

SC95337

IN THE SUPREME COURT OF MISSOURI

MISSOURI MUNICIPAL LEAGUE, *et al.*, Appellants,

v.

STATE OF MISSOURI, Respondent

Appeal from the Circuit Court of Cole County, Missouri,
The Honorable Jon E. Beetem, Judge

BRIEF OF CTIA – THE WIRELESS ASSOCIATION® AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*

CTIA – The Wireless Association® (“CTIA”) submits to the Court the following *Amicus Curiae* Brief in support of the Respondent, the State of Missouri, to highlight the importance of the Missouri laws at issue in this case to critical nationwide and state broadband deployment priorities.

CTIA and its members have an abiding interest in this case because the laws—SB 649 and SB 650—represent a major step forward for wireless broadband in Missouri. As discussed below, it is a national and state priority to expand mobile broadband to all Americans, including first responders and other public safety workers, while ensuring adequate capacity to meet demand and increase the availability of next-generation wireless broadband services. To meet this goal and satisfy consumer demand, the deployment of wireless infrastructure is essential. The Executive Branch, Congress, and the Federal Communications Commission (“FCC”) have all taken steps to encourage wireless broadband and remove barriers to deployment, but states play a crucial role.

CTIA represents the U.S. wireless communications industry.¹ With members ranging from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, CTIA brings together a dynamic group of companies that enable consumers to lead a 21st century connected life.

¹ See CTIA – The Wireless Association®, <http://www.ctia.org/> (last visited Feb. 26, 2016).

CTIA recognizes that local governments have an important and challenging role to play in balancing the need for broadband deployment with areas of traditional local responsibility, like zoning. As a consequence, it works collaboratively with officials at all levels of government across the nation to facilitate solutions to the deployment of next-generation wireless networks that are responsive to the needs of industry and the unique sensitivities and concerns of states and localities. Among other things, CTIA worked with local officials, including the National Association of Counties, National Association of Telecommunications Officers and Advisors, and the National League of Cities, to publish a model ordinance and a checklist for reviewing wireless facilities.²

Notwithstanding these voluntary collaborative efforts, however, assuring uniformity in siting laws throughout a state is ultimately the responsibility of the state legislature. CTIA strongly advocated enacting the new provisions,³ which take important steps to encourage and streamline the deployment of wireless communications and

² See *CTIA Statement on Joint Release of Model Ordinance and Checklist to Streamline Wireless Infrastructure Deployment*, Press Release (Mar. 5, 2015), <http://www.ctia.org/resource-library/press-releases/archive/model-ordinance-checklist-wireless-infrastructure-deployment> (last visited March 14, 2016).

³ See Letter from Bethanne Cooley, Director, State Legislative Affairs, CTIA – The Wireless Association®, to the Honorable Jay Nixon, Governor of Missouri, re: Support for Senate Bill 650 (Mar. 11, 2014).

broadband infrastructure in Missouri while preserving local zoning, land use, planning, and permitting authority. By taking these steps, the laws pave the way for wireless providers to meet consumer demand for wireless broadband services, creating thousands of jobs,⁴ improving public safety, revitalizing education, and expanding Missouri's economy.

CTIA's members would be adversely affected by any order of this Court reversing or remanding the ruling of the Circuit Court of Cole County, which upheld SB 649 and SB 650 to the benefit of Missouri's citizens and economy and CTIA's members doing business in Missouri. According to one provider, over 100 communications infrastructure projects in the state—including projects performed for CTIA members to expand or enhance service to consumers—potentially could be impacted if the laws were stricken, creating uncertainty for both wireless providers and the Missouri citizens and businesses that rely on wireless service. CTIA therefore urges the Court to affirm the judgment of the Circuit Court of Cole County and declare these laws to be valid, enforceable, constitutional, and in full force and effect.

⁴ See Raul L. Katz *et al.*, Telecom Advisory Services, LLC, *Economic Impact of Wireless Broadband in Rural America*, at 9 (2011), <http://competitivecarriers.org/wp-content/uploads/2011/02/Economic-Study-Executive-Summary-02.24.11.pdf>.

JURISDICTIONAL STATEMENT

This Court has original appellate jurisdiction of this case because it involves the validity of a state statute. *Mo. Const. (1945), art. V, § 3.*

STATEMENT OF FACTS

CTIA adopts the Statement of Facts in the Respondent's brief.

