



Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
February 25, 2020

To: Honorable Mayor and Members of the City Council
From: Councilmembers Susan Wengraf, Sophie Hahn, and Kate Harrison
Subject: Support for S.2012 (Feinstein)

RECOMMENDATION

Adopt a Resolution in support of S.2012, “Restoring Local Control Over Public Infrastructure Act of 2019” (Feinstein) and send copies to Senators Dianne Feinstein and Kamala Harris, and Congresswoman Barbara Lee.

FINANCIAL IMPLICATIONS

None

BACKGROUND

S.2012, the [Restoring Local Control Over Public Infrastructure Act](#) proposes to restore local government control over how wireless carriers deploy small cell and other wireless equipment on utility poles.

The legislation is in response to a pair of recent FCC rules that revoke local authority to regulate telecommunications equipment deployment. The FCC rules also determine how much wireless carriers would pay to use public phone and utility poles, without any local input.

Senator Feinstein's bill would overturn the new FCC rules and restore local control concerning the placement of small cell and other wireless equipment on phone and utility poles.

S.2012 would also overturn the FCC's 60 to 90 day limits for local governments to review applications to use public infrastructure before being automatically approved.

The bill is cosponsored by Senators Charles E. Schumer (D-N.Y.), Michael Bennet (D-Colo.), Kamala D. Harris (D-Calif.), Ron Wyden (D-Ore.), Ben Cardin (D-Md.) and Richard Blumenthal (D-Conn.).

The bill is supported by the U.S. Conference of Mayors, National Association of Telecommunications Officers and Advisors, American Public Power Association,

Communications Workers of America, National Association of Counties, League of California Cities and American Public Works Association.

ENVIRONMENTAL SUSTAINABILITY

Local control over telecommunication equipment placement supports the city's efforts to provide a safe community.

CONTACT PERSON

Councilmember Wengraf

Council District 6

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Attachments:

1: Resolution

2: Bill S-2012

3: FCC Press Release about its September 26, 2018 Declaratory Ruling

4: Link to [FCCs 116 page Declaratory Ruling and Third Report and Order](#)

RESOLUTION NO. ##,###-N.S.

City of Berkeley Support for S.2012 (Feinstein)

WHEREAS, The FCC passed the Declaratory Ruling and Third Report and Order, in September 2018 that allow telecom providers to install heavy equipment on local infrastructure with little input from the impacted local jurisdictions ; and

WHEREAS, These rules, ostensibly intended to fast-track the 5G rollout, supersede local and state regulations, taking away local control over how wireless companies may attach small cell and other wireless transmission devices to utility poles, light poles and traffic lights; and

WHEREAS, The rules dictate how much local governments can charge wireless companies for permits and use of public infrastructure. The fee allowed is far less than it costs to the City of Berkeley to process; and

WHEREAS, The FCC Rules give jurisdictions just 60 days to review a wireless corporation's application for installation of small cell equipment, which is hardly enough time to consider the safety and aesthetic effects of the deployment. Applications that aren't processed within the 60 day period are automatically approved; and

WHEREAS, Wireless companies won't bear the responsibility when things go wrong from the weight of their equipment. Attaching small cells that are the size of a mini-refrigerator to utility poles will make them more vulnerable to falling, posing danger to residents and property, including the increased potential of fires; and

WHEREAS, The City of Berkeley shouldn't be asked to subsidize private commercial development without local oversight. In order to prevent big wireless companies from sidelining local jurisdictions, Congress must act.

NOW THEREFORE, BE IT RESOLVED by the City of Berkeley that it fully supports S.2012 "Restoring Local Control Over Public Infrastructure Act of 2019" (Feinstein)

BE IT FURTHER RESOLVED that the Berkeley City Council appreciates Senator Feinstein's leadership on this item and Senator Harris' co-sponsorship.

116TH CONGRESS
1ST SESSION

S. 2012

To provide that certain regulatory actions by the Federal Communications Commission shall have no force or effect.

