To: Woodstock Town Supervisor

From: Stephen P. Romine

Re: Notice of Appellate Decision relevant to, and Notice of Cease and Desist from, Processing and Approving Applications pertaining to all 4G and 5G Small Wireless Telecommunications Facilities ("sWTFs"), and from any placement, construction, modification and operations thereof, as non-compliant with 8/9/19 Case 18-1129 Ruling

Date: February 1, 2020 SENT BY USPS

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

Dear Bill McKenna:

You have currently before you, or soon will have, applications submitted to you or your staff, requesting authorization to place, construct, modify and/or operate small Wireless Telecommunications Facilities ("sWTFs") — 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 irradiation. From our colleagues' discussions with Federal Communications Commission ("FCC") NEPA-specializing attorneys, 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 internet transmissions formerly fell under FCC Title 2, regulated; but, as of late in 2019, fall under FCC Title 1, unregulated. Voice and text transmissions still fall under Title 2. Regulated differentially, Title 1 and Title 2 applications might well receive, respectively, of local planning boards and commissions

separate file cabinets; and in larger cities, separate offices. This regulatory distinction means 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), which is superior in every way to wireless internet transmissions, and which can enrich the local economy.

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 cannot lawfully be claimed or used, particularly not exclusively, by unregulated private wireless companies as if they were private property purposed for private profit.

We call to your attention that, on August 9, 2019, the DC Circuit Court of Appeals, in its Ruling in Case 18-1129 (copy of which is attached hereto) **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 DC Circuit judges, whose Court is esteemed as superseding the other Circuit Courts and only subsidiary to the U.S. Supreme Court, 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 800,000-unit network of sWTFs.

- Such sWTFs 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 [sWTF] deregulation will 'leave little to no environmental footprint.'".
- The FCC fails to justify its conclusion that sWTFs "as a class" and by their "nature" are "inherently unlikely" to trigger potential significant environmental impacts.

Therefore, this 8/9/19 DC Circuit Ruling renders every sWTF application in Woodstock, Ulster County, New York incomplete in that the FCC has not yet addressed the remanded issues. The Court set expectations that the FCC write rules specific to sWTFs "as a class" that address the need for the FCC and the wireless industry to complete Environmental Assessments ("EA") and / or Environmental Impact Statements ("EIS") for the anticipated nationwide deployment of an 800,000-unit network of sWTFs. Such rules, in addition to analyses and reviews, appear to be required by the National Environmental Policy Act of 1969 (NEPA). This 8/9/19 Ruling pertains to the class of sWTFs 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 sWTF exemption — resulted in a lack of sWTF-specific rules on the effective date of December 5, 2019.

The anticipated nationwide deployment of 800,000 additional sWTFs is clearly a federal undertaking, since the wireless industry licenses its wireless spectrum frequencies from the federal government. Every single sWTF planned for Woodstock, Ulster County, New York is part of this federal undertaking.

Until such time as the applicants for any and all sWTFs in Woodstock, Ulster County, New York place substantial written evidence in the public record proving that the FCC has written rules specific to sWTFs "as a class" and has completed any required EA

and / or EIS for the anticipated nationwide deployment of an 800,000-unit network of sWTFs, every sWTF application in Woodstock, Ulster County, New York remains incomplete, stopping all shot-clocks.

On October 1, 2019, the DC 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 pre-empt 'any state or local requirements that are inconsistent with [the Commission's] deregulatory approach[,]' see id. ¶ 194."

This letter therefore demands that Woodstock, Ulster County, New York cease and desist from:

1. the processing of any and all sWTF applications,
2. the placement of any new sWTF,
3. the construction of any new sWTF, and
4. the modification of any sWTF 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 sWTF.

In connection with the above-ceased activities, you may wish to inform applicants of the DC Circuit Court Case 18-1129 requirement to comply with the above Rulings and NEPA. The Court repealed the NEPA preemption in FCC Order 18-30. No sWTF shot-clocks can be tolled by Woodstock, Ulster County, New York until further notice.

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 DC 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 Keetowah 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, and that is something that should be done. 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."

Kindly remember that the federal Telecommunications Act of 1996 ("TCA"), at 47 U.S. Code § 332(c)(7)(B)(iv), recognizes the actual environmental effects of radiofrequency / microwave ("RF/MW") radiation from wireless communications facilities ("WCFs"), 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 WCFs' 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 WCFs: placement, construction, modification and operations.

In plain reading:

"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."

All operations of all WCFs – as well as new 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 at 47 U.S. Code § 332(c)(7)(B)(iv), 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.

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 you see actual and potential consequences of WCFs or new WTFs contrary to the said purposes, you are 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 the intent of the underlying law, against which all FCC rules must be measured.

The U.S. Supreme Court has, of course, taken notice of FCC overreach. According to Attorney John Bergmayer, Legal Director at Public Knowledge, 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 ignorance not severe.

Public officials might question whether the wireless industry attorneys' demand that they dutifully parrot "Our hands are tied [by federal law]" does not constitute anything more than cultish indoctrination. The 24-year repetition of this rumor does not substantiate it. Certainly the U.S. Congress cannot override the very Constitution that establishes its own existence, nor can it override the state constitutions protected by the former's Tenth Amendment and the People's Ninth. Therefore this letter finally calls for immediate cessation of such false pronouncement denying the actual, legal rights of individuals under officials' yet-extant, neither

preempted nor preemptible oaths of office, and rather aim for the realization of the full rights of the individual in his or her home and community.

Kindly inform us of your intent to cease and desist from the above-cited activities.

Signed,

Stephen P. Romine

P.O. Box 657

Woodstock, NY

12498

845-532-5120