



## City of Rochester

City Hall Room 308A, 30 Church Street  
Rochester, New York 14614-1290  
[www.cityofrochester.gov](http://www.cityofrochester.gov)

Lovely A. Warrar  
Mayor

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 Rochester, New York submits these comments in response 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. The City of Rochester is a medium sized city located in western New York, with a population of approximately 210,000. While boasting a high concentration of area colleges and universities, including the University of Rochester and Rochester Institute of Technology and a growing high technology sector, especially in the area of imaging and optics, the City also suffers from one of the highest rates of urban poverty and has one of the lowest high school graduation rates in the country. The City, as is typical of many so called "rust belt" cities, has aging infrastructure and increasing demands for public services in the face of limited resources, and is keenly aware of the importance of encouraging high quality telecommunications services for our residents, businesses, educational and other institutions. Without question, the City of Rochester, recognizes the importance of broadband deployment and realizes that our City will be left behind in terms of jobs, growth and economic development if we do not encourage the expansion of telecommunications infrastructure. However we are also mindful of our obligation to protect and manage the City's valuable public resources, including our right-of way, for the benefit of our taxpayers.

In support of this telecommunications infrastructure growth, the City of Rochester, has for the past several months been drafting a Telecommunications Code. We believe this Code will have the multiple benefits of having a clear, expedited, consistent procedure for reviewing and granting applications for use of our right-of-way for telecommunications facilities, which will encourage infrastructure deployment, while requiring applicants to protect the right-of-way through reasonable requirements for installation and maintenance of facilities and equipment and payment of reasonable compensation for use of this public asset.

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 restrictive.** 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. 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. It has been the City of Rochester's experience that every applicant has concluded that our existing street lighting poles must be replaced with new stronger poles, even for the first installation of facilities. However, one case required substantial push back from the City, requiring the applicant to provide an engineering report to certify that the existing pole's load bearing capacity was sufficient to support the proposed equipment. After we made this demand, the applicant changed its position and installed new poles. If a less responsible applicant, one driven by financial considerations, decides that an existing pole is adequate for collocation of additional equipment, the City will be forced to either deny the application or run afoul of the shot clock if it requires engineering reports or other additional information about the safety of collocation facilities. There should be provision for additional time when issues of safety require supplemental information or verification or a change of the applicant's plans.

- The FCC'S proposed shot clock for new construction is too restrictive in the case of batched applications.**

The 90 day shot clock for new construction applications is reasonable and will ensure a reasonable yet prompt review and approval process. We believe that in most cases we can easily comply with the requirement and in fact, the City of Rochester draft code provides a 30 day permit approval period. However, we are concerned that the shot clock applies regardless of the number of site applications. Paragraph 110 of the Ruling fails to understand the nature of the permit review process where it states that batching "has advantages in terms of administrative efficiency". The Ruling does not recognize that an application review is not just a review of multiple uniform facilities drawings but requires inspection visits to each proposed site to verify field conditions such as existence of overhead lines, areaways and other aboveground facilities, inspection of electrical circuits for the pole and coordination with electrical utilities, evaluation of adjacent road and sidewalk conditions, as well as identification of other competing right-of-way projects in the area, and addressing complaints or issues with adjacent residential and business neighbors. There is no relevant "administrative efficiency" for such work. It has been our experience that applications have been batched with as many as 40 sites and there is potential for even larger numbers and each site requires individual review and inspection.

While there is "finger pointing" at municipalities that take too long to process applications, the FCC is urged to look at the industry's role in contributing to processing delays. In another recent case in Rochester, during a pre-construction meeting it was learned that the contractor had failed to receive the electric utility's approval of the power source it showed on its drawings. After it received approval for another power source, the contractor revised and submitted new drawings, which in turn had to be reviewed by the City. This was not an isolated incident and with multiple applications there is a high likelihood of problems like this that will require additional time to resolve. It is not

reasonable to expect municipalities to review anywhere from one site to dozens or even hundreds of sites in the same time period, without a serious risk to public safety. Municipalities must have the time to properly review these multiple applications. The City's draft Code proposes to add 2 days for each additional site application, and it is requested that the FCC adopt a similar provision.

- **The FCC's proposed maximum application fees significantly underestimate the costs to municipalities of reviewing and approving applications.**

The FCC has presumed that an application fee of \$100 per Small Wireless Facility site is sufficient to cover the costs of review and approval of such applications. This amount is demonstrably insufficient and will amount to a municipal subsidy to the private telecommunications industry. During the drafting of its telecommunications code, the City of Rochester undertook a review of its permit application processing costs. We looked at the comprehensive services required for each application, including clerical time for accepting and processing an application, engineering review of the application, plans and drawings, site inspections as described above, attendance at public meetings, pre-construction meetings with contractors, review of as built documents and follow up inspections of installed facilities, and concluded that actual costs to the City are approximately \$2000. It is unconscionable that the FCC would require municipal taxpayers, who in cities like Rochester are often low income residents and struggling businesses, to pay for the review of a for profit telecommunications industry application.

- **The FCC's proposed recurring fee structure is an unreasonable restriction.** We disagree with the FCC's interpretation of "fair and reasonable compensation" as meaning approximately \$270 per small cell site, restricted to a reasonable approximation of costs. The New York State Constitution prohibits municipalities from giving away public property. "(N)o county, city, town...shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking..." NYS Constitution, Article VIII, §1. The City of Rochester's right-of-way, specifically including its street lighting poles, is property owned by the City of Rochester. That it has actual, quantifiable value is demonstrated by the recent purchase of that street lighting for over seven million dollars. The City is constitutionally prohibited from giving this valuable property to private corporations, and the only way that the City can lease or license its property is to establish the reasonable market value of that property. It is not a question of municipalities "profiting" from the use of their rights-of-ways, but of municipalities receiving fair and reasonable compensation, as authorized by the Communications Act, for the use by private competitive entities of a valuable publicly owned asset. The FCC and the industry should not expect the City of Rochester to give away its property anymore that it would expect a private property owner to give away free space on private property.

- 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 Rochester and many cities have worked to negotiate fair deals with wireless providers, even though they may exceed the restrictions proposed by the FCC. The City of Rochester has worked with telecommunications providers over the past several years to ensure a reasonable, expedited, yet comprehensive review process for small cell

applications in our municipality because we value and want the best broadband infrastructure possible for our residents, business and institutions. We hope to adopt a telecommunications code in the next month or two that will codify many of our current procedures, which are reasonable and expedited, while insuring the public safety and proper management and protection the City's right-of-way. 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,



Lovely A. Warren  
Mayor

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