ARGUMENT

Broadband can help connect Missouri communities, increase consumer choice, and provide access to the “information superhighway.”⁵ The technical term “broadband” refers to high-speed Internet service, capable of supporting video (*e.g.*, YouTube), streaming media, VoIP (Voice over Internet Protocol telephony), online business applications, and interactive services, to name a few. Broadband also provides benefits in public safety (*e.g.*, by improving emergency response and sending critical notifications and alerts), healthcare (*e.g.*, by allowing rural providers and patients the opportunity to access specialists from around the world), agriculture (*e.g.*, by expanding opportunities for real-time market information, weather forecasts, and remote monitoring of crops and livestock), economic development (*e.g.*, by providing access to regional, national, and worldwide markets and enhancing opportunities for businesses), and education (*e.g.*, by enabling remote class instruction and shared course offerings).⁶

⁵ State of Missouri Office of Administration Information, Technology Services Division, *Broadband Strategic Report: Building Broadband Access and Adoption in Missouri*, at 2 (Fall 2013) (“*Missouri Broadband Strategic Report*”) (quoting Missouri Governor Jay Nixon), http://mobroadbandnow.com/files/2014/01/State-Report_October-2013.pdf (last visited March 14, 2016).

⁶ See MoBroadbandNow Broadband 101, <http://mobroadbandnow.com/broadband-101/> (last visited Feb. 26, 2016).

Broadband can often be provided using wireless infrastructure, which is particularly attractive in areas that are difficult to serve. Most wireless networks use LTE (Long Term Evolution) technology to support broadband access via cell phones, tablets, and other wireless devices. Because LTE offers significant data speed improvements over older wireless standards, some refer to it as a 4G (fourth generation) technology. Carriers are also laying the groundwork for the evolution to the next generation of wireless technology, known as 5G, which will offer even faster data speeds and support the “Internet of Things” (everything from smart meters and connected homes to driverless cars).⁷

Wireless broadband networks require the deployment of wireless infrastructure facilities, which consist of radio transmitters, or antennas, and other electronic equipment used to convey signals from wireless devices to the Internet. To allow for clear signals over a broad coverage area, that equipment often must be placed high in the air. Sometimes that means attaching the equipment to a new support structure, like a communications tower. Other times it means “collocating” equipment, *i.e.*, placing it on an existing tower or other structure, such as a roof, water tank, or utility pole.

⁷ See Thomas K. Sawanobori, CTIA, *The Next Generation of Wireless: 5G Leadership in the U.S.* (Feb. 9, 2016) (“CTIA 5G White Paper”), <http://www.ctia.org/docs/default-source/default-document-library/5g-white-paper.pdf>.

Antenna installations on towers and collocations on other tall structures (like rooftops) are often referred to as “macro” sites. Macro sites form the core of the network and are effective for covering large geographic areas and for meeting capacity demands. Modern networks also use various smaller antenna technologies, such as Distributed Antenna Systems (“DAS”) or “small cells,” which are being deployed closer to the subscriber on structures such as utility poles and streetlamps as well as within buildings. These technologies provide coverage in targeted locations and additional capacity to handle calls and data in areas with concentrated demands for wireless services.

Collectively, individual wireless facilities are generically called “cell sites.” Modern wireless broadband networks require multiple cell sites to keep up with booming demand where broadband is already deployed and to expand broadband’s footprint. In fact, annual mobile data traffic grew 26 percent year-over-year between 2010 and 2014, when the laws at issue here were enacted,⁸ and this growth is projected to continue at a rate of 35 percent per year in North America between 2014 and 2020.⁹ This estimate

⁸ See CTIA®, *Annual Year-End 2014 Top-of-the-Line Survey Results*, at 8 (2015) (“*CTIA 2014 Survey Results*”), http://www.ctia.org/docs/default-source/default-document-library/ctia_survey_ye_2014_graphics.pdf?sfvrsn=2.

⁹ Ericsson, *North America Mobility Report Appendix*, at 2 (June 2015), <http://www.ericsson.com/res/docs/2015/ericsson-mobility-report-june-2015-rnam-appendices.pdf>.

may prove to be conservative, as mobile data traffic grew 55 percent in North America last year alone.¹⁰

The impact of broadband demand on the number of cell sites is reflected in estimates showing that an additional 2,000 towers and tens of thousands of small cell and building locations are needed just over the next three years to keep up with national broadband demand.¹¹ Indeed, network densification through the deployment of additional macro sites (collocations and new towers), DAS networks, and small cells is essential to ensure consistent user experiences as the wireless ecosystem evolves from 4G LTE to 5G.¹² Yet, as discussed below, wireless providers face multiple barriers to deploying new cell sites, including local laws in Missouri that (prior to the passage of SB

¹⁰ Cisco Systems, Inc., *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2010-2017* (Feb. 6, 2013).

