FCC Angers Cities and Towns With $2 Billion Giveaway To Wireless Carriers

Cities will get less revenue, and carriers won't face any new requirements.

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The Federal Communications Commission's plan for spurring 5G wireless deployment will prevent city and town governments from charging carriers about $2 billion worth of fees.

The FCC proposal, to be voted on at its meeting on September 26, limits the amount that local governments may charge carriers for placing 5G equipment such as small cells on poles, traffic lights, and other government property in public rights-of-way. The proposal, which is supported by the FCC's Republican majority, would also force cities and towns to act on carrier applications within 60 or 90 days.

The FCC says this will spur more deployment of small cells, which "have antennas often no larger than a small backpack." But the commission's proposal doesn't require carriers to build in areas where they wouldn't have done so anyway.

Philadelphia is one of numerous local governments that objects to the FCC plan.

"The City respectfully disagrees with the Commission's interpretation of 'fair and reasonable' compensation," Philadelphia officials told the commission this week. "For many cities, public rights-of-way are the most valuable and commonly used public asset."

The FCC plan proposes up-front application fees of $100 for each small cell and annual fees of up to $270 per small cell. The FCC says this is a "reasonable approximation of [localities'] costs for processing applications and for managing deployments in the rights-of-way." Cities that charge more than that would likely face litigation from carriers and would have to prove that the fees are a reasonable approximation of all costs and "non-discriminatory."

But, according to Philadelphia, those proposed fees "are simply de minimis when measured against the costs that the City incurs to approve, support, and maintain the many small cell and distributed antenna system (DAS) installations in its public rights-of-way."

Philadelphia said it "has already established a fee structure and online application process to apply for small cell deployment that has served the needs of its citizens without prohibiting or creating barriers to entry for infrastructure investment." The city has also negotiated license agreements for small cell installations with Verizon, AT&T, and other carriers.

Rural governments also cry foul
Localities both large and small object to the FCC plan. A group representing 35 rural California counties told the FCC that its "proposed recurring fee structure is an unreasonable overreach that will harm local policy innovation."

The FCC-proposed limit of $270 per small cell site is too low, said the group, which is called the Rural County Representatives of California (RCRC).

"That is why many local governments have worked to negotiate fair agreements with wireless providers, which may exceed that number or provide additional benefits to the community," the RCRC wrote. "The FCC's decision to prohibit municipalities' ability to require 'in-kind' conditions on installation agreements is in direct conflict with the FCC's stated intent of this Order and further constrains local governments in deploying wireless services to historically underserved areas."

Los Angeles Mayor Eric Garcetti expressed similar concerns, saying the FCC plan "will insert confusion into the market and sow mistrust between my technology team and the carriers with whom we have already reached agreements."

The full FCC docket is available here.

Ex-FCC official details problems in plan
Local governments are right to be angry at the FCC, according to telecom industry adviser Blair Levin. Levin was the FCC's chief of staff from 1993 to 1997 and oversaw development of the FCC's National Broadband Plan in 2010.

The pending FCC order "presents a framework in which industry gets all the benefits (reduced fees to access state and local property) with no obligations to reinvest the resulting profits in rural broadband—even though the purported rationale for the reduced fees is that they will lead to new investment," Levin wrote in a blog post

Wednesday. "At the same time, states and localities will be forced by federal mandate to bear all the costs and receive no guaranteed benefits."

Levin described the move as "a 'power grab' in which the FCC majority substitutes [its] judgment of what is best for local communities for the judgment of duly elected local officials."

Carriers don't need the FCC's help negotiating with cities, Levin wrote. "As the carriers themselves have acknowledged, they have sufficient leverage to walk away from any locality that creates too many obstacles to deployment," he noted.

Local governments are also able to encourage deployment without FCC interference, Levin wrote.

"[L]ocal governments have a strong recent track record of endeavoring to enable and facilitate broadband deployment, as the Google Fiber experience conclusively demonstrated," Levin wrote. "Vilifying them based on fees for use of public property is not only a distraction but also unfair."

