

United States Senate

WASHINGTON, DC 20510

January 30, 2019

The Honorable Ajit Pai
Chairman
Federal Communications Commission
Washington, DC 20554

Dear Chairman Pai,

As you know, reports have surfaced that Federal Communications Commission (FCC) staff may have encouraged wireless carriers to file suit against the September 2018 FCC rule on 5G small cell deployment. It has been alleged this was done with the goal of moving litigation out of the Ninth Circuit. What's worse, there are also allegations that FCC staff may have implicitly threatened licensees that were not helpful. If true, this represents an unprecedented level of coordination between an oversight agency and the entities it regulates for the express purpose of preventing a federal circuit court's review. We therefore ask you provide additional information about these cases and the FCC's role in them.

To date, our offices have heard from more than 60 towns and cities throughout California and Connecticut strongly opposing the FCC's *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment* Declaratory Ruling and Third Report and Order (Order).¹ Once this rule goes into effect, local governments will lose the ability to make decisions regarding where and how 5G transmission devices are affixed to light poles, traffic poles, and utility poles. The rule will also take away the ability of cities and counties to receive fair and competitive compensation from wireless carriers for use of public property. Consumer advocacy groups have also expressed their opposition to the FCC's ruling, citing the unbalanced benefit it gives to carriers and decrying the lack of commitment from carriers to reinvest cost savings in rural and underserved areas.

As you know, in October 2018, two dozen cities across the country filed suit against the FCC challenging the legality of the Order. Even though additional cases filed by wireless carriers in separate jurisdictions were eventually transferred back to the Ninth Circuit, the reason for their filing in the first place remains a concern. Pressuring entities that are regulated by the FCC to file frivolous litigation in order to

¹ Federal Communications Commission, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket 17-79 and WC Docket 17-84, Declaratory Ruling and Third Report and Order (Sept. 27, 2018).

game the system, and potentially threatening companies if they fail to comply, would be an unacceptable abuse of power and raise serious ethical concerns. Given these concerns, please answer the following questions:

1. Did any individual employed by or otherwise affiliated with the FCC discuss challenging the Order with an FCC licensee? If so, who and what was discussed?
2. Did any individual employed by or otherwise affiliated with the FCC communicate with an FCC licensee regarding that licensee's potential or actual legal challenge of the Order? If so, who and what was discussed?
3. Did any individual employed by or otherwise affiliated with the FCC threaten or take adverse action against any FCC licensee that refused to challenge the Order in court? If so, who and what was discussed?

Please provide answers no later than **Friday, February 8th**. We appreciate your responsiveness to these questions.

Sincerely,


Dianne Feinstein
United States Senator


Richard Blumenthal
United States Senator