



Jenny Leinen <leinen@monterey.org>

**FCC comments, please forward to Planning Com, Wireless Ordinance Subco m.**

1 message

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~  
To: leinen@monterey.org  
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Mon, Sep 24, 2018 at 9:02 AM

Ms. Leinen:

Please forward to the Planning Commission and Wireless Ordinance Subcommittee. Thank you.

Nina Beety

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Dear Planning Commission and Subcommittee:

Attached are my comments to the FCC on its draft order (Dockets 17-79 and 17-84) eliminating most state and local authority over cell towers, including small cells.

<https://www.fcc.gov/document/streamlining-deployment-next-generation-wireless-infrastructure>

I sent the FCC an additional comment asking for postponement of the vote this Wednesday, re-opening the comment period, and posting the draft order on the FCC homepage, as did a number of other commenters.

Sincerely,

Nina Beety

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 **9-17-18 NB, FCC Comments draft order 17-79, 17-84.doc**  
57K

9-17-18

To Marlene Dortch  
Office of the Secretary  
445 12<sup>th</sup> St., SW  
Washington DC 20554

*EX PARTE*

Nina Beety

Accelerating Wireless Broadband Deployment  
by Removing Barriers to Infrastructure Investment;  
Accelerating Wireline Broadband Deployment  
by Removing Barriers to Infrastructure Investment

D 17-79, D 17-84

Dear Ms. Dortch:

...

When Tom Wheeler moved from the helm of the CTIA to the helm of the FCC, he transferred over its function. He warned that he intended to gut FCC regulatory oversight, “turning innovators loose.”

“[S]tay out of the way of technological development.”

“Rule number one is that the technology should drive the policy rather than the policy drive the technology”

National Press Club, June 20, 2016

That was in 2016. Now with these proposed new rules and other recent rule changes, the FCC intends to finally preempt state and local government regulation and authority to such as degree as to virtually eliminate it. The industry appears to be completely in charge, with “the overarching objective that telecommunications service and personal wireless services be deployed without material impediments.” (#92)

This flips the FCC regulatory role and mandate. The FCC now regulates the public and state and local governments, instead of regulating the telecommunications industry. The FCC makes absurd statements about wanting a “fair and balanced legal and regulatory environment” (#79) when it wants nothing of the sort. It seeks only to protect the telecom industry and exclude all other stakeholders.

The breadth and scope of these new rules is breathtaking. In them, the FCC radically redefines key regulatory concepts and applies them broadly, intruding on state and local affairs and blocking any inhibitory regulation. The FCC position is “to encourage the

rapid deployment of personal wireless facilities” “free from municipally imposed barriers to entry” (#119).

The rules run roughshod over federal, state, and local rules, Constitutional protections, civil rights, the public, and the environment. Commenters noted that these rules

- create a taxpayer subsidy
- usurp the role of the judiciary
- are at odds with 10<sup>th</sup> Amendment and Constitutional precedents, and case law
- unconstitutionally interfere with the relationship between states and their political subdivisions,
- “compel the states to administer federal regulatory programs or pass legislation” (#97) and
- are a “federal regulatory program dictating the scope and policies involved in local land use” – League of Minnesota Cities.

In view of the far-reaching effects from this FCC proposal, these proposed new rules and guidance must have a thorough independent analysis to

- evaluate conflicts with existing laws – federal, state, local
- evaluate costs – federal, state, local, public – including costs from preemption of existing law
- evaluate health, environmental, scenic, and resource impacts
- evaluate other impacts, such as societal impacts
- evaluate impacts to those disabled by electromagnetic sensitivities

Currently there is no such evaluation, and there are no plans to obtain one. In its report, the FCC principally quoted itself and its prior decisions, the industry, and industry-connected groups to justify these new rules.

Strangely, to the question in both NPRMs:

“Federal rules that may duplicate, overlap, or conflict with the proposed rules,”

the FCC replied: “None”. That is completely false and speaks to the unwillingness and/or ignorance of the FCC to understand anything outside of its relationship with the industry.

