

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of Acceleration of Broadband
Deployment Expanding the Reach and Reducing
the Cost of Broadband Deployment by Improving
Policies Regarding Public Rights of Way and
Wireless Facilities Siting

WC Docket No. 11-59

COMMENTS OF MONTGOMERY COUNTY, MARYLAND

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SUMMARY

Montgomery County strongly supports and shares the goal of accelerating broadband deployment and improving broadband adoption. Local governments are significant users of broadband service and local government policy has been central to the current successes in broadband deployment. The County herein provides information regarding the County's use, support and promotion of deployment of broadband services. The County's experience illustrates the important role local governments have and continue to plan in use, support, and promotion of deployment of broadband. The County further provides information regarding the important local government public health and safety role in managing deployment of wireline and wireless broadband services and in balancing the competing rights and interests of local residents, economic development and quality of life related to efficient and appropriate use of public rights-of-way.

This Notice of Inquiry implies that "local government" is a barrier to broadband deployment – which then leads the Commission to question whether federal regulation of local rights-of-way and land use zoning processes should be adopted to accelerate broadband deployment. The County's comments demonstrate that the Commission's inquiry is based on false assumptions. The County has worked over the past two decades to promote competitive wireline broadband deployment and to streamline and incentivize deployment of private wireless broadband services. Specific statistical evidence demonstrates that private entities, not government agencies, are the key determinants of broadband deployment. And for this reason, federal efforts to preempt local governments would be ineffectual and the Commission should instead direct its attention to imposing requirements on private to significantly accelerate broadband deployment.

The County has developed considerable expertise in the development and application of

policies to protect and further public safety, economic development, the environment, and other community interests, while at the same time encouraging broadband deployment. The Commission should not interfere with the careful balancing of community interests that these local policies represent. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. The County believes the Commission should act out of a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission's limited expertise on local land use matters. All of these elements point to the same conclusion: local land use and right of way regulation is no place for federal regulation.

A one-size-fits-all national approach is unworkable. It would impose substantial regulatory costs to the system – costs that must be absorbed either by the providers or by local governments. The Commission should avoid any action that creates a subsidy from local taxpayers to carriers. Such a subsidy reduces the ability of local governments to fund deployment and operation of public broadband to community anchor institutions and critical community institutions, such as libraries, schools, community colleges and community centers which are at the heart of local broadband adoption and digital literacy efforts.

Local governments are not the problem.

The County respectfully and urgently requests that the Commission engage in effective efforts to facilitate the important goal of broadband deployment and adoption. The Commission should exercise a strong leadership role in those areas where it has exclusive authority or is the expert federal agency. Specifically, the Commission should focus its efforts on identifying the market failures associated with the dominant providers and direct them to expand their facilities to rural and unserved areas and pursue policies that will encourage broadband adoption. The

Commission should take a strong leadership role in addressing the public's concerns about the health effects radio frequency (RF) emissions. And the Commission should provide leadership, resources and support for the recently announced Broadband Adoption Task Force.

Montgomery County is ready and able to be strong local partner to the Commission in its efforts to promote broadband deployment and adoption. Over one-third of the land mass of the County is a dedicated agricultural reserve with low population densities. The County understands the difficult task of incenting private entities to spend capital to deploy facilities in areas where there is a limited profit potential. The County understands the difficult problem of inadequate resources to fund every compelling need. It is that experience that has taught the County that partnerships, collegial relationships, and strong leadership is the best way to address the difficult issues of rural broadband deployment and urban broadband adoption. The County urges the Commission to work with local governments as partners, co-regulators, and appropriate operators of broadband networks to address needs the private sector leaves unmet.

Through these comments, the County:

- 1) Shows it has expertise in the development and application of policies to protect and further public safety, economic development, the environment, and other community interests, while at the same time encouraging broadband deployment;
- 2) Provides statistical data to demonstrate that local governments are not a barrier to broadband deployment; action and inaction by private industry is the relevant determinant of broadband deployments;
- 3) Shows that the problems of broadband deployment and adoption have been greatly reduced through County policies and actions regarding access to and management of public rights-of-way and wireless siting;
- 4) Asks the Commission to not interfere with the careful balancing of community interests that these local policies represent;
- 5) Asks the Commission to act out of a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission's limited expertise on local land use matters and conclude that local land use and right of way regulation is no place for federal regulation.

- 6) Illustrates the successes the County has achieved in broadband deployment through the County's local right-of-way and facility management practices and charges;
- 7) Cautions against mandatory federal regulations that would be counterproductive or harmful, pointing to the adverse effects of the Commission's *Shot Clock Ruling*;
- 8) Shows the important role of County operated broadband facilities in solving broadband deployment and adoption issues within the County;
- 9) Recommends specific actions the Commission should take to foster broadband deployment and adoption, in cooperation and partnership with local government, including directing private providers to extend their networks to the unserved, providing useful educational materials for the public on RF emissions, and developing innovative broadband adoption policies.

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COMMENTS OF MONTGOMERY COUNTY, MARYLAND

Montgomery County, Maryland (the “County”), files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. The County strongly supports the goals of the Commission and the National Broadband Plan to accelerate broadband deployment and to significantly improve broadband adoption. The County supports and promotes effective local strategies to promote the provision of best value, better broadband services. Through these comments, the County offers specific information and statistical data to provide the Commission with a more accurate understanding and appreciation of the role local governments perform in promoting broadband deployment.

Local governments, such as Montgomery County, Maryland, actively use and deploy wireline and wireless broadband services. Contrary to implied assumptions in the NOI, local governments are not barriers to broadband deployment, Montgomery County has adopted policies to accelerate wireline broadband deployment, streamlined private wireless deployment and incentivized zoning and regulatory processes to accelerate wireless siting. Through these Comments, the County demonstrates that its policies protect and further public safety, economic development, the environment and other community interests, while at the same time encouraging broadband deployment. Montgomery County is also actively engaged in efforts to

promote broadband adoption and digital literacy, and is trying to develop public-private partnerships to foster broadband deployment to rural agricultural, senior and low-income areas and populations. Montgomery County asks the Commission to develop policies to support these local broadband initiatives. The federal government should support imposing reasonable build-out conditions on providers using public resources such as rights-of-way, provide leadership on RF emission health concerns, and support at the highest levels the Commission's recently announced Broadband Adoption Task Force.

Montgomery County herein provides statistical data to support the following conclusions: local governments are not a barrier to broadband deployment; action and inaction by private industry is the relevant determinant of broadband deployments. In addition, the County offers information indicating that the Commission's wireless tower siting shot clock illustrates the adverse consequences of federal rules preempting local zoning processes

I. FEDERAL REGULATION OF LOCAL GOVERNMENT RIGHT OF WAY MANAGEMENT AND ZONING PROCESSES WILL NOT ACCELERATE WIRELINE AND WIRELESS BROADBAND DEPLOYMENT

A. Montgomery County is a Geographically, Economically, and Ethnically Diverse Community.

Montgomery County is a 496-square mile jurisdiction adjacent to Washington, DC with a population of 971,777.¹ The County includes urban, suburban, exurban and rural communities with 29 percent of the County land mass still in use for agriculture. As of 2010, 39 percent of the County's residents live in the top five planning places within the County and 64 percent are

¹ Montgomery County is the 42nd largest county in America and 42% of the American population lives within the largest 100 U.S. counties. 2010 U.S Census data compiled at http://en.wikipedia.org/wiki/List_of_the_most_populous_counties_in_the_United_States.

concentrated in the top ten planning places within the County.² Thus, the County must manage broadband service deployment to concentrated populations located within geographically small portions of the County and also provide incentives for those same companies to deploy broadband to significant areas of the County with relatively low population densities.

The County must promote the interests of a highly-educated workforce who demand access to commercial broadband services, as well as use public resources to serve a significant number of residents who likely do not have access to broadband services at home. The age of the County's population is similar to the U.S. overall.³ As of 2010, 26 percent of the County's population is age 19 or younger and 25 percent is age 55 or older. The County's per capita income (\$41,122) is 52 percent larger than the United States overall (\$27,041) and the median household income in the County (\$62,363) is 21 percent larger than the United States overall (\$51,425).⁴ However, while 46 percent of County residents earn more than \$100,000 annually (as compared to 20 percent of the United States population), 31 percent of children (45,061) in Montgomery County public schools were eligible for free or reduced-priced meals.

The County is also significantly more diverse than the United States as a whole, which is 74.5 percent white.⁵ Montgomery County is now one of 336 "majority-minority" counties in the United States. As of 2010, Non-Hispanic Whites make up 49.3 percent of the County's

² There are 45 "planning places" within the County. *See* http://www.montgomeryplanning.org/research/data_library/census/2010/documents/PopChangePlace_2000_2010.xls (last visited July 17, 2011). 378,396 people live with Bethesda, Germantown, Silver Spring, and Gaithersburg and Vicinity. An additional 239,341 live within Wheaton, Aspen Hill, Potomac, North Bethesda, and Fairland.

³ Age of Montgomery County population as compared to the United States: Under age 5, 7.2 percent versus 6.9 percent; over age 18, 75.2 percent versus 75.4 percent; and age 65 or older, 12 percent versus 12.6. *Ibid.*

⁴ U.S. Census Bureau, 2005-2009 American Community Survey, Montgomery County, Maryland Fact Sheet. *See* Exhibit A

⁵ *Ibid.*

population. Hispanics and Latinos are now the County's second largest population group (17.0 percent) followed by African Americans and Blacks (16.6 percent), Asian and Pacific Islanders (13.9 percent) and Other (3.2 percent). Four percent of the County's population is people of more than one race.⁶ 29.5 percent of the County's residents are foreign born, as compared to 12.4 percent of U.S. population, and 35.8 percent of the County's residents speak a language other than English at home, as compared to 19.6 percent of the U.S. population. Thus, in promoting broadband deployment and adoption, the County must balance the interests of rural and urban population centers, high income and low income residents, and an ethnically diverse population.

