



City of Foster City

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

610 FOSTER CITY BOULEVARD
FOSTER CITY, CA 94404-2222

September 17, 2018

SENT VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission (FCC)
445 12th Street, SW
Washington, DC 20554

RE: NOTICE OF OPPOSITION

Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment;
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment
(*WT Docket No. 17-79; WC Docket No. 17-84*)

Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended
by the Cable Television Consumer Protection and Competition Act of 1992
(*MB Docket No. 05-311*)

Dear Ms. Dortch:

On behalf of the City of Foster City, we would like to express our strong **opposition** with the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment; as well as our strong **opposition** to the Second Further Notice of Proposed Rulemaking regarding cable-related, in-kind contributions as required by local franchising authorities.

As currently presented by the Federal Communications Commission ("FCC" or the "Commission"), there are several provisions within these proposals that are of considerable concern. These include:

- Extreme Stance on Proposed Collocation Shot Clock Category – The FCC's proposal establishes that any preexisting structure, regardless of its design or suitability for attaching wireless equipment, is eligible for an expedited 60-day shot clock. This would tremendously usurp local government authority when paired with the FCC's previous decision exempting small wireless facilities from federal historic and environmental review. It introduces an unreasonable burden on local governments to prevent historic preservation, environmental, or safety harms to the community. Aesthetic concerns included, 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.
- Overly Broad Proposed Definition of "Effective Prohibition" – The FCC's proposal in defining "effective prohibition" invites challenges to long-standing local rights-of-way requirements unless

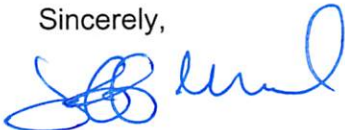
they meet a subjective and unclear set of guidelines. While the FCC may have intended to preserve local review, this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding.

- Unreasonable Overreach with Proposed Fee Structure & Deductions of In-Kind Contributions – The FCC's proposed fee structure and interpretation of "fair and reasonable compensation" is unwarranted. By limiting the rates local governments may charge a wireless applicant and by not allowing local governments to recover direct and actual costs as related to use and maintenance of public property, this eliminates fair compensation or revenues that would otherwise be dedicated towards benefits for the community. Additionally, by allowing cable operators to deduct in-kind contributions from cable franchise fee payments, local governments are being compelled to choose between receiving cable franchise fee revenues or continuing Public, Education, and Governmental operations.

The City of Foster City had submitted its opposition to Senate Bill 649 (vetoed by California Governor Jerry Brown in 2017), which in similar regard had presented comparable shifts to telecommunications policy and law. Overall, the wireless industry offers many benefits in our growing economy; but the approach as taken then with SB 649 and now the aforementioned orders, undermines the ability of local governments to regulate wireless facilities, limit any community impacts as such orders would impose, and obtain a fair return for any wireless facilities that would be installed in the public right-of-way.

The City of Foster City acknowledges the Commission's efforts in engaging local governments and municipalities on this matter. It also shares the Commission's goal of ensuring the growth and ubiquity of broadband services for all. However, our City has the responsibility of protecting the health, safety, and welfare of its residents, and we have concerns that the measures as proposed are preemptive and may compromise the local authority/level of discretion. We appreciate the Commission's consideration of our concerns and would urge that the Commission oppose these two orders.

Sincerely,



Jeff C. Moneda
City Manager, City of Foster City

cc: City Council, City of Foster City
Sam Hindi, Mayor
Gary Pollard Vice Mayor
Charlie Bronitsky, Councilmember
Catherine Mahanpour, Councilmember
Herb Perez, Councilmember
Dante G. Hall, Assistant City Manager, City of Foster City
Jean B. Savaree, City Attorney, City of Foster City
Kai Ruess, Deputy City Attorney, City of Foster City
Curtis Banks, Community Development Director, City of Foster City
Norm Dorais, Public Works Director/City Engineer, City of Foster City
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