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September 11, 2017

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

Re: *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79;
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84;
Restoring Internet Freedom, WC Docket No 17-108;
Accelerating Broadband Deployment, WC Docket No 17-83

Dear Secretary Dortch,

On September 7, 2017, the following Chief Information/Technology Officers and their staffs met with Commissioner Brendan Carr and Nathan Eagan, his Legal Advisor, to discuss net neutrality, local authority and the role such authority plays in achieving a CTO's vision of the Internet of Things, local government representation on the BDAC and the need to increase the transparency of the process.

- Miguel Gamiño, Chief Technology Officer of New York City;
- Michael Mattmiller, Chief Technology Officer of Seattle;
- Linda Gerull, Chief Technology Officer of San Francisco;
- Archana Vemulapalli, Chief Technology Officer of the District of Columbia;
- Stephen Elkins, Chief Information Officer of Austin, Texas; and
- Mike Lynch, Boston Cable Administrator and In-coming President of the National Association of Telecommunications Officers and Advisors.

They were joined by their staffs and Washington counsel, including the undersigned in his role as counsel to the City of Boston:

- Smruti Radkar, Esq. (District of Columbia)
- Anne Schwieger (City of Boston)
- Leslie Pollner (City of Seattle)
- Eve O'Toole (City of San Francisco)
- Nikolas Nartowicz (District of Columbia)

- Sam Cooper (New York City)
- Priya Shrinivasan (New York City)
- Max Sevillia (New York City)

The CTOs shared that it is part of their jobs to integrate new technologies into the daily life of their communities, and therefore support efforts to promote deployment of wireline and wireless infrastructure so long as it is deployed in a manner that optimizes systems-wide productivity and performance, while maximizing benefits to the public and properly protecting privacy and security interests. They pointed out, consistent with the letter signed by 11 communities and attached hereto, some of which were not present, that the two infrastructure proceedings before the Commission [*Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* (WT Docket No. 17-79) and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking* (WC Docket No. 17-84)] put hundreds of millions of dollars in potential investments at risk, limiting investments that would otherwise create new jobs throughout this country, and placing the effective deployment of advanced networks in jeopardy.

The CTOs shared an updated "Mayors' Letter in Support of Net Neutrality." The letter which has been filed in the Net Neutrality proceedings has now been signed by sixty-five (65) mayors representing more than 26 million Americans. The letter is attached hereto.

Finally, the CTOs spoke of the lack of local government representation on the BDAC and that such lack of representation makes it hard to understand how the BDAC's work product will be balanced and useful. Moreover, Miguel Gamiño, Chief Technology Officer of New York City and a member of one of the BDAC's working groups, shared his frustration with not being able to share the work of subcommittee with his fellow CTOs and other local government officials for their input. This is because the subcommittee work is being treated as confidential. Mr. Gamiño asked if that rule could be reconsidered as a means to promote greater transparency.

In accordance with Section 1.1206(b) of the Commission's rules, an electronic copy of this letter is being filed in the above-captioned proceedings.

Please contact me with any questions regarding this submission.

Sincerely,

Gerard Lavery Lederer
of BEST BEST & KRIEGER LLP

Attachments

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Ajit Pai
Chairman
Federal Communications Commission
445 12th St SW
Washington, DC 20554

July 17, 2017

Dear Chairman Pai:

Our nation's residents benefit immensely from an open internet, which drives innovation and economic growth across every segment of American society. "Net neutrality" rules recognize the importance of maintaining a level playing field for all internet content – regardless of the creator or owner – to be enjoyed by all users, regardless of their internet provider. For this reason, the U.S. Conference of Mayors has consistently advocated for strong federal actions on this issue across two federal administrations.

This message has been consistent and simple. Be it through the Federal Communications Commission (FCC) or through legislative action, the U.S. Conference of Mayors first called in 2014 for nationwide internet protections that enforce the following nondiscrimination principles:

- Commitment to transparency;
- The free flow of information over the internet;
- No blocking of lawful websites;
- No unreasonable discrimination of lawful network traffic; and
- No paid prioritization.

