

COUNTY OF NEVADA
STATE OF CALIFORNIA
BOARD OF SUPERVISORS



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June 29, 2017

The Honorable Board of Supervisors
County of Nevada
950 Maidu Avenue
Nevada City, CA 95959

DATE OF MEETING: July 11, 2017

SUBJECT: Letter of Opposition to Senate Bill 649 (Hueso)

RECOMMENDATION: Approve the attached letter

FUNDING: None.

BACKGROUND:

Over the past two decades mobile and wireless device use has significantly increased. These devices are dependent upon cell phone tower infrastructures that are generally very massive and tall (200 feet). However, wireless service providers also use small cells, which are low-powered wireless base stations that are typically used to target specific localized outdoor locations, such as offices, stadiums shopping malls, hospitals and other outdoor spaces. Unlike cell phone towers, small cells only work with their corresponding wireless provider and need to be deployed at greater volumes in more concentrated areas. Under existing law, wireless carriers must seek local approval and obtain permits, where applicable, to place additional telecommunication equipment on structures and facilities where equipment already exists, which are referred to as collocations. Municipalities are required to approve collocations through a ministerial process but are generally prohibited from limiting the duration of permits for wireless sites to less than 10 years.

Telecommunication companies do have a right to access utility poles in the public right-of-way under specific legal guidelines. While local governments may not block utility pole attachments, they can regulate when, how and where they are attached in the public right-of-way. Investor and municipal owned utilities can only charge cost-based rates to telecommunication companies for attaching to their utility poles. However, these restrictions do not apply to other publicly-owned infrastructure such as light poles and street lamps. Instead local governments can impose conditions and negotiate payments for their use.

However, on February 17, 2017 California Senator Hueso introduced Senate Bill (SB) 649 to amend Section 65964 of, and to add Sections 65964.2 and 65964.5 to, the Government Code, relating to telecommunications. In a nutshell, SB 649 establishes a statewide process for a streamlined permitting process for the installation of small cell wireless facilities and ensures access to most vertical infrastructure in the utility right-of-way and within commercial and industrial zones. Per the Legislative Counsel's Digest, "this bill would provide that a small cell is a permitted use, subject only to a specified permitting process adopted by a city or county, if the small cell meets specified requirements. By imposing new duties on local agencies, this bill would impose a state-mandated local program. The bill

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Letter of Opposition

Re: SB 649

June 29, 2017

Page 2 of 2

would authorize a city or county to require an encroachment permit or a building permit, and any additional ministerial permits, for a small cell, as specified. The bill would authorize a city or county to charge 3 types of fees: an annual administrative permit fee, an annual attachment rate, or a one-time reimbursement fee. The bill would require the city or county to comply with notice and hearing requirements before imposing the annual attachment rate. The bill would require an action or proceeding to challenge a fee imposed under the provisions of this bill to be commenced within 120 days of the effective date of the ordinance or resolution. The bill would define the term "small cell" for these purposes. This bill would prohibit a city or county from adopting or enforcing any regulation on the placement or operation of a communications facility in the rights-of-way by a provider that is authorized by state law to operate in the rights-of-way or from regulating that service or imposing any tax, fee, or charge, except as provided in specified provisions of law or as specifically required by law." Moreover, recent amendments to the bill outline a permit cap of \$250 and that a permit fee shall be determined by multiplying the percentage of the total usable space that would be occupied by the attachment by the annual costs of ownership of the vertical infrastructure.

The Rural County Representatives of California (RCRC) and the California State Association of Counties (CSAC) both oppose the bill, citing various concerns as SB 649 represents a major shift in telecommunications policy by requiring local governments to lease out the locally-owned streetlights, stoplights and other "vertical infrastructure" for small cells; capping lease rates to a cost-based rate plus a \$250/year administrative permit fee; eliminating the ability for counties and cities to require public benefits in exchange for the lease of public infrastructure; and limiting the public's input and full discretionary review of the installation of "small cell" wireless equipment.

Moreover, the Board has received numerous letters of correspondence and several public comments at the June 27, 2017 meeting in opposition of the bill citing concerns over local municipal autonomy and public health and safety concerns.

Therefore, I am requesting that the Board approve and authorize the Chair to sign the attached Letter of Opposition to SB 649.

Respectfully submitted,



Dan Miller
Supervisor, District 3