



Local Control of Wireless Facilities

City of Palos Verdes Estates

City Council Meeting

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Intro

- Next wave of wireless deployments focused on “small cells” in public rights-of-way
- Regulation of communications involves all three levels of government and multiple public agencies.
- Starting premise is local control over placement decisions.
- However, federal and state laws and agency regulations place limits on local authority.



Wireless Technology

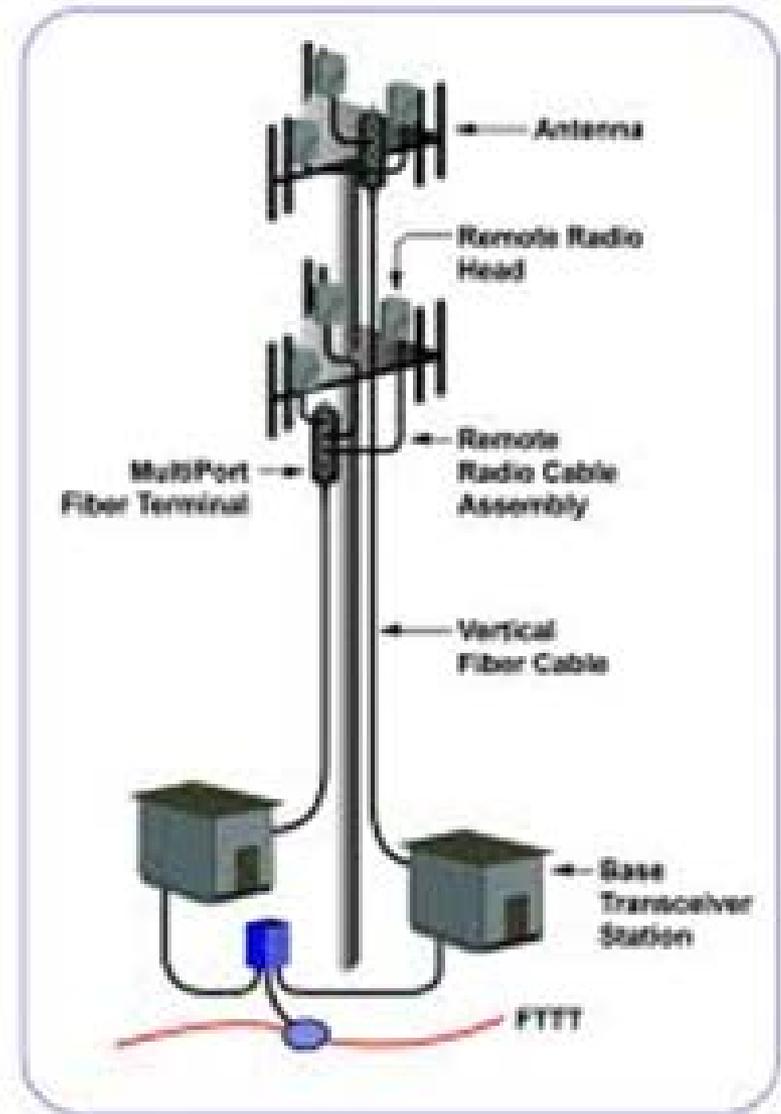


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Macro Wireless Facility

- Antenna(s)
- Equipment
- Connecting Cables
- Support Structure
- Power Source (Meter/Battery)
- Backhaul (wired or wireless)



What are “Small Cells”?

- Typically smaller facilities serving smaller coverage area
- Distributed Antenna Systems or DAS is a type of small cell network
- Common location is in public rights-of-way



What is 5G?