¹¹ BTIG Research, *Answering the Call for Capacity; Initiating Coverage on the Towers* (June 17, 2015). AT&T and Verizon alone may deploy as many as 40,000 and 60,000 small cells, respectively, in 2016. Martha DeGrasse, *Can Verizon and AT&T deploy 100,000 new small cells?*, RCR Wireless News, Oct. 29, 2015, <http://www.rcrwireless.com/20151029/carriers/can-verizon-and-att-deploy-100000-new-small-cells-tag4>. (last visited March 14, 2016).

¹² See *CTIA 5G White Paper* at 11.

649 and SB 650) unnecessarily hindered the construction and installation of wireless facilities.

Unfortunately, Missouri still ranks 41st out of 50 states when it comes to broadband access.¹³ A report by the Community Policy Analysis Center at the University of Missouri found that “mobile wireless coverage may be the best solution” for closing gaps in local broadband connectivity and helping to expand broadband access to all Missourians.¹⁴ The new laws are precisely targeted to address local siting barriers in order to expand mobile broadband access in Missouri.

I. Expanding Broadband to All Americans Is a National and State Priority.

The Executive Branch, Congress, and the FCC have all made clear that expanding broadband access for all Americans—especially wireless broadband—is a national priority. The Administration set a goal to provide at least 98 percent of Americans with

¹³ See MoBroadbandNow, Frequently Asked Questions, <http://mobroadbandnow.com/broadband-101/frequently-asked-questions/#Q17> (last visited Feb. 26, 2016); *Missouri Broadband Strategic Report* at 27.

¹⁴ See Thomas G. Johnson *et al.*, University of Missouri Community Policy Analysis Center, *The Benefits of Expanded Broadband for Missouri Farms and Agribusinesses*, at 11 (Oct. 15, 2011) (“*Missouri Broadband White Paper*”), <http://cpac.missouri.edu/library/publications/broadband%20white%20paper.pdf>.

access to 4G wireless broadband by the end of this year,¹⁵ and created the Broadband Opportunity Council (“BOC”) “singularly focused on increasing broadband investment and adoption.”¹⁶ Likewise, Congress—on a strong bipartisan basis—directed the FCC to develop a National Broadband Plan that ensures that every American has “access to broadband capability.”¹⁷ That Plan calls broadband access an “overarching national policy imperative,”¹⁸ and recognizes that “[t]he United States should lead the world in

¹⁵ Fact Sheet, *President Obama’s Plan to Win the Future through the Wireless Innovation and Infrastructure Initiative* (Feb. 10, 2011), <http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access>. This national target has been met. *See* Fact Sheet, *Next Steps in Delivering Fast, Affordable Broadband* (Mar. 23, 2015) (“White House Fact Sheet”), <https://www.whitehouse.gov/the-press-office/2015/03/23/fact-sheet-next-steps-delivering-fast-affordable-broadband>. While progress has also been made in Missouri, it continues to lag well behind other states. *See supra* note 13 and accompanying text.

¹⁶ *See* White House Fact Sheet, *supra*.

¹⁷ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(k)(2)(D), 123 Stat. 115, 516 (2009).

¹⁸ FCC, *Connecting America: The National Broadband Plan*, at 151 (Mar. 2010) (“NBP”), <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

mobile innovation, with the fastest and most extensive wireless networks of any nation.”¹⁹ In addition, Congress authorized the creation of FirstNet, a nationwide public safety broadband network for public safety entities,²⁰ and, as discussed below, took steps to mandate that states and localities approve certain wireless broadband facilities.²¹ Congress also recently passed bipartisan legislation directing that additional spectrum be made available to further accelerate mobile broadband deployment.²²

The reasons are clear: Broadband technology “enhance[s] our Nation’s economic competitiveness”²³ and “has become fundamental to modern life.”²⁴ Broadband access

¹⁹ *Id.* at xiv.

²⁰ 47 U.S.C. § 1424.

²¹ *See* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6409(a), 126 Stat. 156 (2012) (“Spectrum Act”) (codified at 47 U.S.C. § 1455(a)).

²² *See* Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584, Title X (2015) (“Spectrum Pipeline Act”).

