

What Local Governments Need to Know About Wireless

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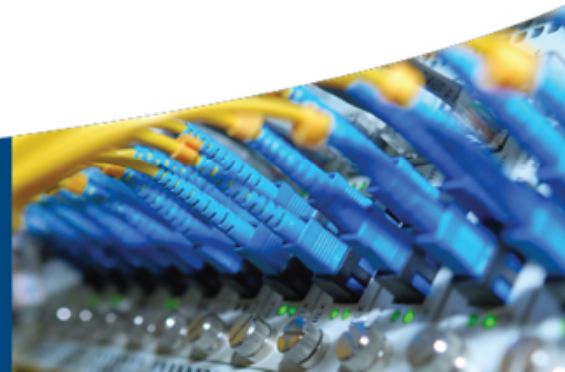


Telecommunications Law



Agenda

- The Basics
- Relevant Federal and State Laws
- How do Small Cells in PROW Fit In?
- Latest Developments
 - State Utility Commissions
 - State Legislation
 - Federal Communications Commission
- Summary & Conclusions

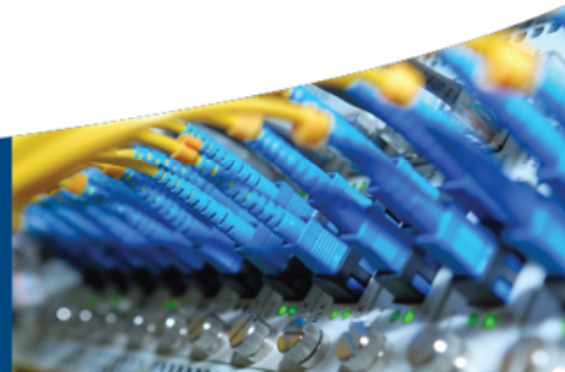


THE BASICS



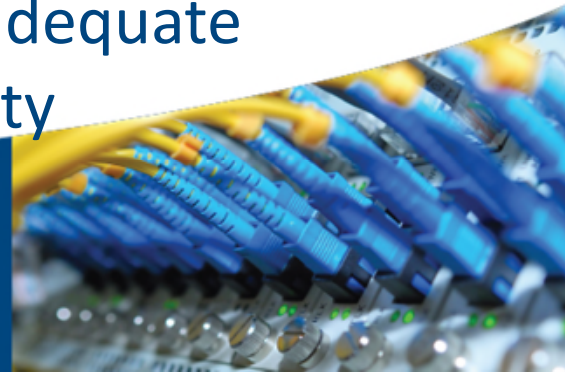
Telecommunications Law

The State of
