-Siting-Policies.pdf>

¹⁴ <http://nextcenturycities.org/2017/02/02/small-cells-what-you-need-to-know/>

¹⁵ <https://www.boston.gov/departments/broadband-and-cable/licensed-wireless-providers-boston>

Lincoln, which owns all the streetlights and a fiber conduit system throughout the city, also entered into a mutually agreeable contract with Verizon.¹⁶ In exchange for a speedy and simplified deployment process, Verizon will replace the street light poles with new poles and assume future maintenance of those poles. Verizon will extend fiber from the city's conduit system to the poles for the city's use, and reserve space on the poles where Lincoln can attach equipment such as cameras, public Wi-Fi antennas, or smart traffic sensors. Both Boston and Lincoln will continue to benefit from these relationships through the pole rental fees Verizon will pay them, and from the continued improvements to mobile wireless coverage.

These are just two of many examples of the innovative steps cities are willing to take to ensure that businesses are incentivized to upgrade broadband access speeds in their communities. But it is not just larger cities and state capitols that recognize the importance of working with private entities. In NCC's experience, even smaller cities have a great opportunity to partner with independent rural service providers in order to improve access to underserved communities.

However, in order to be able to continue creating good policies that will fit their individual needs and internal processes, cities must be allowed to maintain a strong level of control over their rights-of-way and permitting processes. The importance of retaining local control of permitting was a key topic at NCC's most recent regional broadband summit, Digital Southwest¹⁷ in Mesa, Arizona. The summit brought together community leaders and broadband policy experts from the Southwest and across the nation, as well as broadband champions from local, state, and federal government, including FCC Commissioner Mignon Clyburn. As Commissioner Clyburn said in her follow up statement after the conference:¹⁸

The time is ripe for opening up pole attachment reform, for taking a look at how we can

¹⁶ <http://nextcenturycities.org/wp-content/uploads/2017/02/2017-01-Lincoln-and-Verizon-Small-Cell-Final.pdf>

¹⁷ <http://nextcenturycities.org/2017/04/19/next-century-cities-host-digital-southwest-a-regional-broadband-summit-in-mesa-az/>

¹⁸ http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0421/FCC-17-37A3.pdf

work with local governments to remove barriers to deployment, and for generally evaluating how we can further streamline processes for rolling out new services. What concerns me, however, is the strong talk surrounding preemption, that takes place even before we lay out a clear path to work with communities through other processes such as the Broadband Deployment Advisory Committee's development of model codes. The importance of community engagement was reiterated during my visit earlier this week to the Digital Southwest summit in Mesa, Arizona, and it is with this backdrop that I look forward to reviewing the full record on all of these issues.

Cities must be given the opportunity to establish innovative and successful public-private partnerships to address their unique needs and create collaborative solutions to closing the digital divide. These partnerships are excellent opportunities for municipal leaders to facilitate streamlined deployment so as to ensure their residents are not left out of the digital economy.

Cities without high speed, reliable broadband access face reduced economic opportunities, shrinking populations, diminishing real estate markets, and increasingly limited opportunities for job growth. Municipalities that lack connectivity must be given space to collaborate with partners and create policies that will ensure all residents have access to the benefits of broadband in order to ensure the vitality of their communities.

Conclusion

NCC commends the Commission for implementing the NPRM and advancing the conversation about how to speed and streamline the deployment of next generation broadband infrastructure. NCC believes that the single most effective step to allow new entrants to more easily and effectively deploy next generation technologies would be to implement a flexible federal OTMR policy. Because most cities do not own the poles in their rights-of-way, an OTMR policy – whether implemented locally or by the Commission – provides one of the few pathways through which cities

and the Commission can materially facilitate the deployment of small cells and other wireless technologies.

NCC believes, however, that the unique circumstances of individual cities must be considered in any permitting process reforms and that mayors and local leaders have a strong role to play in these discussions. For that reason, NCC opposes any broad preemption of local rights to regulate the costs, timing or standards for considering permit requests.

Respectfully submitted,

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