

WORK SESSION: Telecommunications
Wireless in the Public Rights of Way

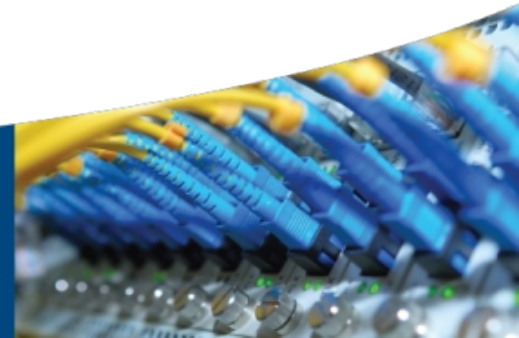
International Municipal Lawyers Association
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Agenda

- Demand and types of deployments
- Federal streamlining efforts
- State Law Issues
 - Right of way compensation and franchising
 - Aesthetics and discretionary reviews
- What to watch for...



Sources of Demand

Industry	Deployment
wireless	Small cells; distributed antenna systems (DAS)
utilities	Advanced metering infrastructure (AMI); smart grids
cable	Wi-Fi hotspots
transportation	Intelligent transportation systems; driverless cars
municipal	Traffic systems
Future IoT	Future technologies mmW 5G

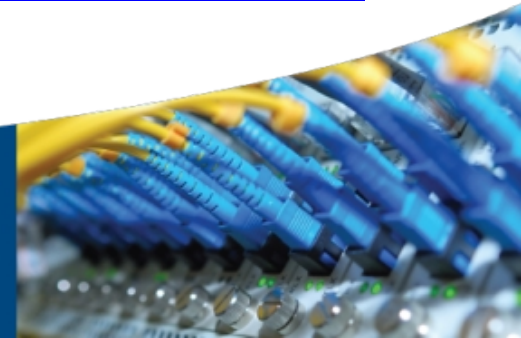


Growth in DAS and Small Cells

FCC/industry estimates:

- More than 37 million small cells will be deployed by 2017.
- 16 million DAS nodes will be deployed by 2018.
- One study projects that aggregate small-cell capacity will overtake macro cell capacity by 2016-2017.

Source: <http://nathpo.org/wp/wp-content/uploads/2015/09/7-NATHPO-FCC-Summit-DAS-Small-Cell-FINAL.pdf> (2015)



NextG DAS Diagram

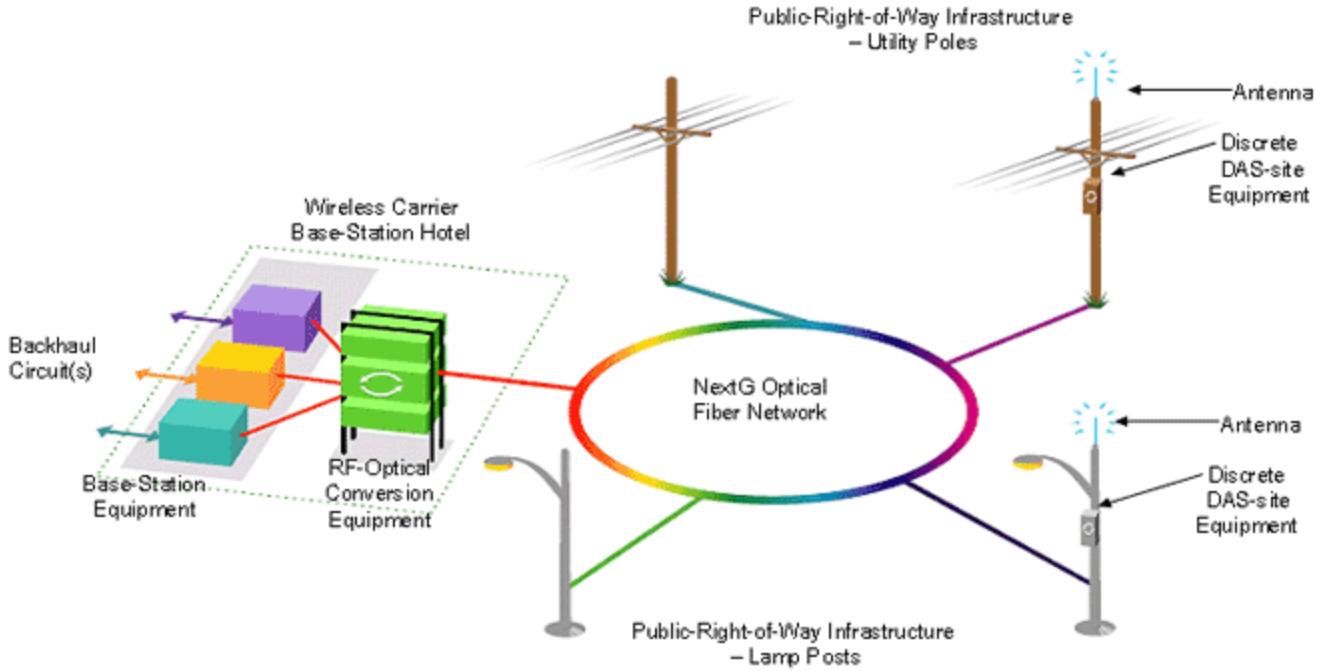
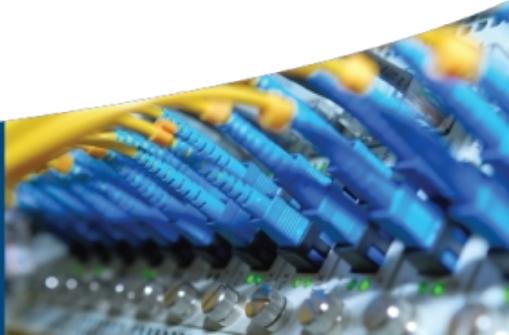