In 2015, the FCC enshrined these same principles of free and open internet service into law, through the reclassification of internet service under Title II of the Communications Act.

On May 18th, the FCC voted to consider full repeal of Title II and net neutrality rules. The FCC's proposal poses a significant risk of stifling American innovation and harming local economies across the country.

Net neutrality is a pocket book issue for American households. Full repeal would have a particularly negative impact on middle and working class families, while simultaneously restricting access to certain types of online content and services to those who cannot afford to pay more. When internet providers restrict access to certain types of content and services and charge residents for the luxury of accessing information and services online, we are all less free to participate in the modern economy. For these and many other reasons, repealing these crucial

protections will prove disruptive for our residents, our families, our small businesses, and countless others including nonprofits, schools, and libraries.

Additionally, technology startups depend on net neutrality to gain fair and competitive access to customers. A repeal of net neutrality rules could see innovative solutions from these startups relegated to the background as entrenched internet providers steer consumers to established solutions that can afford to pay for privileged status. Our cities depend on a thriving startup community to drive innovation and our continued economic growth.

The FCC must maintain and enforce the 2015 Open Internet Order, to ensure the principles of openness, freedom, and innovation continue to drive the American economy into the twenty-first century.

Sincerely,

Edwin M. Lee, Mayor, City and County of San Francisco, California
Bill de Blasio, Mayor, City of New York, New York
Martin J. Walsh, Mayor, City of Boston, Massachusetts
Muriel Bowser, Mayor, District of Columbia
Ed Murray, Mayor, City of Seattle, Washington
Rahm Emanuel, Mayor, City of Chicago, Illinois
Allison Silberberg, Mayor, City of Alexandria, Virginia
Dana Kirkham, Mayor, City of Ammon, Idaho
Steve Adler, Mayor, City of Austin, Texas
Jesse Arreguin, Mayor, City of Berkeley, California
Ben Kessler, Mayor, City of Bexley, Ohio
Melvin Kleckner, Town Administrator, Town of Brookline, Massachusetts
E. Denise Simmons, Mayor, City of Cambridge, Massachusetts
Deborah Frank Feinen, Mayor, City of Champaign, Illinois
Andy Berke, Mayor, City of Chattanooga, Tennessee
Mary Casillas Salas, Mayor, City of Chula Vista, California
Kim McMillan, Mayor, City of Clarksville, Tennessee
John Woods, Mayor, Town of Davidson, North Carolina
Lucy Vinis, Mayor, City of Eugene, Oregon
Lioneld Jordan, Mayor, City of Fayetteville, Arkansas
William McLeod, Mayor, Village of Hoffman Estates, Illinois

Archibald L. Gillies, Chairman, Islesboro Board of Selectmen, Town of Islesboro, Maine

David Baker, Mayor, City of Kenmore, Washington

Peter D'Errico, Chair of Select Board, Town of Leverett, Massachusetts

Chris Beutler, Mayor, City of Lincoln, Nebraska

Edward J. Kennedy, Mayor, City of Lowell, Massachusetts

Paul Soglin, Mayor, City of Madison, Wisconsin

Alex Morcos, Mayor, City of Medina, Washington

Mark Gamba, Mayor, City of Milwaukie, Oregon

Betsy Hodges, Mayor, City of Minneapolis, Minnesota

Hans Riemer, Council Vice President, Montgomery County, Maryland

Jennifer Gregerson, Mayor, City of Mukilteo, Washington

Megan Barry, Mayor, Metropolitan Nashville & Davidson County, Tennessee

Jon Mitchell, Mayor, City of New Bedford, Massachusetts

Toni N. Harp, Mayor, City of New Haven, Connecticut

David J. Narkewicz, Mayor, City of Northampton, Massachusetts

Libby Schaaf, Mayor, City of Oakland, California

Greg Stanton, Mayor, City of Phoenix, Arizona

William Peduto, Mayor, City of Pittsburgh, Pennsylvania

Ted Wheeler, Mayor, City of Portland, Oregon

Tom Butt, Mayor, City of Richmond, California

Sherman P. Lea, Sr., Mayor, City of Roanoke, Virginia

Byron Randolph Foley, Mayor, City of Salem, Virginia

Ron Nirenberg, Mayor, City of San Antonio, Texas

Sam Liccardo, Mayor, City of San Jose, California and Member, Federal Communications Commission Broadband Deployment Advisory Committee

