To: [City] Mayor [Name] [eddress], Vice Mayor [Name] [eddress], City Councilmembers [Names & eddresses] City Clerk [Name] [eddress], City Manager [Name] [eddress], City Attorney [Name] [eddress], City Planner [Name] [eddress], [City Street Address]

From: [Name], on behalf of many other [City] residents, signed below

Re: Notice of 8/9/19 and 10/1/19 D.C. Circuit Court Rulings in supersession of [State Fast-track Law]; Request to Cease and Desist from Processing and Approving Applications for 4G and 5G "Small" Wireless Telecommunications Facilities ("WTFs") and from any placement, construction, modification and operations thereof, as non-compliant with, at minimum, said Rulings; and Notice of urgent need for Moratorium purposed for the preparation of an updated wireless Ordinance in accordance with extant laws and precedents.

Date: July 15, 2020 SENT BY EMAIL AND CERTIFIED USPS

Notice to Agent is Notice to Principal; Notice to Principal is Notice to Agent

Dear [City] Mayor, Vice Mayor, Councilmembers, et al,

Our local wireless Ordinance should be purposed to regulate all the activities that the U.S. Congress left in the hands of local officials: the **placement, construction, modification** and **operations of wireless facilities.** It cannot suffer any longer under misrepresentations of the 1996 Telecommunications Act (TCA), overridden FCC Rules, which are not laws, or the State [5G Fast-Track Law], based in old FCC Rules now federally adjudicated as "overreach". Laws change over time; said State Law is now unlawful. Nor may any agency or corporation block our local officials' decision-making and our access to those officials, in decision-making processes that are rightly theirs. Nor has any outside counsel authority to make law, much less interfere in our state and local contracts, as laid out in our State Constitution and TCA itself, that our local officials, alongside constituents, shall make and enforce our local laws. Officials lack authority to surrender their regulatory authorities to foreign or exogenous entities, and must take up their proper duties while disregarding false preemption attempts; even if need be, as now, declaring moratoria and standing for what they know deeply and truly to be right.

You have currently before you applications requesting authorization to place, construct, modify and/or operate small wireless telecommunications facilities — which the wireless industry has branded "small cells"— on street lights, utility poles or other street furniture in the public rights-of-way, to facilitate the deployment of a close-proximity, microwave-irradiating network enabling not only internet data and voice and text transmissions, but also surveillance, crowd-control, and personal injury by means of pulsed, data-modulated, microwave irradiation. Fortunately, contrary to rumor, local officials have wide-reaching legal authorities over these facilities, including the capacity to require Need Tests, by which claims of "significant gap in coverage" can be proven or disproven.

From our colleagues' December 12, 2019 and other discussions with Federal Communications Commission ("FCC") National Environmental Policy Act ("NEPA") attorneys Aaron Goldschmidt, Erica Rosenberg and Paul D'Ari, we've learned that **"every new [wireless telecommunications facility ("WTF")] must undergo NEPA review,"** and that WTF applications cannot be batched for such purpose.

Kindly note that briefly, from 2015 to 2019, both wireline (wired) and wireless internet transmissions fell under FCC Title II, regulated as "Telecommunications Services" under the 1996 Telecommunications Act ("TCA"). However, on October 1, 2019, the D.C. Circuit Court of Appeals in Case No, 18-1051, *Mozilla et al. v. FCC*, confirmed internet "Services" to be reclassified by the FCC as Title I, unregulated "Information Services". At present, only wireline and wireless telephone and text transmissions are classified as Title II, regulated "Telecommunications Services". Title I and Title II applications, therefore, need to be regulated

differentially by local planning boards and commissions: for example, with separate file cabinets. Ideally, in larger cities and counties, separate staff should evaluate the respective applications. This regulatory distinction means that no preemption applies to WTF applications purposed for internet transmissions. Indeed, instead of permitting WTFs, various local governments around the country have decided to supply public fiber-optics to the premises (FTTP) for internet services, which is superior in every way to wireless internet transmissions. Fiber provides the fastest, clearest transmissions over the greatest distances. It is reliable in storms and emergencies, not hackable, and emits no radiation. A decision for public FTTP can also enrich the local economy while preserving the quiet enjoyment of streets.