- High capacity spectrum with short range
 - 1000 times the bandwidth of 4G, low latency
 - More antennas, closer to users
- Need for high capacity backhaul
 - More fiber and fiber alternatives (microwave)



<http://www.rcrwireless.com/20160815/fundamentals/mmwave-5g-tag31-tag99>



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Small Cells/DAS in PROW

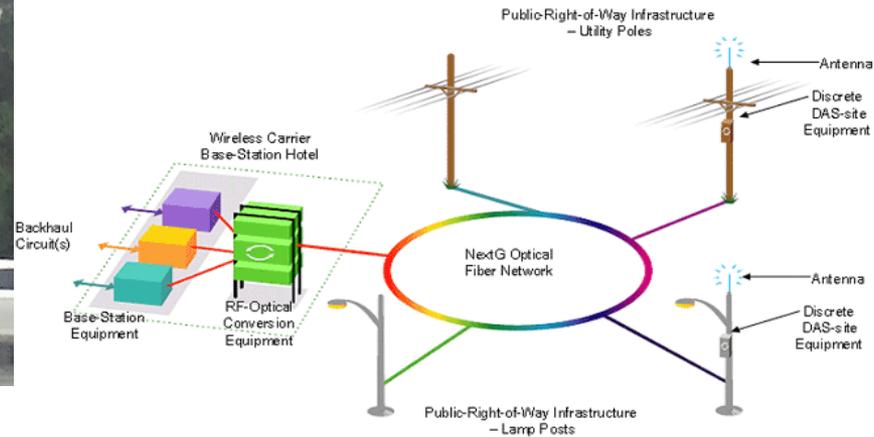
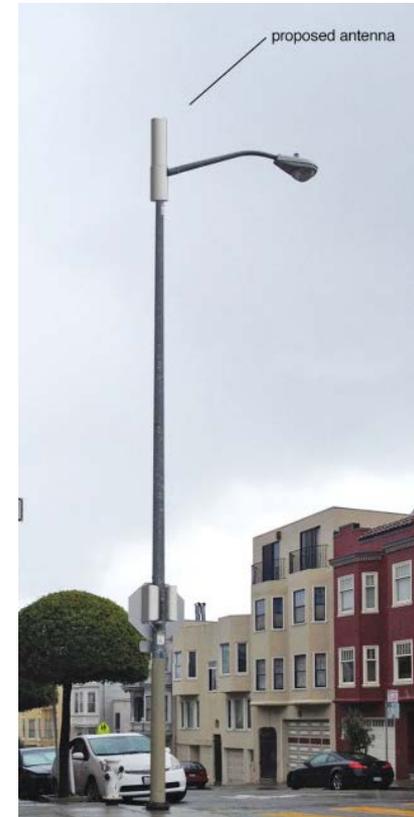


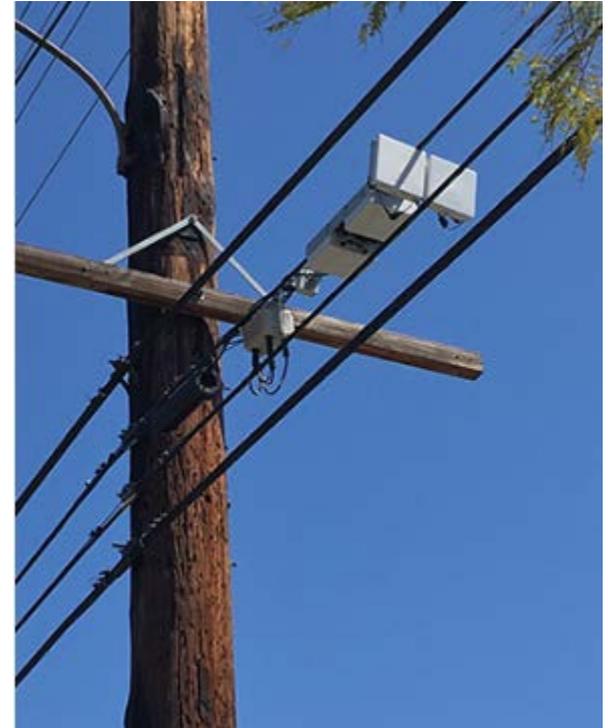
Figure 2: Distributed Antenna System



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Pole-Top, Mid-Pole, Mid-Strand



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Stealth Designs Evolving



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What is driving deployment?

