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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 Kent 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 Kent is the sixth largest city in Washington with a population over 128,000, near Seattle. A culturally rich destination, Kent features captivating neighborhoods, award-winning parks, exceptional school districts and nationally accredited police and fire departments. In recent years, Kent has experienced impressive economic growth, and is nationally known as a prime location for manufacturing. Kent is currently working with three telecommunication companies to deploy small cell technology throughout the city. During this process Kent has strived protect our residents and the taxpayer investment in our rights of way, while at the same time embracing new technology.

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. 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. Additionally, the process employed in the City of Kent and in many cities throughout the state of Washington involves the negotiation and adoption of a franchise. Pursuant to state law, the city council as the legislative body cannot adopt a franchise at its introduction, meaning two council meetings are required. These meetings must be regularly scheduled meetings.

The City of Kent's City Council meets twice a month. Imposing a 60 day shot clock means that at least half of the allowed reviewed time would be taken up in the legislative process, giving the City of Kent and the cities in Washington very little time to work with the wireless industry to deploy the technology and also fulfill its responsibility to protect the health, safety and welfare of the residents and their investment in the city's rights of ways.

- **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. This definition also directly conflicts with case law within the Ninth Circuit, under which the City of Kent and many other jurisdictions have been operating.
- **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.

The City of Kent also disagrees that the FCC has the authority to set limits on the amount the city can charge privately owned companies for the use of city-owned infrastructure within the right of way. Compelling the city to lease its infrastructure for a specified amount that may not even cover its costs is an unconstitutional gift of public funds to a private party under the Washington State Constitution, Article 8, Section 7.

The City of Kent has worked with private business to build the best broadband infrastructure possible for our residents. 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,

A handwritten signature in blue ink, appearing to read 'CMS', followed by a stylized flourish.

Christina M. Schuck
Assistant City Attorney
City of Kent, Washington