The [City] wireless ordinance, however, is in violation of this long and recently confirmed federal regulatory distinction; in that, without limitation, at Chapter _____, the language folds both "communications" and "information" data into one definition. This is one of many serious problems that render our [City] ordinance unlawful.

Note also that the infrastructural copper wires and almost all fiber-optic cables already in place were financed with public money and reside in public conduits or on poles in the public rights-of-way. These publicly-financed fiber-optic cables and copper wirelines cannot lawfully be claimed or used, particularly not exclusively, by unregulated private wireless companies as if they were private property, purposed for private profit. Nor can they lawfully be destroyed.

Positive ID

When the local government reviews incoming applications, its staff needs to determine the true identity ("ID") of each applicant. As obvious as this may seem, the specific agent, shell company and franchise of the wireless carrier, in practice, often fails to appear correctly on the application. This applicant entity needs to be named as its true corporate identity, e.g., not as a "dba". Listing its board of directors on the application provides local staff the necessary positive identification: requirement therefore should be added to our Ordinance.

Additionally, the entity filing application must be registered to do business in the State; so a copy of the registration with the Secretary of State in the true name of the Applicant should accompany the application. Even when these requirements do not appear in the Ordinance, the local government should refrain from permitting until such information comes forth.

Positive ID is essential for risk management: the smaller franchise, while uninsured or personally insured with few assets, holds liability passed along to it by the larger corporation. For this reason, requirement that the applicant provide proof of insurance and worthy assets needs to be added to our Ordinance. If the local government requires a master license agreement, then the Licensee under that agreement must also be the same entity as the Applicant. The certificate of insurance, which may be required by statute, ordinance, or the master license agreement, must name the Licensee as its insured – not a "dba". Should the [City Commission] find itself unable lawfully to deny an application, it must pass all liability to the applicant/permittee by requiring Commercial General Liability coverage without a "pollution exclusion".

The applicant should be required to submit a copy of the insurance policy so that a risk manager can review the actual exclusions. Since major insurance companies do not cover damages from radiofrequency/microwave (RF/MW) radiation or extreme low-frequency EMF, municipalities are coerced sight-unseen into huge liability when they permit WTFs.

Workers who construct and modify equipment are not protected by the Occupational Safety and Health Administration (OSHA), which follows the FCC guideline only "voluntarily" and does not independently monitor transmissions. Similarly, no agency checks regularly on public

microwave radiation exposures from WTFs. Since the State has failed to make these requirements, these additions to our Ordinance are necessary.

Building Codes

Typically, local governments do not give building permits to poorly designed structures that do not meet the standards and intent of local and national building codes – purposed for life, health, safety and public welfare. Equipment designed in such a way as to inflict biological harm upon the public should not be given a building permit or other permission to operate, as doing so would be in violation of the intent of established codes.

Existing standards and codes such as building codes, fire codes, general plans, and city and county guidelines, are purposed to avert harm, manage risk and liability, and protect and serve the public welfare. The failure to uphold codes constitutes malpractice – a legal liability – and is unjust to the public. The obvious precedents include authorities' handling of lead, asbestos, cigarette smoking, seatbelts and airbags, noise, flame retardants, and so on. Telecoms' aggressive intrusions into local governments often bypass these local protections, with pressures imposed upon officials to bend to the FCC's whims; however, such overreaching may be produced by, or result in, fraud.