Pauline Russo Cutter, Mayor, City of San Leandro, California

Zach Friend, Vice Chair, Santa Cruz County Board of Supervisors, Santa Cruz County, California

Cynthia Chase, Mayor, City of Santa Cruz, California

Ted Winterer, Mayor, City of Santa Monica, California

Joanne Dittes Yepsen, Mayor, Michele Madigan, Commissioner of Finance, and the City of Saratoga Springs City Council, City of Saratoga Springs, New York

Gary R. McCarthy, Mayor, City of Schenectady, New York

Patricia Smith, Mayor, City of South Portland, Maine

Christine Lundberg, Mayor, City of Springfield, Oregon

David R. Martin, Mayor, City of Stamford, Connecticut

Elizabeth Goreham, Mayor, Borough of State College, Pennsylvania
Stephanie Miner, Mayor, City of Syracuse, New York
Marilyn Strickland, Mayor, City of Tacoma, Washington
Diane Wolfe Marlin, Mayor, City of Urbana, Illinois
William D. Sessoms, Jr., Mayor, City of Virginia Beach, Virginia
John Heilman, Mayor, City of West Hollywood, California
Joe Dominick, Mayor, City of Westminster, Maryland
Gary Resnick, Mayor, City of Wilton Manors, Florida

September 7, 2017

The Honorable Ajit Pai, Chairman
The Honorable Mignon Clyburn, Commissioner
The Honorable Michael O'Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Pai and Commissioners Clyburn, O'Rielly, Carr and Rosenworcel:

We are Chief Innovation Officers, Chief Information Officers, and Chief Technology Officers representing communities across the country. As part of our jobs, we attempt to integrate new technologies into the daily life of our community.

We support efforts to promote deployment of wireline and wireless infrastructure. We work regularly within our communities, and have been working, with success, to streamline processes for deployment of this infrastructure. We believe that digital networks, which will enable the next wave of innovation and economic growth, can be deployed in a manner that optimizes systems-wide productivity and performance, maximizes benefits to the public and properly protects interests in privacy and security.

However, we also believe that two current proceedings before the Commission put hundreds of millions of dollars in potential investments at risk – limiting investments that would otherwise create new jobs throughout this country, and placing the effective deployment of advanced networks in jeopardy. The two proceedings are Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking and Notice of Inquiry (WT Docket No. 17-79; FCC 17-38) 82 Fed. Reg. 21761 (May 10, 2017); and Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking, Notice of Inquiry and Request for Comment (WC Docket No. 17-84; FCC 17-37) 82 Fed. Reg. 22453 (May 16, 2017). These proceedings propose to allow incumbent providers of telecommunications services and facilities access to public and private property at below market rates (and seemingly, below full cost), and do not provide any incentives or guarantees that systems will be built out to serve underserved areas in urban, suburban, and rural America.

We focus on three issues of concern:

- Mandating access to public property without adequate coordination or planning among entities,
- Pricing of access to municipal property, and
- Assumptions the rulemakings make about how the Internet of Things (IoT) will develop.

To understand those concerns, it is important to recognize the challenges and opportunities being created by the development of the IoT. At a municipal level today, the IoT can have impacts that may seem small (alerting the City to waste receptacles that are full) but that allow us to maintain cleaner communities and provide services more effectively to our residents. But in the future, the IoT will be transformative, allowing us to better manage traffic systems, develop infrastructure that can support autonomous vehicles, and make our public safety systems more responsive and our communities safer. The potential beneficial impacts are so significant that, if the resources are available to them, localities are expected to be among the largest category of investors in the equipment and systems that make up the IoT. We often refer to the effort to incorporate technology into municipal functions as the "Smart City" initiative. Local governments worldwide are expected to spend almost $41 trillion on the Internet of Things over the next two decades.[1] Some analysts predict that the market for Smart City technologies to be worth about $737 billion by 2020.

