

MOTION BY SUPERVISORS HILDA L. SOLIS

March 7, 2023

AND LINDSEY P. HORVATH

Five-Signature Letter to the Federal Communications Commission Regarding Local Land Use Authority on Wireless Telecommunications Facilities

The County of Los Angeles is committed to deleting the Digital Divide by ensuring all County residents have internet access and the opportunities that digital services and content provide. Wireless telecommunication facilities (“wireless facilities”) are just one aspect of a multiple-pronged effort to harness different technologies and strategies to delete the Digital Divide. Additional technologies and programs the County is currently pursuing include the build-out of a stable fiber network, the deployment of plentiful hot spot access in public places, provision and subsidization of free and low-cost digital devices and services, improvement in access to broadband services, and empowerment with digital literacy. Some of these initiatives require the County to partner with providers of internet and wireless telecommunication services. However, there are challenges at the local level due to a lack of trust in wireless technology that is exacerbated by current regulations at the federal level.

MOTION

SOLIS _____

MITCHELL _____

HORVATH _____

BARGER _____

HAHN _____

The Telecommunications Act of 1996 stipulates that state or local government review of wireless facilities, “shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services” (Section 704(a)(7)(B)(i)). The Act prohibits state and local governments from establishing regulations “for the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission’s regulations concerning such emissions” (Section 704(a)(7)(B)(iv)). Recent court cases have upheld the Act’s limitations on local land use authority to regulate these wireless facilities.

The Federal Communications Commission (FCC) issued Reports and Orders in 2014, 2018, and 2019 that further constrain local land use authority to regulate wireless facilities, as well as impose accelerated timetables for processing applications for wireless facility development proposals. The shotclock schedule established in the 2018 Report and Order deprives due process to the public by not allowing sufficient time for local governments to engage with communities regarding wireless facility development proposals that may impact their communities and to conduct due diligence, including environmental analysis. Again, the courts have deferred to the FCC with its Reports and Orders.

There has been a lack of transparency and communication regarding the regulations established for wireless facilities from both the federal government and the wireless telecommunications industry. Many of the standards established for wireless facilities have not been updated since the Telecommunication Act’s passage. The result

is a large-scale mistrust by the public to wireless facilities and the local land use decisions regarding their placement because their concerns cannot be considered due to constraints imposed by federal law on local governments.

Furthermore, the Board's recent adoption of a zoning ordinance regulating wireless facilities in January 2023 – which was one aspect of the County's objectives for deleting the Digital Divide - was preceded by a series of constrained and aggravated public hearings because the ordinance was prohibited from incorporating many of the public's concerns. In recent years, there have also been a dramatic rise in appeal cases presented to the Board for development proposals and many of the appeals pertain specifically to the individual and cumulative effects of wireless facilities that are outside the local government's purview. The strong response puts the Board in an untenable position between being responsive to their constituents' concerns and staying in compliance with federal law.

The Board believes that it is in the best interest of the public and all state and local governments across the country, for the FCC and the wireless telecommunications industry, to develop a transparent, inclusive process that will be supportive of local land use authority and constituents with their concerns.

I, THEREFORE, MOVE that the Board of Supervisors direct the Chief Executive Office-Legislative Affairs and Intergovernmental Relations Division (CEO-LAIR), in consultation with County Counsel, the Departments of Public Works and Regional Planning and other relevant County Departments to send a five-signature letter to the Federal Communications Commission requesting:

- That the FCC develop a transparent, inclusive, and equitable process to engage the public, state and local governments, and the wireless telecommunications industry and develop new regulations for wireless facilities that are considerate and supportive of concerns at the local level;
- That the FCC revise regulations, including its Reports and Orders, that will ensure more access to information and greater cooperation with local governments in preparing ordinances and reviewing development proposals for wireless telecommunication facilities that take into consideration local concerns and due process; and
- That the FCC provide direct oversight to impose requirements for independent analysis when proposing sites and to monitor ongoing compliance with emission regulations in partnership with local authorities.

#

HLS:lo