City of Wilton Manors

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STATEMENT OF

THE HONORABLE GARY RESNICK
MAYOR, WILTON MANORS, FLORIDA

BEFORE THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

INVESTING IN AMERICA'S BROADBAND INFRASTRUCTURE: LOCAL GOVERNMENTS' EFFORTS TO SUPPORT DEPLOYMENT WHILE PROPERLY MANAGING PUBLIC RIGHTS-OF-WAY

MAY 3, 2017
WASHINGTON, DC

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Good morning, Chairman Thune, Ranking Member Nelson and members of the Committee. I am Gary Resnick, Mayor of Wilton Manors, Florida, having served on the Commission for over 18 years and Mayor since 2008. I am also a long-term member of the National League of Cities (NLC) and the National Association of Telecommunications Officers and Advisors (NATOA). The National League of Cities is the nation's oldest and largest organization representing local elected officials in America's cities and towns. NLC represents 19,000 cities and towns of all sizes across the country. The National Association of Telecommunications Officers and Advisors is the premier professional association that provides support on the many local, state, and federal communications laws, judicial decisions, and technology issues impacting the interests of local governments. The cities and towns in your states are very likely members of NLC and NATOA.

I currently serve as Vice Chair of NLC's Information Technology and Communications Committee. In addition, I have served on the Federal Communications Commission's (FCC) Intergovernmental Advisory Committee for eight years including as Chair from 2014 through 2016. The IAC provides guidance to the FCC on a broad range of issues important to state, local and tribal governments including cable franchising, public rights-of-way, facilities siting, universal service, broadband access and adoption, and public safety communications. More locally, I have served on the Board of Directors of the Florida League of Cities for 14 years and have chaired various committees for the Florida League addressing communications policies and issues. My background as an attorney with the Florida firm of GrayRobinson, representing businesses and local governments for over 20 years in connection with such communication issues, and my role as Mayor, has afforded me a unique opportunity to work effectively with public and private entities, and local citizens, focused on improving communications services.

I want to thank the Committee for calling attention to the importance of broadband deployment in our communities by holding this hearing and appreciate the opportunity to provide the unique perspective of local governments and our role in promoting broadband deployment. I want to particularly thank Senator Nelson not only for his focus on this issue, but for his excellent service for all Floridians – we are truly fortunate to have him represent us.

No one wants broadband deployment and competitive broadband choices more than local governments. We understand the opportunities that broadband presents for our local communities and our residents in terms of public safety, economic development, healthcare, entertainment and education. We are not only regulators of broadband infrastructure and services, we are also large consumers of broadband services, and sometimes even providers. In Florida, for example, the City of Gainesville has been a provider of high speed broadband service for commercial entities for many years. For years, communities of all sizes around the nation have taken innovative steps to increase the deployment of broadband infrastructure, both wired and wireless, while balancing our health, safety, and welfare concerns.

Local Successes in Broadband Infrastructure Deployment

Local governments like mine have been active partners for years now in ensuring that their residents and local businesses have access to competitive broadband choices. Siting broadband infrastructure in Florida has and is working very well. Both wired and wireless services have been deployed efficiently and effectively in communities throughout our state. While there are some areas where certain broadband wireline providers have not extended their fiber, local governments including my City have worked with service providers to encourage such build out of entire communities, usually with success.

With respect to wireless broadband infrastructure, local governments generally process applications for wireless facilities in an efficient and expeditious manner not only for the benefit of their residents, visitors, and businesses, but also for their own benefit, as wireless services are important for local governments' own communications needs. We appreciate the many benefits of expanded access to broadband options. In fact, many local governments are now actively working to deploy conduit, fiber, towers, and other communications facilities themselves, particularly in conjunction with construction projects in the rights-of-way and on public property, or are planning these for future projects. The goal of these projects is to encourage providers to offer advanced wired and wireless broadband services throughout our communities.

Cities realize that the smart deployment of infrastructure must carefully balance the needs of our industry partners with the public health, safety and welfare concerns of communities. Wireline broadband infrastructure has been built out, with wireline broadband service available throughout Florida, and indeed throughout most of the country, largely because of local governments managing their franchising authority in a responsible manner.

