Congress of the United States
Washington, DC 20515

September 25, 2018

The Honorable Ajit V. Pai
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Pai:

We support swift deployment of 5G and are concerned that the proposed *Streamlining Deployment of Next Generation Wireless Infrastructure Declaratory Ruling and Third Report and Order* ("Declaratory Ruling and Order") will set us on a path that will ultimately delay 5G efforts. Many cities and counties of varying sizes across the country have spoken out against this proposal and urged the Commission to cooperatively address key concerns so as to avoid harm to consumers and localities.[1] Given the reasons outlined below, we ask that you remove the item from the Open Meeting agenda and take the time needed to resolve these issues. Thoughtful consideration now will benefit consumers and avoid unnecessary delays that may result from future litigation.

We are excited about the opportunities that 5G will bring—including its potential to increase broadband connectivity, transform health care and transportation, and make our power grids more efficient—and we are eager to see 5G deployed. However, in order to achieve the best outcome for consumers, it is crucial that 5G be deployed in a way that carefully balances the interests of both communities and the wireless carriers. The Declaratory Ruling and Order clearly falls short of striking such a balance.

Localities must have the flexibility to negotiate terms with wireless carriers in order to meet the needs of their individual communities and residents. Limiting the purpose for which small wireless facility fees can be collected by cities and municipalities, as proposed by the Declaratory Ruling and Order, will only stifle local policy innovation, including efforts to bridge the digital divide. For example, cities in California, such as San Jose and Los Angeles, have worked with wireless carriers to negotiate agreements that allow for expedited small wireless

[1] *See e.g.*, comments filed this month in opposition by City of Anna, TX; Botetourt County, VA; City of Chicago, IL; City of Cincinnati, OH; Contra Costa County, CA; Cumberland County, NJ; City of Danville, VA; Fresno County, CA; Village of Greendale, WI; City of Hurst, TX; Johnson County, IA; City of Lake Forest, CA; Lamar County, GA; Lancaster County, SC; Latah County, ID; City of Louisville, KY; Monroe County, FL; Morgan County, AL; McKinley County, NM; City of McKinley, TX; City of Mount Vernon, NY; New York City, NY; City of Olmos Park, TX; City of Omaha, NE; City of Overland Park, KS; City of Philadelphia, PA; City of Rye, NY; Sacramento County, CA; City of San Francisco, CA; City of Seattle, WA; West Valley City, UT; and City of Yuma, AZ.

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facility infrastructure deployment while helping to close gaps in broadband access and adoption across their communities.[2] The City of Lincoln, Nebraska has similarly demonstrated how local needs can be addressed by partnering with carriers to deploy small wireless facility infrastructure.[3]

Adoption of the Declaratory Ruling and Order may call into question the validity of existing agreements, causing confusion between the parties and inviting long, protracted litigation that will only impede the rapid deployment of these critical facilities. Additionally, it may forestall any such agreements in the future, thus undermining efforts to bridge the digital divide and harming productive relationships between wireless carriers and their communities.

The Declaratory Ruling and Order also turns its back on the unique characteristics that are so essential to our communities and often give us a "sense of place"—their appearance, history, and environmental qualities. By restricting local aesthetic and historical review requirements and limiting fees that cities and municipalities can levy, the Declaratory Ruling and Order undermines the ability of cities and municipalities to exercise control over the most fundamental aspects of a locality.

It is troubling that many cities and municipalities feel like they have not been heard by the Commission in this process.[4] For example, cities, municipalities, and the public were not given an opportunity to provide feedback on the proposed presumptive fee limits. The Commission's failure to make a genuine effort to understand and take into account the perspectives of all stakeholders, including localities, raises doubts about whether the proposal in the Declaratory Ruling and Order will in fact yield the best result for consumers.

Furthermore, the lack of a real effort to consider the perspectives of cities and municipalities appears to be part of a larger alarming trend in the Commission's work to streamline wireless broadband infrastructure deployment. While the Commission convened its Broadband Deployment Advisory Committee to examine this and other issues, the body is unbalanced in its composition, lacking representatives from cities and municipalities, despite repeated concerns raised by some of us as well as state and local officials.[5]

Finally, the faulty reasoning in the Declaratory Ruling and Order alone warrants that the Commission hit pause on moving forward with this item. The item assumes the savings that wireless carriers will have from paying lower fees will result in 5G deployment investment in rural areas. Yet, there is no guarantee that the savings will result in wider deployment, and

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[2] *See* City of San Jose, CA Comments, 4, September 18, 2018, https://ecfsapi.fcc.gov/file/10918161513154/San%20Jose%20Ex%20Parte%20Letter%20%E2%80%93%20Docket%20Nos%20WT-17-79%20and%20WC-17-84.pdf; City of Los Angeles, CA Comments, 2, September 19, 2018, https://ecfsapi.fcc.gov/file/1091933119375/Ex%20Parte_City%20of%20Los%20AngelesCA.pdf.

[3] *See* City of Lincoln, NE Comments, 2, September 18, 2018, https://ecfsapi.fcc.gov/file/1091905860458/LincolnNE-letter-FCC-DeclaratoryRuling-SmallCellTech9-18-19.pdf.

[4] *See, e.g.,* County of Granville, NC Comments, 1, September 18, 2018, https://ecfsapi.fcc.gov/file/10919160096176/FCC%20Letter%20Ajit%20Pai%202018.pdf; and Village of Lake Success, NY Comments, 1, September 19, 2018, https://ecfsapi.fcc.gov/file/10919477416988/Response%20FCC%20Sept%202018.pdf.

[5] *See e.g.*, Letter to Chairman Pai, November 7, 2017, https://docs.fcc.gov/public/attachments/DOC-353132A4.pdf.

indeed the Declaratory Ruling and Order places no obligations or commitments on carriers to do so. Given the potential consumer harms that could result from hamstringing cities and municipalities, it is important that these dynamics be further explored before the Commission takes such drastic action.

We strongly hope that you will reconsider moving forward with this item and pursue a path that better balances the interests of communities and wireless carriers to maximize the benefit to consumers. Treating cities and municipalities as partners in the process now will put our nation on a path forward to winning the global race for 5G leadership.

Sincerely,

JERRY MCNERNEY
Member of Congress

MIKE DOYLE
Member of Congress

FRANK PALLONE JR.
Member of Congress

ELIOT L. ENGEL
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Member of Congress

CC: The Honorable Michael O'Rielly, Commissioner, Federal Communications Commission
The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission
The Honorable Brendan Carr, Commissioner, Federal Communications Commission