IN THE SENATE OF THE UNITED STATES
JUNE 27, 2019

Mrs. FEINSTEIN (for herself, Mr. SCHUMER, Ms. HARRIS, Mr. BENNET, Mr. WYDEN, Mr. CARDIN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide that certain regulatory actions by the Federal Communications Commission shall have no force or effect.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Restoring Local Con-
5 trol Over Public Infrastructure Act of 2019”.

6 SEC. 2. DEFINITION.

7 In this Act, the term “Commission” means the Fed-
8 eral Communications Commission.

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**1 SEC. 3. PRESERVATION OF RIGHTS OF STATE AND LOCAL
2 GOVERNMENTS.**

3 The following regulatory actions of the Commission
4 shall have no force or effect:

5 (1) The Declaratory Ruling in the “Third Re-
6 port and Order and Declaratory Ruling in the mat-
7 ter of Accelerating Wireline Broadband Deployment
8 by Removing Barriers to Infrastructure Investment
9 and Accelerating Wireless Broadband Deployment
10 by Removing Barriers to Infrastructure Investment”
11 adopted by the Commission on August 2, 2018
12 (FCC 18–111).

13 (2) The “Declaratory Ruling and Third Report
14 and Order in the matter of Accelerating Wireless
15 Broadband Deployment by Removing Barriers to In-
16 frastructure Investment and Accelerating Wireline
17 Broadband Deployment by Removing Barriers to In-
18 frastructure Investment” adopted by the Commis-
19 sion on September 26, 2018 (FCC 18–133).

20 (3) The rule adopted by the Commission enti-
21 tled “Accelerating Wireless and Wireline Broadband
22 Deployment by Removing Barriers to Infrastructure
23 Investment” (83 Fed. Reg. 51867 (October 15,
24 2018)).

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For Immediate Release

**FCC FACILITATES DEPLOYMENT OF WIRELESS
INFRASTRUCTURE FOR 5G CONNECTIVITY**

***Action Removes Regulatory Barriers to Infrastructure
Investment***

WASHINGTON, September 26, 2018—Today, the Federal Communications Commission took another important step in its ongoing efforts to remove regulatory barriers that inhibit the deployment of infrastructure necessary for 5G and other advanced wireless services. This action, which builds upon those already taken by states and localities to streamline deployment, underscores the FCC's commitment to ensuring that the United States wins the global race to 5G.

The first part of the Commission's decision, a Declaratory Ruling, focuses primarily on local fees for the authorizations necessary to deploy small wireless facilities. Specifically, the Declaratory Ruling:

- 1 Explains when a state or local regulation of wireless infrastructure deployment constitutes an effective prohibition of service prohibited by Sections 253 or 332(c)(7) of the Communications Act;
- 2 Concludes that Section 253 and 332(c)(7) limit state and local governments to charging fees that are no greater than a reasonable approximation of objectively reasonable costs for processing applications and for managing deployments in the rights-of-way.
- 3 Removes uncertainty by identifying specific fee levels for small wireless facility deployments that presumably comply with the relevant standard; and
- 4 Provides guidance on when certain state and local non-fee requirements that are allowed under the Act—such as aesthetic and undergrounding requirements—may constitute an effective prohibition of service.

The second part of the Commission's decision, the Third Report & Order in the Wireless Infrastructure Docket:

- 5 Establishes two new shot clocks for small wireless facilities (60 days for collocation on preexisting structures and 90 days for new builds);
- 6 Codifies the existing 90 and 150 day shot clocks for wireless facility deployments that do not qualify as small cells that were established in 2009;
- 7 Concludes that all state and local government authorizations necessary for the deployment of personal wireless service infrastructure are subject to those shot clocks; and
- 8 Adopts a new remedy for missed shot clocks by finding that a failure to act within the new small wireless facility shot clock constitutes a presumptive prohibition on the provision of services.

Action by the Commission September 26, 2018 by Declaratory Ruling and Report and Order (FCC 18-133). Chairman Pai, Commissioners O’Rielly and Carr approving. Commissioner Rosenworcel approving in part and dissenting in part. Chairman Pai, Commissioners O’Rielly, Carr, and Rosenworcel issuing separate statements.

WT Docket No. 17-79; WC Docket No. 17-84

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This is an unofficial announcement of Commission Action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974)

