



June 14, 2018

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, District of Columbia 20554

*RE: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Accelerating Broadband Deployment, Broadband Deployment Advisory Committee, GN Docket No. 17-83; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84*

Dear Ms. Dortch,

The National Association of Telecommunications Officers and Advisors (“NATOA”),<sup>1</sup> the National League of Cities (“NLC”),<sup>2</sup> the National Association of Regional Councils (“NARC”),<sup>3</sup> the National Association of Counties (“NACo”),<sup>4</sup> and the National Association of Towns and Townships (“NATaT”)<sup>5</sup> on behalf of all the representative constituencies we represent, write to express our concerns regarding the lack of appropriate local government representation on the Broadband Deployment Advisory Committee (“BDAC”), the work product recently voted out

---

<sup>1</sup> NATOA’s membership includes local government officials and staff members from across the nation whose responsibility it is to develop and administer communications policy and the provision of such services for the nation’s local governments.

<sup>2</sup> The National League of Cities is the oldest and largest organization representing cities and towns across America. NLC represents 19,000 cities and towns of all sizes across the country.

<sup>3</sup> The National Association of Regional Councils represents more than 500 councils of government, metropolitan planning organizations, and other regional planning organizations throughout the nation.

<sup>4</sup> NACo represents county governments, and provides essential services to the nation’s 3,069 counties.

<sup>5</sup> NATaT represents the interests of more than 10,000 towns and townships across the country at the federal level.

of the model state and municipal code working groups,<sup>6</sup> and the use of unverifiable data included in the preliminary report offered by the Rates and Fees Ad Hoc Committee.

The local leaders that NATOA, NLC, NARC, NACo, and NATaT represent appreciate and wholeheartedly agree with the FCC and BDAC's goal of expanding access to broadband Internet service in all our communities – large and small, urban and rural. Broadband access is no longer a luxury – it is a necessity for American communities and families to participate in the 21st century.

Accelerating the expansion of high-speed Internet access has thus far proved to be no easy task, especially in our nation's rural areas and urban broadband deserts. That is why our respective constituencies say it is imperative for all levels of government to be equal partners in this conversation. By working as team players willing to share ideas with one another and find more avenues for collaboration, we can come closer to our shared vision of making high-speed Internet access at the home and workplace a reality for everyone.

We respect the sincere effort of the BDAC and its working group members throughout this process. However, our respective members remain concerned about the composition of the BDAC, the presumption that local governments are a barrier to broadband deployment, and the overall impact these factors had on BDAC members as they were considering recommendations to address the fundamental issues with universal broadband deployment.

We respectfully urge the BDAC and the FCC to consider our recommendations below. We also ask stakeholders to collaborate with local governments to find practical solutions to achieve our shared goal of broadband access for all Americans.

### ***Local Concerns Regarding the Composition and Mission of the BDAC***

#### **Composition**

While our organizations commend the FCC's efforts to promote broadband expansion, we remain concerned with the low representation of local governments on the BDAC and its effect on key policy decisions that impact the way local governments engage with and conduct business with partners from the telecommunications industry. It is important to note that out of the original 29 members that were selected to serve on the BDAC, only one local government representative – the Honorable Sam Liccardo, Mayor, San Jose, California – was included in the group. Meanwhile, representation on the BDAC and its working groups is overwhelmingly members of the telecommunications industry.<sup>7</sup>

---

<sup>6</sup> See State Model Code for Accelerating Broadband Infrastructure Deployment and Investment (discussion draft for April 25, 2018 BDAC meeting) (“State Model”); Draft Model Code for Municipalities (Dated April 20, 2018) (“Municipal Model”). The State Model and Municipal Model (“Model Codes”) were voted out of the working group by the BDAC on April 25, 2018.

