



CITY OF PIEDMONT CALIFORNIA

September 17, 2018

Chairman and Members
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street SW
Washington, DC 20554

RE: Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Draft Declaratory Ruling and Third Report and Order, WT Docket No. 17-79; WC Docket No. 17-84, issued September 5, 2018 -
Comment and Notice of Opposition

Dear Chairman Pai and Members of the Federal Communications Commission:

The City of Piedmont is **strongly opposed** to the draft Report and Order issued by the FCC on September 5, 2018, titled "Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment," which would represent a drastic shift in telecommunications policy and law and a \$2 billion unfunded mandate by requiring local governments to lease out the public's property, cap fees and leases for public property, eliminate the ability for cities to negotiate public benefits, burden cities with FCC hearings and judicial review to establish reasonable aesthetic controls, degrade historic districts, and void the public's input, in all communities across the United States of America, for the installation of "small cell" wireless equipment.

Our citizens are very concerned with the appearance of their community and with the impact that wireless facilities that are not sized for the specific site conditions has on the community. Thus, while our community supports wireless technology to have better access to telecommunications services, the community also wants the facilities to be located and sized in an appropriate way.

Despite the wireless industry's claim that the equipment would be "small" in their attempt to justify this special permitting and price arrangement solely for their industry, the draft definition allows any number of antennas of 3 cubic feet each, plus 28 cubic feet of equipment, for radios, cables, electric meters, bollards, cabinets, pedestals, demarcation boxes, grounding equipment, power transfer switches, and cutoff switches, in the public right-of-way near homes, schools, and parks. To the contrary, small cell antennas and equipment can be provided with smaller antennas and smaller radios and equipment that would significantly decrease the aesthetic impact of these facilities without any decrease in the service and capacity of these facilities. Your rules should encourage facilities in the rights-of-way that are of benefit to the public and do not cause adverse impacts on aesthetics and on the economic value of the homes and commercial areas of the community.

THE DRAFT RULES ARE UNNECESSARY

- Small cell wireless facilities are just in the beginning stages of being deployed, and 5G technology is in the planning stages. Piedmont processed its first applications for small cell sites in 2017, approving four new small cell installations with conditions of approval to avoid impacts to sidewalks and crosswalks near schools, as well as aesthetics. These projects are awaiting building permit applications from Crown Castle, LLC so that construction can begin. Given that many jurisdictions have not even processed a small cell permit yet, or only handled a small number, it is unclear why there is such an urgent need for a new layer of burdensome regulations by the FCC. This draft order was written with the assumption that there will be issues, which the Telecommunications industry has yet to demonstrate.

THE DRAFT RULES WILL IMPACT HISTORIC RESOURCES

- The City of Piedmont, founded in 1907 after the San Francisco earthquake and fire of 1906 caused residents to relocate across the Bay, contains the highest concentration per capita of buildings constructed prior to 1940 of any California city. Between 1907 and 1940, 2,500 homes, nearly 70% of the City's existing housing stock, were built, and most of Piedmont's streets were laid out. As this was during the early days of the automobile, these roadways and public rights-of-way were designed before modern engineering standards evolved and were adopted. Approximately half of the city's public rights-of-way are extremely narrow and only marginally adequate for the safe flow of vehicles and pedestrians. The Piedmont General Plan was developed by City decision-makers over time to apply rigorous aesthetic and health and safety standards to new development on private and public property due to the unusually dense development of Piedmont neighborhoods, high-quality natural and historic resources, and the existing limited transportation circulation and access. Inappropriate small cell installations will overburden narrow roadways and sidewalks, some of which are immediately adjacent to homes.
- The Design and Preservation Element of the Piedmont General Plan, as well as the Piedmont Historical Society and local historians, have documented the extensive historical resources including homes, schools, bridges, landscape features, monuments, trees, and public buildings and structures. FCC actions must comply with the National Environmental Policy Act (NEPA) which protects historic resources. . These draft rules proposed by the FCC will have impacts to historic resources from large and unsightly DAS and small cell installations, inappropriately located on historic lights and columns in the public right-of-way, on park monuments, and in front of historic buildings. The draft rules are "one size fits all" and allow no consideration for the case-by-case conflicts that an individual or large scale deployment of DAS and small cell installations could have on historic resources.

