The Advance of Wireless Infrastructure
Federal, State and Local Regulations
League of California Cities
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Roles of Public Agencies

- **Property Owner Role:**
  - **Private Property:** Local Entity As a Landlord
  - **ROW:** Local Entity as owner of ROW Infrastructure

- **Regulatory Role:**
  - **Private Property:** Zoning, Planning Commission, Conditions of Approval
  - **ROW:** Time, Place and Manner Restrictions
Federal Telecom Act

- The Federal Telecommunications Act of 1996

Purpose: “to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced information technologies and services to all Americans by opening all telecommunications markets to competition.”


Section 332 of the Telecommunications Act


Federal Telecom Act

- Section 332 of the Telecommunications Act

“[N]othing in this [Act] shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless services facilities.”

(47 U.S.C. § 332(c)(7)(A).)
**Discrimination**

Regulations and approvals may not "unreasonably discriminate among providers of functionally equivalent services." (47 U.S.C. § 332(c)(7)(B)(i).)

- "[D]iscrimination based on traditional bases of zoning regulation such as preserving the character of the neighborhood and avoiding aesthetic blight are reasonable and thus permissible." (MetroPCS v. City and County of San Francisco, 400 F.3d 715, 727 (9th Cir. 2005).)

  - Applies to:
    - similar technologies, or
    - similarly situated service providers

**Federal Preemption**

- Regulations must not “prohibit or have the effect of prohibiting the provisions of personal wireless services.” (47 U.S.C. § 332(c)(7)(B)(i).)

  - No bans on wireless service
  - Must allow a provider to close a “significant gap.”

**Federal Preemption**

- Section 253 of the Telecommunications Act

  “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”

  (47 U.S.C. § 253(a).)
**Significant Gap Analysis**

- Gap = hole in providers geographic service area
- Provider must prove:
  - “Significant” gap
  - Proposed installation closes the gap using “least intrusive means”
- Gap v. Lack of Capacity

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**Denials**

- CAN be based on failure to utilize least intrusive means, i.e. aesthetics
- CANNOT be based on RF emissions
  (47 U.S.C. § 332(c)(7)(B)(iv).)

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**Denials**

- Must be in writing
- Must be supported by:
  - Substantial Evidence: Less than a preponderance, but more than scintilla evidence
  - Written record
Federal Shot Clocks

- Must approve or deny a proposed installation “within a reasonable period of time”
- FCC has defined “reasonable” as follows:
  - 60 days for collocations or modifications not resulting in a “substantial change”
  - 90 days for all other collocations or modifications
  - 150 days for all new facilities

STATE LAW: ROW

“Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway...”


STATE LAW: ROW

“(a) It is the intent of the Legislature, consistent with Section 7901, that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.

(b) The control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner...”

STATE LAW: ROW

* Time, Place and Manner:
  * Discretionary permitting allowed
  * Insurance, bonding, and indemnity requirements
  * Compliance with building and safety codes
  * Aesthetic regulations allowed
    * Sprint PCS Assets v. City of Palos Verdes Estates, 583 F. 3d 716, 725 (9th Cir. 2009)

CASE LAW

* American Tower Corp. v. City of San Diego, 763 F.3d 1035 (9th Cir. Cal. 2014)
* Crown Castle v. City of Calabasas (Case No: BS 140933, Judgement filed Jan. 24, 2014 (L.A. Sup Ct.)

Thank you for attending!

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