B. The County's Cable Franchise Build-Out Requirements Have Facilitated Deployment of Competitive High-Speed Broadband throughout the County.

Since the mid-1980's, the County has required a franchise for every company seeking to place facilities within the public rights-of-way and has granted non-exclusive franchises to use those public rights-of-way.

The County is served by three franchised cable operators who provide high-speed cable modem service. In the mid-1980's, County granted its first cable franchise and required that cable operator over the life of its 15-year franchise to build-out its cable system to serve the entire County. The cable operator requested and County agreed to add further conditions favorable to the cable operator in areas of the County where the housing densities were below certain levels. When the cable operator began to provide cable modem service, as result of the

⁶ Montgomery County Demographic Characteristics 2010, prepared by the Maryland department of Planning, Projections and Data Analysis / State Data Center, based on the 2010 U.S. Census, available at http://www.montgomeryplanning.org/viewer.shtm#http://www.montgomeryplanning.org/research/data_library/census/2010/documents/MoCo_DemProf_1990-2010.pdf (last visited on July 17, 2011).

build-out requirement, Internet access service became available throughout the County. When the cable operator began to upgrade its system to provide broadband service and renewed its franchise in 1998, similar to the build-out initial build-out requirement, the County conditioned the franchise on the cable operator agreeing to upgrade its system throughout the County over the life of its second franchise. When Comcast subsequently acquired the cable system, the build-out and upgrade requirements imposed by the County helped to ensure that Comcast's high-speed broadband service was available through the County.

The County granted its second cable franchise to RCN-Starpower in 1999. Similar to the Comcast franchise, the initial RCN-Starpower franchise also required the cable operator to build-out its system throughout the County over the life of the 15-year franchise. The competitive pricing power exerted by Comcast limited RCN-Starpower's ability to achieve significant market share within the portions of the County that it had begun to serve. A subsequent inability to acquire necessary market capital lead RCN-Starpower to sell off many of its cable systems in the Boston to Virginia area and eventually, RCN-Starpower requested that its franchise service area be reduced so that it was no longer required to serve the entire County and could focus on increasing its penetration rate in the areas where it had already built out its system. Comcast objected to a reduction in RCN-Starpower's franchise service area. In the interest of preserving competition in at least some parts of the County, the County agreed to a reduction in RCN-Starpower's franchise service area.

In 2006, the County granted its third competitive cable franchise to Verizon. Similar to its other franchises, the County required Verizon to build-out its system throughout the County, subject to minimum housing density requirements. Verizon has substantially completed its build-out and will likely complete deployment of its cable and broadband system throughout the

County within the next year.

Thus, the County's cable franchise requirement that each franchisee had to build out the entire area of its franchise has guaranteed that competitive high-speed broadband is deployed throughout the County and that the majority of County residents have access to at least two wireline high-speed broadband service providers. Of 375,905 County housing units, approximately 99.6% are passed by one wireline cable company providing broadband service and at least 65.6% are passed by two wireline cable companies providing broadband service; of 357,086 occupied County households, approximately 72 percent subscribe to cable service.⁷ Because of bundled pricing incentives, most cable subscribers tend to purchase broadband service from their cable service providers, so the number of cable subscribers is an approximate estimate of the number cable modem broadband subscribers within the County. Based on anecdotal evidence, however, the County also has reason to believe that cable operators may have a significant number of customers who subscribe to broadband service, but not to cable services.

Since the mid-1980's the County has granted 21 non-cable franchises to use and occupy the public rights-of-way to the following companies: AboveNet Communications; ARBROS; Columbia Transmission Communications; Discovery Communications; E.Spire; Fibergate; FiberLight; FiberTech; InSite Solutions; KMC; Looking Glass Network; Metricom; Metromedia Fiber; Next G Networks; NewPath Networks; TelCove Inc.; TW Telecom; Qwest; Williams; and Xspedius. Unfortunately, federal law does not protect local government's authority to require

⁷ 2010 U.S. Census, Profile of General Demographics for Montgomery County, MD; confidential information provided to the Montgomery County Office of Cable and Broadband Services.

build-out and customer information for non-cable franchises as it does for cable franchises.⁸ Thus, the County does not have information as to the extent to which these companies have built out their telecommunications networks or the number of telecommunications or broadband customers each company serves within the County. Nevertheless, it appears likely the broadband deployment and broadband adoption rate within the County is greater than 72 percent.

C. Montgomery County Has Facilitated the Deployment of Wireless Telecommunications Facilities Throughout the County.

There is no problem deploying wireless broadband facilities within the County. Since 1996, the County has approved deployment of over 1,700 total wireless facilities (*i.e.*, antennas, monopoles, and towers) at 421 aggregate locations by the following 32 companies: Airband Communications; AT&T; Baltimore Gas & Electric; Bell Atlantic; Bell South; Birach Broadcasting; Cellular One; Cingular Wireless; Clearwire; Comtech; Cricket; Crown Castle; Fiber Tower; Flo TV; Fuzion Wireless; Horizon W-Com; Light Squared; Metricom; Modeo; New Path; New Wave; NextG; Page Net; Sirius; Southwestern Bell; Sprint; Teligent; T-Mobile; US Wireless; Verizon Wireless; Winstar Wireless; and XM Satellite. The County has overseen the deployment of three generations of smart phone technology in the same time period, and is currently working with providers to grant approval for providers to deploy 4G facilities throughout the County. In addition, 97 percent of all applications seeking to place wireless facilities within the County have been approved by the County. The number of applications received each year, and the number of approvals, is provided in Figures 1 and 2 below.

⁸ 47 U.S.C. 541(a)(4)(A)

Figure 1

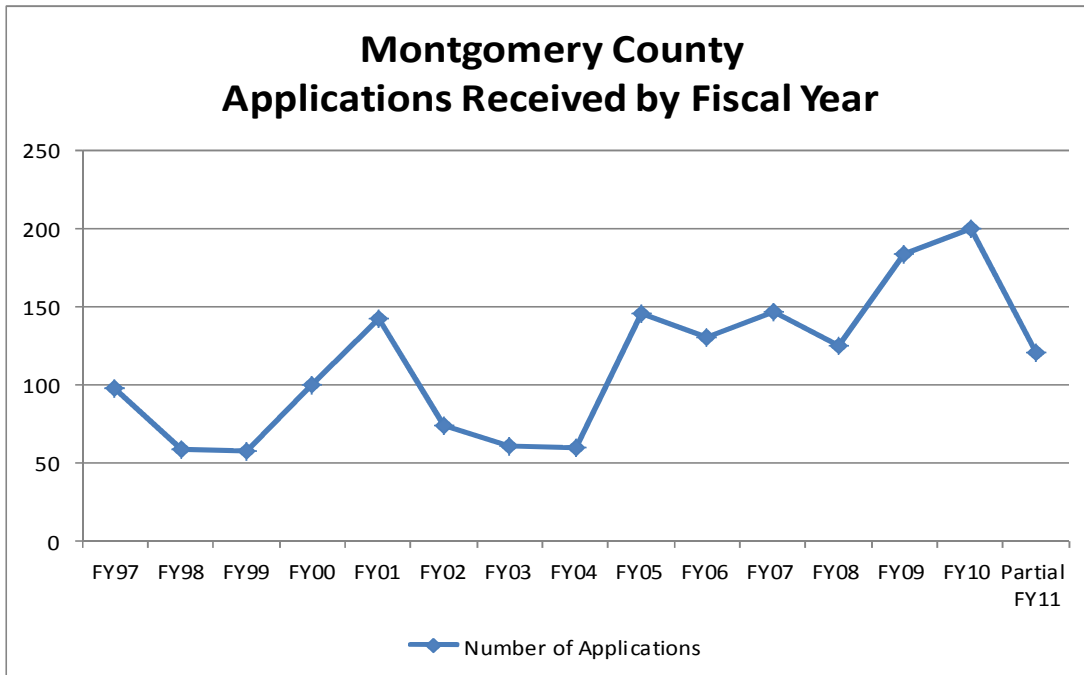


Figure 2

Montgomery County Applications Processed Through March 31, 2011	
<u>Description</u>	<u>Number (%)</u>
Total Applications Received	1,700
Total Withdrawn from Action	156
Total Recommended	1,517 (97%)
Total Denied/Tabled	27 (.017%)

D. Wireline and Wireless Broadband Deployment Could Be Improved With Better Federal Data Collection And Local Government Authority to Require Deployment Data

Each of the wireline and wireless deployments were made in a manner consistent with the regulatory and permitting system described below. This record is a record of success. And the results speak for themselves. The County has encouraged new entrants, extensive competition and county-wide build-outs, all in the context of even-handed treatment of all providers without giving undue advantage to the telecommunications providers over the other users of the rights-

of-way or the community interests protected by local regulation. Additional federal regulation is not necessary to promote broadband deployment in areas where market incentives exist to encourage commercial wireline and wireless broadband deployment. Nor will further regulation of local governments cure the business case issues which deter commercial broadband deployment.

The County's efforts to facilitate further broadband deployment are hindered by the County's difficulty in obtaining detailed information about broadband deployment and penetration. For example, the County has specific information from franchised cable operators about homes passed and subscription rates. However, cable operators have generally refused to provide the County with information regarding the number of their broadband subscribers. Wireless telecommunications provide no data regarding mobile broadband subscribers and request confidential treatment of all coverage area maps.

The County could better target broadband adoption programs if the FCC makes it clear the County has authority to require broadband service providers to report broadband customer information to the County. For example, if all broadband providers provided a list of billing addresses of customers, the County could aggregate that data and use its GIS capabilities to provide a detailed analysis of broadband deployment and adoption. The County could then work with industry to target gaps in broadband deployment and adoption.