Fees are less than 1% of 5G deployment costs

The FCC's 5G plan was spearheaded by Republican Commissioner Brendan Carr, who said in a speech that carriers will have to spend $275 billion to deploy small cells throughout the US.

Carr said in another speech that eliminating $2 billion worth of local fees will "stimulate $2.4 billion in additional investment" and "flip the business case for building 5G and next-gen networks in rural and less affluent communities." Carr quoted a Republican state senator from Montana as saying that carriers spend most of their investment capital in large urban areas "primarily due to the high regulatory cost and the cost recovery [that] can be made in those areas" and that "this leaves the rural areas out."

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Carr claims that the FCC's proposed changes are necessary for the US to beat China in "the race to 5G."

The "race to 5G" is frequently invoked by the FCC and carriers in arguments to eliminate various regulations. T-Mobile and Sprint now claim they need to merge in order to create a robust 5G network, even though each company previously said it would build a top-tier 5G network by itself.

Even AT&T cast doubt on this narrative in a recent FCC filing that responded to the T-Mobile/Sprint merger. AT&T told the FCC that "the US is already the world leader in 5G" and that "AT&T plans to serve more than 400 markets [with 5G] by the end of 2018."

FCC claims are "highly questionable"

The FCC's 5G proposal claims that additional deployment created by carriers' $2 billion in savings will occur almost entirely in "rural and suburban communities that otherwise would be on the wrong side of the digital divide."

But Levin is skeptical. "[E]ven if one accepts the FCC claim about the $2.5 billion—which is highly questionable—that amount is about one percent of what the FCC and industry claim is the necessary new investment needed for next-generation network deployments and, therefore, is not likely to have a significant impact," he wrote.

Other federal government actions—such as new tariffs on China—will have an even greater impact on 5G deployment but in the opposite direction, he wrote.

Reducing local fees would make it cheaper for carriers to deploy small cells in areas where they would have done so anyway. But there's no reason to think carriers will use those savings to build 5G networks in areas where doing so would be unprofitable, Levin wrote.

"[T]e FCC's draft order is based on a fallacy that no credible investor would adopt and no credible economist endorse: that reducing or eliminating costs for small cell mounting on public property in lucrative areas of the country (thus reducing carriers' operating costs), will lead to increased capital expenditures in less-lucrative areas—thus supposedly making investment more attractive in rural areas," Levin wrote.

Though the FCC claims the carriers' savings would be re-invested in rural areas, the commission isn't imposing any requirement that carriers do that.

"[W]hile the FCC may ignore reality, the carriers and Wall Street understand that increasing profitability in Market A will not make Market B more attractive for investment," Levin wrote. "Market B will still be an area that is unprofitable or otherwise unattractive for investment, and the new requirement that Market A subsidize carriers by reducing fees will not benefit Market B under these circumstances."

Instead, carriers are more likely to devote savings to "stock buybacks, debt reduction, or dividend support" than to new capital investments, he wrote.

AT&T, Verizon in favor

So who's in favor of making 5G deployment cheaper for carriers, even without any guarantee of additional deployment? The carriers, of course.

The FCC plan "takes the critical next step of addressing state and local processes that may impede the deployment of advanced wireless networks," Verizon told the FCC Wednesday. If approved, Verizon said the FCC proposal "would establish meaningful guidance for state and local governments, while preserving their role in those reviews."

AT&T is hoping the FCC will go even further. AT&T urged the commission to apply its new standard to existing agreements between carriers and municipalities instead of just future agreements. This would require changing the draft order before next week's vote.

"The Commission should clarify that this standard applies not only to municipal regulations but also to existing and future agreements between municipalities and carriers," AT&T wrote Wednesday. "Otherwise, carriers paying exorbitant fees under an existing agreement with a jurisdiction will operate at a competitive disadvantage relative to new entrants who pay presumptively reasonable fees."

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