WTFs cannot meet intent of local standards when:
· causing widespread biological harm – the root of myriad adverse health effects;
· compounding the effects of multiple, simultaneous frequency deployments, and wave amplification and peaks producing dynamic "hot spots" that are not accounted for in FCC guidelines;
· producing interacting mechanical vibrations, a form of sound and noise nuisance; ruining the quiet enjoyment of streets, the aesthetics of beautiful communities and their landscapes; and
· increasing fire risks from elevated electrical consumption of WTFs and the poorly designed Advanced Metering Infrastructure (AMI) grid, with the production of additional failure points; and from the construction and operations of industrial equipment above high-voltage electrical supply lines and near flammable trees and landscaping treated with volatile organic compound pesticides.

For your reference, the Uniform Building Code (here 1970, Part 1, Chapter 1, Section 102) states: "The purpose of this Code is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within the city and certain equipment specifically regulated herein."

The more developed 2019 California Building Code, Title 24 states in greater detail: "The purpose of this code is to establish the minimum requirements to safeguard the public health, safety and general welfare through structural strength, *means of egress* facilities, stability, access to persons with disabilities, sanitation, adequate lighting and ventilation and energy conservation; safety to life and property from fire and other hazards attributed to the built environment; and to provide safety to fire fighters and emergency responders during emergency operations."

[State] uses the [year] International Building Code [OR OTHER], which states its Intent in Chapter [citation]: ["The purpose of this code is to establish the minimum requirements to provide a reasonable level of **safety, public health and general welfare** through structural strength, *means of egress* facilities, stability, sanitation, adequate light and ventilation, energy conservation, and safety to life and property from fire, explosion and other hazards, and to

provide a reasonable level of safety to fire fighters and emergency responders during emergency operations."]

[Possibly insert particularly violational aspects of the current City ordinance here.]

State building codes may differ slightly; but, according to the U.S. Federal Emergency Management Agency (FEMA), the purpose of building codes is to "specify the minimum requirements to safeguard the **health, safety, and general welfare** of building occupants." (Emphasis added in all building code quotes.)

Therefore, under the Tenth Amendment and other federal and state provisions, any federal law, or rule, such as from the FCC, purporting to override the health, safety, and/or general welfare of the public, can and must be overridden by the local government as prior superseded.

[State] Public Nuisance Statute
Our State Statute [citation] is superseded neither by [State Fast-Track Law] nor by any federal law, and applies to wireless facilities, with their vibrational and other broadcast transmissions:

> [Quote nuisance law here.]

2019 Federal Precedents
We call to your attention that, on August 9, 2019, the D.C. Circuit Court of Appeals, in its Ruling in Case 18-1129, vacated FCC Order 18-30's deregulation of sWTFs and remanded this to the FCC. In Case 18-1129, the judges stated that "the FCC failed to justify its determination that it is not in the public interest to require review of [sWTF] deployments" and ruled that "the Order's deregulation of [sWTFs] is arbitrary and capricious."

The D.C. Circuit judges, whose Court is esteemed as superseding, and not part of, the other eleven Circuit Courts – a Court subsidiary solely to the U.S. Supreme Court and of equivalent weight in the absence of an appeal, which appeal does not exist in this case – published reasons for their 8/9/19 Ruling, concluding:

- The FCC failed to address that it was speeding densification "without completing its investigation of . . . health effects of low-intensity radiofrequency [microwave] radiation".
- The FCC did not adequately address the harms of deregulation.
- The FCC did not justify its portrayal of those harms as negligible.
- The FCC's characterization of the Order as consistent with its longstanding policy was not "logical and rational." . . . because the FCC mischaracterized the size, scale and footprint of the anticipated nationwide deployment of an 800,000-unit network of small WTFs.
- Such WTFs are "crucially different from the consumer signal boosters and Wi-Fi routers to which the FCC compares them".
- "It is impossible on this record to credit the claim that [WTF] deregulation will 'leave little to no environmental footprint.'".
- The FCC fails to justify its conclusion that small WTFs "as a class" and by their "nature" are "inherently unlikely" to trigger potential significant environmental impacts.