²³ President George W. Bush, Technology Agenda, *Promoting Innovation and Economic Security Through Broadband Technology* (2004), http://georgewbush-whitehouse.archives.gov/infocus/technology/economic_policy200404/chap4.html; *accord Accelerating Broadband Infrastructure Deployment*, Executive Order 13616, 77

drives job creation, promotes innovation, spurs educational improvements, and expands markets for American businesses. It also affords public safety agencies greater levels of effectiveness and interoperability. Wireless broadband access is particularly important, providing these benefits with the convenience of mobility, while allowing for more efficient broadband expansion into unserved or underserved areas that are difficult to serve via wires.²⁵

Here in Missouri, broadband access is just as essential as it is elsewhere. Recognizing that “[b]roadband connectivity is a crucial element to Missouri remaining globally competitive in the 21st century,” Governor Jay Nixon established *MoBroadbandNow* initiative to help integrate broadband and information technology into

Fed. Reg. 36903, 36903 (June 20, 2012) (“E.O. 13616”) (“Broadband access is essential to the Nation’s global competitiveness in the 21st century.”).

²⁴ Tom Wheeler, Chairman, FCC, *Closing the Digital Divide in Rural America* (Nov. 20, 2014), <https://www.fcc.gov/news-events/blog/2014/11/20/closing-digital-divide-rural-america>.

²⁵ *Unleashing the Wireless Broadband Revolution*, Presidential Memorandum, 75 Fed. Reg. 38387, 38387 (July 1, 2010).

state and local economies.²⁶ The initiative has bipartisan support,²⁷ and recognizes the importance of having broadband connectivity across Missouri to create jobs, increase educational opportunity, improve health care, and enhance overall quality of life.

Missouri has also recognized the benefits of using broadband to transform public safety in the state, including through participation in a national public safety wireless network.²⁸

²⁶ See MoBroadbandNow, Overview, <http://mobroadbandnow.com/mo-broadband-initiatives/mobroadbandnow-overview-test/> (last visited Feb. 26, 2016).

²⁷ See, e.g., Rep. Rocky Miller, 124th District, Interview, *St. Louis Business Journal*, June 24, 2013 (supporting legislation that “encourages and streamlines the deployment of broadband facilities and helps ensure that robust wireless communication services are available throughout Missouri”), <http://www.bizjournals.com/stlouis/print-edition/2013/06/14/rep-rocky-miller-r-tuscumbia.html?page=all>; Sen. Brad Lager, 12th District, *Making It Easier to Build Broadband in Missouri*, *Cameron Citizen-Observer*, Aug. 1, 2013 (“[I]n recent years, many broadband carriers in Missouri have begun to experience excessive, overzealous, and unnecessary regulatory barriers at the local level which have greatly slowed, and in some cases even stopped, greater broadband and wireless deployment and investment in Missouri.”).

²⁸ See MoBroadbandNow, Transforming Public Safety, http://mobroadbandnow.com/files/2011/06/MO_flyer_9_pub_safety.pdf (last visited Feb. 26, 2016).

II. To Expand Broadband Access and Satisfy Consumer Demand, the Removal of Barriers to Infrastructure Deployment Is Essential.

The deployment of wireless infrastructure facilities is crucial to meeting the goal of universal wireless broadband and satisfying exploding consumer demand, and America's wireless companies and infrastructure providers are working hard to meet that demand. Nationwide, wireless providers have invested approximately \$146 billion in their networks over the last five years and more than \$32 billion in 2014 alone.²⁹ Private investment in wireless infrastructure is projected to generate as much as \$1.2 trillion in economic growth and create tens of thousands of new jobs through 2017.³⁰ This growth can only be realized, however, if providers are able to overcome some of the many federal, state, and local barriers that delay the construction of wireless facilities when and where they are needed.

These delays in deployment have real consequences. This is a significant issue in Missouri, where data available in advance of the adoption of SB 649 and SB 650 showed that more than 63,000 households had access to either no broadband providers or only

²⁹ *Competitive Market Conditions for Commercial Mobile Wireless*, Eighteenth Report, DA 15-1487, at ¶¶ 106-07 (rel. Dec. 23, 2015); *CTIA 2014 Survey Results* at 11.

³⁰ Alan Pearce *et al.*, Information Age Economics, *Wireless Broadband Infrastructure: A Catalyst for GDP and Job Growth 2013-2017*, at 1 (Sept. 2013), <http://apps.fcc.gov/ecfs/document/view?id=7520949630>.

one broadband provider.³¹ For localities with existing wireless coverage, delays can forestall adding the capacity needed to offer new high-speed technologies, or addressing persistent gaps in service and dropped calls—including emergency calls.³² But for localities without coverage, those same delays keep residents in the dark altogether. Infrastructure siting delays can also slow or preclude additional choice between and among broadband providers.

Infrastructure siting delays can also impact public safety, both in terms of slowed construction of wireless facilities that can enable E-911 connectivity in unserved areas

³¹ See Kevin D. Gunn, Chairman, Missouri Public Service Commission, *Missouri Broadband Report and FCC's Actions on Broadband*, at 13 (Jan. 24, 2012) (“*Missouri Broadband Report*”), <http://news.heartland.org/sites/default/files/missouri20broadband20report20and20fccs20actions20on20broadband.pdf>; see also *id.* at 5.

