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July 17, 2017

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REPLY COMMENTS OF THE GEORGIA MUNICIPAL ASSOCIATION, INC.

Executive Director
Lamar Norton

RE: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch:

The Georgia Municipal Association (GMA) is a voluntary, non-profit organization that provides legislative advocacy, educational, employee benefit, and technical consulting services to its members. It is the only state organization that represents municipal governments in Georgia. Currently, GMA's membership totals 521 municipal governments, accounting for more than 99% of the state's municipal population.

GMA respectfully submits these reply comments on the Public Notice in this proceeding.

In its comments dated June 15, 2017, Mobilitie, LLC asserted that local regulations and processes in place in Georgia have resulted in delays in implementing deployment of wireless broadband infrastructure.¹

Delays to Execute a Right of Way (ROW) Access Agreement

One comment states that a government in Georgia has delayed execution of a right of way access agreement for a year. GMA has worked diligently to develop model agreements, including a Model Right of Way Permit Ordinance prepared in 2008 that helps streamline deployment of small cell infrastructure in the ROW. GMA also developed, in conjunction with Mobilitie, LLC, a Master ROW Agreement and a Communications License Agreement to help facilitate small cell infrastructure deployment on City owned utility poles. Both model agreements are included as attachments to this reply comment letter. To date, at least seven local governments

¹ Mobilitie, LLC Comments in Attachment 3, p. 8, p. 15

have signed the agreement with another six local governments in the process of finalizing the agreements, including the one local government out of 538 cities and 159 counties in Georgia referenced in Mobilitie's comments that has taken one year to execute the agreement.

Mobilitie's actions have negatively impacted GMA's ability to assist cities in processing applications. Mobilitie has applied for permits in over 100 Georgia cities to install 120' towers in municipal rights of way, often in historic downtown areas. Downtown and historic areas are the heart of Georgia's cities – they define the character of cities. They are home to small businesses and residences, and cities have invested a significant amount of public resources to develop a unique aesthetic in downtowns based on publicly approved design standards. When presented with Mobilitie's requests for 120' poles, city officials have understandably expressed concerns about locating these tall poles in their cities.

To facilitate a compromise between cities and Mobilitie, GMA worked with the company to establish a model Master ROW Agreement to install 40' to 50' poles. However, because of the company's previous applications which emphasized 120' poles, it is taking time to win the cities' trust back. It has also become more difficult for GMA and cities to work with Mobilitie to process agreements because almost every Mobilitie representative that GMA has worked with in the past twelve months to negotiate the model agreement has left the company.

Excessive and Discriminatory Fees

The Georgia Constitution contains two prohibitions against donations of public property. GA. CONST. Art. III, Sec. VI, Par. VI; GA. CONST. Art. IX, Sec. II, Par. VIII. Because the public rights-of-way are considered public assets, Georgia cities must receive fair market value for use of the right-of-way by a private company.

This has been true for almost 100 years for electric companies, natural gas companies, and telephone companies, and since 1984 for cable companies. This fair market value is not measured by what it costs the city to regulate the right-of-way but rather by what it would cost the user of the right-of-way to purchase access from a private property owner. Local taxpayers should not be required to subsidize the placement of new technologies in the rights-of-way.

Federal law does not require this, but instead recognizes that existing and new users of the right-of-way should be treated in a competitively neutral and nondiscriminatory way. Franchise fees are a well-known and long established cost of doing business for users of the rights-of-way. Those who do not want to pay them are free to negotiate and purchase easements through private property.

The Georgia Telecom statute O.C.G.A. 46-5-1 requires cities in Georgia not to charge more than the amounts GDOT charges for use of the ROW and in Georgia, cities shadow GDOT requirements. The fees assessed by the one Georgia city that Mobilitie references in its comments is not indicative of any other city in Georgia.

Notably, in the Master ROW License Agreement GMA negotiated in concert with Mobilitie, the company agreed to all terms for compensation. The agreement incentivizes colocation on existing poles through reduced fees, but allows for new poles at an agreed-upon higher rate. The rates in the model agreement were established based on a nationwide survey of pole attachment and right of way agreements with Mobilitie in 2016. The survey results included rates from the following states that were in effect in 2016:

- CITY OF ANAHEIM, CA: Annual license fee per City-owned light pole is \$93.40 with annual increases.
- CITY OF KANSAS CITY, MO AND MOBILITIE INVESTMENTS III, LLC: Annual per street light pole attachment fee is \$540 each. Annual new facility installation fee in City's ROW is \$1,500 each.
- MONTGOMERY COUNTY, MD: Annual fee per County-owned pole, street light or other County-owned property located in the ROW is \$100 with two adjustments throughout 15 year term.
- CITY OF NEW YORK AND MOBILITIE INVESTMENTS II, LLC:
 - Monthly Street Operations Pole Compensation paid to the City monthly in the following amounts:
 - \$332.00/Street Operations Pole that is a Compensation Street Pole and is located in Zone A.
 - \$186.00/Street Operations Pole that is a Compensation Street Pole and is located in Zone B.
 - \$38.00/Street Operations Pole that is a Compensation Street Pole and is located in Zone C.
 - Monthly Street Utility Pole Compensation paid to the City monthly in the following amounts:
 - \$16.00/Street Utility Pole that is a Compensation Street Pole and is located in Zone B; and
 - \$3.00/Street Utility Pole that is a Compensation Street Pole and is located in Zone C.
 - All amounts above are subject to CPI adjustment.

- CITY OF OVERLAND PARK, KS: Annual Light Pole Attachment Fee is \$540 per year, subject to CPI adjustments.
- ROCKY MOUNTAIN POWER IN SALT LAKE CITY, UT AND MOBILITIE, LLC: Annual Utah Rental Rate per attachment is \$5.76 per foot of space used for its attachments and associated equipment as well as space rendered unusable.
- CITY OF ST. PAUL, MN: Base rent per pole (whether new or existing) is \$750 annually, with 3% annual increases. One-time lump sum administrative fee of \$2,500.

Examples of Bad Faith Conduct in Negotiations

Numerous commenters to this proceeding have asserted that municipal regulations are the primary reason for delays in broadband deployment. In fact, local governments throughout Georgia have experienced delayed permitting review and approval due to the failure of telecom providers to provide information necessary to complete permit applications, lengthy regulatory review processes required by these companies, or even an outright refusal by the industry to communicate with cities.

For example, GMA has been working with Augusta, Georgia to expedite Mobilitie's application to install new poles in the city. The city entered into the GMA Master ROW agreement in April, 2017, and approved 8 pole installation permits. To date, Mobilitie has still not installed those poles because they are awaiting regulatory review by the company's home office in California.

The City of Moultrie, Georgia, also submitted comments to this proceeding in June that are still valid to this issue. A copy of the City's comments are included as an attachment to this reply comment letter. Other examples include:

- Crown Castle has been underpaying or not paying at all in communities throughout Georgia.
- AT&T and Crown Castle refuse to work with GMA and cities, despite GMA's repeated requests to negotiate agreements similar to the GMA model agreement with Mobilitie that streamlines the deployment of small cell technology.
- Rather than working with GMA, Crown Castle and AT&T persist in seeking state legislation to reduce the amount they pay to cities to occupy the ROW. In contrast, other companies like Zayo, Tower Cloud readily pay.

GMA hopes to work with these companies on a compromise and we believe we can work through our differences and arrive at a mutually beneficial agreement as we have with Mobilitie, but first these companies must agree to come to the table.

Conclusion

GMA has and will continue to represent and protect cities' interests, working with telecommunications companies including Mobilitie to recommend model agreements that will facilitate broadband deployment while protecting community values and allowing for reasonable compensation for the use of public ROW.

GMA works with municipal officials to provide training opportunities and workshops for municipal officials, including a series of five regional workshops scheduled during August, 2017 that will address the deployment of small cell antennas, including a discussion GMA's model master ROW agreement.

GMA also provides its member cities with the option to participate in a Telecommunications and Right of Way Management Service (TRM), which provides technical assistance to program participants on all telecommunication issues. Cities and counties enrolled in the TRM service obtain expert assistance in negotiating agreements with wireless companies which expedites the approval process for the applicant. Currently, the TRM has 152 participating Georgia local governments.

Georgia is an example of a state that is making every effort to work with the industry to facilitate broadband deployment while protecting the interests of local governments. Georgia has proven through its work with Mobilitie that this balance can be achieved, the process of negotiating template agreements in good faith can work. GMA and Georgia cities will continue to seek out ways to allow deployment of broadband infrastructure in a timely manner, through agreements that are reasonable and fair to cities. However, GMA rejects the mischaracterizations presented in Mobilitie's recent comments on this proceeding.

GMA appreciates the opportunity to provide these comments and to present information that will clarify misleading comments made about Georgia Cities.

Sincerely,

A handwritten signature in black ink, reading "D. Lamar Norton". The signature is written in a cursive, flowing style with a large initial "D".

D. Lamar Norton
Executive Director