



The Advance of Wireless Infrastructure
Federal, State and Local Regulations

League of California Cities
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PRESENTED BY
Christy Marie Lopez
Of Counsel

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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.....”

(H.R. Rep. No. 104-458 (1996))

Section 332 of the Telecommunications Act

- (7) Preservation of local zoning authority.
- (A) General authority. Except as provided in this paragraph, nothing 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 service facilities.
- (B) Limitations.
 - (i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—
 - (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
 - (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.
 - (ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.
 - (iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.
 - (iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
 - (v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(47 U.S.C. § 332(c).)

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)(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

Denials

- CAN be based on failure to utilize least intrusive means, i.e. aesthetics
(T-Mobile West LLC v. City & County of San Francisco, 2016 Cal. App. LEXIS 769 (Cal. App. 1st Dist. Sept. 15, 2016).)
- CANNOT be based on RF emissions
(47 U.S.C. § 332(c)(7)(B)(iv).)

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....”

(Cal. Pub. Util. Code § 7901)

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....”

(Cal. Pub. Util. Code § 7901.1)

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)
 - *T-Mobile West LLC v. City & County of San Francisco*, 2016 Cal. App. LEXIS 769 (Cal. App. 1st Dist. Sept. 15, 2016)

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.)
- *T-Mobile West LLC v. City & County of San Francisco*, 2016 Cal. App. LEXIS 769 (Cal. App. 1st Dist. Sept. 15, 2016)

Thank you for attending!

Christy Marie Lopez

Of Counsel

Best Best & Krieger LLP

18101 Von Karman Ave., Suite 1000

Irvine CA 92612

Phone: 949-263-2600

Email: christy.lopez@bbklaw.com

www.bbklaw.com
