

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Accelerating Wireless Broadband Deployment by)	WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)	
)	
Accelerating Wireline Broadband Deployment by)	WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)	

Comments of the City of Philadelphia

The City of Philadelphia (“City”) respectfully submits these Comments in response to the Commission’s Declaratory Ruling and Third Report and Order (collectively, “Order”) in the above proceedings.

The City shares the Commission’s goal of promoting broadband technology and addressing regulatory barriers that would unlawfully inhibit deployment of infrastructure to support next generation networks and services. These goals are reflected not only by the presence of many broadband services providers in its rights-of-way (ROW), but in the many policies and initiatives that the City has championed to make ubiquitous broadband service available to all Philadelphia residents. While promoting broadband technology and development remains an essential City initiative, it is critically important for municipalities such as Philadelphia to balance these goals with the ability to regulate and manage the public ROW. The City’s ability to manage its ROW is essential in order to effectively protect the health, safety and welfare of the City’s over 1.5 million residents and 43 million annual visitors. For the reasons set forth below,

the City urges the Commission to oppose the Order or, in the alternative, postpone action until the public is afforded a sufficient public comment period (no less than 90 days).

1. The proposed fees are not “fair and reasonable” compensation.

The City respectfully disagrees with the Commission’s interpretation of “fair and reasonable” compensation. For many cities, public rights-of-way are the most valuable and commonly used public asset. This especially rings true in Philadelphia, the second largest city in the Northeast, with a workforce of just over three million (the sixth largest in the country), home to many of the nation’s top-ranked universities and hospitals, five professional sports teams and the brand new 60-story Comcast Technology Center. The Commission’s proposed fees (\$270 per year per small cell site including ROW access and facilities attachment, and a \$500 “presumptively reasonable” up-front application fee covering up to five sites then reduced to a \$100 application fee for each site after the fifth), are simply *de minimis* when measured against the costs that the City incurs to approve, support and maintain the many small cell and distributed antenna system (DAS) installations in its public rights-of-way.

The City has already established a fee structure and on-line application process to apply for small cell deployment that has served the needs of its citizens without prohibiting or creating barriers to entry for infrastructure investment. Notably, the City has successfully negotiated master license agreements (MLA) with a number of telecommunications companies including Verizon, Mobilitie, Crown Castle and AT&T (Service Providers) for small cell installations on City-owned infrastructure in the public ROW. These agreements entered into voluntarily by the parties allow the City to safely, effectively and efficiently manage decisions regarding placement, construction and modification of service facilities while promoting industry efforts to expand affordable broadband services throughout the city.

In order to accommodate and support the numerous Service Providers while ensuring public safety and an environment conducive to all uses of the public rights-of-way, the City incurs significant upfront engineering costs to review and inspect each location, including structural analysis review, geographic information system (GIS) updating, and design review and approval. The City allocates these costs to the permitting, inspection and monitoring of wireless infrastructure in the rights-of-way and considers only these costs in establishing its upfront application fees.¹ The attachment fee contemplates additional costs in connection with the City's DAS program which are not recouped through the City's ROW management fees. Such costs include DAS programmatic fees, additional costs related to increased employee work hours for installation of electric and fiber connection hookups for DAS antennas requiring underground conduit feeds, as well as additional inspection costs of occupied City-owned infrastructure. Moreover, the MLA provides for an annual attachment fee that is based on a sliding scale model. The more sites a Service Provider attaches to, the more its annual attachment fee decreases. This sliding scale fee structure actually encourages Service Providers to deploy small cell facilities in the ROW and enhances broadband coverage throughout the city.²

The proposed attachment fee of \$270 per year for ROW access and facilities attachment suggested by the Commission would only cover a mere fraction of the City's costs, resulting in a significant net loss to the City. Aside from the direct costs incurred to approve, support and maintain these facilities in its ROW which the City would not be able to fully recoup under the

¹ The MLA requires the licensee to submit an application for each new installation, pre-existing installation, relocation, modification and termination. Further, the MLA requires a one-time, non-refundable application fee of \$400 as well as an additional fee of \$400 as reimbursement for the Street Department's additional time reviewing applications involving City-owned infrastructure.