Therefore, this 8/9/19 D.C. Circuit Ruling renders every WTF application is [City] incomplete, where the application does not contain substantial written evidence of NEPA review. The D.C. Circuit judges provided judicial reasoning for remanding the matter back to the FCC so that

FCC could write rules specific to small WTFs "as a class". Such rules would address the need for the FCC and the wireless industry to complete Environmental Assessments ("EA") and / or Environmental Impact Statements ("EIS") for the then-anticipated nationwide deployment of an 800,000-unit network of small WTFs. This judicial reasoning pertains to the class of small WTFs that includes the antennas, radios, and ancillary equipment that are often attached to utility poles, light poles and other street furniture.

As printed in the Federal Register on 11/5/19, the repeal of FCC 18-30 — a section of the Commission's rules implementing the small WTF exemption — resulted in a lack of small WTF-specific rules on the effective date of December 5, 2019.

The nationwide deployment of 800,000 additional WTFs is clearly a federal undertaking, since the wireless industry licenses its wireless spectrum frequencies from the federal government. Every single WTF planned for [City] is part of this federal undertaking.

Until such time as any and every applicant for any WTF(s) in [CITY] places substantial written evidence in the public record proving that the applicant has completed NEPA and NHPA review for the applied-for WTF, the application remains incomplete, and any shot-clock remains stopped.

On October 1, 2019, the D.C. Circuit Court of Appeals further ruled against FCC overreach in Case 18-1051, which states on page 146, re: Restoring Internet Freedom, 33 FCC Rcd. 311 (2018) ("2018 Order"):

"[Because] the Commission's Preemption Directive, see 2018 Order ¶¶ 194–204, lies beyond its authority, we vacate the portion of the 2018 Order purporting to preempt 'any state or local requirements that are inconsistent with [the Commission's] deregulatory approach[,]' see id. ¶ 194."

This Ruling confirms that internet transmissions fall under Title I, which is regulated by localities and is not subject to the TCA or any preemption therein. However, at this time, to our knowledge, [City] officials are at present incorrectly considering applications for internet transmissions to fall under Title II.

This letter therefore urges that [City] immediately enact a Moratorium and during such cease from:

1. the processing of any and all WTF applications,
2. the placement of any new WTF,
3. the construction of any new WTF, and
4. the modification of any WTF that would result in the addition of any antenna, the alteration of frequency, or in the increase in any Effective Radiated Power (ERP) from the WTF;
5. allowing any operations of any WTF whose post-August 9, 2019 application was in any way incomplete, e.g., per required review under NEPA/NHPA, or otherwise deficient.

In connection with the above-ceased activities, you may wish to inform applicants of the D.C. Circuit Court Case 18-1129 requirement to comply with the above Rulings and NEPA and NHPA, and of the Case 18-1051 need to distinguish the Title I or Title II purpose for each application.

The following testimony from Attorney Edward B. Myers, an intervenor in Case 18-1129, was delivered at a November 19, 2019 hearing in Montgomery County, Maryland and again at a November 20, 2019 San Francisco hearing. The testimony was entered into the respective public records at each of these hearings:

"I am an attorney and was an intervenor in the D.C. Circuit Case 18-1129. I worked closely with the Natural Resources Defense Council on the briefs filed with the Court. My reading of the Court decision is summarized in the following:

"The Federal Communications Commission issued a rulemaking order on March 30, 2018 to expedite the deployment of Densified 4G/5G and other advanced wireless facilities (what the FCC called "small cell" facilities). The FCC's order exempted all of these 4G/5G facilities from two kinds of previously required review: historic-preservation review under the National Historic Preservation Act (NHPA) and environmental review under the National Environmental Policy Act (NEPA).

"On August 9, 2019, the US Court of Appeals for the District of Columbia Circuit vacated the FCC's rulemaking order. The legal effect of vacating the FCC's rule necessarily means that the prior rule was reinstated: any actions taken on the basis of the vacated rule must be reconsidered under the terms of the prior rule.

