



SANDRA L. WELCH
MAYOR

October 24, 2019

Mr. Ajit Pai, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: City of Coconut Creek's Comments on WIA's Petition for Rulemaking, WIA's Petition for Declaratory Ruling and CTIA's Petition for Declaratory Ruling, WT Docket No. 19-250, WC Docket No. 17-84, and RM-11849

Dear Chairman Pai,

On behalf of the City Commission of the City of Coconut Creek, Florida, I would like to express our grave concerns regarding the above petitions. Like many communities have stated in their comments, the City believes that the Federal Communications Commission ("FCC"), through previous rule making and declaratory rulings, have significantly curtailed local input on siting, construction, maintenance, and other matters involving communications infrastructure and facilities. These new petitions stand to further tie local officials' hands in the deployment of this technology to the detriment of the public good.

The City takes issue with several aspects of the petitions; however, the City is compelled to detail its opposition to the following five (5), specifically:

1. Above all others, to the extent that the petitions support preventing the City from requiring measurements of RF radiation from cell towers for compliance with FCC standards, that is simply irresponsible and unconscionable. The City receives comments and questions from the public on a monthly basis regarding the safety standards of this technology. The City has a duty to educate the public on the FCC's safety standards, and to ensure that they are complied with.

2. As a proprietary owner of five (5) large monopolies throughout the City, the proposed expansive applicability of the new 60-day shot clock and the proposed changes to the definition of "substantial change" will impair the City's rights negotiated through its private contracts.

3. The proposed "good faith" standard that triggers the new shot clock is impractical as the City receives applications from third party contractors that are blatantly incomplete, and submitted on behalf of communications service providers that are often

Chairman Pai
October 24, 2019

Page 2

undisclosed. To follow this arbitrary starting point through to its conclusion, the petitions propose to allow construction to commence prior to the issuance of building or safety code permits; this is blatantly inconsistent with the public interest.

4. The proposed removal of absolutely basic processing requirements such as: public participation and input in traditional zoning procedures (when applicable) will conflict with fundamental due process and Florida's Sunshine Laws, elimination of reasonable controls such as the property owner's consent for work completed on their property, and undercutting the City's ability to assess appropriate review fees.

5. The proposed change in camouflaging requirements significantly hurts the City's ability to successfully integrate communications facilities into the very community that they are intended to serve.

The City of Coconut Creek respectfully requests that these petitions either are denied in full or drastically scaled back in light of the practical consequences that they carry. The industry and local communities can work together without the FCC's large-scale intervention in these matters.

Sincerely,



SANDRA L. WELCH
Mayor

cc: City Commission
Karen M. Brooks, City Manager
Terrill C. Pyburn, City Attorney



KAREN M. BROOKS
CITY MANAGER

July 21, 2020

Secretary Marlene H. Dortch, Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, District of Columbia 20554

RE: City of Coconut Creek's Comments on Notice of Proposed Rulemaking in WT Docket
No. 19-250, RM-11849

Dear FCC Chairman Pai and Commissioners,

As City Manager for the City of Coconut Creek, Florida, I would like to express my belief that this rulemaking proceeding is misguided for a number of reasons. Therefore, I respectfully submit three (3) comments for the Commission's consideration.

First, the City supports the position of the National League of Cities in that the definition of "site" must be defined as that site which was last reviewed by the locality, and that an expansion of thirty (30) feet or more in any direction therefrom constitutes a "substantial change." Adoption of the interpretation offered by industry stakeholders is tantamount to issuing a blank check. If the "site" is given the industry's proffered meaning, there is no limit to a cumulative expansion greater than thirty (30) feet. For example, arguably a site could expand by ninety (90) feet in all directions through a single eligible facilities application, simply because a new lease agreement expanded the old site by sixty (60) feet and the applicant desires thirty (30) more feet, citing that further expansion as not "substantial."¹ Furthermore, as proposed, there is no limit to the number of thirty (30) foot expansions a wireless facility can undergo without triggering a review as a "substantial change;" and the potential expansion over the course of a short period of time could result in usurping an entire parcel without meaningful land use and zoning reviews that protect adjacent landowners and the City's urban planning as a whole.²

Second, should the FCC determine that a thirty (30) foot expansion is not a "substantial change," it would trample over the legislative functions of the City Commission in carrying out review of its traditional land use and zoning laws. It would also force the City Commission to choose between compliance with Florida state laws and City ordinances that mandate newspaper publications and public hearings for local land development actions, or compliance with these newly promulgated FCC rules, which circumvent

¹ Leasehold interests can be easily renegotiated and amended after the fact, without regard to zoning or other local government considerations.

² Imagine this rule of expansion applied in another context: an ordinance permitting a two (2) square foot sign in the front yard of a residentially-zoned parcel and that same land use expanding over time into a billboard. Land use laws are not governed exclusively by the profitability of an expanded use.



Page 2 of 2

RE: City of Coconut Creek's Comments on Notice of Proposed Rulemaking in WT Docket No. 19-250, RM-11849

transparency. Indeed, there is debate on whether the adoption of the industry's proposal boils down to contract zoning in violation of established Federal and Florida case law; and to make matters more complicated for localities, because of the time constraints imposed by the FCC in its Declaratory Ruling of June 9, 2020, such transactions could not be carried out in compliance with Florida's Government in the Sunshine Laws. Before taking any action, please carefully consider how these new FCC rules may place local governments in a position where they cannot follow the essential requirements of the existing applicable laws.

Last, Florida state laws and previous FCC declaratory orders permit small wireless facilities, defined by specific dimensions, to be located within public rights-of-way. What solution can the FCC offer to the City for addressing an expansion authorized as not "substantial" under its new rule, yet exceeds the limitations imposed upon a small wireless facility? An expanded facility in a right-of-way may create hazards for motoring public, violate clear zones, conflict with proximity limitations of other utilities, run afoul of the Americans with Disabilities Act, as amended, and the list goes on. In many cases, expansions have been applied for to secure back-up power sources (generators); however, a generator with hazardous and combustible materials has no place near a roadway where collisions often occur. The uniqueness of facilities located within a public right-of-way has not been adequately explored or considered under this proposed rulemaking proceeding. If any rule is to be adopted in this instance, the City submits that small wireless facilities located in a public right-of-way should be excluded from the category of "eligible facilities" as contemplated by 47 CFR §1.6100.

The City of Coconut Creek respectfully requests that the FCC refrain from any rulemaking in this instance; but should it proceed, that it adopt a rule consistent with the comments provided herein. As stated in previous comments, the City of Coconut Creek firmly believes that the industry and local communities can work together without the FCC's large-scale intervention in these matters.

Sincerely,

Karen M. Brooks
City Manager

cc: City Commission, City of Coconut Creek
Terrill C. Pyburn, City Attorney