



Top Telecommunications Issues of 2020

Threats to Local Rights

Local governments are advocating in many venues to preserve their sovereignty and property rights. Both individually, and as part of the U.S. Conference of Mayors, National League of Cities, National Association of Counties and National Association of Telecommunications Officers and Advisors, they seek to retain the right to establish the terms, location and design rules for siting wireless devices in the rights of way. These efforts are under way simultaneously in the courts, at the Federal Communications Commission, in Congress and before state legislatures. Finally, municipal leaders must be aware of “Buy One, Get One Free” laws at the state level. First adopted in Texas, the law excuses a telephone and cable service provider from paying the less expensive of the company’s telecommunication right of way fees or cable franchise fees.

Challenge the FCC’s Small Cell Orders and Support for H.R. 530 and S 2012 – Legislation to Reverse those Orders

In 2018, the FCC adopted a new “industry-friendly” legal standard for what constitutes a prohibition, or effective prohibition, of services under sections 253(a) and 332(c)(7). It established new rules to restrict local permitting, accelerate decision timelines and cap fees for attachments and use of rights of way for small cells at an approximation of a locality’s costs – well below market value. Almost 100 local governments and local government organizations, including NLC, USCM and NATOA formed a coalition to challenge the small cell order. Litigation is pending before the U.S. Ninth Circuit Court of Appeals, where oral argument will take place on Feb. 10, 2020. Legislation (H.R. 530/S. 2012) to overturn the FCC’s small cell order was introduced in Congress by Rep. Anna Eshoo (D-Calif.) Sen. Dianne Feinstein (D-Calif.). Local government must support these efforts.

What Local Government Leaders Need To Do:

1. Request that your congressional delegation co-sponsor H.R. 530 and S. 2012.
2. Support the appeal of these new FCC rules to ensure you retain the right to manage the look and feel of your community and obtain fair compensation for use of your assets.
3. Work with your community to develop a proactive approach to planning for wireless entry into the rights of way and adopt aesthetics, undergrounding, spacing and other desired requirements. Review your ordinances and processes to ensure they meet the new rules and shorter shot clocks.

Local Governments are Challenging the FCC’s Order Granting a Cable Operator the Right to Reduce their Franchise Fees By Hundreds of Millions of Dollars

On Aug. 2, 2019, the FCC adopted an order that empowers a cable operator to reduce its franchise fees in an amount equivalent to the market value of non-financial franchise obligations, such as: cable services to government buildings and schools, discounts for seniors, veterans and poor families and other obligations. Estimated losses are in the 10s of millions of dollars. In addition, the FCC has stated that it will review, within the year, the ability of a cable operator to reduce cable franchise fees by the fair market value of channel capacity dedicated to the carriage of Public, Education and Government channels. This could cost local governments hundreds of millions in franchise fees. Legislation to overturn the FCC’s order by redefining franchise fees to include only financial payments was introduced by Sen. Ed Markey (D-Mass.) and Rep. Anna Eshoo (D-Calif.) (S. 3218/H.R. 5659).

What Local Government Leaders Need To Do:

- Request that your Congressional delegation co-sponsor H.R. 5659 and S. 3218.



Join the Local Government Coalition to Fight the FCC’s Proposal to Expand OTARD Rules to Hub and Relay Antennas (Cell Sites)

The FCC released a Notice of Proposed Rulemaking proposing to expand the Over-the-Air Reception Devices rules to cover hub and relay antennas, the equivalent of small cell towers outside of the rights of way. While Congress intended for the OTARD rule to protect consumers’ rights to install satellite dishes, the FCC is now seeking to expand the rule to bar localities’ zoning authority over equipment that 5G providers will use to transmit signals. The OTARD rules expansion from consumer equipment to network elements flies in the face of Congress’ stated intent, and also may permit 5G providers to install their antennas without notifying – let alone complying with – local requirements. Local governments must make their concerns heard at the FCC.

What Local Government Leaders Need To Do:

- While comments and reply comments have been filed, additional support and visits to the FCC to oppose this proposal are needed.

Protect Local Governments’ Rights to Manage and Obtain Fair Compensation for Use of the Rights of Way

As rights of way become ever more valuable for locating wireline and wireless communications infrastructure, localities face ever-increasing assaults at the state and federal levels to limit local control over, and charges for use of, the rights of way. Such efforts accelerate as legislatures and regulators push to promote 5G infrastructure deployment to support the Internet of Things, including autonomous and connected vehicles. This threat has reappeared in Congress with reintroduction of the Thune-Schatz STREAMLINE Act (S 1699).

There is a new threat on the horizon. Texas this year enacted the first of what has been called the “Pay Me Half” or “Buy One, Get One Free” bills. In Texas, if a company is both a phone and cable company, they soon will only have to pay the larger of the two rental rates. Texas was the first state to pass a state franchise law and the first to pass a state small cell bill. We can similarly expect to see “Pay Me Half” bills in other states.

What Local Government Leaders Need To Do:

1. Understand these threats, and the false narrative upon which they are based, to best position your community to protect its interests. Share with your federal and state elected officials your position,

including the successes you have achieved in bringing broadband to your residents. Call upon your state and national associations to champion your cause.

2. Inform your congressional delegation that you oppose S. 1699. Engage in the policymaking process early and often, and join with other local governments in resisting these efforts to demonize local government and indirectly subsidize the broadband industry at the expense of local communities, without regard for local challenges.

Preserve the Option of Municipal Broadband, Public-Private Partnership and New Approaches for Networks

Municipalities throughout the country are searching for the best way to ensure that their communities are served by advanced networks that offer high-speed Internet at reasonable prices.

What Local Government Leaders Need To Do:

- Encourage your community to actively engage in broadband planning and identify the best approach for your community to speed broadband deployment, consistent with legal limits on your own local authority.

Please contact one of the following BB&K Telecommunications attorneys if you’d like more detail on how your community can address these threats. To learn more, visit bbk.law.com/Telecom2020.

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In addition, Best Best & Krieger attorneys represent local governments on a myriad of municipal issues including, but not limited to: water, education, labor and bond issues. Please visit www.bbklaw.com for more information.