



New York State Conference of Mayors and Municipal Officials

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Peter A. Baynes

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 cities and villages comprising the membership of the New York State Conference of Mayors, I write to express our strong opposition 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. This order would severely restrict local governments' authority to regulate wireless facilities, grant wireless service providers unparalleled rights of access to the municipal right-of-way (ROW), and mandate specific application procedures for wireless facilities installed in the ROW. While NYCOM supports universal high-speed internet access for all, the means by which this rule and order mandates the installation of wireless facilities and eliminates the ability of local governments to obtain a fair return for wireless equipment installed on taxpayer property is fatally flawed and not in the public interest. Maintaining the public ROW is an essential function of local governments and their capacity to protect the public's health, safety, and welfare and preserve the character of communities. The standard provided in this order would fundamentally impinge on the ability and responsibility of local governments to make well-reasoned decisions in the best interest of their residents.

- **The FCC's proposed new collocation shot clock category is too extreme.** The proposal would usurp local government authority to address particularized public safety and aesthetic concerns related to the installment of such facilities by limiting the factors that a municipality may include when reviewing a wireless application, and reducing the amount of time a local government has to consider an application. Additionally, the order designates any preexisting structure, regardless of its design or

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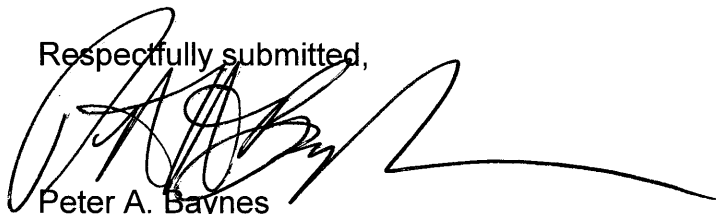
Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
September 18, 2018
Page 2

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 as they seek 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.** Compelling local governments to charge below-market rates for the use of public structures will foster the already inequitable deployment of broadband technologies. Additionally, limiting the fees that municipalities may charge a wireless applicant to the direct and actual costs of the installation will eliminate the ability of local governments to receive fair compensation for the use and maintenance of public property.

Again, achieving broadband ubiquity is an important and necessary goal for all municipalities in New York State and across the country. However, forcing local governments to abdicate their authority to protect and maintain public rights-of-way, and preventing cities and villages from receiving a fair return for rented space on municipally owned infrastructure is simply untenable. For the aforementioned reasons, NYCOM vigorously urges you to oppose this declaratory ruling and report and order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter A. Baynes', is written over the typed name.

Peter A. Baynes
NYCOM Executive Director