The new rollouts envisioned have little to do with Congress’ original intent in the 1996 TCA, and this is reflected in the FCC’s attempt to eliminate coverage and significant coverage gap as criteria in cell tower decisions. It is well known that Verizon and other companies are attempting to grab business from cable companies with these PROW cell towers. In many areas of the U.S., the telecommunication coverage is quite good, but these companies want to compete with faster download times for video. Coverage considerations leave them at a disadvantage, so they want them eliminated.

In this proceeding, the token comment period of less than 2 weeks, and “party standing” constraint is a gross affront in view of these far-reaching rules. It is openly hostile to all stakeholders, particularly the EMF-disabled, and blocks the people and their elected

representatives from meaningful input and participation. By eliminating democratic and transparent process, this proceeding most closely resembles a coup d'etat.

The Americans with Disabilities Act is one of the most serious violations by the FCC in these new rules. The FCC has ignored ADA for years, despite its being raised in this and previous proceedings. People disabled by electromagnetic sensitivities are protected by ADA from discrimination and barriers to access, and these new rules have catastrophic effects on this vulnerable population. However, the FCC blocked the assertion of my disabled rights and those of others by failing to address us in these rules, refusing to dialogue with EMF-disabled stakeholders, and refusing to deviate from its plans.

When the FCC pushes "wireless service for all Americans" (p. 29/#60), it is compelling hazardous exposure on those who don't want it and who are disabled by it, like forcing peanuts on allergic people. When the FCC makes statements like "discriminatory effect" and "Americans need", the FCC ignores discriminatory effect on disabled Americans -- a class protected from discrimination. The "digital divide" also describes a situation similar to racist housing covenants, because wireless technology rollouts exclude access and eliminate civil rights for those disabled by electromagnetic sensitivities.

The FCC brashly and coldly asserts that these technologies are safe for all, refusing its duty to make disabled accommodation for those disabled people who say the emissions are not safe for them. This is likely the reason there is no public comment at monthly FCC hearings. By not hearing the public, it can claim that issues don't exist.

But I commented to the FCC in these and other proceedings. I and others in my disabled class have said, "Wireless technology is not safe for us. We cannot tolerate it. Wireless emissions are causing severe disabling, even life-threatening effects to us already. We cannot tolerate more in our environment. This is a continually rising access barrier, blocking our use and enjoyment of our homes. PROW cell towers could constitute an actual taking of our homes and property because we may be unable to live in them. Our access to our communities, ability to use public roads and sidewalks, visit friends and family, shop for groceries, our access to critical services, such as medical care, and to travel freely are increasingly blocked by wireless technology rollouts. We want accommodation and access, and we want this discrimination against us to stop."

The FCC ignores us, blocking the assertion of our disabled rights, even stigmatizing us. By doing so, it is violating federal rules and state-equivalent rules.

The FCC also ignores its obligations under ADA Title II which would place limitations on new wireless deployments. Since the Industry is authorized (even mandated), regulated, enabled, and promoted by government regulators, it is therefore a quasi-state actor and subject to Title II rules, and the FCC must make sure that the industry complies with Title II. But it refuses to do so, violating this federal rule as well.

There are financial costs for the disabled and for local, state, and the federal

governments as a result of this disability. Despite industry-facing Accenture and its report on economic benefits (Footnote #1), serious economic costs have not been evaluated. Lack of access translates to lack of economic benefit to a community. Access and disability negatively affect employment opportunities and income, and may necessitate public assistance, impacting public funds. This also further reduces financial inputs into the local economy. The situation puts people at risk for homelessness, which causes severe personal and societal impacts. These costs are ignored, swept under the carpet by the FCC. Disregarding the EMF-disabled is in direct violation of federal rules and Congressional mandates per ADA.