These projections assume that localities, with their constrained budgets: will be able to take advantage of existing infrastructure to deploy IoT hardware; will be in a position to invest in IoT hardware and software; and will be able to pay for the services or infrastructure required to interconnect network elements. With respect to the first, cities must be able to plan and coordinate use of their infrastructure. There is limited space available on public infrastructure and that space must be managed carefully to ensure that important public services – including equipment critical to public safety – are not adversely affected by deployment of private systems. One of the ways multiple uses can be accommodated is through contracts that ensure that public property remains available for public uses. By contrast, mandating access to any entity that wishes to construct wireless facilities or provide wireless services may make it far more expensive, and in some cases impossible to deploy the IoT network elements that will enable states and local governments to provide advanced services to their communities. A rule that allows private companies to essentially gain control of limited space on public property will, in effect, inhibit deployment and public investment. It is likely to result in *less* innovation.

As to funding, it is hard to imagine that the funding for widespread public IoT investments can come from increased taxes, bonding backed by general funds, or existing municipal budgets. Today, local governments are improving infrastructure and deploying the IoT by leveraging existing assets such as, publicly owned light standards, providing access to private companies in

[1] http://www.cnbc.com/2016/10/25/spending-on-smart-cities-around-the-world-could-reach-41-trillion.html

return for cash or in-kind rents, such as the provision of capacity, sensors, and services to local governments for little or no charge. The model is a classic public-private partnership that allows for far more rapid deployment of IoT projects than would otherwise occur.

Allowing localities to leverage assets also permits localities to develop contractual requirements that result in advanced services being made available throughout a community. Ensuring that underserved populations benefit from internet connectivity technology is critical to fully realize the promise of connected societies.

When the FCC proposes to regulate what charges can be levied for use of public assets, or threatens to prohibit local governments from requiring in-kind contributions as a condition of access to government property, it may effectively prevent or delay precisely the arrangements that are leading to deployment of advanced technologies and providing governments with the ability to make the investments required to support the IoT. Many communities have tried to entice deployment by lowering access costs or streamlining permitting processes, and have failed to attract significant new investment. All the signatories, by contrast have been successful in leveraging assets in a manner that significantly encourages deployment. In Boston, the City is providing access to City infrastructure and in return, obtains access to excess fiber that it can use as a backbone for the provision of advanced services that it might not otherwise be able to pursue. In Los Angeles and San Jose, the Cities worked with Philips-Ericsson to deploy smart street lights that can be used by wireless providers, and that also perform important public safety functions and provide free Wi-Fi to residents. New York City entered into a payphone conversion franchise with LinkNYC that will result in a system of thousands of high-tech public communications structures across the five boroughs. Each new structure will provide completely free, ultra-high speed Wi-Fi service. Under the FCC's proposed rules it is highly doubtful that any of these arrangements would have been viable under a model where access to public facilities is free or at cost.

The models outlined above are consistent with free market approaches and have enabled investment in infrastructure that serves the public good. If the FCC wishes to encourage development of the IoT and deployment of advanced technology, the FCC needs to preserve local authority to leverage assets to encourage deployment, and should not attempt to regulate rates or charges for use of public property.

In addition, the two rulemakings assume that entities holding licenses to provide commercial mobile radio services (and those who build infrastructure for them), and incumbent telecommunications service providers are building the networks that will provide the foundation for the IoT. That is not necessarily the case. As the Commission is well aware, on the wireless side, there has been an explosion in the use of unlicensed frequencies, and in devices that can deliver advanced services using the best available networks. On the wireline side, we are seeing combinations of publicly and privately owned software-defined networks that function in very different ways from traditional networks. By ensuring that localities have the ability to enter into

partnerships and to control their own assets, the FCC can encourage innovation in product design and deployment that will result in networks that do more than simply stream video to the home.

