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VIA ELECTRONIC FILING

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

***Re: Build America: Eliminating Barriers to Wireless Deployments*, WT Docket No. 25-276.**

Dear Ms. Dortch,

As a telecommunications attorney, I am writing to express my grave concerns regarding the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking ("NPRM") in the matter of "Build America: Eliminating Barriers to Wireless Deployments." The NPRM makes clear that the agency is considering promulgating sweeping rules to gut State and local control over State and local government wireless telecommunications facility permitting processes – rules that far exceed its congressional authority and represent an unprecedentedly disturbing attempt to unlawfully rewrite the Telecommunications Act of 1996 ("TCA").

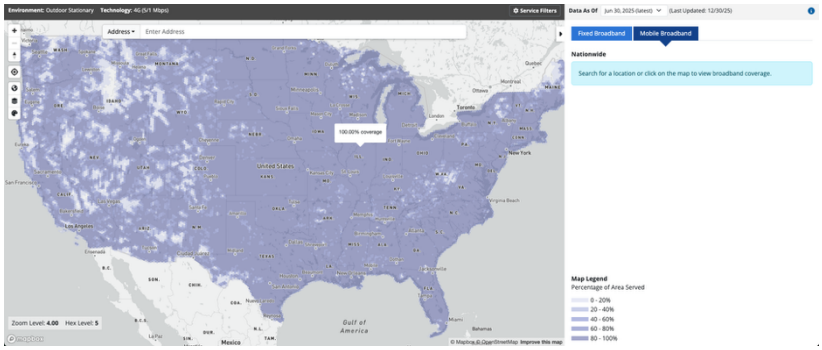
Pursuant to the TCA, Congress has granted State and local governments considerable control over "decisions regarding the placement, construction, and modification of personal wireless service facilities"; provided, of course, that the locality does not blanketly prohibit such facilities. This power is set forth in 47 U.S.C. §332(c)(7)(A) of the TCA. Subsection (7) is, in fact, titled, "Preservation of local zoning authority." The limitations of that authority imposed by Congress are set forth in Section 332(c)(7)(B) and are narrow: State and local governments (a) shall not unreasonably discriminate among providers of functionally equivalent services; and (b) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

Moreover, the State or local government shall act on any request within a reasonable period of time; and any decision shall be in writing and supported by substantial evidence contained in a written record. No State or local government may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC regulations concerning such emissions. Finally, any person adversely affected by any final action or failure to act by a State or local government may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction, and the court shall hear and decide such action on an expedited basis.

The FCC may not upset the powers prescribed by the TCA to State and local governments through ultra vires, administrative fiat. Any FCC action that would exceed the agency's congressional authority must be set aside under the Administrative Procedure Act ("APA").[1]

Wireless Telecommunications Companies Are "Crying Wolf" – Self-Reported Data Submitted by Wireless Carriers to the FCC Demonstrate Ample Fixed Broadband and Mobile Broadband Access Nationwide.

The wireless telecommunications industry likes to "cry wolf," claiming that State and local permitting reviews for proposed wireless telecommunications facilities are burdensome and present a significant hindrance to their deployments. But reality paints a very different picture. Just look at the FCC's own National Broadband Map – the product of self-reported data provided by wireless carriers operating in the United States.



FCC National Broadband Map depicting the vast availability of "Mobile Broadband" service available throughout the United States as of December 30, 2025.

[1] *See* 5 U.S.C. § 706(2).

Clearly, the vast majority of the United States can place a cell phone call. And with the emergence and widespread adoption of new technologies like Starlink, true service coverage gaps are going to be few and far between in the very near future.

We can depend on the accuracy of the FCC National Broadband Map[2] for two primary reasons: 1) many federal grant and subsidy programs rely on the FCC's National Broadband Map data to determine eligibility, funding levels, and priority areas for infrastructure deployments and 2) pursuant to the Broadband DATA Act, 47 U.S.C. §643, all Internet Service Providers ("ISPs") (including wireless carriers) are required to produce data to the FCC demonstrating their respective coverage areas throughout the entire United States under penalty of perjury. According to the Broadband DATA Act, it is "unlawful for any entity or individual to willfully and knowingly, or recklessly, submit information or data under this subchapter that is materially inaccurate with respect to the availability of broadband internet access service or the quality of service with respect to broadband internet access service."

47 C.F.R. §1.7004(d) states that each data filing provided by ISPs must include:

> [A] certification signed by a corporate officer of the provider that the officer has examined the information contained in the submission and that, to the best of the officer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct. All providers also shall submit a certification of the accuracy of its submissions by a qualified engineer. The engineering certification shall state that the qualified engineer has direct knowledge of, or responsibility for, the generation of the provider's Broadband Data Collection filing. The qualified engineer shall also certify that he or she has examined the information contained in the submission and that, to the best of the engineer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct, and in accordance with the service provider's ordinary course of network design and engineering.

