

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

In the Matter of)	
)	
Petition for Declaratory Ruling Filed by)	WC Docket No. 21-323
Missouri Network Alliance, LLC d/b/a)	
Bluebird Network Pursuant to Section 253)	
of the Communications Act)	
)	

**NTCA–THE RURAL BROADBAND ASSOCIATION
COMMENTS IN SUPPORT OF PETITION FOR DECLARATORY RULING**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these Comments in support of the Petition for Declaratory Ruling filed with the Federal Communications Commission (“Commission”) by Missouri Network Alliance, LLC d/b/a Bluebird Network (“Bluebird” or “Petitioner”).² Bluebird seeks preemption of the rights-of-way (“ROW”) fees imposed by the City of Columbia, Missouri as unrelated to the revenues likely to be generated

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 and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

² *Wireline Competition Bureau Seeks Comment on Petitions for Declaratory Ruling Filed Pursuant to Section 253 of the Communications Act*, Public Notice, WC Docket No. 21-323 and WC Docket No. 21-217 (Aug. 13, 2021).

from Bluebird’s network and thus effectively prohibitive of Bluebird’s plans to expand competitive broadband services within Columbia’s boundaries.³

NTCA supports Petitioner’s request for preemption as consistent with Commission rules and the Commission’s goal of encouraging and facilitating the buildout of competitive broadband facilities throughout the country. The effect of the rights-of-way practices identified by Petitioner, if allowed to proceed, would extend beyond Bluebird and have a chilling effect on other providers seeking to offer competitive broadband services, perhaps most especially small providers that do not have the resources to endure the delays or overcome the barriers described by Petitioner. Thus, any steps the Commission can take to ensure the cost, both in time and money, of broadband providers’ access to municipally-controlled rights-of-way is reasonable would benefit the individuals, businesses and schools located in those communities. This is due to the fact that providers could invest in the technologies and equipment necessary to deliver broadband or 5G services, including the fiber needed to carry the 5G traffic, instead of fees unrelated to the municipalities’ cost of granting access to the ROW.

NTCA recognizes localities’ rights to impose reasonable fees for access to ROW and to adopt reasonable practices for managing such access; however, neither the charges nor the practices identified by Petitioner are reasonable. Rather, as Bluebird demonstrated, Columbia’s fees are not limited to Columbia’s cost of managing the ROW but instead include “the City’s costs associated with: (1) ‘permit related review and inspections’; and (2) repair and restoration

³ *Petition of Missouri Network Alliance, LLC d/b/a Bluebird Network for Preemption and Declaratory Ruling Pursuant to Section 253(d) of the Communications Act*, WC Docket No. 21-323 (filed May 10, 2021) (“Bluebird Petition”).

The ROW fees and practices identified by Bluebird have no basis in Commission rulings on such practices and impose a significant chilling effect on providers' ability to offer broadband or other technology services to the communities. Notably, NTCA members have repeatedly cited the cost of deployment as the largest barrier to fiber deployment, even without the kinds of exclusive access or unrealistic fees imposed by Columbia.⁴ Consequently, permitting the ROW practices identified by Petitioner would make broadband deployment and the backbone necessary to carry next generation technologies infeasible, to the detriment of individuals and businesses living and working in those communities.

The Commission has previously determined that fees for access to municipally-controlled ROW for the purposes of 5G infrastructure installation should be “nondiscriminatory and represent a reasonable approximation of the locality’s reasonable costs.”⁵ Nearly a year ago, the Commission found that cities’ attempts to impose duplicative ROW fees on the same entity violated Section 253(a) of the Communications Act and were thus preempted. Specifically, the Commission reaffirmed its authority under the Communications Act to preempt any state or local actions “that have the effect of prohibiting the ability of any entity to provide

⁴ See 2020 NTCA Broadband Internet Availability Survey Report (Dec. 2020), p. 15, available at <https://www.ntca.org/sites/default/files/documents/2020-12/2020%20Broadband%20Survey%20Report.pdf> (88.7% of survey respondents cited “Cost of Deployment” as a significant barrier to deployment); 2019 NTCA Broadband Internet Availability Survey Report (Dec. 2019), p. 17, available at <https://www.ntca.org/sites/default/files/documents/2019-12/2019%20Broadband%20Survey%20Report.pdf> (91.4% of survey respondents cited “Cost of Deployment” as a significant barrier to deployment) (last visited Sep. 10, 2021).

⁵ *Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17- 84, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, FCC 18-111 (rel. Aug. 3, 2018), ¶ 11.

telecommunications services.”⁶ Accordingly, Commission preemption is likewise warranted here due to the municipality’s attempt to engage in ROW practices that directly contradict these fundamental requirements.

Respectfully submitted,



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⁶ *Missouri Network Alliance, LLC d/b/a Bluebird Network and Uniti Leasing MW LLC*, Declaratory Ruling, WC Docket No. 20-46 (Nov. 9, 2020), ¶ 6.