Michigan
Meeting Our



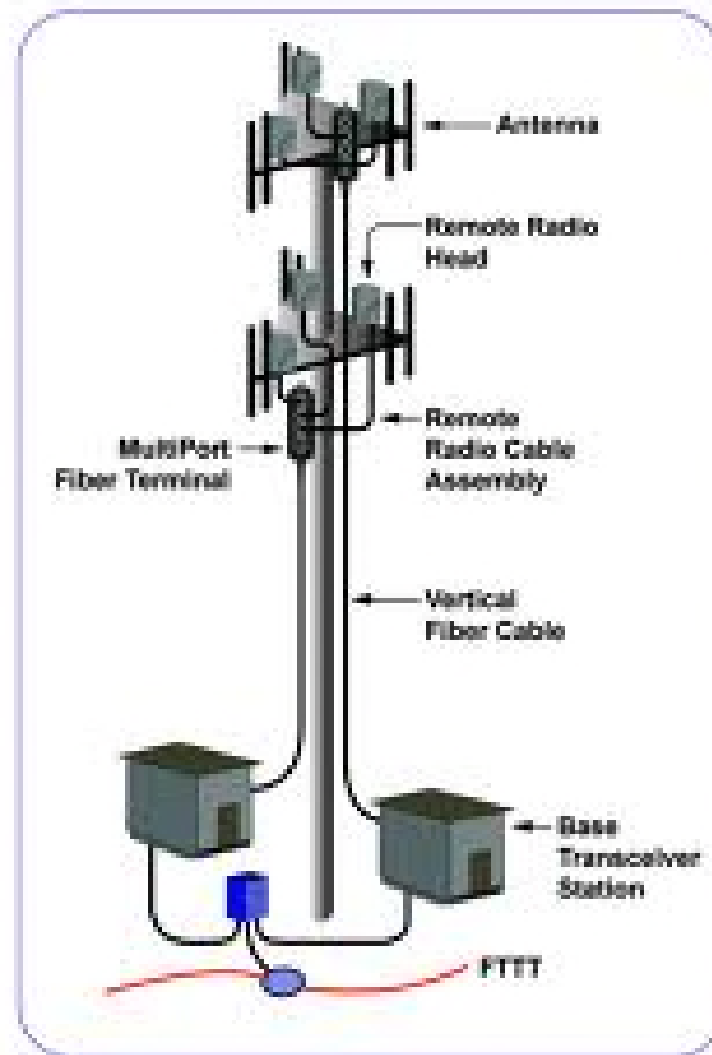
Basics

- 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

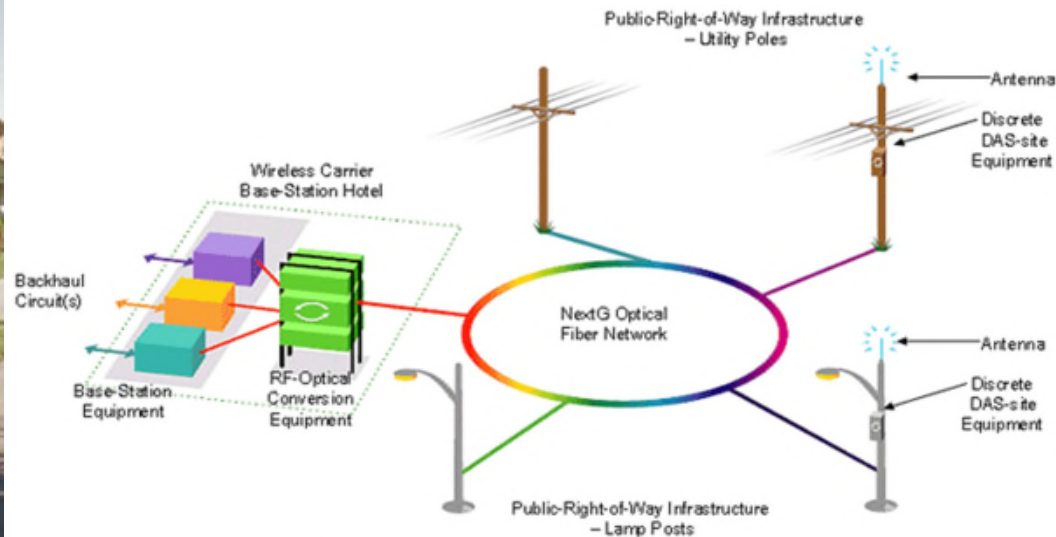
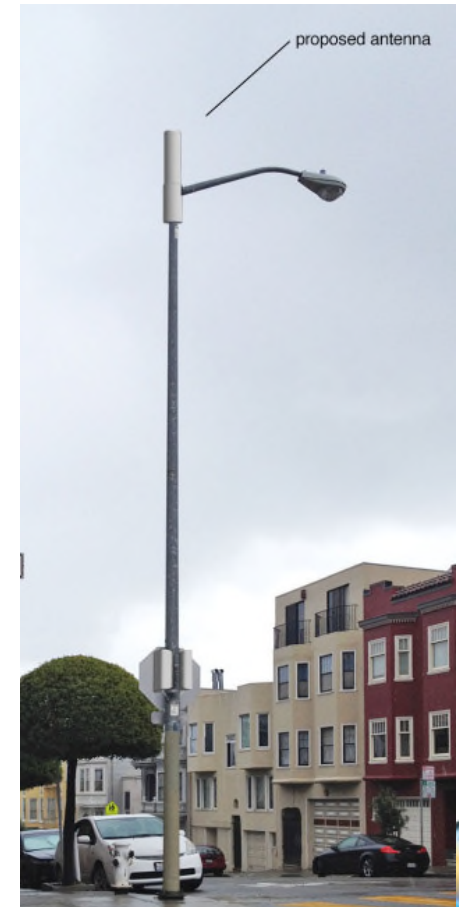
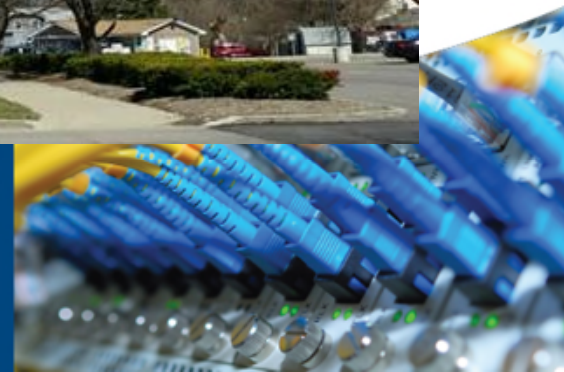


Figure 2: Distributed Antenna System

NextG DAS Diagram

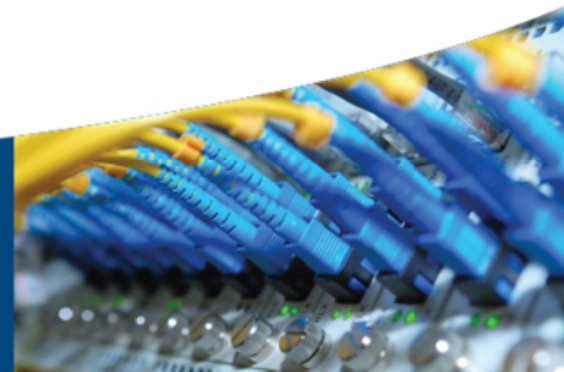


But Also Mid-Strand or 120 Ft. Pole



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



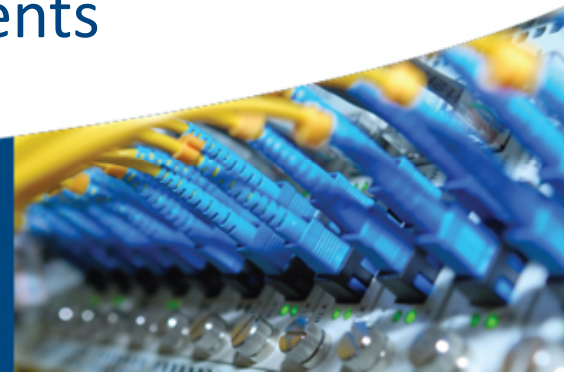
Basic Regulatory Framework in Communications

