



September 17, 2018

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

VIA ELECTRONIC FILING

RE: Accelerating Wireless 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,

McKinley County New Mexico, a political subdivision of the State of New Mexico, submits this letter to express our concerns over the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. McKinley County has a population of approximately 73,000 citizens. Our County is unique in that of the 5,449.81 square miles that make up McKinley County, only 20% of that land is within the regulatory jurisdiction of the local County government. Most of the remaining 80% is within the jurisdiction of the Navajo Nation, the Bureau of Indian Affairs, or the Zuni Pueblo.

We share the Commission's objective of finding new ways to effectively deploy broadband technologies, especially in underserved communities; however, we are concerned with the limiting of a local governments' ability to serve as trustees of public property, safety and welfare that the proposed language will have. Counties own substantial amounts of public rights-of-way, which many communication providers use to construct their own communications networks. The proposed order would significantly narrow the amount of time for local governments to evaluate 5G deployment applications from communication providers – effectively hindering our ability to protect the public health and safety responsibilities placed upon us during the construction and modification of broadcasting facilities.

- **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.

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- 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 of necessity, needs more review time and analysis 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 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?

Our County has worked with private business in the recent past to permit two small broadband infrastructure sites for small groups of our residents. While these sites did not fall within the preview of being placed in existing rights-of-way, we did need more time and expended a greater amount of funds than your regulations would allow. We are responsible for the health and safety of our citizens and need to be Thorough in analyzing any communication site. 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,



Anthony Dimas, Jr., McKinley County Manager

c. Douglas W. Decker, McKinley County Attorney