Testimony of
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Oppose Unless Amended HB 1020
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Before the Maryland House Economic Matters Committee

Chairman Davis, Vice Chair Bromwell and members of the Committee, on behalf of CTIA, the trade association for the wireless communications industry, I am here to express opposition, unless substantially amended, to HB 1020. This legislation likely runs afoul of federal law, is overly broad and would significantly slow deployment of wireless infrastructure in Maryland.

The people of Maryland continue to demand – at increasing levels – access to wireless products and services. This is demonstrated by the fact that there are more wireless devices than people in Maryland.[1] In addition, over 1/3 of Maryland residents live in wireless-only households.[2] These demands from the wireless industry's customers – your constituents – require that wireless networks be both updated to meet the existing demand and readied for the next generation of wireless networks. However, as introduced, HB 1020 will significantly impede wireless carriers' ability to update our networks and provide advanced services to Maryland residents.

First and foremost, the breadth of HB 1020 is troubling. As drafted, HB 1020 seeks to impose the same siting process on all types of wireless facility deployments – whether macro towers, eligible facilities requests, small cells, DAS – equally. Treating all wireless facilities the same for siting purposes conflicts with federal law and is entirely inconsistent with laws in at least 21 other states encouraging small cell deployments.

In 2018, the Federal Communications Commission (FCC) recognized the importance of winning the global race to 5G and the need to expedite the deployment of small wireless infrastructure – often referred to as small cells – to help reach that goal. With its issuance of the State and Local Wireless Infrastructure Declaratory Ruling and Third Report and Order (Order), the FCC set guardrails – including clear timelines and cost-based fees – around state and local siting

[1] FCC, Voice Telephone Services Report: Status as of June 30, 2017, at https://www.fcc.gov/voice-telephone-services-report, last accessed 2/14/2019.
[2] CDC, National Center for Health Statistics, https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201712.pdf, last accessed 2/14/2019.

practices.[3] These reforms are timely and necessary, and they provide clarity to both communities and applicants while respecting the important role that states and localities continue to play in the siting process.

Consistent with the work of 21 state legislatures who have recognized that small cells should not be treated the same as taller macro towers, the FCC Order establishes presumptively reasonable rates for the deployment of small wireless infrastructure: $270 for all reoccurring fees, unless a locality can prove their actual costs exceed that rate. And, for non-recurring fees, $500 for the first five small cell applications, then $100 thereafter, and $1,000 for an application for a new pole intended to support a small wireless facility. As introduced, HB 1020 is in stark contrast to the FCC Order. For instance, it permits a local government to charge a pole attachment fee up to the greater of $2,500 per attachment or 2% of gross revenue "realized by the pole."

Second, HB 1020 notes that a locality "may elect" to hold a public hearing after an application is submitted for the deployment of a wireless facility. Again, treating small cells similar to the way in which a macro tower is sited – where a public hearing is appropriate for siting a macro tower – runs counter to the spirit of the FCC Order as well as the actions of 20 other state legislatures. In fact, 20 of the 21 states with enacted statewide small cell legislation, consider small cells a "permitted use," where a public hearing is not required.[4] The benefits of a permitted use system are twofold: the permitted use construct ensures that appropriate permits and applications are submitted to local government for proper oversight, but it also ensures timely deployment and adherence to the FCC's shot clock rules for small cells. Furthermore, should a locality elect to hold a public hearing for every small cell deployment, for example, it is entirely likely that the locality will violate the federal timelines for wireless facilities siting, outlined below.

Third, HB 1020 grants an unreasonably long 180-day shot clock for action by a locality on a wireless deployment permit application. And, under HB 1020, if a locality fails to act in 180 days, a wireless carrier's only recourse is to commence litigation. As introduced, the siting timelines proposed in HB 1020 run counter to various federal siting laws. Some of the federal rules for wireless facility siting are as follows:

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[3] See https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf; last accessed 2/14/2019.

[4] Delaware is the only state not considered to have "permitted use" as the Department of Transportation controls the majority of the state's rights-of-way and the zoning construct is not applicable.

- Macro Towers & Collocations – In 2009, the FCC established shot clocks requiring local governments to make final decisions on proposed wireless facilities. A decision is required within 150 days of receipt of a complete application for a new tower and within 90 days for a complete application for proposed wireless facilities on existing structures.[5]
- Eligible Facilities Request – An eligible facilities request is a request for a modification of an existing wireless tower or base station that involves removal or replacement of transmission equipment or collocation of new transmission equipment. The FCC ruled that state or local government must approve an application within 60-days with the agency inquiry limited to whether the request meets federal regulations. [6]
- Small Cells – The FCC's State and Local Order was clear in establishing new timeframes in which a locality must act on a small cell application: 60 days for an application for a small cell collocation, and 90 days for an application for new small cell builds.

In closing, CTIA and its members are very concerned with the provisions in HB 1020. HB 1020 is overly broad, imposes "one size fits all" siting treatment on all wireless facility deployments and likely runs afoul of federal law. More importantly, HB 1020 is anti-competitive. States across the country – including nearby Virginia, Delaware and North Carolina – have chosen to enact siting policies that facilitate and encourage capital investment. HB 1020 moves Maryland in the opposite direction. CTIA and its members continue to welcome the opportunity to work with the appropriate stakeholders to ensure Maryland residents receive the most advanced wireless service they deserve. However, HB 1020 is not the solution.

For all the reasons outlined herein, we respectfully oppose HB 1020 unless amended.

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[5] *See* Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance (Nov. 18, 2009), *available at*: http://apps.fcc.gov/ecfs/document/view?id=7020393456, last accessed 2/14/2019.

[6] Section 6409 of the Spectrum Act (codified at 47 U.S.C. 1455) requires a State or local government to approve any eligible facilities request for a modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station. *See* https://www.govinfo.gov/content/pkg/CFR-2016-title47-vol1/pdf/CFR-2016-title47-vol1.pdf, § 1.40001 Wireless Facility Modifications, last accessed 2/14/2019.