Figure 2: Distributed Antenna System



Existing



view from Taylor Street looking south at site
MTAPOLY-VZW Node 148
99 Aladdin Terrace, San Francisco, CA
Photosims Produced On 1-28-2015



Proposed



Proposed Exteneer Antennas & Equipment

AdvanceSim
Photo Simulation Solutions
Contact (925) 202-8507



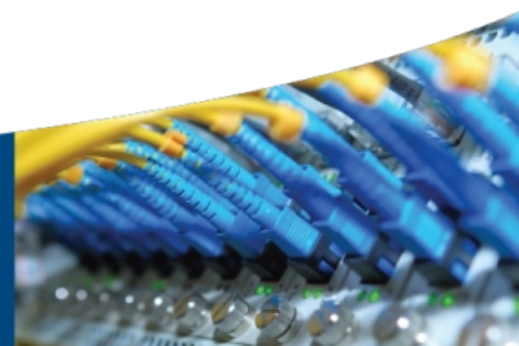
Utility AMI



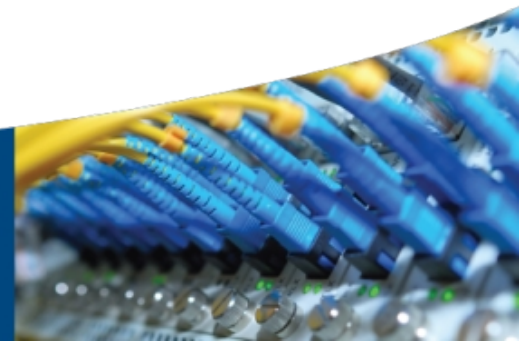
Southern California Gas



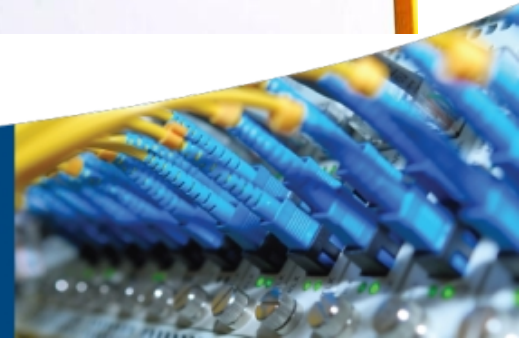
Telecommunications Law



Cable Wi-Fi



Municipal Uses



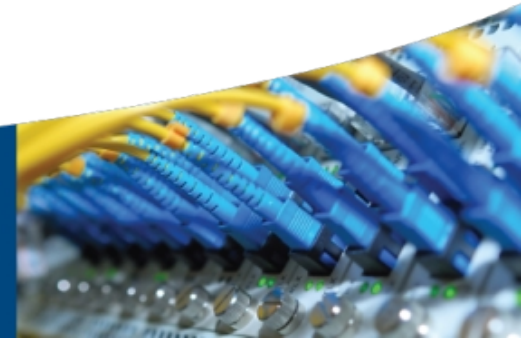
Federal Streamlining Efforts

FCC Shot Clocks

- Sec. 332 (c)(7) shot clocks apply to small cells and DAS for “personal wireless services”
- Sec. 6409(a) “eligible facilities requests” apply to wireless facilities for “any Commission-authorized wireless communications service”

