Telecommunications Policy in the New Administration
How it May Affect You

It's a Small World After All: Small Cells Raise Big Challenges

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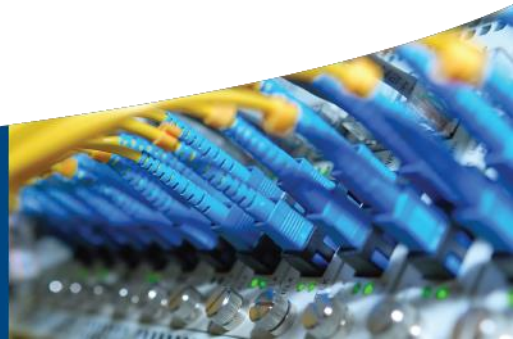


Agenda

- Federal, State and Local Backdrop
- How do Small Cells in PROW Fit In?
- Industry Agenda & Actions
  - Industry Agenda
  - Federal (see JVE presentation)
  - State Legislation
  - State Utility Commissions
- How Local Governments Can, Should and Are Responding



FEDERAL, STATE AND LOCAL BACKDROP



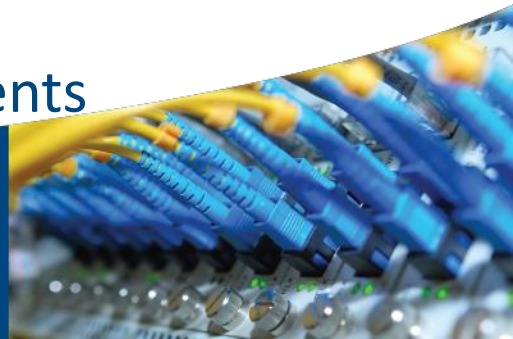
Regulatory Framework

Federal

- Wireline telecommunications
  - Interstate and international services
- Wireless services
- Information services
- Broadcasting/cable
- Utility pole attachments (IOUs)

State and/or Local

- Wireline telecommunications
  - Intrastate services
- Cable service
- Wireless siting (land use)
- Franchising use of public rights-of-way
- Public rights-of-way management
- Pole attachments



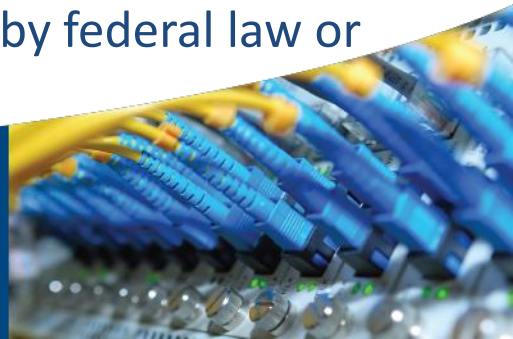
Federal Telecommunications Laws Impacting State/Local Authority

- **47 U.S.C. § 253 (1996)**
  - Preempts local/state regulations that prohibit or have effect of prohibiting ability of any entity to provide telecommunications services
  - But does not reach nondiscriminatory PROW management or compensation requirements
  - Mostly interpreted by court decisions
- **FCC Actions (pending)**
  - No major FCC rulemakings (2011 ROW NOI went nowhere)
  - But ROW management and compensation back on table at FCC today (Mobilitie and 4/20/17 NPRMs)



State Jurisdiction Over Telecommunications Services

- PUCs traditionally regulated conditions of entry for telephone companies, and intrastate service (CPCNs; rate regulation)
- Much telecom service deregulation has occurred due to perceived competition
- FCC services classification and technology transition have reduced or eliminated state oversight over some services, e.g. interconnected VOIP, BIAS, and IP-enabled
- Some states have curtailed PUC authority
  - E.g, CA, Pub. Util. Code § 710 (SB 1161)(2012)
    - CPUC preempted from regulation of VOIP and IP-enabled services until Jan. 1, 2020 except as required or delegated by federal law or expressly provided otherwise in statute