Similarly, the reason why wireless services and infrastructure for macro tower sites have expanded so rapidly in Florida is because local governments have enjoyed broad home rule authority to adopt appropriate land use regulations to make siting decisions that work best for their communities and applicants. Most local codes afford government staff sufficient ability to work with communications providers and infrastructure companies in a way that serves the industries' needs while addressing local land use, public safety and other concerns within their authority. This is

particularly important with respect to installing communications infrastructure in the rights-of-way, since Florida local governments are precluded under current State law from entering into agreements for the installation of facilities in the rights-of-way. The relatively recent requests to install small cell and micro cell technology infrastructure in the public rights-of-way has created new challenges as well as opportunities for local governments.

First, we should understand what we are talking about in terms of this infrastructure. I have met on numerous occasions with both providers of wireless service and infrastructure companies that do not provide service but install and manage equipment to lease to providers. We should understand that the term "small cell" does not refer to the size of the facility, but according to industry engineers, refers to the distance that the signal will reach and can be used to provide service only to small areas. The industry has described this infrastructure as "the size of a pizza box," but the type and size of such infrastructure varies greatly with some companies looking to place towers that are 120' tall in the rights-of-way, while other providers seek to site relatively small antenna sites of 6 cubic feet or less that could be collocated on existing light or utility poles. The small cell infrastructure to be located in the rights-of-way also includes equipment cabinets that may be as large as 28 cubic feet or bigger than most refrigerators in our homes. Thus, the infrastructure to be located in the rights-of-may not be anything like a pizza box but may be more like a pizza delivery vehicle located adjacent to a 120' tower, much bigger than anything else in the rights-of-way. In addition, because small cell facilities reach only small areas, the industry will look to locate a lot of such facilities particularly in densely populated areas, with each provider needing its own facilities since antennas and equipment cabinet are not shared by providers. Thus, some cities may be facing as many as 10 or more sites on one block to accommodate all carriers' small cell networks. Many local governments that have comprehensive policies in place to address macro towers and infrastructure on private and public property have not been faced previously with requests to locate this volume and size of infrastructure in the rights-of-way and thus, have to consider appropriate policies.

Some cities around the country, such as the City of San Antonio, have worked in consultation with providers to develop master agreements for the placement of such infrastructure in the rights-of-way. The City entered a master license agreement with Verizon which served as a model for other providers, to allow access to city rights-of-way and to attach equipment to certain city-owned structures for an agreed-upon fee schedule. The City found that this proactive agreement allowed Verizon and others to increase coverage and capacity, benefiting both the providers and customers, while allowing the City to protect important safety and land-use concerns, including the City's unique historical aesthetic character.

In Florida as well, there are many examples of local governments working proactively with the broadband communications and infrastructure industries to support deploying infrastructure. The City of Tampa has worked diligently to support expanding communications capabilities for its residents and businesses. The City allows wireless infrastructure on commercial buildings, and the City has leased numerous public properties for the installation of infrastructure for both wireless carriers and wireless infrastructure companies. The City also hosts over 190 free Wi-Fi hotspots and thousands of subscriber-based Wi-Fi hotspots, creating a dense, reliable network for residents and businesses. The City has committed extensive capital and resources to handling rights-of-way registration and permit applications in a timely fashion, ensuring that infrastructure is developed with minimal disruption to city streets or business operations.

The robust deployment of broadband infrastructure has occurred under existing state and federal communications laws that recognize the important role of local governments and preserve local land use authority while balancing the needs of the industry so that communications services are not effectively prohibited. I have met with many members of the infrastructure industry who candidly have stated that the reason they are seeking access to public rights-of-way as opposed to private property is that access will be quicker, especially if various state bills pass that mandate that local governments grant permits within a short time frame, and cheaper since private property landlords will require rent. From a technical standpoint, the industry has stated that there is no reason that they cannot locate small cell technology on public or private property outside of the public-rights-of-way. The communications laws were never intended to ensure that either the infrastructure or wireless carrier industry has the cheapest and quickest route available to deploy infrastructure. I would caution that such policies in new communications laws would harm competition and discourage innovation.

