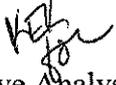


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: December 11, 2013

TO: Honorable Members of the City Council

FROM: Gerry F. Miller 
Chief Legislative Analyst

Council File No: 13-0002-S141
Assignment No: 13-12-1021

SUBJECT: Resolution (Blumenfield - Krekorian) to the Federal Communications Commission (FCC) Notice of Proposed Rulemaking.

CLA RECOMMENDATION: Adopt the Resolution to include in the City's 2013-14 Federal Legislative Program **OPPOSITION** to the FCC Report, Order and Notice of Proposed Rulemaking, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies* (FCC 13-122), which severely limits local authority over the rational expansion of existing wireless facilities and support the participation of the City in a coalition of communities to file a response to the FCC and that the City Attorney, with the assistance of the law firm Best Best and Krieger, be requested and authorized to file comments.

SUMMARY

On November 27, 2013, a Resolution (Blumenfield - Krekorian) was introduced to oppose the Federal Communications Commission's Report, Order, and Further Notice of Proposed Rulemaking, which limits local authority over the rational expansion of existing wireless facilities. The Resolution states that the City's local authority over these facilities is at stake. The Resolution further states that City has previously established policy positions consistent where it protects residents and consumers from administrative or legislative actions related to this issue.

The Resolution indicates that the proposed legislation may require that, among other rules, that the City must approve a 20 foot (and sometimes greater) extension to any existing wireless facility. The Resolution, also states that the proposed rule may require that cities allow up to three additional large utility cabinets next to any utility pole in the rights-of-way that supports a wireless facility.

The Resolution, therefore requests that the City oppose the FCC's Report, Order, and Further Notice of Proposed Rulemaking; participate in a coalition of communities to file a comprehensive response to the proposed rules; and that the City Attorney, with the assistance of the law firm Best, Best and Krieger, under contract with the City, file comments in opposition.

BACKGROUND

On September 26, 2013, the Federal Communications Commission issued a Notice of Proposed Rulemaking (NPRM), *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies* (FC 13-122), which includes a proposed set of rules that threaten local authority over the rational expansion of existing wireless facilities. Among other requirements, the proposed rules may be read to mean that a locality:

1. Must approve a 20 foot (and sometimes greater) extension to any existing wireless facility, including outdoor Wi-Fi devices, even if the extension:
 - a. makes a stealth facility visible;
 - b. reaches into and adversely impacts a historical preservation district or an environmentally sensitive area; and,
 - c. unnecessarily intrudes upon a residential neighborhood, or an existing structure that was subject to very strict requirements limiting its expansion.
2. Must allow up to three additional large utility cabinets next to any utility pole in the rights-of-way that supports a wireless facility.
3. Must allow four utility cabinets to be added to existing wireless facilities in residential neighborhoods – whether beside utility poles along the rights of way, or on private property.

On December 5, 2013, the FCC published the Notice of Proposed Rulemaking in the Federal Register and is seeking comments on the order. There are two comment period filing dates. Initial comments are due February 3, 2014 and reply comments are due March 5, 2014.

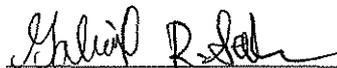
In the past, the City has participated in a coalition of public entities in response to administrative actions that minimize local authority over the siting of telecommunications facilities. The proposed FCC Order focuses on expediting the process for the expansion of existing wireless facilities. In order to protect the City's jurisdiction over this matter and to maintain appropriate oversight, the City should oppose the Order and enter into a coalition of cities to file comments to the FCC. At this time, there are other participating municipalities also in opposition to the Order that although intended to streamline the approval process of local authorities, relinquishes local control over installations to existing wireless facility structures. These cities include Boston, Massachusetts, Arlington, Texas, and San Jose, California. The County of Montgomery, Maryland and a coalition of Texas' utilities/cities will also participate. The County of Los Angeles may also participate, but is awaiting the Board of Supervisors approval.

We recommend opposition to the FCC's Report, Order, and Notice of Proposed Rulemaking inasmuch as the recommendation is consistent with the City position on this matter (C.F. 08-002-S150, C.F. 10-0002-S3). In addition, we recommend that the City join a coalition of communities to file a comprehensive response; and that the City Attorney, with the assistance of the law firm Best, Best and Krieger, be requested and authorized to file comments in opposition.

The Information Technology Agency supports the opposition of the FCC's administrative action.

DEPARTMENTS NOTIFIED

Information Technology Agency



Gabriel R. Salazar
Analyst

GFM:grs

Attachment: Resolution

13-0002-5141

NOV 27 2013

RESOLUTION RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the Federal Communications Commission (FCC) issued a Report and Order and Further Notice of Proposed Rulemaking, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies* (FCC 13-238), on September 26, 2013, that if adopted in their current form, will severely limit the City's authority to control wireless facility placements; and

WHEREAS, the interests of the City of Los Angeles are at stake with respect to exercising local authority over the rational expansion of existing wireless facilities; and

WHEREAS, the City has previously established a policy position consistent with regard to this matter (CF 08-0002-S150, CF 10-0002-S3), and it is imperative that the City's position remain consistent to protect residents and consumers from administrative or legislative actions related to this issue; and

WHEREAS, the proposed legislation may require that, among other rules, that the City must approve a 20 foot (and sometimes greater) extension to any existing wireless facility, including outdoor devices; and

WHEREAS, the proposed legislation may require that cities allow up to three additional large utility cabinets next to any utility pole in the rights-of-way that supports a wireless facility; and

WHEREAS, according to Best Best and Krieger, the City's Outside Counsel, the wireless industry is anticipated to support rules preempting local discretion over a broad array of wireless installations and modifications; and

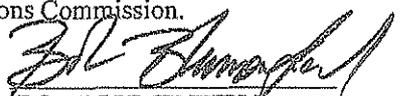
WHEREAS, Best Best and Krieger is coordinating and collaborating with a coalition of communities to develop a comprehensive response to the proposed rules and it is imperative that the City of Los Angeles join other local entities in opposition to the rulemaking;

NOW, THEREFORE, BE IT RESOLVED, with the Concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby include in its 2013-2014 Federal Legislative Program OPPOSITION to the Report and Order and Further Notice of Proposed Rulemaking, *Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies* (FCC 13-238), which severely limits local authority over the rational expansion of existing wireless facilities; and

BE IT FURTHER RESOLVED, that the City of Los Angeles hereby agrees to join a coalition of communities to file a comprehensive response relative to the Federal Communications Commission rulemaking proceeding; and

BE IT FURTHER RESOLVED, that the City Attorney, with the assistance of the law firm Best Best and Krieger, currently under contract with the City, be requested and authorized to file comments, consistent with the above position, with the Federal Communications Commission.


NOV 27 2013

PRESENTED BY: 
BOB BLUMENFELD
Councilmember, 3rd District

SECONDED BY: 

gfs

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