

City of Wilton Manors

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STATEMENT OF

**THE HONORABLE GARY RESNICK
MAYOR, WILTON MANORS, FLORIDA**

**BEFORE THE UNITED STATES SENATE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY,
INNOVATION AND THE INTERNET**

**REBUILDING INFRASTRUCTURE IN AMERICA:
INVESTING IN NEXT GENERATION BROADBAND**

**MARCH 13, 2018
WASHINGTON, DC**

**Mayor Gary Resnick
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Good morning, Chairman Wicker, Ranking Member Schatz, and members of the Subcommittee. I am Gary Resnick, Mayor of Wilton Manors, Florida. I'm here to speak on behalf of the National League of Cities, the nation's oldest and largest organization representing local elected officials in America's cities and towns of all sizes in your states and across the country.

I currently serve as Chair of NLC's Information Technology and Communications Committee and a member of NLC's Board of Directors. In addition, I served on the Federal Communications Commission's (FCC) Intergovernmental Advisory Committee for eight years, including as Chair from 2014 through 2016. More locally, I have served on the Board of Directors of the Florida League of Cities for 15 years and have chaired various committees for the Florida League addressing communications policies. My background as an attorney with the Florida firm of GrayRobinson, representing businesses and local governments for over 20 years in connection with 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 Senators Thune and Nelson for inviting me here to share some perspective from city leaders across the country. I'd also like to thank the Subcommittee for calling attention to the importance of broadband deployment. I particularly want to thank the members of this subcommittee for their work to advance the dig once language currently included in the FCC reauthorization bill. Common-sense bipartisan policies like dig once will help us move toward responsible broadband infrastructure deployment.

I also want to recognize my fellow local elected officials here today. We are in Washington for NLC's Congressional City Conference, and no doubt you will be hearing from my colleagues in the coming days about how sorely broadband and other infrastructure investment is needed in our communities. Affordable broadband for all Americans is vital for 21st century education, health care, economy, recreation, and public safety.

Cities Want and Need Broadband, But Obstacles Remain

City officials continue to work with our private, state, and federal partners to close the digital divide and provide the remaining disconnected 10 percent of Americans, including 39 percent of Americans living in rural areas, with access to the FCC's current benchmarked 25 Mbps/3 Mbps service, and more robust service, at affordable rates, that will be demanded by our younger generation.

Cities, perhaps more than any other level of government, understand the absolute necessity of reliable, affordable broadband for our residents and businesses. Local officials are keenly aware of the broadband gaps in their communities, driven by a lack of infrastructure investment by the private sector and broadband options that are far too costly for many residents and businesses. We are also aware of the public need for broadband, as human resources, utilities, city clerks, parks and recreation, and as we just saw only twenty miles from Wilton Manors in Parkland, Florida, police and EMS first responders absolutely need technology to do their jobs.

Despite the diligent efforts by communities across the country, these gaps in service persist and are increasing. If our goal is to ensure that all Americans have access to reliable, affordable broadband services, states and the federal government are not adopting appropriate actions consistent with that policy. I appreciate the opportunity to share with you reasons why most Americans do not have appropriate access to affordable broadband, from our local government vantage point, and offer some solutions.

- **Preemption of Local Investment** - In many states and in many FCC orders, local governments are preempted from negotiating with broadband providers or regulating broadband service. In Florida, for example, my City is prohibited from entering into an agreement with a broadband provider for use of our rights-of-way. Cities and counties in Florida also have no authority to regulate broadband service. The same holds true for state agencies, including the Florida Public Service Commission, and even the FCC. Without the ability to enter agreements or to regulate broadband providers, the only reason for a broadband provider to provide service is profit. Not all potential consumers are going to provide sufficient incentive for private investment in broadband infrastructure. It is up to government to address this gap where the market fails.

Many local governments have heard their residents' complaints and attempt to address the lack of affordable, reliable broadband either on their own with public municipal broadband networks, or by pursuing public-private partnerships. Mayors are good at getting things done. However, once again, we are preempted by industry-backed state laws that not only prohibit local governments from offering broadband, but some that require local governments that have already built taxpayer-funded networks to shut them down. NLC's Center for City Solutions and Applied Research found that in 2016, nearly half of states preempted cities from creating – or even exploring – municipal broadband networks.¹ Yet, as we have seen with the large number of successful ballot initiatives in cities in Colorado, the demand remains enormous, and needs continue to go unmet by the private sector. In Fort Collins, Colorado, the city's residents recently passed a referendum granting the city permission to build a municipal fiber network, despite industry spending nearly a million dollars campaigning against it.² Imagine how many broadband customers could have been served by those dollars, if they had not been spent fighting a local government attempt to fill a void where there was not even a private competitor.

