



City of Casper

Incorporated 1889
Casper, Wyoming 82601

OFFICE OF CITY ATTORNEY
200 NORTH DAVID STREET
PHONE (307) 235-8252
(307) 235-7503
FAX (307) 235-7506

September 13, 2018

VIA ELECTRONIC FILING

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

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

Dear Ms. Dortch,

The City Attorney's office for the City of Casper, Wyoming ("City"), a Wyoming municipal corporation, writes to express its concerns about the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. Our City has been approached by Verizon and Mobilite about locating small cell wireless infrastructure in City rights-of-way. While we appreciate the Commission's efforts to engage with local governments on this issue and share the Commission's goal of ensuring the growth of cutting-edge broadband services for all Americans, we remain deeply concerned about several provisions of this proposal. Local governments must protect the health, safety and welfare of residents, and we are concerned these preemption measures compromise that traditional authority and expose wireless infrastructure providers to unnecessary liability.

- The FCC's proposed new collocation shot clock category is too extreme. The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired with the FCC's previous decision exempting small wireless facilities from federal historic and environmental review, this places an unreasonable burden on local governments to prevent historic preservation, environmental, or safety harms to the community. Adding up to three cubic feet of antenna and 28 cubic feet of additional equipment to a structure not originally designed to carry that equipment is substantial

and may necessitate more review than the FCC has allowed in its proposal. For instance, in its downtown corridor, the City of Casper has spent large sums of money moving electrical utilities underground to improve aesthetics and help revitalize the area. Aesthetics are important to a community, and agreeing about them sometimes takes longer than 60 days.

- The FCC's proposed definition of "effective prohibition" is overly broad. The draft report and order proposes a definition of "effective prohibition" that invites challenges to long-standing local rights-of-way requirements unless they meet a subjective and unclear set of guidelines. While the Commission may have intended to preserve local review, this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding. The definition unnecessarily invites legal challenges, bullying and intimidation tactics.
- The FCC's proposed recurring fee structure is an unreasonable overreach that will harm local policy innovation. We disagree with the FCC's interpretation of "fair and reasonable compensation" as meaning approximately \$270 per small cell site. Local governments share the federal government's goal of ensuring affordable broadband access for every American, regardless of their income level or address. That is why many cities have worked to negotiate fair deals with wireless providers, which may exceed that number or provide additional benefits to the community. Additionally, the Commission has moved away from rate regulation in recent years. Why does it see fit to so narrowly dictate the rates charged by municipalities? What appears lost in the whole discussion about "fair and reasonable compensation" is that local pole attachment fees have little impact on how affordable rates will be for consumers. For instance, "if one assumes the industry is constructing 20,000 new small cell antennas a year, even if each pole fee was \$3,000/year, the wireless industry AS A WHOLE would only lose out on \$60 million or less than .1% of their annual profit. Yes, you read that right, less than 1/10th of 1 percent of their annual profit. To put in perspective, Verizon and AT&T alone spent half that amount on lobbying alone in 2016.¹" It seems that carriers would like the benefits of locating in public rights-of-way (e.g., not having to negotiate and pay for private easements case by case), and yet, pay far less than other utilities locating in it.

¹ See an article by Ken Schmidt, dated April 11, 2017, available at <http://www.steelinthear.com/Blog/2017/04/top-10-things-the-wireless-industry-doesnt-tell-you-about-small-cells.html>

Ms. Marlene H. Dortch, Secretary

Page 3

September 13, 2018

The City of Casper has worked with private business to build the best broadband infrastructure possible for our residents. We oppose this effort to restrict local authority and stymie local innovation, while limiting the obligations providers have to our community. We urge you to oppose this declaratory ruling and report and order.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Wallace Trembath".

Wallace Trembath

Deputy City Attorney

Cc: Wyoming Association of Municipalities
National League of Cities