"The prior rule required the FCC to apply NEPA to the construction of 4G/5G facilities. Consequently, it is not lawful that any such facility be constructed without prior NEPA review. While other actions of Congress and the FCC have attempted to circumscribe local authority over the construction of Densified 4G/5G facilities, in light of the Court's decision, the localities are, nevertheless, within their rights to **require the sponsors of** Densified 4G/5G facilities to provide evidence that the FCC has conducted a NEPA review prior to approving any request for construction.

"Moreover, in as much as the Court's decision vacated the FCC's rule, the decision applies nationwide: its effect is not limited to the District of Columbia."

Attorney Ingrid Evans Testified at a Nov 20, 2019 San Francisco Board of Appeals Hearing:

"I would also like to add that this case that came up earlier, the United Keetoowah vs the FCC case, which was recently decided by the DC Circuit, is very instrumental here, and I think it is going to change the game on this, and I think it is something to which the Board should pay attention. It is going to be required that these small cell towers and these wireless permits be required to do an Environmental Impact. . . I would request that all of these permits be delayed until DPH has gotten back to you on the health effects and an environmental impact study has been done. Thank you."

Per this map, after the U.S. Supreme Court, the D.C. Circuit is generally considered the most prestigious of American courts. Its jurisdiction contains the U.S. Congress and many of the U.S. government agencies, and therefore is the main appellate court for many issues of American administrative and constitutional law. Its Rulings apply to the entire United States, as admitted at 3:34:55 in the public record video by Verizon Wireless Outside Counsel Paul Albritton at the San Francisco Board of Appeals on November 20, 2019: "My colleague, Melanie Sangupta, reminded me that NEPA does apply nationwide."

Further, many applications classified as "administrative" or "ministerial" at local levels are not and cannot be so classified, as increases in antenna number, power output, and frequency constitute significant, not minor, changes.

FCC Overreach

The FCC's overreach extends to its radiation exposure "guideline", which is currently under litigation in the D.C. Circuit Court of Appeals. The guideline's history involves 1980s and earlier experimentation, some of such study at once unscrupulous and irrelevant to infrastructural radiation effects upon humans. A set of ~120 pre-1990s biological studies, all of which concluded harm, were claimed falsely by the guideline-setting ANSI-IEEE Committee [American National Standards Institute (ANSI) with the Institute for Electronic and Electrical Engineers (IEEE)] to establish, in 1991, a Hazard Threshold upon which the FCC guideline was based. Unfortunately, some studies chosen to establish this Threshold beneath which no harm could purportedly occur actually did show harm at lower intensities, positively disproving the Threshold.

ANSI-IEEE Committee Chair John Osepchuk PhD has repeatedly claimed his Committee "reviewed over 20,000 studies". Out of these, ~120 were chosen to establish the Hazard Threshold. However, some of these studies showed harm even at <10% of the Hazard Threshold, indicating scientific fraud. FCC has not allowed any study published since 1990 to influence its guideline, which in any case pertains only to ambient power [flux] density, not to the many more potent biological factors, e.g., duration, modulation characteristics, wavelength in proximity to body dimensions, and the complexity of many simultaneous, overlapping signals. Nor does it consider or acknowledge, despite EPA's warning to the contrary, vulnerable subgroups in the population. Regardless, the guideline was rubber-stamped in 1996.

In the ~30 years since the setting of the "guideline", many new peer-reviewed, journal-published studies have concluded harm at much lower intensities, particularly where exposure occurs over a long period of time. With many more WTFs now operating in residential and sensitive areas such as schools, hospitals and nursing homes, vulnerable populations are being exposed to ever-increasing radiation intensities, without cease, 24-7-365. Since ongoing exposure has cumulative effects, people are incurring more serious harm, even if they are unable consciously to attribute observed impairments, illnesses and early deaths to WTFs' highly xenobiotic, pulse-modulated radiofrequency/microwave ("RF/MW") radiation exposures.

