

**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: February 11, 2019

TO: Honorable Members of the Rules, Elections, and Intergovernmental Relations Committee

FROM: Sharon M. Tso *Sharon Tso* Council File No: 18-0002-S125  
Chief Legislative Analyst Assignment No: 19-01-0068

SUBJECT: Resolution to oppose Federal Communications Commission September 26, 2018 Declaratory Ruling and Report and Order

CLA RECOMMENDATION: Adopt the attached revised Resolution to include in the City’s 2019 – 2020 Federal Legislative Program **OPPOSITION** to the Federal Communication Commission’s (FCC) small cell order that would curtail local municipalities’ authority to regulate small cell wireless facilities in the public right-of-way.

SUMMARY

On October 24, 2018, the Resolution (Koretz – Krekorian) was introduced to oppose the Federal Communications Commission’s (FCC) September 26, 2018 order that would accelerate the establishment of next-generation 5G wireless networks throughout the U.S. by overriding local rules. The FCC order would ban local regulations designed to prohibit wireless infrastructure deployment in the public right-of-way, limit local government fees to the actual costs involved in reviewing deployment applications, and require municipalities to act on applications to attach small cells to existing structures within 60 days.

The Resolution further states that the City of Los Angeles has opposed other attempts to preempt local control over small cell infrastructure. Local officials throughout the country have come out against the FCC’s small cell order and the City’s outside counsel on telecommunications matters is forming a coalition of cities to challenge the FCC’s order. The Resolution therefore requests that the City oppose the FCC small cell order.

BACKGROUND

The siting process for small cell wireless facilities is regulated by a combination of federal, state, and local law. The Federal Telecommunications Act of 1996 (Act) establishes specified limitations, preemptions, and preservations of local zoning authority relative to the siting of wireless service facilities. Except where noted in the Act, state and local governments have authority over decisions regarding the placement, construction, and modification of personal wireless service facilities. State and local governments are also required to not unreasonably discriminate against functionally equivalent providers, to not prohibit the provision of a personal wireless facility, and to provide written notice of any decision to deny a request to place, construct, or modify personal wireless facilities.

Within California, state regulations require that wireless carriers must seek local approval for collocations. The Public Utilities Code also establishes a framework, process, and procedures

governing the attachment of telecommunications facilities to investor-owned or municipal utility poles. Local governments may not block utility pole attachments, but can regulate the time, manner, and place of pole attachments in the public right-of-way. Investor-owned and municipal utilities are limited to charging cost-based rates for use of their properties. These restrictions do not apply, however, to other infrastructure in the right-of-way, such as light poles and street lights. Local governments retain discretionary authority over the approval process in these instances and may impose conditions on the wireless facilities and negotiate payments for the use of public infrastructure.

On September 26, 2018, the Federal Communications Commission adopted a Declaratory Ruling and Report and Order relating to 5G deployment. The Declaratory Ruling states that local fees associated with the deployment of wireless telecommunications infrastructure can unlawfully prohibit the provision of service. Fees are permissible only to the extent that they are nondiscriminatory and reflect a reasonable approximation of the local government's costs. The FCC has determined that application fees of \$100 per each small cell wireless facility and a \$270 annual lease rate per pole would be reasonable. Municipalities may exceed these rates if there is a reasonable approximation of costs, and those costs are themselves reasonable and non-discriminatory. Additionally, aesthetic requirements must be reasonable, no more burdensome than those applied to other types of infrastructure deployments, and published in advance.

The Report and Order establishes "shot clocks" governing the approval of permits for small cell wireless facilities. Local governments are permitted 60 days for approving a colocation permit and 90 days for approving all other permits. Failure to approve applications within this timeframe does not deem the applications granted, but it does constitute a presumptive prohibition on the provision of wireless services under the Telecommunications Act of 1996.

The Bureau of Street Lighting (BSL) has indicated numerous issues with the FCC Declaratory Ruling and Report and Order as the result of the strain small cell attachments can create on the City's streetlights. First, the attachments take up a circuit's electrical capacity. Whereas LED fixtures draw approximately one to two amps, the attachments can draw up to ten amps. Attaching other devices such as EV stations, smart city devices, seasonal lighting, etc. may require additional services in the future to accommodate the attachments. Second, the attachments, which can weigh up to 50 pounds, add additional stress to streetlights. The faster aging of streetlights may require replacement of the pole earlier than expected and may pose a liability issue if the City does not conduct timely inspection of these poles. Third, maintenance crews must follow additional procedures when repairing a pole with an attachment, including contacting the relevant company to take the small cell offline. Crews must also carry an alert device to ensure that the unit is not active, as health impacts may occur when in close proximity to the small cells. These procedures add time to the repair. Fourth, there is an aesthetic impact to the units, which may be unsightly. While BSL has implemented aesthetic guidelines, BSL believes the FCC order is burdensome to the City in the event the aesthetic guidelines need to be changed at a later time.

When calculating lease fees, BSL takes into account the above impacts to the City's system. The fees ensure that public funds, including the Street Lighting Assessment Fund, are not subsidizing the impact to the streetlight system. The current annual fee is \$810 per attachment, increased annually by inflation. Charging the FCC's recommended rate of \$270 per attachment would result in reduced revenue of \$540 per pole.

DEPARTMENTS NOTIFIED

Bureau of Street Lighting  
Bureau of Engineering  
Information Technology Agency



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Tim Plummer  
Analyst

SMT:tcp

Attachments: Revised Resolution opposing FCC Declaratory Ruling and Report and Order

## RESOLUTION

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, on September 26, 2018, the U.S. Federal Communications Commission (FCC) adopted a small cell order relating to the 5G Deployment Plan that would accelerate the establishment of next-generation 5G wireless networks throughout the U.S. by overriding local rules; and

WHEREAS, the new 5G Deployment Plan would ban local regulations designed to prohibit wireless infrastructure deployment in the public right-of-way, limit local-government fees to the actual costs involved in reviewing deployment applications, and require municipalities to approve or disapprove applications to attach small cells to existing structures within 60 days; and

WHEREAS, the City of Los Angeles has previously established similar policy positions, such as through the City's opposition to SB 649 (Hueso) (C.F. 17-0002-S69) which would have preempted local control over small cell infrastructure by prohibiting local discretionary review of small cell wireless antennas; and

WHEREAS, City officials throughout the nation have come out against the FCC's small cell order, as it will impede local control over the public right-of-way and require cities to subsidize the wireless industry's deployment of small cell infrastructure; and

WHEREAS, the City of Los Angeles' legal counsel on telecommunication-related issues (Best, Best & Krieger) is forming a coalition of cities to challenge through filings the FCC's assumptions in the small cell order;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2019 – 2020 Federal Legislative Program opposition to the Federal Communications Commission's small cell orders that would curtail local municipalities' authority to regulate small cell wireless facilities in the public right-of-way.