² The City's attachment fee schedule provides for a sliding scale, plus 3% annual escalator. The annual attachment fee decreases the more locations a Service Provider has.

Commission's proposed fee structure, the City would also be deprived of other potential revenue-generating opportunities involving the ROW and City-owned infrastructure to benefit and improve the lives of its citizens. Simply put, the cost structure proposed by the Commission will have a substantial negative financial impact on the City by resulting in lost revenue and lost opportunity for the City, and as currently written, the Commission's draft Order will force municipalities and tax payers to subsidize the private business operations of Service Providers.

2. The proposed new 60-day shot clock is too extreme.

The City respectfully disagrees with the Commission's proposal to designate any "preexisting" structure, regardless of its design or suitability for attaching wireless equipment, as eligible for an expedited 60-day shot clock. The Commission recognizes and has repeatedly acknowledged the importance of state and local efforts to enhance public safety and preserve historic designations. Indeed, in its recent adoption of an order exempting small wireless facilities from federal historic and environmental review (Wireless Infrastructure Second Report and Order dated March 22, 2018, or "March Order"), the Commission noted that the order would not have any preemptive effect on state and local review procedures, instead deferring to local procedures which are "adopted and implemented by regulators with more intimate knowledge of local geography and history," to "reduce[] the likelihood that small wireless facilities will be deployed in ways that will have adverse environmental and historic preservation effects."

In contravention of the March Order, the proposed 60-day shot clock here disregards and discounts the City's intimate knowledge of its local geography and history. In practice, the City has been exceptionally responsive to applications submitted for review. In certain circumstances, the Order would deprive the City of adequate time to carefully consider how certain small cell installations may impact public safety and the character of its many diverse

neighborhoods and zoning areas, forcing the City to issue denials that may otherwise be accepted if the City were provided more time and flexibility to collaborate on creative solutions with Service Providers. At a minimum, citizens and homeowners should be given an opportunity to be heard regarding how they are impacted by deployment of small cell facilities on adjoining properties which will necessitate more review than is reasonably feasible within the proposed shortened shot clock.

3. The proposed definition of “effective prohibition” is overly broad.

The City respectfully objects to the Commission’s proposed definition of “effective prohibition” as overly broad. The Commission proposes that a state or local government which “materially inhibits” a small wireless facility deployment is in violation of Sections 253 and 332(c)(7) of the Communications Act. However, such proposal is likely to provoke more conflict and litigation over requirements for aesthetics, spacing and undergrounding. Municipalities are in the best position to set requirements necessary to regulate their public rights-of-ways. Such requirements should not be subjected to challenges for failing to meet a subjective and unclear set of guidelines that accommodates the needs of industry in disdain of local regulation of any kind, no matter how reasonable or necessary to protect the safety of the public and promote fair use of the public rights-of-way for economic activity.

The City of Philadelphia has partnered tirelessly with private industry to build the best broadband infrastructure possible for our residents including a major effort to ensure that broadband services are available to underserved communities throughout the City. For the reasons stated herein, the City respectfully opposes the apparent efforts by the Commission to unduly restrict local authority while disregarding the necessary responsibilities that Service

Providers have to our community. The City urges the Commission to oppose the proposed Order.

Dated: September 19, 2018

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEPARTMENT
Marcel S. Pratt, City Solicitor

/s/ Rachel Castillo Rosser

By: Rachel Castillo Rosser, Senior Attorney
 Bradford J. Ham, Deputy City Solicitor
 City of Philadelphia Law Department
 1515 Arch Street, 17th Floor
 Philadelphia, PA 19102-1595
 (215) 683-5257