SMARTPHONE ECOSYSTEM

400M+
mobile devices, that's about



1.2 devices
for every person in
the country

of those devices,
273M

are data-intensive smartphones

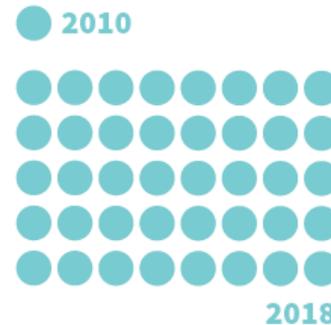


Up 56%
over the last
ten years

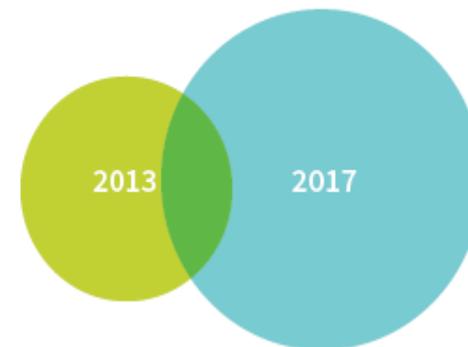


2008 2018

DATA USE IS UP
40X SINCE 2010



TOTAL REPORTED DATA-ONLY DEVICES



+147%
in the last
five years

+19.5%
from 2016-2017
alone

Source: CTIA (2018)



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Types of Entities Deploying Wireless

Industry	Deployment
Wireless carriers	Small cells; distributed antenna systems (DAS); future mmW 5G
Telephone companies	Small cells; distributed antenna systems (DAS); future mmW 5G
Cable operators	Wi-Fi hotspots; small cells; DAS
Gas, electric, water utilities	Advanced metering infrastructure (AMI); smart grids
Municipal	Traffic and parking systems; utilities; public safety
Others	??



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Wireless Regulation Federal Law



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Key Provisions of Federal Communications Law

- 47 U.S.C. 332(c)(3) No State or local government may regulate the entry of or the rates charged by any commercial mobile services provider
- 47 U.S.C. 332(c)(7) generally preserves local authority to decide on placement of “personal wireless services” facilities, subject to certain substantive and procedural limits
- 47 U.S.C. 1455(a) (Section 6409(a)) *requires* local governments to allow eligible changes to “existing” wireless facilities (Eligible Facilities Requests or EFRs)
- 47 U.S.C. 224 allows FCC to regulate rates and conditions for attachments to utility poles unless state choose to do so
- 47 U.S.C. 253 related to “telecommunications services”, and right-of-way management and compensation



47 U.S.C. 332(c)(7)

- Limitations on local authority:
 - Action within reasonable period of time
 - No effective prohibition of personal wireless services
 - Denials in writing and supported by substantial evidence
 - No consideration of RF emissions if meet FCC standards
 - No unreasonable discrimination among providers of functionally equivalent services
 - Expedited appeals to court



Key FCC Orders

- **2009** – Established two wireless application shot clocks (90 and 150 days)
- **2014** – Established rules for Eligible Facilities Requests (plus 60 day shot clock)
- **2018** – Banned express and *de facto* moratoria on processing applications
- **2018** – Adopted new shorter shot clocks for small wireless facilities (60 and 90 days) and put limits on local fees and aesthetic rules. Order in effect Jan 14, 2019 (shot clocks/fees), and on April 15, 2019 (aesthetics).



Moratoria Ban

- August 3, 2018: FCC released *In the Matter of Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, FCC 18-111, Third Report and Order and Declaratory Ruling, WT Docket No. 17-79
- Holding: *de jure* moratoria and *de facto* moratoria on wireless and wireline deployment generally “prohibit or effectively prohibit” provision of telecom services in violation of federal law, and are not saved from preemption as a form of rights-of-way management
- Examples: street cut moratoria that don’t allow alternative means of deployment such as aerial lines



Small Cell Order

- Sept. 26, 2018: FCC Adopts *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order*, WT Docket No. 17-79
- Changed “effective prohibition” standard
- Established shorter 60 and 90 day shot clocks for “small wireless facilities”
- Fees for permits and for use of city-owned vertical infrastructure must be cost-based; established “safe harbors” (\$500, \$1000, and \$270)
- Aesthetic regulations must be reasonable, no more burdensome than those applied to other types of infrastructure deployments, objective and published in advance
- All permits/authorizations subject to shot clocks
- Collocation not limited to existing wireless facilities



