Repealing Colorado HB 17-1193

Reclaiming Local Control over Cellular Wireless Facilities

Why HB 17-1193 Must Be Repealed: This 2017 bill streamlines the permitting process for small cellular facilities including 5G. By preemption of local regulation and codes, it overrules local governance and grants telecom companies access rights to our public rights-of-way for their private corporate benefit. It paves the way for the proliferation of small cell installations in Colorado communities and creates a massive *de facto* subsidy for the telecom industry by local taxpayers.

Background:

- HB 17-1193 was patterned after model legislation from the American Legislative Exchange Council (ALEC) with the support of the telecoms.
- It was represented as "enhancing wired and wireless telecom services" and passed quietly without full understanding by legislators of its actual purpose or consequences.
- Other states have pushed back against preemptive small cell laws, such as in California, where Governor Brown vetoed Senate Bill 649.
- FCC Small Cell Order #18-133 (2018) also facilitates the process of small cell permits, and aligns with HB 17-1193. This FCC order is currently being broadly challenged in the federal courts (see below).

Provisions of HB 17-1193:

- States the "THE SITING, MOUNTING, PLACEMENT, CONSTRUCTION, AND OPERATION OF A SMALL CELL FACILITY OR A SMALL CELL NETWORK IS A PERMITTED USE BY RIGHT IN ANY ZONE" Pg. 4, Section 4 (3).
- Gives telecom providers the right to locate wireless facilities on public streets, light poles, traffic signals, and in public rights of way including in front of homes.
- Limits public hearings and full administrative review or approval by local government planning commissions, city councils and county governments.
- Limits taxes, fees, and charges local governments can impose to only those "reasonably related to the costs directly incurred" for the granting and administration of small cell permits.
- Disallows communities from charging market rates for leasing public rights-of-way.
- Establishes "shot clocks" for limiting the time to process applications: 150 days for new facilities and 90 days for modifications on existing facilities.

Concerns about Small Cells—Including 5G:

Heavily promoted by the telecom industry, 5G promises faster wireless Internet access, autonomous vehicles, Internet-of-Things (IoT), virtual reality, and Artificial Intelligence (AI), which some consider progress. However, there are several areas of concern regarding this technology:

Privacy and Security

- The primary motivating force behind the push for 5G is advertising and data collection. Pioneered by Google, Facebook, Amazon, Microsoft and others, the economy of "surveillance capitalism" now exists to monetize our personal information and predict and shape our behavior.
- Wireless networks, smartphones, and other wireless devices are proprietary and complex, and can gather surveillance data to a far greater extent than can be done on wired networks, which are open, simple and thus more secure.

Health and Safety

- A mounting body of evidence shows human health risks from non-ionizing radiation. Notably, a 2018 study by the National Toxicology Program linked cancer in male rats to radio frequency radiation (RF) from 2G and 3G networks.
- "High band" (millimeter) waves and beam-forming technology associated with 5G have never been proven safe, and can potentially have unknown negative health impacts.
- There are documented environmental effects from RF, including damage to plants, animals, insects and pollinators.
- FCC guidelines for RF exposure are among the highest in the world, with thousands of studies documenting that they are inadequate to protect public safety. U.S. Senator Blumenthal and Congresswoman Eshoo have challenged the FCC over the safety of 5G.
- NASA and NOAA are concerned that 5G network frequencies may interfere with meteorological water vapor data collection on an adjacent frequency band, risking public safety by impeding the ability to predict and monitor tornadoes, storms, floods, and fires.
- Military flight safety, navigation, and tactical capabilities could also be affected by adjacent frequency interference.

Community

- 5G millimeter waves have limited range, requiring antennas every few hundred feet. Under the guise of needing to place their antennas this close together for 5G, which is still in the early stages of development, telecoms are installing a significant number of 4G small cell antennas in many cities and neighborhoods that under local land use codes would have been designated as industrial and commercial zones.
- In addition to large cell towers in less populated areas, telecoms now plan to install many small cell antennas on a single street, close to where people live and work.
- Small cell densification may have a significant impact on the aesthetics of a community.
- Property values have been shown to decline considerably when cell antennas are installed near a home.

Challenges to the 2018 FCC Small Cell Order:

The FCC Order is currently being challenged in the Ninth Circuit Court by nearly eighty municipalities, and U.S. Congressional bills HR 530 and SB 2012 seek to overturn the Order. On August 9, 2019 the D.C. Circuit Court of Appeals ruled against the FCC in favor of the National Resources Defense Council (NRDC) in Case 18-1129, regarding requiring environmental impact studies for small cells in compliance with the National Environmental Policy Act (NEPA). In addition, the Court of Appeals further ruled against FCC overreach on October 1, 2019 in Case 18-1051, "Restoring Internet Freedom". The "Irregulators v. FCC" opening arguments were presented January 17, 2020: www.irregulators.org.

Conclusion:

HB 17-1193 needs to be repealed to eliminate the State's preemption of local land use codes in the siting of wireless facilities. If the FCC Order is invalidated and HB 17-1193 is repealed, Colorado will be in a position to restructure statewide telecommunications regulation policy to return control to local governments. The focus of Colorado law should be to promote the establishment of fast, secure, reliable, energy-saving fiber networks, with locally owned fiber-to-the-premises (FTTP) managed by communities as a municipal public utility.

About us: *We are Coloradans for Safe Technology, a citizen group advocating for smart, safe, and healthy technology. For more information, go to https://4safetech.com. For questions or to get involved, contact us at https://4safetech.com/contact/*