The FCC attacks state and local regulation, though Congress did not preempt state or local rules “to protect public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers” (#50) The FCC radically redefines prohibition of service to apply to every aspect of local and state regulation. “A state or local legal requirement constitutes an effective prohibition if it ‘materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.’” In doing this, the FCC conflicts with Congress’ intent. The only regulatory environments left for the public are states and local governments, and the FCC wants to eliminate these. That is overreach. Regulating states and localities is not its mandate.

FCC unashamedly states its new rules are to protect the industry and any new rollout. For example, the industry wants to eliminate stealth design requirements, including all aesthetics considerations, specific paint colors or designs, camouflage, size limitations, screening, or any expense.(#81). These aesthetics rules can constitute an “effective prohibition”, says the FCC. The FCC cares not about visual impact and a community’s scenic character, or the graffiti targets and industrial blight wireless carriers bring.

This is a “taxpayer subsidy” (#70)

In a radical new step, the FCC says local and state government fees can constitute an effective prohibition of service, including “the effect of prohibiting service when aggregate effects [of fees] are considered” and that they cause delays, slowdowns, and stoppages. If fees are now equated by the FCC with “effective prohibition”, taxpayers, local governments, and states can look forward to completely subsidizing the telecom industry in the very near future. By these new rules, the FCC externalizes industry costs onto cities, counties and states.

The FCC provides fee amounts it considers “fair and reasonable compensation”, which “do not constitute an effective prohibition” (#75) that states and local governments can collect on public right of way cell towers. It implies these are benchmarks, and says fees that are higher must be shown to be “objectively reasonable”. Who is the judge? Where is the independent analysis of appropriate fees? The FCC’s basis for these fees appears to be from CTIA-written small cell legislation.

What’s worse, these “reasonable” fees only pay for 1-2 hours of staff time total per

application and do not cover actual government costs. By not covering costs, they do not allow for orderly or thorough local and state planning, and cities will be overwhelmed and overrun with visual blight, like Santa Rosa and San Francisco.

The FCC statement: “Our approach to compensation ensures that cities are not going into the red to support or subsidize the deployment of wireless infrastructure” is unsupportable and absurd. That there is no independent analysis of the cost impacts to localities or to the public shows the FCC doesn’t even care about accuracy. This is an unfunded mandate, putting exorbitant costs on cities, counties, states, and residents, reducing funding for public services, and reducing staff availability for city work. Taxpayers and the greater public will pay for this roll-out in tangible and non-tangible ways. Financial costs include staff time, extra staff, office space for extra staff, storage of documents, report, analysis, and presentation preparation, site visits, resolutions and other paperwork including notifications on government websites for public access requirements, meetings, postponing other agency priorities, paper and ink, legal and technical consultants, and the public’s time.

And the FCC states the burden is on state and local governments to justify their costs as “reasonable” in the possible face of lawsuits. Local governments and states already have limited and constrained resources, and often substantial debt. This will further strain local and state resources. There is also no consideration of downstream societal costs and economic costs from deploying this infrastructure which was heard by California legislators during Senate Bill 649 hearings. It is unreasonable and irresponsible for a federal regulatory agency to compel states and local governments and taxpayers to assume these costs and bear this burden.

FCC and the industry makes claims of poverty which are not credible -- the industry is poor and strapped (e.g. “stretch finite capital dollars”, “constrained resources”) -- and describes cities and states as predatory (e.g. “to leverage their unique position to extract high fees”, “imposed obstacles”, “excessive government fees”). However, in reality, state and local governments are usually cash-strapped, while the telecommunications industry makes billions in profits, their executives make millions, and companies spend millions in lobbying and lobbying events, golf tournaments, and NGO capture contributions to groups such as the American Cancer Society. Claiming poverty is ridiculous and duplicitous. Their capital expenditure accounts have been under-capitalized – set artificially low by design to build the case for “poverty” and “stretched” budgets, as well as a result of poor management and budget preparation. This is not the fault of local or state governments, which should not bear their costs.

