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OF THE
UNITED STATES OF AMERICA

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VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Development (WC Docket 17-84).

Dear Ms. Dortch:

The U.S. Chamber of Commerce (“Chamber”), the world’s largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America’s free enterprise system, respectfully submits these reply comments to the Federal Communications Commission (“FCC” or “Commission”) in response to its proposed rule to accelerate wireline broadband deployment by removing barriers to infrastructure investment, while ensuring public safety standards are not compromised.

Connecting all Americans to high-speed internet will lead to economic growth and new job opportunities. Although the vast majority of Americans have access to high-speed internet, nearly 34 million Americans do not according its own definition of “high-speed broadband” in the FCC’s *2016 Broadband Progress Report*.¹ The Chamber advocates for policies that streamline permitting and reduce unnecessary delays in all facets of the communications industry in order to bridge the digital divide and promote emerging technologies.

In order to spur private sector deployment of broadband, the Commission should work to remove regulatory barriers to technology infrastructure investment such as the Title II classification of broadband as well as local and state impediments. FCC should use its statutory authority to prohibit local and state fees not reasonably connected to the cost of siting communications technology such a duplicative charges in which localities double recover fees for new broadband lines to be placed on a provider’s preexisting infrastructure.

¹ Federal Communications Commission 2016 Broadband Progress Report (Jan. 29, 2016) *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-6A1.pdf.

I. The Benefits of High-Speed Broadband, 5G and Emerging Technologies

Reducing regulatory barriers to broadband investment will be necessary to bridging the digital divide. Many Americans, especially students living in rural and tribal areas in states like Alaska suffer major disadvantages with slow internet speeds at school.² According to the National Telecommunications & Information Administration, broadband can help schools use digital textbooks saving schools as much as \$600 per student per year.³ In addition to educational benefits, telehealth can reduce hospital admissions by 25 percent and small business owners can increase sales.⁴

Wireless technology employing small cell and 5G technology have the potential to be an economic game changer for the American economy as well. According to one study, there are more connected devices in the world than there are people and there are expected to be as many as 50 billion such devices worldwide by 2020.⁵ It has been argued that 5G wireless technology will be the backbone of the IOT revolution and the connected economy.⁶ 5G technology will improve data speeds, which will be vital to increasing the usage of telemedicine and autonomous vehicles.⁷ This wireless technology will also create growing demand for physical land-based fiber networks to support 5G.⁸

A recent report published by Deloitte demonstrates how industries such as energy, health, public safety and transportation will leverage the enhanced wireless technology, leading to substantial economic investment and job development throughout the country.⁹ According to a study by Accenture,¹⁰

[t]he full potential of Smart Cities will be unlocked by 5G networks and small cells, creating jobs as well as entire new industries. Communities that support 5G wireless technology will see significant economic and community benefits. This next generation of wireless technology is expected to create 3 million new jobs

² Naomi Nix, "Alaska's Disconnected Schools," *The Atlantic* (Dec. 16, 2015) *available at* <https://www.theatlantic.com/education/archive/2015/12/alaska-schools-internet/420648/>.

³ "Why Does Broadband Matter?" National Telecommunications & Information Administration *available at* http://www2.ntia.doc.gov/files/broadbandmatters_021417.pdf.

⁴ *Id.*

⁵ Dale Evans, "The Internet of Things: How the Next Evolution of the Internet is Changing Everything," Cisco at 3 (Apr. 2011) *available at* http://www.cisco.com/c/dam/en_us/about/ac79/docs/innov/IoT_IBSG_0411FINAL.pdf.

⁶ Alexander Hellemans, "Why IoT Needs 5G," *IEEE Spectrum* (May 20, 2015) *available at* <http://spectrum.ieee.org/tech-talk/computing/networks/5g-taking-stock>.

⁷ Stacey Higginbotham, "Qualcomm readies itself for 5G with these 3 tech breakthroughs," *Fortune* (Oct. 14, 2015) *available at* <http://fortune.com/2015/10/14/qualcomm-5g/>.

