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June 12, 2017

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

RE: WC Docket No. 17-84—Accelerating Wireline Broadband
Deployment by Removing Barriers to Infrastructure Development

Transmitted via Electronic Comments Filing System

Dear Ms. Dortch:

On behalf of the Community Associations Institute (CAI), I am pleased to respond to the Federal Communications Commission's (FCC or Commission) request for information and comments on state laws and local ordinances that may unlawfully impede the deployment of infrastructure required to expand availability and access to wireline broadband Internet service.

CAI members have a strong interest in consumer access to broadband Internet service, having embraced emerging technology to more efficiently manage community association assets and communicate with residents. These efficiencies would not be possible without access to broadband Internet service via wireless or wireline connectivity.

Consumers increasingly view the availability of highspeed Internet service at home in the same manner as access to more traditional utilities—it is expected. This demand is so prevalent that some community associations have installed broadband infrastructure to ensure each residence has access to broadband Internet service. Further, it is not uncommon for developers to install broadband infrastructure as a community is under construction. In these instances, the association operates the community's broadband infrastructure for the benefit of all association residents and homeowners. To more fully understand the role of community associations in meeting owner

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CAI is the only national organization dedicated to fostering competent, well-governed community associations that are home to approximately one in every five American households. For more than 40 years, CAI has been the leader in providing education and resources to the volunteer homeowners who govern community associations and the professionals who support them. CAI's more than 33,000 members include community association volunteer leaders, professional managers, community management firms and other professionals and companies that provide products and services to associations.

and resident demand for highspeed Internet service in their homes, additional background on the community association housing model is helpful.

About the Community Association Housing Model

Community associations are commonly known as condominium associations, homeowner associations, and housing cooperatives. Generally organized as private non-profit organizations, community associations operate pursuant to various state statutes and certain conventional real estate practices. Housing units and lots in the community are subject to a declaration of covenants (covenants, conditions, and restrictions or CC&Rs), that are enforced by a Board of Directors (Trustees or Managers in some states) comprised of homeowner volunteers elected by owners in the community. In purchasing a lot or unit in a community association, owners agree to be bound by the association's CC&Rs and bylaws.

The Foundation for Community Association Research (FCAR)¹ has documented strong consumer demand for the community association housing model over the past half century. In 2015, FCAR estimated the number of community associations nationwide at 338,000, accounting for more than 26 million housing units. There are more than 68 million community association residents, representing almost 1 in 5 households nationally.²

The value of housing units in community associations is estimated at \$5.28 trillion. In 2015, association homeowners paid \$85 billion in association assessments to fund maintenance and operation of community infrastructure. To further support community infrastructure and services, homeowners have set aside \$23 billion in reserves for the repair, replacement, and enhancement of association assets such as roofs, streets, and elevators as well as to ensure community compliance with state and federal land use and environmental requirements.³

Community Associations and Broadband Infrastructure Development

According to national research, a supermajority of community association homeowners has consistently expressed the view that enforcement of association land use policies and architectural standards protect and promote the value of properties in the association.⁴ It is therefore rather unremarkable that community associations participate in municipal hearings concerning communications infrastructure to be sited on rights of way within or adjacent to the community.

A key component of any locality's permitting process is providing interested parties the opportunity to comment on proposals to site or substantially alter existing communications facilities. Opportunities for engagement and discussion included in local statutes or permitting requirements are important to community association residents and should not be diminished.

¹ The Foundation for Community Association Research is the driving force for community association research, development, and scholarship, providing authoritative analysis on community association trends, issues, and operations.

² Foundation for Community Association Research: *Statistical Review for 2015 (Summary)*. Note: 2016 statistical information under development.

³ *Ibid*

⁴ Community Associations Institute, *Validation: Sixth National Survey Affirms Community Association Success* (May 2016, Falls Church, VA), p. 5. Available at <https://www.caionline.org/validation>.

CAI members strongly support meaningful association and homeowner engagement if a communications service provider is seeking access to a public right of way or easement that may cross association common property.

The comments below are respectfully submitted to offer Commissioners and staff insights on the concerns of community association homeowners regarding infrastructure development. While the following commentary addresses telecommunications infrastructure, the basic principles would apply to the placement of substantially similar facilities on or near community association common property.

Installing Broadband Infrastructure on Public Rights of Way or Easements in Community Associations

CAI members understand and acknowledge that use of public rights of way is necessary to expand broadband Internet service availability and close the digital divide. CAI members also believe that expanding consumer access to broadband Internet service and respect for private property rights of community association residents are not mutually exclusive.