FCC claims small cells have “far less visual and other impacts” than other facilities, have smaller community impact, cause little or no risk of adverse environmental or historic preservation impacts, and have no complex issues. The FCC quotes itself or the industry to support these claims (#103). In reality, small cells are “in your face”, on your street, looking in your window, leading to more visual impacts. The equipment can be as large as a refrigerator (not a “pizza box” (Footnote 272) - a lie that has been debunked nationally), blocking sidewalks and becoming graffiti targets, and the equipment on

poles creates visual blight. These industrial nightmares are out of character with most neighborhoods, especially historic districts. Environmental damage is assured but those impacts are “off the table” thanks to TCA Section 704, despite their seriousness.

In these rules, the FCC asserts its peculiar definition of “collocation” – adding wireless equipment to any structure -- should replace the common definition – locating wireless equipment with other wireless infrastructure -- in order to restrict local and state power and serve the industry

Then, the FCC institutes new shotclocks, claiming that cities and states should be able to address small cells in more expedited fashion than the time needed for larger facilities (#101). Again, FCC claims don't fit the facts. Large equipment next to homes, schools, parks, or in historical districts is often considerably more complex than big towers on mountain tops or far from people. The processing time is the same or longer, especially with large numbers of people impacted and the quantity of private property in close proximity.

A 60-day shotclock is unreasonable. “Efficient in processing” (#102) means eliminating public process and input. Shorter shotclocks for smaller facilities impair states' and localities' authority to regulate the right of way, says the League of Arizona Cities.

Agencies are allowed to rebut presumptive reasonableness of shotclocks based on actual circumstances (#105) but this appears to be done in court, at taxpayer expense. Citing BDAC or S.3157's industry-written bill as back-up for 60/90 day shotclocks is laughable.

The FCC “sees no reason” that batched applications should get a longer shot clock. The FCC believes it takes the same amount of time to read 30 pages as it does to read 300 pages. To state the obvious, plans for each site are detailed, with photo sims of each location, RF assessments of each, spread of antenna emissions in relation to different buildings and lots, etc. This is not the same as putting more or less bots dots on a freeway, and it is frightening that oversight of microwave infrastructure in American communities has been given carte blanche to an agency this lazy. The incentive for industry to batch projects is that it is likely cheaper, with application fees less for one project of 13 sites, than for 13 separate applications.

The FCC also wields “prohibition of service” interpretation over localities or states which miss a these tight shotclock deadlines for small cells, “State or local inaction” will not only constitute a failure to act, but now, this will be considered “a presumptive prohibition of the provision of personal wireless services” and the applicant can get expedited relief in a lawsuit (#114, 115), because “such a failure to act can be expected to materially limit or inhibit the introduction of new services or the introduction of existing ones.” It will be much more difficult to rebut a presumptive prohibition claim in court. The FCC claims a lawsuit resulting in permanent injunction would only cause minimal harm to states or localities. The FCC creates this “additional remedy” to “reduce the likelihood that applicants will need to pursue additional and costly relief in court”. There is no relief

for states or localities. “We expect siting authorities to issue without any further delay all necessary authorizations” when they have missed a deadline “absent extraordinary circumstances”. Approval appears to be the only option.

BDAC is repeatedly referred to in this FCC report, but it has been exposed as another industry-dominated group. When Mayor Sam Liccardo quit, he said, “...[T]he industry heavy makeup of BDAC will simply relegate the body to being a vehicle for advancing the interests of the telecommunications industry over those of the public. The apparent goal is to create a set of rules that will provide industry with easy access to publicly funded infrastructure at taxpayer subsidized rates, without any obligation to provide broadband access to underserved residents.” <http://sanjoseca.gov/DocumentCenter/View/74464>

It is also telling that the FCC uses the term ROW – right of way – rather than PROW – public’s right of way -- throughout its report, as it asserts broad preemptive ability over state and local governments, and over the public (p. 23).

As I stated in my Comments on 17-84 in 2017:

The Commission has turned away from its mandate to regulate the telecommunications industry and is now heavily regulating the public, municipal governments, and states, as reflected in this proceeding, WT 17-79 and others. It has not been given this authority by Congress or most importantly, by the people.