Federal

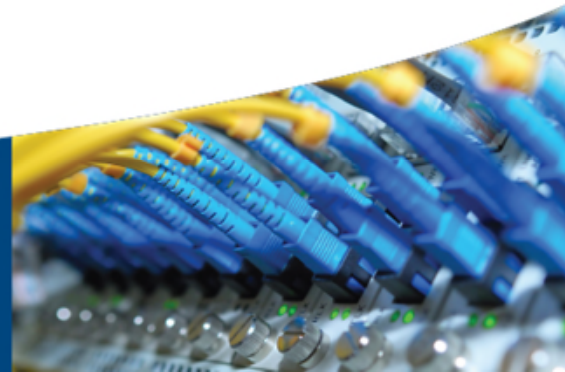
- Wireline telecommunications
 - Interstate and international services
- Wireless services
- Information services
- Broadcasting/cable
- Utility pole attachments (IOUs)

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



RELEVANT FEDERAL AND STATE LAWS



Telecommunications In Public Rights-of-Way

- **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

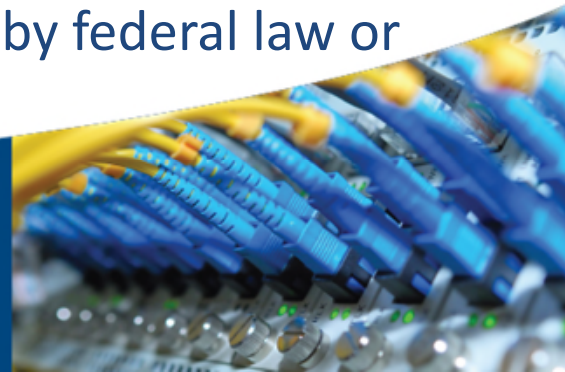
- **FCC Actions (pending)**

- 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

- PUCs traditionally regulated conditions of entry for telephone companies, and intrastate service (CPCNs; rate regulation)
- Deregulation has occurred due to perceived competition
- FCC services classification and technology transition have reduced or eliminated state oversight over some services, e.g. interconnected VOIP, BIAS, and IP-enabled
- Some states have curtailed PUC authority
 - E.g, CA, Pub. Util. Code § 710 (SB 1161)(2012)
 - CPUC preempted from regulation of VOIP and IP-enabled services until Jan. 1, 2020 except as required or delegated by federal law or expressly provided otherwise in statute

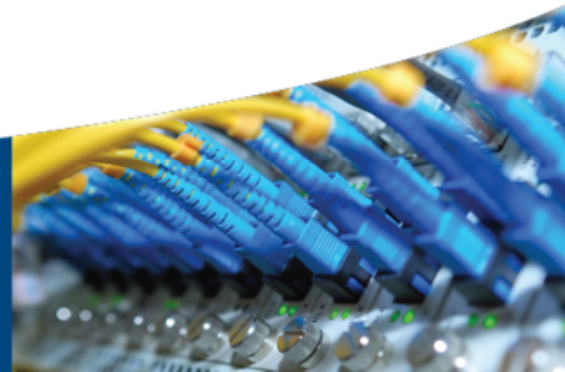


Telecom Franchising and Control Over Public Rights-of-Way

- **Franchising authority:**
 - Varies by state and local practice

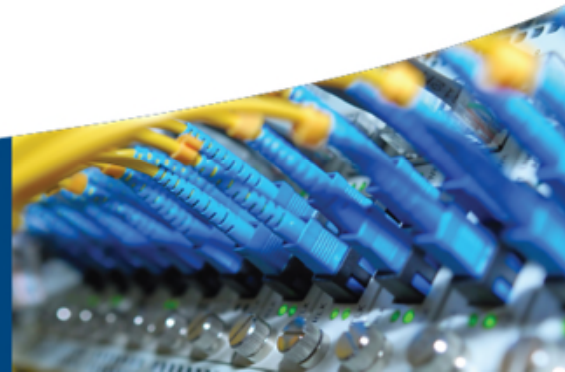
Compensation for telecom use of PROW:

- Varies by state and local practice
- Most states limit permit fees to costs



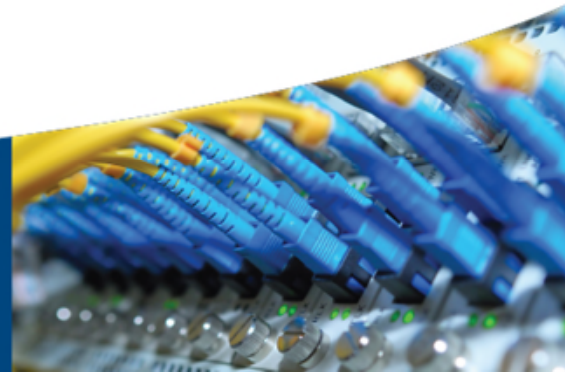
Utility/Cable Installations in Public Rights-of-Way

- **Discretionary or ministerial permit:**
 - Discretionary review considering aesthetics
 - Often depends on local code and practice
 - Not uncommon to treat utility installations as ministerial
- **Application of Zoning Code to PROW:**
 - Often depends on the local code and practice
 - Not uncommon to exclude PROW from zoning intentionally or unintentionally



