

SOUTH WASHINGTON COUNTY TELECOMMUNICATIONS COMMISSION

COTTAGE GROVE • GREY CLOUD • NEWPORT • SAINT PAUL PARK • WOODBURY

September 19, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Presentation, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Streamlining Deployment of Small Cell Infrastructure, WT Docket No. 16-421

Dear Ms. Dortch:

The South Washington County Telecommunications Commission (the “SWCTC”) is a municipal joint powers association consisting of the following St. Paul, Minnesota, suburban cities: Woodbury, Cottage Grove, Newport, St. Paul Park, and Grey Cloud Island. The SWCTC agrees with the *ex parte* letter filed by the National League of Cities and NATOA dated June 21, 2018, and offers the following additional observations and concerns for the above-referenced dockets.

Preemption of Local Government Proven Ineffective

Nearly a year and a half ago, the Minnesota legislature passed small cell legislation preempting local governments under the presumption that it would result in widespread and rapid deployment of small cell wireless facilities to improve wireless networks throughout the state. *See* Minn. Stat. §§ 237.162-237.163. Since the passage of the Minnesota Small Cell Act, there has been only one application to one of our 5 member cities for the construction of small cell wireless facilities. The one application was approved, but as of the date of this letter, no construction has occurred. We believe that a majority of Minnesota suburban and rural cities have not received any applications. Of the suburban and rural cities that have received an application the coverage of the small cell wireless facilities would be very limited. Based upon the experience in Minnesota, there is no evidence to support the premise that preempting local government authority over the construction of small cell wireless facilities will result in wide spread or rapid deployment of small cell wireless networks.

Commission Preemption of Local Government is Unlawful

The Commission does not have legal authority to preempt local government. *See* NATOA, Notice of *Ex Parte*, dated June 21, 2018.

Small Cell Facilities Should Be Excluded from 6409(a) Modification Rules

Prior to the proliferation of small cell wireless networks, the Commission released rules in 2014 related to the modification of wireless facilities based upon Section 6409(a) (47 USC § 1455(a)). These rules related to macro-cell towers and don't make sense when applied to small cell wireless facilities. Smaller poles are very different than macro cell towers in terms of size, location and aesthetics. We do not believe that the Commission or Congress intended to allow such an absurd result. We urge the Commission to clarify that these rules are inapplicable to small cell wireless facilities.

Construction Shot Clocks

If the Commission is interested in rapid deployment, the Commission should require that any applicant seeking to construct small cell wireless facilities must construct such facilities within 60 days of authority being granted. If an applicant is not prepared to construct its facilities, it should not apply for a permit and cause a local government to expend time and resources (on an expedited basis) when it could work on applicants that are ready to build.

Anti-Competitive Industry Behavior

We have become aware of some wireless industry companies aggressively seeking poles, even if they don't have customers or even plans to construct small cell facilities on the poles in the near future. This behavior eliminates poles from other providers that may have more immediate plans. This causes delays and increased costs to wireless competitors. It also causes additional burdens on property located in the Public Right-of-Way. The Commission should ensure this type of anti-competitive behavior is prohibited.

Residential Zoning Authority

Allowing small cell wireless facilities to be constructed in residential neighborhoods without any ability for residents to voice concerns is poor public policy. In Minnesota, local zoning authority was maintained over residential zones. *See* Minn. Stat. § 237.163, Subd. 2(f). This authority was agreeable to the industry at the time the legislation was adopted. If the Commission insists on preempting local government, it should exclude residential zoning decisions.