- **Lack of Fiber Investment** - Even in urban and suburban areas, like my City, neighborhoods lack the necessary infrastructure for true in-home or business broadband. As leaps in technology move wealthy, highly profitable neighborhoods ahead, many areas are being left further and further behind. Despite offering fairly high density in eastern Broward County, Florida, and having two of the largest wireline

¹ National League of Cities. "City Rights in an Era of Preemption," February 22, 2017. Online at <http://www.nlc.org/preemption>.

² Nick Coltrain. "\$900K spent on failed fight against Fort Collins broadband," December 8, 2017, The Coloradoan. Online at <https://www.coloradoan.com/story/news/2017/12/08/fort-collins-broadband-vote-spending/934967001/>.

broadband providers competing home by home, my City does not enjoy fiber to the home, except in a few private developments that are served by smaller, nimbler providers who negotiated contracts that they feel can provide appropriate compensation for their investment. If smaller companies can manage this, why not the large incumbents? This is the same across Florida and the nation. When some potential competitors announce they will construct fiber, we see the incumbents hold press conferences to announce increased investment in fiber, but this is extremely rare, particularly as competitors pause fiber builds and cities face court challenges to prevent or delay access to utility poles. As we recently saw in the legal challenge to the City of Louisville's One Touch Make Ready ordinance, incumbents are willing to invest significant resources to maintain barriers to competition that could increase consumer choice.³

- **Our Forsaken Rural Communities** – While residents and businesses in more populated areas can generally obtain broadband service, though often at a high price, our nation's policies and actions on broadband have not closed the digital divide in rural areas. Small and rural communities are often the last to receive improved technology, because of the high cost of construction and relatively low return on investment. There is no incentive or regulatory mandate for a private company to build broadband to serve customers in areas that will not generate sufficient profits. In some communities, it may never be profitable for a private company to offer broadband. That does not mean that we are absolved of our responsibility to ensure that those residents have access to a vital modern utility.

While my home in Wilton Manors is in a relatively urban area, I also have experience with trying to obtain reliable broadband in rural Georgia for a family home. There is one landline communications provider serving the area, and it does not offer broadband. The maximum data service is 5 mbps download for about \$60 per month. Many residents in the area rely solely on wireless data. For vacationers, this may be fine. However, for families with children or people running businesses, the lack of broadband hurts educational and economic opportunities and harms economic development in these areas.

- **Financial Issues** - Even in neighborhoods with broadband infrastructure, high rates can keep families from getting and maintaining a subscription. Increased housing, medical, and educational costs make it difficult for many households to budget for broadband, despite its importance. The public libraries in my area are packed after school with children looking for a place to do their homework, since they do not have broadband access at home. While teenagers live on their smart phones, despite what the FCC may think, there are limits to what you can do on such devices and wireless broadband is similarly not affordable for many families.

While we are on the subject of money, the wireless broadband industry has been successful in getting taxpayers to subsidize the industry's access to public assets and rights-of-way. For example, in Florida, cities and counties cannot charge service providers for use of public rights-of-way. Taxpayers pay 100% of our costs to maintain the public rights-of-way. Also, we cannot charge permit fees to process applications to construct infrastructure in our rights-of-way. Taxpayers foot the bill for our staff time to review these applications. This is particularly a problem for smaller cities that do not have in-house staff

³ "Judge throws out AT&T suit against city's 'Google Fiber' proposal." Louisville Courier-Journal, August 16, 2017. Available <https://www.courier-journal.com/story/news/politics/metro-government/2017/08/16/judge-throws-out-at-t-suit-against-citys-google-fiber-proposal/573863001/>.

and pay out of pocket for outside contractors to review permits. While Florida established a communications services tax for communications providers using public rights-of-way, a portion of which is distributed to cities and counties, the providers do not pay that. Rather, the tax is paid entirely by their subscribers as line items on bills. Ironically, there is no tax on Internet service or prepaid wireless service, so the fastest growing and most profitable services that benefit the most from use of public rights-of-way contribute nothing for rights-of-way maintenance.

Also, around the country, the industry has lobbied for State legislation – and is pushing soon to be released FCC regulations - giving them access to publicly owned light and traffic poles at virtually no cost. In Florida and many other states, the maximum rate Verizon or AT&T pays is \$150/year/pole. The typical cost to our taxpayers to purchase and to install a new light pole is \$15,000. The industry pays roughly 1% of the cost and once again, taxpayers subsidize this industry’s use of public resources. Market rates for access to poles where local governments are not preempted from charging market rates are closer to \$2,000/pole/year. Given the tremendous expenses cities and counties around the U.S. are incurring, with aging infrastructure, soaring health care costs for employees and first responders, and costly improvements for public safety, this is not the time to be asking local governments’ residents to subsidize a for-profit communications industry that is hardly in need of a handout.

