



# CITY OF KENT, OHIO

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## OFFICE OF THE CITY MANAGER

September 18, 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:

The City of Kent, Ohio, 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 City of Kent, Ohio, home of Kent State University, is a diverse city of nearly 30,000 which has worked very hard for many years to create and maintain attractive, vibrant neighborhoods and business districts.

We understand and acknowledge the importance of facilitating deployment of advanced wireless communications; our residents and businesses are as eager as anyone for ultra-fast 5G service. But, we are deeply concerned about several provisions of this current proposal. We have an important responsibility to protect the health, safety and welfare of our residents, and we are concerned that the preemptive and restrictive measures within the proposal compromise our ability to do so.

Equally as important, the proposal overlooks and is inconsistent with Ohio Revised Code Chapter 4939, Ohio's Right of Way Management statute, which includes specific and detailed small cell wireless deployment provisions that just recently took effect, on August 1, 2018. Ohio H.B. 478, which modified Chapter 4939 to insert these small cell provisions, followed thoughtful, intense and lengthy negotiations involving the wireless carriers and Ohio municipalities. The carriers met many times over a 6 month period with the Ohio Municipal League and a number of municipalities and their representatives to balance the industry's need

for clear, predictable and reasonable rules for deployment with the municipalities' need to properly manage the public right of way, protect the public health, safety and welfare, and create and maintain attractive communities.

Since H.B. 478 was adopted, the City of Kent and numerous other Ohio cities have implemented small cell wireless ordinances, or updated their right of way ordinances, in accordance with the new law. Ohio wireless providers and municipalities have expressed their intention to work collaboratively under these new rules. The proposal would almost completely derail this new regulatory framework.

In particular, the following issues are problematic for the City of Kent:

- The proposed new small cell shot clocks are too extreme. The proposal designates any preexisting structure, regardless of design or suitability for attaching wireless equipment, as eligible for this new expedited 60 day shot clock. As a result of these timelines and the FCC's previous decision exempting small wireless facilities from federal historic and environmental review, local governments will be materially impaired in their efforts to protect against historic preservation, environmental, or safety harms.
- The proposal to allow an unlimited number of applications to be filed in a batch with no change in the processing time shot clock is unreasonable. Cities could even need to hire new or temporary employees to comply unless there is tolling – and the availability of tolling is left up to the applicant. Processing small cell wireless applications is a very small part of a city's responsibilities to residents and a city should not be forced to choose between properly reviewing such applications and incurring additional costs.
- The proposal to allow poles as tall as fifty (50) feet substantially increases the height allowed under the new small cell provisions of Ohio Revised Code Chapter 4939, where the industry agreed to a limit of forty (40) feet above grade generally, and as low as thirty-five (35) feet under particular circumstances. These lower limits better respect the character and aesthetics of neighborhoods in communities like Kent.
- The proposal's analogies to other types of wireless siting applications with respect to tolling/shot clock issues and the propriety of the FCC's proposed new injunctive remedy ignore the reality that small cell wireless facilities are going to be deployed in far, far greater numbers. It is inappropriate to require that local governments simply open their rights-of-way, which they are charged with managing for the benefit of their citizens, to be littered with thousands of small cell facilities placed wherever the applicant wishes.

As stated, the City of Kent recognizes the critical importance of advanced wireless communications. We believe that the recent changes in Ohio law negotiated with the wireless industry strike a better balance between the needs of the wireless communication providers and those of municipalities charged with protecting their communities and residents. We oppose the proposal as an effort to restrict local authority which will impair our ability to serve our residents. We urge you to oppose this declaratory ruling and report and order.

Respectfully submitted,



Dave Ruller  
City Manager

cc: Hope L. Jones, Law Director