



Experience **LIFE** in the Park

August 30, 2018

VIA ECFS

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dear Ms. Dortch:

The City of St. Louis Park, Minnesota submits this letter in response to NCTA's June 11, 2018 Letter in Wireline Infrastructure, WC Docket No. 17-84 (the "NCTA Letter"). The Commission should not grant any of the 12 rulings requested by NCTA,¹ as they all encroach on legitimate local governmental regulation of public rights-of-way and federal law.

The City of St. Louis Park is a first-ring suburb of Minneapolis, Minnesota, with about 49,000 residents. St. Louis Park has actively promoted broadband deployment in the following ways:

- Granting a competitive cable franchise to CenturyLink in December 2015.
- Installing approximately 50 miles of fiber and conduit in the city, with unused fiber available to be leased by outside organizations, making broadband deployment quicker and more cost-effective.
- Leasing unused fiber and conduit to companies that provide fiber to the home for residents, businesses and other organizations, including US Internet and Arvig.
- Provide free wifi hot spots in nine city buildings and eight parks.
- Working with developers to ensure new construction is broadband ready both inside and outside, with 10 successful agreements.

St. Louis Park continues to look for opportunities to make sure its citizens have access to broadband. NCTA's requests would undermine these successful efforts. According to NCTA, reform is needed to "reduce or eliminate obstacles to broadband deployment."² Yet, as discussed above, these obstacles do not exist in St. Louis Park. It's also questionable if there are actually obstacles to be addressed, as NCTA's members have invested more than \$275 billion to deploy broadband networks³ and are leaders "in the deployment of broadband infrastructure."⁴

¹ See Exhibit A.

² NCTA Letter, p. 1.

³ <https://www.ncta.com/broadband-by-the-numbers>.

⁴ NCTA Letter, p. 1.

The Commission does not have a record that justifies the radical changes requested by NCTA. If the Commission has interest in the issues discussed by NCTA, it should initiate a full and thorough examination. That examination will show NCTA's requests are not necessary.

St. Louis Park has a legitimate and congressionally recognized interest in regulating public rights-of-way.⁵ Those regulatory activities are not a "profit center,"⁶ but rather are necessary to the protection of public property. NCTA's attempt to capture the value of public property for the benefit of private businesses should be rejected.

I. PUBLIC RIGHTS-OF-WAY REGULATION

St. Louis Park has an obligation to protect public health, safety and welfare of its citizens. This includes regulating public rights-of-way.⁷ NCTA, without justification, seeks to restrict the regulatory powers of local governments to the "time, place and manner of access for construction that will disrupt use of the right-of-way."⁸ Under NCTA's proposal, St. Louis Park and other local governments would not be able to require undergrounding. Residents would have no recourse if NCTA's members placed 150-foot monopoles in front of their houses. This is clearly not consistent with federal law and the long-standing recognition of the important role local governments play in protecting the health, safety and welfare of citizens.

NCTA arrives at its restrictions on the authority of local governments by unreasonably expanding the scope of rights granted under cable franchises. NCTA claims cable operators can leverage their cable franchises to provide non-cable services.⁹ Specifically, NCTA asserts that a cable franchise "includes authority to install and operate ... communications equipment to provide additional non-cable services without obtaining a separate franchise or authorization or paying additional fees."¹⁰ As discussed below, NCTA's position is not consistent with the current law.¹¹ NCTA's position is also a bad policy outcome, as it would give cable operators free reign to leverage cable franchises into unrestrained proliferation of equipment that is not related to the provision of cable service.

II. RIGHTS-OF-WAY COMPENSATION

Public rights-of-way are public property.¹² As such, St. Louis Park has an obligation to hold that property in trust *and* an obligation not to leave it entirely in the control of industry.¹³ NCTA's request is entirely at odds with these obligations.

There are at least two components of the obligation to hold public property in trust: 1) securing fair and reasonable compensation for the use of public rights-of-way and 2) recovering management costs. Congress has determined that a franchise fee of up to 5% of gross revenues is fair and reasonable compensation for the use of public rights-of-way *for the provision of cable services*.¹⁴ Congress has not determined that the payment of the cable franchise fee is fair and reasonable compensation for other

⁵ 47 U.S.C. §§ 253(d), 542(b), 556(a).

⁶ NCTA Letter, p. 9.

⁷ 47 U.S.C. §§ 253(c), 556(a).

⁸ NCTA Letter, p. 9.

⁹ NCTA Letter, p. 2-3.

¹⁰ NCTA Letter, p. 6.

¹¹ *Montgomery County, Maryland v. Federal Communications Commission*, 863 F.3d 485, 493 (6th Cir. 2017).

¹² *Illinois Central R. Co. v. Illinois*, 146 U.S. 387, 452 (1892).

