

SB 649 and Local Permitting Issues In Wireless

SBCTA Planning and Development Technical
Forum
San Bernardino, CA
May 24, 2017

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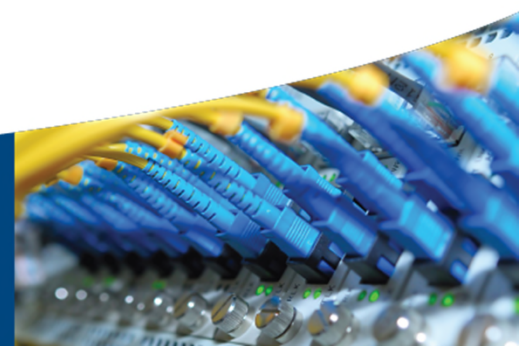


Telecommunications Law



Agenda

- The Basics
- Relevant Federal and State Laws
- How do Small Cells in PROW Fit In?
- Latest Developments
 - SB 649
 - California Public Utilities Commission
 - Federal Communications Commission
- Summary & Conclusions

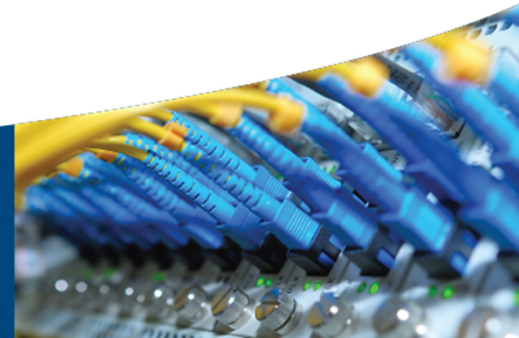


THE BASICS



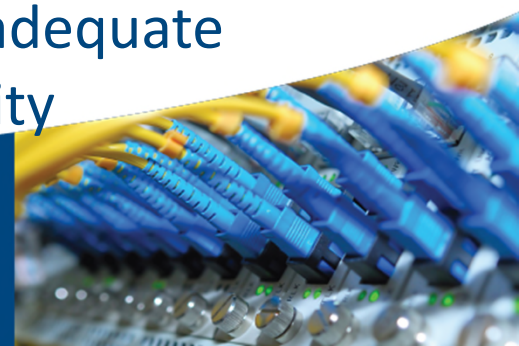
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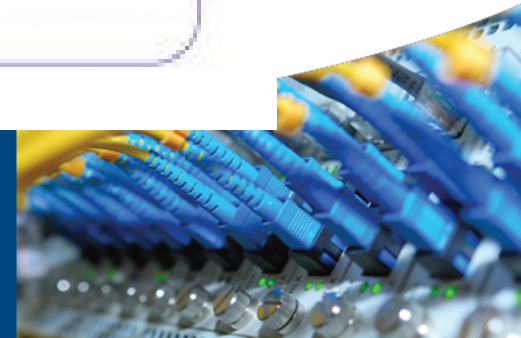
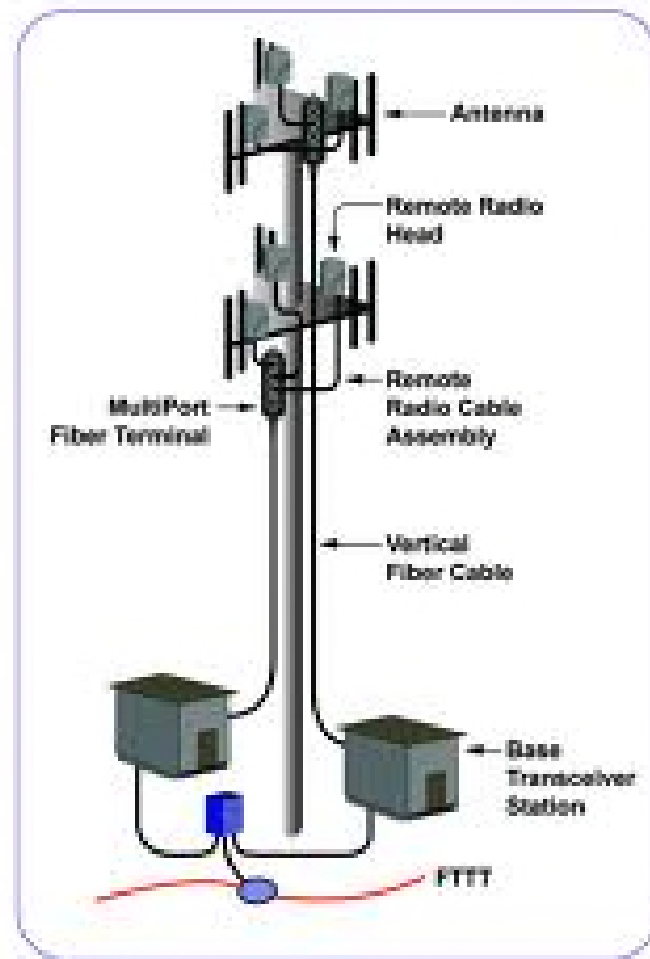
Basics

- Small Cells
 - 5G
 - Internet of Things (IoT)
 - Big Data
 - Smart City
- Issues Raised for Govt:
 - Massive numbers of wireless devices in PROW
 - Protecting the public, taxpayers and consumers
 - Protecting local revenue streams
 - Advancing community interests such as ensuring adequate connectivity



Basic Components

- Antenna(s)
- Equipment
- Connecting Cable(s)
- Support Structure
- Power Source (Meter/Battery)
- Backhaul (wired or wireless)