Federal Wireless Regulation

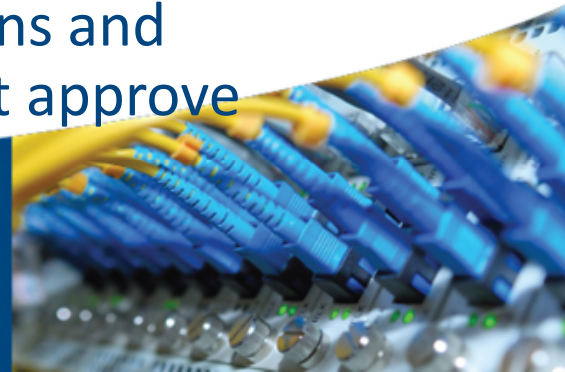
- Spectrum management and auctions
 - Spectrum licensing
- NEPA/NHPA reviews
- Programmatic Agreement and First Amendment
 - To facilitate/expedite federal environmental and historic preservation reviews
 - Initial agreement dealt with collocations on macro towers
 - First Amendment (2016) to facilitate small cell reviews
 - (pending) FCC 4/20/17 NPRM re further streamlining



Federal Wireless Laws

Impacting State/Local Authority

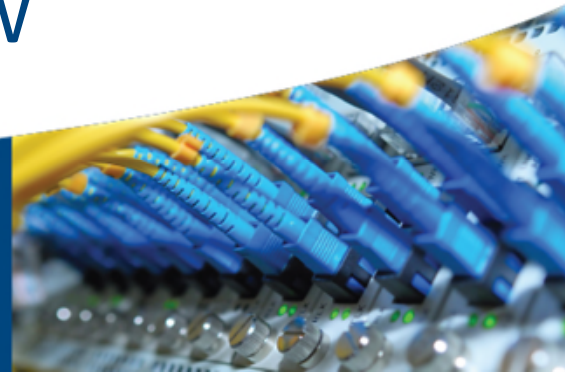
- **47 U.S.C. § 332(c)(3) (1993)**
 - No State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile services, except States can regulate the other terms and conditions of commercial mobile services
- **47 U.S.C. § 332(c)(7) (1996)**
 - Generally preserves local authority to control placement of person wireless 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



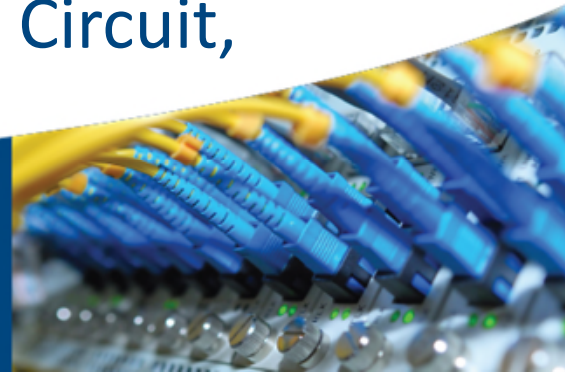
State Laws Impacting Local Authority Over Wireless

- Limitations on zoning authority adopted in numerous states over past 5 years
 - Some states adopted versions of Sec. 6409
 - RCW 80.36.375 (2014) (**encourages** certain practices)
 - Applications for “several” microcells, minor facilities
 - single set of documents for permits
 - single administrative proceeding
 - Applications for small cell networks
 - consolidated application
 - single permit for the small cell network in a single jurisdiction
 - CA AB 57 (2015) extended deemed granted remedy to Section 332(C)(7) shot clocks



Federal Cable Laws Impacting Local Authority

- **Communications Act, Title VI (1984 and 1992)**
 - Franchise standards and procedures
 - 5% Cap on franchise fees
 - PEG facilities and funding
 - Renewals
 - Competitive entry/no exclusive franchises
 - Rate regulation/effective competition
- **3 Franchising Orders (2006, 2007 and 2015)**
 - Reasonable franchise terms for new entrants, renewals
 - 2nd and 3rd orders now on appeal in 6th Circuit, Montgomery County, MD et al v. FCC

