



**OFFICE OF THE MAYOR
LOUISVILLE, KENTUCKY**

GREG FISCHER
MAYOR

September 18, 2018

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

September 18, 2018

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,

I write today to express the concerns of our community regarding the Federal Communications Commission's proposed Declaratory Ruling Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. While I appreciate the Commission's engagement efforts to date and its work to advance the shared goal of deploying broadband services for all Americans, I remain deeply concerned about the unintended impacts of these recent proposals. Local governments have an important responsibility to protect the health, safety, and welfare of all residents; unfortunately, the proposed preemption measures compromise this traditional authority. For many years, Louisville Metro Government has worked with wireless providers to ensure the successful deployment of wireless small cell devices. Streamlined permitting efforts have improved our communications infrastructure in the community, while considering the interests and needs of our residents. In the spirit of this partnership, I hope to share some specific concerns.

The two proposed shot clock categories do not provide adequate time for necessary review processes, including mandatory pre-application procedures, license/franchise agreements for rights-of-way access, public notice and meeting periods, lease negotiations, building/encroachment/electric/road closure permits, and other approvals. The 90 day shot clock for new structures is unreasonable. All preexisting structure, despite design or suitability to attach wireless equipment, will be eligible for the new expedited 60 day shot clock for collocated small cells. Coupled with the previous decision to exempt small wireless facilities from federal

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environmental and historic review, this new shot clock will impose an immense burden on local governments to prevent harm to the public or environment without sufficient time to analyze those potential impacts. Collocation does not give consideration to the requirements of our local zoning ordinances and whether the preexisting structure has been approved for such attachments.

The proposed definition of “effective prohibition” is broad, which we fear will invite legal challenges to established local right-of-way requirements. This definition must be clear and objective with a standard 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 proposed recurring fee structure and interpretation of “fair and reasonable compensation” will harm local governments and its ability to provide affordable broadband access in cities across the country, especially those currently underserved. Local governments are expressly prohibited from recovering any cost not directly related to rights-of-way maintenance, charging fees above cost recovery, or recovering “unreasonable” costs, like excessive contractor or consultant fees. Local officials strive to negotiate fair deals with providers, based on fair market principles, not arbitrary caps. The mandatory application fees set forth in the proposed rule will not cover the full costs of processing applications, and it will ultimately result in a new unfunded mandate to local governments.

For these reasons, I oppose the Commission’s proposal and any federal efforts that restrict local authority, do not consider the well-being and safety of the general public, and hinder our ability to innovate and deploy critical broadband access to all Americans. We urge you to oppose this declaratory ruling and report and order. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Fischer".

Greg Fischer
Mayor