This is the reality the public faces.

This pattern and practice of the FCC -- this operational ethic that puts it above all law – is demonstrated by its suppression of science and fact, and its willingness to throw American men, women, and children, and the environment under the wireless bus to be crushed.

Who is doing the policing? Not the FCC. It only forces through these changes, making sure they happen, consequences be damned, cities be damned, people be damned.

Though FCC has quickly acted on proceedings 17-79 and 17-84, and with these new rules dramatically increased the public’s microwave radiation exposure, including for children and babies, the FCC has stalled its proceeding to re-evaluate exposure limits -- 13-84 -- for 5 years.

I have not discussed herein the biological impacts of wireless radiation, including what is known of higher frequencies planned for 5G. The damage microwave RF does to humans and to trees, plants, birds, insects, and wildlife has been well-studied for decades. The National Toxicology Program and Ramazzini Institute results showed carcinogenicity that had even James Lin reacting. The NTP exposure was only for 2 years. American children will be exposed for their lifetime. How long will they live?



This is our nation's future. What is the financial and social cost to our nation of rising neurological disease and death, rising cancers and tumors, rising infertility, rising DNA damage and birth defects, rising mental illness, rising bird and tree deaths and extinctions?

Will it cost mere billions? Will it cost trillions? Or will it bankrupt our American society?

The clock keeps ticking.

Will the FCC continue to do nothing?

/s/ Nina Beety

September 17, 2018



Jenny Leinen <leinen@monterey.org>

# Pleaes Vote in Favor of Changing City of Monterey Wireless Ordinances as Recommended by the Wireless Subcommittee

1 message

Paula A. White <pa.white@monterey.org> Mon, Sep 24, 2018 at 12:43 PM  
Reply-To: "Paula A. White" <pa.white@monterey.org>  
To: Jenny Leinen <leinen@monterey.org>, Monterey Suggest <montereysuggest@monterey.org>

Dear Sir/Madam,  
Please see and circulate the attached letter to the Planning Commission and City Council regarding the meeting and vote scheduled for 25 September 2018.  
Thank you very much,  
Paula White

24 September 2018

## Re: Amending the City of Monterey's Personal Wireless Ordinances – Please Vote in Favor of Accepting the Wireless Subcommittee's Recommendations

Dear City of Monterey Planning Commission,  
This letter is regarding the upcoming vote (25 September 2018) on changing the wireless ordinances in Monterey. First, I wish to thank all of the City Council and Planning Commission members and others who have worked so tirelessly on this issue. I am grateful for the thoughtful consideration shown to our community over these past several months as you listened to our concerns, in letters and public comment periods, regarding the installation of dangerous cell towers and "small cell" facilities throughout our neighborhoods.  
I was impressed by the formation of the Wireless Subcommittee where the City of Monterey and community members joined together to work towards the best possible solutions that would help ensure our beautiful city remains a safe and vibrant place to work and live.  
Most recently, I am grateful to learn of the City Council's unanimous vote to join the Smart Communities Coalition in its fight against the FCC's proposal that seeks to run roughshod over local ordinances and force risky wireless technologies into our communities.  
In keeping with the huge, progressive strides already made in this campaign to safeguard our community and citizens, I urge you to vote on 25 September 2018 to approve the changes to our wireless ordinances as recommended by the City of Monterey's Wireless Subcommittee.  
This remains a crucial time that will have long-term effects on all of our futures. Thank you again for your time and foresight.  
Sincerely,  
Paula White  
Resident and Homeowner  
26 Cuesta Vista Dr  
Monterey

**MRY PC & Wireless Subcommittee Vote.docx**  
15K

24 September 2018

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Sincerely,

Paula White

Resident and Homeowner

26 Cuesta Vista Dr



Monterey



Jenny Leinen <leinen@monterey.org>

## Verizon Wireless Comments on Wireless Facilities Code Amendments - Tonights' Commission Agenda Item 5

1 message

**Paul Albritton**  Tue, Sep 25, 2018 at 12:52 PM  
 Reply-To: Paul Albritton   
 To: Jenny Leinen <Leinen@monterey.org>  
 Cc: Monterey City Clerk <Bonner@monterey.org>, Christine Davi <davi@monterey.org>, Kimberly Cole <cole@monterey.org>

