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September 19, 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 Overland Park, Kansas 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.

The City of Overland Park is city of the first class with a population of approximately 200,000 residents, and is the second largest city in Kansas. The City regularly appears on national lists of top cities to live in, which, in part, is a result of the City's strong commitment to good planning and development. The City is also the national headquarters of Sprint.

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 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. When combined with the FCC's proposed expansion of "collocation", 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. Overland Park has worked hard to coordinate with our industry representatives to review and act on applications in a quick and efficient manner. However, the FCC's "one size fits all" rule does not account for or give latitude to unusual case-by-case issues related to some specific locations. In addition, our experience shows that at times installation delays are caused by the applicant and its designers (and not the City) as the applicant often makes multiple design changes and/or fails to timely respond to City requests for information or design adjustments.

- **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 safe 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; so why does it see fit to dictate the rates charged by municipalities? On multiple occasions industry representatives have advised the City of Overland Park that our compensation provisions are more than reasonable (and in fact well under market), yet the FCC's interpretation will cut them in half. Another aspect the FCC interpretation completely ignores is the costs spent by cities to acquire right-of-way for public purposes.

Our city has worked with private business to build the best broadband infrastructure possible for our residents. We have invested a significant amount of time working with our wired and wireless broadband providers and infrastructure providers to create an efficient and effective deployment system that allows these business to deploy in a quick and timely fashion but also in a manner that does not detrimentally interfere with or affect neighboring property owners, businesses and residents. Unfortunately we find that the proposed ruling and report and order will jeopardize our efforts and establish a system that is detrimental to our community. We

oppose this effort to restrict local authority and local innovation, while limiting the obligations providers have to our community.

We urge you to oppose this declaratory ruling and report and order in order to gain further input and reach a more compatible solution where broadband expansion can occur in harmony with local municipalities.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Bill Ebel, Jr.", with a stylized flourish at the end.

Bill Ebel, Jr.  
City Manager

Copy furnished via email:

Carl Gerlach, Mayor  
Jim Kite, Council President  
Overland Park City Council  
Bill Ebel, City Manager  
Sean Reilly, Communications Manager  
Tammy Owens, City Attorney  
Stephen Horner, Sr. Assistant City Attorney  
Dick Carter, The Carter Group