To the extent roads in a community association are owned and operated by a municipality and utility poles are located within a public right of way, it seems an obvious policy choice to use these assets to deploy broadband infrastructure. Similarly, if telecommunications wireline facilities are located within (i.e., subterranean siting) roads owned and operated by a municipality, it is reasonable policy to permit sharing of conduit or similar siting arrangements when deploying optical fiber necessary for broadband communications.

In installing broadband infrastructure in such instances, CAI members respectfully urge the property rights of the association be acknowledged and protected by the Commission. CAI is aware of instances of telecommunications providers installing infrastructure in rights of way or easements with no regard for the impact such installations have on individual homeowners or the community association. This should not occur. Conflicts and attendant delays arising from the disregard (witting or otherwise) of the legitimate views of property owners can be avoided if a community association has opportunity to meaningfully participate in negotiations on the type and location of infrastructure to be installed.

Deference to the concerns of local homeowners in the design and siting of telecommunications infrastructure is appropriate and does not, on its face, prohibit or have the effect of prohibiting telecommunication services. This is a rational policy approach to balance the economic decision of consumers to protect the value of their greatest asset—their home—by purchasing a home or land in a community association while promoting consumer access to a competitive broadband marketplace.⁵

Community association homeowners have taken a deliberate choice to purchase a home or lot in a community precisely because association architectural standards have the effect of maintaining the visual and aesthetic attributes of the community. CAI members caution against

⁵Researchers have found that homes in community associations are generally valued at least 5 to 6 percent more than other homes. See Agan, A. & Tabarrok, A. (2005). What are private governments worth. *Regulation*, 28 (3), 14-17.

even greater preemption of state and local laws (which is already substantial) if the expanded preemptions will have the effect of reducing or eliminating the opportunity for collaboration on the siting of broadband infrastructure in community associations. If telecommunications service providers are shielded from the obligation to be responsive to the legitimate concerns of private entities such as community associations, the property rights of these owners will have been substantially degraded.

Installation of Broadband Infrastructure on Association-Owned Land

While community associations offer municipal-type services to homeowners, community associations are private entities organized to undertake activities that provide a direct benefit to privately owned property. Community associations are not local governments or instrumentalities of local governments. Community associations are not state actors in any capacity.

As private entities, community associations routinely negotiate with communications service providers for telecommunications services, including broadband Internet service. The exercise of these prerogatives is not in form or substance different from the exercise of property rights by any individual or corporate property owner. The Commission should avoid even the appearance of degrading property owners' direct control over the activities on private property.

The nature of the community association housing model demands that federal policymakers consider the impact of preemption and policy on community association operations. CAI members have noted the recent empaneling of the Broadband Deployment Advisory Committee. While there is a plethora of telecommunications service providers with representation on the Committee, there does not appear to be a representative to advocate for the 68 million residents of community associations. While CAI members will submit comments for the Committee's consideration as appropriate, it may be constructive for the Commission to consider adding to the Committee's expertise to ensure policy recommendations account for the community association housing model.

Conclusion

CAI members report that community association homeowners, as communications consumers, place high value on access to broadband Internet service at home, which in many instances requires a wire or fiber connection. Community associations continue to meet this need by installing broadband infrastructure or working with telecommunications providers to ensure resident access to broadband. This is evidenced by more and more community associations negotiating with communications service providers to site communications facilities on association owned and controlled property.

CAI notes there is sometimes friction between associations and telecommunications service providers installing infrastructure on rights of way or easements, particularly when the service provider provides only limited notice to the association and homeowners. Community association residents must be allowed opportunity for meaningful public comment and collaboration when permits are requested to site communications facilities on rights of way or

easements that will impact association property or are adjacent to the association. Telecommunications service providers must not be relieved of the obligation to work with directly impacted property owners on infrastructure installation and follow the covenants and architectural standards of the association.

CAI members urge the Commission to carefully assess the extent to which expansion of the existing federal preemption of state statutes and local laws will diminish collaboration with community associations in broadband infrastructure deployment. Just as localities should act on valid and complete permit applications to site communications facilities on appropriate rights of way, private companies seeking to install telecommunications infrastructure should not willfully ignore the concerns of local homeowners, be they association homeowners or non-association homeowners. In removing impediments to broadband deployment, the Commission should not create new impediments to accommodation of the reasonable concerns of community association residents.

Thank you for your consideration of these comments and the concerns of CAI members. If the Commission requires any additional information, do not hesitate to contact me at (703) 970-9224 or dbauman@caionline.org.

Sincerely,

A handwritten signature in black ink, appearing to read "DM Bauman", with a long horizontal flourish extending to the right.

Dawn M. Bauman, CAE
Senior Vice President, Government & Public Affairs
Community Associations Institute