

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Petition for Declaratory Ruling of Missouri |) | WC Docket No. 20-46 |
| Network Alliance, LLC d/b/a Bluebird |) | |
| Network and Uniti Leasing MW LLC |) | |

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these Reply Comments in response to comments addressing the Petition for Preemption and Declaratory Ruling filed with the Federal Communications Commission (“Commission”) by Missouri Network Alliance, LLC d/b/a Bluebird Network (“Bluebird”) and Uniti Leasing MW LLC (“Uniti”) (collectively, “Petitioners”). NTCA concurs with the Petitioners and commenters who contend the cities’ imposition of rights-of-way (“ROW”) fees upon both Bluebird and Uniti for the same network and the same locations violates Section 253(a) of the Communications Act

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

because the imposition of a duplicative fee would “materially inhibit or limit” Bluebird’s ability to provide service.²

As INCOMPAS noted, applying ROW fees to the entity accessing the land subject to the ROW through deployment and maintenance of a fiber network is appropriate given the fact that the entity requires access to the ROW as part of its service offering.³ However, requiring a parent or affiliate company to lease the same ROW, for any fee, has no bearing whatsoever on the burden placed on the ROW or on any need to access the ROW. Instead, such a fee results in an unnecessary burden on the provider and parent/affiliate due to a double payment of fees for the same network, the same subscribers and the same ROW access, despite the fact that the affiliate/parent is not also providing service to subscribers or in any way accessing the ROW. Imposing a duplicative ROW fee such as those identified by Petitioners could have a negative effect on broadband deployment, contrary to the Commission’s goal of ensuring all Americans have access to broadband services.⁴ Furthermore, if this type of duplicative fee is permitted by the cities identified in the Petition, other cities could soon follow, further inhibiting the

² See Comments of The Wireless Infrastructure Ass’n, WC Docket No. 20-46 (March 23, 2020), p. 3.

³ See Comments of INCOMPAS, WC Docket No. 20-46 (March 23, 2020), p. 15 (“INCOMPAS Comments”).

⁴ See, e.g., FCC Authorizes \$521,000 to Tribal Provider to Bring Broadband to Rural Idaho, *News Release*, March 16, 2020 (“Nothing is more important at the FCC than our work toward bridging the digital divide.”). See also *Petition of Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act of 1934*, WC Docket No. 20-46 (filed Feb. 13, 2020) at p. 10 (“Petition”) (Petitioners noted that paying twice the ROW fee would preclude Bluebird “from providing telecommunications service using its existing facilities or expanding those facilities to offer additional service.”).

deployment of broadband services throughout the country.⁵ Indeed, the fact that the cities identified in the Petition imposed a duplicative ROW fee on Petitioners only after the City of Joplin did so suggests the idea that other cities would follow is not merely hypothetical. Charging duplicate ROW fees for the same network would also harm the individuals and businesses located in the communities assessing such fees as residents and businesses in those communities risk losing a telecommunications service provider, thereby reducing competition at best or eliminating access to high-speed Internet at worst.⁶

Commission preemption is warranted here due to the localities' attempt to charge a separate ROW fee for the same fiber lines serving the same customers, solely because the provider who entered into the initial ROW agreements, and who is the one providing service using the fiber, entered into an affiliate business transaction subsequent to entering into the ROW agreement. Petitioners' ownership structure has no impact whatsoever on Bluebird's delivery of service or use of the fiber used to deliver such service. Nor does such agreement in any way grant anyone other than Bluebird access to the network facilities that are subject to the ROW agreements.

The cities' concerns appear to relate purely to contractual issues surrounding the Petitioners' leaseback arrangement.⁷ Even if those concerns were valid, they are not an excuse

⁵ See INCOMPAS Comments at p. 4.

⁶ See, e.g., Comments of CenturyLink, WC Docket No. 20-46 (March 23, 2020), p. 4 (“The aggregate effect of these increases further exacerbates a carrier’s inhibition in providing telecommunications services....”).

⁷ See Comments of the Cities of Cameron, Maryville, and St. Joseph, Missouri on the Petition for Preemption and Declaratory Ruling Filed by Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC, WC Docket No. 20-46 (March 23, 2020), pp. 3-5 (describing the Cities’

to double-assess. A telecommunications provider's business transactions or business structure should have no bearing on ROW fees. The standard imposed by the Missouri municipalities – in order to be made equal among all entities – would require every entity seeking ROW access, or making changes to their ownership structure after entering into a ROW agreement, to file something akin to an FCC Form 602 Ownership Report with every locality, describing the company's ownership structure.⁸ Yet, a company's ownership structure has no bearing on a telecommunications provider's need to access a ROW. Rather, ROW fees paid by Petitioners are rightly based upon the length of fiber passing through the ROW – reflecting the relative physical imposition on the ROW. That is where the fees should end. Any attempt to charge multiple times for the same lines and the same customers is misguided and harmful to the communities being served.

For the reasons stated above, NTCA supports Petitioners' request for preemption and agrees with the commenters who encouraged the Commission to grant the Petition on an expedited basis. Granting the Petition on an expedited basis will help prevent further delay of Bluebird's ability to access the cities' ROW in order to perform any necessary maintenance of their facilities while also ensuring other municipalities do not attempt to follow the cities' harmful lead.

requirement that Petitioners obtain consent prior to entering into a transfer of control, which even when granted, must be followed by other requirements including payment of additional fees).

⁸ See INCOMPAS Comments at 10 (“Determining which AT&T, Verizon, CenturyLink, or Frontier entity actually owns a network would require a comprehensive inquiry up the corporate organization chart.”).

Respectfully submitted,



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