



September 17, 2018

Secretary Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th St., SW  
Washington, DC 20554

Subject: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84 and WT Docket No. 17-79

Dear Secretary Dortch:

On behalf of the City of Delaware, Ohio, I am writing to express my 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 Delaware is a full service, county seat municipality established in 1808 comprised of more than 40,000 residents and 20 square miles. It is home to national and international industry and Ohio Wesleyan University among other notable community uses. It is the birth place of a President with a thriving, restored, historic downtown.

The City of Delaware, like many cities in Ohio, welcomes the rapid deployment of new technology, both for our residents and businesses. 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 preemptive 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 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? This would be an unreasonable restriction on local government's ability to effectively serve their citizens with appropriate review. It also unfairly shifts the cost burden of the review from the private sector to local governments.

The combined effect of the proposed limits on review timeframes and fees, and unclear definition of effective prohibition is to incentivize the proliferation of small cell wireless facilities in public rights-of-way by telecom providers outside of a planned and coordinated process, and without consideration of public health, safety, and welfare.

Throughout the last calendar year many communities across Ohio, including Delaware, worked in a collaborative fashion with wireless telecommunications companies to address our concerns with the small cell facility language enacted in a separate piece of state legislation. After months of work, the interested parties (cities, wireless providers and Ohio legislators) reached a consensus resolution that addressed the telecommunication industry's real concerns of ensuring greater predictability in deploying new technology throughout Ohio, while respecting the character of local municipalities and protecting our infrastructure investment.

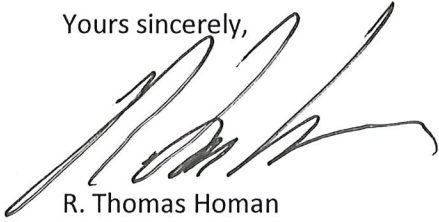
The outcome of that compromise is House Bill 478, which was signed into law earlier this year by Governor John Kasich. If the proposed rule were to take effect, the hard work and equitable compromise accomplished through the bill will be undone. Therefore, we oppose this effort to restrict local authority and urge you to oppose this declaratory ruling and report and order.

**Despite the concern regarding issues of local sovereignty and possible federal takings, should the Commission proceed with enacting this Order, we request an exemption for those states in which the wireless industry and municipalities have reached consensus regarding the placement and installation of small cell facilities and the associated fees, timelines and aesthetics.**

The City of Delaware and the wireless industry have worked well together to deploy wireless and broadband services to our community while balancing municipal regulation and the industry's deployment needs.

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.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Thomas Homan', written in a cursive style.

R. Thomas Homan  
City Manager

cc: City Council  
Dave Efland, Planning & Community Development Director  
Darren Shulman, City Attorney  
Senator Sherrod Brown  
Senator Rob Portman  
Congressman Troy Balderson