Nationwide Programmatic Agreement for Collocation of Wireless Antennas

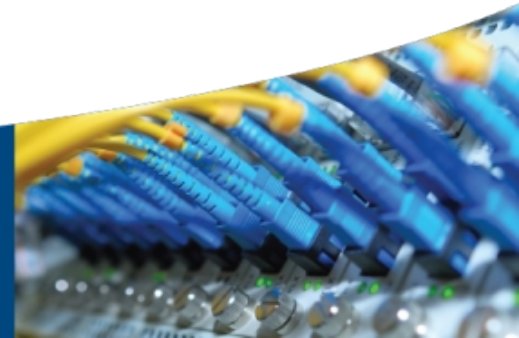
- Amended on 8/3/2016 to add new exclusions for small antennas and associated equipment:
 - on buildings and non-tower structures if they are outside of historic districts and are not historic properties;
 - on structures in historic districts or on historic properties if small or minimally visible;
 - in the interior of buildings
 - Replacement antennas and equipment



Federal Streamlining Efforts

- FCC's rules tend to assume:
 - Wireless facilities in public rights-of-way will be small and unobtrusive
 - Certain small cells have limited potential to adversely affect historic properties
- *FCC anticipates amendment will promote advancement of 5G mobile services by reducing time, cost, and burden of deploying small facilities.*

BUT...



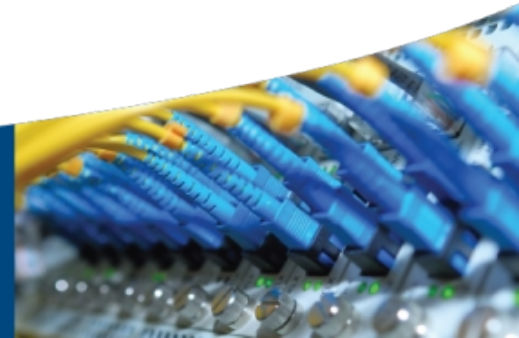
WHAT IF IT LOOKS LIKE THIS?



Wireless in PROW

Applicants

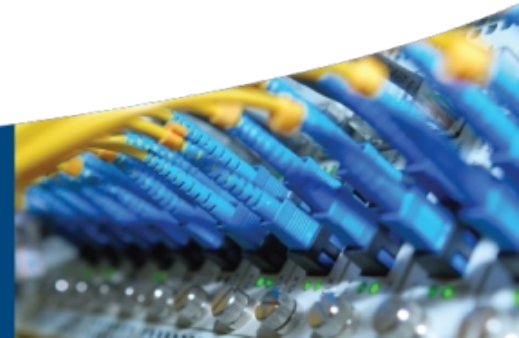
- May or may not be wireless carriers
- May have unfamiliar names
 - Utility Pole Authority
 - Interstate Transport and Broadband
 - Transmission Network
- May not have required licenses
 - May *claim to be* state-authorized telco with CPCN
 - May not have authorizations needed to install or operate wireless facilities
 - May not have franchise



Wireless in PROW

Applications

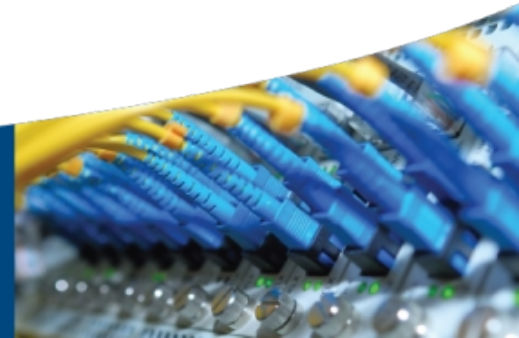
- May go to Public Works or Engineering, not Planning
- May not use your forms or online systems
- May show up in the snail mail



Wireless in PROW

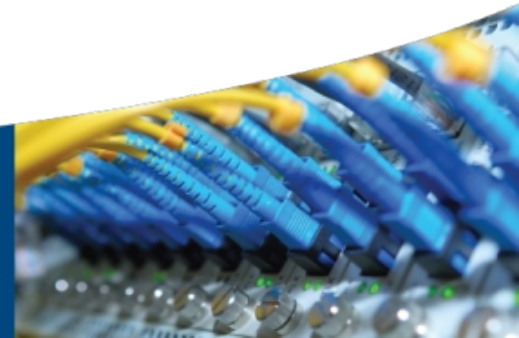
Projects

- May not plan to use “utility pole” to string their wires
- May not have any immediate plans to place antennas either (no customers)
- May be designed to accommodate *future* antenna and equipment installations
- May be planning wireless or wireline backhaul (or both) and wireline may be underground not above ground



Some Issues Raised

- Has an application been filed?
- Is this a utility pole or a wireless facility?
- Do FCC wireless shot clocks apply?
- Does applicant have the right to place facilities in the public rights-of-way?
- Does applicant have to establish need?
- Can you prevent piecemeal requests?