Small Cells/DAS -Typical Structures

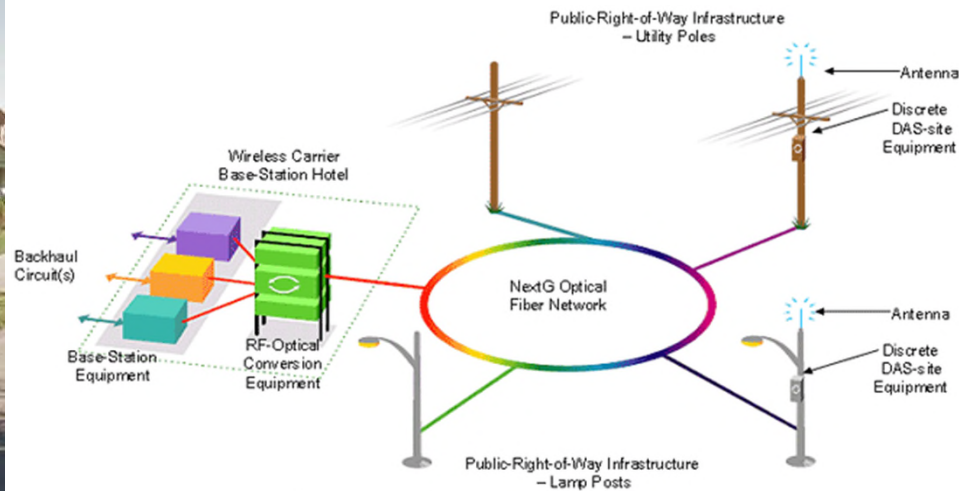
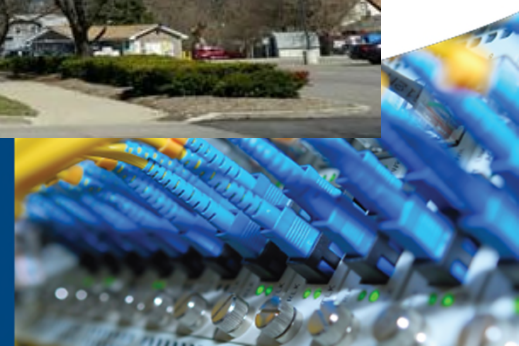


Figure 2: Distributed Antenna System

NextG DAS Diagram

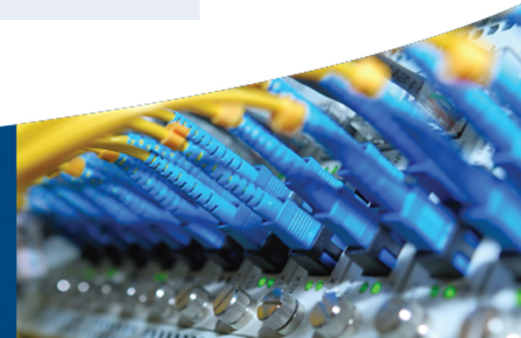


But Also Mid-Strand or 120 Ft. Pole



Types of Entities Deploying

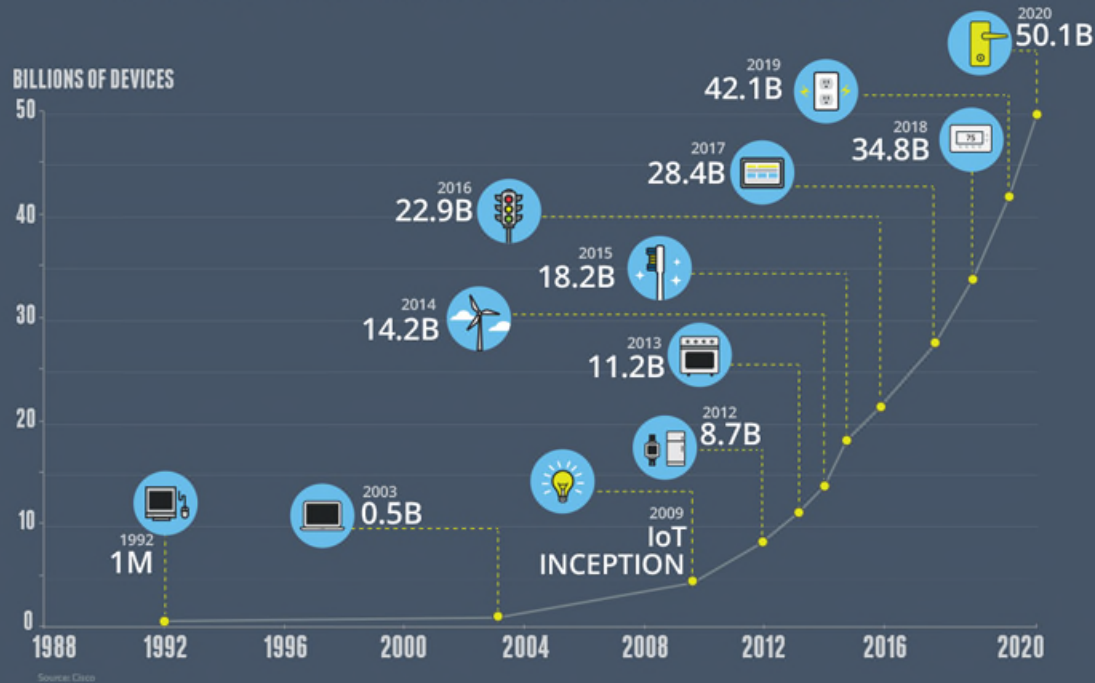
Industry	Deployment
Wireless carriers	Small cells; distributed antenna systems (DAS); future mmW 5G
Telephone companies	Small cells; distributed antenna systems (DAS); future mmW 5G
Cable operators	Wi-Fi hotspots; small cells; DAS
Gas, electric, water utilities	Advanced metering infrastructure (AMI); smart grids
Municipal	Traffic and parking systems; utilities; public safety
Others	??