³² See Mid-Missouri Regional Technology Planning Team, *Broadband Availability and Adoption Strategic Plan for the Mid-Mo Region*, at 28, 32, 35-38 (May 2012) (“*Mid-Mo Strategic Report*”), <http://mobroadbandnow.com/files/2012/06/Mid-Mo-Broadband-AvailabilityAdoption-Strategic-Report05-2012.pdf>; Southwest Missouri Regional Technology Planning Team, *Broadband Availability and Adoption Strategic Plan for the Southwest Missouri Region*, at 32 (May 2012), [http://smcog.missouristate.edu/PDF/MBBN%20Tech%20Planning/SMCOG-Final_Broadband_Strategic_Plan%20\(clean%205-31-2012\).pdf](http://smcog.missouristate.edu/PDF/MBBN%20Tech%20Planning/SMCOG-Final_Broadband_Strategic_Plan%20(clean%205-31-2012).pdf).

and with respect to the deployment of public safety broadband facilities, including for FirstNet.³³ Indeed, FirstNet is expected to rely heavily on collocations on existing towers and others structures, making streamlined review for collocations particularly important for public safety.³⁴

Providers face many challenges in constructing new or improved wireless facilities. In addition to federal or state regulatory burdens,³⁵ providers have encountered a number of local siting barriers. They include: lengthy zoning or local permitting application processing times or moratoria; unreasonable application fees; arbitrary

³³ Mark L. Goldstein, *Preliminary Information on FirstNet's Efforts to Establish a Nationwide Broadband Network*, Testimony before the Senate Commerce Committee, at 22 (Mar. 11, 2015), <http://www.gao.gov/assets/670/668933.pdf>.

³⁴ See *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 29 FCC Rcd 12865, 12926-29 (2014) (“*Broadband Acceleration Order*”), *aff'd sub nom.*, *Montgomery County v. FCC*, 2015 U.S. App. LEXIS 22070 (4th Cir. 2015); *id.*, 29 FCC Rcd at 13106 (Statement of Commissioner Ajit Pai); see also Notice of Proposed Rulemaking, 28 FCC Rcd 14238, 14274-75 (2013).

³⁵ Examples include compliance with federal and state environmental and safety statutes, FCC and FAA air safety regulations, and laws governing the siting of wireless facilities on federal lands.

evaluation of an applicant's business or technology choices; inconsistent or unclear application procedures; difficulty collocating facilities on existing structures; difficulty accessing space on poles or rights-of-way; excessive costs to access those poles or rights-of-way; and improper consideration of issues outside the jurisdiction of state and local authorities (*e.g.*, radiofrequency emissions, which are addressed by federal rules), to name a few.³⁶

These issues have been a particular challenge in Missouri, where permitting fees and zoning processes (with 114 counties and over 1000 municipalities) have slowed project timeframes. Missouri's home rule framework also makes network deployment more difficult, as various cities and counties have diverse rules and regulations. As a result, it has been difficult for providers to work across jurisdictions while remaining efficient and consistent.³⁷

³⁶ For example, the National Broadband Plan observed that in light of regulations such as "permitting and zoning rules," securing the rights to deploy infrastructure using public rights-of-way "is often a difficult and time-consuming process that discourages private investment." NBP at 109. As the Plan found, this process is made especially complex because of the great diversity among state and local jurisdictions concerning "access to and payment for accessing public rights-of-way." *Id.* at 113.

³⁷ See AgBroadbandNow, *Report on Broadband Access, Usage, and Potential on Missouri's Farms and in Rural Communities*, at 41 (May 2013) ("*AgBroadbandNow*

III. Coordinated Action Is Required to Remove Barriers to Wireless Broadband Deployment.

Addressing these challenges requires a concerted effort of policymakers at all levels as well as the private sector. In 2014, for example—the same year that the laws here were enacted—the FCC noted that the process of deploying wireless infrastructure facilities “can be expensive, cumbersome, and time-consuming” and can “slow deployment substantially.”³⁸ The FCC said it is therefore important to “reduce regulatory obstacles and bring efficiency to wireless facility siting and construction” to “promote the deployment of wireless infrastructure.”³⁹ FCC Chairman Wheeler put it bluntly: “High-speed mobile broadband also requires high-speed broadband buildout. However, the regulatory burdens associated with deployments can be expensive and time-consuming.... [C]oncrete steps [are needed] to immediately and substantially ease those burdens.”⁴⁰

Similarly, the BOC concluded that “[l]owering barriers to deployment and fostering market competition can drive down price, increase speeds, and improve service

Report”), <http://mobroadbandnow.com/files/2013/05/AgBroadbandNowFinalReport5272013.pdf>.