The density threshold limitations to cable build-out requirements, which the County negotiated as a concession to cable operators, generally require an individual subscriber in low density areas to pay for the cost of extending the providers' facilities to the subscriber's home.⁹

⁹ The County's cable franchise build-out conditions can be found at: Comcast Franchise Section 4, <https://mail.montgomerycountymd.gov/exchweb/bin/redirect.asp?URL=http://www.montgomeryco>

In many cases, it may cost a resident between \$2,000 and \$10,000 to extend the cable operators plant to obtain cable and broadband service. The build-out requirements require the cable operator to provide service to residents but not to businesses. Thus, a cable operator may refuse to extend its facilities to serve a small business, even in densely populated areas of the County. The County routinely receives complaints from residents who live in low density areas of the County, or from small businesses, who complain that they are not able to obtain wireline broadband service.

E. The County Understands the Real Issues Related to Broadband Deployment and Adoption because Montgomery County Is Both a Significant Provider and a Significant Consumer of Wireline and Wireless Broadband Services.

The County is a significant provider of broadband services and a significant consumer of broadband services. The County began deploying its own fiber optic network, known as FiberNet, in 1995, leveraging the fiber optic deployment work that the County Department of Transportation had already begun in building an Advanced Traffic Management System. The County's current generation FiberNet provides voice, video and data communications services including broadband to 319 government and community buildings and 106 public schools, at speeds no less than 100 Mbps and as high as 10 Gbps. FiberNet serves departments within the Montgomery County Government, Montgomery College, Montgomery County Public Schools, the Maryland-National Park and Planning Commission, Washington Suburban Sanitary Commission, and the Housing Opportunities Commission (the non-profit agency that owns and

untymd.gov/mcgtmpl.asp?url=/content/cableOffice/June98franchise.asp; RCN-Starpower Section 4,

https://mail.montgomerycountymd.gov/exchweb/bin/redirect.asp?URL=http://www.montgomerycountymd.gov/mcgtmpl.asp?url=/content/cableOffice/starpower_ccapprv080399_franchise.asp;

Verizon Franchise, Section 3,

<https://mail.montgomerycountymd.gov/exchweb/bin/redirect.asp?URL=http://www.montgomerycountymd.gov/content/cableOffice/pdf/20061128verizonfranchise.pdf>.

operates public housing in the County). Some of FiberNet’s fiber was provided by the cable operator in the form of an institutional network, but the County has also expended millions of dollars in constructing its own infrastructure to expand this network. County telephony, e-mail, Internet access and web-based government services are provided using FiberNet. The County also leverages FiberNet and a limited number of wireless access points to provide broadband WiFi service to the public and to government users at selected locations in the County.

Over the next two years, the County will use funding from right-of-way franchise fees and the American Recovery and Reinvestment Act (ARRA) to add 139 sites to FiberNet, including 109 elementary schools and 19 low income public housing sites, bringing the total number of FiberNet sites to 562 by August 2013. The County is a member of the One Maryland Broadband Network – the public-private consortium formed by the State of Maryland Department of Information Technology, Maryland Broadband Cooperative and the Inter-County Broadband Network (consortium of ten central Maryland counties and cities) – which was recently awarded \$115,240,581 to deploy the One Maryland Broadband Network to bring affordable and abundant broadband to each of Maryland’s twenty-four counties.¹⁰ This critical federal funding will permit the County to provide high-speed broadband access to all of its elementary schools within the next 2 years; without the federal funding, budgets cuts would have

¹⁰ Through the Broadband Technology Opportunities Program (BTOP), administered by National Telecommunications and Information Administration (NTIA) and funded by the American Recovery and Reinvestment Act of 2009 (“ARRA”), numerous middle mile public network grants have been awarded federal stimulus funds for broadband deployment. A fact sheet summary of the One Maryland project is available on the NTIA website: http://www2.ntia.doc.gov/files/grantees/fact_sheet_-_maryland.pdf (last accessed July 11, 2011). These ARRA BTOP grant funds will bring broadband services to 1,000 community anchor institutions within Maryland, including approximately 400 schools, library and community center locations where the public will be able to access broadband services. However, it is worth noting in its current state, this federal broadband grant program does not permit any of the funds to be used to purchase end user computer equipment at any of these locations.

slowed the County build-out of high-speed broadband to elementary schools to a 7 year period.¹¹ FiberNet is also an integral component of the County's Public Safety Communications Network. The County's public safety voice communications network uses FiberNet as a fiber backbone to connect 11 radio communications transmission sites within the County, and the County has engaged the Washington Metropolitan Area Transit Authority to consider sharing assets and facility access to improve network reliability and availability for the County's Public Safety Radio System. Fire and rescue service vehicles use mobile terminal access points to update in-vehicle mapping data. FiberNet will also be an important component of any future transition to public safety broadband wireless communications and public safety multi-jurisdictional broadband interoperable systems.¹²

County agencies leverage the FiberNet broadband technology and capacity to provide services ranging from free Internet service in public libraries, to Internet access in schools, to on-line filing of permit applications, to broadband education and job training classes at local community locations.¹³ As the County seeks to provide more 24/7 broadband-based services, it

¹¹ Without this funding, the County would also not be able to meet the goals of the State of Maryland's Educational Technology Strategic Plan, which mandates broadband access, computer to student ratios, IT support, and teacher training. The plan is available at, <http://www.marylandpublicschools.org/NR/rdonlyres/9242FEDD-09F7-4BB0-8F1F-AE6FAE562EA8/13485/TechPlanFinalfromPrinter73007.pdf>. It also worth noting that the County first built-out FiberNet to high schools and middle schools because these schools typically are sited on main roads where joint deployment with the traffic management system could be leveraged to reduced costs. Elementary schools tend be located deeper in neighborhoods where the per site construction costs are higher. Again, the County does understand the capital and operational pressures that industry faces in deploying broadband to neighborhoods.

¹² Presently, FiberNet is interconnected to 24 other Maryland, Virginia and District of Columbia jurisdictions as part of Washington DC Metropolitan Council of Governments' NCRNet (National Capital Region Network) project.

¹³ Some of examples of broadband-based services provided by Montgomery County are: Alert Montgomery; Apartment Rental Guide; Ball Fields Belonging to Schools; Bicycle Registration; Bikeway Maps; Blue Recycling Bin; Building or Zoning Violation Complaint; Cable &

also has an interest in promoting deployment of commercial broadband services to residents and businesses, as well as an interest in ensuring that residents have sufficient digital literacy skills to access those services.

The County has worked very hard to serve the public as cost-effectively as possible using the most advanced technology available, but it could never have achieved these results if it had to rely solely on services purchased from commercial providers. The current rates offered by providers for the bandwidth needed to provide state-of-the-art Web functionalities at more than 300 locations in a county of nearly a million residents, are cost-prohibitive. Instead, FiberNet serves the Montgomery County government and its agencies at a fraction of the cost of commercially available services. For example, and as discussed in the County's reply comments in the Commission most recent e-rate proceeding, the County provides service to schools for the annual fee of \$71 per megabit for 100 Mbps broadband service. In contrast, it would cost the schools \$1,826 per megabit for 1.54 Mbps T-1 services at its elementary schools, even after factoring in the e-Rate discount.¹⁴

The County also leverages the Maryland state broadband SAILOR network to provide

Broadband Service Provider Complaints; Complaints Against Merchants; Emergency Alert; Estimated Real Property Tax & Other Non-Tax Charges; eSubscription Newsletter; Fire Code Violation Report; Hazardous Materials Use Permit; Housing Discrimination Complaints; Library Catalog Search; Library Fines; Library Renewals & Your Account; Liquor Wholesale Sales; Local Small Business Reserve Program; Noise Complaints; Procurement Solicitations; Park Facilities & Fields Reservation; Parks & Park Facilities Online Search; Pay Parking Tickets; Personal Property Tax - Business Accounts; Polling Place Locations; Pothole Repair Requests; Property Tax - Real Estate Accounts; Recycle Store; Red Light Camera Violation Payment; Reserve Park Facilities Online; Ride-On Bus Complaints and Compliments; Ride-On Bus System Map; Ride-On Bus Tracking; Snow Plow Status Map; Solid Waste Hauler/Collector Payments; Space Rental of County Facilities; Speed Camera Violations; Streetlight Outage Reporting; Taxicab Complaint Form; Unplowed Street Reporting; Unshoveled Sidewalk Reporting; Vendor Registration with County; and Women's Workshops & Programs.

¹⁴ *In The Matter of Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Reply Comments of Montgomery County, Maryland (July 26, 2010) at 5.

free public Internet access at public libraries.¹⁵ Maryland libraries are responsible for building fiber connections or leasing commercial capacity from library sites to reach the single SAILOR point of presence location within each county. FiberNet is used to provide broadband services for administrative functions within each library in the County and the FiberNet fiber connections are used to deliver the SAILOR network for public patron Internet use. Presently, the County provides 470 publicly available computer terminals at 20 library locations. This includes a variety of software such as accessibility software for the blind and visually impaired, and deaf and hearing impaired. Due to severe budget reductions, the County is increasingly turning to grant funding and other donations to expand public access to broadband services at libraries.¹⁶ Annually, the public uses the County library computers, SAILOR and FiberNet connectivity to conduct over 1,000,000 computer sessions. The County's library system and its Department of Economic Development also offer computer skills training and workforce development training (e.g., how to file on-line job applications) using computers at the library and two workforce development centers in the County.