Given the harsh penalties prescribed for providing inaccurate information to the FCC about a wireless carrier's coverage, the likelihood is very high that the wireless coverage data provided by Verizon Wireless, AT&T, T-Mobile, and other wireless broadband providers to the FCC to create its National Broadband Map is reliable.

The bottom line is this: Isolated areas throughout the United States lack wireless coverage due to topographical challenges, economic decisions made by wireless companies to prioritize

[2] The FCC National Broadband Map is free and publicly-available at: https://broadbandmap.fcc.gov/.

infrastructure deployments in lucrative markets, or both. Wireless service coverage gaps are *not* a symptom of the supposed 'illness' the wireless industry attributes to State and local governments.

The FCC Lacks Statutory And Constitutional Authority To Divert Wireless Siting Disputes From The Courts Into Mandatory Alternative Dispute Resolution ("ADR"). The TCA Guarantees Judicial Review Of Siting Disputes And Forecloses Mandatory ADR.

The TCA explicitly vests the courts with the responsibility to resolve wireless telecommunications siting and permitting disputes. Simply put, the FCC lacks any statutory power to mandate that such disputes be resolved through ADR.

47 U.S.C. §332(c)(7)(B)(v) provides as follows:

> Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

The statutory language is crystal clear. Thus, any attempt by the FCC to impose ADR requirements would exceed the agency's authority, rendering such rules ultra vires and void as a matter of law.

Wireless Siting Applications are Complex, Technical Submissions. Completeness Issues Often Emerge During And After Substantiative Review.

Wireless siting applications involve the interpretation and analysis of technical, complex materials. Thus, wireless facility application deficiencies are often not immediately detectable at initial intake. This reality explains why notices of incompleteness of an application are sometimes issued closer to the end of the shot clock period. Wireless applicants argue that late-stage incompleteness notices are dilatory tactics, but in my experience as a telecommunications attorney, this is patently untrue. Not once have I encountered a State or local government acting in bad faith by identifying deficiencies in an applicant's materials towards the end of the shot

clock period for the purpose of intentionally delaying, stalling, or obstructing the permitting approval process.

"Monopine" Cell Towers Generate Prodigious Quantities Of Plastic And Microplastic Pollution. As Such, The FCC Should Not Codify Language That Encourages Or Condones Monopines As A Stealth-Design Element For Wireless Telecommunications Facilities.

I would strongly advise against codifying any language that mentions the use of "monopines" (or what I like to call "Frankenpines") as a cell tower stealth-design element. Put simply, monopine cell towers are a massive point source of plastic and microplastic pollution. Wireless telecommunications companies often fail to disclose to local and State permitting authorities that the faux pine needles attached to their monopine towers are made of PVC plastic which are glued onto fiberglass reinforced plastic or PVC pine boughs, limbs, and branches. In the exposed natural environments, subject to high levels of UV radiation, dramatic shifts in temperature, high winds, ice, snow, and rain, the faux pine needles and branches rapidly degrade and break off, or shed, from the towers, creating widespread debris fields below. A 110-foot cell monopine cell tower contains approximately 5,000 pounds of plastic. The net result is that every monopine cell tower develops a debris field around the base where PVC fake pine needles and fragments and pieces of fake pine branches or limbs are scattered. This debris constitutes solid waste and is litter or is otherwise illegally dumped.

Rarely is the debris confined to the cell tower site. Falling from great heights, often between 60 feet and 170 feet, detached PVC fake pine needles, fragments, and debris are likely to be carried by the wind a considerable distance from the tower site. Moreover, because the fragments are often so small and widely dispersed, they cannot be remediated. They fall onto the ground, or wind up in drainage basins or ditches, or in the street, or on other private properties. Wireless telecommunications companies would have no ability to clean up all of the PVC debris that detached from the monopine over the uncontrolled and expansive debris field. Even if they wanted to, the companies would have no right to trespass on other private properties to attempt to recover tiny PVC fragments wherever they may land.

I have been working with a team of local activists and lawyers in Lake Tahoe, CA since 2020 that have surveyed several existing monopine sites around the Lake Tahoe, CA basin (a federally protected ecosystem). In November of 2021, volunteers documented massive amounts

of fallen, brittle PVC pine needles at the base of each monopine tower site, along with chunks of broken fiberglass reinforced plastic branches. Video footage of the debris field was collected and can be viewed at this link: https://drive.google.com/file/d/15111GU0ncs4iWCXCSiZw_iV3BWLzVbch/view.

