Small Cells in 2018
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Program

- Federal Activity
  - Congress
  - FCC
  - BDAC
- State Legislation
- Litigation
- What’s Next
Capitol Hill

- Big picture – Congress likely done w/ major legislation for the year & focusing on midterms
- Omnibus spending bill survived attempts to attach wireless-related riders
- Industry dominates the conversation, using 5G as justification for broad agenda of deregulation & preemption

Capitol Hill

- Siting-specific legislation
  - Draft 5G bill – Thune/Schatz – TBD
  - RAPID Act – Moran/Scalise – TBD
- General FCC Matters
  - MOBILE NOW (S.15) – included in omnibus spending package
  - FCC Reauthorization – included in omnibus spending package
Capitol Hill

• Infrastructure
  • Whenever Congress gets to infrastructure, expect preemption & deregulation to accompany any action on wireless
  • Highly unlikely before 2019, but industry continues laying groundwork and pushing their 5G message

FCC

• Big picture – this FCC is very receptive to industry wishes around wireless & small cells
• What wireless industry wants :
  • Greater access – right to use ROW & poles
  • Lower costs – capping fees & rents at cost or below market rates
  • Streamlined processes – restricting local zoning & permitting, more shot clocks & deemed granted remedies, federal preemption of localities
• Litigation expected on many of these issues
FCC

- Local zoning & siting preemption
  - No action yet on 2017 NPRMs, but FCC in March signaled action on those issues in coming months.
- Environmental/historic review
  - March 2018 order exempts all small cells from NEPA/NHPA Federal review
  - Raises concerns for small cell collocations & future actions

Recurring Theme at the FCC: Local Government as Part of Problem, Not Solution, to Broadband Deployment

- Multiple FCC items describe local government policies as “barriers to entry and investment”
  - Mobilitie wireless siting petition
  - Wireless and wireline infrastructure proceedings
  - Preemption Petition Targeting San Francisco MDU Ordinance
  - Multiple Tenants Environment Proceeding
  - Section 706 Inquiry
  - BDAC
BDAC
FCC’s Broadband Deployment Advisory Committee
Established in 2017, dominated by industry voices with minimal local representation
Final recommendations due April 2018 – FCC action likely to follow

BDAC Structure & Purpose
• Charged with identifying ways to eliminate barriers to infrastructure investment
• Working groups focusing barriers, model state & local codes, federal issues, & costs
• Minimal local gov’t representation, proposals adopted consistently mirror industry agendas & dismiss local gov’t perspectives & concerns
BDAC Recommendations

• Model State Code
  • Includes wireless industry modeled state small cell preemption language
• Barriers Working Group
  • Identified numerous local gov’t practices as barriers
  • Rejected local gov’t efforts to include minority report w/ dissenting views

BDAC Recommendations

• Costs
  • Recommendations due in April, expected focus on capping application & ROW access fees below market rate
• Model Local Code
  • Sole working group with meaningful local representation & balanced approach, reflects reasonable recommendations
**BDAC Recommendations**

- **Costs**
  - Recommendations due in April, expected focus on capping application & ROW access fees below market rate

- **Model Local Code**
  - Sole working group with meaningful local representation & balanced approach, reflects reasonable recommendations

**State Small Cell Legislation**

- Many states have adopted legislation. Details vary but generally:
  - Liberal definition of “small cell” based on federal definitions; may or may not deal with structures
  - Shot clocks /bulk permits
  - Eliminate discretionary authority.
  - Access to government vertical assets and other property
  - Regulated low rental rates
  - Other state level fixes (permit renewals)
  - Cable industry / oppose without amendments
    - Then propose their agenda in amendments
  - Some better, some worse than CA's vetoed SB649
State Legislation Landscape
As of March 20, 2018

2 states adopted legislation to preempt local siting in 2016.
• Ohio in process of being overturned

• California was vetoed
• McAllen, TX challenge survives Motion to Dismiss

2018 - laws signed in
• New Mexico
• Utah

12 states have pending legislation
• New York bill was part of budget – defeated
• Maryland died in committee
• Maine died in committee

Litigation

• Small Cell - some prior and pending cases
• Net Neutrality
What Local Leaders Need to Do

• Show up – Congress, FCC, state legislatures, & courts

• Form coalitions to fight state bills

• Commit time and resources to policy & prepare to face challenges at multiple levels simultaneously

• Educate elected officials about your views and work to tell the other side of the story and create a counter-narrative