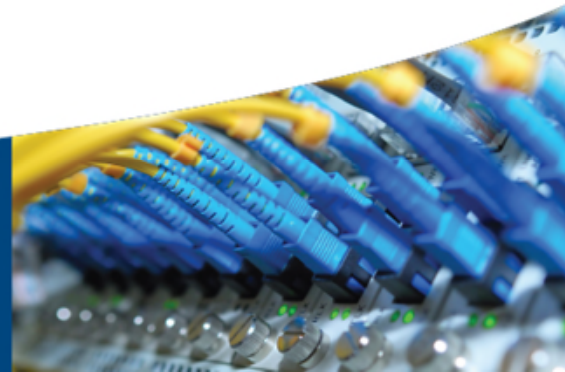


Pole Attachments

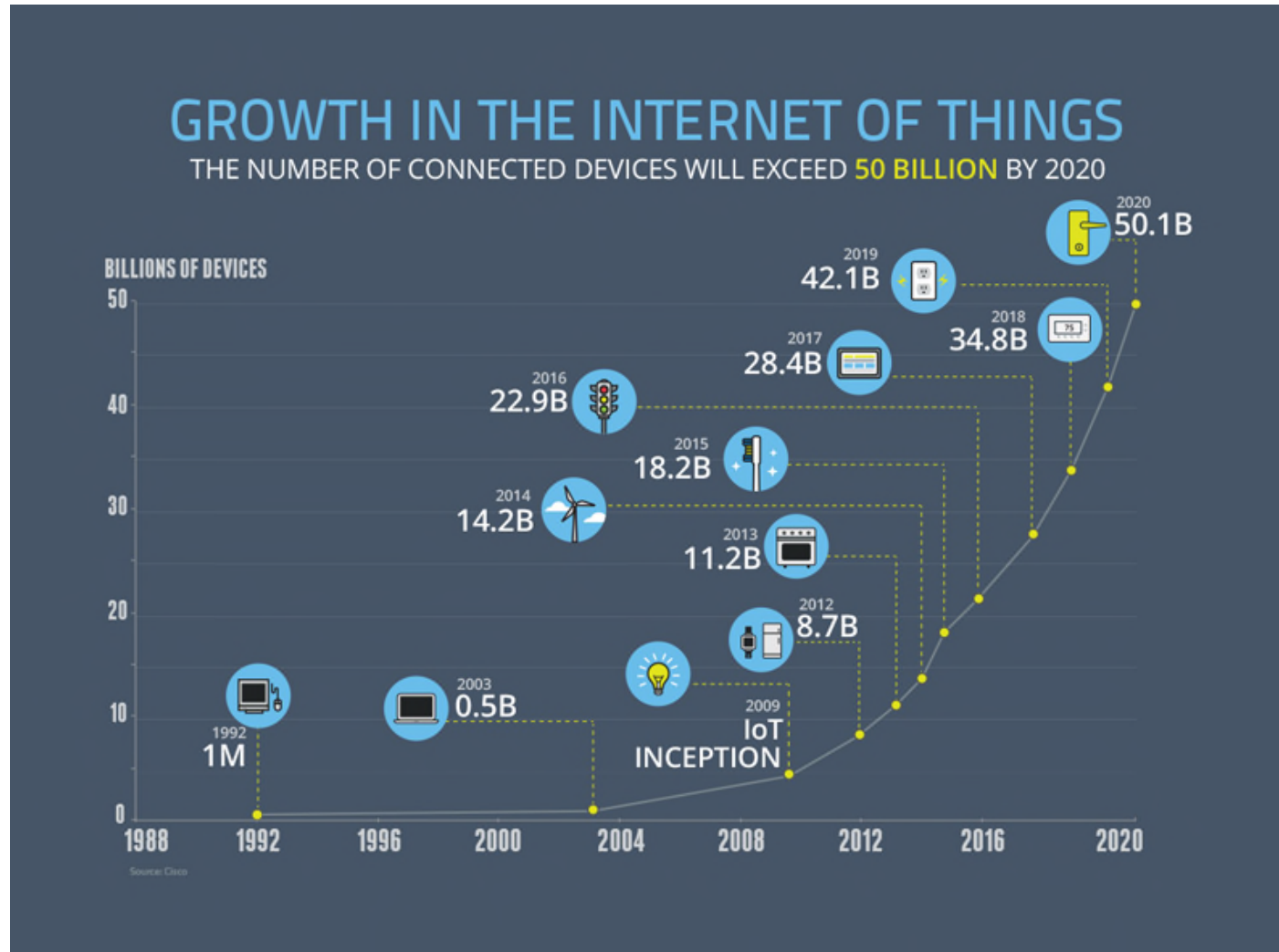
- 47 USC § 224 – federal rules and FCC orders govern attachments by telco, cable, wireless
 - Federal law only applies to investor-owned utility poles and conduit (not street light poles), and excludes municipal and cooperatives
 - States can reverse preempt and adopt their own rules meeting certain standards (both WA and OR have)
- State regulation of pole attachments
 - Utility poles and conduit of IOUs
 - Some state have rules for municipal/coops



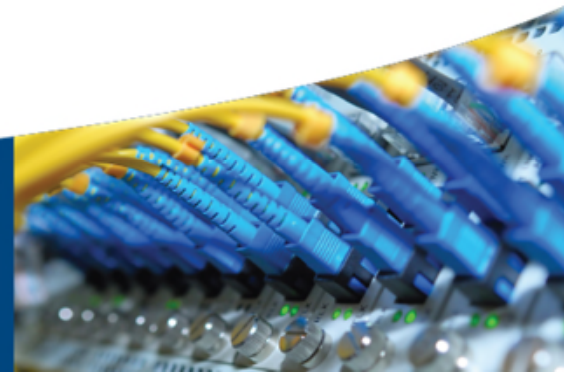
HOW DO SMALL CELLS IN PUBLIC RIGHTS-OF-WAY FIT IN?



