



September 17, 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,

On behalf of the City of Clayton, Ohio, we would like to express our concerns regarding the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. The City of Clayton is a small city located in Montgomery County Ohio and was the result of a merger of a township and a village in 1999. As a fledgling city of less than 20 years, we strive to make incremental improvements to our municipality to better serve our current residence and hopefully attract new growth in the Millennial population. In early 2018, we adopted an updated land use and comprehensive plan. The undertaking took well over a year to vet and included numerous sessions of public participation which provided the framework for how to proceed. Part of that vision includes recognition of the need for expanded utilities, such as wireless infrastructure, but also considers aesthetics and determining the most appropriate means to match both goals.

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 have an important responsibility to protect the health, safety and welfare of residents. We are concerned these preemption measures compromise that traditional authority and expose wireless infrastructure providers to unnecessary liability.

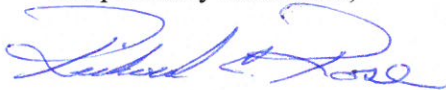
- **The FCC's proposed new collocation shot clock category is far too extreme and removes all local control.** The proposal designates any preexisting structure, regardless of its design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. When paired 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 concerns to the community. The addition of 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.

- **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 best decisions are made when two parties share their goals and then work together to find the best means to resolve the conflict and move the project forward. Litigation, only cost everyone time and money; no one comes out a winner and the current proposal most surely will include numerous challenges in the future.
- **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. The Commission has moved away from rate regulation in recent years and this new position causes concern as to why fair and equitable cannot be substantiated by each community and the providers. Fees less than proposed may very well be appropriate but in some cases, higher fees may be justified. Cities and providers should work together on a case by case basis.

The City of Clayton will continue to work with private business to build the best broadband infrastructure possible for our residents. However, we oppose this current 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, third report and order.

Respectfully submitted,



Richard C. Rose  
City Manager