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September 17, 2018

VIA ELECTRONIC FILING

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

Dear Ms. Dortch,

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
Oppose

On behalf of the League of California Cities, we are opposed to 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 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.

Just last year, the wireless industry pursued similar failed legislation here in California that sought to achieve many of the elements present in this proposal. The industry's effort here was met with overwhelming opposition from over 325 cities concerned about shifting authority away from our residents, businesses, and communities over to a for-profit industry whose shareholder returns potentially outweigh their considerations for the health, safety, aesthetic, and public benefits of the communities we serve.

To be clear, cities across California share in the goal of ensuring all our residents have access to affordable, reliable high-speed broadband and eagerly welcome installation of wireless infrastructure in collaboration with local governments. However, this proposal will not help in achieving these goals.

Instead, this proposal would interfere with local governments' management of their own property and their ability to receive fair compensation for its use. Local governments actively manage the rights of way to protect their residents' safety, preserve the character of their communities, and maintain the availability of the rights of way for current and future uses. Hundreds of cities throughout California have the following major concerns with this proposal:

- **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 of up to three cubic feet of antenna and 28 cubic feet of additional equipment to a structure not originally designed to carry equipment as large as a refrigerator necessitates 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 more 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.

This proposal would force local governments to give access to public property funded by the taxpayer so that for-profit wireless corporations can install their equipment to sell their private services. By eliminating fair market rate leases for use of taxpayer funded property, this proposal effectively gives corporations discounted access to these facilities with no requirement to pass their cost-savings onto their customers. This would create billions of dollars of value for wireless industry shareholders by eliminating fair market rate leases. Furthermore, rents from the use of public property, which every other for-profit business pays, help pay for essential public services, such as police, fire, libraries, and parks. This proposal would set a dangerous precedent for other private industries to seek similar treatment to benefit their shareholders over constituent funded infrastructure, further eroding the ability to fund vital local services.

Ultimately, this proposal would have lasting damaging impacts on the character of each individual city, while simultaneously creating an undue burden on taxpayers to subsidize the deployment of wireless infrastructure for private corporations. This proposal should be rejected and wireless providers should be instead encouraged to work in collaboration with their local governments and residents we serve to deploy this critical infrastructure.

For these reasons, the League of California Cities **opposes** this FCC proposal. If you have any questions or need any additional information, please contact me or the League's Washington advocate, Leslie Pollner (leslie.pollner@hklaw.com) at 202.469.5149.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Berdugo', with a stylized, cursive script.

Rony Berdugo
Legislative Representative

cc: California Congressional Delegation