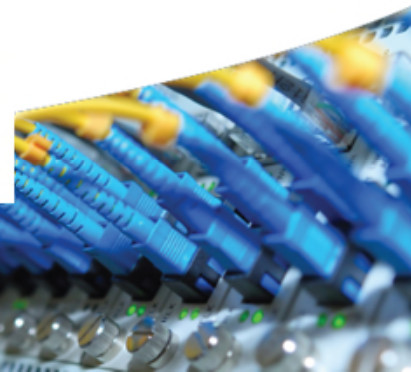
Densification Drivers



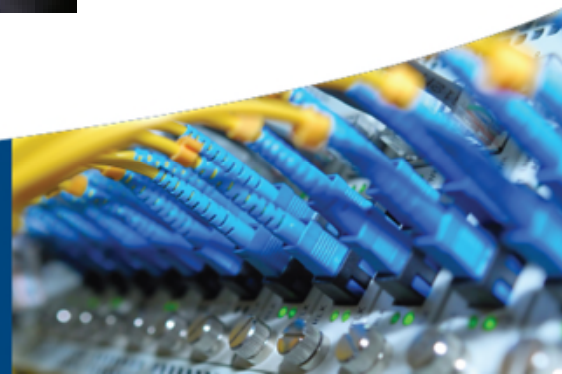
Handheld Devices



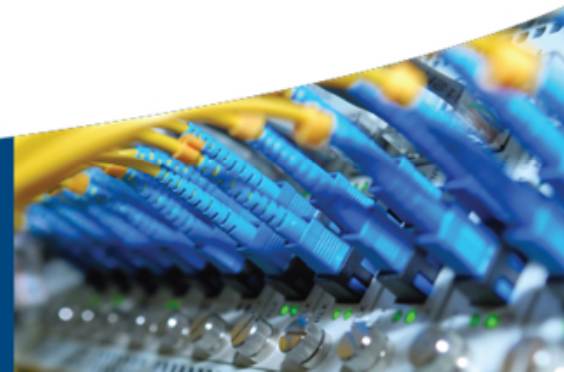
Automated License Plate Readers



Public Safety



Smart Meters



Drones



Parking systems

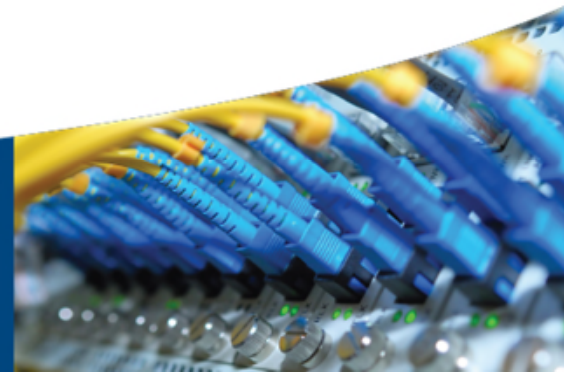
A parking sensor to zero-out meters?



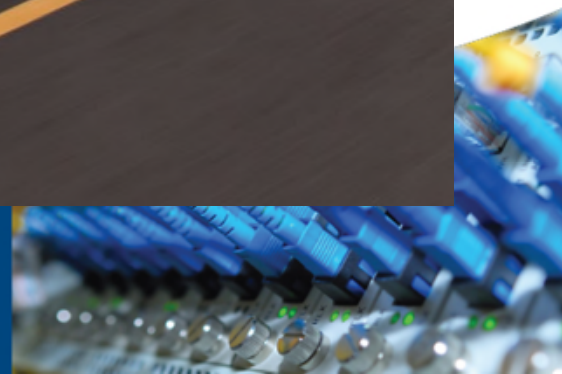
Or a complete parking solution to improve your entire parking ecosystem for all space types?



Source: Streetline.com

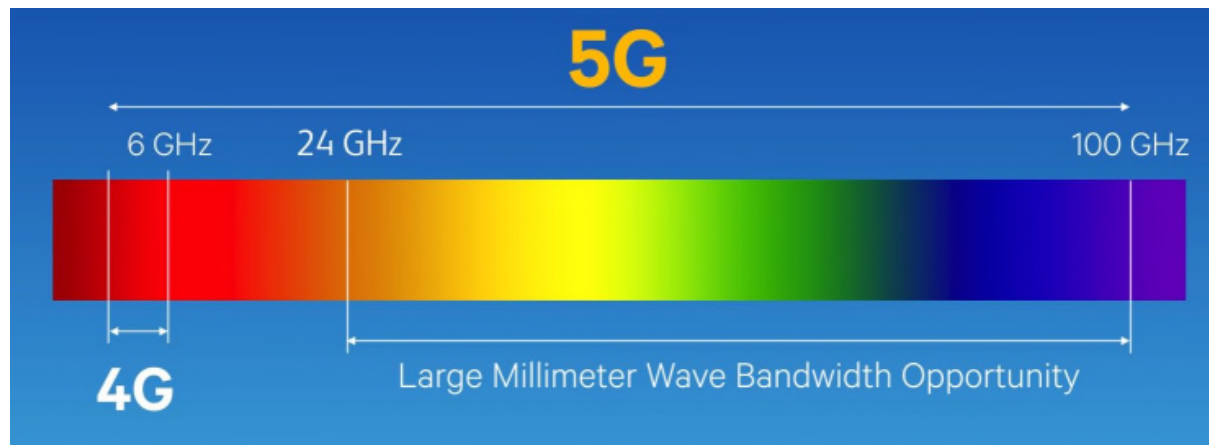


Driverless Cars

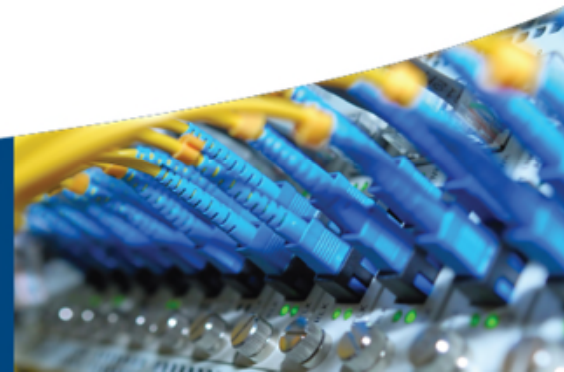


Technological Drivers

- 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>



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



Types of Communications Entities Deploying

- Wireless carriers
 - Have FCC spectrum licenses
 - Typically don't hold wireline PUC authorizations or franchises
- Wireless infrastructure providers
 - Do hold wireline PUC authorizations and franchises*
 - 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 PUC authorizations
 - May or may not have telecom franchises