<sup>7</sup> NATOA and NARC join the list of many groups, including NLC and NACo, who have expressed concern with the lopsided representation on the BDAC and its working groups. See, e.g., CLIC Letter; Minority Report; National League of Cities, National Association of Counties, The United States Conference of Mayors Letter, submitted November 7, 2017, Dockets WTB 17-79, GN 17-83, WC 17-84;

While we appreciate the FCC’s efforts in adding new local government representation, former BDAC local government representatives Mayor Liccardo and New York Chief Technology Officer Miguel Gamino resigned from the committee. They cited concerns that the structure of the BDAC has been tilted to highlight the priorities of representatives from the telecommunications industry, undermining regard for true public-private partnerships and the voices of those who know the needs and capabilities of their communities best.

Supporting evidence for their concerns was the State Model, which requires local government to subsidize telecommunications providers and leaves local communities with little recourse to address real concerns about safety, economic development, protecting public investments in infrastructure and private property values.<sup>8</sup> The State Model would impose costly mandates on states,<sup>9</sup> municipalities,<sup>10</sup> (including additional burdens on rural communities<sup>11</sup>), non-governmental utility pole owners,<sup>12</sup> railroads,<sup>13</sup> and multi-tenant building owners.<sup>14</sup> Yet there is no obligation for telecommunications providers to deploy infrastructure or offer broadband services anywhere in the country.

### **Mission**

We appreciate that BDAC members have worked hard and in good faith, but we remain concerned that the narrow scope of their charge hampered their ability to address the digital divide. The BDAC was formed on the premise that reducing and removing regulatory barriers to infrastructure investment would effectively accelerate broadband deployment. Evidence in this docket contradicts that assumption.<sup>15</sup>

Our organizations would argue that this scope does not address the underlying deployment problem of finding a way to jumpstart private financing in areas that do not provide private

---

National Association of Regulatory Utility Commissioners Letter, submitted April 6, 2018, Docket GN 17-83.

<sup>8</sup> See State Model Art. 4 § 5 (giving communications providers access to publicly owned assets on a cost-based basis); State Model Art. 9 § 2.2 (giving communications providers the right to locate small wireless facilities on municipal poles with limited bases for denial, not of which address aesthetics); State Model Art. 9 § 3.5 (setting application fee caps for small wireless facilities that may be less than municipalities’ related costs). See also, Comments of Smart Communities and Special Districts Coalition, Docket WTB 17-79, pp. 44-52.

<sup>9</sup> See, e.g., *id.* at Art. 3, 4, 7, 10, 11 and 13.

<sup>10</sup> See, e.g., *id.* at Art. 3, 4, 5, 7, 9 and 12.

<sup>11</sup> *Id.* at Art. 12.

<sup>12</sup> See, e.g., *id.* at Art. 3, 4, 5 and 9.

<sup>13</sup> *Id.* at Art. 6.

<sup>14</sup> *Id.* at Art. 8.

<sup>15</sup> See, e.g., City of McAllen, City of San Jose, and New York City Minority Report of the State and Local Barriers Working Group (“Minority Report”), Docket GN 17-83, pp. 15-16; Coalition for Local Internet Choice (“CLIC”) Submission for the Record, submitted May 2, 2018, Dockets WTB 17-79, GN 17-83, WC 17-84, pp. 7-8 (“CLIC Submission”); CLIC Letter, submitted April 12, 2018, Docket GN 17-83 (“CLIC Letter”), attaching Testimony of Joanne S. Hovis President, CTC Technology & Energy before

companies a return on their investment. The working group itself acknowledged that closing the digital divide is a “funding issue” that requires more than the proposed preemptions in the State Model.<sup>16</sup> Even when asked at a House Subcommittee Hearing whether “we can successfully deploy unserved areas in rural America or underserved areas without some sort of Federal investment, that it can just be done through streamlining regulation and making deployment easy[,]” every witness, including representatives of major telecommunications providers, said no.<sup>17</sup>

There is clear recognition on all sides that reducing and removing regulatory barriers, which BDAC was charged with considering, is not the only part of this broadband deployment equation. We ask that while BDAC takes on the important task of considering what efficiencies can be created by looking at regulatory barriers, we encourage them to also look at recommendations that incentivize investment in underserved areas to attract private capital.