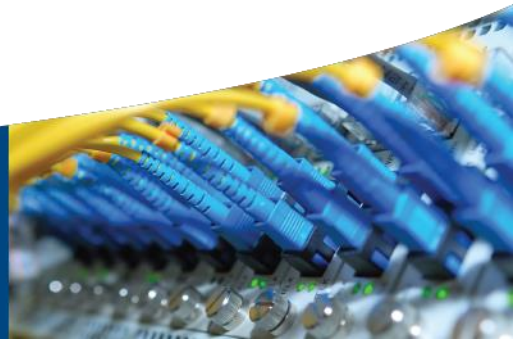


Telecom Franchising and Control Over Public Rights-of-Way

- **Franchising authority:**
  - Some allow telcos to use ROW without local franchises (CA)
  - Some require all telcos to obtain local franchise or consent (OR, WA)
  - Some treat PROW as a proprietary, so property may be subject to rules applicable to other proprietary assets (TX)

Compensation for use of PROW:

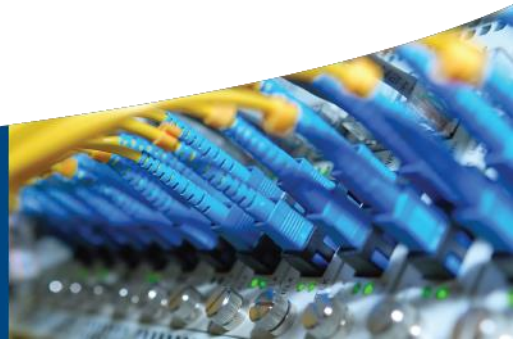
- Some states prohibit PROW use charges on telcos (CA)
- Some set maximum charge for all or part of PROW use (SC)
- Some allow localities to set fees for use (TX)
- Most limit permit fees to costs



Utility/Cable Installations in Public Rights-of-Way

- **Discretionary or ministerial permit:**
  - Some state franchises allow discretionary review considering aesthetics (CA-appeal pending)
  - Often depends on local code and practice
  - Not uncommon to treat utility installations as ministerial

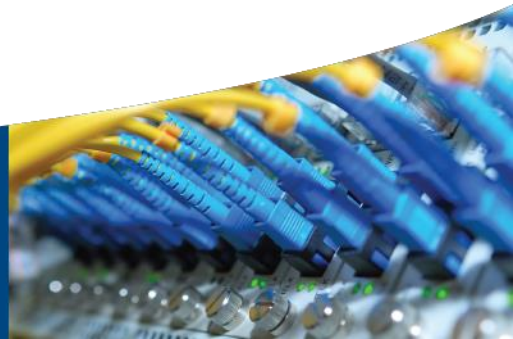
- **Application of Zoning Code to PROW:**
  - Often depends on the local code and practice
  - Not uncommon to exclude PROW from zoning intentionally or unintentionally



Federal Wireless Regulation

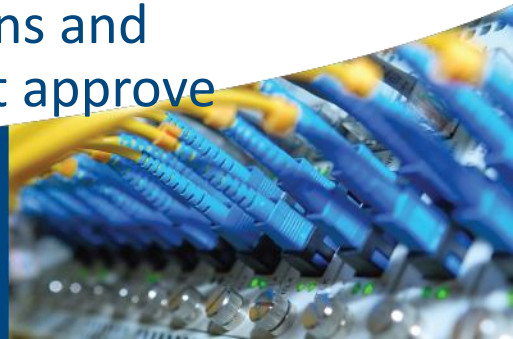
- Spectrum management and auctions
  - Spectrum licensing

- NEPA/NHPA reviews
- Programmatic Agreement and First Amendment
  - To facilitate/expedite federal environmental and historic preservation reviews
  - Initial agreement dealt with collocations on macro towers
  - First Amendment (2016) to facilitate small cell reviews
  - (pending) FCC 4/20/17 NPRM re further streamlining



Federal Wireless Laws Impacting State/Local Authority

- **47 U.S.C. § 332(c)(3) (1993)**
  - No State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile services, except State can regulate the other terms and conditions of commercial mobile services
- **47 U.S.C. § 332(c)(7) (1996)**
  - Generally preserves local authority to control placement of person wireless facilities, subject to certain substantive and procedural limits
- **47 U.S.C. § 1455(a) (2012)**
  - Applies to all "wireless" applications (broader)
  - Preempts local discretion over certain collocations and modifications to existing wireless sites; i.e., must approve



