I. Introduction.

We oppose the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking, Docket 25-276 (NPRM), which proposes to commandeer local governments to implement the fast-tracked, wall-to-wall deployment of wireless infrastructure desired by the FCC and its *de facto* partner, the wireless telecommunication industry. The rules and other actions that are contemplated in the NPRM would exceed the FCC's scope of authority under the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) (TCA), and violate the anti-commandeering doctrine. Equally important, if enacted, they would have devastating effects on communities like ours, because they would virtually eliminate all state and local zoning authority over macro cell towers and other wireless facilities, and effectively transfer that traditional authority to private telecommunication companies.

The rules and actions contemplated in the NPRM would functionally require local zoning authorities to approve wireless facilities without regard to regional planning, aesthetics, setbacks, cost, community character, or community input, and to do so under condensed timelines, with facilities "deemed granted" when those timelines cannot be met. This is so even though the legislative history of 47 U.S.C. § 332(c)(7) (B)(ii) directly states that Congress did not intend "this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision." *See* S. Rep. No. 104-230, at 208.

Moreover, because the rules and actions contemplated in the NPRM would require approvals regardless of fit, local authorities would be helpless to address legitimate complaints from constituents, who will ultimately bear the adverse impacts of those approvals, and who will not understand that their ire should be directed at the FCC. In light of the illegalities and myriad harms that would flow from the NPRM, we urge the FCC to abandon this effort, and begin a new one that actually considers the interests of the individuals and communities affected by each deployment proposal.

II. By Eliminating Local Authority Over Cell Towers and Giving Telecommunication Companies Ability to Determine the Fate of Communities Like Ours, the Rules and Actions Contemplated in the NPRM Would Have Devastating Consequences.

As a matter of history, law, and public policy, zoning decisions are and should be made by local authorities, who — unlike the FCC and private telecommunication companies –- are accountable to and knowledgeable about the communities affected by their decisions. Indeed, "land-use decisions are a core function of local government. Few other municipal functions have such an important and direct impact on the daily lives of those who live or work in a community." *Petersburg Cellular Pshp. v. Bd. of Supervisors*, 205 F.3d 688, 703 (4th Cir. 2000).

Local zoning authorities best understand the unique character, needs, and priorities of their communities, and use their police powers to maintain safety and infrastructure; protect the environment; protect neighborhood character; ensure quiet enjoyment of private property; maintain orderly growth; further local economic goals; stabilize property

values; and more. However, the rules and actions contemplated in the NPRM would strip communities like ours of the ability to engage in any of these core government functions when it comes to wireless infrastructure.

The NPRM proposes turning local zoning authorities into rubber stamps, creating a free-for-all for private telecommunication companies. Among other ills, the rules and actions contemplated in the NPRM would turn conditional use permitting into a ministerial process; curtail communities' authority to set fees to recoup the full costs of permitting and overseeing wireless infrastructure; override concealment and aesthetic protections and other essential tools of zoning, such as setbacks; and set accelerated deployment timelines that silence community input and overtax small, local governments like ours.

This loss of control over the siting of communications facilities would have devastating consequences. Among others,

> any number of telecommunications towers and other communications facilities could be erected in the midst of residential neighborhoods, next to schools, or in bucolic natural settings such as in the woods or on top of mountains -- areas held in high value by most communities. . . . [Loss of zoning control] would put at risk the property value of every home in the jurisdiction and create the possibility that aesthetic quality of every area in the jurisdiction would be destroyed.

Petersburg Cellular, 205 F.3d at 703.

Meanwhile, if the outcomes envisioned in the NPRM come to pass, local officials will bear the brunt of rightful citizen complaints, while the true culprint—the FCC—gets off scott free. *Cf. New York v. United States*, 505 U.S. 144, 168-69 (1992) (when local authority is commandeered to federal government ends, "it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision").

For these practical reasons, the FCC should abandon the course being contemplated in the NPRM.

III. The Rules and Actions Contemplated in the NPRM Would Exceed the FCC's Statutory Authority, and Violate the Anti-Commandeering Doctrine.

In addition to being abandoned due to their devastating effects on local communities, the rules and actions contemplated in the NPRM should be rejected because they would violate key constitutional principles: the separation of powers, federalism, and the anti-commandeering doctrine.

The TCA reflects "[t]he deliberate choice that Congress made not to preempt, but to use, state legislative processes for siting towers," and the Act "precludes the federal government from instructing the states on how to use their processes for this purpose." *Petersburg Cellular*, 205 F.3d at 704. Congress spoke very clearly when drafting Sections 253 and 332 of the TCA: under 47 U.S.C. § 253 (b) and (c), state and local

governments retain the authority (and responsibility) to protect public safety, preserve service quality, safeguard consumer rights, and manage the public rights-of-way on fair and competitively neutral terms; and under 47 U.S.C. § 332(c)(7)(A), local communities retain *full* authority over "decisions regarding the placement, construction, and modification of personal wireless service facilities," with just a few, key limitations. .

The FCC has power to act only within the boundaries of authority delegated in the TCA; in the areas where local communities *retain* authority under the TCA, the FCC has *no power* to regulate. *See generally, Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). The NPRM proposals turn Sections 253 and 332 into empty vessels and expand the few stated "limitations" in § 332(c)(7)(B) far beyond what Congress intended.

In addition, "The Federal Government may not compel the States to enact or administer a federal regulatory program." *Printz v. United States*, 521 U.S. 898, 933 (1991) (quoting *New York v. United States*, 505 U.S. at 188). This is for good reason: "when the federal government commandeers state and local legislative processes to carry out its own goals, not only is the federal power aggrandized and the state power enslaved, but also the lines of separation are blurred, causing a loss of accountability to the people and confusion by them." *Petersburg Cellular*, 205 F.3d at 701. Accordingly, the FCC may not commandeer local zoning authorities to further its regulatory program of "eliminating barriers" to wireless rollout.

The rules and actions contemplated in the NPRM would effectively transfer core zoning powers from local government to private telecommunication companies. They would exceed the scope of the FCC's delegated authority and violate the anti-commandeering doctrine by

- preempting local rules and actions that the FCC claims merely *inhibit* the deployment of wireless infrastructure (rather than effectively prohibiting such deployment);
- preempting local rules and actions that are based on legitimate zoning concerns such as aesthetics, concealment, and setbacks;
- eliminating communities' ability to use conditional use permitting as a zoning tool to promote orderly and sustainable land development;
- requiring communities to permit "densification" of 5G networks regardless of whether such densification is desired by the community;
- imposing shot-clock and "deemed granted" rules that ignore and override the realities of local government functioning;
- curtailing communities' ability to set fees that fairly reflect the true cost of permitting and allowing wireless infrastructure;
- preempting state and local regulation of AI.

IV. Conclusion

The FCC should abandon its pursuit of pro-industry rules that eviscerate local control and violate the U.S. Constitution. Instead, the Agency should turn its attention to revising its outdated RF exposure guidelines, as ordered by the D.C. Court of Appeals over four years ago. *See Envtl. Health Tr. v. FCC* 9 F.4th 893, 900 (2021).