

5G, Poles and Local Controls

Lesson learned: It does not pay to run roughshod over local concerns. The FCC finds out the hard way.

By Steven S. Ross / *Broadband Communities*

Anyone deploying new networks, especially fiber networks, knows that prime real estate often resides on utility poles. Access to the poles can create unwanted competition for incumbent carriers. It can generate revenue for pole owners, often municipalities and local utilities. Disputes over access can and do produce tens of thousands of pages of court rulings and government regulations – a truly biblical volume. A veritable flood.

New 5G cellular technology will generate demand for about 25 million microcell sites over the next decade in the United States alone. Most will end up on utility poles and urban rooftops.

Regulating pole access has never been easy, so all sides have long asked the Federal Communications Commission to cut through the mess and set some rules. Rigid rules. The kind of “one size fits all” rules devoid of the wiggle room that leads to court battles.

Well, we got the rules – *and* the court battles. What happened, and what might the outcome be? How can deployers and pole owners get the job done?

It all started in California, where municipal governments are hobbled by 40-year-old restrictions on raising property tax revenue but enjoy expansive rules that allow them to raise much new revenue from builders of new housing, utilities and commercial developments. Pole fees are a natural cost of doing business, and the cost can be high. Governments know they would be wise not to tax things they want – broadband, for instance – but temptations are heightened in California.

With a new deregulatory mood taking hold at the federal level, deployers saw an opportunity to cut their costs, even though the party in power has historically decried federal pre-emption of state and local laws. The cuts they demanded were not large. Blair Levin, who oversaw the writing of the national broadband plan in 2009, puts them at \$2 billion today, total. As I model it, I calculate more than \$3 billion. The major carriers spend more than \$70 billion on their networks every year. Levin notes that even if the carriers use that \$2 billion (or more) for new deployments they otherwise would not build, that amounts to rich municipalities subsidizing

buildouts in rural and lower-income areas.

But the idea that carriers would use the savings to expand deployment to unprofitable areas is as silly as, say, the president suggesting that the United States leapfrog 5G and go right to 6G. Or 4H. Or whatever.

CARRIERS PRESS THEIR ADVANTAGE

To press their advantage, the carriers hijacked the regulatory reform committee that wrote the new rules. Sam Liccardo, mayor of San Jose, California, quit the committee when it became obvious that his concerns would not be considered. The so-called FCC Small Cell Order text became final last December. Thirteen cities, including Liccardo’s San Jose, sued, and others have been knocking at the doors of the FCC and some courthouses as well.

The Tenth Circuit Court of Appeals let the Small Cell Order go into effect on January 19 but allowed the 13 cases to be consolidated in the Ninth Circuit, not a friendly venue for Washington, D.C., regulators and politicians. Liccardo was particularly annoyed because San Jose had reached 5G agreements with two national carriers deploying in his city, and the Small Cell Order wiped out those agreements. Good point to raise in court, especially in the Ninth Circuit, based in San Francisco.

The Tenth Circuit stay did not last long, either.

Rep. Anna G. Eshoo, a Democrat from California, filed HR 530 in January to overturn the Small Cell Order. Eshoo says the idea of national regulation is good, but the FCC overreached by prioritizing national corporations over local governments. On February 25, the FCC recognized the writing on the poles (no wall being available, it seems, but that is another story) and moved to consolidate those and other appeals of the Small Cell Order and to delay proceedings under the order pending agency reconsideration.

An entertaining Twitter war erupted between Liccardo and FCC Commissioner Brendan Carr.

The 5G cellular bible is still being written. ❖

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