That said, the County is, nonetheless, also a significant consumer of commercial broadband services and has an interest in promoting the availability and deployment of wireless broadband services. At the time the County installed mobile data terminals in public safety vehicles, sufficient bandwidth was not available for the County to provide this service using County facilities. At the present time, the County contracts with Sprint to provide approximately 1,400 mobile air cards to police cars so that officers may use in-vehicle mobile data terminals. The County also annually spends approximately \$1.3 million collectively with Sprint, Verizon,

¹⁵ For more information see, <http://sailor.lib.md.us> (last accessed July 11, 2011).

¹⁶ Most recently, the Friends of the Library provided \$146,000 to create a computer lab at the Long Branch Library.

and AT&T to provide mobile telephony and data services to 3,700 cell phone and smart phone devices for County employees. The County has recently launched a pilot program to provide tablet devices to employees and, at the present time, will primarily rely on wi-fi access to provide connectivity for those devices. Thus, the County has a significant interest in effective deployment, coverage and density of commercial wireless broadband services throughout the County.

Finally, the County engages in an ongoing strategic planning effort led by the Department of Technology Services to manage the County's information technology needs proactively to serve its citizens. The most recent plan, "Enterprise Technology Strategic Plan 2009-2012" is attached as Exhibit B hereto. These efforts are meeting with success. Last year the County was recognized as the "top digital county government in the United States" by the Center for Digital Government and the National Association of Counties. This year, the County was recognized as the third best digital county government in the United States.¹⁷ Five other Maryland and three other Virginia jurisdictions also placed within the top ten best digital county governments (among the three categories based on jurisdiction size). This award was based on more than 100 measurements and data points related to online service delivery, infrastructure, architecture, and government models. The County encourages the Commission to visit the Digital Communities program and review the compilation of digital best practices at www.digitalcommunities.com/library/papers/ to learn more about how local governments are using broadband within their communities to deliver services.

The County highlights its broadband deployment experience to demonstrate the County has significant expertise with respect to broadband and fiber optic and wireless services. The

¹⁷ See list of winners at www.centerdigitalgov.com.

County understands well the construction process undertaken by private sector entities to build their wireline and wireless networks. It knows that deployment of municipal broadband networks can take place side-by-side with the deployment of commercial broadband networks for the overall benefit of the wider community. And the County understands that access to broadband services benefits the commercial providers because the more broadband services, both government and commercial, are available within the County, the more individual residents will see the value of subscribing to retail services themselves.

II. THE COUNTY'S RIGHT-OF-WAY AND FACILITY MANAGEMENT PRACTICES AND CHARGES ARE NOT A BARRIER TO BROADBAND DEPLOYMENT

As the service provider statistics in the previous section indicate, there is no evidence that the County's policies or charges with respect to placement of facilities in the rights-of-way or on County property (such as water towers) have discouraged broadband deployment. There is no evidence any additional federal regulation of local government right-of-way management or compensation policies is necessary to accelerate broadband deployment. Montgomery County welcomes and encourages broadband deployment, and our policies have helped to manage deployment by more than 50 companies within public rights-of-way and on private and public properties.

Restricting or regulating local government authority to reasonably regulate and manage deployment of broadband facilities will not accelerate deployment of broadband services. Local government regulation is not a significant factor influencing broadband deployment. These rules ensure that new broadband deployment can be pursued expeditiously, without damage to other right-of-way users, or risk to the public health, safety, welfare, or deprivation of the interests of the broader community.

In response to the NOI, the County provides the following information to illustrate the County's approach with respect to the deployment of wireline and wireless facilities.

A. Placement of Facilities in the Public Rights-of-Way

Any entity that seeks to place facilities in the rights-of-way must obtain a franchise or some similar authorization from the County. This grants a right to use and occupy space within the rights-of-way throughout the franchise area, subject to time, place, manner and other general police power restrictions. Companies that seek to deploy wireless communications networks without use of the public rights-of-way are not required to obtain a franchise. Providers of wireless communications networks which seek to place facilities in the public rights-of-way must obtain a franchise as well as separate regulatory approval for wireless facilities discussed in the following subsection. Any deployment of facilities through environmentally sensitive areas, on historic buildings or in historic districts, and/or on Rustic Roads within the County, may be required to obtain additional regulatory approval similar to any other non-communications company seeking to place facilities in those special districts.

The franchise sets out general conditions with which a provider must comply, including insurance and bond requirements, liability and indemnification, and compensation (if any). The franchising process is supported by the Office of the County Attorney and the Office of Cable and Broadband Services. In Montgomery County, a franchise is granted by ordinance. Thus, the franchise ordinance will be introduced in an open Council meeting, the Council will take public comments and approval or denial of the proposed franchise ordinance will be completed in a subsequent Council meeting.

Once a franchise has been granted, the company is authorized to occupy the public rights-of-way and may obtain permits to perform construction in the public rights-of-way and building permits for any structures to be constructed. Any structure constructed in Montgomery County

is required to obtain a building permit. The permitting process establishes conditions based on the type of work expected to be performed at particular locations (*e.g.*, when and where the streets may be opened, traffic management plans, storm water runoff and sediment control, etc.). The actual information provided in the permit application varies with both the nature of the construction techniques and the proposed location. Routine maintenance normally does not require a permit if there is no significant blockage of traffic on secondary roads. Permits and traffic plans are required for any activities on primary streets and boulevards and these traffic management plans must be approved by the County's Department of Transportation. Permit applications must show the provider has engaged in the initial planning and engineering that would allow construction to move forward – that all the project components are in place. Before work begins, the County will hold a pre-construction meeting with the permittee, often at the site where construction is to occur. During this meeting, the County inspector confirms that the work plans accompanying the permit application actually reflect the work that will be planned in the field. Thus, for example, an inspector may discover that the actual planned work is different in location or design than shown in the permit applications or disturbs existing facilities not disclosed in the permit application. Depending on the nature of the changes, the County permit inspector can approve changes in the field during this pre-construction meeting. If the application was grossly inaccurate, or does not include a traffic management plan approved by the Department of Transportation, the project will be delayed while the necessary plans are submitted and approved.¹⁸ The County inspects the site during and after work to assure compliance with permit conditions, safety codes, and restoration requirements.

¹⁸ This is a simplification of the process. To speed processing, the County does draw distinctions among projects based on the amount and type of work required.

1. Application Procedures, Forms, Substantive Requirements, and Charges.

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.¹⁹

In 1996, the County created the Department of Permitting Services (“DPS”) as a one stop shop for construction and land use permits in the County, and as such DPS performs a multitude of different services.²⁰ In addition to making application forms and information available at the physical offices of the DPS, the County has detailed information about the DPS and its services available online. The main webpage of DPS is the starting point for learning about the processes and contains extensive links.²¹ There is also an extensive library of links to pertinent DPS documents on the site.²²

The information is also organized by type of permit, thus if the application is for a permit to perform utility work in the right-of-way (the category of permit typically of interest to wireline communications companies), all necessary information is readily available on a DPS webpage which is dedicated to that specific permitting process and contains numerous links to all pertinent documents, including the application, fees schedules, bond requirements, applicable codes and standards.²³ One link on the utility permit page presents the permitting process “at a

¹⁹ NOI ¶ 14.

²⁰ Some of the specific services provided by DPS can be found at:
<http://permittingservices.montgomerycountymd.gov/permitting/pdf/Functional%20Responsibilities%20for%20DPS.pdf>

²¹ <http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/main.asp>

²²

<http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/permitting/docs/nfdoclist.asp>

²³ See the County’s webpage titled “DPS/Roads - Utility Permit” which contains numerous links
<http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/permitting/r/nfup.asp> .

glance” in schematic flow chart form.²⁴ Another link provides a document entitled “Montgomery County Specifications for Utility Construction Permit” which includes detailed guidance on the application process and requirements.²⁵ The utility permit page also displays a telephone number if applicants have right-of-way questions, a link to the main DPS webpage where there is an online system that allows an applicant to retrieve real-time data on the status of any application,²⁶ and a link to the County’s 311 non-emergency information website where applicants can also check the status of service requests or research other County information.

2. 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.²⁷ In the County, most applications are processed very quickly. Processing time may vary according to workload, complexity of the project and number of reviews required. If the Department of Transportation’s approval of a Traffic Control Plan (“TCP”) is required, the permit issuance will take longer.

However, in some cases, there are delays, most often due to incomplete applications or inexperienced applicants. For example, a missing or inadequate TCP is a common source of delay. Another common source of delay is the failure of the applicant to submit information required under the County’s permitting process. Because the type of information \required by the County is available on-line, the problem is less common with experienced contractors, and

²⁴ <http://permittingservices.montgomerycountymd.gov/permitting/r/nfup.htm>

²⁵ <http://permittingservices.montgomerycountymd.gov/permitting/pdf/UtilitySpecs.pdf>

²⁶ <http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/main.asp> There are four ways to retrieve real-time data from the DPS Permit System: Search by application type and permit number, or search by zip code, or search for applications and permits for a premise address, or search for permits that are linked to a Contact Number.

²⁷ NOI ¶ 14.

more common where the person preparing or directing preparation of the application fails to review and become familiar with the County's requirements. Generally speaking, the County sees better quality more complete applications from civil engineering firms than from telecommunications engineering firms.

3. Improvements.

The Commission asks whether there are particular practices that can improve processing.²⁸

All right-of-way management practices have budgetary consequences and it is important for communities to adopt and evaluate cost-effective practices in light of their own situation. In an area where a limited number of permits are filed, or in a small community, web-based solutions may be more costly, and may cause more delay than other solutions as a small community may lack the ability to develop and distribute and maintain appropriate Internet-based content. It may be simpler to talk to a small permitting department in person or by telephone. In contrast, web-based information has benefited the County and its right-of-way occupants. The County has a significant volume of right-of-way permit requests, number of right-of-way occupants, and has the ability to support Internet-based services.