### ***The Model Municipal Code Must Not be a Mandate***

Our organizations recognize the time and energy that members of the BDAC’s Model Municipal Code Working Group put into drafting recommendations for local governments to adopt to help streamline the deployment of telecommunications infrastructure. We appreciate that the working group drafted a Municipal Model that reflects its understanding that one-size does *not* fit all. We also agree with the working group’s acknowledgement that there is “enormous diversity based on geography, size, resources, aesthetics, existing infrastructure, regulatory and legal framework, history, culture, and community priorities”<sup>18</sup> amongst our local governments.

With that fundamental understanding, the working group drafted “a non-binding, flexible guideline” for municipalities.<sup>19</sup> We note that the Municipal Model does not dictate fees and rates, design standards, size and height limits, or the terms of right of way agreements. We agree that bridging the digital divide does not require mandating these matters, all of which are best addressed by local governments who know – and are accountable to – their residents.

The working group members were clear: the Municipal Model is not intended to be, and should not be used to create, a mandate imposed on municipalities. We urge the BDAC in its harmonization process, and the FCC in any action on the BDAC’s final recommendations, to remember and respect the voluntary nature of the recommendations put forth.

---

the U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology “Closing the Digital Divide: Broadband Infrastructure Solutions,” January 30, 2018.

<sup>16</sup> April 25, 2018 BDAC Meeting Video, minutes 310:30-311:40.

<sup>17</sup> U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Communications and Technology “Closing the Digital Divide: Broadband Infrastructure Solutions,” January 30, 2018, Preliminary Transcript, pp. 60-61.

<sup>18</sup> Municipal Model, A-1.

<sup>19</sup> *Id.*

### ***The Model State Code Includes Unfair Mandates on Local Governments***

Our organizations oppose the provisions of the State Model that circumscribe local governments' ability to ensure efficient use of public property and to protect the public interest. For example, Section 5.1.1 of the State Model in part states:

*Dark Fiber that is owned or operated by an Authority shall be leased to any private sector Communications Provider on a cost-based basis when a private sector Communications Provider requests to lease such Dark Fiber from the Authority.*

Recognizing that the term “Authority” used by the State Model Code working group includes state and local governments, Section 5.1.1 mandates that state and local governments must provide access to our infrastructure without adequately considering the right of the “Authority” to use its property in accordance with our long-term plans, and without respecting the investment that state and local governments have made in deploying infrastructure such as dark fiber.

The State Model also caps permit and application fees at potentially less than municipalities costs;<sup>20</sup> and establishes state-level communications franchises that preempt local franchising without any substantive provisions to protect local property, rights of way or consumers.<sup>21</sup> Yet it does not include any obligation for telecommunications providers to deploy broadband.

This language does not represent a “blueprint” for closing the digital divide. It represents a mandate that state and local governments, along with other owners of infrastructure, must turn over their assets to the telecommunications industry at their request while they were not given adequate seats at the table in the BDAC process.

Additionally, the State Model contains provisions that are incompatible with the framework of the Municipal Model. The State Model includes multiple articles preempting local authority over access to public property and rights of way. These preemptions are contrary to, and irreconcilable with, the Municipal Model, which recognizes – and is premised upon – the need for flexibility for local governments to address issues unique to their communities. Further, the proposed preemption of local government will not close – and likely will deepen – the digital divide.

We respectfully urge the BDAC and the FCC not to recommend states adopt a policy that gives away municipal property and preempts municipalities' ability to protect their residents.