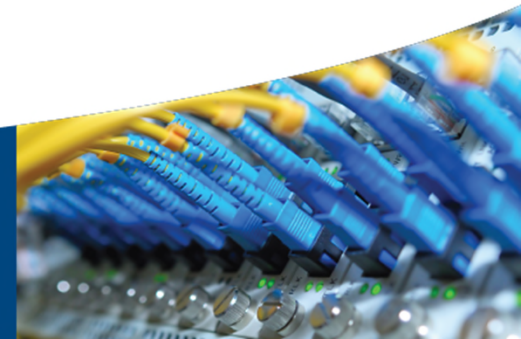
Densification Drivers

GROWTH IN THE INTERNET OF THINGS

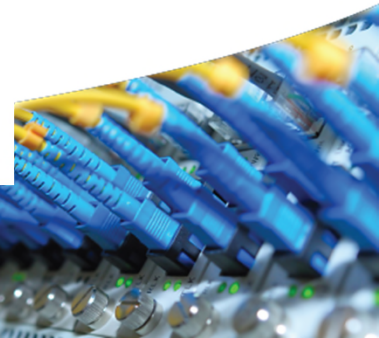
THE NUMBER OF CONNECTED DEVICES WILL EXCEED **50 BILLION** BY 2020



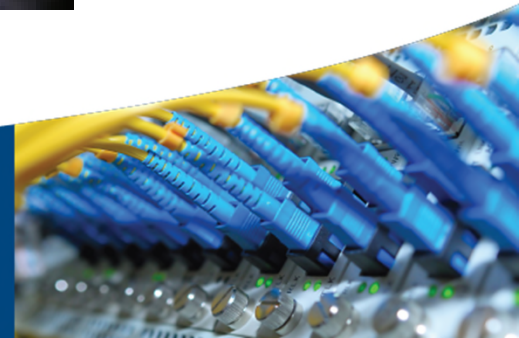
Handheld Devices



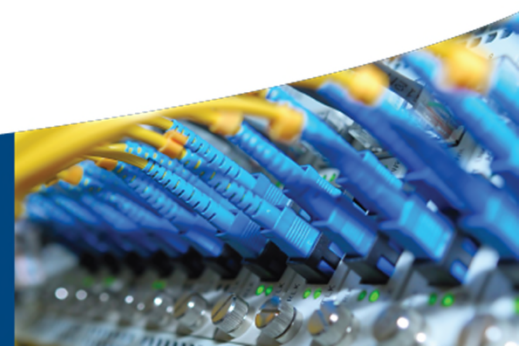
Automated License Plate Readers



Public Safety



Smart Meters



Parking systems

A parking sensor to zero-out meters?

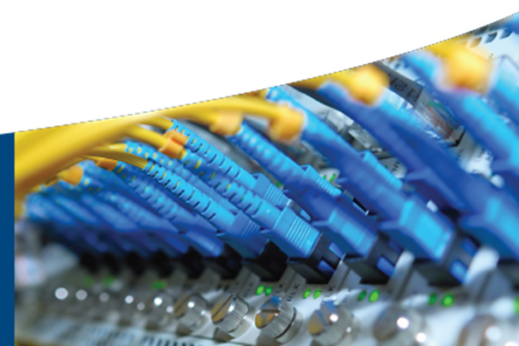
1- Zeroes out the meter



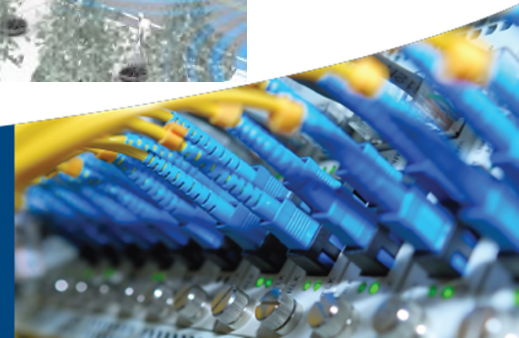
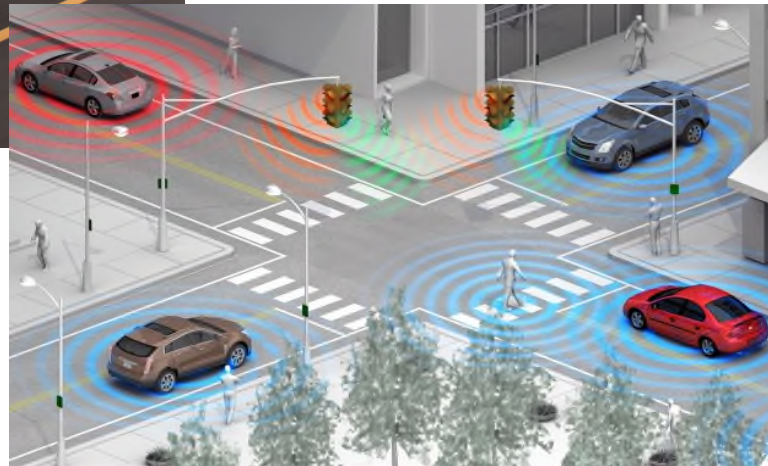
Or a complete parking solution to improve your entire parking ecosystem for all space types?