³⁸ *Broadband Acceleration Order*, 29 FCC Rcd at 12869.

³⁹ *Id.* at 12996.

⁴⁰ *Id.* at 13011 (Statement of Chairman Tom Wheeler).

and adoption rates across all markets.”⁴¹ A recent report examining barriers to broadband access in Missouri found likewise, emphasizing the importance of state action: “Both agricultural leaders and telecommunications providers say that development of broadband is being held back by inconsistent rules and regulations from jurisdiction to jurisdiction. This includes permitting process[es], right-of-way and easement requirements, etc. While local or regional solutions are possible, *a statewide approach will be much more efficient and effective.*”⁴² (emphasis added).

Against this backdrop, Missouri considered ways to expand broadband access on a bipartisan basis, consistent with the national priority of achieving broadband access for all Americans. In addition to the Governor’s *MoBroadbandNow* initiative, the Missouri

⁴¹ Broadband Opportunity Council, *Report and Recommendations*, at 6 (Aug. 20, 2015) (“*BOC Report*”), https://www.ntia.doc.gov/files/ntia/publications/broadband_opportunity_council_report_final.pdf; see also Comments of CTIA – The Wireless Association®, Docket No. 150414365-5365-01 (June 10, 2015), https://www.ntia.doc.gov/files/ntia/ctia-the_wireless_association_boc.pdf.

⁴² *AgBroadbandNow Report* at 48 (emphasis added); see also *Mid-Mo Strategic Report* at 33 (recommending the near-term inventory of state and local government planning, zoning, rights-of-way, or construction rules and regulations, and “examining ... how these laws and rules could potentially impact build out or be an incentive to expanding broadband access”).

Senate Committee on Commerce, Consumer Protection, Energy and the Environment requested the Missouri Public Service Commission to engage in a broadband fact finding process ending in a report to the General Assembly in December 2011.⁴³ The final report found that “[s]ome of the key reasons for difficulty in deploying broadband infrastructure are difficulty in accessing utility poles, conduits, rooftops, tower sitings, rights of way.”⁴⁴ Policymakers from across the aisle reached similar conclusions,⁴⁵ and analysts recommended that Missouri “state and local governments should review existing statutes and regulations to identify and address impediments to rural broadband build out.”⁴⁶ The new Missouri laws are an outgrowth of these efforts.

⁴³ See *Missouri Broadband Report* at 2.

⁴⁴ *Id.* at 18. Likewise, the *Mid-Mo Strategic Report* recommended the near-term inventory of state and local government planning, zoning, rights-of-way, or construction rules and regulations, and “examining ... how these laws and rules could potentially impact build out or be an incentive to expanding broadband access.” *Mid-Mo Strategic Report* at 33.

⁴⁵ See *supra* note 27.

⁴⁶ *Missouri Broadband White Paper* at 1.

IV. The Executive Branch, Congress, the FCC and Many States Have Acted to Accelerate Investment.

The Executive Branch, Congress, and the FCC have all taken steps in the last several years to reduce barriers to wireless infrastructure deployment. The Missouri bills build on these federal directives by further streamlining wireless infrastructure deployment.

At the Executive Branch level, federal agencies have been directed to coordinate and create consistent and efficient procedures, requirements, and policies to “facilitate the timely and efficient deployment of broadband facilities” on federal lands.⁴⁷ The President also tasked the BOC with identifying regulatory barriers unduly impeding broadband deployment or competition, and “[t]ak[ing] all necessary actions to remove these barriers and re-align existing programs to increase broadband competition, deployment, and adoption.”⁴⁸ The BOC responded by issuing a report, which includes commitments to inventory Federal towers and other assets to support faster and more economical broadband deployments to remote areas of the country, and to streamline applications and permitting to support deployment and foster competition.⁴⁹

⁴⁷ See E.O. 13616.

⁴⁸ See White House Fact Sheet, *supra*.

⁴⁹ See *BOC Report* at 3.

For its part, Congress directed the “[FCC] and each State commission with regulatory jurisdiction over telecommunications services [to] encourage the deployment on a reasonable and timely basis of [broadband] to all Americans” by “remov[ing] barriers to infrastructure investment.”⁵⁰ It adopted amendments to the Communications Act that forbid state or local governments from unreasonably discriminating among providers of wireless services or prohibiting the provision of wireless services; require action on a wireless siting application “within a reasonable period of time;” and prohibit the denial of an application “on the basis of the environmental effects of radio frequency emissions” if the provider complies with FCC regulations on that subject.⁵¹ Congress also passed a law that requires timely approval of eligible collocations by providing that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”⁵² The law also required the development of common applications and master contracts for use by federal agencies when addressing deployments on federal properties.⁵³

⁵⁰ 47 U.S.C. § 157 nt.