Important Considerations in Local Regulation

Local governments have a duty to their taxpayers to protect and manage public property and public rights-of-way for the benefit of all users. The public rights-of-way typically are not owned by local governments, but rather are held in public trust for all users of the rights-of-way, including government employees and first responders, public utilities, businesses and the travelling public. In addition to transportation, utility, public safety and land use concerns, we have other valid concerns with managing the rights-of-way, including ADA, environmental, economic development, property value, aesthetics, encouragement of collocation versus new installations, and costs for management and maintenance. Local regulation is vital to ensure that the important interests of both residents and competitive industry users of public resources are protected. This regulation actually protects the long-term viability of the industries in question. For example, if a tower company installs a tower in the rights-of-way without sufficient regard to building codes or safety of the traveling public and persons are injured or killed, no cost cutting or regulatory preemption will save that company. Appropriate local regulations that protect important interests are necessary to maintain viable provider and infrastructure industries.

Local regulations of wireless infrastructure in Florida did not come about in a vacuum. Rather, most localities have adopted land use codes that are consistent with Florida and federal statutes and regulations after considering input from the affected industries and other stakeholders. For the most part, local governments in Florida have approved infrastructure siting applications as long as there did not exist a land use reason to deny such application. Many local governments, including my City, are actively updating their codes to reflect the relatively new small and micro cell technologies that are seeking to be sited in public rights-of-way.

Local governments in Florida also have unique concerns in managing the deployment of such infrastructure in their communities. More hurricanes, tropical storms, cyclones and lightning strikes occur in Florida than any other state in the nation. In the past ten years, 38 of these storms have made landfall in Florida, causing deaths and billions of dollars of property damage. In response, communities around the state have worked hard to make their communities more resilient, by requiring that new utilities be constructed underground, and asking taxpayers to pay to underground existing overhead utilities. The residents of the Town of Palm Beach recently approved a referendum for the Town to spend tens of millions of dollars to underground utilities throughout the Town. Florida communities know very well that constructing utilities underground offers many advantages: utility service is more reliable, particularly in storms and lightning

strikes, maintenance of utilities and rights-of-ways is less costly, there is greater safety for the travelling public, community aesthetics are improved and property values increase. Further, when there are catastrophic storms, first responders and residents gain much faster access to streets, without having to wait often several days to address downed utility lines. These reasons that support utilities being constructed underground apply equally to communications infrastructure in the rights-of-way.

In addition, many Florida roads border waterways and canals. Ensuring that the rights-of-way adjacent to roads remain clear is a priority of our State's Department of Transportation as well as counties and municipalities. This is essential for drivers to pull safely off the road or to avoid accidents without submerging their vehicles. State Departments of Transportation and local governments often have such "clear zones" for public safety, requiring that no fixed objects be placed in the rights-of-way or that such areas are not constantly under construction to locate and to maintain facilities. I understand from talking to my colleagues in other states, including South Dakota, that there are similar protections in place in states that are subject to freezing ice and heavy snow storms for the safety of the travelling public. Constant construction and permanent facilities in the public rights-of-way would be just as hazardous in such communities.

Avoiding One-Size-Fits-All Federal Preemption

A one-size-fits-all federal preemption scheme, either as a result of FCC regulations or new federal legislation, cannot adequately take into account the diverse and particular needs of communities from state to state. In Florida, under current law, local governments are not able to negotiate and to enter into agreements with communications providers for access to the rights of way. My city for example, could not enter into the type of agreement that San Antonio entered with Verizon. Our only authority to address our valid concerns with use of our rights-of-way while accommodating the needs of communications providers is through our codes. Federal preemption of local governments' codes could leave Florida counties and cities without a way to address our vital interests that federal courts have determined are lawful areas for us to regulate under federal and Florida law. Because of Florida's unique law with respect to local control over rights-of-way for communications facilities, the FCC and Congress must be very cautious about interfering with local authority. There could be unintended consequences that would be harmful to the communications and infrastructure industries as a result of inappropriate federal action.