In response to lessons learned, Montgomery County has taken several steps to improve its permitting process. Codes, fees and other information are readily accessible to applicants on-line. There are numerous steps that can be performed on-line including searches on the status of an application, the scheduling of inspection appointments, and the like.²⁹ However, the County still provides staff contact phone numbers for questions as a useful best practice.

²⁸ NOI ¶¶ 14, 29.

²⁹ These items are described in detail on the DPS/Help webpage.
<http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/status/mainhelp.asp>

B. Facilities Outside the Right-of-Way – Wireless Siting

In early 1996, the County began receiving a significant number of applications for placement of wireless towers. In many communities, zoning codes had been developed without wireless communications facilities in mind, and existing codes were not designed, for example, to effectively encourage practices like collocation, or to handle effective processing of large numbers of applications. In addition, the County needed to manage requests to use public properties owned or managed by different County agencies.

The County responded by amending its ordinances and zoning code to establish a Transmission Facilities Coordinating Group (TFCG or “Tower Committee”). The Committee was tasked with coordinating the interests of County agencies and providing engineering support for those agencies. The TFCG Coordinator performs an engineering review of each application for construction of new wireless facilities (typically a monopole), collocation of facilities on an existing structure or building, or modification of existing facilities (such as upgrades of antenna arrays). The TFCG determines whether there is a need for the facility and whether there will be any radio interference to existing facilities created by the applicant. The TFCG may recommend the application, not recommend the application, or recommend the application with conditions.

The County also amended its zoning code to encourage collocation of new facilities on existing structures, to encourage placement of facilities in commercial areas, and to limit the height of new facilities to no more than 155 feet. Facilities collocated on existing structures and in certain commercial and mix-use areas are permitted as matter of right, and no further zoning approval is necessary after the engineering review and recommendation by the Tower Committee is received. If no further zoning approval is need, the applicant may take the TFCG recommendation and obtain building permits if ground structures or cabinets will be constructed or installed. If additional zoning approval is needed (because the facility will not be placed in

area where wireless radio or telecommunications facilities are zoned by right), or because specific environmental reviews are necessary, those zoning processes rely on the TFCG recommendation to address the RF engineering issues.

In this way, the Tower Committee performs several important functions. First, it consolidates the engineering reviewing into a single point so that other departments need not charge applicants for additional engineering analysis to address need and interference issues. Second, the Tower Committee protects the public safety. For example, new structural standards were recently adopted by the Telecommunications Industry Association. More severe weather patterns are now commonplace and many older towers are weakened by corrosion. The new industry standards require telecommunications facilities to be able to withstand winds of 90 mph instead of 75 mph.³⁰ These standards were not made retroactive. Rather, when facilities are modified, the facility must be brought into compliance with the current federal standards. If there is concern that the facility must be modified or that the collocation of additional facilities will stress the facility beyond its structural load capacity, the TFCG requests a copy of a structural analysis if one exists, or may condition the recommendation on the performance of a structure analysis. Similarly, where facilities are placed near airports, the TFCG Recommendation may condition the recommendation on meeting applicable Federal Aviation Administration regulations and the building permit inspectors will enforce those codes. (Disturbingly, the FAA has no authority to prevent construction of a telecommunications tower on flight path – it relies on enforcement of local zoning codes to accomplish this public safety protection.) If screening is required, the TFCG recommendation will condition the

³⁰ Structural integrity is a very important issue. See E. Gazzala, *Effect of the New “RevG” Structural Standard on the Wireless Industry*, ABOVE GROUND LEVEL (Oct. 2007) at 40; D. Southern, *Use Wireless Technology to Protect Towers as they Age*, ABOVE GROUND LEVEL (Apr. 2008) at 24.

recommendation and alert the building permit department to inspect for compliance in this area.

If an applicant seeks to construct or place a facility in an area where such facilities are not zoned by right, or where set back limits are not met, the TFCG recommendation will condition the recommendation based on the applicant obtaining the necessary zoning exemptions from the relevant zoning enforcement authority and the zoning authority will use the engineering analysis contained in the TFCG recommendation as part of the zoning special exception process. A member of the Maryland-National Capital Planning Commission staff sits on the TFCG, so the zoning authority receives the benefit of this additional familiarity.

Finally, the TFCG also provides the public, including nearby property owners with notice of the proposed placement of facilities on public property. This avoids a problem which has occurred several times as applicants attempted to get TFCG permission to place facilities on school properties or water towers without first getting the permission of the property owner to do so.

1. Application Procedures, Forms, Substantive Requirements, and Charges.

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available, and we incorporate them by reference.³¹

In addition to visiting the County's offices, applicants can obtain extensive information about wireless facilities siting processes, forms, substantive requirements and charges on the County's website. The starting point for learning about the process is the Tower Committee's homepage which contains extensive links to all the information an applicant would need, including the application forms, applicable regulations, the application process, the location of

³¹ NOI ¶ 14.

existing towers, and Tower Committee meetings.³²

2. *Improvements.*

The Commission asks whether there are particular practices that can improve processing.³³

As with placements in the right-of-way, whether a particular practice makes sense will depend on local circumstances, and the federal, state and local land use interests implicated by particular applications. The County as a practice meets with industry and other affected agencies to attempt to develop coordinated approaches to applications. The Tower Committee approach was recommended by an interagency taskforce after extensive meetings with industry representatives. Through this process, the County obtained information about the number of sites that would be required. The County has improved its process by making the Tower Committee process highly transparent and open. Meetings are open to the public, agendas and meeting minutes are available on-line one week prior to the meeting, and the contact information for all the committee members is also available online.

This collaborative process has continued. The County, in conjunction with industry, determined that it could classify tower applications into minor modifications (changes to an existing attachment); colocations (where a new carrier adds facilities to an existing pole); and new facilities. The Tower Committee adjusted its information requests to focus on information required for each of these types of review.

³² <http://www.montgomerycountymd.gov/mcgtmpl.asp?url=/apps/ttfcg/home.asp>

³³ NOI ¶¶ 14, 29.

The County has learned from the Tower Committee’s deliberations is that it is a false assumption that colocations can occur without restraint or that local governments are opposed to colocations. On the contrary, local government typically encourages colocations. The problem is that every site has limited capacity and the growth in wireless services providers and facilities has reached the limit of many sites to accommodate more facilities. The scope of the problem is apparent from the following chart. The County now has over 50 sites with six or more collocated facilities reviewed (and 217 sites serving multiple carriers).

Figure 3

Number of Sites with Multiple Carriers by FY (Based on Applications Reviewed)

Number of Carriers with Antennas at the Site	Number of Sites with Multiple Carriers by FY (Based on Applications Reviewed)														
	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
2	16	24	26	26	42	48	48	61	65	61	54	59	61	71	74
3	0	8	18	26	25	28	32	29	31	36	38	35	36	38	39
4	1	0	2	7	15	15	16	22	22	20	26	31	28	34	36
5		1	2	5	8	11	9	8	12	13	18	17	22	19	17
6				1	2	4	7	9	9	13	13	16	13	18	20
7										3	9	10	11	11	9
8											2	3	9	11	13
9											1	1	3	5	4
10													1	2	4
11														1	1
Sites with Multiple Carriers	17	33	48	65	92	106	112	129	139	146	161	172	184	210	217

Distributed Antenna Systems have also been encouraged by the County, and are developing. The County has approved two DAS applications. Because these systems also occupy the public rights-of-way, franchises were required and granted by the County.

Because the County is in a position to adopt new policies (for example, by limiting the number of colocations permitted without special approvals) the County hopes to be able to

address the growing issue of space scarcity by working with providers through the zoning process to create more areas where wireless facilities may be located by right. A federal rule might actually prevent the County from responding to these problems – and from experimenting with ways to streamline application review.

As the Commission reads and considers comments in this NOI, the County requests the Commission pay close attention to the possible unintended consequences of any federal intrusion in right-of-way management and wireless facility siting. One specific example illustrates the point. In response to the Commission’s wireless shot clock order [cite], the County had to adopt a time limit for applicants to provide required information for incomplete applications. Otherwise the County would have to reject the applications and the applicant would have restart at the beginning. As explained below, incomplete applications are responsible for much of the time required to process applications.

1) Sources of Delays.

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion.³⁴ The County highlights some of the most common causes of delay: timing, incompleteness, applicant neglect, applicant disputes, and technical issues.

Timing: Some delays are caused by the *timing* of applications. As the Commission recognized in its recent pole attachment proceeding, the ability of a utility to timely process applications depends on the number that are submitted on a given date. In the County, rather than stage applications, some providers will submit many applications on the same date. This not only strains County resources (see discussion below), but it also makes it more difficult for the County to work to with the applicant, since it must process the applications within a time

³⁴ NOI ¶ 14.

frame established by the Commission that (unlike its rules for pole attachments) assumes the same time frames should apply regardless of the number of applications filed. In contrast, the County needed to file 77 pole attachment permit applications (each application encompasses multiple utility poles on a specific route) with the local utility companies as part of its ARRA grant construction. The utility companies would not accept any more than 5 applications per week.

Incompleteness: A much more significant cause of delay is the failure of applicants to submit complete applications. The following chart (Figure 4) shows the number of minor and collocation applications filed in Montgomery County in 2010, and the number filed incomplete, and also shows the number of new tower applications – and the number that were incomplete.

Figure 4

Montgomery County 2010 Co-location and Minor Modification Application Processing	
Applications Filed	175
Withdrawn Prior to Action	17
Applications Processed	158
Complete Applications	101
Incomplete Applications	57
2010 New Tower Applications	
Applications Filed	7
Withdrawn Prior to Action	0
Applications Processed	7
Complete Applications	0
Incomplete Applications	7

That is, 100% of the new tower applications filed were incomplete, and almost a third of the other applications filed were incomplete. In nearby Prince George’s County during the same period, more than half of all collocation and minor modification applications were incomplete.