Permitting Authorities Must Retain The Ability To Impose New Conditions As Part Of The Permit Renewal Process.

Barring State or local permitting authorities from imposing new conditions at permit renewal will be counterproductive to efforts to streamline wireless facility deployments. Faced with the prospect of permanently surrendering regulatory authority to address evolving site-specific concerns, the rule would incentivize officials to deny initial applications outright for densification projects that do not address proven significant gaps in wireless coverage. The FCC's *2018 Order*, which rejects the 'significant gap in coverage' test and permitted network densification to justify the construction of new wireless facilities, has only been recognized by the Third Circuit Court of Appeals and rested on *Chevron* deference -- a doctrine which the U.S. Supreme Court has since repudiated. Without *Chevron*, courts are free to reject the Commission's expansive reading of the TCA, and future federal circuit courts may decline to defer to the FCC altogether. The Commission therefore risks promulgating a rule that not only exceeds its statutory authority but is also unlikely to survive judicial review.

Imposing A New Condition Would Be Acceptable After A Natural Disaster Or Other Catastrophic Event Where the Eligible Facility Was Previously Authorized Because The Assumptions That Supported The Original Permit May No Longer Be Valid.

Imposing a new condition after a natural disaster or other catastrophic event alters where an eligible facility was previously authorized is appropriate because the assumptions that supported the issuance of the original building permit for the wireless facility (e.g. site stability and topography) may no longer be valid. For instance, in the case of a mudslide or flood, an updated geotechnical study addressing soil instability, subsidence, or erosion may be warranted to ensure that the previously permitted facility remains compliant with all structural engineering guidelines and safety practices given new alterations to the site's terrain. Thus, a permitting authority must retain the ability to reassess a wireless telecommunications facility's impacts to public safety, environmental resources, and adjacent properties, particularly given the intensifying effects of global warming and the increasing occurrence of natural disasters.

Adopting A Proposed "Deemed Granted" Remedy Would Exceed The FCC's Congressional Authority Under The TCA.

Installation Setback Requirements For Cell Towers And Other Wireless Facilities Are Intended To Preserve Neighborhood Character and Historic Sites, Protect Property Values, And Ensure Public Safety. Absent Specific, Codified Language Identifying RF Health Concerns As The Basis For Such Setbacks, The FCC Should Not Entertain The Wireless Industry's Imputation Of Ulterior Motives Behind Installation Setback Requirements.

It is no secret that cell towers and other wireless telecommunications facilities are industrial eyesores that devalue property values.[3] It is also no secret that cell towers and other

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[3] Numerous peer-reviewed published studies in academic journals have reached the totally unremarkable and expected conclusion that the value of residential properties decreases significantly as the distance of the property from a cell tower decreases. These studies yield consistent results in residential markets worldwide -- in the United States, in Africa, and in Oceania. Moreover, the studies find that the magnitude of the property devaluation is significantly greater if the cell tower is visible from the residential property. Several representative academic studies are presented below.

In Affuso, E., Reid Cummings, J. & Le, H., "Wireless Towers and Home Values: An Alternative Valuation Approach Using a Spatial Econometric Analysis.," *J Real Estate Finan Econ* 56, 653–676 (2018), range. https://doi.org/10.1007/s11146-017-9600-9, the authors studied sales of residential houses in Mobile, Alabama. They found that properties located within 0.72 km (2,362 ft) of the closest cell tower declined in value by 2.46% on average. Moreover, the valuation declines were as large as 9.78% for homes where the tower was visible compared to those outside the visibility range. The negative effect generally diminished with increasing distance from the tower.

A 2019 study in *The Empirical Economics Letters* examined 34,335 multiple listing service ("MLS") sales of residential homes in Savannah, Georgia during the period 2007 to 2016. The authors found that homes close to towers sell for a discount of up to 7.6% (within 500 feet of the cell tower), with the effect disappearing at a distance of 1,500 feet from the tower. The cell tower's negative impact on house price valuation was exacerbated in a declining real estate market (such as occurred in 2007-2011); the discount required to sell rose to 8.8% for houses within 500 feet of a cell tower. *See* Beck, Jason, "The Disamenity Value of Cellular Phone Towers on Home Prices in Savannah, Georgia." *The Empirical Economics Letters*, 17 (2019).

In Rajapaksa, D., W. Athukorala, S. Managi, P. Neelawala, B. Leen, V.-N. Hoang, C. Winston, "The impact of cell phone towers on house prices: evidence from Brisbane, Australia," *Environmental Economics and Policy Studies*, 20, 211-224 (2017), the authors studied property transaction data collected from two suburbs within the Brisbane City Council, adopting a spatial hedonic property valuation model. The estimated models were statistically significant, and the results revealed that proximity to cell phone towers negatively affects house values, decreasing as the distance from the tower increases.