Even by the mid-1960s, the science of RF/MW radiation bioeffects was considered so well established that, on October 18, 1968, the U.S. Congress amended the Public Health Service Act in Public Law 90-602, declaring, "[T]he public health and safety must be protected from the dangers of electronic product radiation." The volume of research since that time has not only further confirmed the known effects, but has shown effects at ever lower exposure intensities.

Note, also, the FCC guideline is based upon the *averaging*, over time, of digital signals containing spikes. Averaging suppresses actual intensities – the radiation peaks that are most bioactive. The heart and brain are especially sensitive to sudden moderate to high-intensity spikes of microwaves. Pulse-modulation is a more harmful form of amplitude modulation, in which the signal is off much of the time but with peaks that last only for tiny fractions – thousandths – of a second, with as many as thousands of spikes per second. In fact, modulated waves have been shown to be more harmful than continuous or analog waves. Although a person may not be conscious of each spike of radiation, the central nervous system and every cell in the body responds in the moment, without limitation, by means of altered efflux kinetics.

The microwave auditory effect (MAE), for example, is a well-known bioeffect caused by pulsed or modulated microwaves impinging on the head. Frey et al. in 1962 demonstrated that the human auditory system is able to detect sounds generated by the absorption of microwaves impinging on the human head *at relatively low power*. A plethora of subsequent studies revealed that microwave-induced sounds are detectable across a broad range of frequencies (<0.5 GHz to 10+ GHz) *at power densities well below current FCC guidelines* using modulations consistent with those transmitted by 4G/5G wireless devices (Chou et al. 2003). It is not surprising, therefore, that 4G/5G wireless devices have been implicated as a causal factor in tinnitus, an increasingly common condition characterized by ringing, hissing, buzzing and clicking in the ears (Hutter et al. 2010).

The complex interactions of the many simultaneous, overlaid signals present in [City], particularly those in the millimeter ("mm") microwavelengths, can combine via a process known as "heterodyning" to approach or achieve resonance with the oxygen (O_2) molecule, which has a strong resonant frequency at 60 GHz – a wavelength of 5mm. Since 60 GHz is unregulated, and FCC allows anyone to place a tiny antenna upon a rooftop without official knowledge, chronic exposure to it will soon cause widespread harm. Additionally, the first harmonic of a 30 GHz signal, the second harmonic of a 20 GHz signal, and the third harmonic of

a 15 GHz signal, are 60 GHz: these are but four means by which chronic exposure to 60 GHz could occur in a "5G" world – even without a 60 GHz signal in operation. An infinite number of combinations of fundamental wavelengths and harmonics can produce 60 GHz – a yet larger infinity when considering heterodyning, as well. When O_2 molecules absorb the energy from 60 GHz radiation, the charge state of the oxygen is changed, which in turn alters its normal chemical reactivity. When signals in, for example, the 3-5 GHz range, which can penetrate roughly 1.5 cm to 9 cm into the body through the skin (with deeper penetration yet into the eyes and ears, with little or no impedance), combine to achieve this 60 GHz resonance, such signals are well within the range of blood vessels found in humans and animals. Even where perfect 60 GHz is not quite achieved, nearby frequencies of 57 – 63 GHz still affect the O_2 molecule somewhat. Alteration of the charge states of oxygen located in human or animal blood may inhibit the binding of hemoglobin with oxygen, resulting in hypoxia – a low blood-oxygen level. This constitutes the basic biophysics of O_2 resonance. Many other bioeffects of 5G millimeter waves (e.g., cataracts, stress response, skin disorders) are well-established in the extremely large body of scientific literature (Kostoff 2020).

Federal Preemption

Kindly remember that the federal Telecommunications Act of 1996 ("TCA"), at 47 U.S. Code § 332 (c)(7)(B)(4), recognizes the actual environmental effects of RF/MW radiation from WTFs, indicating by extension its recognition of actual health effects therefrom. Despite the existence of a few wrong "precedents" constituting encroachment of the Third Branch upon the Second, this Act unambiguously left the regulation of the health effects of WTFs' RF/MW radiation entirely within state and local officials' authorities, *obligating* said officials to protect their residents against health effects with regard to all related activities of WTFs: placement, construction, modification and operations.