For every application, the County requires an applicant to submit a drawing or photo of the existing structure that shows what changes the modification will make to the structure. In many cases, applicants have submitted a photo of a monopole other than the one identified in the

application, or an outdated picture that does not show all existing attachments on a fully loaded monopole. In Montgomery and Prince George's counties, applications have also been filed with wrong addresses, incorrect antenna specifications, and missing administrative information. Applicants have submitted applications that ignore established screening requirements for ground-mounted equipment; applications without screening or landscaping plans must be revised.

In addition, several different consultants may be involved in the preparation of drawings, specifications and other information required to determine whether a tower may be safely permitted. If the activities of these multiple entities are not coordinated by the carrier, errors and omissions lead to delays, and each entity has its own incentive to lay the blame at the local government's feet. Similarly, carriers sometimes change consultants, and the resulting loss of continuity results in additional delays as each new contractor must become acquainted with the specifics of each application. In one case, a carrier changed contractors four times while an application for a new tower was pending.

Applicant Neglect: Applicants also allow even completed applications to languish. In several instances, the Tower Committee has recommended an application that for approval, and the provider has waited a year or more to file to obtain the necessary permits or zoning approvals required to proceed with construction. In some cases, by the time the application is filed with the agency responsible for final approval, the recommendation is so stale that the information on which it was based is no longer reliable, and the matter must return to the Tower Committee for review.

Indeed, as the next Figure shows, in every case where the time required for Tower Committee approval exceeded 100 days, the major source of delay was the failure of the

applicant to supply information requested. As significantly, in cases where a special exception was required the applicant has waited months, and in some cases, years, to file for the special exception.

The Tower Committee does its best to help carriers comply with the process. The Tower Committee has compiled a list of common problems, errors and omissions that it has found with applications, and has posted this list along with application materials on its website.³⁵ Nonetheless, the omissions persist.

³⁵ See County website, Tower Committee Application Processing webpage:
http://www.montgomerycountymd.gov/mcgtmpl.asp?url=/apps/tfcg/Application_Processing.asp (last accessed July 11, 2011).

Figure 5

AppNo	Carrier Name	Zone	Application Received	Date of Notice of Incomplete	Date Complete	Appvd	Action	TFCG time in Review	Carrier time to complete app	Total time	date filed for SX	#days since original TFCG action
1	200806-22 AT&T Wireless 201103-02 IMF	R-C R-C	5/18/08 1/14/11			8/6/08 3/3/11	Recommended Recommended	80 48	0 0	80 48	12/8/2010	854
<i>company refiled in 2011, claiming the International Monetary Fund is the service provider. Currently pursuing approval on that basis.</i>												
2	200809-08 T-Mobile	I-1	7/31/08			11/5/08	Recommended	97	0	97		
<i>this monopoly met the zoning standards and no special exception was needed</i>												
3	200809-20 T-Mobile	R-200	8/13/08			11/5/08	Not Recommended	84	0	84		959
<i>first reviewed in 2010; as of 6/22/2011, company has not filed for special exception.</i>												
4	200810-07 T-Mobile	R-200	8/29/08		8/29/08	11/5/08	Recommended	68	N/A	68		
<i>first reviewed in 2008; company failed to file for special exception and recommendation expired; as of 6/22/2011, company has not filed for special exception.</i>												
5	200901-04 T-Mobile	I-4	11/25/08	2/4/09	2/12/09	3/4/09	Recommended	91	8	99		
<i>this monopoly met the zoning standards and no special exception was needed</i>												
6	200902-03 T-Mobile	PD-9	1/15/09	1/15/09	9/19/09	10/7/09	Recommended	18	247	265	5/3/11	573
<i>this app first reviewed in 2008 - the original recommendation was no longer valid and the company filed for a second review in 2011.</i>												
7	200904-02 T-Mobile	I-3	2/18/09	3/12/09	3/16/09	4/1/09	Recommended	38	4	42		
<i>this monopoly met the zoning standards and no special exception was needed</i>												
8	200904-07 T-Mobile	R-60	2/26/09	3/11/09	3/12/09	4/1/09	Recommended	33	1	34	11/23/2010	601
<i>this app first reviewed in 2008 - because the company had waited so long to file for the special exception the original recommendation was no longer valid the company had to refile for a second review in 2010 - ultimately, in 2011 they withdrawn their application because they had no valid lease.</i>												
9	200906-04 T-Mobile	RE 2 C	4/30/09	5/5/09	6/26/09	7/1/09	Recommended	10	52	62		721
<i>first reviewed in 2009 - company failed to file for special exception and recommendation expired; as of 6/22/2011, company has not filed for special exception.</i>												
10	200907-09 T-Mobile	RDT	5/22/09	6/12/09	1/19/10	2/3/10	Recommended	36	221	257	12/3/10	303
<i>first reviewed in 2009; company failed to file for special exception and recommendation expired; new application referred back for failure to meet setback requirements</i>												
11	200907-10 T-Mobile	RDT	5/22/09	6/15/09	1/13/10	2/3/10	Recommended	45	212	257	3/29/11	419
<i>first reviewed in 2009; company failed to file for special exception and recommendation expired; new application referred back for failure to meet setback requirements Second review recommended application as site had been relocated to meet setback requirements 7/13/11</i>												
12	200907-11 T-Mobile	RDT	5/22/09	6/11/09	2/22/10	3/2/10	Recommended	28	256	284	12/13/10	286
<i>first reviewed in 2009; company failed to file for special exception and recommendation expired; new application referred back for second review because company relocated site and redesigned monopoly Second review recommended application conditioned on the company documenting why existing support structures cannot be used in lieu of the new one - 7/13/11</i>												
13	200907-13 T-Mobile	RDT	5/27/09	6/12/09	12/21/09	1/6/10	Recommended	32	192	224		532
<i>first reviewed in 2009; company failed to file for special exception and recommendation expired; as of 6/22/2011, company has not filed for special exception.</i>												
14	200907-14 T-Mobile	RDT	5/27/09	6/12/09	7/27/09	8/5/09	Recommended	25	45	70	9/28/10	419
15	200907-15 T-Mobile	R-200	5/27/09	6/12/09	6/28/09	8/5/09	Recommended	54	16	70		686
<i>first reviewed in 2009; as of 6/22/2011, company has not filed for special exception.</i>												
16	200908-01 T-Mobile	RDT	6/15/09	7/23/09	7/27/09	9/2/09	Recommended	75	4	79	3/3/10	182
<i>first reviewed in 2009; company failed to file for special exception and recommendation expired and they had to refile for a second review in 2010</i>												
17	200908-02 T-Mobile	RDT	6/15/09	7/22/09	12/4/09	1/6/10	Recommended	70	135	205		532
<i>first reviewed in 2009; as of 6/22/2011, company has not filed for special exception.</i>												
18	200908-24 T-Mobile	R-200	6/29/09			8/5/09	Recommended	37	0	37		686
<i>first reviewed in 2009; as of 6/22/2011, company has not filed for special exception.</i>												
19	200908-45 T-Mobile	RDT	6/30/09	7/21/09	9/23/09	10/7/09	Recommended	35	64	99	2/25/11	506
<i>first reviewed in 2009; company failed to file for special exception and recommendation expired and they had to refile for a second review in 2011</i>												
20	200912-04 T-Mobile	R-200	10/21/09	10/30/09	1/14/10	2/3/10	Recommended	29	76	105		504
<i>filed for special exception but withdrew application</i>												
21	201001-05 T-Mobile 201103-05 T-Mobile	RE-2C RE-2C	11/23/09 1/28/11	12/3/09	12/8/09	1/5/10 4/8/11	Recommended Recommended	38 70	5 0	43 70	5/26/11	506
22	201001-07 T-Mobile	C-4	12/3/09	12/17/09	1/18/10	2/3/10	Recommended	30	32	62	2/1/11	363
23	201002-01 T-Mobile 201103-01 T-Mobile	R-C R-C	12/22/09 1/14/11	12/22/09	12/22/09	1/6/10 2/2/11	Recommended Recommended	15 19	0 0	15 19	5/24/11	503
24	201003-01 T-Mobile	RDT	1/19/10	2/3/10	5/21/10	6/2/11	Recommended	27	107	134	6/22/11	385
<i>first reviewed in 2010; as of 6/22/2011, company has not filed for special exception.</i>												

Applicant Disputes: Even where the County is willing to recommend a tower site, deployment may not occur, because the land owner never agreed to the tower siting, or a dispute arises between the tower owner and landowner, and the provider opts to alter the location of the tower to another property, or to a different location on the same property. When that occurs, the “application” must be resubmitted, with the new site drawing, the new tower design, and so on.

For example, the Washington Suburban Sanitary Commission (“WSSC”) owns various sites in Montgomery County, such as water towers, on which it has leased space to several carriers, including Sprint. Applications to install antennas on WSSC property are subject to review by the Tower Committee. Clearwire recently submitted several applications to the Tower Committee for approval of collocation on WSSC sites currently occupied by Sprint. At the same time, Sprint contacted WSSC and asked that Sprint’s leases be amended to allow Sprint to sublease to other users without WSSC’s consent. WSSC’s leases forbid Sprint from subleasing space on WSSC property, and the amendment would have allowed Clearwire – which was recently acquired by Sprint – access to WSSC’s property under the terms of Sprint’s leases. But Sprint had not informed WSSC of the fact that Clearwire was seeking to collocate antennas with Sprint. WSSC only became aware of the collocation requests as a result of the Tower Committee process. Once WSSC learned of the pending applications, WSSC asked the Tower Committee to suspend processing of Clearwire’s siting requests until the sub-lease issue was resolved.

