

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

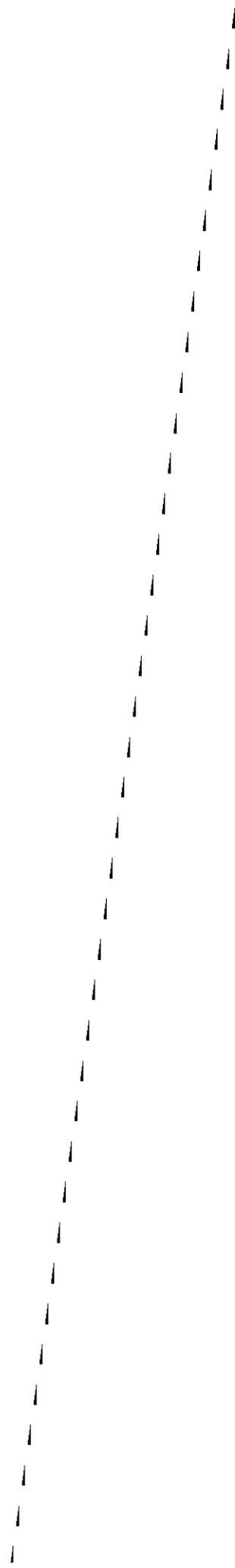
In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**COMMENTS OF CITY OF TEMPE, ARIZONA**

The City of Tempe, Arizona files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, the City of Tempe seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.<sup>1</sup> The Commission should not interfere with these local policies here. The City of Tempe has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the

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<sup>1</sup> We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.



Commission's limited expertise on local land use matters all point to the same conclusion: this is no place for federal regulation.

The City of Tempe has successfully managed its property to encourage deployment of several broadband networks to date. As a result, broadband service is available to 100% of the households and businesses in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property (such as water towers) have discouraged broadband deployment. Our community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. To date, no company has cited our policies as a reason that it will not provide service. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. The City of Tempe has actively assisted both Cox Communications and now Qwest/Century Link in their deployment of broadband service to our community through their fiber-to-the-node (FTTN) program and their other deployment initiatives. Within the City of Tempe, there are also several other providers that have fiber optic facilities in the right-of-way. On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer. Specifically, one Distributed Antenna Systems (DAS) provider claimed to be exempt from fees for use of the right-of-way for its fiber optic cables and "offered" to pay only a *de minimus* fee for attachments of its antennas to City-owned poles.



In response to the NOI, the City of Tempe provides the following information:

**I. *Application Procedures, Forms, Substantive Requirements, and Charges***

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.<sup>2</sup>

The City of Tempe applies the following right-of-way management and facility placement procedures. This is facilitated through the cooperative work of the Public Works – Engineering Division, City Attorney’s Office and the Information Technology Division of the Finance and Technology Department. The following are a number of URL links which may be accessed on the City’s internet site (24/7) that outline the code provisions for both telecommunications (Chapter 31) and right-of-way requirements (Chapter 29); current fee structure for both Chapters 29 & 31; standard details; and, the utility permit manual:

<http://www.tempe.gov/citycode/29Streets&Sidewalks.htm>

<http://www.tempe.gov/citycode/31aTelecommunications.htm>

<http://www.tempe.gov/citycode/APPENDIX.htm>

[https://www.tempe.gov/engineering/dry\\_utilities.htm](https://www.tempe.gov/engineering/dry_utilities.htm)

