



September 19, 2018

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW Washington, DC 20554

Re: Ex Parte Presentation, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84.

Dear Ms. Dortch:

The League of Minnesota Cities¹ (“LMC”) and the Minnesota Association of Community Telecommunications Administrators (“MACTA”) submit these comments in response to the Federal Communication Commission’s (“FCC”) *Declaratory Ruling and Third Report and Order* for WT Docket No. 17-79 and WC Docket No. 17-84 (the “Declaratory Ruling and Order”) which is to be heard at the next FCC open meeting on September 26, 2018. LMC has previously submitted formal comments on this matter, and its positions stated in those comments has not changed. LMC continues to support the efficient deployment of 5G technology amongst its members. LMC, however, is concerned that deployments impact the public assets of each municipality, rely upon public resources (e.g. public poles and power), uses shared antenna systems, necessitates adequate public protections, and warrants receiving fair market consideration. After reviewing the Declaratory Ruling and Order, LMC respectfully submits these additional comments regarding the proposals.

Shot Clock

The shot clocks created by the Declaratory Ruling and Order proposed Report and Order create unreasonable deadlines for municipalities when processing wireless facility applications and contradict current regulations in Minnesota Statutes. The Minnesota Legislature, pursuant to Minnesota Statute, section 237.163 has already regulated the timeframe needed to process small cell facility permits and authorized a longer shot clock than proposed in the Declaratory Ruling and Order. Although the timeframes in Minnesota law may be difficult for municipalities to follow, the legislation allows cities to pause the applicable timeframes if written notice of incompleteness is provided to the applicant within 30 days of receipt of the application. The Declaratory Ruling and Order would effectively create timeframes inconsistent with those already

¹ LMC is a statewide cooperative association representing 833 cities, 11 townships, 61 special districts and one joint power entity. Only 20 cities in Minnesota do not belong to LMC. The LMC was established in 1913 within the school of public affairs at the University of Minnesota. It became an independent association representing and serving cities in 1974. A board of directors, elected by the LMC membership, govern LMC.



negotiated in Minnesota and provide increased pressure on local governments to process applications.

In addition, the Declaratory Ruling and Order does not take into consideration the complexity of applications and the unique issues that may arise in processing applications. The strict shot clocks encourage applicants to submit applications as soon as possible in order to start the clock without regards to the needs of the local. The proposed strict shot clocks do not encourage dialogues between wireless providers and municipalities prior to submitting applications.

If a shot clock is to be implemented it should, at the very least, contain provisions that extend the deadlines if additional information is required from an applicant. Any regulations should encourage discussions and negotiations between applicants and municipalities before an application is submitted.

Batched Applications

The proposed shot clocks impair the ability of municipalities to properly review applications when applications are batched together. It will be very difficult to implement if applicants are allowed to batch together multiple site requests into a single application as proposed in the Declaratory Ruling and Order. The Minnesota Legislature has adopted provisions with an allowance to batch applications (simultaneously submit a group of applications), with the limitation to not exceed 15 small wireless requests for substantially similar equipment on similar types of wireless support structures within a two-mile radius. The Minnesota Legislature has determined there is a need to limit the amount of facilities seeking approval in a single request. Without such a limitation, as would be allowed under the Declaratory Ruling and Order, cities would be forced to review a large number of sites within a short time frame.

If batched applications are to be allowed, the number of wireless sites applied for in a single application should be limited. In addition, the shot clock for batched applications should be increased as more sites are added to a particular application.

Effect of Shot Clock OVERRUNS

The Declaratory Ruling and Order provides that should a shot clock overrun occur, a wireless site applicant may seek expedited injunctive relief in court. If this is the remedy for a shot clock overrun, every effort should be made to allow a municipality to have enough time to adequately review an application.

In addition, the proposed ruling does not clearly identify if injunctive relief is the sole remedy for an applicant or if local remedies would also apply. Any remedy enacted by the FCC should clarify the relation with any local remedies.



Fees

The Declaratory Ruling and Order limits the amount of fees that may be collected for applications and recurring fees related to small cell wireless facilities. These limits will result in cities subsidizing wireless deployment because, depending on the application, a city may not be able to recover its actual costs incurred in processing an application. The cap on fees will jeopardize a city's ability to recover costs incurred with maintaining its right-of-way as well as reasonable rent for the use of a public facility. If wireless carriers are going to use public assets, such as poles and street lights, fairness dictates that they pay the actual costs involved in using such assets.

Cities must be able to recoup all of its actual costs for processing wireless permits as well as the actual costs involved in maintaining structures used by wireless facilities. Cities must have the ability to charge an applicant for the time and costs involved with processing an application as well as be able to charge rent and other maintenance charges if an applicant is using a public asset to provide services.

The FCC rules should protect a city's ability to collect all of its actual costs for its role in providing wireless facilities. Reasonable fees should be determined on a case-by-case basis and not on a presumption of a fair and reasonable fee.

Different cities have different amounts of resources available to review and respond to requests to use public assets to provide wireless services. In addition, although similar, no two wireless projects will be exactly alike. Cities need to have the flexibility to recoup all of their actual costs involved in assisting wireless services. The reasonable costs will be different between communities and should be determined on a case by case basis.

Local Regulations are not an Impediment

Additional regulations are simply not needed to allow effective deployment of wireless services. In Minnesota, cities and wireless providers have always worked together to balance the needs of the public with those of wireless providers. There is no evidence that cities have been an impediment to the deployment of wireless services.

LMC has recently asked its members for information regarding the number of small cell wireless applications they have received. Thirty-two members responded to LMC and only 13 members indicated that they have actually received applications for small wireless facilities. None of those 13 members reported having denied an application for small cell wireless facilities. These responses show that any argument that regulations are stopping the deployment of wireless technology is simply unfounded.



The responses LMC has received show that municipalities are not an impediment to the deployment of wireless facilities. Rather, Minnesota cities appear to be working well with wireless providers in providing wireless services to their communities.

Conclusion

LMC on behalf of its members, is in favor of improved wireless services in Minnesota communities. Municipalities must be allowed to balance the need for wireless services with the needs to maintain their rights-of-way as well as their public assets. Any limits on a municipality's ability to regulate or permit wireless services should not result in municipalities subsidizing such services.

As noted in previous comments submitted by LMC, imposing a new federal regulatory overlay not only would create confusion and administrative burden upon communities (many with limited resources and personnel) but also would create unnecessary costs, would conflict with the intent of Section 253 of the TCA and would undermine important local policies.

Respectfully Submitted,

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