



September 17, 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 West Carrollton, Ohio writes to express its 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. West Carrollton is a community comprised of approximately 13,000 residents located in a suburb of Dayton, Ohio.

You may be aware that the municipalities of Ohio, the Ohio General Assembly, and the major telecommunications companies spent eight months negotiating and developing regulations to govern the placement, installation, and maintenance of small cell facilities as well as a fair fee structure, which resulted in House Bill 478 as codified in the Ohio Revised Code, Chapter 4939. The FCC's report proposes regulations that are contrary to those now contained in the Ohio Revised Code.

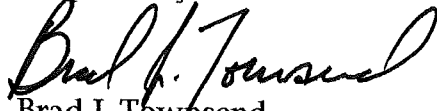
While we appreciate the Commission's efforts to engage with local governments on this issue and share the Commission's goal of ensuring the growth of cutting-edge broadband services for all Americans, we remain deeply concerned about several provisions of this proposal. Local governments have an important 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 especially in sensitive areas such as residential neighborhoods and historic districts. 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, or which may already have wireless equipment on it, is substantial and may necessitate more review than the FCC has allowed in its proposal. A "one size fits all" approach to review does not consider the size and more limited resources of a community such as ours which may limit our ability to review applications within the expedited time frame.
- **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. Such requirements in our local small cell facility regulations were reviewed directly with representatives from the wireless industry and were specifically crafted to meet their needs and obligations as well as to protect our community's aesthetic standards.
- **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?

Our city has worked with private business to build the best broadband infrastructure possible for our residents. We recognize the value of small cell technology to our local business community and residents, and support and encourage its implementation. However, 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, and to allow comprehensive state legislation such as that codified in the Ohio Revised Code, Chapter 4939, to govern the placement, installation, and maintenance of small cell facilities. Those regulations are more directly reflective of the needs, issues, conditions, and concerns of the City of West Carrollton's constituents.

Respectfully submitted



Brad J. Townsend
City Manager

OML: gg

XC: City Council