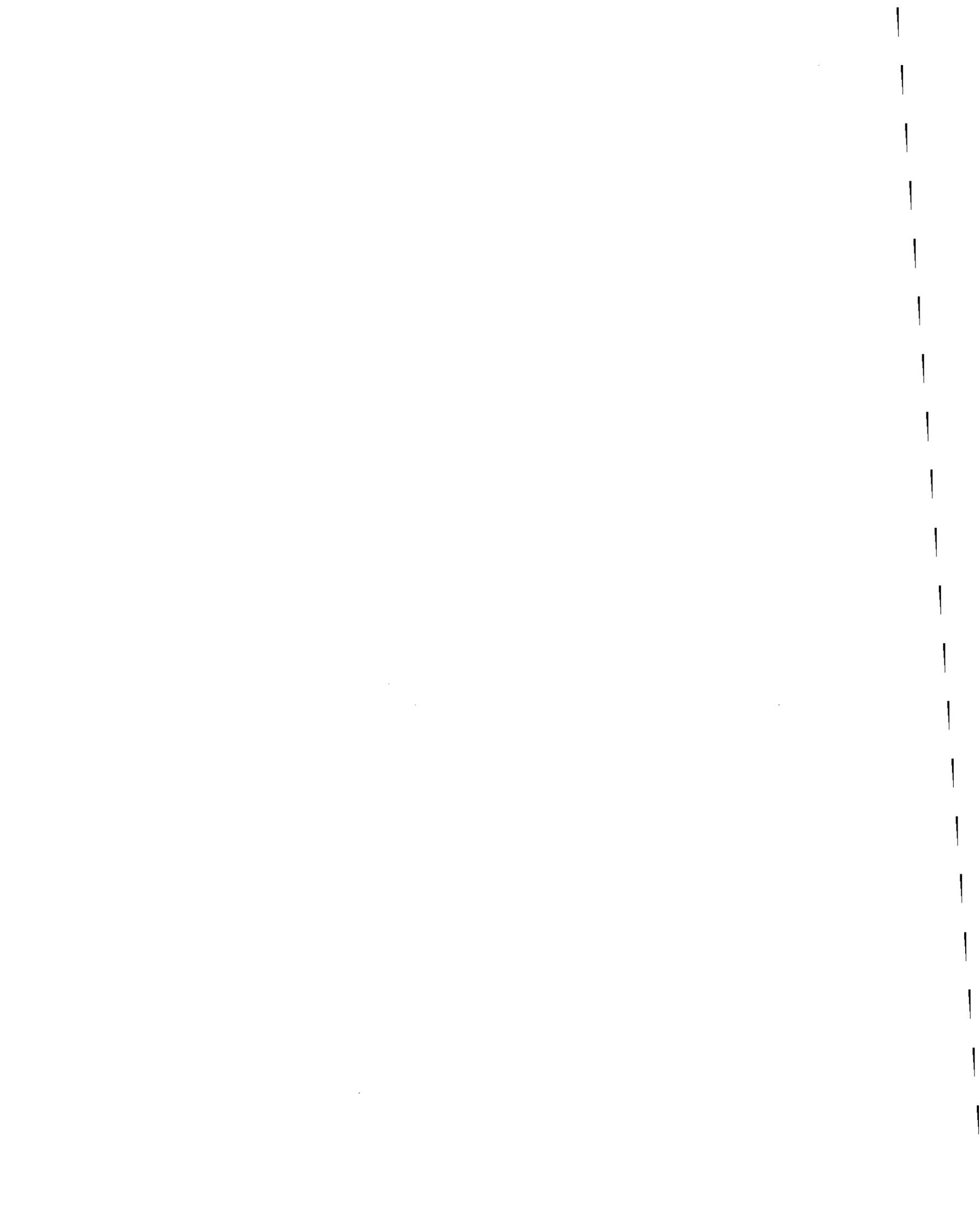
[https://www.tempe.gov/engineering/standard\\_details.htm](https://www.tempe.gov/engineering/standard_details.htm)

With respect for the access to city property outside of the right-of-way and depending upon the specific location, the Information Technology Division and/or the City’s Community Development Department handle all requests for antenna placement on city property. The URL link for the Community Development Department is as follows:

<https://www.tempe.gov/planning/Applications/>

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<sup>2</sup> NOI ¶ 14.



The applications can take an applicant through the step-by-step process for obtaining permission for antenna placement.

## **II. *Sources of Delays***

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.<sup>3</sup>

In the City of Tempe, most applications are processed very quickly if the information that is submitted is complete, and the provider does not challenge payment of the required fees. However, in some cases, the street area for broadband placement is scheduled for renovation and the need to coordinate the two schedules can cause a delay regarding installation.

Getting applicants to provide complete and/or necessary additional information in a timely fashion has been a continuing problem over the last decade, especially where a license and/or agreement is getting ready to expire. Despite the City's efforts to start the process early by sending out applications for renewal, nearly all the applicants consistently either delay in responding or respond to the application with inadequate information, thus requiring the City to follow up several times to get information before it can even begin to process the application.

