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VIA ELECTRONIC FILING

September 17, 2018

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 Town of Herndon, Virginia 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. The Town of Herndon is located in Northern Virginia and has a population of 24,393. The Town encompasses 4.2 sq. mi., 3.06 sq. mi. of which are zoned for residential use, leaving 1.14 sq. mi. for commercial purposes.

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, and we are concerned that 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. The addition

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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. Of the Town of Herndon's 4.2 sq. mi. of land, .31 sq. mi. make up the Historic District. Many structures in the Historic District are more than 100 years old and are integral to that district. Safety and zoning review in this district is already complex. The FCC's new rules actively prevent the required preservation review in this district.

- 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 exposes local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding. As a Town of limited area in a dense modern urban environment, our structures and rights of way are already at or almost at capacity. Adequate time needs to be available to consider the competing interests for the limited space in public areas.
- 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. We believe that any use of public rights-of-way should be valued at fair market value. That is why many cities and towns have worked to negotiate fair deals with wireless providers, that represent the actual cost to localities, which may exceed that number or provide additional benefits to the community. Given that the Commission has moved away from rate regulation in recent years why does it seek to so narrowly dictate the rates charged by municipalities now?

Our Town has labored 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 "Lisa C. Merkel". The signature is fluid and cursive, with the first name "Lisa" being more legible than the last name "Merkel".

Lisa C. Merkel, Mayor
Town of Herndon, Virginia

- c. William Ashton, Town Manager
Virginia Municipal League