



July 29, 2017

The Honorable Byron Brown  
Mayor, Buffalo, New York  
65 Niagara Square  
Room 201  
Buffalo, New York 14202

**Re: Requesting Veto of Proposed Rules for Small Cell Attachment (Amending Ch. 440)**

Dear Mayor Brown,

On behalf of CTIA, the trade association for the wireless communications industry, I am writing to respectfully request your veto of the proposed rules for small cell attachments (amending Chapter 440 of the City Ordinances). We have concerns that the proposed rules will severely hamper industry's ability to provide superior wireless service and deploy the latest technology to the citizens of Buffalo. In addition, the proposed moratorium on the installation of new poles conflicts with federal law. Further, the proposed rules impose excessive fees for the placement of wireless infrastructure, which inhibits the ability to deploy much-needed infrastructure. For all the reasons outlined herein, we would respectfully ask for your veto.

Consumers' demands for wireless connectivity is exploding as new devices, technologies and services are continuously coming online. In 2016, wireless data traffic reached yet another record high. In all, traffic totaled 13.72 trillion MBs – the equivalent of 1.58 million years of streaming HD video – an increase of 4.07 trillion megabytes over 2015. Over the past two years, data use has increased 238 percent.<sup>1</sup>

In order to accommodate this demand, today's wireless networks need to be densified and updated in preparation for the rollout of the next generation of wireless networks, referred to as 5G. While traditional macro towers will always remain an important component of wireless technology, small cells will provide the densification needed for 5G.

Small cells are wireless antennas that are being installed on existing structures like utility poles, street lights and traffic signal poles. Small cells enhance capacity on existing 4G LTE wireless networks by efficiently using scarce spectrum and will be required for higher-frequency 5G spectrum. The Common Council's actions by outright prohibiting new small cell structures in the public rights-of-way not only conflicts with federal law but carries the very real possibility of creating areas of inadequate wireless coverage in Buffalo. Furthermore, the Common Council has stated that there are many existing poles available for wireless equipment attachments. However, it is important to note that there are many areas in Buffalo requiring additional wireless

---

<sup>1</sup>CTIA's Wireless Industry Summary Report, Year-End 2016 Results, 2017, <https://www.ctia.org/docs/default-source/default-document-library/annual-year-end-2016-top-line-survey-results-final.pdf?sfvrsn=2>, last accessed 7/28/2017.



capacity where there are no poles or the existing poles are inadequate. Wireless communications in those areas, including emergency communications, may be at risk.

To prohibit and implement a moratorium on the installation of new poles will hurt the City's ability to attract investment and realize the benefits of 5G. 5G networks will provide increased capacity to accommodate growing consumer demands and will connect 100 times more devices. Towns and cities will be able to leverage wireless technology and the Internet of Things to enable smart cities, allowing them to monitor public infrastructure and conditions and operate more cleanly and efficiently. Global smart city economic benefits are estimated to range from \$644 billion to \$1.2 trillion by 2025.<sup>2</sup>

Enactment of policies comparable to those passed by the Common Council hinder Buffalo's ability to realize these benefits. In addition to depriving the City and its citizens with enhanced network capacity and the benefits of 5G, enactment of a moratorium conflicts with federal law. Section 253(a) of the Telecommunications Act of 1996 provides that "no State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."<sup>3</sup> Similarly, Section 332 of the Communications Act states, in part, that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service."<sup>4</sup> Courts have made clear that "entry" includes the placement of wireless facilities, and, therefore, state and local agencies lack the jurisdiction to prohibit wireless infrastructure deployment. By imposing a blanket ban on new wireless infrastructure, the proposed rules would violate the Communications Act's limitations on state jurisdiction over entry for mobile services and the Telecommunications Act's ban on prohibiting entities from offering telecommunications service, and are, therefore, unlawful.

Secondly, is important to note that the proposed fees for the placement of small cells are out-of-line with recent statewide actions in other states. In fact, over the past thirteen months, twelve states have passed statewide small cell legislation both streamlining the process for small cell deployment and imposing reasonable fees for access to the public rights-of-way. None of the fees in the passed statewide bills are as high as the fees in the proposed Buffalo rules. Egregious fees of this nature will hinder the ability to expeditiously deploy small cells throughout Buffalo.

In closing, it is important to note that the wireless industry wants to meet the needs of its customers – who are also your constituents. Significant investments have been made in

---

<sup>2</sup> Sawanobori, Thomas K. "5G: The Next Generation of Wireless: 5G Leadership in the U.S." (February 9, 2016), [https://www.ctia.org/docs/default-source/default-document-library/5g\\_white-paper\\_web2.pdf](https://www.ctia.org/docs/default-source/default-document-library/5g_white-paper_web2.pdf), last accessed 7/28/2017.

<sup>3</sup> 47 U.S.C. § 253(a).

<sup>4</sup> 47 U.S.C. § 332(c)(3)(A).



infrastructure to ensure that the industry can meet this robust, growing consumer demand for wireless service and broadband.<sup>5</sup> However, in order to ensure that the wireless industry can continue to meet this demand in Buffalo, the industry's investment must be met with forward-looking infrastructure regulations that promote rapid and efficient deployment. The proposed rules do not reflect such forward-looking regulation. As such, we would respectfully ask that you veto the proposed rules for small cell attachments (amending Chapter 440 of the City Ordinances).

Sincerely,

A handwritten signature in cursive script that reads "Bethanne Cooley".

Bethanne Cooley  
Director, State Legislative Affairs  
CTIA

---

<sup>5</sup> CTIA Wireless Industry Survey, Since January 2010, wireless carriers have invested more than \$203 billion to improve their coverage and capacity and better serve Americans, with \$26.34 billion invested in 2016 alone.