Source: Streetline.com

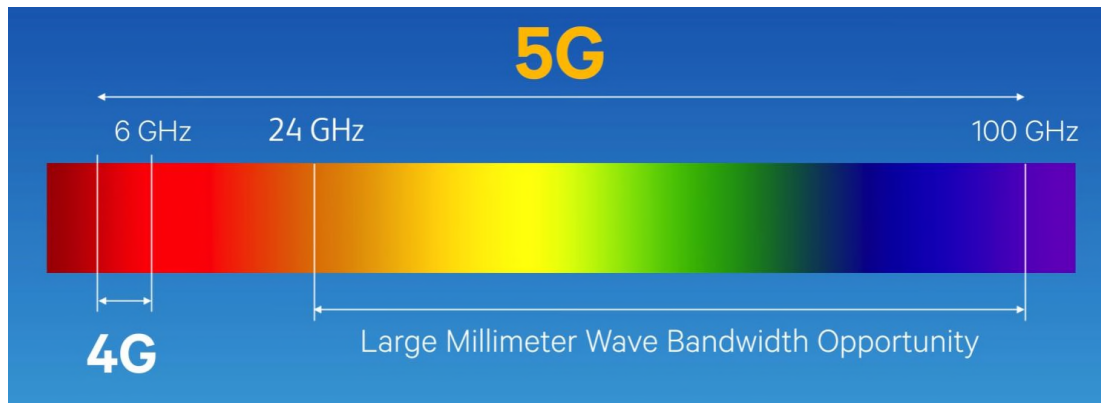


Driverless Cars

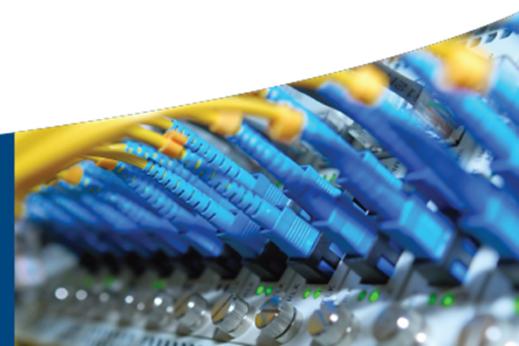


Technological Drivers

- High capacity spectrum with short range
 - 1000 times the bandwidth of 4G
 - More antennas, closer to users
- Need for high capacity backhaul
 - More fiber and fiber alternatives (microwave)



<http://www.rcrwireless.com/20160815/fundamentals/mmwave-5g-tag31-tag99>

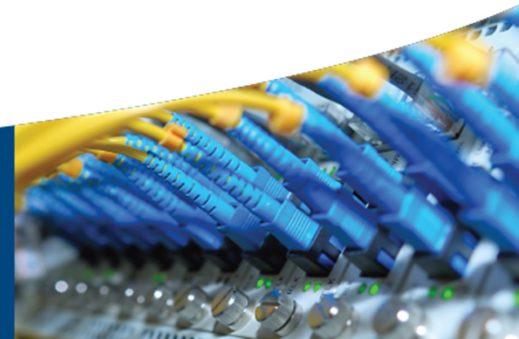


OVERVIEW OF RELEVANT FEDERAL AND STATE LAWS



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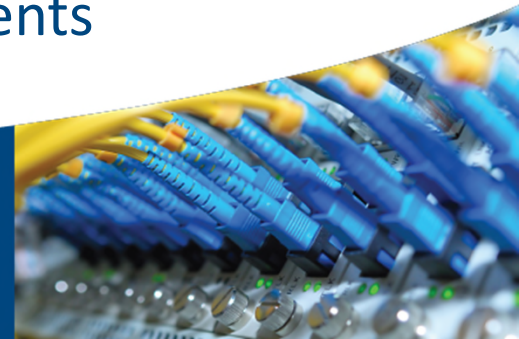
Basic Regulatory Framework in Communications

Federal

- Wireline telecommunications
 - Interstate and international services
- Wireless services
- Information services
- Broadcasting/cable
- Utility pole attachments (IOUs)

State and/or Local

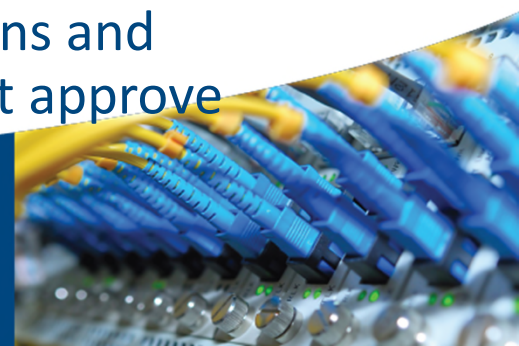
- Wireline telecommunications
 - Intrastate services
- Wireless siting (land use)
- Cable service
- Franchising use of public rights-of-way
- PROW management
- Pole attachments



Federal Wireless Laws

Impacting State/Local Authority

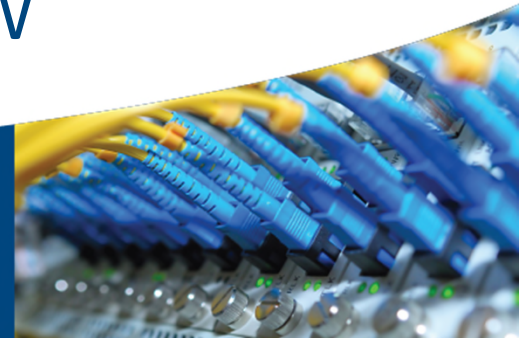
- **47 U.S.C. § 332(c)(3) (1993)**
 - No State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile services, except States can regulate the other terms and conditions of commercial mobile services
- **47 U.S.C. § 332(c)(7) (1996)**
 - Generally preserves local authority to control placement of personal wireless service facilities, subject to certain substantive and procedural limits
- **47 U.S.C. § 1455(a) (2012) (Sec. 6409)**
 - Applies to all “wireless” applications (broader)
 - Preempts local discretion over certain collocations and modifications to existing wireless sites; i.e., must approve



FCC Wireless Rules and Orders

FCC Shot Clocks & Deemed Grant (2009, 2014 & pending)

- Sec. 332 (c)(7): 90 and 150 day shot clocks apply to local review of collocations and new sites whether macro or small cells/DAS in PROW
- Sec. 6409(a): “eligible facilities requests” 60 day shot clock and deemed granted remedy apply to local review; specific parameters for EFR affecting structures within and outside PROW
- Mobilitie and 4/20/17 NPRMs in PROW



