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September 19, 2018

VIA ELECTRONIC FILING
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment – WC Docket No. 17-84 and WT Docket No. 17-79

Dear Secretary Dortch:

The Board of Supervisors of the County of San Mateo, California would like to express its strong opposition to several features of the Federal Communications Commission's (FCC) proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment. Although our County encompasses part of Silicon Valley and greatly supports the deployment of new and forthcoming telecommunications technology, including high-capacity 5G and related technologies, we oppose efforts that would limit necessary local discretion and public review as it pertains to the siting of new infrastructure in the public domain.

Several specific quotes from the ruling stand out to us as warranting a response.

First the proposal's stated purpose must be addressed:

> *Supporting the deployment of 5G and other next-generation wireless services through smart infrastructure policy is critical...5G can enable increased competition for a range of services—including broadband—support new healthcare and Internet of Things applications, speed the transition to life-saving connected car technologies, and create jobs.*

While the County of San Mateo agrees with this premise, we do not feel that it addresses the fact there is a significant digital divide that has a negative impact on the underserved. To address this need in San Mateo County, we invest a significant amount of time and public funds each year to provide free and high-speed Wi-Fi to the public. We believe that everyone, especially the underserved, much have equal access to the benefits of the Internet, such as increased educational opportunities, local economic development, and greater access to public services. Unfortunately, the FCC's proposal does little to address the digital divide. It contains no language to encourage or incentivize small cell providers to build in rural or underserved communities. Nothing in the

proposal enforces its promise that "97 percent of new deployments would be in rural and suburban communities that otherwise would be on the wrong side of the digital divide."

We are also concerned by some of the proposal's other assumptions:

> *...the addition of an antenna to an existing tower or other structure is unlikely to have a significant visual impact on the community. The size of Small Wireless Facilities poses little or no risk of adverse effects on the environment or historic preservation.*

The ruling itself defines a small wireless facility in Appendix A as having antennas up to three cubic feet in volume and related equipment up to 28 cubic feet in volume. This is not a "stealthy" size. Refrigerators listed as being 28 cubic feet in volume have a footprint of over 3' square and are over 5' tall. It is difficult to imagine an object with these dimensions not having a significant visual impact on a community. If a government agency prevents the illegal dumping of a refrigerator in a front yard due to concerns relating to the safety, cleanliness, and attractiveness of a community, it cannot then dismiss equipment of similar size as being unlikely to have significant visual impact.

Aesthetics aside, objects of this size absolutely pose environmental and historic preservation risk. It is impossible to imagine how strapping a refrigerator to a historic structure it was not designed to support would not be detrimental. Furthermore, the Commission's proposal designates *any* preexisting structure – regardless of its design or suitability for attaching wireless equipment – as eligible for the new, expedited 60-day shot clock. However, reviews of requests involving historic structures or environmentally sensitive areas would very likely necessitate more review than this shot clock allows for.

This is especially true given that, as the FCC's proposal itself points out:

> *...multiple authorizations may be required before a deployment is allowed to move forward. For instance, a locality may require a zoning permit, a building permit, an electrical permit, a road closure permit, and an architectural or engineering permit for an applicant to place, construct, or modify its proposed personal wireless service facilities. All of these permits are subject to Section 332's requirement to act within a reasonable period of time, and thus all are subject to the shot clocks we adopt or codify here.*

Local government authorizations and permits for any kind of construction work *must* be required. However, many local governments already operate with very limited resources compared to the amount of work they are expected to do. Arbitrary shot clocks fail to account for all the competing demands on a government's time and attention, potentially putting the needs of telecommunication companies before other critical services, such as public safety, health and human services, and housing. The proposal states, "Given the relatively low burden on state and local authorities of simply acting—one way or the other—within the Small Wireless Facility shot

clocks..." This sentence is dismissive of the legitimate concerns local governments have regarding this ruling. Furthermore, the FCC's answer to these concerns is insufficient:

> *...in cases where a siting authority misses the deadline, the opportunity to demonstrate exceptional circumstances provides an effective and flexible way for siting agencies to justify their inaction if genuinely warranted.*

Requiring agencies to spend additional time justifying their priorities only creates more work for these agencies, putting additional deadlines at risk. Forcing agencies to spend time crafting such justifications is a poor use of taxpayer money. It serves no purpose to improve services for constituents, does not actually increase the speed at which construction is authorized (if anything, it further slows the process by creating more paperwork), and seems to exist only as a punitive measure. The FCC claims that:

> *...any additional administrative burden from increasing the number of Section 332 shot clocks from two to four is outweighed by the likely significant benefit of regulatory certainty and the resulting streamlined deployment process.*

This is inaccurate, as the additional administrative burden does not enforce regulatory certainty or streamline processes; it forces employees to follow additional rules and regulations and potentially spend time justifying decision-making processes rather than performing actual work. This proposal also does not lessen the number of authorizations or permits required for any given construction; it simply mandates an arbitrary timeline. This is not streamlining a process; the process is unchanged. This is simply changing the timeline in a way that makes the process more difficult. We must also question who the recipients of this "significant benefit" are.

In addition, the FCC's proposed definition of "effective prohibition" is overly broad. The draft report and order proposes a definition of this particular term that invites challenges to long-standing local rights-of-way requirements unless they meet a subjective and unclear set of guidelines. While the Commission may have intended to preserve local review, this framing and definition of effective prohibition opens local governments to the likelihood of more, not less, conflict and litigation over requirements for aesthetics, spacing, and undergrounding.

We also believe that the FCC's proposed recurring fee structure represents an unreasonable overreach. Specifically, we disagree with the FCC's interpretation of "fair and reasonable compensation" as meaning approximately $270 per small cell site. Local governments share the Commission's goal of ensuring affordable broadband access for every American, regardless of their income level or address. That is why many local governments have worked to negotiate fair deals with wireless providers, which may exceed that number or provide additional benefits to the community. Additionally, the Commission has moved away from rate regulation in recent years, so

it would be inconsistent for the FCC to attempt to narrowly dictate the rates that can be charged by local governments.

Finally, we are concerned by the implications of the following paragraph:

> *A narrow reading of the scope of Section 332 would frustrate that purpose by allowing local governments to erect impediments to the deployment of personal wireless services facilities by using or creating other forms of authorizations outside of the scope of Section 332(c)(7)(B)(ii).363 This is especially true in jurisdictions requiring multi-departmental siting review or multiple authorizations.*

Local governments are categorically not seeking to "erect impediments" to the deployment of 5G. Like the County of San Mateo, most local governments wholeheartedly support the transition to 5G and understand the benefits increased deployment of small cell sites would have on its citizens. We simply do not agree that a federally-mandated, one-size-fits-all approach is the best way to accomplish this goal. San Mateo County would also like to see faster and consistent permitting, but we must balance these desires with other concerns, such as the management of streetscapes and providing for digital inclusion. We believe that only through collaboration and negotiation, not unilateral legislation, can everyone's needs be met. Carriers, local governments, and organizations like the National League of Cities and the International City/County Management Association should be granted authority to work together on true process improvement that benefit all.

Thank you for considering our association's views. If you have any questions or would like any additional information, please contact Connie Juarez-Diroll, Legislative Officer (650-599-1341, cjuarez-diroll@smcgov.org).

Sincerely,

Dave Pine
President, San Mateo County Board of Supervisors

cc: San Mateo County Board of Supervisors
County Manager's Office
Information Services Department