Regulatory Challenges

Applicants

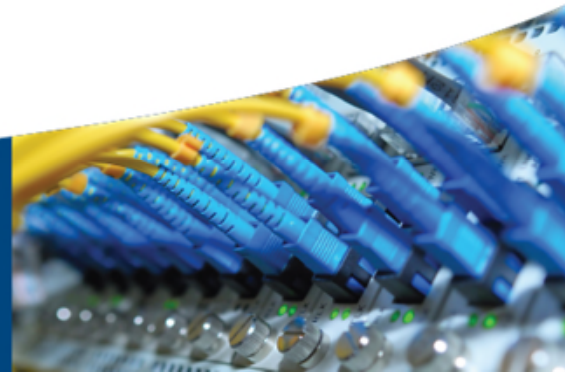
- May or may not be wireless carriers
- May not be owner of all components to be installed
- May not have required licenses for all components
 - May be state-authorized telco with CPCN
 - May be cable operator
 - But may not have authorizations needed to install or operate wireless facilities or telecom facilities
- May not have necessary franchise
- May not have necessary pole attachment rights



Regulatory Challenges

Any or All Levels of Gov't Could be Involved

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



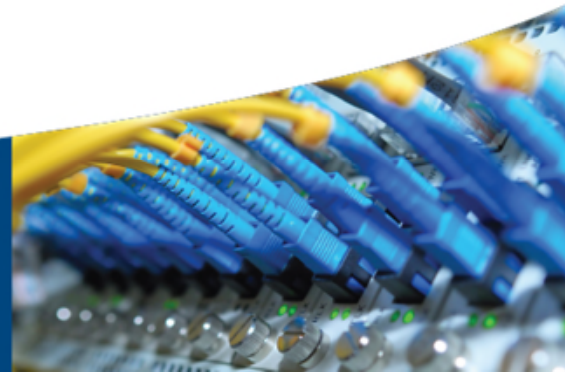
Applications Raise Questions

- 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?

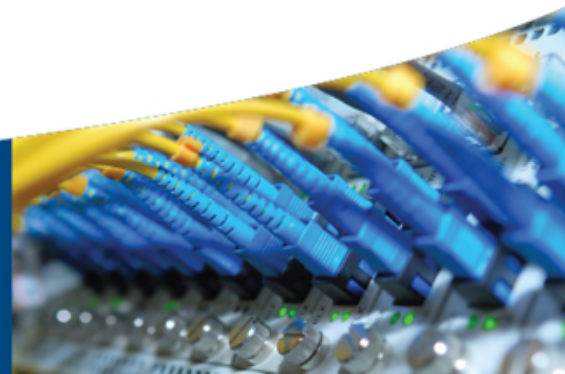


Other Issues and Concerns

- Data collection by whom for what purpose under what rules?
 - Privacy Issues
 - Retention
 - Security
 - Public Records Act Requests
 - Liability Issues
- Availability of Services and Digital Inclusion

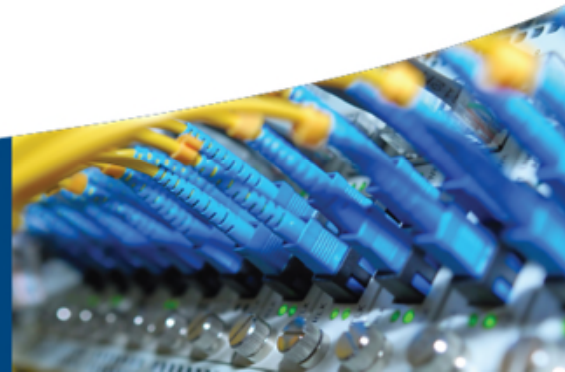


LATEST REGULATORY DEVELOPMENTS



State Utilities Commissions

- Examining scope of service authorizations (CPCNs) related to wireless
 - whether wireline telcos (non-wireless carriers) offering DAS are public utilities (PA said NO)
 - whether DAS service is an interstate service, intrastate service, or both (PA said it's PWS)
- Examining fees and franchising rights (TX)
- Examining pole attachment rights for wireless (CA)
- Examining implications of wireless for PROW safety and other uses (CA)



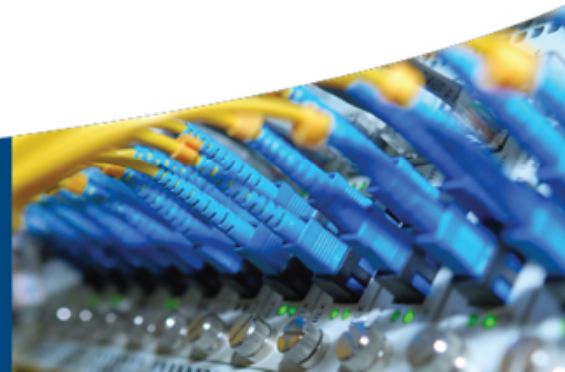
Legislative

- Small cell / 5G bills intro'd in many states by wireless industry
- 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 / other property
 - Regulated low rental rates
 - Other state level fixes (permit renewals; franchising)
- Cable industry typically proposes amendments for mid-strand attachments, and to protect franchise rights