THE DRAFT ORDER DOES NOT PROVIDE FAIR COMPENSATION TO COMMUNITIES

- The draft order appears to require cities to allow wireless facilities on public property in any zone in a city, regardless of the use for that property, even those serving young children. In addition, the draft order arbitrarily cuts rent on the city's property and appears to require the city to lease its property without obtaining fair market value for use of its property. The City strongly objects to, potentially, being ordered to allow private parties to use city resources, paid for by the citizens of the community, before deciding whether this use is in the city's interest and without receiving fair market rent for this use.

THE REGULATIONS ERODE THE ABILITY OF THE CITY TO SAFELY MANAGE PERMITTING OF WIRELESS INSTALLATIONS

- The proposed annual rent cap is inconsistent with the City's obligation not to gift its property or use of its property to private parties and deprives the taxpayers of the value of public property. In addition to the extent that the rent is changed to a cost of service this deprives the taxpayers of funds to pay for other items such as maintenance of infrastructure, like roads.

NEW SHOT CLOCK REGULATIONS WILL ERODE THE ABILITY OF THE CITY TO SAFELY MANAGE PERMITTING OF WIRELESS INSTALLATIONS

- Under the proposed order, it appears, all permitting activities (zoning, building permits, traffic plans, etc.) would now have to be handled simultaneously to meet any FCC shot clocks. Compliance will likely require hiring more staff dedicated to the special treatment of wireless permit applicants. This will involve both time and costs for facilities that may not be approved or may be relocated and require new permits.
- Shortened shot clocks are not expanded regardless of the number of sites requested.

THE DRAFT ORDER DOES NOT PROTECT AESTHETICS, WHICH ARE IMPORTANT TO PRESERVING THE PUBLIC CHARACTER OF THE CITY

- The draft FCC regulations assert that local cities retain discretion over aesthetics. This attempt at local discretion falls flat. Cities would have to live with the size parameters established by the regulations for "small cells," regardless of their inappropriateness in a given location. For example, 70% of the homes and buildings in the City of Piedmont were built before 1940, including public monuments and homes that are oriented toward the street and public sphere with tree-lined streets and landscaped medians. In addition, Piedmont often required undergrounding to permit facilities to be located safely while still providing sidewalks and ADA accessibility.
- Undergrounding requirements may no longer be allowed, even if all other utilities must be undergrounded pursuant to City law.
- Furthermore, it is imperative that cities be able to enforce maintenance and removal of equipment requirements so that the streets and sidewalks are maintained and are safe for the public to use and without being a dumping ground for obsolete equipment. It is imperative that local agencies have control over the safety of streets and rights-of-way so that the streets are safe and well maintained and contribute to the economic well-being of the city.

The city further strongly objects to the tying of this order and the lack of time to prepare and submit comments. The draft FCC regulations released on September 5, 2018, providing only 11 days to comment on a set of burdensome new regulations that actually fail to deliver on the FCC's stated intent. For example, the draft FCC regulations fail to require that their "small cells" deliver 5G, 4G, or any standard level of technology. The truth is that standards for 5G are still being developed, which is why the order can't require it to meet that standard. This begs the question as to why these regulations are necessary at all. They also fail to impose any requirement for the wireless industry to deploy their networks to unserved or underserved parts of the nation.

It's clear from the direction of these draft FCC regulations, that this is not about 5G wireless deployment, but more about local deregulation for the benefit the Telecommunications industry without any obligation or participation by the industry to provide adequate service to all Americans, both urban and rural. The City of Piedmont opposes this overreach and abuse of the FCC's power.

For these reasons, the City of Piedmont is **strongly opposed** to the proposed draft FCC regulations issued September 5, 2018 ("Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Draft Declaratory Ruling and Third Report and Order, WT Docket No. 17-79; WC Docket No. 17-84").

Sincerely,

CITY OF PIEDMONT



Robert McBain
Mayor

cc: City Council Members
Senator Diane Feinstein
Senator Kamala Harris
Congresswoman Barbara Lee
Sam Caygill, League of California Cities
Meg Desmond, League of California Cities
Lauren De Valencia y Sanchez, APA California Chapter