



MARY C. BLASI
CITY MANAGER

September 19, 2018

Mr. Ajit Pai, Chairman
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 Chairman Pai,

The City of Coconut Creek would like to express our concerns over the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order (hereinafter "Declaratory Ruling") regarding state and local governance of small cell wireless infrastructure deployment. The City of Coconut Creek has long supported the deployment of broadband technology and wireless infrastructure. We continue to serve our citizens with careful oversight on the planning and implementation of this technology. For example, the City recently implemented Florida State law streamlining the implementation of small and micro wireless facilities in Florida (Ref. Section 337.401(7), Fla. Stat.).

Through our extensive experience with the federal, state, and local policies around broadband deployment, we have reviewed the Declaratory Ruling and submit the following comments for your consideration. Please note that some sections of the Declaratory Ruling can be seen as positive for local jurisdictions in Florida, as the state law is more restrictive in those areas. Other sections, some identified below, will clearly have negative effects on local jurisdictions that will counter the forward movement of deployment.

Positive Impacts of the Declaratory Ruling

The Declaratory Ruling:

1. Provides thoughtful guidance on reasonable aesthetic regulations. This will help support our City's aesthetic policies of distance/separation between facilities.
2. Creates a rebuttable presumption for small facility applications not processed within shot-clocks, instead of authorizing the "deemed granted" remedy. This allows the City to defend in court that such time limitation was unreasonable due to the nature of the application.

Negative Impacts of the Declaratory Ruling

The Declaratory Ruling:

1. Strips local jurisdictions of its reliance on case law as precedent, and does not sufficiently detail the parties' burdens in court (outside of a suit for an injunction).

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2. Sets forth that excessive fees are tantamount to a financial burden inhibiting the ability of providers to compete in a balanced environment; however, it provides no guidance to local jurisdictions on how to determine whether consultants' fees are excessive.
3. Ignores the practical effect of applying the shot-clock to all facets of permitting including construction permits. This will mean that all other City functions will have to stop when a wireless facility application comes through the door because it may have to undergo review by close to 30 individuals throughout several divisions within that short amount of time (i.e. zoning, building- structural, building- electrical, road closure/boring/trenching, architectural, engineering, etc.). This is tantamount to re-prioritizing the City's review actions within the community, and delays higher priority projects, such as those that deal with life safety concerns.
4. Appears to extend FCC's authority to preempt fees for deployment outside the ROW; however, it is mentioned only in the beginning of the Declaratory Ruling and not throughout. The City's position is that this action would be ultra vires, or beyond the rule-making authority of the agency and highly detrimental to the City. Fees and applications for deployment outside the ROW, i.e. erection of a tower in the backyard of a single-family home, requires specialized processing and additional scrutiny under a Special Land Use/Special Exception application.

Equally important to these practical impacts upon our City, we would like clarification either through the FCC Public Meeting or in writing on the following points:

1. Is the "deemed-granted" remedy removed for applications not falling within small facility deployment? It is unclear whether the FCC intends to make the rebuttable presumption applicable to all applications or only small facilities. Paragraph 134 would have been a good place to clarify this point, but it is not mentioned.
2. What rule applies to permits that were submitted and are pending at the time of adoption of the Declaratory Ruling? Are they under old or new rules? If under new rules, does the shot-clock start upon adoption of the Declaratory Ruling or when the application was submitted to the local jurisdiction (which may implicate an ex post facto issue)?

We respectfully ask that the FCC address and clarify these final points while taking into full consideration the negative impacts that the Declaratory Ruling will have on communities like Coconut Creek.

Sincerely,



Mary C. Blasi
CITY MANAGER

cc: Michael O'Rielly, FCC Commissioner
Brendan Carr, FCC Commissioner
Jessica Rosenworcel, FCC Commissioner
Coconut Creek City Commission
Terrill C. Pyburn, City Attorney
Sheila Rose, Assistant City Manager/Director of Sustainable Development