## **III. *Improvements***

The Commission asks whether there are particular practices that can improve processing.<sup>4</sup>

The City of Tempe has recognized a number of practices that have improved the process. All our code and cost information is provided on our website. The Public Works Department

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<sup>3</sup> *Id.*

<sup>4</sup> NOI ¶¶ 14, 29.



and the City Attorney's Office work closely together to insure that the applications are processed in a timely fashion. Where possible, the City coordinates with the applicant to accommodate "single digs"/joint trenching as well as when the City has planned road repair/resurfacing projects.

#### **IV. *Permitting Charges***

The Commission seeks data "on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees." Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of-way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.<sup>5</sup>

Permit fees should not be confused with either lease rates or fees for use of the right-of-way. In Arizona, there are state statutes that severely limit the fee that can be charged for use of the right-of-way for interstate telecommunications as specifically defined by the state statute. The fee is on a linear foot basis and was capped at a rate set back over a decade ago without regard to current increased costs incurred by the City for maintenance and management of its

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<sup>5</sup> NOI ¶ 17.



right-of-way, and subject only to any annual CPI increases. Use of the right-of-way for intrastate telecommunications services is exempt from any fee for use of the right-of-way other than a transaction privilege tax. Fees for use of the right-of-way for other services are not addressed by the state statutes. State statutes written to address old technology fail to address the current reality that voice, video and data are often transmitted over the same fiber networks simultaneously.

In the City of Tempe, the majority of the fees incurred by the applicant have been pre-established and published on the City's website. All permit fees are pre-established and published on the City's website. In certain instances when the type of request has not been previously identified, the fees for use of the right-of-way are negotiated at the time of the request.

Typical fees include an initial application fee which covers only a small portion of the cost of the time needed by staff to review the application for completeness and for legal counsel to prepare the license and/or agreement. Permit fees may be applied based upon submitted construction plans which would include plan review, utility construction in the right of way permits, pavement replacement surcharges, etc. Based upon the type of request, there may be monthly/annual lease fees for placement of antennae on city property. In addition, there may be annual fees assessed per linear foot of dark fiber and/or franchise fees which are based upon a percentage of allowable user fees collected by the applicant.

These charges are important because they are meant to reimburse the City for costs incurred in review, negotiation, and processing of the applicant's request and/or reimburse the City for fair market value for the lease of space whether that is referring to placement of equipment on City property or within right-of-way. It is important for the FCC to understand



that any application fees, permit fees, and/or right-of-way usage fees imposed cover only a relatively small portion of the total costs incurred by the City of Tempe for the disruption and damage to, as well as for the maintenance and management of the right-of-way within its jurisdiction. Despite this, there are applicants that continue to claim that the fees imposed are either unreasonable or too high. The City of Tempe does not require in-kind contributions for access to the right-of-way or for any permit approvals.

**V. *Local Policy Objectives***

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.<sup>6</sup>

In the City of Tempe, our policies are designed to achieve the following:

- facilitate the responsible deployment of services;
- make the services broadly available;
- ensure public safety;
- protect future use of the right of way by managing this scarce resource of available space for buried utilities within certain major street intersections and/or arterial streets;
- protect access for emergency and service vehicles and protect the traveling public (pedestrian, bike, and vehicle) by managing the placement (location within streets and alleys) of above ground facilities (service pedestals, fiber cabinets, power cabinets that support fiber, DAS, and other antennas);
- avoid traffic disruption;
- maintain and repair roadways;
- prevent public disruption and damage to abutting property;
- minimize accelerated deterioration to roads that accompanies street cuts;
- satisfy aesthetic, environmental, or historic preservation concerns;
- protect existing utilities from damage due to new utility construction and assure that access to the existing utilities is not impaired by new utilities;
- avoid damage to the property of others; and
- obtain fair compensation for use of public property.

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<sup>6</sup> NOI ¶ 22.



## **VI. *Possible Commission Actions***

Finally, the Commission asks what actions the Commission might take in this area.<sup>7</sup>

As noted above, the City of Tempe strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. One size does not fit all. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. For example, the City of Tempe offers free Wi-Fi Internet access at its public library, as well as provides over 100 computers with Internet access to library patrons. Additionally, the City has three community centers providing about 40 additional computers with free Internet access to patrons. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

## **CONCLUSION**

The City of Tempe, Arizona urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above,

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<sup>7</sup> NOI ¶ 36.



in the City of Tempe, our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

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