⁵¹ *See* 47 U.S.C. § 332(c)(7).

⁵² Spectrum Act § 6409(a) (codified at 47 U.S.C. § 1455(a)).

⁵³ *Id.*, § 6409(b) (codified at 47 U.S.C. § 1455(b)).

The FCC has also taken a number of significant steps to reduce barriers to wireless infrastructure investment. In 2009, it adopted a “Shot Clock” establishing presumptive timeframes for state and local processing of wireless tower and antenna siting requests.⁵⁴ In 2011, it adopted an order that ensures timely and rationally priced access to utility

⁵⁴ See *Petition for Declaratory Ruling To Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd 13994 (2009), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff’d sub nom. City of Arlington, Texas v. FCC*, 668 F.3d 229 (5th Cir. 2012), *aff’d*, 133 S.Ct. 1863 (2013).

poles.⁵⁵ It took further steps last year to “keep[] pole attachment rates unified and low.”⁵⁶

These regulations are binding on pole owners and attachers in Missouri.⁵⁷

More recently, the FCC announced a “Broadband Acceleration Initiative” designed to “remove barriers to broadband build-out, including streamlining the deployment of mobile broadband infrastructure.”⁵⁸ That initiative resulted in a 2014 order that updated and tailored the process for evaluating the impact of proposed

⁵⁵ *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011) (“*Pole Attachment Order*”), *aff’d sub nom. American Elec. Power Service Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013). The order implements Section 224 of the Communications Act, which exempts non-utility poles owned by the federal government or any state, including municipalities. *See* 47 U.S.C. § 224(a)(1); *Pole Attachment Order*, 26 FCC Rcd at 5243 n.14.

⁵⁶ *Implementation of Section 224 of the Act*, Order on Reconsideration, 30 FCC Rcd 13731, 13733 (2015).

⁵⁷ The regulations do not apply to states that independently regulate pole attachments. *See* 47 U.S.C. § 224(c). Missouri does not. *See Pole Attachment Order*, 26 FCC Rcd at 5371 (listing states that have certified that they regulate pole attachments).

⁵⁸ *New Broadband Acceleration Initiative Actions*, News Release (Jan. 25, 2013), https://apps.fcc.gov/edocs_public/attachmatch/DOC-318589A1.pdf.

deployments on the environment, and clarified and implemented statutory requirements related to state and local government review of infrastructure siting applications.⁵⁹ The initiative also resulted in steps by the FCC to develop a new program to improve and facilitate the historic preservation review process for small facility deployments.⁶⁰

While these steps are significant, states play a crucial role as well.⁶¹ In recent years, a number of states enacted legislation designed to accelerate broadband deployment by reducing barriers to infrastructure deployment. These states include: California (AB 57); Colorado (HB 1327); Georgia (HB 176); Indiana (HB 1318); Iowa

⁵⁹ See *Broadband Acceleration Order*, *supra*.

⁶⁰ See *Wireless Telecommunications Bureau Seeks Comment on Revising the Historic Preservation Review Process for Small Facility Deployments*, Public Notice, DA 15-865 (July 28, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DA-15-865A1.pdf; Comments of CTIA – The Wireless Association®, WT Dkt. No. 15-180 (Sept. 28, 2015), <http://apps.fcc.gov/ecfs/document/view?id=60001325458>.

⁶¹ See, e.g., Julius Genachowski, Chairman, FCC, Prepared Remarks to the University of Pennsylvania – Wharton, Philadelphia, PA, *Winning the Global Bandwidth Race: Opportunities and Challenges For Mobile Broadband* (Oct. 4, 2012) (“Everyone will have to do their part—including the FCC, other federal agencies, states and localities, and Congress.”), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-316661A1.pdf.

(HF 655); Michigan (SB 1064); New Hampshire (SB 101); North Carolina (HB 664); Pennsylvania (SB 1345); Washington (HB 2175); Wisconsin (AB 40).⁶² Missouri's new laws fit squarely in this model.

V. SB 649 and SB 650 Significantly Enable the Deployment of Mobile Broadband in Missouri, Helping to Achieve National and State Deployment Goals.

