

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: March 11, 2019

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

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No: 19-0002-S35
Assignment No: 19-02-0178

SUBJECT: Resolution to support H.R. 530

CLA RECOMMENDATION: Adopt the Resolution (Blumenfield – Rodriguez) to include in the City’s 2019 – 2020 Federal Legislative Program SUPPORT for H.R. 530, which would cause the Federal Communications Commission actions taken on August 2, 2018 and September 26, 2018 to have no force or effect.

SUMMARY

The Resolution (Blumenfield – Rodriguez), introduced on February 22, 2019, states that the roll-out of fifth generation (5G) mobile technology requires the installation of small cell wireless facilities. The City has been collaborating with telecommunications companies to ensure the timely processing of permits to build wireless facilities or add upon existing facilities such as streetlights, known as collocation. On August 2, 2018 and September 26, 2018, the Federal Communications Commission (FCC) adopted orders that would limit the annual fee local governments could charge for collocation to \$270 per attachment, far below the \$810 the City currently charges for cost recovery.

The Resolution further states that H.R. 530 (Eshoo), the Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019, would cause the FCC orders to have no force or effect. The Resolution therefore requests that the City support H.R. 530.

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 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.

On August 2, 2018, the Federal Communications Commission (FCC) issued a Declaratory Ruling which clarified that any state or local moratoria on the deployment of telecommunications services or telecommunications facilities would be a violation of the Telecommunications Act of 1996. The FCC also adopted a Report and Order that would, among other things, preempt state and local laws

that inhibit the rebuilding or restoration of broadband infrastructure after a natural disaster. While this Declaratory Ruling is impacted by H.R. 530, the Report and Order is not.

On September 26, 2018, the FCC 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 telecommunications 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 September Report and Order also 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 resulting from 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 future services to accommodate the attachments. Second, the attachments can weigh up to 50 pounds, which adds 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 inspections. 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 and costs. 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 should 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.

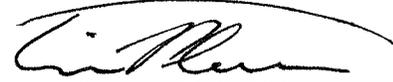
H.R. 530 would cause the Declaratory Ruling issued on August 2, 2018 and the entirety of the Declaratory Ruling and Report and Order issued on September 26, 2018 to have no force and effect. The National League of Cities, National Association of Counties, and National Association of Telecommunications Officers and Advisors, as well as 126 governments and 132 public utilities have expressed support for H.R. 530.

DEPARTMENTS NOTIFIED

Bureau of Street Lighting
Bureau of Engineering
Information Technology Agency

BILL STATUS

1/14/19	Introduced in House
1/14/19	Referred to House Committee on Energy and Commerce



Tim Plummer
Analyst

SMT:tcp

Attachments: Resolution (Blumenfield – Rodriguez) in support of H.R. 530

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 must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the roll-out of fifth generation (5G) mobile technology requires thousands of small cell wireless facilities to be installed in the City over the coming years; and

WHEREAS, the City has been collaborative with telecommunications companies to ensure timely processing of applications for permits to build wireless facilities and related telecommunications equipment or add upon existing facilities such as streetlights, known as collocation, and continues to adjust procedures to accelerate 5G deployment; and

WHEREAS, on August 2, 2018 and September 26, 2018, the Federal Communications Commission (FCC) adopted orders that would limit the annual fees the City is permitted to set for the use of the public right-of-way to \$270 per attachment, far below the \$810 per attachment the City currently charges to recover associated costs; and

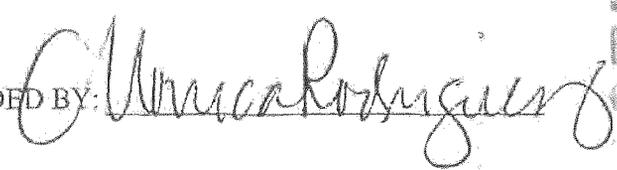
WHEREAS, the FCC's actions restricts the City's ability to balance competing interests for the use of the public rights-of-way, taking into account considerations for public safety, public utility services such as water, sewer, and electricity, the traveling public, environmental concerns, economic development, and maintenance costs; and

WHEREAS, H.R. 530 (Eshoo), the Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019, was introduced in the House of Representatives on January 14, 2019, the date the FCC's orders went into effect and would cause those orders to have no force or effect; and

WHEREAS, the Council has consistently opposed similar legislative proposals that would impede the City's control over the public right-of-way and require cities to subsidize the wireless industry's deployment of small cell infrastructure;

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 SUPPORT for H.R. 530 (Eshoo), the Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019, which would cause the Federal Communications Commission's actions taken on August 2, 2018 and September 26, 2018 restricting City control over permits for wireless facilities to have no force or effect.

PRESENTED BY: 
BOB BLUMENFELD
Councilmember, 6th District

SECONDED BY: 


FEB 22 2019

ORIGINAL