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July 11, 2017

The Honorable Cecilia Aguiar-Curry  
Chair, Assembly Local Government Committee  
State Capitol, Room 5144  
Sacramento, CA 95814

**Subject: OPPOSITION to SB 649 (Hueso) – Special Permitting and Mandated Leasing of Public Property for "Small Cell" Wireless Infrastructure – In Assembly Local Government Committee – June 28th (*as amended June 21st*)**

Dear Assembly Member Aguiar-Curry:

The County of Nevada opposes SB 649. This bill eliminates public input and full local environmental and design review, mandates the leasing of publicly owned infrastructure, and eliminates the ability for local governments to negotiate leases or any public benefit for the installation of "small cell" equipment on taxpayer funded property. These not-so-small "small cell" structures would be required to be allowed on public property in *any* zone in a city or county and would be subject to a confusing permitting process carved out for the sole benefit of the wireless industry.

**Recent Amendments Make the Bill More Problematic**

The bill was voted out of the Senate on the premise that amendments would be made to address members concerns regarding the fee calculations. While amendments to the bill have only been in print one week prior to the hearing, those amendments make matters worse and don't live up to the agreements with Senators. While Senators were told there would be a formula to calculate the fee, plus an additional \$250 to process *the leasing agreement per year*, the amendments now appear to put a \$250 cap on *permit fees*. There was never a cap on permit fees in previous versions of the bill.

Most dramatically, the amendments add Section 4 to the bill, which vastly expands the scope of SB 649 beyond "small cells", and would broadly pre-empt regulation of virtually any communications facilities within local rights-of-way. This would not merely limit, but would implicitly repeal the longstanding provisions of California law allowing local governments to reasonably regulate privately-owned facilities placed within the streets and

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roads for which they are responsible. Local regulations protect public health and safety by ensuring that equipment placed within the right-of-way does not cause traffic hazards, or interfere with sight distances necessary to avoid accidents at busy intersections – and protect neighborhood character and quality of life through reasonable concealment and similar aesthetic conditions. It is difficult to overstate the hazards to the public welfare of all Californians threatened by SB 649's wholesale elimination of such local authority.

Other major Senate amendments have been made at the last minute without any direct input from opposition. In fact, aside from Senator McGuire and Senate Governance and Finance staff trying to help facilitate a more workable bill; our opposition has never had a real chance to provide meaningful input on language. And yet documents being circulated suggest that amendments were made to address our opposition concerns. This is not the case. This bill continues to move with empty and broken promises, failing to address critical concerns inherent in such a monumental shift in telecommunications law. Major concerns not changed in the last set of amendments are as follows:

### **By-Right Approval for "Small Cells"- Full Discretionary Review ELIMINATED**

While the wireless industry promises local governments will retain their discretion, the bill eliminates the full discretion locals currently have to require that such equipment blends into the communities where they install their facilities. The bill eliminates the ability of a city or county to negotiate any public benefit such as providing network access for the local library. Additionally, this bill places the entire burden on local governments to adopt a complicated set of ordinances, again increasing costs to the local jurisdiction, at the same time the bill caps the flexible revenue cities and counties can generate for public services such as infrastructure, police, fire, libraries, human services or looming pension obligations.

### **Mandatory Leasing of City or County Property**

SB 649 forces local government to rent space for small cells on public property at rates far below fair market value and requires that every jurisdiction, in order to use its own public property, provide "substantial evidence" that the space is needed by that community. Rents from the use of public property, which every other for-profit business pays, help defray the cost of essential public services that are otherwise provided at taxpayer expense. SB 649 sets a dangerous precedent for other private industries to seek similar treatment, further eroding the ability to fund local services.

SB 649 proposes to calculate the maximum rate for these non-consensual leases using a formula designed only for electricity and telephone poles - a limited category of installations, with fairly uniform features and costs. Application of this formula to the vast variety of "vertical infrastructure" covered by Sb 649 is both unfair and uncertain. The capital and operational cost components for these facilities vary widely in both complexity and amount, and efforts to apply the "Buchanan" formula to these facilities are virtually certain to result in continual disputes and confusion statewide.

## **No Required Deployment of 5G**

While the supporters continue to state that the purpose of the bill is to deploy in rural or underserved areas of the state, there is still no requirement for such deployment. This bill does not provide anything to our constituents in exchange for giving up our public property.

## **Full Discretionary Review ONLY for Coastal and Historical Districts**

The bill explicitly allows for a discretionary review in areas within the coastal zone or in historical districts. Cities and counties that are not included in this exemption are essentially left with little ability to clearly apply design standards.

## **Small Cell Deployment is New – Where's the Problem?**

Small cells are just in the beginning stages of being deployed. Given that many jurisdictions haven't even processed a small cell permit yet, or only handled a small number, it is unclear why there is such an urgent need for this bill. This bill is being passed with the assumption that there *will be* issues, which supporters have yet to demonstrate.

## **What other types of structures or industries will be next in line to demand free or low cost access to public property to boost corporate profit margins?**

While the County of Nevada support the deployment of wireless facilities to ensure that Californians have access to telecommunications services, this goal is not inherently in conflict with appropriate local planning and appropriate fee negotiations on publically owned infrastructure. **For the above reasons, and many more, we respectfully urge a NO vote.**

Respectfully,

Hank Weston,  
Chair, Board of Supervisors