



TEXAS MUNICIPAL LEAGUE

President **Mary M. Dennis**, Mayor, Live Oak  
Executive Director **Bennett Sandlin**

July 17, 2017

Commission's Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington DC 20554

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

Dear FCC Commissioners:

I am writing on behalf of the Texas Municipal League to urge the Federal Communications Commission (FCC) to avoid favoring industry needs over the needs of people who live and work in Texas cities.

The tone of the pending NPRM appears to lean towards the conclusion that any regulation of cellular providers or their vendors serve as “impediments to wireless infrastructure investment and deployment.” In fact, industry commenters routinely call out some Texas cities as “good actors,” and others as “bad actors.” (See, e.g., Comments submitted by Crown Castle, Mobilitie, and AT&T.)

One can only assume that “good actors” are those that accepted all the terms proposed by industry, and “bad actors” are those that sought additional protections for their citizens. Every city is different. A city may be a relatively “new,” suburban one with pre-planned rights-of-way that anticipate future technological development, or it may be one of the first incorporated in the Texas that has unique right-of-way challenges. This “patchwork quilt” of cities is what makes Texas a great place to live.

Dozens of cities and their associations will file technical comments on the pending NPRM. Our technical comments on the pending NPRM are essentially the same as the [comments](#) and [reply comments](#) we previously filed in *In the Matter of Streamlining Wireless infrastructure deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies* – Mobilitie, LLC Petition for Declaratory Ruling, WC Docket No. 16-421. Those comments included specific Texas examples of properly-managed access to city rights-of-way.

Since those comments, the Texas Legislature passed [Senate Bill 1004](#). A detailed summary of the bill is available on the [TML website](#). The bill grants expedited access to municipal rights-of-way in Texas, and preempts a good deal of local decision-making. It also caps right-of-way rental fees at far less than fair market value. (The Texas Constitution, in [Article III, Section 52](#), prohibits the Texas legislature from giving away the use of municipal property for less than fair market value.) That state legislation has removed any so-called “barriers to deployment” in Texas. Thus, further federal rules aren’t necessary here.

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The price per node in the current bill is, plainly and simply, a taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. Texas cities had been working with companies to deploy their technology, but the industry decided it would rather go to the legislature and exploit city rights-of-way at below market rates. Cities want this technology, but their taxpayers shouldn't be on the hook for subsidizing it.

The City of McAllen, Texas, is leading a coalition of cities that will challenge the woefully low right-of-way rental fees in S.B. 1004. The bill caps a city's right-of-way rental fee at \$250 per small cell node. A handful of Texas cities had already licensed small cell nodes in their rights-of-way, and they rented the space for *up to \$2,500 per small cell node*. That's *ten times* what the bill allows, and clearly violates the Texas Constitution.

In addition, at least two proceedings are pending at the Texas Public Utility Commission (PUC) related to access to and payment for city rights-of-way by cellular provider vendors. In [\*Complaint of ExteNet Network Sys., Inc. against the City of Houston for imposition of fees for use of public right-of-way\*](#), the PUC concluded that Extenet may have access to city rights-of-way under an older law that governs wireline installations. That docket is pending on a motion for rehearing. A second, similar case is pending against the City of Dallas. In [\*Complaint of Crown Castle NG Central LLC against the City of Dallas\*](#), Crown Castle makes essentially the same claim.

The bottom line is that a one-size-fits-all mandate simply won't work because there are so many unique Texas cities with unique right-of-way needs. TML supports the comments submitted by the National League of Cities (NLC), and joins NLC in opposing federal preemption, deemed granted remedies, and further federal restrictions on aesthetic requirements and negotiations,

It's clear that locally-elected officials, rather than administrative officials in Washington, D.C., know what is best for their community. The idea that a federal agency located 2,000 miles from El Paso knows what works best in that city's rights-of-way doesn't make sense. (It's farther from El Paso to the FCC office in Washington, D.C., than it is from that same FCC office to the U.S embassy in Nicaragua.)

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'SH' followed by a stylized flourish.

Scott Houston  
*Deputy Executive Director & General Counsel*