



# COUNTY OF

For the meeting of: 10/22/201

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File #: 19-1533

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**To:** Board of Supervisors

**From:** County Administrative Office

**Agenda Section:** Consent

**SUBJECT:**

Approve Sending Letters In Support of HR 530 (Eshoo) and S 2012 (Feinstein) Regarding 5G Installation Rule

**RECOMMENDATION(S):**

That the Board of Supervisors:

1. Approve the letters in Attachments 1 and 2, and direct staff to distribute to the addressees.

**SOURCE OF FUNDING:**

General Fund

**DISCUSSION:**

Both Congress and the United States Federal Communications Commission (FCC) have taken steps to enact policies aimed at accelerating 5G deployment nationwide. However, the measures target local governments by restricting local authority. In June 2019, the STREAMLINE Small Cell Deployment Act (STREAMLINE Act) was reintroduced in the U.S. Senate, which limits fees local governments can charge providers and narrows the review process for counties to adequately assess 5G deployment applications. Prior to the bill's reintroduction, the FCC approved a controversial rule in September 2018 setting national standards on the local permitting process when siting 5G small cell locations, which went into effect Jan. 14, 2019.

5G describes the next generation of mobile networks which builds on today's 4G wireless broadband infrastructure. This next generation of wireless service uses higher-frequency wavelengths transmitted through a network of "small cell" devices - roughly the size of a backpack - scattered throughout communities. To build 5G networks, telecommunications providers place small cells on public rights-of-way to construct their own communications networks.

Analysts expect the full buildout of the 5G network will require nearly one million small cell installations over the next decade. In general, counties are strongly committed to the timely and successful deployment of 5G facilities and services throughout the nation, just as counties led and supported public and private partnerships that resulted in the successful introduction and expansion of 4G infrastructure and services. However, as stewards of substantial amounts of public rights-of-way, many counties are concerned with recent federal actions that undermine local governments' ability to serve as trustees of public property, safety and well-being.

### **STREAMLINE Small Cell Deployment Act**

In June 2019, Sen. John Thune (R-S.D.) and Sen. Brian Schatz (D-Hawaii) reintroduced the STREAMLINE Act (S. 1699) in the 116th Congress. The legislation would limit fees local governments are able to assess telecommunications companies and includes two shot clocks for localities to review and process applications. The bill also includes a “deemed granted” provision, under which applications would be automatically approved if the local government fails to complete its evaluation within the set timeframe - which would be considered a prohibition of service. This provision would severely jeopardize counties’ ability to fulfill our public health and safety responsibilities.

### **FCC Ruling**

On Sept. 26, 2018 the FCC approved the Streamlining Deployment of Next Generation Wireless Infrastructure Declaratory Ruling and Third Report and Order on a 3-to-1 vote. The order limits fees local governments are able to assess on telecommunications companies for the placement, construction or co-location of new wireless service facilities. Additionally, the ruling provides local governments only 60 days to evaluate applications from wireless companies to attach 5G small cells to existing structures and just 90 days to review applications for equipment on entirely new structures. These “shot clocks” effectively prevent local governments from properly evaluating and assessing 5G deployment applications and forces a rubber-stamp approval process in fear of crippling litigation from communication providers.

The FCC’s controversial order went into effect on Jan. 14, 2019. In response to the ruling, several lawsuits were filed in federal appeals courts questioning the legality of the FCC rule. As a result, the order is currently being challenged in the United States Ninth Circuit Court of Appeals. The appellate court is expected to release a decision sometime this year.

The path forward for the STREAMLINE Act is unclear. The legislation has been introduced in the Senate, but has not seen any action. In the House of Representatives, a companion bill has yet to be introduced.

### **H.R. 530/S. 2012**

The FCC 5G regulation went into effect on Jan. 14, 2019 and counties nationwide now face enforcement action if wireless providers or other small cell applicants challenge them in court. H.R. 530 and S. 2012 would effectively rescind the controversial rule and retain local authority of public rights-of-way.

### **FINANCIAL IMPACT:**

Local governments can still negotiate with carriers and infrastructure providers. However, the FCC’s order gives carriers more leverage when negotiating with local governments and reduces the ability of local governments to enact certain regulations.

The FCC ruling provides guidance on some parameters of the deployment of small cells, including the cost, aesthetic requirements and location, but it does not prohibit local governments or carriers from reaching their own arrangements on these or any other factors. Market rate for leasing space on public property for mobile cellular equipment generally ranges from several hundred to several thousand

dollars per month, per antenna, depending on the location. If a county sets its annual fee at or below the cost specified by the FCC order (\$270/year), carriers are less likely to challenge them in court, since it will be in line with the FCC order. However, if a local government chooses to set a higher fee, this could require the municipality to justify the higher fee as being directly related to cost.

There is a presumed “safe harbor” for application and use fees, but no specific cap on fees. The safe harbor amounts are (a) \$500 for a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, (b) \$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW, and (c) \$1,000 for nonrecurring fees for a new pole. The FCC views these amounts as safe harbors because it believes they are low enough that no carrier would challenge them if they were imposed unilaterally in a local government’s regulations. Nothing in the Order prevents a local government from charging higher fees. However, under the FCC's framework, if a carrier files a lawsuit challenging the fees imposed by a local government, the burden would be on the local government to demonstrate that the amount is a reasonable approximation of its costs and that its costs are reasonable. The FCC did not specify a methodology for calculating cost, or what expenses could be included.

**STRATEGIC FRAMEWORK:**

This action supports your Board’s Strategic Framework by facilitating the establishment of local revenue sources to address local needs .

**OTHER AGENCY INVOLVEMENT:**

FCC

**ALTERNATIVES TO STAFF RECOMMENDATIONS:**

Your Board could choose to modify or not send the letter. Staff recommends sending the letter as it will aid in the community’s ability to retain control over if and where 5G county’s ability to generate revenue to provide services.

**ATTACHMENTS:**

1. Letter to Rep. Eshoo
2. Letter to Sen. Feinstein
3. NACo analysis of 5G and FCC

**PREVIOUS ACTION/REFERRAL:**

Board Order No.: N/A

Meeting of: N/A

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