⁸ Brian Larson, "Fiber is expected to be a significant focus on planned 5G network deployments," *RCR Wireless News* (Aug. 22, 2016) *available at* <http://www.rcrwireless.com/20160822/opinion/reader-forum-building-blocks-5g-fibers-role-tag10>.

⁹ Deloitte, "Wireless Connectivity Fuels Industry Growth and Innovation in Energy, Health, Public Safety, and Transportation," http://www.ctia.org/docs/default-source/default-document-library/deloitte_20170119.pdf, last accessed 3/3/2017.

¹⁰ "Smart Cities: How 5G Can Help Municipalities Become Vibrant Smart Cities," Accenture Strategy at 3 (2017) *available at* <http://www.ctia.org/docs/default-source/default-document-library/how-5g-can-help-municipalities-become-vibrant-smart-cities-accenture.pdf>.

and boost annual GDP by \$500 billion, driven by a projected \$275 billion investment from telecom operators.

Similarly, “the U.S. cable industry supports 2.7 million jobs representing a total economic impact of more than \$386 billion.”¹¹

Many localities across the country such as Chicago are benefiting from the use of Smart City technology powered by small cells, which uses 4G technology to provide real time video accessible to first responders, and in San Francisco wireless sensors are enabling authorities to be alerted to real-time and location-based information concerning gunshots.¹²

Chairman Ajit Pai, promoting his Digital Empowerment Agenda designed to lessen the effects of the digital divide, recommended that:¹³

First, the FCC must aggressively use its legal authority to make sure that local governments don’t stand in the way of broadband deployment. That means taking a fresh look at section 253 of the Communications Act and preempting state and local regulations that prohibit or have the effect of prohibiting the provision of service. It means looking at section 332(c)(7) of the Communications Act and section 6409 of the Spectrum Act, where Congress clearly and specifically granted the Commission and the power to remove barriers to infrastructure deployment.

The Chamber agrees with Chairman Pai that now is the time to use its congressionally-mandated authority to remove local government impediments that hinder the ability of the private sector to provide fast and affordable broadband. The Commission should implement policies that streamline and reduce the time required to obtain consent from local governments to site communications equipment on public rights of way (“PROW”) in a manner consistent with reducing interference across industry sectors otherwise the benefits of high-speed internet, 5G and smart cities may not be fully realized.

II. The Commission Should Prohibit Unreasonable and Duplicative Local and State Siting Fees

A. The FCC Should Require Localities to Implement Cost-Based Fee Structures for Siting Communications Equipment on Public Rights of Way

Localities generally require communications providers to pay fees for the installation of equipment on PROW. Unfortunately, many localities are charging as much as \$10,000 in upfront application and administrative fees before allowing a wireless provider to even access a PROW. Many localities in proceedings, such as the FCC’s *Mobilitie* proceeding, have not shown how

¹¹ NCTA, *With 2.7 Million Jobs, Cable Industry Boosts U.S. Economy*, Platform (Sept. 2, 2015), <https://www.ncta.com/platform/industry-news/with-2-7-million-jobs-cable-industry-boosts-u-s-economy/>.

¹² *Id.* at 10.

¹³ Remarks of FCC Commissioner Ajit Pai (Sept. 21, 2016) *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-341365A1.pdf.

they arrived at the costs imposed upon communications providers in their application fees.¹⁴ In addition to administrative and applications fees, localities are also imposing upon wireless providers annual costs based upon the number of units installed or a percentage of revenue.¹⁵

Unreasonable local PROW siting fees are contributing to slowing down the deployment of economy-stimulating technologies. Permitting delays and fee structures designed to enhance local government revenues “coupled with concerns about return on investment will cause delays for the deployment of wireless infrastructure, potentially leading to the loss of projected benefits, including economic development and increased competitiveness...”¹⁶

Congress authorized the Commission to preempt local and state regulations that had the effect of prohibiting entities from providing telecommunications services.¹⁷ States and localities have the authority to regulate PROWs in relation to telecommunications siting as well as to “require fair and reasonable compensation from telecommunications providers.”¹⁸ Currently, courts are split as to whether fees imposed by localities to use PROWs must be directly related to a telecommunications provider’s use of the ROW and the costs that use imposes on the local government.¹⁹ Given the federal circuit court split on the issue of PROW siting fees, the Chamber finds it entirely appropriate for the Commission to declare which practices related to siting fees charged by localities to communications providers are not fair and reasonable.