Another recent study, Koech Cheruiyot, Nosipho Mavundla, Mncedisi Siteleki, and Ezekiel Lengaram, "Impact of proximity to cell phone tower base stations on residential property prices in the City of Johannesburg, South Africa," *International Journal of Housing Markets and Analysis* (2024) 17 (6): 1422–1442, https://doi.org/10.1108/IJHMA-12-2023-0167, focuses on Johannesburg, South Africa. The authors examined residential sales between the period 2010 and 2020 in certain suburbs to determine whether proximity to a cell tower had any effect on sales price. The authors broke down the sales by distance of the residence from the cell tower in four increments: 0-250 m; 251-500 m; 501-750 m; and 751-1,000 m. 79,691 residential sales transactions were analyzed. The authors concluded:

> The results show a significant impact on the proximity of CPTBS [cell phone tower base stations] to the residential property sale prices. However, the impact of CTPBSs on residential property prices depends on the distance of such CTPBSs from the residential

wireless facilities can collapse, catch fire, and accumulate dangerous amounts of falling ice and snow. Just yesterday, December 30, 2025, a cell tower in Palmer, Alaska snapped in half after recent high winds tore through the area.[4] In July of 2025, a 275-foot cell tower fell when a wind storm ripped through Lincoln County, South Dakota.[5] In April of 2022, a cell tower in Las Vegas, Nevada crashed down mere feet from businesses and homes.[6] In March of 2021, a cell tower collapsed and caught fire on the property of Otay Ranch High School in Chula Vista, California.[7] These incidents represent just a handful of serious cell tower public safety episodes that have been reported by media outlets in the last couple of years.

For these reasons alone, installation setback requirements for wireless facilities are essential to protect life and property by ensuring adequate fall zones, to protect property values, and to preserve the aesthetic integrity of communities nationwide. Lastly, the wireless industry has failed to provide any data or evidence demonstrating that installation setbacks by local or State governments are effectively prohibiting the provision of wireless services.

The FCC Should Not Adopt a Rule Prohibiting State And Local Requirements For Radiofrequency ("RF") Testing.

From a cost-benefit perspective, the cost of conducting independent, randomized RF compliance testing is negligible compared to the substantial public trust and accountability

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> properties. The closer to the CTPBSs a residential property is, the higher the impact that CTPBSs has on its residential sale price. In other words, the impact of proximity of CTPBBs on the residential sale prices seems to decrease as the distance from the CPTBSs increases. This was evident from the estimation results that was based on different interval distance bands of 0–250 m, 251–500 m, 501–750 m and 751–1,000 m.

The results of the academic studies simply validate common sense. When faced with the choice of buying a residence, rational consumers will demand a substantial price discount before they purchase a house close to an unsightly cell tower. They will demand a greater discount if the cell tower is visible from the residential property. As the distance from the cell tower increases (and the visibility of the cell tower diminishes, the amount of the discount needed to close the deal decreases and eventually disappears). Such results justify the need for wireless facility installation setback requirements.

[44] Joey Klecka & Freddy Wheeler, *Video: Palmer Cell Tower Snaps in Half*, Alaska's News Source (Dec. 30, 2025), https://www.alaskasnewssource.com/2025/12/30/video-palmer-cell-tower-snaps-half/?outputType=ampv.

[5] *Rural South Dakota 275-Foot SBA Communications Tower Crumples Under Force of Derecho-Like Storm*, *Wireless Estimator* (July 2025), https://wirelessestimator.com/articles/2025/rural-south-dakota-275-foot-sba-communications-tower-crumples-under-force-of-derecho-like-storm/.

[6] *Cell Phone Tower Collapses Near Nellis, Tropicana, Crashing Down Feet From Businesses, Homes*, FOX5 Vegas (Apr. 25, 2022), https://www.fox5vegas.com/2022/04/25/cell-phone-tower-collapses-near-nellis-tropicana-crashing-down-feet-businesses-homes/.

[7] *Cell Tower/Light Pole Catches Fire, Collapses in Chula Vista*, *Inside Towers* (2021), https://insidetowers.com/cell-tower-light-pole-catches-fire-collapses-in-chula-vista/.

fostered by ensuring that RF emissions generated by wireless facilities remain within FCC allowable limits. As such, State and local governments must continue to be allowed to require such testing of wireless facilities within their respective jurisdictions.

Thank you for your attention to this matter and for your consideration of my comments.

Respectfully submitted,

/s/ Zoe Berg, Esq.