



Legislative UPDATE

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Of Socialism and Cell Phones?

A memo leaked from the White House this week shows the administration considering letting the federal government develop the nation's 5G cell phone and Internet network instead of private companies. The main rationale is the security risk such a network could pose in the modern world of hacking and cyber espionage.

Critics were quick to pounce on the idea, however, with one commentator titling his article "[The White House Floats Socialism for the Internet.](#)"

Would it really be socialism for the federal government to roll out "next generation" cell facilities instead of private companies, like AT&T and Verizon? Maybe, if we weren't mostly there already thanks to the passage of S.B. 1004 by the Texas Legislature and similar measures being considered by Congress and federal agencies.

Senate Bill 1004 and the federal proposals virtually give away taxpayer-owned property for the use of cell companies to make their profits. The state bill requires cities to donate their poles and other vertical structures for \$250 each, many multiples below market value to the taxpayer. The federal initiatives – all pushed by the same cell companies – could go further and deprive taxpayers of even that tiny amount.

Industry critics of the administration's proposal want it both ways. They're happy to accept government handouts of free land and right-of-way, but would hate to see the government take the next step and simply run the network. Why? They'd lose the layer of profits they plan to make on the backs of the taxpayers. Cell companies want just enough socialism to pad their bottom line, but not an ounce more.

Texas Municipal League officers and staff will travel to Washington, D.C., next week to visit with key members of the Texas Congressional delegation about the federal efforts mentioned above. The League also supports a lawsuit filed by 40 cities opposing the theft of taxpayer right-of-way by S.B. 1004.

If asked how cities feel about the White House proposal to let the government roll out the network, we'll have a conundrum on our hands. At worst, it would be an honest form of socialism instead of the crony socialism of S.B. 1004 and its ilk.

FCC Right-of-Way Preemption Efforts: The Whole Story

Over the last decade, the Federal Communications Commission (FCC) has issued numerous orders preempting city right-of-way and other authority, and it is continuing to ramp up its efforts.

The issues may seem technical to some, but they are among the most important that cities face. FCC efforts could ultimately eliminate a city's ability to direct what goes where in its rights-of-way. Just as important, they could collectively cost Texas cities hundreds of millions of dollars in right-of-way compensation.

Here's a summary of the evolution of FCC preemption efforts:

- **November 2009:** CTIA, the national association of wireless telecommunications providers, filed a "petition for declaratory ruling" with the FCC asking it to preempt local zoning of wireless phone tower locations. The subsequent FCC order applies to city regulation of macro cell towers on private property. While not technically a "right-of-way" preemption order, it set the stage for those efforts as providers sought new ways to provide service. Among other things, the order sets deadlines within which a city must act on a wireless application. Otherwise, the application is essentially deemed granted.
- **October 2014:** The FCC issued another order relating to wireless facility siting in cities. The 155 page order reads like a 1-2-3 of municipal preemption. It largely preempts a city's ability to regulate the "collocation" of wireless facilities on existing sites.

Almost every issue in the order was decided in favor of industry, with only a few important city protections kept intact. One municipal victory was that the FCC rejected an industry position that would mandate collocations on "any structure capable of supporting a wireless antenna." That position could have meant that antennae could be placed on any building in a city without much oversight. (This victory may have been one of the reasons AT&T and other providers sought S.B. 1004, the Texas legislation that allows providers to place their facilities on city and other poles in the rights-of-way with inadequate compensation.)

- **December 2016:** The FCC issued a public notice seeking comment on two topics that could shape the future of cities' control over their rights-of-way. The FCC's Wireless Bureau requested public comment on how to "streamline" the deployment of small wireless facilities, primarily through potential changes to local land-use ordinances, and it also sought comments on a petition filed by infrastructure company Mobilitie regarding local government rules and procedures.

The public notice raises several major concerns for cities. First, the FCC seeks to use these proceedings to question whether the evidence presented by local governments during 2009 and 2014 rulemakings on local wireless facilities siting is still valid.

Specifically, the notice once again questions the amount of time needed by local governments to process wireless siting applications for small-cell facilities, particularly when submitted in large quantities. It also questions the amount and structure of fees charged by local governments for applications and access to rights-of-way.

- **March 2017:** The FCC formed the Broadband Deployment Advisory Committee (BDAC). The BDAC is tasked with developing recommendations to expedite wired and wireless broadband deployment in cities by "reducing regulatory barriers." That phrase can usually be translated as "preempting municipal authority."

With state preemption of city right-of-way authority looming, and new leadership at the FCC, the membership of the BDAC was clearly "stacked" in favor of industry. The FCC chair appointed the committee members. Out of 30 total members, only five represented cities. One of those, the mayor of San Jose, resigned in protest because he objected to continued efforts to require taxpayers to subsidize the telecommunication industry. Moreover, his resignation protested the fact that the committee's recommendations did not in any way reflect municipal input.

For example, the BDAC chair created five working groups to assist the entire committee. None of those groups was chaired by a city representative. One of the working groups was assigned the task of creating a "draft model code for states" related to small cell deployment. The group had zero city representatives, and its report is extremely detrimental to cities. It incorporates many of the most restrictive and preemptive policies that have been introduced or passed in state legislation around the country.

The BDAC is expected to meet for the final time this spring, at which time it will likely recommend broad preemption policies to the FCC.

- **April 2017:** The FCC released proposed rules that, if finalized, could dramatically preempt city authority. The two proposed rules, which are intended by the FCC to "streamline and promote broadband deployment," suggest a series of changes that could severely hamper a city's authority to manage use of the rights-of-way. Again, the quoted phrase usually translates into eliminating municipal authority.

The first proposed rule, “Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,” would reform utility pole attachment rules to mandate timelines and limit fees for applicants seeking to attach antennas or new wires to existing poles. The proposed rule also considers whether the FCC should further preempt any local ordinances or practices that “frustrate, delay, or inhibit” telecommunications providers – a statement that could open the door to broad preemption.

The second proposed rule, “Wireless Infrastructure NPRM,” would revisit existing “shot clocks” for wireless site application review and potentially create a number of new categories with differing shot clock timelines. It would also suggest: (1) that any city that failed to meet a shot clock requirement would have “defaulted its authority” to review wireless applications at all; and (2) limiting aesthetic requirements for wireless sites; and (3) limiting any regulations not relating directly to health and safety.

- **January 2018:** City representatives on the BDAC, after recognizing the FCC’s ongoing preference for industry positions, filed a “minority report” with the FCC. The City of McAllen, Texas, along with San Jose and New York authored the report. The report outlines the city position that local control of rights-of-way is best.

Make no mistake, these FCC proposals, along with administrative actions at the Texas Public Utility Commission and legislative action at the Texas Capitol, are nothing less than a full preemptive strike at cities.

The issues are so important that League officers and staff will travel to Washington, D.C., next week to visit with key members of the Texas Congressional delegation about the federal efforts mentioned above. The goal of the visit is to show that Texas has enacted legislation (for telecommunications, cable/video, and small cell deployment) to address industry concerns, and that further preemption – especially in the area of right-of-way compensation – would create a subsidy for telecommunications companies on the backs of taxpayers.

Payday Lending Clearinghouse Updates

The League’s “Payday Lending Clearinghouse” webpage, available at www.tml.org/payday-updates, includes information related to the regulation of payday and auto title lenders. It is updated from time-to-time to reflect recent developments. Interested city officials should note that the list of cities that have adopted regulations is expanding. An updated list is available on the webpage.

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