Federal Laws Impacting State/Local Authority Over Wireline Telecommunications

- **47 U.S.C. § 253 (1996)**

- Preempts local/state regulations that prohibit or have effect of prohibiting ability of any entity to provide telecommunications services
- But does not reach nondiscriminatory PROW management or compensation requirements
- Mostly interpreted by court decisions

- **FCC Actions (pending)**

- No major FCC rulemakings (2011 ROW NOI went nowhere)
- But ROW management and compensation back on table at FCC today (Mobilitie and 4/20/17 NPRMs)



State Jurisdiction Over Telecommunications Services

- CPUC regulates conditions of entry for telephone companies, and *intrastate* service (CPCNs/rates)
- Deregulation due to:
 - Perceived competition (rates and tariffs)
 - FCC services classification/technology transition
 - State law: CPUC preempted from regulation of VOIP and IP-enabled services until Jan. 1, 2020
PUC § 710 (SB 1161)(2012)



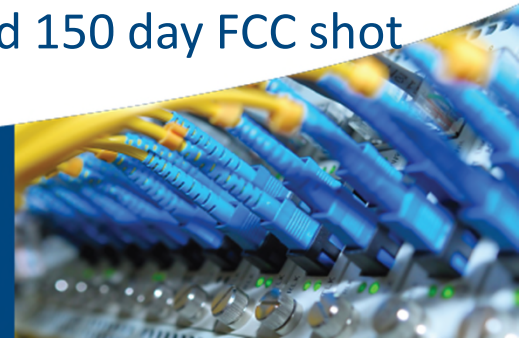
State Laws Impacting Local Authority Over Telecommunications and Wireless

- No local franchising authority:
 - PUC 7901 state franchise to telephone companies to use PROW, subject to limitations
 - Includes wireless
- Locals do have siting authority in ROW:
 - shall not “incommode the public use”
 - Discretionary review considering aesthetics ok (*T-Mobile v. San Francisco* – pending Cal. Sup. Ct)
 - PUC 7901.1 - reasonable control as to the time, place, and manner in which roads...are accessed
 - PUC 2902 – regulate use and repair of public streets, location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets



State Laws Impacting Local Authority Over Telecommunications and Wireless

- Limitations on zoning authority:
 - **SB 1627 (2006)**
 - Gov. Code § 65850.6 intended to allow:
 - Discretionary permit to approve base facilities that may later add collocation facilities.
 - No discretionary review of facilities collocated on base facility.
 - Gov. Code § 65964 prohibits:
 - Escrow deposit for removal of a facility. (bonds ok)
 - Permit of less than 10 years (unless “public safety” or “land use” reasons).
 - Require all facilities to be located on sites owned by particular parties.
 - **AB 57 (2015)**
 - extended “deemed granted” remedy to the 90 and 150 day FCC shot clocks



Pole Attachments

- 47 USC § 224 – federal rules and FCC orders govern attachments by telco, cable, wireless
 - applies to investor-owned utility poles and conduit (not street lights), and excludes municipal and coops
- CPUC exercised right to “reverse preempt” FCC and adopt its own pole attachment rules
- California adopted AB 1027 (2011)
 - Requires access and cost-based rates for communications attachments to utility poles (not street lights) of local publicly owned electric utilities

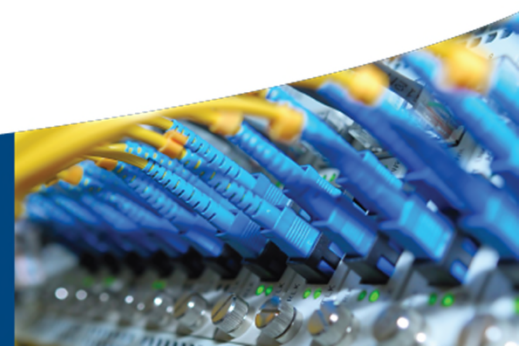


HOW DO SMALL CELLS IN PUBLIC RIGHTS-OF-WAY FIT IN?



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Regulatory Situation is Complicated

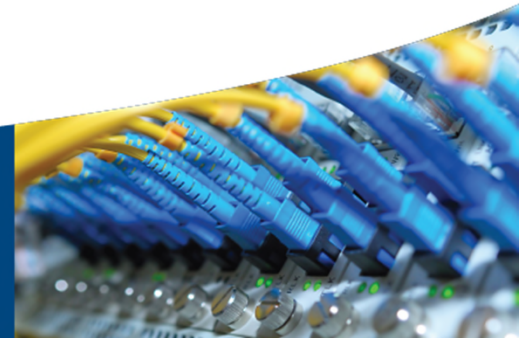
- What type of entity is placing the facilities?
 - The scope of authorizations and franchises held by different types of entities differ materially
- What types of facilities are being placed?
 - Small cells have a lot of different components and can be used for a variety of purposes
- What type of supporting structure is being used and who owns it?
 - Unlike wires, small cells go on a variety of structures
 - Access/rates for some are regulated, others are not



Regulatory Challenges

Any or All Levels of Gov't Could be Involved

- FCC licenses/environmental and historic properties review
- State PUC authorizations/review
- Local zoning and/or encroachment permitting, subject to federal and state restrictions
- CPUC pole attachment rules or AB 1027 rules or unregulated local proprietary



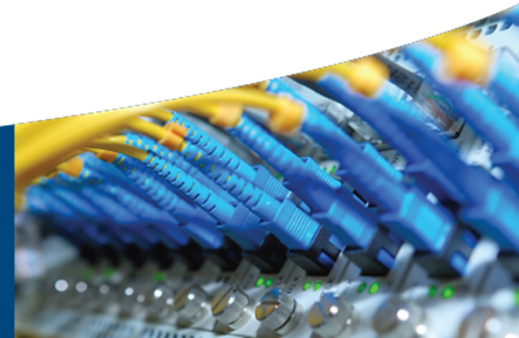
Applications Raise Questions

- Does entity have all authority for placement?
- What services will be provided?
- Do different rules apply to different components?
- Is this a piecemeal application?
- Is this new structure a utility pole or a wireless facility?
- Do zoning rules apply in public right-of-way?
- Does any shot clock apply?