Legislative

- **Washington SB 5711**
 - Missed a key deadline March 8
 - Reintroduced April 24
- **Oregon ?**
- **California SB 649!!**
- **Federal Senate Commerce Committee**
 - Tentative May 3rd hearing on wireless siting
 - AZ bill sponsor expected to testify



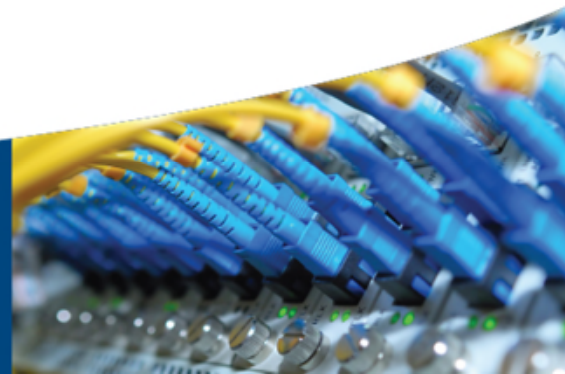
FCC Proceedings

- *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*



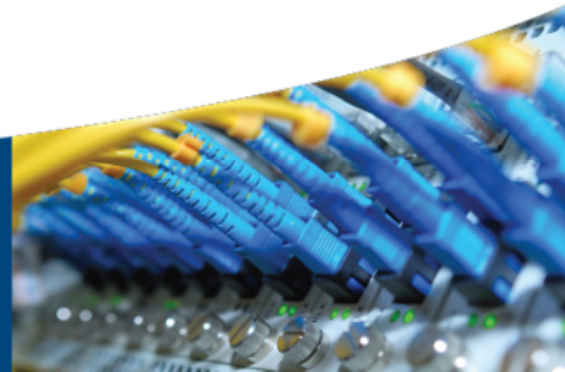
Selected FCC Issues (Mobilitie)

- Shortening shot clocks for “small cells”
- “deemed granted” remedies
- Interpreting Sec. 253 and Sec. 332(c)(7)
- Limiting fees that can be charged for:
 - Use of public property (PROW, street lights, etc.)
 - Reviewing an application
 - Ongoing management of PROW (permitting, inspection)



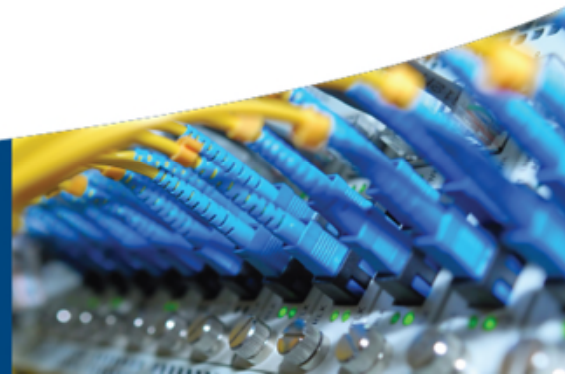
Selected FCC Issues (5G)

- 5G NPRM:
 - More “deemed granted” remedies
 - More and different shot clocks under 332.
 - Moratoria
- 5G NOI to examine numerous “effective prohibition” issues:
 - Harmonization of varying circuit court interpretations
 - Proper role of aesthetic considerations
 - Whether 253/332 apply to localities acting in a proprietary capacity
 - 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

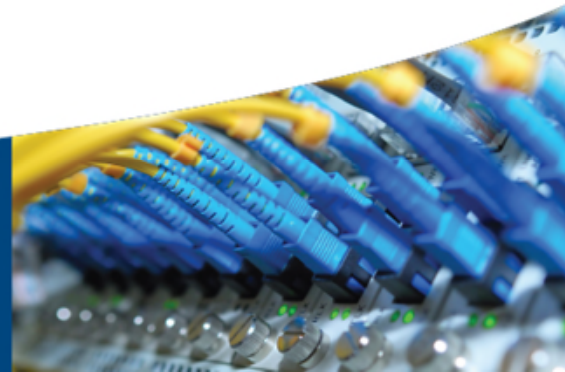


Selected FCC Issues (Wireline)

- *Wireline NOI also to consider Section 253 effective prohibition and preemption opportunities related to telecommunications services:*
 - *Moratoria; Delays in PROW Negotiation and Approval Processes.*
 - *Excessive Fees and Other Excessive Costs.* Including fees paid by cable operators and whether gross revenues based fees are reasonable.
 - *Unreasonable Conditions.* Gives examples of in-kind service or product requirements such as services provided free or at a discount, or requiring build out.
 - *Bad Faith Negotiations.*
 - *Other Prohibitive State or Local Conduct.* Anything else industry needs preempted?
 - Questions re scope of FCC authority to act

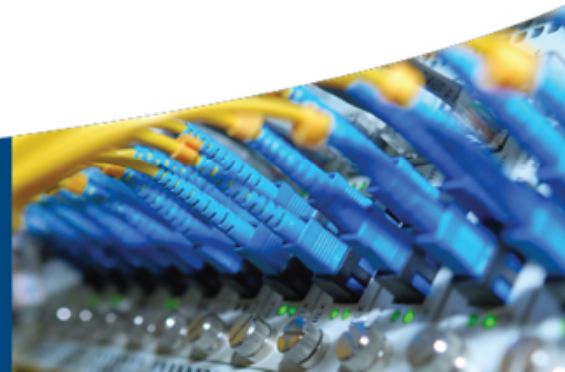


SUMMARY & CONCLUSIONS



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



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 not just in defense but to develop a strategy and vision for the future



Thank You



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