



September 18, 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:

Together with cities in the Columbus, Ohio metropolitan area, I write on behalf of the City of Westerville 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.

The City of Westerville has been a public power community since 1898, and on behalf of our municipal electric customers, we oppose the recent direction of the FCC which seeks to overturn the municipal pole exemption for small cell wireless attachments. The FCC has expressed its intent to vote on the proposal at their next Commission hearing scheduled for Sept. 26, which is why we ask you to urgently request they delay this action.

Westerville welcomes the rapid deployment of new technology, both for our residents and businesses. In fact, Westerville has a long tradition of working to attract new infrastructure investments that benefit our community. For that reason, we oppose this federal proposal to repeal local jurisdiction over zoning, public right-of-ways and utility infrastructure.

Westerville is deeply concerned that repealing the municipal pole exemption poses serious safety and financial harm. More broadly, we oppose these industry-driven federal proposals because they would overturn good-faith efforts between municipalities and the wireless industry that has occurred in over half the state legislatures across the country in the last two years. 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.

Safely accommodating wireless attachments and equipment on utility poles is much more complex than traditional wireline attachments. For example, small cells may create line worker safety issues and require advanced engineering considerations such as loading, clearance, and signal interference to protect the reliability and longevity of the infrastructure investments made by public power communities.

Public power utilities inherently support the deployment of broadband technologies, as it greatly benefits the communities we serve. The problem with the FCC's direction is the federal mandate of a "one-size-fits-all" approach to pole attachments and regulation while ignoring legitimate concerns about the placement of irregular and ever-changing wireless equipment on public power utility poles and facilities.

Chief among our concerns are:

- **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 Westerville, 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 FCC's 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 Westerville has been a national leader working with private business to build the best broadband infrastructure possible for our residents. In fact, Westerville established the nation's first municipal data center in 2013, and has built a fiber-optic backbone covering the major commercial corridors of the City. Through engagement and facilitation of both private and public investment, we have taken every opportunity to build toward the future.

We oppose this effort to restrict local authority and stymie local innovation, while limiting the obligations providers have to our community and urge you to oppose this declaratory ruling and report and order. Your consideration of this and other issues vital to the survival of municipal electric communities does not go unnoticed.

Sincerely,

A handwritten signature in blue ink, appearing to read "David A. Collinsworth".

David A. Collinsworth
City Manager

cc: Senator Sherrod Brown
 Senator Rob Portman
 Congressman Steve Stivers
 Congressman Troy Balderson