Litigation – Scope of State Franchise

City of Huntington Beach v. Public Utilities Com., 214 Cal. App. 4th 566, 597-8 (Cal. App. 4th Dist. 2013)

- State franchise (PUC 7901) applies to any telephone corporation that provides wireless or landline services
“The plain language of the pertinent statutory provisions leads to only one reasonable conclusion: The definition of ‘telephone corporations’ for purposes of section 7901 is not limited to those entities utilizing technology invented at the time section 7901 or its prior iterations in the Civil Code were enacted. If an entity owns, controls, operates, or manages telephone lines in connection with telephone communication, the entity is a ‘telephone corporation’ under section 7901.”



Litigation – Scope of State Certificate

Review of Issues Relating to Commission Certification of Distributed Antennae System Providers in Pennsylvania (Docket No. M-2016-2517831 (initiated in January 2016))

Four key issues being examined:

- (1) whether DAS providers are public utilities under Pennsylvania law that can be certificated;
- (2) whether the Commission should or is required to certificate these carriers in furtherance of federal law;
- (3) whether DAS service is an interstate service, intrastate service, or both; and
- (4) whether a CPC is needed to confer property rights to DAS providers to site the facilities/equipment used to provide DAS service, including access to rights-of-way and eminent domain.



Litigation – Compensation

Extenet Network Systems, Inc. v. City of Houston (Texas PUC, Docket No. 45280)

- Complaint filed in Oct/2015 against city for requiring fees for use of PROW to install DAS facilities (installation for Verizon)
- Alleges violation of Chapter 283 of Texas Local Gov. Code
 - Under Ch. 283, PUC-certified telecom provider (“CTP”) can use PROW and pay compensation for use based on number of retail end-user lines it operates in city, known as “access lines.”
- Extenet claims city has no authority to demand fees because it is a CTP that does not have retail end-use customers, and thus has no access lines.
(CCI also filed complaint against Dallas)



Litigation – Aesthetics/Discretionary Review

T-Mobile West LLC et al. v. The City and County of San Francisco et al. (1st District Court of Appeal (CA), Case No. A144252, 9/15/16)

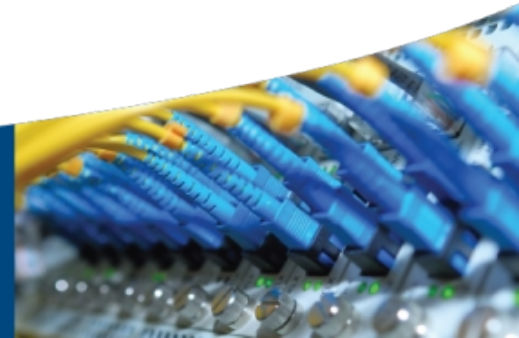
- Existing 9th Circuit legal authority established that “time, place and manner” review includes aesthetic regulations
- Telecom providers filed in state court challenging whether that authority is discretionary, and whether can impose conditions on a permit to regulate aesthetics
- Court also asked to consider whether the term “all entities” is limited to telephone companies (or includes other utilities) and whether localities can treat wireless and wireline telephone companies differently
- City prevailed. But further appeal or attempt at legislative “fix” may follow.



What's Next?

How many more small cells are we talking about? Estimates are a 10x growth, and potentially significantly more. That's hundreds of thousands, maybe even millions of new antennas. That's hundreds of thousands, if not millions of siting decisions. **Which raises quite a few questions:** What can government do accelerate investment in building out small cells? How can federal, state, and local levels of government work more effectively with the private sector? Or to take it down to real brass tacks, how can we work with siting authorities to allow the plethora of antennas that will be required quickly and at a reasonable cost?

Remarks of FCC Chairman Tom Wheeler
CTIA Super Mobility Show 2016, Las Vegas
September 7, 2016



State Legislation

- California

- AB 57 (2015) – successfully extended “deemed grant” to FCC’s two Sec. 332(c)(7) shot clocks
 - went into effect Jan. 1, 2016.
- AB 806 (2015) – failed late session attempt by cable industry to exempt “strand-mounted antennas” used for Wi-Fi hotspots from any permitting requirements
 - would not have covered strand-mounted cellular antennas
- AB 2788 (2016) – failed late session attempt to eliminate local regulatory and proprietary authority over installation of DAS and small cells
 - Actually would have allowed for facilities that are substantial in size
 - Would have forced local authorities to make property available for wireless installations essentially at cost.
 - Did not protect historic areas



SUMMARY

- *Educate* – planning and public works
- *Update* – codes, application forms
- *Get Advice* – many of these issues involve a careful analysis of interplay of federal, state and local law
- *Monitor state and federal developments* – there's more to come.



Thank You



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