



City of Omaha
Jean Stothert, Mayor

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September 18, 2018

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 Omaha, Nebraska ("City"), writes to express its respectful opposition to the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order ("Order") regarding state and local governance of small cell wireless infrastructure deployment.

The City of Omaha and telecommunications companies have cooperated to forward the build out of small cell infrastructure in our City. The City currently has a template agreement that it regularly enters into with companies who express interest in placing small cell antennas in City right of way. That template agreement is the product of past negotiation between the City and the small cell industry. As a result, the terms of the agreement are fair to both sides. The template agreement also has the advantages of being tailored to local conditions, and being easily amended to adjust to changing circumstances.

Under these agreements, the build out of small cell wireless in Omaha has steadily progressed. There are currently approximately 150 small cell nodes or "attachments" in place under the agreements. Applications for more attachments are in process. We currently have executed agreements with four companies. All of this activity demonstrates the cooperation between the City and telecommunications companies.

This mutually beneficial relationship would be disrupted by the proposed Order.

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. As the Order apparently invites installation on a wide (or perhaps limitless) variety of structures, sufficient time must be allowed to verify that these varied structures can safely withstand the loads involved.
- **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. Our template agreement currently contains provisions for aesthetic considerations and spacing, which have been negotiated and agreed to by the City and the telecommunications companies.
- **The Order invites argument for unlimited use of existing structures, and unlimited building of new structures, for antennas.** Our template agreements provide for the liberal use of existing street light poles in our City. New poles are not contemplated and are not needed. The Order would open the door for telecommunications companies to argue for the erection of unlimited numbers of new structures in the public right of way. However, that right of way is a limited resource; it should not be given away freely. Citizens do not want the right of way to become a forest of new poles and ancillary equipment. Furthermore, the unlimited use of existing structures in the public right of way would be dangerous to the public. For example, the Order references traffic signal poles. Traffic signal poles serve an essential public safety function. That function would be compromised by allowing private small cell infrastructure to roost on the poles, without limitation.
- **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, like ours, 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?
- **Fee rates should include a provision for annual increases based on cost of living.** The Order effectively limits fees to certain fixed levels, purportedly to "approximate" cities' actual and

reasonable costs associated with the facilities. However, there appears to be no consideration of the fact that prices and costs increase every year.

Our City 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 proposed Order.

Respectfully submitted,

A handwritten signature in blue ink that reads "Jean Stothert". The signature is written in a cursive, flowing style.

Jean Stothert, Mayor