THE UNITED STATES CONFERENCE OF MAYORS

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A CENTURY OF STRENGTHENING CITIES

NATIONAL ASSOCIATION of COUNTIES NACo

April 11, 2025

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
45 L Street NE
Washington, DC 20554

Re: Delete, Delete, Delete (GN Docket No. 25-133)

Dear Chairman Carr, Commissioner Starks, Commissioner Simington, and Commissioner Gomez,

On behalf of the National Association of Counties (NACo), National League of Cities (NLC), and The United States Conference of Mayors (USCM), the organizations representing America's local government leaders, we thank the Federal Communications Commission (FCC) for the opportunity to provide input as the Commission reviews its body of existing regulations for potential repeal or modification. Our organizations have identified several rules that have failed to deliver on their promised impacts and do not reflect the current real-world circumstances, which render them outdated or unhelpful.

Regulations Unnecessarily Limiting Local Decision-making on Wireless Communications Infrastructure

Small Cell Order – Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79; WC Docket No. 17-84

This Report and Order and Declaratory Ruling,[1] issued in 2018, was intended by the FCC to implement Section 253 and 332(c)(7) of the Communications Act, which limits state or local regulations that "effectively prohibit" the provision of wireless services. In effect, this Report and Order dramatically and inappropriately increased the extent to which the FCC directly imposed specific requirements on local permitting processes and limited local oversight of wireless infrastructure, by requiring specific shot clocks for permitting processes, limiting the factors communities may consider in permit applications, and dictating how localities may set fees for applications or use of public rights of way.

Federal court challenges have partially overturned some provisions of this rule, allowing a degree of additional flexibility to local governments. However, current guidance continues to reflect a rigid, defined dollar value for the "safe harbor" determination for appropriate fee rates; these provisions have not and will not keep up with economic, marketplace, and technological changes. In addition, in the years since

[1] Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79; WC Docket No. 17-84, September 27, 2018. https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf

the finalization of this rule, the nation has not seen the promised explosion in applications for permits or ubiquity of 5G service promised by the rule, a gap which was most notable during the COVID-19 pandemic and resulting demands placed on networks. While network buildout has continued steadily, it would not appear that micromanagement of local permitting processes was the panacea promised by the FCC in 2018.

5G Upgrade Order - Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012, WT Docket No. 19-250

This 2020 Report and Order,[2] intended to implement Section 6409 (A) of the Spectrum Act of 2012, has created unnecessary burdens for localities while failing to deliver on promises of broadly closing the gaps in wireless network coverage and improvement. Congress's intent in Section 6409(A) was to separate out those permitted activities that were simple upgrades to existing wireless infrastructure, rather than significant new builds or major changes, and provide them with a quicker pathway to construction by requiring localities to approve these "Eligible Facilities Requests."

However, the FCC's 2020 Order substantially limited local oversight and effectively created pathways for wireless infrastructure owners to conduct end-runs around local oversight through manipulation of process. While the shot clock for review remained the same, the 2020 Order limited the ability of localities to enforce a reasonable starting point for that shot clock, potentially allowing applicants to run the timer out through informal communications or incomplete applications until the application is deemed granted by federal law. It also substantially limited the ability of local governments to control the expansion of existing cell towers over time unless all eventual modifications were accounted for in the initial permitting of the first build of the site - a high bar to clear as technology and infrastructure, as well as concealment technologies, constantly evolve. Congress created a carveout for these Eligible Facilities Requests in anticipation of them being *minor* changes to existing sites - which does not describe all activities now covered by the 2020 Order.

<u>Regulation Unnecessarily Limiting Local Franchise Authority</u>

Mixed-Use Rule - Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311, Third Report and Order

This 2019 Report and Order[3] created a regulatory loophole for providers of broadband services over cable systems and limited the ability of local governments to appropriately negotiate franchises and protect consumers within their jurisdiction. The Cable Act, as passed by Congress, explicitly allows state and local franchise authorities to negotiate fees in exchange for granting franchises to providers and to negotiate terms beyond simple payment of franchise fees. This flexibility allows those entities to ensure adequate and consistent service across communities, protect residents, and provide vital public services such as local government and educational programming. Congress also did not contemplate a future in which broadband services might be provided over cable networks, or that television services might be provided over broadband networks.

[2] Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012, WT Docket No. 19-250, November 3, 2020. https://docs.fcc.gov/public/attachments/FCC-20-153A1.pdf

[3] Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311, Third Report and Order, August 2, 2019. https://docs.fcc.gov/public/attachments/FCC-19-80A1.pdf

In the absence of guidance from Congress, the FCC in this order overreached in its interpretation of the Cable Act to allow cable providers to deduct the value of many of these non-fee franchise obligations from their overall franchise fee payments, and barred franchise authorities from incorporating non-cable services - such as broadband - into their franchise agreements, effectively leaving those services ungovernable by local governments within the existing regulatory framework. The FCC should withdraw this inappropriate use of federal regulatory power.

On behalf of the nation's cities and counties, we thank the FCC for considering these and other existing rules that should be repealed to better serve American communities. By repealing the above-mentioned orders, we believe that local governments will be better able to innovate, expand broadband infrastructure investment strategically, and protect residents' health, safety, and rights. If you have any further questions, they may be directed to David Burns, Assistant Executive Director for The United States Conference of Mayors at dburns@usmayors.org, Seamus Dowdall, Legislative Director for Telecommunications and Technology for the National Association of Counties at sdowdall@naco.org, or Angelina Panettieri, Legislative Director for Information Technology and Communications for the National League of Cities at panettieri@nlc.org.

Sincerely,

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