Types of *Communications* Entities Deploying

- Wireless carriers
 - Have FCC spectrum licenses
 - Hold WIR CPUC registrations
- CLEC wireless infrastructure providers
 - Do hold wireline CPUC authorizations
 - Typically don't have FCC spectrum licenses
- Cable operators
 - Have cable system/cable service franchises
 - Typically deploy for non-cable services using unlicensed spectrum; but also cellular backhaul
 - Typically don't hold wireline CPUC authorizations

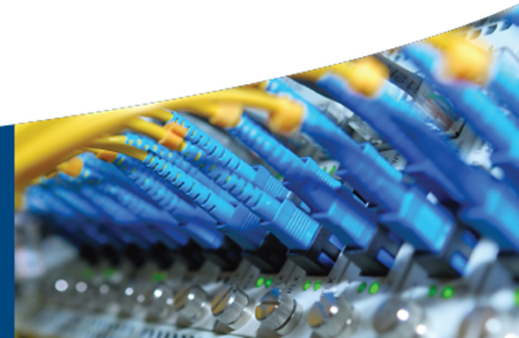


SB 649



Telecommunications Law

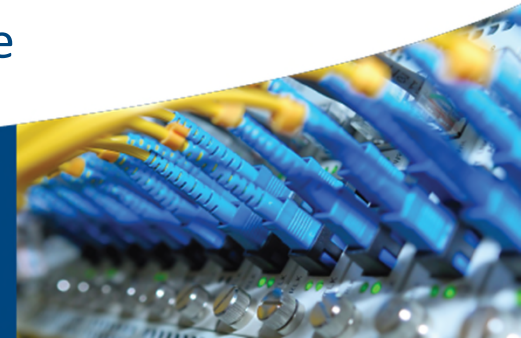
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SB 649

2017-2018 Regular Session

- Authors
 - Senator Ben Hueso (40th – Imperial County /part of SD County)
 - Assembly Member Bill Quirk (20th – Alameda County)
 - Senator Bill Dodd (3rd – Contra Costa County)
- Summary
 - Streamlined permitting process for small cell wireless facilities
 - Mandatory access to city/county owned “vertical infrastructure” in ROW and property outside ROW at regulated rates
 - Mandatory wireless permit renewals
- Status
 - Introduced in Senate on February 17, 2017
 - Approved by E., U. & C. and GOV. & F. committees (with significant amendments)
 - Hearing in Senate Appropriations Committee on May 25, 2017
 - If approved by Senate, will go to Assembly
 - Amendments not well crafted; more work to be done



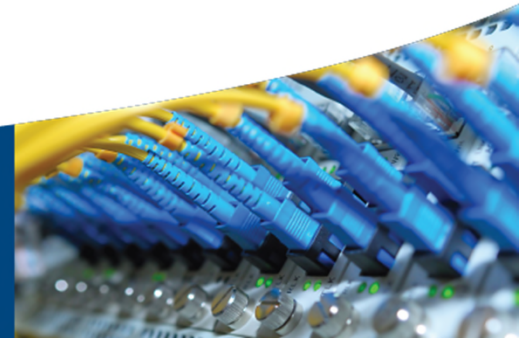
SB 649

- “Small cell”
 - WTF using licensed or unlicensed spectrum
 - Volume limits:
 - Antennas on structure, excluding associated equipment, total no more than 6 cubic feet in volume, whether single array or separate
 - Associated equipment on pole structure does not exceed 21 cubic feet
 - No individual piece of associated equipment or pole structures can exceed 9 cubic feet
- Small cell includes “micro wireless facility” no larger than 24 x 15 x 12 inch, with exterior antenna no longer than 11 inches



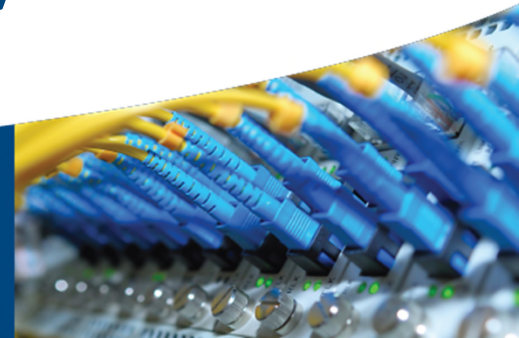
SB 649

- “Small cell” does not include:
 - Coaxial or fiber optic cables that do not exclusively provide service to that small cell;
 - Electric meters and any required demarcation box
 - Concealment elements
 - Any telecommunications box
 - Grounding equipment
 - Power transfer switches
 - Cut-off switches
 - Vertical cable runs
- Excludes wireless facilities in certain historic districts or coastal zones



SB 649 -Regulatory

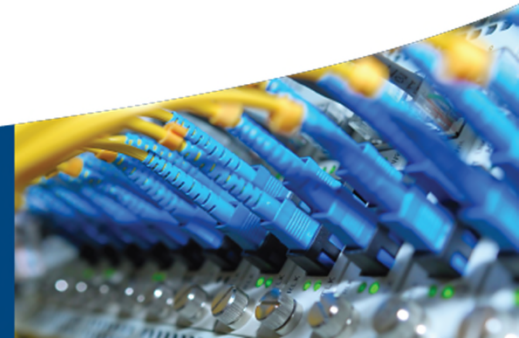
- Small cell is permitted use, subject to certain local gov't permitting processes, if it satisfies following standards:
 - Located in PROW in any zone or
 - Located in any zone that includes commercial or industrial use
 - Complies w/ all applicable federal, state, and local health and safety regulations, including ADA
 - Not located on fire department facility



SB 649 -Regulatory

City or county may require small cell approval pursuant to:

- Encroachment permit issued consistent w/ Sections 7901 and 7901.1 of Public Utilities Code for placement in PROW;
- Building permit in connection w/ placement outside PROW;
- Any additional ministerial permits, provided they are issued within timeframes required by state and federal law.