Another example: Both Sprint and AT&T have recently sought permission to add antennas on certain existing monopoles located on property owned by Montgomery County Public Schools (“MCPS”). At the time, however, the carriers were in arrears on their lease payments to the schools. Not surprisingly, the school district withheld its consent to the

additional siting requests until the carriers brought their accounts up to date by paying back rent in full. Processing of the Sprint and AT&T applications was therefore delayed until this issue – created entirely by the carriers’ own actions – was resolved.

Montgomery County Public Schools reports that, on numerous occasions, applications have been filed with the County's Tower Committee for approval to attach additional antennas to support structures located on school property before the applicants even contacted the school district's facilities management personnel. In these cases, Tower Committee approval was delayed until agreement was reached with the school district on the contractual terms of the collocation. In one case, the carrier was expressly instructed by MCPS to design a utility connection in a particular way, in anticipation that a grant of a utility easement would be executed before the lease for placement of the antenna was signed. The provider, however, ignored this instruction and proceeded to connect its utilities to an underground electrical storage vault without informing MCPS.

In one respect, these are simply property disputes. However, in each case, the County devoted resources that could have been devoted to other matters in order to review defective applications, and then review the applications again after the defect was corrected.

Technical Issues: Carriers also cause delays when they ignore technical issues that obviously might affect the safety of a proposed installation. There have been numerous instances in which a carrier sought to collocate on an existing tower that was close to or had exceeded its structural capacity, but simply ignored the ramifications of that fact. The Tower Committee may inquire whether a structural analysis has been performed to verify that the additional antennas can be safely attached, or as noted above, condition its recommendation on performance of such a structural analysis. The remarkable fact is that carriers have been known

to ignore the findings of reports they themselves commissioned.

The problem is actually quite significant for colocations. As the number of attachments increase, and as the poles age, the risk of structural failure increases. The risk is heightened when the towers are of significant size or there are public areas or residential or commercial structures within a fall zone. For example, in connection with a pending application for a temporary cell tower, the Tower Committee has been advised that the temporary facility is needed because co-location is not feasible on the tower to which the antennas would otherwise be attached. That tower, which is 744 feet high and located in a residential area, is already overloaded, as it is currently supporting 400% of its original capacity.

When the Tower Committee receives a structural analysis, the report is reviewed to ensure it does not contain obvious errors. In one instance in 2006, Clearwire submitted a structural analysis that expressly stated that the planned installation would cause the tower to fail – yet Clearwire did not propose a remedy. Even more remarkable, however, is that three years later, Clearwire submitted an application for siting on the same structure, without performing or proposing any changes to the structure; in this case, Clearwire simply omitted the structural analysis. The Tower Committee was only aware of the potential safety hazard because of its knowledge of the prior application.³⁶

In another case, Cricket submitted an application to attach antennas to a monopole, which was designed to replace a stadium light pole and was located next to stadium seating at a high school athletic field. The carrier's structural analysis, however, showed that the attachment

³⁶ When the Commission asks whether discrimination is an issue, it needs to understand that in the context of permitting and zoning, a strict rule requiring everyone to be treated identically could lead localities to demand the same proofs from companies that consistently follow sound practices, as companies that do not

could not be made safely until structural modifications were made to the monopole.³⁷

These examples illustrate the shock and disappointment felt within the County to learn that a senior counsel for the Chairman, in a recent speech, stated that there is no reason that permitting should take years and implied that local governments were to blame for the delays. The leadership of the Commission needs to understand that more often than not, industry delay, not local government inaction, is the reason why the permitting process drags on.

3. *The Commission's "Shot Clock" Has Not Had a Positive Effect on Deployment.*

The perceived problem that drove the shot clock rules was that application processing delays were hindering deployment of wireless facilities. The Commission's simple solution was to impose a shot clock on all local governments. The writer H. L. Mencken once said: "For every problem, there is one solution which is simple, neat and wrong." The shot clock was wrong (setting aside legal objections) because it was unnecessary – in fact, wireless had been deployed throughout the country, and throughout Montgomery County quite quickly. That was so before the shot clock, and it remains so after the shot clock. Isolated instances of problems caused by local governments were adequately addressed through court proceedings. Second, it was wrong because it was misdirected – the carriers are largely responsible for the time required to review applications. Third, it was wrong because its assumed that deadline could be set based on average processing times – ignoring that many factors may affect those times from year to year,

³⁷ Carriers have also been known to submit plans based on erroneous or outdated information, information that should have been known or readily learned by the applicant. For example, applications for co-location must take into account the current load on monopoles and towers, and the current uses of ground space in the vicinity, for obvious reasons. Yet applicants have been known to submit applications proposing to place antennas at locations that are already occupied by other antennas, and to place equipment shelters in spaces where a shelter has already been built. In other words, the applicants paid no attention to whether they would actually be able to do what they were proposing. These applications have to be reviewed, rejected, and revised, which simply wastes everybody's time.

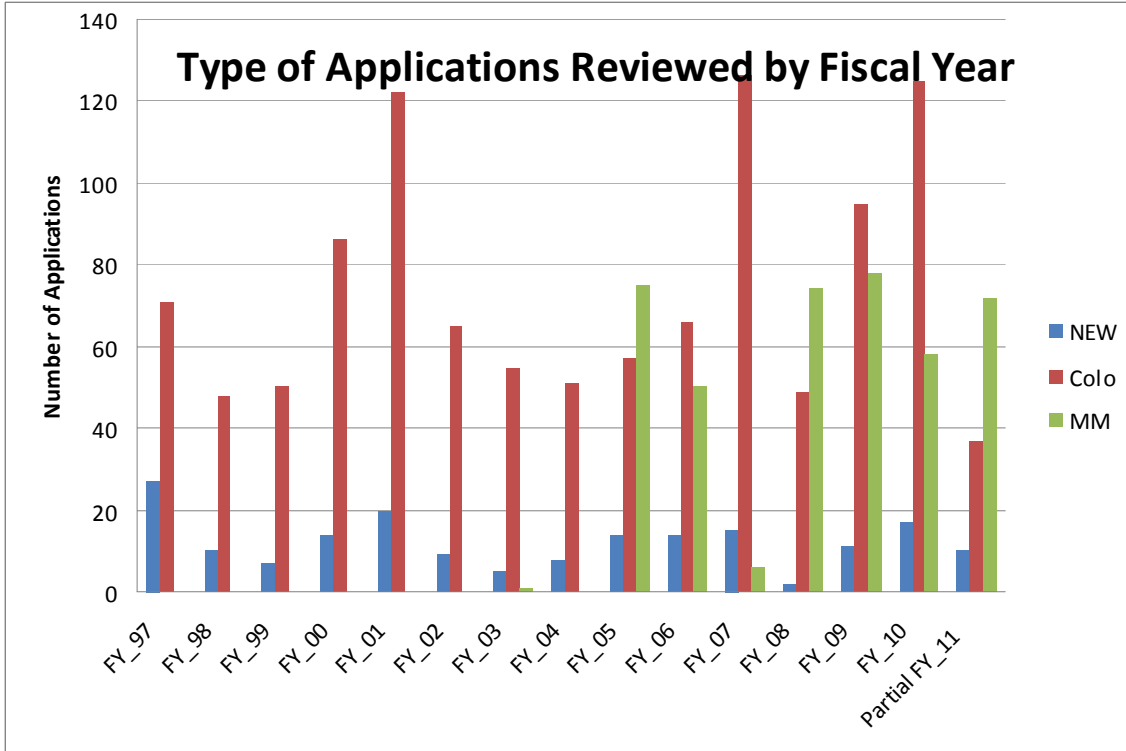
including (as suggested by the above) the number of applications filed, the timing of the applications, the type of applications and the completeness of the applications.

The wide variation in applications is illustrated by Figure 6. Not only has the total number of applications changed from year to year, but in some years there are relatively large numbers of minor modifications, in others relatively large numbers of colocations, and in others relatively greater number of new towers. One would therefore also expect review times to vary from year to year, even without the shot clock, and even without delays caused by incomplete applications. And that is in fact what has occurred.

Montgomery County's experience pre- and post-*Shot Clock Ruling* demonstrates the Commission's shot clock has no meaningful impact on deployment in the County, and if anything has had harmful effects. The County recognized the need to improve its wireless facilities process and adopted its streamlined wireless tower siting model in 1996, and has worked with providers to improve the process over time. During the period from Fiscal Year 1997 to the third quarter of Fiscal Year 2011, County has reviewed 183 new towers, 1103 colocations and 414 minor modifications.

Over this period, the time required for the County to process applications has varied based on a number of factors. These factors include: the volume of applications received, the timing (whether many come in at once or submissions are staged), the type of applications, the complexity of the applications, and most importantly the posture of the applicant (whether it submitted a complete application, how long it takes to complete it, how quickly it moves to the next stage after it receives Tower Committee approval).

