



# The Board of Chosen Freeholders County of Cumberland State of New Jersey

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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 County of Cumberland (New Jersey) 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. The County of Cumberland has over 560 miles of roadways that would be impacted by the FCC decision and would potentially compromise the ability of the County to carry out its functions and to utilize County rights-of-way for public purposes.

The County of Cumberland is concerned with respect to the timeframes for approvals regarding deployment of 5G antenna within the public rights-of-way and we are also concerned about the County's ability to impose fees for location of small cells within the right-of-way. Presently, the County of Cumberland does not receive any revenue for utility locations in the public rights-of-way and more importantly, the County has faced difficulties with utilities which presently use our rights-of-way when the County needs to have access to the rights-of-way in order to pursue public projects such as roadway widening, creation of acceleration and deceleration lanes, addition of drainage, curbing, clearing site distances, site triangles, and simple maintenance such as cutting grass. More importantly, the County is very concerned about the fact that utilities often refuse to remove their utilities from public rights-of-way without payment when public projects are undertaken, causing not only delays but a potential for delay damages from contractors, and attempting to transfer costs for using the rights-of-way to the public as opposed to ratepayers. We are very concerned that this legislation would not only impact the current issues we are facing with regard to the use of public rights-of-way but we are also concerned with the loss of zoning or

regulatory control over the rights-of-way such that the public becomes further burdened with inappropriate locations, heights, aesthetics, and other potential impacts due to the proposed rulemaking.

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.
- **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 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?

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Our County 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,

  
Joseph Derella

TEB/mep