MARIN
TELECOMMUNICATIONS AGENCY

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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,

As Chair of the Marin Telecommunications Agency (MTA) I am writing on behalf of our Agency to express our 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 MTA, a Joint Powers Authority (JPA) comprised of the County of Marin and nine cities/towns, including San Rafael, Belvedere, Corte Madera, Fairfax, Mill Valley, Ross, San Anselmo, Sausalito and Tiburon, has serious concerns about the Commission's intent to move forward with another ill-advised preemption of local authority.

We share the Commission's goal of ensuring the growth of cutting-edge broadband services for all Americans, yet we are deeply concerned about several provisions of this proposal. Local governments have an important responsibility to protect the health, safety and welfare of residents; we are concerned that these preemption measures compromises our local land use authority (and states' rights) and our ability to ensure that our citizens' are protected for such deployment.

- **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 up to 28 cubic feet of additional equipment to vertical infrastructure not originally designed to carry that equipment is substantial, and may necessitate more time for review than the FCC has allowed in its proposal. Among other concerns, this may constitute a significant fire hazard, and careful planning is needed to mitigate this potential.

- **The FCC's "one size fits all" orders do not recognize unique local conditions and assets.** Several of the communities in Marin County, California have been in existence since the mid-1800's. The rights of ways were acquired through dedication and/or fair market value acquisition over time and as needed. The public rights of ways are already occupied by vital necessary services such as electrical systems, telephony, cable television/broadband, water, storm water and waste water distribution and transportation systems, such as roads, multi-use pathways for pedestrians, cyclists and the physically challenged.

  It will be extremely difficult for the additional equipment described above to fit into our rights of ways, and not conflict with other existing service providers. Finally, the visual impact of up to 3 cubic feet of appurtenance on top of vertical infrastructure, and the visual and obstructive impact of up to 28 cubic feet of equipment at the base of vertical infrastructure may not be viable.

  As I note above, the fire hazard posed by this equipment is very real, both in our neighborhoods and given our proximity to vast areas of open space. Wildfires are always a threat, as we see throughout California and the Bay Area. Overburdening our rights of way (and utility poles) with excessive equipment will heighten this danger.

- **The FCC is offering the for-profit telecommunications industry a deeply discounted financial arrangement and exceptional use of public assets for limited community benefit.** The FCC's proposed ruling will have significant consequences for both communities and other for-profit and utility service providers that have been contributing to community benefit via fair and reasonable franchise agreements, fees for service and in-kind services for years. The order touts the economic benefit of faster deployments without acknowledging the costs, and not just from lost permit and rights of way fees, but also from impacts to property values/economic development/quality of life if small cell installations are not properly installed or well managed. If the cost/benefit of this proposed arrangement has been analyzed by the FCC, especially the basis for the acceptable fee structure outlined in the proposed order, the MTA would like to receive that analysis.

  In addition, many of our member MTA jurisdictions are undertaking studies of their respective fee structures (or have already done so), to ensure that their staff costs are recovered for permits and other services. It would not be appropriate to approve a "one size fits all" approach for fees. Given the high cost of living in California and in particular the Bay Area, local jurisdictions' fees will be "higher" than that in lower cost areas. Cost recovery through fees is necessary to balance our budgets.

- **The FCC's proposed definition of "effective prohibition" is overly broad.** The draft report and order propose 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 to a limited extent, 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, safety and undergrounding.

  The MTA community members are already engaged in widespread discussions about the appearance of the proposed equipment, and spacing issues in commercial and residential neighborhoods. This discourse is occurring at publicly noticed council meetings, among neighborhood groups and in the print and social media. The lack of clarity regarding definitions, guidelines and outcomes is making it difficult for MTA jurisdictions to conduct informative public discussions about the impact of the FCC's proposed orders.

- **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. As discussed above, such a "one size fits all" approach is not appropriate. Local governments share the federal government's goal of ensuring affordable broadband access for every American, regardless of their income level or address. Many cities, towns and counties already have worked to negotiate fair deals with wireless providers, and the negotiations have resulted in agreed upon fees and additional benefits to the community. The Commission has moved away from rate regulation in recent years. We do not support the FCC conducting rate regulation; dictating the rates of municipalities is a significant overreach on our State (and local government) rights.

  MTA jurisdictions have already established contractual relationships with multiple telecommunications providers, and individual communities are actively updating ordinances, policies and procedures in advance of receipt of applications for specific attachments. The "fair and reasonable" compensation identified above is antithetical – it is very far from covering the actual costs to prepare for these telecommunications installations, and clearly does not reflect the cost to process and monitor such installations throughout their life expectancies.

  Finally, our jurisdictions have franchise and other compensatory/offsetting agreements with the other users of the public rights of way that reflect not only the value of the use, but the expense that each community has invested in acquiring and managing that asset to deliver essential public services. While for some communities, the possibility of enhanced telecommunications is helpful, its value must be weighed and compared to the value of and necessity of our safety, and our water, electrical, sewer and transportation systems.

- **The FCC's Wireless Bureau must update RF emissions standards for new technologies now, and also needs to clarify liability issues related to small cell attachment devices.** The MTA jurisdictions have noted that "local government cannot regulate on the basis of RF emissions" in the revisions we have made to ordinances, policies and procedures. While this a true statement of the law, it is still a major concern for residents. Local governments would find it helpful to potentially mitigate contentious public meetings if citizens knew that the providers are required to comply with newly updated RF standards that are based on small cells placed closer to pedestrians and homes (rather than on macro towers).

  It is ironic that the FCC and industry are complaining that local governments are taking too long to create a process for approving small cells, and yet it has been years since the FCC was asked to update RF standards. The science of RF emissions has advanced significantly over the years, and it is time for FCC to review recent peer-reviewed data and update the standards. In addition, there is the additional irony of the FCC arguing that local governments are still using regulations designed for macro tower permitting that are not applicable to small cell attachments when the FCC is relying on RF standards that were based on macro towers – not small cells.

  MTA communities are also expressing concern about local government liability for their employees who have to work on or near light or utility poles that hold small cells. The updated RF emissions standards would help clarify how and to which entity liability may be assigned should issues arise.

In summary, the communities represented by the Marin Telecommunications Agency have worked with public and private business partners to build the best broadband infrastructure possible for our residents. We oppose this effort to restrict local authority and hinder local innovation, while limiting the obligations providers have to our community. We urge you to oppose this declaratory ruling and report and order.

Sincerely,

Barbara Coler, Chair
Marin Telecommunications Agency

C: Senator Dianne Feinstein – BY MAIL AND EMAIL
Senator Kamala Harris – BY MAIL AND EMAIL
Representative Jared Huffman – BY MAIL AND EMAIL
Nancy Hall-Bennett, League of California Cities – BY EMAIL
Meg Desmond, League of California Cities – BY EMAIL
Jennifer Harmon, Deputy Director, NATOA – BY EMAIL
Angelina Panettieri, National League of Cities – BY EMAIL
MTA Board members – BY EMAIL