

To: The Federal Communications Commission

Re: **Please add to Docket Number WT 19-250.** The document below was originally received by the FCC October 15, 2019, under an old docket number. This resubmission corrects the docket number (resubmission date October 31, 2019).

October 8, 2019

DOCKET FILE COPY ORIGINAL

To: The Federal Communications Commission

Re: "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment", Petition by the Wireless Infrastructure Association (WIA) Docket Number 17-79

I represent East Bay Neighborhoods for Responsible Technology (EBNRT), a grassroots group founded by California residents in the communities of Alamo and Walnut Creek, in Contra Costa County. We collaborate with similar groups from nearby towns and cities of the East Bay who are likewise concerned about retaining local authority in determining aesthetic conditions for land use, especially as it pertains to the use, placement, and modification of technologic infrastructure such as wireless facilities. We agree wholeheartedly with the position of the Alamo Improvement Association (AIA) which is also submitting a comment regarding the above-named petition. Our aim is not to hinder technology, but to use it responsibly. This proposed order would strip local government of their rights and powers to execute this responsibility.

The California Supreme Court asserted that local government authority to determine aesthetic characteristics for land use is such an intrinsic right, it is not pre-empted by state codes giving telecommunications companies the right to use the public right-of-way when siting wireless facilities (*T-Mobile West LLC v. City and County of San Francisco*, 6 Cal.5th 1107. (2019)). The Court explained its decision, in part, by stating that municipalities have "inherent local police power to determine the appropriate uses of land within its jurisdiction [which]... includes the authority to establish aesthetic conditions for land use." Although this decision was about siting of new wireless facilities, the principles of local government rights articulated in the decision directly apply to the proposed order on existing wireless facilities. This petition, if approved, would severely encroach on these municipal rights and powers already held by virtue of state codes and reasserted in this California Supreme Court decision. Furthermore, an order from a federal agency does not overturn or preempt state law or the orders of the California Supreme Court. A federal appeals court has held that neither the FCC, nor the U.S. Congress has authority to enact local regulations. In *Cablevision, Inc. v. Public Improvement Comm'n*, the U.S. Court of Appeals for the First Circuit held that the federal legislature and agencies do not have the ability "to commandeer local regulatory bodies for federal purposes." (*Cablevision, Inc., v. Public Improvement Comm'n* (1st Cir. 1999) 184 F.3d 88, 105.)

Egregious examples of what this petition asks the Commission to deny our communities include conditional approvals, public hearings, and requirements to provide an inventory of equipment to be added to a wireless facility. Along with the other requests in the petition, these would

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eliminate basic municipal processes to preserve the aesthetic character of towns and cities, as well as prevent civic involvement of local residents in potential land use changes which affect their homes, property values, and enjoyment of their surroundings. The current definition of substantial change, which leaves room for interpretation, preserves local communities' rights to govern in their own jurisdictions. In addition, the petition's request to disallow requirements for radio-frequency emissions reports goes so far as to prevent enforcement of the Commission's own safety levels.

Through the processing of wireless facility approvals, we have worked with our county government for the past year, to understand and implement correctly the local, state, and federal laws which exist to responsibly incorporate the latest technology in our community. Telecommunications companies have done the same. We strive to collaborate with the industry in a balanced approach to determine what is best for our community. This petition removes that balance and allows private industry to overrun the people whose lives are meant to be improved by this technology.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alice Lee".

Alice Lee, M.D.

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