SB 649 -Regulatory

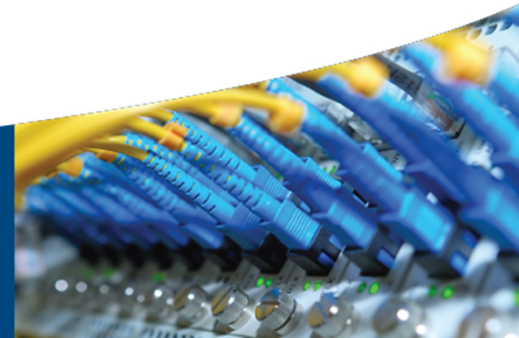
Permits may be subject to the following:

- Same administrative permit requirements as for similar construction projects and applied in a nondiscriminatory manner.
- Submittal showing small cell complies with FCC RF emissions regulations.
- Allowed Conditions:
 - permit may be rescinded if construction is not substantially commenced within one year. Rescinded permits may not be renewed or resubmitted at same location for 6 months (absent a showing of good cause).
 - small cells no longer used to provide service to be removed at no cost to locality
 - compliance with building codes, including building code structural requirements.
 - applicant pays all electricity costs associated with small cell.
 - compliance with feasible design and collocation standards for small cells *outside* public right-of-way



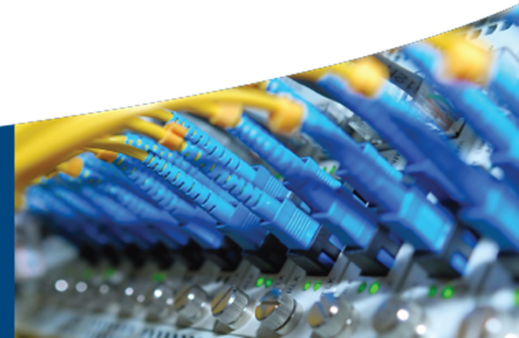
SB 649 - Regulatory

- Prohibits permits from being subject to:
 - Requirements to provide additional services, including in-kind contributions from applicant (e.g., reserving fiber, conduit or pole space)
 - Submission of additional information other than that required of similar construction projects (except as otherwise provided in SB 649)
 - Limitations on routine maintenance or replacement of small cells that are substantially similar, same size, or smaller
 - Regulation of micro wireless facilities mounted on span of wire



SB 649 – Other

- *Renewals*: WTF permits must be renewed for an equivalent duration unless the city or county makes a finding that the WTF does not comply with the codes and permit conditions applicable at the time the permit was initially approved.
 - Note: not limited to small cells
- *Franchises*: Does not alter, modify, or amend any franchise or franchise requirements under state or federal law



SB 649 - Proprietary

- Vertical infrastructure located in PROW or public utility easements must be made available for placement of small cells under fair and reasonable fees, terms, and conditions, which may include feasible design and collocation standards.
- “Vertical infrastructure” – all poles or similar facilities owned or controlled by city or county that are in PROW or public utility easements and meant for, or used in whole or in part for, communications service, electric service, lighting, traffic control, or similar functions



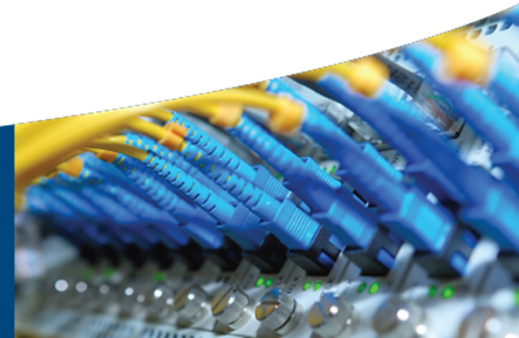
SB 649 - Proprietary

- Fees for use of vertical infrastructure must be tiered or flat and within \$100 to \$850 per small cell per year, indexed for inflation
- Existing leases or licenses of vertical infrastructure remain in effect, subject to applicable termination provisions
- City or county may reserve capacity on vertical infrastructure if it adopts resolution finding, based on substantial evidence, that capacity is needed for projected city or county uses.



SB 649 - Proprietary

- Prohibits city or county from discriminating against deployment of small cells on its “property” outside public rights-of-way
- Must make space available on property not located in PROW on terms that are at least as favorable as those provided for comparable commercial projects or uses

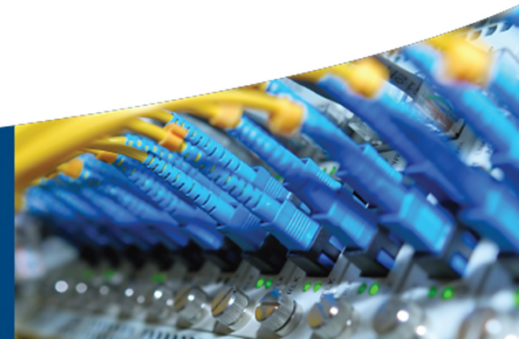


LATEST REGULATORY DEVELOPMENTS



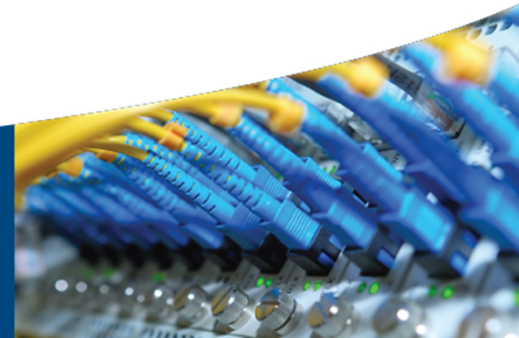
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California Public Utilities Commission