All preemptive law can only be understood in plain reading. See 47 U.S. Code § 332 (c)(7)(B)(4):

> **"No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions."**

As you can clearly read here, all operations of all WTFs remain, and have always been, under the regulatory authorities of state and local officials. "Operations", which pertain to the RF / MW radiation transmissions of WTFs, and the transformation of electrical energy into such, were attempted to have been preempted by the authors of the original draft of TCA. However, Congress removed "operations" from the preemption clause codified at 47 U.S. Code § 332 (c)(7)(B)(4), positively leaving the regulation of operations within state and local authorities' hands, for any and all reasons and grounds: health effects, environmental effects, agricultural effects, energy conservation, atmospheric effects, weather forecasting effects, astronomy effects, aesthetic effects, historic preservation, property values, aviation safety, local and state economies, and more.

"Operations" authorities allow public officials, without limitation, to require and place fuses, filters, and fiber-optic sharing boxes on public utility poles with WTFs. Simple fuses ensure that the effective radiated power (wattage) does not exceed municipality limits, else fees can be charged. Filters reduce or eliminate from the wiring the transients or "dirty electricity" induced by WTFs into municipality electrical lines. And fiber-optic sharing boxes allow the public to make direct use of that optimal service rather than having it transformed into the poor engineering of wireless transmission.

Throughout TCA, Congress confirmed local authorities over the placement, construction, modification and operations of WTFs. The FCC allows local residents to file "controversies" when residents are at odds with their local officials regarding these activities. Claims that residents are blocked from addressing their local officials directly on these matters, i.e., claims removing or further preempting local authorities, are not in accordance with federal law, and where nevertheless in effect, require your challenge.

Legislative purposes cannot be ignored, as they supersede specific laws and rules thereunder. The primary purpose of the U.S. Congress's TCA "mobile services" is to "to promote the safety of life and property". Congress set up FCC, for, among other purposes, "promoting safety of life and property". Therefore, where a local government sees actual and potential consequences of WTFs contrary to the said purposes, it is authorized to ensure that Congressional intent is rather fulfilled.

TCA intent is further evidenced in its Conference Report, pp. 207-209:

> "The conferees also intend that the phrase 'unreasonably discriminate among providers of functionally equivalent services' will provide localities with the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even if those facilities provide functionally equivalent services. For example, the conferees **do not intend** that if a State or local government grants a permit in a commercial district, it must also grant a permit for a competitor's **50-foot tower in a residential district."**

The U.S. Congress **never intended 50-foot towers in residential areas,** nor macro-tower antennas just 6 feet off the ground. Such WTFs are clearly *ultra vires*: outside the law and beyond the intent of the underlying law, against which all FCC rules must be measured.

In a case brought by FCC itself, pertaining to the intrusiveness of radio broadcasts into homes, the U.S. Supreme Court determined in *FCC v. Pacifica Foundation, 438 U.S. 726 (1978),* that under the First Amendment of the US Constitution, people have the right not to be "assaulted" by unwanted broadcast and to "be left alone" in their homes. The decision focused on children as a class in need of special protection in the home. In commentary:

> "The government has substantial powers to regulate broadcast media because, unlike cable, it enters the privacy of the home without the intermediate step of a user choosing to opt in or opt out."

Justice Paul Stevens delivered the opinion of the Court:

> "Of all forms of communication, broadcasting has the most limited First Amendment protection. . . Broadcasts extend into the privacy of the home, and it is impossible completely to avoid."

People have the legal right to protect themselves and their children in their home from broadcast content, and therefore have as well the far more crucial right to avert physical injury from the broadcast of RF/MW radiation into their home.

