



January 17<sup>th</sup>, 2018

Honorable Jeff Morris  
Chair, House Technology & Economic Development Committee  
436A Legislative Building  
PO Box 40600  
Olympia, WA 98504

Honorable Shelley Kloba  
Vice Chair, House Technology & Economic Development Committee  
132A Legislative Building  
PO Box 40600  
Olympia, WA 98504

**RE: House Bill 2592 – Support for Cost-Based Fees**

Dear Chairman Morris and Vice Chair Kloba,

On behalf of CTIA, the trade association for the wireless communications industry, I am writing regarding House Bill 2592. CTIA supports the provisions within House Bill 2592 providing for a cost-based fee for attachments to municipal structures.

The people of Washington continue to demand – at increasing levels – access to wireless products and services. This is demonstrated by the fact the number of wireless subscribers in Washington has grown 15% since 2010, amounting to over 6.9 million subscribers, and that over 50% of Washingtonians live in wireless-only households <sup>1,2</sup> These demands from the wireless industry’s customers – your constituents – require that wireless networks be updated today and readied for the next generation of wireless technology.

Small wireless infrastructure – also known as small cells – are being deployed today nationwide to accommodate consumers’ insatiable demand for mobile data and ready the networks for the next generation of wireless, called 5G. In order to meet that demand and expeditiously provide service to customers, wireless carriers need a predictable, efficient and cost-based process for bringing small cells to the market. As such, the imposition of cost-based fees is a proper mechanism.

While there is also reference to “fair market rent” in House Bill 2592, it is important to note that CTIA does not believe that the concept of “fair market rent” actually applies in the realm of

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<sup>1</sup> FCC, Voice Telephone Services Report: Status as of June 2015, August 2016, at <https://www.fcc.gov/wireline-competition/voice-telephone-services-report>, last accessed 1/17/2018.

<sup>2</sup> CDC, National Center for Health Statistics, [https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless\\_state\\_201712.pdf](https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless_state_201712.pdf), last accessed 1/17/2018.



municipal attachments. "Fair Market Rent" inherently includes the notion that neither the seller nor the buyer are pressured or forced to act. In the context of municipal pole attachments, in many areas wireless providers have no choice but to attach to municipal infrastructure, as the municipalities may be the only providers of vertical infrastructure in the public rights-of-way in most cities. As such, a "market" for attachment to poles does not really exist.

Furthermore, we understand that some localities have alleged they are prohibited from charging less than "fair market rent" due to Washington State's Gift of Public Funds Statute<sup>3</sup> which bars either the gifting or loaning of public funds or property and that any legislation that imposes fees at less than "fair market value" would violate the Takings Clauses of the Washington State and United States Constitutions<sup>4</sup>. Phil Talmadge of Talmadge Fitzpatrick Tribe has completed a comprehensive review of these issues and does not agree with such assertions by the localities.

In closing, we appreciate the Legislature's recognition of the importance of an efficient process to deploy small cells. As such, CTIA is supportive of the provisions in House Bill 2592 that impose cost-based fees for the deployment of small wireless infrastructure.

Sincerely,

Bethanne Cooley  
Senior Director, State Legislative Affairs  
CTIA

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<sup>3</sup> See: WA Const. art. VIII, § 7, <http://leg.wa.gov/LawsAndAgencyRules/pages/constitution.aspx>, last accessed 1/17/2018. ""No county, city, town, or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company, or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation."

<sup>4</sup> See: WA Const. art. I; § 16, U.S. Const. 5th, 14th Amendment.