The federal government should also be careful not to pick winners and losers through law or regulation. Both the service provider and infrastructure industries have become extremely competitive, not just in Florida but around the country. Making it easier, faster, or less costly for a particular technology, competitor, or type of infrastructure to be deployed will create significant competitive advantages and harm viable competitors. If Congress or the FCC encourages particular technologies, it will remove incentives to develop better technology. For example, prioritizing the deployment of "small cell" wireless infrastructure, which covers only a small area of service may have negative consequences. Affording these technologies advantages under federal law could limit the deployment of technologies that would provide greater coverage and be less physically impactful on our environments.

Local regulations may actually incentivize advances in technology. For example, local government regulations that require collocation if feasible before a new tower can be constructed, have encouraged the industry to adopt better methods to collocate more facilities on existing towers and structures and have led to safer tower practices and more efficient use of infrastructure resources.

Local needs for hidden or stealth infrastructure have led to the development of new kinds of smart street furniture and advances in infrastructure camouflaging.
The federal government must also not ask taxpayers to subsidize these industries to boost one type of infrastructure over others. Preemption of local fees or rent for use of government-owned light and traffic poles, or fees for use of the rights-of-way amounts to a taxpayer subsidy of wireless providers and wireless infrastructure companies. There is no corresponding benefit for such taxpayers such as requiring the broadband industry to reduce consumer rates or offer advanced services to all communities within a certain time frame. While it could be said that the benefit is that the wireless provider industry will deploy 5G for consumers, there is certainly no requirement being discussed. Further, it is hard to find a public benefit by giving special concessions to an infrastructure industry that does not provide service to consumers, but earns revenue by constructing, managing and leasing infrastructure. Light and traffic poles paid for by taxpayers are not cheap. My City has had the occasion as part of roadway improvement projects to purchase many new lights poles over the past several years. In 2016, we purchased 22 new poles for Dixie Highway at a cost of $5,340 per light pole. Total cost of installation with directional bore, conductors, conduit, distribution system, etc. was $209,350. In 2012, we purchased 34 new light poles for a project on Powerline Road at a cost of $4,357.70 per pole and total cost of installation of $249,277.30, and in 2010, a similar project for installing 51 new light poles on Wilton Drive cost $344,756.90. Many of the industry advocates argue that the industry should be allowed to use such light poles for free or for as little as $15 per attachment per year. Why should our taxpayers pay for the infrastructure to be used by these for-profit companies? The onus is on Congress to negotiate on behalf of the American public, and if it offers handouts to industry, it must negotiate something tangible in turn that improves service for consumers - not just promises or predictions of increased competition in the future. As a Mayor, if I were negotiating to provide perks for certain businesses, I would certainly be expected by my constituents to get a good deal for them in turn.

In addition, during my years serving on the IAC, we devoted substantial attention to broadband adoption and why roughly 20% of the nation's households do not subscribe to broadband. Certainly access to broadband figures into this, particularly in rural and tribal areas where carriers have refused to construct infrastructure because of relatively low returns on the capital investment. However, what the IAC and the FCC have realized is that for many residents, broadband is simply not affordable. Local governments, including my City, have worked hard to make broadband available to such residents, often through federal programs such as CDBG, by setting up community centers, schools and libraries and free Wi-Fi in parks and government buildings where residents can obtain free access to broadband as well as education on how to use and not to use broadband. In any discussion about supporting infrastructure, we should not lose sight of the ultimate goal of having affordable broadband available for all residents.

Policy Recommendations for the Committee

To ensure that all Americans have reliable access to affordable, truly high-speed wireless broadband, local governments through NLC and NATOA have proposed a number of actions the federal government can take to increase competition and the reach of broadband.