¹³ *Id.* at 453 ("[Local governments cannot] abdicate [their] trust over property in which the whole people are interested . . . so as to leave them entirely under the use and control of private parties....").

¹⁴ 47 U.S.C. § 542(b).

uses of the public rights-of-way. Yet, that is exactly what NCTA seeks, thereby depriving citizens fair and reasonable compensation for the use of their property.

NCTA appears to recognize that local governments should be able to recover the costs of managing rights-of-way,¹⁵ which is a requirement under Minnesota law.¹⁶ Local governments incur both up-front costs (*i.e.*, costs of receiving, evaluating, and processing registration requests and rights-of-way permits) and ongoing costs (*i.e.* monitoring and evaluation to make sure that private parties are not diminishing the public's use of the rights-of-way or interfering with each other). Both are reasonable and should be paid by cost-causers. It is also important to note that the heightened demand for access to the public rights-of-way is leading to increases in management costs.

III. RECORD SUPPORT

Any action taken by the Commission should have adequate support, which is not present in the NCTA Letter. The NCTA Letter provides vague references to a handful of unidentified local governments.¹⁷ Even if NCTA's characterizations were true, a few instances across the country do not justify a new regulatory paradigm. NCTA even acknowledges that its examples are outside of the mainstream, as "many local governments are supportive of the cable industry's deployment of new facilities and new services...."¹⁸ As noted above, St. Louis Park has actively supported broadband deployment in a variety of ways. The Commission should only consider NCTA's requests with the benefit of a full, complete and accurate record of existing regulatory policies.

The Commission's existing dockets do not provide the requisite full, complete and accurate record. A full, complete and accurate record would detail the different regulatory regimes for cable operators and telecommunications providers codified in federal, state and local laws. Such a record would also reflect that current law allows local governments to regulate non-telecommunications services provided by incumbent cable companies.¹⁹

IV. CONCLUSION

St. Louis Park has actively supported broadband deployment while exercising the regulatory authority granted to it under federal law. Ultimately, NCTA's requests are not consistent with the law or sound public policy. If the Commission has interest in the issues identified by NCTA, St. Louis Park looks forward to the opportunity to contribute to a full, complete and accurate record.

Very truly yours,

/s/ Clint Pires

Clint Pires
Chief Information Officer
City of St. Louis Park, Minnesota

¹⁵ NCTA Letter, p. 9.

¹⁶ Minn. Stat. § 237.163, subd. 2 (b) ("Subject to this section, a local government unit has the authority to manage its public rights-of-way and to recover its rights-of-way management costs.").

¹⁷ NCTA Letter, p. 1 (emphasis added).

¹⁸ NCTA Letter, p. 1 (emphasis added).

¹⁹ *Montgomery County, Maryland v. Federal Communications Commission*, 863 F.3d 485, 493 (6th Cir. 2017).

12 Rulings Requested by NCTA

1. Clarify that local authorities may not require additional franchises, fees, conditions or authorizations beyond a Title VI cable franchise and routine, straightforward permits for the placement of the cable system (and equipment attached thereto) in the public right of way, or for the offering of new services over such facilities.
2. Confirm that authority to build a “cable system,” as defined in Section 602 includes authority to install and operate, as part of the cable system, communications equipment to provide additional non-cable services without obtaining a separate franchise or authorization or paying additional fees.
3. State that local authorities may not require cable operators to obtain separate authorization beyond the cable franchise for placement of small wireless equipment on a cable system.
4. Reaffirm that the federal 5% cap on cable service franchise fees for use of the public right of way for the provision of cable and non-cable services.
5. Declare that a franchising authority a franchising authority cannot refuse to process permit requests on the ground that the equipment can be used for non-cable services, including wireless services.
6. Declare a provider may not be required to obtain additional approval or consent from the franchising authority, other than generally applicable traffic control permits, for lashing communications facilities to facilities already installed under a cable franchise.
7. Declare new facilities to be installed as part of a franchised cable system in the public right-of-way may be subject only to generally applicable permit provisions addressing time, place and manner of access for construction that will disrupt use of the right-of-way and should be processed in a timely manner.
8. Declare any fees for routine permits should be limited to the actual cost of processing and reviewing the permit.
9. Adopt a declaratory ruling that, in addition to their rights under state property law, franchised cable operators have the right under Section 621(a)(2) to utilize compatible utility easements, regardless of the services provided over the cable system.
10. Rule that owners of private easements may not engage in discriminatory behavior or restrict a franchised cable operator’s rights to utilize compatible easements for such purposes.
11. Cable operators should have access to easements under the terms and conditions of existing easement agreements, without being required to negotiate a new agreement with the grantor of the easement.
12. Find any costs incurred by a cable operator and not reimbursed by a franchising authority in connection with any discriminatory forced relocation of facilities are considered franchise fees for purposes of Title VI.