Moreover, providing flexibility to localities allows us to begin to use contractual tools to identify and address some of the critical issues raised by deployment of devices that potentially allow for collection of data about vehicles, pedestrians, residences and businesses near the deployment. Issues as to what data may be collected, how it may be used, and public rights with respect to the collection and use of that data are serious. There is a potential for networks without appropriate privacy safeguards in place to be used as a tool for surveillance or discrimination. Finally, these networks are also potentially a target for bad actors trying to disrupt systems or wreak havoc. Maximizing local flexibility is not only likely to result in more innovation, more deployment and more jobs, it is also likely to enable the development of deployment approaches that can begin to address privacy, data sharing, data use, cybersecurity, and equity issues surrounding the deployment of advanced networks in public spaces.

We urge you not to regulate from the top down in a world where real innovation is occurring at local levels.

Sincerely,

Samir Saini, Chief Information Officer, City of Atlanta, Georgia

Stephen Elkins, Chief Information Officer, City of Austin, Texas

Jascha Franklin-Hodge, Chief Information Officer, City of Boston, Massachusetts

Danielle DuMerer, Chief Information Officer and Commissioner, City of Chicago, Illinois

William Finch, Chief Information Officer, City of Dallas, Texas

Archana Vemulapalli, Chief Technology Officer, District of Columbia

Ted Ross, General Manager, Chief Information Officer, City of Los Angeles, California

H.N. Sonny Segal, Chief Information Officer, Montgomery County, Maryland

Miguel Gamiño Jr., Chief Technology Officer, City of New York, New York

Anne Roest, Commissioner, New York City Department of Information Technology & Telecommunications and Chief Information Officer, City of New York, New York

Ann Goldenberg, Division Manager, Office for Community Technology, City of Portland, Oregon

Shireen Santosham, Chief Innovation Officer, City of San Jose, California

Michael Mattmiller, Chief Technology Officer, City of Seattle, Washington

The Need to Preserve Local Government and Consumers Rights in the Broadband Era

WHEREAS, the Federal Communications Commission has recently opened two proceedings (**WT Docket Nos. 17-79 and WC Docket No. 17-84)** that if adopted would deny local governments' authority to manage their rights-of-way and determine where wireless infrastructure is sited, including a proposed preemptive zoning practice called "deemed granted" or overturning community decisions to underground utilities; and

WHEREAS, these two proceedings would also challenge a local government's rights to charge fair market rental rates when communications providers locate their equipment on your buildings, your water tanks, your light poles, in your rights-of-way or in your community parks; and

WHEREAS, the FCC at the same time established a Broadband Deployment Advisory Committee (BDAC) to provide advice and recommendations to the Commission on how to accelerate the deployment of high-speed Internet access, including creating model local government siting ordinances, but named only a single local government official to the group as opposed to 28 industry representatives,

NOW THEREFORE BE IT RESOLVED THAT THE UNITED STATES CONFERENCE OF MAYORS calls on the Federal Communications Commission and Congress to

- **Preserve Local Zoning Over Cell Towers and Small Cell Sitings:** Mayors oppose efforts at the Federal Communications Commission, in Congress and in the individual states to deny or limit a local government's decision-making authority over cell tower and small cell sitings. Such siting decisions must remain local as they involve public safety, community image, property valuations and competitiveness issues that are best handled at the local level.
- **Protect Local Police Powers over Rights-of-Way and Preservation of the Right of a Fair Rental Return on the Use of Public Assets:** Mayors call on Congress, the Federal Communications Commission and the individual state legislatures to reject legislative and regulatory initiatives to preempt, or otherwise limit, local governments' ability to manage their rights-of-way and other proprietary assets, including the ability to demand a fair rental payment for the use of same. Fairness and the financial health of local governments across the country demand that local governments retain authority to manage and obtain compensation for the use of their rights-of-way and other municipal property. Included in this compensable use should be broadband services which are not currently paying their fair share of the rent due for use of the community assets; and
- **Expand the BDAC's Membership to Include Additional Local Government Representatives and Refrain from Acting on Infrastructure NPRMs until the New and Expanded BDAC Has Issued Its**

Recommendations. Mayors want their communities connected with wireless and wireline broadband and would welcome discussion of workable practices that they can adopt and shape for their communities. Cooperative discussions are far superior to illegal and unconstitutional mandates.

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