



Loudoun County, Virginia

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Loudoun County Board of Supervisors

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September 19, 2018

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

VIA Electronic Filing

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,

Loudoun County writes to express our concerns over the Federal Communications Commission's (FCC) proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure and deployment. Loudoun County, at 520 square miles, is part of the Washington Metropolitan Area and has a population of 402,561. The eastern part of Loudoun County is suburban in nature, while the western part of the County maintains its rural character.

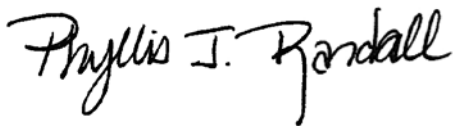
Although the County is appreciative of the Commission's efforts to engage with local governments on this issue and shares the Commission's goals of ensuring high quality broadband access to all of our residents, we are deeply concerned about several provisions of this proposal. Loudoun County has worked with the telecommunications industry over the last two years to create efficiencies for processing applications, including zoning ordinance amendments that make antennas sixty feet or less by-right when developed subject to specific performance standards to the extent the telecommunications antennas are listed as a permitted use in the underlying zoning district. The County is responsible for protecting the health, safety and welfare of our residents, and we are concerned that the preemption measures proposed would compromise our authority, and would hinder the progress we have made on this issue within our community.

- **The FCC's proposed shot clock for new construction is too extreme.** The proposal designates that local government would have 90 days to complete review of applications for small cells on new structures, which would include all permits and approvals. New structures often require a site plan in addition to zoning permit review. The purpose of the site plan is to ensure that the structure is properly engineered and sited, and is in accordance with regulations to protect public safety. Requiring batched applications to follow these shot clocks when site plans are needed places an unreasonable burden on local governments who are ensuring the safety of our community.

- **The FCC's proposed fee structure requires taxpayers to subsidize small cell facility applications.** The FCC proposal allows only \$500 for a single up-front application of five small wireless facilities, with an additional \$100 for each facility beyond five. As mentioned before, some small cell facility applications will require site plan review to ensure the safety of the public. These reviews are technical in nature and take additional time for review. Although the FCC proposal allows localities to charge fees above these levels for what are considered "reasonable approximations of costs," the proposal opens up localities to potential litigation by providers. The FCC itself states that "they assume there would be almost no litigation for providers over fees set at or below these levels," in the proposal. Therefore, the FCC itself recognizes localities would be challenged for fees above this amount should they try to recover the costs of review. Not covering staff time for review essentially requires taxpayers to subsidize small cell facility applications.
- **The FCC proposed language limits a local government's authority to ensure that facilities fit the visual character of the area.** The FCC proposal states that "aesthetic requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployment, and (3) published in advance. Loudoun County requires an antenna collocated on an existing structure or placed on a support structure be of a material or color that matches the exterior of the building or support structure. These aesthetic and performance criteria help the facility blend with existing visual character of the area. Although these are published as part of our zoning ordinance requirements, applicants could challenge whether these are considered reasonable.

Loudoun County has worked with our telecommunications industry to create processes for expediting applications while protecting the health, safety and welfare of 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,



Phyllis J. Randall
Chair
Loudoun County Board of Supervisors



Ralph Buona
Vice Chairman
Loudoun County Board of Supervisors