### ***The Ad Hoc Rates and Fees Committee is Using Unverifiable and Insufficient Data***

Our organizations commend the Rates and Fees Ad Hoc Committee for taking a systematic approach in identifying principles that recognize fair partnership, are future proof, benefit the greater community, promote a sense of urgency, simplicity and transparency. We also appreciate committee members' acknowledgement that the data presented in the report was voluntarily

---

<sup>20</sup> *Id.* at Art. 9 § 3.5.

<sup>21</sup> *Id.* at Art. 10.

submitted by BDAC members, “have not been verified and represent a convenience sample that is not necessarily representative of national trends.”<sup>22</sup>

During the BDAC’s April 25, 2018 meeting, the limitations of the data were highlighted to the full committee. The actual data included in the report only represents a small sample size of rates and fees that state and local governments have assessed for broadband infrastructure deployments. Additionally, it has not been made clear whether any additional data collection and verification will be done before the committee issues a final report or formulates its recommendations. We are sympathetic to the time and costs associated with a more robust study, but we also recognize the importance and need for a representative, verifiable, and a widely-sourced sample to inform policy recommendations that may impact every municipality in the country.

We are also concerned that the collected data does not include location data, leaving an unclear picture of if or how fees impact deployment. BDAC Chair Bowles and other BDAC members acknowledged that the report is not useful to the BDAC unless it establishes a correlation between fees and deployment rates.<sup>23</sup> Without such a correlation, any recommendation from the BDAC or action by the FCC regarding rates and fees would not be fully informed.

At the April 25, 2018 meeting, one BDAC member also opined that wireless attachment fees would be higher in urban areas,<sup>24</sup> where deployment is more robust. Should this assumption be corroborated, it undermines the notion that fee caps are a necessary or effective tool to increase broadband deployment.

Furthermore, the record includes the experience of Lincoln, Nebraska, which illustrates that lower fees in urban areas do not lead to deployment in less profitable areas. Lincoln offered broadband providers deeply discounted pole attachment fees to those willing to deploy in rural areas. Every provider passed on that option, instead paying a fee twenty times higher to avoid any obligation to build in rural areas.<sup>25</sup>

Given the importance of this issue to local governments and communications providers alike, we encourage the BDAC to rely only on information gathered in an independent study and given the appropriate time and resources to generate useful, statistically valid data that addresses the nexus between fees and the impact on broadband infrastructure deployment.

### ***Collaboration is a Better Path***

In establishing the BDAC, Chairman Pai made clear that its mission was to “explore ways to accelerate deployment of [broadband] nationwide and to close the digital divide.”<sup>26</sup> NATOA,

---

<sup>22</sup> Survey of Rates for Pole Attachments and Access to Rights of Way (as of April 24, 2018), presented at the April 25, 2018 BDAC Meeting.

<sup>23</sup> April 25, 2018 BDAC Meeting Video, minutes 77:50-83:40.

<sup>24</sup> *Id.*

<sup>25</sup> See CLIC Submission, p. 11.

<sup>26</sup> Chairman Pai Forms Broadband Deployment Advisory Committee, News Release, January 31, 2017.

NLC, NARC, NACo, and NATaT support this incredibly important goal, but the Model Codes do not address the challenges to future broadband deployment.

We must – and can – ensure every American has access to affordable broadband services. But we cannot do it through an advisory committee that is not truly balanced and was not charged with the specific task of looking at all parts of the broadband deployment equation. True collaboration between all levels of government, communities, and the communications industry is the only way we will be able to tackle the digital divide from all angles. We urge all stakeholders to work together to achieve our shared goal: broadband deployment across the United States.

Sincerely,



Nancy Werner  
General Counsel  
National Association of Telecommunications  
Officers and Advisors



Matthew D. Chase  
Executive Director  
National Association of Counties



Clarence E. Anthony  
CEO and Executive Director  
National League of Cities



Leslie Wollack  
Executive Director  
National Association of Regional Councils



Jennifer Imo  
Executive Director  
National Association of Towns and Townships