



CITY OF PETALUMA

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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 Oppose

Dear Ms. Dortch,

The City of Petaluma opposes the Federal Communications Commission's proposed Declaratory Ruling and Third Report and Order regarding state and local governance of small cell wireless infrastructure deployment for the following reasons:

1. **Requirement of collocation on publicly owned infrastructure:** The regulations require jurisdictions' own infrastructure to be made available for the installation of Small Wireless Facilities. This is a violation of the takings principle, as articulated in *United States v. 50 Acres of Land*, 105 S. Ct. 451 (1984). As Justice Stevens stated there, "When the United States condemns a local public facility, the loss to the public entity, to the persons served by it, and to the local taxpayers may be no less acute than the loss in a taking of private property. Therefore, it is most reasonable to construe the reference to "private property" in the Takings Clause of the Fifth Amendment as encompassing the property of state and local governments when it is condemned by the United States.¹⁵ Under this construction, the same principles of just compensation presumptively apply to both private and public condemnees."

The regulations are in contravention to the above stated principle, disallowing local agencies just compensation for the continuous use of infrastructure by private entities, which is maintained on behalf of the citizenry.

2. **Fee Structure:** The regulations allow fees only to the extent they represent a reasonable approximation of the local government's objectively reasonable costs and are non-discriminatory. Further, the FCC offers a safe harbor fee structure of \$500 for a single up-front application that includes 5 small cell wireless facilities, with an additional \$100 for each small wireless facility beyond five, and \$270 per small wireless facility per year for all recurring fees, including any possible ROW access fee or fee for the attachment to municipally-owned structures in the ROW. The FCC continues that there would only be very limited circumstances in which higher fees would be allowed.

This is a blatant disregard for the work done by municipalities in processing such applications. By its own admission, the FCC anticipates 300,000 small wireless

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facilities will be deployed in the next three years, a number surpassing all existing cell towers.

Staff time is valuable. Using it to further the objectives of telecommunications corporations at a rate below which is required to recuperate costs in this jurisdiction is a disservice to this community and serves to subsidize the profits of the telecommunication companies.

As stated above, the \$270 yearly fee per small wireless facility allowed by these regulations is not adequate compensation to maintain local government infrastructure that has now been burdened with a private corporation's technology. It does not factor in removal and maintenance needed or the burden and degradation caused to locally owned infrastructure. The regulations seem short-sighted with regard to the needs of the community when the telecommunications industry inevitably moves on from 5G, as it has done with preceding technologies.

3. **Aesthetics:** Aesthetic considerations are only allowed to the extent that they are reasonable, no more burdensome than those applied to other types of infrastructure deployment, and that such aesthetic requirements are published in advance. This regulation does not even make sense. The phrase "no more burdensome than those applied to other types of infrastructure" is vague and does not provide clear guidance for municipalities to move forward. There is no comparable process to the small wireless facilities contemplated here. The FCC would have small wireless facilities treated the same as other cell structures when they are quite different, from the sheer number that are going to be deployed, as the FCC recognizes from its own document. While aesthetic concerns should be left to each jurisdiction to decide, it is fair to ask that those requirements be made upfront and that providers not be asked to guess at design regulations. However, this is an emerging technology where it would be helpful for telecommunications companies to work with jurisdictions to elucidate communities on various aesthetic options. While not in opposition to some clarifying language about aesthetics, the regulations as written only further confuse the issue.
4. **Undergrounding:** The undergrounding requirements would be preempted so long as the telecommunications company showed that they could not operate with undergrounding the equipment. This leaves communities vulnerable to having equipment cabinets as fixtures in the ROW. The logic here fails. The mere idea that a requirement to underground equipment is then prohibitive of being allowed to engage in small wireless facility placement at all is false. If jurisdictions are allowed to address aesthetic concerns, the large cabinets that accompany these devices is clearly such a concern and should be allowed to the discretion of the jurisdiction. There is potential for abuse by telecommunications companies avoiding undergrounding by claiming impossibility when the real concern is cost.
5. **Shot Clock:** The reduction in the shot clock to 60 days, combined with the refined definition that collocation refers to any existing structure and not one that already houses wireless facilities, creates an unreasonable processing time when, once again, it

is contemplated how many facilities are expected to be rolled out. For the protection of the community, jurisdictions need a reasonable time frame in which to consider and process applications. This is of particular importance in this instance, where small wireless facilities are contemplated at a much greater density than existing macro facilities. A 60-day shot clock does not suffice.

While it is appreciated that the FCC has not contemplated in this action that the lapse of the shot clock results in a deemed granted application, it does allow for telecommunications facilities to take municipalities to court in the event of an expired shot clock to compel action. Even this, however, will tie up scarce municipal resources when a longer shot clock could avoid such results.

While some clarification by the FCC is helpful and good guidance is needed in moving forward with this emerging technology, a vast majority of the regulations laid out in the hundred-page declaration are a broad overreach. The FCC attempts to do through its regulatory power what should be done legislatively, or not at all.

The City of Petaluma strenuously objects to this declaration.

Sincerely,

Lisa Tennenbaum
Assistant City Attorney