

June 15, 2017

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

**SUBJECT: Response to Notice of Proposed Rulemaking and Notice of Inquiry –
Accelerating Wireless Broadband Deployment by Removing Barriers to
Infrastructure Investment**

WT Docket No. 17-79

Dear Ms. Dortch:

The American Association of State Highway and Transportation Officials (AASHTO) — a nonprofit, nonpartisan association representing highway and transportation departments in the 50 states, the District of Columbia, and Puerto Rico — submits comments concerning WT Docket No. 17-79, Proposed Rulemaking concerning Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment.

AASHTO's members are committed to supporting the deployment of next generation broadband technologies that will provide smart technologies and improve economic vitality. Our members require deployment that is consistent with the primary function of state highways to provide for the safe and efficient movement of traffic, and which does not infringe upon the states' rights to allow and regulate utilities or any other non-highway use of the highway rights of way. Further, FCC action must not conflict with or restrict states' efforts to maintain highway and traffic safety and the highway's aesthetic quality. Neither shall it contradict federal, state, or local laws or regulations per 23 CFR §645.205(a) and 23 CFR §645.211(a)&(b). It is strongly recommended that FCC coordinate with the Federal Highway Administration (FHWA) to jointly consider the implications of any new or revised rules with respect to FHWA rules in 23 CFR 710.

Section II.A. of the Proposed Rulemaking – Streamlining State and Local Review – proposes measures to expedite the review of applications for wireless deployments. AASHTO members appreciate the need for rapid deployment and many already meet or exceed the proposed timeframe of the “Shot Clock.” However, each member agency

has its own application and review process. Many applications are complex for various reasons including site geography, review of the application by multiple entities, the inclusion of tens or hundreds of sites in a single application, and multiple applications arriving simultaneously or within days of each other. Agencies with a smaller number of staff are likely to be temporarily overwhelmed. Because each application review is unique, it is unreasonable to set a single shot clock deadline that applies universally to all applications. In fact, a shot clock deadline may result in more denials when it forces states to review applications at an unfeasible pace. Furthermore, granting a shot clock for wireless applicants could be detrimental to other right of way users, such as applicants for utilities and highway access points who are not offered the same advantage. Our member agencies recommend that they be allowed to set their own reasonable review process timeframes, based on state criteria and that the timeframes consider as factors the volume and complexity of applications received and how that will impact the site review process.

AASHTO members have also received many applications for wireless deployments that are incomplete or vague in their details. Processing incomplete applications requires additional time in order to communicate with applicants to gather the required information. Because of this, AASHTO members suggest that any timeframe established by the state begin at the time the agency deems an application complete, and not at the time of initial submission by the applicant.

In response to the request for comment on restricting or banning state moratoria on processing applications, AASHTO members believe it will be detrimental to both the agencies and the applicants to ban an agency's ability to issue a moratorium. The technology at issue is new, and some members are still developing their review processes. Additionally, when applications are received in bulk, a brief moratorium can provide agencies an opportunity to establish policies and allocate staffing to improve the efficiency of reviewing those applications. A moratorium, then, is sometimes necessary to ensure that all applications, both at present and in the future, are treated the same according to the law. As a result, AASHTO members recommend not banning reasonable moratoria for all, or for individual states.

Section II.B. of the Proposed Rulemaking – Reexamining National Historic Preservation Act and National Environmental Policy Act Review – proposes to streamline the review processes and effectively reduce costs for the deployment of wireless technology. The AASHTO members support this effort and the potential to combine or simultaneously conduct state and federal reviews so long as they maintain and do not compromise existing state regulations and processes. Any combined process must also recognize that each state is unique and may require an application be reviewed by various entities with authority over the site.

Our members strongly believe that their application fees are not prohibitive or unreasonable. We request the FCC refrain from any restrictions on the State's ability to

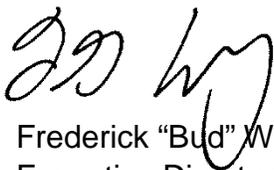
recover their actual and reasonable costs to review applications and issue permits. Restricting that ability would jeopardize the safety of our nation's highways and result in our members subsidizing the process, which may impact their ability to complete adequate reviews in a timely manner. In addition, in many states, fees are set forth by the legislature to be carried out by our members.

While wireless telecommunications offer significant benefit to their customers, many of our member states do not recognize them as a public utility. Where cellular telecommunications are not a utility, FHWA rules 23 CFR 710 Subpart D provisions require that compensation for non-highway use of interstate highway right of way be based on fair market value. In addition, at least one state's constitution requires fair market value pricing for non-transportation-related use of right of way. In the case of property not used for highway right of way, fair market value is also typically a component for determining compensation for any accommodation on or use of the land. Additionally, some highway rights of way are obtained through eminent domain for the public good; providing access to private industry in locations obtained in this manner would therefore not be allowed.

AASHTO members also recommend against allowing encroachments within the right of way or attached to state infrastructure that violate a state's rights or its agreement with the FHWA to control the right of way. These encroachments may introduce safety hazards to in-place infrastructure, compromise safe travel, affect significant environmental resources and limit an agency's ability to adequately maintain highway facilities. Additionally, many sites that have been proposed are in locations that would be logistically impossible to relocate if a highway facility needed to be widened or realigned. AASHTO members strongly recommend that applicants be required to develop and submit complete siting information and site-specific work zone plans that are consistent with an understanding of what can be realistically managed by the applicant and the states in terms of deployment, construction, and maintenance.

AASHTO appreciates the opportunity to provide comments on behalf of its members and the opportunity to work with deployers and the FCC to accelerate the deployment of wireless broadband while respecting state rights, federal law and the primary function of the state highways. If you have any questions, please contact Jim McDonnell, Program Director for Engineering, at jmcdonnell@ashto.org or 202-624-5448.

Sincerely,

A handwritten signature in black ink, appearing to read "Bud Wright", written over a circular stamp or seal.

Frederick "Bud" Wright
Executive Director