Our highest Court has also taken notice of FCC overreach. According to Attorney John Bergmayer, Legal Director at Public Knowledge, as of August 1, 2019:

> "The FCC's effort to dramatically expand its power at the expense of traditional state and local government prerogatives contradicts numerous federal and state courts that have read the statute and found it contains no such broad preemption authority. It also contradicts several decisions decided by the Supreme Court last term, notably *Virginia Uranium, Inc. v. Warren* (federal jurisdiction does not extend

> beyond bounds of comprehensive federal statute to intrude on related state authority) and *Kisor v. Wilkie* (statutory interpretation that fails to identify genuine ambiguity deserves no deference)".

The preemption clause's circumscribed language is unambiguous. Claims that "environment" means what is *not* environment, and that operations are preempted though *not* preempted, are irrational, deserving no more deference than a king without clothes. Laughter might be due, were the consequences of official error not severe.

Public officials might question whether the wireless industry attorneys' demands that they dutifully parrot "Our hands are tied [by federal law]" constitute anything other than false and dangerous cultish indoctrination. The 24-year repetition of this rumor fails to substantiate it. Along with this false doctrine, industry attorneys' urgings that public officials suppress constituents' speech should be recognized as the very fronting of officials on behalf of a mob-like criminal enterprise to coerce by fraud in the inducement the placement, construction, modification and operations of WTFs that, without said *prima facie* First Amendment violation, would never have otherwise occurred. Certainly, the U.S. Congress cannot override or preempt the very Constitution that establishes its own existence, nor can it *take* from the Constitutions establishing the States, these further protected by the former's Tenth Amendment and the People's Ninth. Nor can Congress *take* building codes or oaths of office. None are preempted.

No more incoherence, absurdity or irrationality from outside counsels, please; else officials' very *standing* must be in question.

Thus, in addition to the aforelisted cessations, we finally call for the immediate cessation of such false pronouncements denying the actual, legal rights of constituents under our yet-extant, neither preempted nor preemptible [State] Constitution's Bill of Rights, our building code, and your oaths of office.

(NOTE: FOR THE BELOW PARAGRAPH, INSERT INSTEAD CONTENT FROM YOUR STATE CONSTITUTION, OTHER STATUTES, AND LOCAL OATHS OF OFFICE.)

Our [State] Constitution, [citation] states: "All political power is inherent in the people, and governments derive their just powers from the consent of the governed and are established to protect and maintain individual rights." Section 4 states, "No person shall be deprived of life, liberty, or property without due process of law." [State] Revised Statutes, [citation] provides that officers and employees be required to take the loyalty Oath of Office: "[I] do solemnly swear that I will support the Constitution of the United States and the Constitution and laws of the State of [____], that I will bear true faith and allegiance to the same and defend them against all enemies, foreign and domestic…."

May you realize constituents' full and primary rights to health, safety, property value, and a clean and energy-efficient environment; as well as their freedom from assault, warrantless surveillance, privacy invasion and data-seizure in their homes and communities, and thereby provide them the quiet enjoyment of their streets and homes.

Kindly inform us of your intent to cease from the abovelisted activities, to immediately declare a Moratorium, and to work with us to create a new, protective Ordinance for [City], in accordance with all laws, federal to local, some of whose links are here for your convenience:

Case Number 18-1129, Final Decision of the United States Court of Appeals for the District of Columbia
https://www.cadc.uscourts.gov/internet/opinions.nsf/4001BED4E8A6A29685258451005085C7/$file/18-1129-1801375.pdf

Case Number Case 18-1051 page 146, re: *Restoring Internet Freedom, 33 FCC Rcd. 311 (2018) ("2018 Order"* https://www.cadc.uscourts.gov/internet/opinions.nsf/FA43C305E2B9A35485258486004F6D0F/$file/18-1051-1808766.pdf

Telecommunications Act of 1996: https://www.congress.gov/bill/104th-congress/senate-bill/652/text

We ask you to reply by 5pm, [date].

Signed, this ____th day of July, 2020,

_____

[Name] [City] [eddress]

[Name] [City] [eddress]

[Name] [City] [eddress]

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