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Litigation Challenging 2018 FCC Orders

- Many appeals filed by locals and industry
- BBK represents coalition of 50+ localities
- All appeals consolidated in 9th Circuit
- FCC and 10th Circuit denied stay requests
- Case Management Conference to determine briefing plan set for April 18th
- Reconsideration petitions also filed with FCC, notice and comment periods closed but no FCC recon orders to date. FCC position is appeals should be held in abeyance pending resolution.



Wireless Regulation State Law



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Key Provisions of State Law

- Cal. Pub. Util. Code
 - **Sec. 7901** grants state franchise to telephone companies to use public rights-of-way, subject to limitations (may not “incommode the public use”).
 - **Sec. 7901.1** reasonable control as to the time, place, and manner in which roads...are accessed by telephone co.
 - **Sec. 2902** preserves local regulation of use and repair of public streets, location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets where not preempted by CPUC
- ***T-Mobile West LLC v. City and County of San Francisco*** (Cal. Sup. Ct, April 4, 2019) upholds local regulation of wireless facility aesthetics in streets, essentially confirming the conclusion reached in ***Sprint PCS Assets v. City of Palos Verdes Estates*** (9th Cir. 2009) 583 F.3d 716.



Key Provisions of State Law

- Cal. Gov. Code 65964.1 (AB 57) deemed approved remedy for FCC shot clocks adopted in 2009
- Gov. Code 65964 prohibits:
 - Escrow deposit for removal of a facility. (bonds ok)
 - Permit of less than 10 years (unless “public safety” or “land use” reasons).
 - Requiring all facilities to be located on sites owned by particular parties.
- Gov. Code 65850.6 intended to allow:
 - Discretionary permit to approve base facilities that may later add collocation facilities.
 - No discretionary review of facilities collocated on base facility.
- *[2018 SB 649 small cell bill vetoed by Gov. Brown]*



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Key State Actors

- California Public Utilities Commission
 - “regulates services and utilities, protects consumers, safeguards the environment, and assures Californians’ access to safe and reliable utility infrastructure and services.” legislative and judicial powers.
 - “also includes hundreds of individuals who inspect track, municipal rail systems, electric and communications wire and poles, and gas pipelines.”
- Northern California Joint Pole Association / Southern California Joint Pole Committee – joint pole owner associations responsible for tracking utility pole ownership transactions.



Key CPUC Orders

- General Orders on construction, operation and maintenance
 - GO 95 – overhead electric lines, poles, communications lines, antennas
 - GO 128 – underground electric and communications systems
 - GO 131-D – generation and certain electric transmission facilities
 - GO 159-A – defers to local zoning for cellular facilities
- Pole Attachment Rights
 - D.98-10-058 provided competitive local exchange carriers and cable television providers with nondiscriminatory access to public utility infrastructure.
 - D.16-01-046 provides wireless carriers with nondiscriminatory access to utility poles.



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Existing City Process / Installations



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City Process

- PVEMC Chapter 18.55 last updated in 2017
- Covers wireless in public rights-of-way
- Process requires discretionary review and decision by Planning Commission
- Public/PVEHA consultation
- Currently evaluating updates needed or advisable in light of the new FCC orders



Samples of Installations in Palos Verdes Estates



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Summary

- Next generation wireless facilities mostly will be placed in public rights-of-way on utility and other ROW poles
- Wireless providers and telephone companies have a limited franchise right to use the public rights-of-way and utility infrastructure for their facilities
- Federal law and FCC orders place procedural and substantive limitations on local authority
- CPUC mainly responsible for rules on safety of infrastructure
- Localities mainly regulate placement and aesthetics
- Process and decisions must comply with limits imposed by state and federal law
- FCC small cell order puts new limits on local time for review, on aesthetic rules and fees