- **Preemption of Local Authority Over Small Cells Is Not a Silver Bullet** - While wireless providers have touted the potential of 5G, it is important to keep in mind the realities of prospective 5G networks, and the limitations of the technology. 5G deployment will not be a panacea for digital inequity in the United States, particularly in rural areas. 5G, which is still being standardized, necessitates the buildout of hundreds of thousands of small cell sites because the portion of the spectrum it uses cannot travel very far. Small cell technology is called small not because it is physically small, but because the signal covers a small area. This makes them great tools for densifying downtown networks and event venues, but terrible tools for covering sparsely populated, far-flung communities. At a conference last week, the big 4 wireless carriers announced their 5G market plans. No location in Florida, Mississippi, or South Dakota is on anyone’s plans for 2018 or 2019. They are looking at the most profitable markets, like Dallas, Atlanta, Chicago and a few others. They will not extend 5G to rural areas, nor to areas where there will not be many customers because of the high rates. Even if we eliminate all local permitting processes, and every environmental and historic review, we cannot streamline our way out of the cost to deploy broadband in rural areas.

Policy Recommendations for the Subcommittee

As the subcommittee works to promote the advancement of next-generation technology, I hope that you will also maintain focus on a core goal of ensuring that all Americans have reliable access to affordable, truly high-speed broadband. To further that goal, NLC has proposed a number of actions the federal government can take to increase broadband availability, affordability, and adoption.

- **Work in Partnership with Local Governments** - Congress and the FCC should more actively engage local governments in federal decision-making processes. Since I last testified, the FCC’s Broadband Deployment Advisory Committee (BDAC) has continued its work to create policy recommendations on broadband deployment without a sufficient balance of public and private interests. Local government

representatives are outnumbered on that committee by industry by a ratio of ten to one, and the BDAC's work on a model state code was completed behind closed doors without input from a single local government committee member.

One local official, Mayor Sam Liccardo of the City of San Jose, was driven to resign from the committee by its overwhelmingly biased process and predetermined outcomes.⁴ As Mayor Liccardo had noted in the few public meetings of the BDAC, the committee's recommendations have done nothing to address the challenges of broadband access and affordability in low-income and rural communities, despite the Commission's stated goal of closing the digital divide. When the Mayor of America's 5th largest city is not being allowed to provide meaningful input on important national policy that will affect his and all communities in the country, something is wrong with this process. We do not believe the BDAC represents a good-faith effort by the FCC to engage in meaningful dialog or create consensus around the best ways to expand broadband access. If state, tribal, and local officials are willing to volunteer their time and travel to these meetings at the expense of their communities, the FCC must take advantage of their contributions.

- **Preserve Local Authority** - I urge this Committee to avoid further preemption in legislation focused on broadband. While I understand the drive to deploy 5G infrastructure efficiently and cost-effectively, we must not subsidize one sector of the broadband industry at taxpayers' expense. Imposing new restrictions on cities such as unreasonable shot clocks, restrictions on rent for public property to "actual and direct costs," and deemed granted remedies will only ultimately harm cities' ability to manage responsibly the public rights-of-way for all users. Cities continue to face mounting pressure to provide an increasing number of critical services, yet states – and now federal – governments are restricting our ability to raise additional revenue to carry out necessary activities.

The federal government should understand that even if it adopts the industry's recommendations and preempts local governments further, cities and counties will not sacrifice residents' and businesses' health, safety and welfare by allowing infrastructure where it does not belong. Years of litigation is certainly not a good broadband policy. We best understand our communities' needs and concerns. It is foolish to try to develop national regulations for deploying broadband infrastructure without local governments having a seat at the table.

- **Strengthen Existing Federal Programs to Expand Broadband Access** - As this Committee and others work to invest in broadband infrastructure, I encourage you to focus your efforts on strengthening existing federal programs that work. Programs should be improved and updated, rather than eliminated or replaced with new systems. Every federal grant or loan comes with a certain amount of application and compliance work for eligible cities, and leveraging existing programs streamlines the process by allowing communities to use the programs they already know how to manage. For example, the Community Development Block Grant and Choice Neighborhood Grant programs are extremely flexible tools for communities that can be used for broadband planning and deployment alongside affordable housing and neighborhood improvement projects. These programs should be protected and fully funded.

⁴ Mayor Sam Liccardo, Letter to Ajit Pai, January 25, 2018, Available online at <http://www.sanjoseca.gov/DocumentCenter/View/74464>.

