



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

September 19th 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:

Erie County writes to express our concerns over the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. Erie County is a geographically diverse county of rural, suburban, and urban communities and is home of Buffalo NY. With over 920,000 residents living in a range of unique communities, local governance is critical to our constituents.

While we share the Commission's objective of finding new ways to effectively deploy broadband technologies, especially in underserved communities, we are concerned that the proposed language would significantly impede local governments' ability to serve as trustees of public property, safety and welfare. Counties own substantial amounts of public rights-of-way, which many communication providers use to construct their own communications networks. The proposed order would significantly narrow the amount of time for local governments to evaluate 5G deployment applications from communication providers – effectively hindering our ability to fulfill public health and safety responsibilities during the construction and modification of broadcasting facilities.

- **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. Given the limited amount of manpower available to both our county Department of Environment and Planning and to the planning office in our towns, villages and cities, this 60 day review period is simply not sufficient.

- **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's why Erie County conducted its own broadband study to assess the quality and breadth of broadband coverage throughout the region. 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 county has attempted to work 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, who in some instances have a virtual monopoly, to our community. We urge you to oppose this declaratory ruling and report and order.

Respectfully submitted,



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Erie County Executive

MCP/bqs

Cc: National Association of Counties