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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:

On behalf of the Arlington County, Virginia government, I am writing to express 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.
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 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 new proposed shot clock ignores the fact that Virginia law already has an existing definition of small cells, co-location and a shot-clock which was just passed into law last year. Introducing an additional layer of definition and deadlines creates confusion and conflict between the state and federal regulations that must be adhered to.

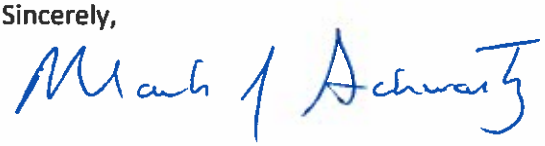
Additionally, it is infeasible to have the shot clock encompass all steps related to the small cell siting process. There is no single application to get right of way access, public notice, lease negotiations, road closures, etc.; these are all separate processes involving different departments, and the timeline in some instances will depend on the applicant, or the required information may interrelate in a manner that makes doing them all at once infeasible. For example, the applicant may not want to start the right of way access period before fully negotiating the lease agreement. This "one size fits all" approach will disincentive local governments from even entertaining lease or franchise offers, for fear of running afoul of the new shot clock.

- **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. Given that different neighborhoods may have different aesthetic concerns, it's not feasible to publish local aesthetic requirements in advance. Regulating aesthetic principles in local neighborhoods is a classic area of local land use and zoning, and the federal government should not impinge on local government's authority to regulate these areas, or impose restrictions that may not make sense for that particular local neighborhood.

- **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 as this will disincentivize local governments from entertaining leases or access agreements, since they will be in danger of giving up public infrastructure for less than market rate?

Arlington County has worked with private business to build the best broadband infrastructure possible for our residents. We oppose this effort to restrict local authority, stymie local innovation, limit the obligations providers have to our community, and disrupt agreements that business and government have carefully negotiated to protect both our interests. We urge the FCC to oppose this declaratory ruling and report and order.

Sincerely,



Mark J. Schwartz
County Manager