The Commission should adopt a definition for “fair and reasonable compensation” that enable localities to recoup costs that are reasonably related to reviewing and issuing permits as well as managing a PROW. Moreover, the Commission should prohibit localities from imposing charges, most notably fees based on telecommunications carrier revenue, not reasonably related to the actual use of a PROW.

B. The Commission Should Prohibit Localities from Charging Duplicative Siting Fees for Communications Equipment

Duplicative fees are inherently unreasonable and pose a hindrance to broadband deployment. Companies that already have local authority to place and maintain communications equipment on PROWS should be able to add new activities and equipment at no additional cost if the activity or equipment does not place any significant new burden on the PROW. Unfortunately, some localities not realizing the benefits of expanded high-speed internet, are charging companies to add new equipment to their PROWs.

For example the city Eugene, Oregon has a franchise agreement with a cable provider to operate a cable system over the city’s PROW and charges a franchise fee.²⁰ Federal law prohibits

¹⁴ Petition for Declaratory Ruling, *In the Matter of Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way* (Nov. 15, 2016) available at <https://ecfsapi.fcc.gov/file/122306218885/mobilitie.pdf>.

¹⁵ *Id.* at 18-19.

¹⁶ *See supra* note 10, at 13.

¹⁷ *See* 47 U.S.C. § 253(a),(d).

¹⁸ 47 U.S.C. § 253(c).

¹⁹ *See.e.g.*, Puerto Rico Tel. Co., Inc. v. Municipality of Guayanilla, 450 F.3d 9 (1st Cir. 2006); TCG Detroit v. City of Dearborn, 206 F.3d 618 (6th. Cir. 2000).

²⁰ *City of Eugene v. Comcast of Oregon*, 359 Ore. 528, 532 (2016).

localities from engaging in franchise fees charging more than “5 percent of such cable operator’s gross revenues derived in [a covered twelve-month period] from the operation of the cable system to provide cable services.”²¹ Although cable operators already compensate Eugene for use of its PROWs through payment of franchise fees, Eugene passed an ordinance requiring companies to obtain *additional* licenses for “telecommunications services” on the city’s PROWs, and charged companies a fee of seven percent of their “telecommunications-service”-related revenue in order to obtain the license even though the services to which the fee has been applied poses no incremental burden on city PROWs.²²

Recently, the Oregon Supreme Court ruled that localities could charge fees to companies for installing and maintaining broadband equipment even though they already had a cable franchising agreement because “[a] fee is a franchise fee if it is imposed on a company because it is a cable operator and not for any other reason.”²³ In essence, the Oregon Supreme Court held that a locality could double charge a cable franchiser for installing broadband having no significant impact on a PROW adjacent to preexisting cable infrastructure. Following the court decision, other Oregon municipalities adopted similar ordinances and there is a risk that these harmful practices will spread to other parts of the country. Such duplicative local and state fees should be deemed unreasonable and preempted by the Commission, and the FCC should examine ways to encourage local regulatory parity among providers regarding siting fees.

III. Conclusion

The FCC should implement policies that streamline the permitting processes of localities as well as require local governments to charge only fair, reasonable and non-duplicative fees. This is not an issue that can be pushed off to the future. New technologies that depend on robust and ubiquitous communications networks are already being developed and implemented, and it is absolutely essential that the infrastructure be in place to support the explosion of demand for these vital communications services.

Not only does the Commission have the legal authority to prohibit local governments from charging unreasonable fees to telecommunications providers, it makes good policy sense for localities to benefit from the use of technologies that will lead to smarter cities which are more efficient, and save costs on services such as public safety.

Thank you for the opportunity to participate in this proceeding. If you have any follow up questions, I may be reached at (202) 463-5457 or by e-mail at wkovacs@uschamber.com.

Sincerely,



William L. Kovacs

²¹ 47 U.S.C. § 542(b).

²² *City of Eugene*, 359 Ore. At 534.

²³ *Id.* at 557.