Dear Planning Commissioners, attached please find our letter prepared on behalf of Verizon Wireless providing comment on proposed amendments to the City's wireless facilities ordinance (Code § 38-112.4) to be considered at your meeting this evening. We urge the Commission to defer any recommendation to a future hearing and direct staff to make needed revisions. Thank you.

--  
 Paul Albritton  
 Mackenzie & Albritton LLP  
 155 Sansome Street, Suite 800  
 San Francisco, California 94104  
 (415) 288-4000  
[pa@mallp.com](mailto:pa@mallp.com)

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 **Verizon Wireless Letter 09.25.18.pdf**  
 117K

**MACKENZIE & ALBRITTON LLP**

155 SANSOME STREET, SUITE 800  
SAN FRANCISCO, CALIFORNIA 94104

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TELEPHONE 415 / 288-4000  
FACSIMILE 415 / 288-4010

September 25, 2018

**VIA EMAIL**

Chair Stephen Millich  
Vice Chair Michael Dawson  
Commissioners Michael Brassfield,  
Daniel Fletcher, Terry Latasa  
and Hansen Reed  
Planning Commission  
City of Monterey  
580 Pacific Street  
Monterey, California 93940

Re: Proposed Amendments to Code Section 38-112.4  
Personal Wireless Service Facilities  
Planning Commission Agenda Item 5, September 25, 2018

Dear Chair Millich, Vice Chair Fletcher and Commissioners:

We write on behalf of Verizon Wireless regarding proposed amendments to Monterey City Code Section 38-112.4, *Personal Wireless Service Facilities* (the “Proposed Amendments”). The Proposed Amendments include several new provisions that are inconsistent with federal regulations, including Planning Commission review of Section 6409 applications and denial of incomplete applications during a submittal appointment. The requirement for a mock-up of each proposed facility is excessive and may be infeasible. We encourage the Commission to defer action on the Proposed Amendments and direct staff to make needed revisions.

While the Proposed Amendments escalate review of all wireless facility applications to the Planning Commission, Verizon Wireless encourages the City to reserve Zoning Administrator approval for small cells that fall below certain dimension thresholds. Proposed Amendments § 38-112.4(D)(1). This will encourage wireless carriers to design small facilities that provide needed network capacity with minimal visual impact. In the right-of-way, a typical small cell involves a single cylindrical antenna up to four feet tall with an antenna mount, plus up to nine cubic feet of associated equipment placed on a pole. We urge the City to allow the Zoning Administrator to review and approve such small cells.

The Proposed Amendments inappropriately mandate that the Planning Commission review eligible facilities requests (also known as Section 6409 applications), even striking any reference to administrative review. Proposed Amendments § 38-

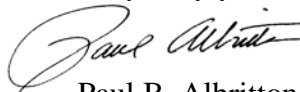
112.4(D)(2). This is inconsistent with federal law and rules adopted by the Federal Communications Commission (the “FCC”) for facility modifications.<sup>1</sup> The FCC adopted objective criteria for substantial change thresholds and emphasized that approval of eligible facilities requests is “obligatory and non-discretionary,”<sup>2</sup> or, administrative in nature. In contrast, Planning Commission review would inject discretion and subjectivity into the process. There is no benefit from public notice, a hearing or Commission review of objective substantial change criteria. The responsibility for reviewing Section 6409 applications should remain with the Zoning Administrator.

The requirement for wireless applicants to build a mock-up of each proposed new facility is excessive. Proposed Amendments § 38-112.4(E)(1)(b). Photosimulations and example photos of built facilities provide sufficient representation to allow the public and decision-makers to assess visual impacts. Mock-ups in the right-of-way may be unworkable if they require rearrangement of existing utilities on a pole, which other utilities are not obligated to perform for non-functional temporary installations. This requirement should be stricken.