In this context, the Missouri legislature in 2013 passed two bills, HB 331 and HB 345, designed to reduce barriers to broadband deployment in Missouri. Because these bills were later enjoined by the Cole County Circuit Court due to procedural defects in their enactment, the Missouri legislature passed replacement bills in 2014 to cure the defects while preserving the substance of the legislation. On March 20, 2014, Governor Jay Nixon signed into law SB 650—the “Uniform Wireless Communications Infrastructure Deployment Act”—along with SB 649 and several other companion bills.

⁶² See A.B. 57, 2015-2016 Reg. Sess. (Cal. 2015); H.B. 1327, 2014 Reg. Sess. (Colo. 2014); H.B. 176, 2013-2014 Reg. Sess. (Ga. 2014); H.B. 1318, 2015 Reg. Sess. (Ind. 2015); H.B. 655, 86th Gen. Ass. (Iowa 2015); S.B. 1064, 96th Legis. (Mich. 2012); S.B. 101, 2013 Reg. Sess. (N.H. 2013); H.B. 664, 2013-2014 Sess. (N.C. 2013); S.B. 1345, 2011-2012 Reg. Sess. (Pa. 2012); H.B. 2175, 2013-2014 Reg. Sess. (Wash. 2014); A.B. 40, 2013 Reg. Sess. (Wis. 2013) (approved as 2013 Wis. Act 20).

In 2015, the Circuit Court of Cole County, Division I, the Honorable Jon E. Breetem, presiding, dismissed challenges against the new legislation.

The purpose of the legislation is “to encourage and streamline the deployment of broadband facilities and to help ensure that robust wireless communication services are available throughout Missouri.” RSMo § 67.5090. While the laws preserve local zoning, land use, planning and permitting authority, *see id.* §§ 67.5096, 67.5102(3), they also take important steps to remove barriers to wireless infrastructure deployment.

In particular, the laws clarify that a local authority may not question an applicant’s business decisions regarding network design or customer demand; evaluate an application based on the availability of other potential locations; specify what type of technology an applicant must use; unreasonably dictate the appearance of a wireless facility; impose application fees that are not used in connection with similar types of commercial developments; or deny an application based on radiofrequency emission concerns. *See id.* § 67.5094. The laws also prohibit moratoria on the permitting of wireless facilities that last more than six months, absent good cause, and require municipal pole attachment fees to be just and reasonable. *See id.* §§ 67.5102, 67.5104. And they require final decisions within 120 days for a new wireless facility application, 90 days for a substantial modification application, and 45 days for a collocation application. *See id.* § 67.5096.

SB 649 and SB 650 recognize the deployment challenges associated with adding capacity to meet exploding consumer demand for 4G and future 5G services, while at the same time expanding coverage in hard to serve areas, and provide a solution: encourage the development of wireless broadband infrastructure, by providing needed certainty in

the process of installing infrastructure essential for improving wireless broadband in communities across Missouri. The new laws provide guidelines and appropriate balance to keep the permit process moving, promoting needed wireless service improvements for consumers, business, government and public safety across the state. CTIA therefore agrees with Governor Nixon that this important legislation “places parameters around the wireless approval process to encourage more timely investment in broadband expansion and wireless service improvement,”⁶³ while at the same time helping to meet important state and national broadband and infrastructure priorities.

In sum, SB 649 and SB 650 make improvements to existing law that facilitate the application process for wireless facilities without negatively affecting local jurisdictions’ zoning authority. While Appellants have challenged the validity of the new laws under the Missouri constitution, the Solicitor General has explained in the State’s brief that the laws are consistent with the Missouri constitution and the judgment of the Circuit Court should be affirmed. CTIA supports the State of Missouri and urges the Court to declare these laws to be valid, enforceable, constitutional, and in full force and effect, so that Missouri’s citizens may enjoy ever-expanding broadband connectivity.

⁶³ *Gov. Nixon Signs Four Telecommunications Bills into Law*, Press Release (Mar. 20, 2014), <http://themissouritimes.com/8991/press-release-gov-nixon-signs-four-telecommunications-bills-law/>.

CONCLUSION

For each of the reasons stated herein, CTIA respectfully requests that the Court consider this *Amicus Curiae* Brief in rendering an opinion herein, and affirm the Judgment of the trial court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned counsel hereby certifies pursuant to Rule 84.06(c) that this brief (1) contains the information required by Rule 55.03; (2) complies with the limitations contained in Rule 84.06(b); and (3) contains 4,348 words, exclusive of the sections exempted by Rule 84.06(b), based on the word count that is part of Microsoft Office Word 2010.

/s/ Lowell D. Pearson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 15, 2016, I electronically filed a true and accurate copy of the foregoing brief with the Clerk of the Court by using the Missouri eFiling System and for service on all counsel registered with the eFiling System:

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