Local Government Telecommunications Policy Checklist for 2026

Federal telecommunications policy continues to change rapidly in 2026. As BBK's January Call to Action warned, proposed federal legislation and Federal Communications Commission (FCC) action could limit local governments' property rights, revenues and police powers. These threats to preempt local authority will continue into 2027. Local governments must continue to advocate before Congress, the FCC and in the courts to preserve their property rights, revenues and police powers. BBK offers the following checklist to ensure that your community is prepared.

1. Oppose H.R. 2289 And Similar Proposals That Restrict Local Authority and Revenues.

In December of 2026, on a party line vote, the House Energy and Commerce Committee favorably reported H.R. 2289, the American Broadband Deployment Act of 2025. House leaders withdrew the bill from Rules Committee consideration, however, in April, after local-government opposition resulted in insufficient Congressional support. This pause in the legislative threat is significant but not final: the bill remains pending, and similar provisions may return. As reported, H.R. 2289 would restrict local authority over wireless and wireline siting, right-of-way management and compensation, cable franchising and federal environmental and historic-preservation review. Local governments should continue communicating their opposition to H.R. 2289 with Congress.

2. Oppose FCC Proposals That Would Preempt Local Property Rights and Police Powers.

FCC Chairman Brendan Carr continues to support additional federal limits on local permitting and compensation authority. He did so most recently in two leading dockets.

- Localities Need to Respond to FCC Rulemaking Proceeding That Proposes Expanded Federal Preemption of Local Wireless Siting Authority
- New FCC Proposal Would Undermine Local Government Property Rights and Limit Authority Over Public Rights-of-Way

In the Wireless Docket (No. 25-276), the FCC proposed an expanded preemption of wireless siting authority. In the Wireline Docket (No. 25-253), the FCC moved from a Notice of Inquiry to a June 2026 Notice of Proposed Rulemaking that proposes, among other things, a 120-day wireline shot clock and cost-based limits on right-of-way compensation. BBK is actively participating in both dockets on behalf of local governments and welcomes others to join. Localities should review the proposals, preserve supporting facts and legal arguments and prepare for litigation. For more information, contact any member of BBK's telecommunications team.

3. Monitor Federal Preemption Efforts Related to AI And Data Centers.

In 2025, the White House released *Winning the Race: America's AI Action Plan* and issued Executive Order 14365, *Ensuring a National Policy Framework* *for Artificial Intelligence*. The EO directed the Commerce Department's NTIA to identify "onerous" state AI laws that could make states ineligible for BEAD non-deployment funds; directed agencies to assess whether discretionary grants may be conditioned on states' nonenforcement of conflicting AI laws and called for federal legislation establishing a uniform AI framework. Although EO 14365 directed action by March 2026, agencies have deferred. Administration-backed AI legislation has not materialized, qualified use of BEAD non-deployment dollars and the federal government's evaluation of onerous state AI laws remain up in the air.

Last year Congress also considered—but removed from 2025 budget-reconciliation legislation—a broad moratorium on state and local AI regulation. Efforts at broad preemption continue. Local governments should monitor federal legislation and funding conditions affecting state and local AI regulation and datacenter permitting. *For more information on these developments and related legal considerations, please visit BBK's* Data Centers & AI Infrastructure practice group.

4. Digital Equity Act Competitive Grant Program Will Return in New Form.

After a non-profit sued when the Administration canceled the congressionally authorized competitive grant program authorized under the Digital Equity Act, a court ruled in July 2026 that it was unconstitutional for the statute to include racial and ethnic minorities among the populations that could be targeted for inclusion programs because they lag in broadband adoption, but found that their inclusion was severable from the rest of the statute. The court permitted the suit challenging the program's cancellation to continue. The Department of Commerce has indicated that it will issue a new funding notice and restart the program while the litigation is pending. Local governments interested in these digital inclusion dollars should monitor for new guidance.

5. Ensure Local Wireless Siting Regulations and Procedures Comply with Law.

Updated ordinances, forms and procedures remain the best protection against federal and state shot clocks, deemed-granted remedies and litigation. Local governments should review both small-cell rules for public rights-of-way and traditional zoning rules for facilities on parcels. Federal law does not permit a moratorium to update codes, and operating under outdated rules creates avoidable risk.

Recent Supreme Court cases (*Loper Bright and McLaughlin*) reduce judicial deference to federal agencies and permit trial courts considering application of federal rules to independently assess an agency's statutory interpretation. These decisions may strengthen challenges to FCC preemption, but subject to careful legal analysis of whether issue preclusion and *stare decisis* might limit how the newly less deferential doctrines apply. Localities should consult experienced counsel and monitor circuit precedent. For additional analysis, see Cheryl Leanza and Tillman Lay's discussion of Loper Bright and McLaughlin.

6. Prevent Cable Operators from Avoiding Existing Community Obligations.

In 2021, local governments prevailed when the U.S. Court of Appeals for the Sixth Circuit held, in *City of Eugene v. FCC*, that in-kind franchise obligations must be valued at marginal cost, not fair market value, if being counted toward the statutory 5 percent franchise fee cap. There are cable operators, nevertheless, that claim larger offsets based on aggressive readings of the FCC rules and *Eugene*. Local franchising authorities should require documentation of marginal costs, confirm the cable operators are following mandatory notification procedures, and recognize that affected franchise terms must be renegotiated within a reasonable period rather than taking effect automatically. See BBK's Call to Action for additional analysis.

Local governments and franchise authorities should also continue monitoring the FCC's mixed-use rule and operator revenue classifications. Migration to streaming and reclassification of revenues are reducing cable franchise fees. Audits to examine operator reclassification of revenue and independent counsel, rather than operator interpretations, will protect local revenues and preserve operators' obligations.

7. Stay Connected, Informed and Funded for Action.

Coordinate with BBK, state leagues and national associations. Document successful local broadband deployments and steps taken to eliminate barriers so officials can rebut claims that local governments impede deployment. Budget for regulatory advocacy and litigation so the community can respond promptly to preemption threats.

Sign up to receive BBK legal alerts:

PARTNER
Gail A. Karish
Los Angeles, CA
(213) 605-1603
gail.karish@bbklaw.com

PARTNER
Gerard Lavery Lederer
Washington, D.C.
(202) 370-5304
gerard.lederer@bbklaw.com

PARTNER
Tillman L. Lay
Washington, D.C.
(202) 370-5299
tillman.lay@bbklaw.com

OF COUNSEL
Cheryl Leanza
Washington, D.C.
(202) 370-5316
cheryl.leanza@bbklaw.com

OF COUNSEL
Bennett Givens
Los Angeles, CA
(213) 617-7497
bennett.givens@bbklaw.com

OF COUNSEL
Gregory M. Caffas
Washington, D.C.
(202) 370-5302
gregory.caffas@bbklaw.com

ASSOCIATE
Brittany Weidner
San Diego, CA
(619) 525-1320
brittany.weidner@bbklaw.com

ASSOCIATE
Jenna Oh
Irvine, CA
(949) 263-6592
jenna.oh@bbklaw.com