- *Order Granting Petition 16-08-016 And Order Instituting Rulemaking Proceeding To Consider Amendments To The Revised Right-of-way Rules Adopted By Decision 16-01-046 (R. 17-03-009)*
- Examining issues such as:
 - Definition of small cell
 - Scope of service authorizations (CPCNs) related to wireless
 - Pole attachment rights and fees for wireless
 - Implications of massive wireless deployments for PROW safety and other uses
 - Locals invited to participate



FCC Proceedings

- *Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; **Mobilitie** LLC Petition for a Declaratory Ruling, DA-16-1427, WT Docket No. 16- 421*
- *Removing Barriers to Investment Needed for America's **5G** Future, Notice of Proposed Rulemaking and Notice of Inquiry WT Docket Nos. 17-79*
- *Accelerating **Wireline** Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice Of Proposed Rulemaking, Notice Of Inquiry, And Request For Comment, WC Docket No. 17-84*



Selected FCC Issues

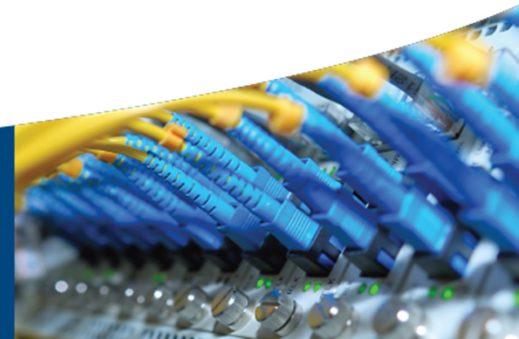
- Regulatory

- Shortening shot clocks for “small cells”
- More “deemed granted” remedies
- Proper role of aesthetic considerations
- Unreasonable discrimination concerns related to more burdensome reviews for telecom than other developments
- Whether undergrounding could be an effective prohibition to wireless
- Whether there has been discrimination in treatment of functionally equivalent services
- Delays in PROW negotiation and approval processes
- Limiting permit fees



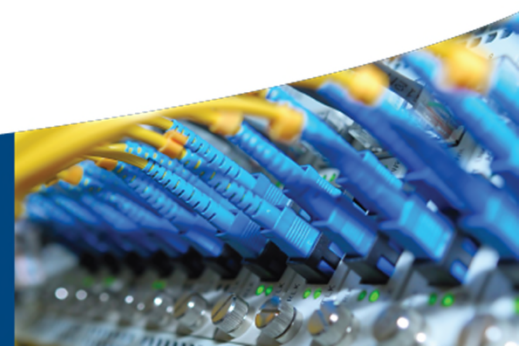
Selected FCC Issues

- Proprietary
 - Rethinking whether Sections 253/332 apply to localities acting in a proprietary capacity
 - Asking whether it can regulate fees and charges for use of public property – including structures like water towers, poles, light poles and buildings.
 - Localities may be prohibited from obtaining in-kind benefits (free services, free Wi-Fi, free fiber) as a condition of access to street lights.

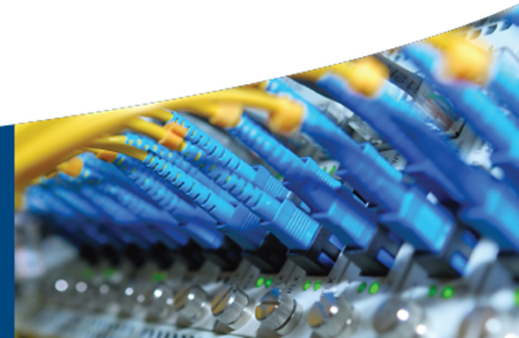


FCC Comments Due

- Mobilitie Petition
 - comments closed – further action redirected
- 5G Wireless Infrastructure NPRM/NOI
 - June 9 Comments
 - July 10 Reply Comments
- Wireline Infrastructure NPRM/NOI
 - June 15 Comments
 - July 17 Reply Comments

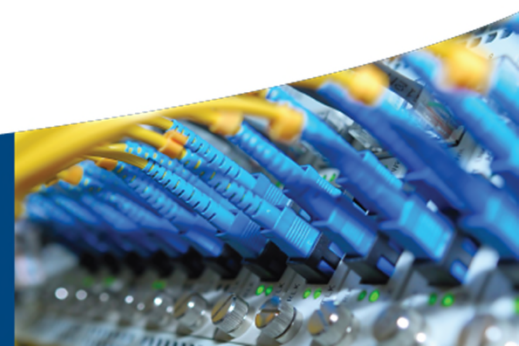


SUMMARY & CONCLUSIONS



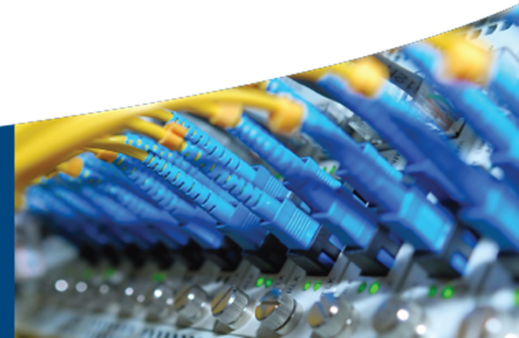
Summary & Conclusions

- Small cells/5G as the third “wire” into the home and potentially so much more
- Deployments raise fundamental jurisdictional questions, challenges in multiple fora
- But also new issues of public concern
- Industry stance is “remove barriers”
- Federal and state levels generally supportive
- Local governments need to be vocal



Summary & Conclusions

- Local challenge is to protect and defend public interests in public safety, aesthetics, consumer protection, getting fair value for use of taxpayer funded assets
- But also to prepare for/create opportunities for broader reforms
- To do so requires committing time and resources in defense but ALSO to develop a strategy and vision for the future



Thank You



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