Figure 6



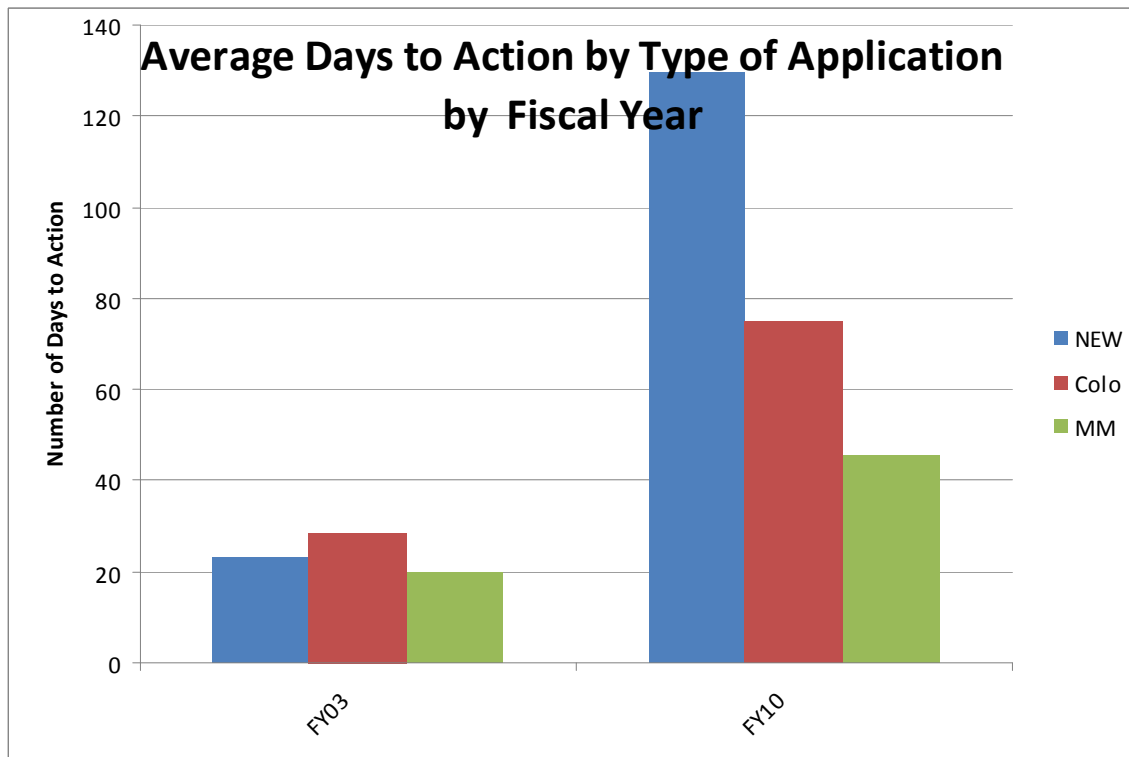
	NEW	Colo	MM	
FY_97	27	71	0	
FY_98	10	48	0	
FY_99	7	50	0	
FY_00	14	86	0	
FY_01	20	122	0	
FY_02	9	65	0	
FY_03	5	55	1	
FY_04	8	51	0	
FY_05	14	57	75	
FY_06	14	66	50	
FY_07	15	126	6	
FY_08	2	49	74	
FY_09	11	95	78	
FY_10	17	125	58	
rtial FY_11	10	37	72	
Total	183	1103	414	1700
Average	12.20	73.53	59.14	

The variation in volume and type of applications is great. For example, in FY 2003, the County reviewed a total of 61 applications, of which over 90 percent were colocations (5 new

towers, 55 colocations and 1 minor modification). In 2010, the County’s workload more than tripled, and it reviewed a total of 200 applications, and more than 62 percent of those were colocations (17 new towers, 125 colocations and 58 minor modifications).

If one compares the *average* time to process each application, it is clear that the County’s average was faster in 2003 – pre-shot clock – than it was in 2010 – post shot clock, see Figure 7.

Figure 7



Average Processing Time in Days

	NEW	Colo	MM
FY03	23	29	20
FY10	130	75	46

One might conclude from this data (applying the Commission’s “rule of averages”) that the Commission’s shot clock more than doubled the time required to process an application. The driver actually is the time it takes between the date an applicant files and the date the applicant finally begins to deploy. The point here is that the shot clock’s benefits are very hard to detect.

The shot clock has, however, had some negative consequences. Because applications are filed in groups – including applications for special exceptions – the County was required to hire an additional hearing officer in order to be able to meet “peak” demand for applications. In part to pay for the cost of the hearing officer, the County increased the fees for special exceptions applications. Similarly, in order to ensure the shot clock is satisfied, cell tower applications are given priority over other applications for zoning exceptions. Thus, applications by telecommunications companies are given greater priority than applications submitted by residents who provide the tax base to support the zoning review process. This was not the intent of Congress.

III. RECOMMENDATIONS REGARDING POSSIBLE COMMISSION ACTIONS

The Commission asks what actions the Commission might take in this area.³⁸ As noted herein, the County has presented evidence that there is no problem obtaining access to the public rights-of-way or receiving local regulatory approval to site wireless facilities, and the most significant source of delay is created by broadband providers themselves. Therefore, the County strongly urges the Commission to refrain from further attempts to regulate local zoning, right-of-way management and facility placement processes. 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. Placing information about local process on-line, providing staff contacts who can work with providers, and complying by providers ensures that local regulatory approval can be obtained in a reasonable period of time. Imposing a federal regulatory regime would create unnecessary costs for communities and it undermines important local policies. Likewise,

³⁸ NOI ¶ 36.

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 – including services that encourage broadband adoption.

It would, however, be very useful if the Commission provided leadership on issue of health effects of RF emission and fully supported the Chairman’s recently announced Broadband Adoption Task Force.

Congress has limited the authority of local and state government to consider electromagnetic radiation issues. It has left these issues to the Commission to implement regulations on RF emissions.³⁹ Local authorities understand and respect the need for federal preemption in this area. Yet the Commission has not taken leadership. It has neither updated its RF emission regulations nor made serious efforts to educate the public on this issue. The Commission has not updated its guidelines and rules regarding RF exposure since they were issued in 1996. The Commission has not updated its “guidance” to local government since that document was issued in the year 2000.⁴⁰ Yet, the use of wireless technology and the number of wireless installations have both proliferated since that time, and RF exposure concerns have grown in the public’s perception. As local authorities bear the brunt of citizen anger and fear over RF emission concerns, the Commission has not equipped local governments with the information, instruction materials, and relevant public education effort to allow local governments to address these citizen concerns effectively. Local government needs both adequate educational materials to provide to concerned citizens and paths for recourse to suggest

³⁹ 47 U.S.C. 332(c)(7)(B)(iv) states: "No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."

⁴⁰ “A Local Government Official’s Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures, and Practical Guidance”, http://wireless.fcc.gov/siting/FCC_LSGAC_RF_Guide.pdf

to citizens to pursue their concerns with federal authorities.

Aside from concerns about wireless facilities affecting property values, the most common concern that local residents raise in opposition to wireless facilities is concern about the health effects of RF emissions. This is particularly true when providers seek to place facilities on school properties. In the absence of federal leadership and significant public education on this issue, concerned residents are left to relying on often inaccurate and alarmist information available on the internet. As more recent studies have been publicized, local officials themselves have little ability to reassure concerned citizens when they raise objections about proposed installations due to RF emissions. The County herein submits information at Exhibit C providing samples of correspondence received by Montgomery County Public Schools (MCPS) and the types of more recent studies cited by residents and healthcare providers. In three recent instances, MCPS, acting in its capacity as a landlord, did not consent to place of wireless facilities on schools because of the controversy surrounding RF emissions.

By making information regarding RF more accessible on the Commission's website (it is not easily accessible); by identifying an ombudsman who can speak to the issue where the public is concerned; and by developing authoritative responses in light of new reports regarding the effect of RF radiation, the Commission will make it easier for local governments to disseminate accurate information regarding the topic. We emphasize: local governments are not making decisions with respect to RF, nor regulating placement of facilities on the basis of health effects of RF emissions. But it is the case that some providers – even those who have all necessary permits in hand – may be forced to abandon particular sites because of public opposition. And it is also the case that private landlords may choose not to lease rooftops if the RF emission issue is of concern to their tenants. It would accelerate the deployment of broadband, particularly of

wireless broadband facilities, if the Commission would work with the U.S. Department of Health and Human Services, the Department of Environmental Protection, and/or the National Information Technology Administration to provide stronger federal leadership and education on this issue.

In addition, the County strongly supports the Chairman's recently announced Broadband Adoption Task Force. The County urges the Commission to support this Task Force at the highest levels. As the Chairman has stated, there are 24 million Americans who do not have access to broadband, but there are 100 million Americans who opt not to purchase broadband. Attached is a slide from Comcast's Internet Essential Program which states that half of all non-adopters simply do not feel that broadband is relevant.⁴¹ This is similar to other studies which show that the majority of non-adopters feel that broadband is not relevant. By partnering with local government and non-profits to implement and expand locally based broadband adoption programs, the Commission will stimulate consumer demand for broadband services. Increased subscription rates should give providers the necessary capital to deploy broadband in rural areas and to offer low cost broadband for low income Americans.

However, the County notes that the Commission must actually support and implement this Broadband Adoption Task Force and partner with local and State governments and non-profit organizations to implement effective broadband adoption strategies. The County notes with dismay that the Commission similarly proposed in the National Broadband Plan a joint federal, state and local Right-of-Way Task Force to create best practices for local rights-of-way management but then never established the Task Force.

Local governments and non-profits are at the leading edge of providing digital literacy

⁴¹ See Exhibit D.

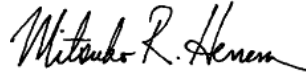
training for residents. More still needs to be done. A serious federal-state-local partnership would help. At the present time, there is not common understanding of what it means to be digitally literate and NTIA is only in the initial stages of publicizing information about the outcomes of sustainable broadband adoption programs funded by ARRA BTOP grants. There is room to create innovate broadband adoption programs targeting agricultural communities (*e.g.*, featuring basic website development to promote local food distribution to local restaurants, on-line product reviews, etc.), faith-based initiatives (*e.g.*, using Google Calendar to organize choir practices or YouTube to post performances), youth and low income populations, just to name a few. Local governments and non-profits have valuable experience designing programs targeted at these types of communities. The County strongly urges the Commission take advantage of this expertise by fully supporting the Broadband Adoption Task Force and making State and local governments and non-profits full partners in the Task Force.

IV. CONCLUSION

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