



City of Newport News

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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 of Newport News 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.

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 the proposed Ruling, Report and Order. Local governments have an important responsibility to protect the health, safety and welfare of residents. One of the ways we do this is by protecting and securing right-of-way and other property that we, as a City, own and manage for the benefit of our citizens. In that regard, the City of Newport News is concerned that the preemption measures outlined in the proposed Declaratory Ruling and Third Report and Order compromise such traditional authority; that the provisions preserving state and local government rights under 47 U.S.C. §253(b) and (c) are discounted in the Declaratory Ruling based upon arbitrary and capricious assumptions un-supported by sufficient evidence; that the Declaratory Ruling ignores the rights of local government and its taxpayers contrary to the Fifth and Tenth Amendments to the Constitution in favor of a single for-profit private industry; and that these Constitutional concerns outweigh the Commerce clause argument relied upon by the Commission in its Ruling.

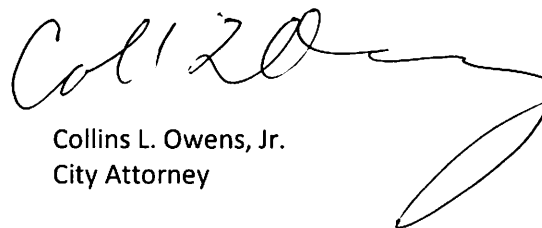
- **The FCC's proposed new collocation approval timeline is too extreme.** The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired with the FCC's previous decision exempting 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. Further, setting specific time limits to act upon applications is a constitutionally unsound usurpation by the federal government of the means and methods of enforcement of lawful state and local government regulation of land

usage in favor of a single for-profit private interest. The Ruling is clearly discriminatory in favor of this single industry at the expense of state and local taxpayers contrary to the principal of non-discrimination set out in provisions of 47 U.S.C. §253(b). Additionally, the increase of up to three cubic feet of antenna and 28 cubic feet of added 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; review which may be impossible to undertake within the proposed condensed period. Further, the expedited approval timeline does not take into consideration the fact that some localities do not have sufficient staff to process applications for the dozens or even hundreds of new installations that are currently being processed.

- **The FCC's proposed definition of a "*de facto* moratorium" or "effective prohibition" is overly broad.** The draft report and order proposes a definition of "*de facto* moratorium" or "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 the aforesaid terms has the effect of exposing local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding.
- **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? Municipal Corporations are corporations and, as such, have a right to be paid just compensation for the taking of their property rights, including the use of their right-of-way. Denying the ability to obtain just compensation for use of local property is contrary to the Fifth Amendment.

The City of Newport News has worked diligently 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, Report, and Order.

Very truly yours,

A handwritten signature in black ink, appearing to read "Collins L. Owens, Jr.", with a long, sweeping horizontal line extending to the right.

Collins L. Owens, Jr.
City Attorney

cc: Congressman Robert C. Scott, U.S. House of Delegates
Congressman Tim M. Kaine, U.S. Senate
Congressman Mark R. Warner, U.S. Senate