The provision allowing the Community Development Director to deny incomplete applications during a submittal appointment ignores FCC Shot Clock timeframes that include an initial 30-day window for the City to issue a notice of incomplete application which pauses the Shot Clock until an applicant responds (with additional pauses if follow-up submittals remain incomplete).<sup>3</sup> Proposed Amendments § 38-112.4(E)(3). A submittal appointment may not afford the Director ample time for thorough review of an application. This provision should be revised to eliminate the option for instant denial. Instead, the City can specify that if staff finds an application to be incomplete, a timely notice will halt the Shot Clock.

The Proposed Amendments introduce new procedures that contradict federal regulations or are excessive and unnecessary. We urge the Commission to defer any recommendation to the Council and direct staff to eliminate problematic requirements.

Very truly yours,



Paul B. Albritton

cc: Christine Davi, Esq.  
Kimberly Cole

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<sup>1</sup> See 47 U.S.C. § 1455(a); see also 47 C.F.R. § 1.40001.

<sup>2</sup> See *In Re: Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Etc.*, 29 FCC Rcd. 12865, 12961, para. 227 (FCC October 17, 2014).

<sup>3</sup> See 29 FCC Rcd. at 12957-58, paras. 217-18.

RECEIVED Meeting PC-9/25/18  
SEP 25 2018 Agenda Item #5  
(Received at meeting)

**AT&T Comments on Monterey, CA  
Proposed Ordinance to Amend Monterey City Code Sections  
Regarding Regulation of Wireless Communications Facilities**

City of Monterey  
PEEC DIVISION

- The FCC is considering a Draft Order to adopt presumption standards for what qualifies as reasonable local regulation of small cell siting, including topics of rates and fees, aesthetics, and minimum spacing. The City will need to consider these issues following the FCC's expected vote on September 26th (tomorrow).
- We suggest the City briefly pause its consideration of the Proposed Ordinance because the FCC's action may impact various provisions. For example, as the Staff Report notes, the FCC may impose a 60-day shot clock on small cell siting. And the FCC may define "collocation" differently from the City's proposed definition in the Proposed Ordinance.
- Section 38-112.4(E)(3), regarding application submittal appointments, would violate the FCC's Shot Clock decisions. This section authorizes the Community Development Director to deny an incomplete application. Under the FCC Shot Clock Order, the City cannot simply deny an incomplete application.
- The City is missing an opportunity to encourage small cell facilities – the City should carve out a separate and simpler process for reviewing small cell siting applications.
  - Small cells present a win-win for the city and providers. Investing in small cells gives residents and businesses access to the latest and greatest wireless technologies while helping to preserve aesthetics because they easily blend with other utility infrastructure in rights-of-way.
  - Small cells will be critical to meet ever-increasing demand for wireless services.
  - In fact, with AT&T's selection by FirstNet as the wireless service provider to build and manage the nationwide first responder wireless network, each new or modified facility will strengthen first responder communications.
  - The City should not discourage small cells in open space and residential areas.
- AT&T has statewide franchise rights to construct telecommunications facilities and to place pole in the public rights-of-way.
  - Under California Public Utilities Code Section 7901, AT&T can do so, as long as it does not "incommode" the public use of the public right-of-way.
  - And under Section 7901.1, AT&T's right is subject only to the city's reasonable and nondiscriminatory time, place, and manner regulations as to how AT&T constructs in the public rights-of-way.
  - The City can *prefer* top-mounted facilities, but cannot *require* specific designs.
  - The City should allow pole-top antennas to extend 10' above the existing pole.
  - The City should not require a single cabinet – that may not result in the most aesthetically-pleasing design.
  - The City cannot prohibit AT&T from placing new poles in the rights-of-way.
  - The City cannot require AT&T to underground facilities where other right-of-way users are not required to underground.

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RECEIVED

SEP 25 2018

City of Monterey  
PEEC DIVISION