- **Prioritize Local Decision-making on Infrastructure** - In addition to avoiding further federal preemption of local police powers, Congress and the FCC should encourage further local input in federal decision-making processes. The FCC's recently-formed Broadband Deployment Advisory Committee, or "BDAC," is tasked with advising the FCC as to state

laws and local ordinances to address small cell infrastructure deployment. However, I and my local government colleagues around the country have concerns since only one member out of 29 on the Committee is a local government official. With all due respect, the other members of the committee have never voted on a local government ordinance. More local government representatives should be appointed to this body.

- **Tackle Federal Barriers to Infrastructure Deployment –** This Committee has already taken numerous steps to speed wireless broadband deployment through the bipartisan MOBILE NOW Act. By freeing up federal spectrum, streamlining access to federal lands, building a database of available infrastructure, and implementing common-sense dig-once policies for federal construction, the Committee is helping to eliminate obvious barriers to deployment in federal systems. Congress could go further, particularly as it considers comprehensive infrastructure legislation, to ensure that federal transportation dollars and other federal funding programs are not restricted in a way that prohibits the inclusion of conduit or dark fiber in state and local government projects. For example, my City recently completed a multimillion dollar improvement on Dixie Highway largely with federal transportation funds. When we wanted to install conduit underground as part of that project, we were told the funds were restricted and we could not do so, even if we wanted to pay the extra labor and material costs for the conduit installation. We have a larger project commencing next year and would like to install conduit. Federal infrastructure funding programs should recognize that broadband infrastructure is a necessary part of bridge, tunnel, and roadway projects. The IAC completed a Wireless Report at the request of the FCC last December, which is maintained on the FCC's website. One of the things we realized, surprisingly, is that the FCC does not maintain remotely complete data as to macro towers that may be available for colocation. The IAC recommended that it would be a good practice for local governments and the FCC to maintain such information to collocate wireless communications facilities more easily.

- **Allow Local Governments to Use Every Tool in the Toolbox -** We need every tool in the toolbox to ensure our residents can have access to affordable, modern broadband and do not wind up subsidizing the provider and infrastructure industries without obtaining significant benefits in return. That means allowing local governments to implement innovative policies like dig-once, which reduces the cost of underground broadband infrastructure, or touch-once, which minimizes the time and disruption necessary to add new broadband providers to existing utility poles. In addition, we should have the ability to negotiate with the broadband industries. Verizon approached the City of Fort Walton Beach, FL to obtain access to government property including government infrastructure in the public rights-of-way. The City entered into an agreement with Verizon that afforded the access it needed and also provided substantial benefits for the City and its residents including market rates of over $2,000 per attachment. My City as well has negotiated for the use of public property in exchange for benefits that accrue to my City's residents. Virtually all local governments have entered into similar arrangements. Allowing local governments and industry members to work together to reach win wins is by far the best state and federal policy. Cities also need the freedom to develop municipal broadband networks, if appropriate, without outright or effective preemption that limits competition. Smaller and rural communities that have successfully developed partially or wholly publicly owned networks have found this option to be a critical lifeline in a market that does not allow private providers to realize a sufficient return on investment to serve these communities. As broadband has become a necessary component for cities to retain talent

and attract business, denying them this option ensures that they will continue to experience "brain drain" and fewer economic opportunities.

- **Education** – Finally, while we all support the goal of making broadband available for everyone, as policymakers we should be considering appropriate education on how to use and not to use broadband. We all know that broadband should not be used for certain purposes, such as identity theft, bullying, and other inappropriate but available uses. Also, not all broadband content is appropriate for all users. Many cities are educating residents on broadband. For example, my City and others often remind residents that posting something on social media is not a substitute for calling 911 in an emergency. First responders do not monitor social media. In the IAC, we often discussed the social responsibility that should accompany the technology, but those issues were not really within the FCC's scope. Perhaps they are within Congress's.

Conclusion

On behalf of the City of Wilton Manors and my colleagues with NLC and NATOA, I want to thank the Committee for inviting me to participate in this hearing today. I offer the ongoing assistance of local governments as you examine ways to increase broadband deployment responsibly across our nation. I urge you to view local governments as strong partners in ensuring that broadband services are available to all Americans.

Thank you again. I look forward to any questions you might have.