Consumer Protection

a. Ensuring Widespread Coverage

The Commission has a duty to protect all wireless consumers in the United States. Yet, there is nothing in any of the Commission's recent orders or rulemaking procedures that seek to ensure that all Americans have access to small cell wireless networks. While it may be more likely that small cell wireless networks will be prevalent in large metropolitan areas with highly dense populations, it is not likely that rural areas or even suburban areas will be fully covered (if at all). This is evident from the fact that the SWCTC area (suburban St. Paul) has had no deployment to date. The one application received in the SWCTC area would only cover (once constructed) one anticipated high-demand intersection. Even in large metropolitan areas, there is nothing to protect economically disadvantaged areas from being unserved. Rather than preempt local governments, the Commission should empower local governments with rules requiring buildout to entire communities. Similarly, the Commission should require wide-spread coverage of these networks when auctioning spectrum to carriers. Otherwise, we may likely see 5G coverage only in parts of highly dense urban areas and limited to no coverage in suburban and rural areas.

b. Rules addressing customer service

The Commission has opened multiple dockets related to small cell deployment, yet it has failed to implement even one rule to protect consumers. The roll-out of 5G wireless will give wireless providers access to even more customer data. We encourage the Commission to address consumer protection issues, such as consumer privacy, restrictions on the aggregation and sharing of data, data security, and customer billing. As a federal agency entrusted with protecting consumers in the United States, it is imperative that the Commission seek to address consumer protection to the maximum extent possible under existing laws.

c. Ensuring Emergency Communications

Wireless networks are being increasingly relied upon by citizens in the event of emergencies. As such, it is important to safeguard these citizens by addressing emergency facilities in the event of a natural disaster or act of domestic terrorism. For example, Hurricanes Irma and Harvey caused a great amount of damage and flooding in the Houston and Gulf Coast areas in 2017. Only those areas that required cell tower power supplies to be buried underground were unaffected. Conversely, in those areas where power supplies were left above ground, cellular networks suffered, and emergency services were more difficult to provide. In Minnesota, weather related emergencies occur due to extreme cold, snow, ice, and wind. While wireless providers are often resistant to undergrounding due to increased cost and time requirements, the Commission should seek to protect consumers in times of emergencies. Commission rules should require the undergrounding of certain equipment to ensure adequate wireless communications services during times of weather emergencies.

d. Protection from Excessive Carrier Rates

As dependence on wireless services continues to increase, the Commission should seek to protect consumers, particularly economically disadvantaged consumers, from being charged excessive rates for wireless service. This is particularly true as the industry may consolidate down to only 3 providers.

Failure to Conduct basic Due Diligence Before Applying for Permits

We have been made aware that some wireless industry applicants for small cell wireless facilities permits and authorizations fail to conduct basic due diligence prior to applying. There have been applicants that only did a Google Map search to identify a pole location. The company insisted it needed to construct a new pole in front of a school and on top of a water main. Basic due diligence would have shown that there were multiple existing poles across the street that were eligible for a small cell wireless attachment. It is apparent that local governments have been unfairly blamed for delays where the wireless industry has failed to come in prepared prior to seeking approvals. The failure to conduct due diligence causes unnecessary delay in the application process. Applicants should come prepared and ready to construct when making applications.

Potential Impact on Cable Franchises

The SWCTC has cable franchises with two different cable franchise providers. We are concerned that any action taken by the Commission to preempt local government as it relates to services provided by wireless providers may have unintended consequences on other Public Right-of-Way users, namely, cable

providers. Commission rules must be clear that should a wireless provider provide video services over its system, which includes significant fiber and antennas in the public right-of-way, it must enter into a cable franchise with the relevant local government entity. Failure to do so, may negatively impact the SWCTC's existing cable franchise agreements, which contain provisions such as level playing field requirements. In most instances, as is the case with the SWCTC, the cable franchise agreements were entered into before the delivery of cable service over a wireless service (but with significant fiber and antennas in the public right-of-way) was ever understood to be a possibility. Local cable franchising authority must be preserved.

Sunset Rules

If the purpose of preempting local government from addressing legitimate local concerns is to promote the rapid deployment of 5G small cell wireless networks, the Commission should sunset the regulations in the above-referenced dockets in five years. This should be more than adequate time for the wireless industry to construct their networks. This will also allow the Commission to review the coverage of the networks to determine if all Americans are receiving the benefits of 5G wireless services.

Thank you for the opportunity to submit comments on these issues.

Sincerely,



Rich Irvine

Chair

South Washington County Telecommunications Commission