Congress should also support existing broadband grant and loan programs that directly distribute federal dollars to local governments and community institutions that work on broadband planning and deployment. The now-concluded Broadband Technology Opportunities Program, the U.S. Department of Agriculture's Rural Utilities Service, and the various components of the Universal Service Fund programs are important tools for closing the digital divide in unserved and underserved communities. Congress should work to ensure that these programs are sustainably funded and have the flexibility to reach as many people as possible, while also ensuring that money is spent responsibly and where it is most needed.

- **Tackle Federal Barriers to Infrastructure Deployment** - I thank the Subcommittee members for their efforts in directly addressing federal barriers to broadband infrastructure deployment. In particular, passage of the bipartisan MOBILE NOW Act and the dig once provision within the recently-passed FCC reauthorization legislation will support deployment of broadband infrastructure. 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.

NLC also encourages Congress to strengthen the federal government's role in data gathering and management to ensure that private and public investments are made where they are most needed. Congress must not only call for an update to the National Broadband Map, but ensure that agencies are adequately resourced to gather that data and that the data provided to the public is accurate. Congress should also encourage the FCC to take action on our 2016 recommendation from the Intergovernmental Advisory Committee to create and maintain a comprehensive database of facilities available for wireless infrastructure collocation, particularly macro cell towers. Collocation reduces the costs and physical imposition of wireless infrastructure in our communities, and should be encouraged as we deploy many more small cell structures. 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 touch-once, which minimizes the time and disruption necessary to add new broadband providers to existing utility poles.

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 where private providers cannot realize a high return on investment. 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. Furthermore, if the Administration and Congress wish to encourage local investment in infrastructure, removing state barriers to direct local investment in that infrastructure is an important first step.

- **Require Responsible Industry Practices**

Utility Responsibilities

Utilities such as electric and gas do not enjoy the kinds of taxpayer subsidies demanded by the wireless industry. While electric utilities enjoy access to public rights-of-way, that access comes with costs and obligations. These include permitting fees, payment for access to public property, and obligations to provide certain levels of service to everyone – even in unprofitable neighborhoods. Those utilities are also obligated to partner closely with local governments during emergencies, and to repair any damage in a timely fashion.

The City of Lincoln and other Nebraska local governments supported reducing the city’s fee per pole from its present market rate fee of around \$2,000 per pole per year to \$95, if wireless providers would agree to build out the State with 5G infrastructure starting in rural areas. According to cities in Nebraska, the industry refused, preferring to pay higher pole access rates than providing service in areas that were not profitable. The same response was received in Leon County, Florida, where Tallahassee is located. When asked at a public hearing if the industry would bring 5G to inner city areas where families lack reliable broadband access, the industry, in a surprisingly candid moment, said no, and the County Commission was advised that Florida law preempted the County from requiring such buildout.

Emergency Preparation and Recovery

We also learned a lot this year from the horrible storms that struck Texas, Florida, Puerto Rico and the Virgin Islands. Regulated electric utilities worked with local governments to better prepare for and to recover from the disasters. In Florida, after Irma, we had daily contact with electric utility representatives who were embedded in our emergency operations centers. When cities were working to remove downed trees and debris to re-install utility poles and lines, we worked 24/7 with electric utility contractors. However, since there are no regulations, we did not hear from cable and phone companies, and getting them to move their lines in streets or to restore services in some communities was a challenge. Congress should analyze what occurred in Houston and consider whether undergrounding utilities should be a national priority. It appeared that utilities and communications functioned in Houston despite the tremendous flooding because they are underground. In Florida, most communities have aerial utilities, and lost power and communications during Hurricane Irma.

Also, unlike electric utilities, such companies continue to charge when they do not deliver service after a hurricane unless the customer requests a credit, which residents found absolutely appalling. Wireless providers were nowhere to be found. With no power for towers, many communities reached out for Cells on Wheels powered by generators, but the industry was absent from recovery efforts. Perhaps FEMA should mandate such items for recovery efforts.

Rights-of-way Repair

Virtually all local governments have also had their rights-of-way and other utilities within the rights-of-way damaged by the communications industry, from the smallest cable installers to the largest incumbent providers. This is just the side effect of performing construction in the rights-of-way. However, without the proper authority to require repair and restoration, our communities suffer from unchecked water, sewer

and gas leaks, and interference with access to transportation and businesses. Local governments throughout the country require security funds, insurance, and bonds to ensure that rights-of-way and utilities are properly repaired after damage. Nonetheless, it is difficult to get these companies to do the right thing. When a contractor for Crown Castle, working on a Saturday without a permit, damaged newly installed brick pavers on Miracle Mile in Coral Gables, the city had to sue and refuse to issue new permits to get the company to pay for repairs.

Conclusion

On behalf of NLC and the City of Wilton Manors, 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, and I look forward to any questions you might have.