FCC Wireless Rules and Orders

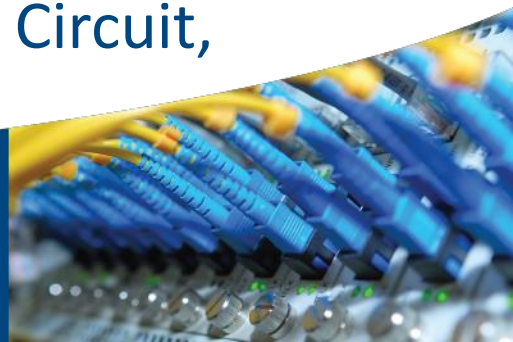
FCC Shot Clocks & Deemed Grant (2009, 2014 & pending)

- Sec. 332 (c)(7) shot clocks apply to local review of macro and small cells/DAS in PROW
- Sec. 6409(a) "eligible facilities requests" shot clock and deemed granted remedy applying to local review; specific parameters for EFR affecting structures within and outside PROW
- Mobilitie and 4/20/17 NPRMs in PROW



Federal Cable Laws Impacting Local Authority

- **Communications Act, Title VI (1984 and 1992)**
  - Franchise standards and procedures
    - 5% Cap on franchise fees
    - PEG capital
    - Renewal
    - Competitive entry/no exclusive franchises
    - Rate regulation/effective competition
- **3 Franchising Orders (2006, 2007 and 2015)**
  - Reasonable franchise terms for new entrants, renewals
  - 2nd and 3rd orders now on appeal in 6th Circuit, Montgomery County, MD et al v. FCC



State Laws Impacting Local Authority

- State telecom franchising and/or fee limitations (noted above)
- State video franchising laws, mainly AT&T states (2005-2009)
- State limits on wireless zoning/siting
  - various states adopted their own shot clocks or remedies or versions of Sec. 6409 after 2012
  - E.g. California AB 57 (2015) –extended "deemed grant" to FCC's two Sec. 332(c)(7) shot clocks

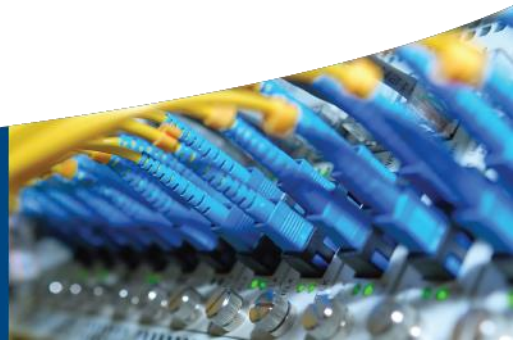


Pole Attachments

- 47 USC § 224 – federal rules and FCC orders govern attachments by telco, cable, wireless
  - Federal law only applies to investor-owned utility poles and conduit (not street light poles), and excludes municipal and cooperatives
  - States can reverse preempt and adopt their own rules (many have)
- State regulation of pole attachments
  - Utility poles and conduit of IOUs
  - Some state have rules for municipal/cooperatives
    - E.g., NC, CA (muni electrics only)



HOW DO SMALL CELLS IN PUBLIC RIGHTS-OF-WAY FIT IN?



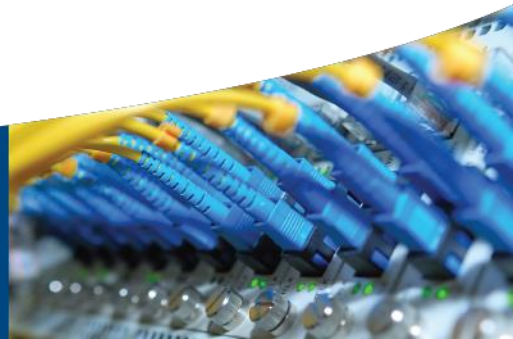
It’s Complicated

- What type of entity is placing the facilities?
  - The scope of authorizations and franchises held by different types of entities differ materially
- What types of facilities are being placed?
  - Small cells have a lot of different components and can be used for a variety of purposes
- What type of supporting structure is being used and who owns it?
  - Unlike wires, small cells go on a variety of structures
  - Access/rates for some are regulated, others are not



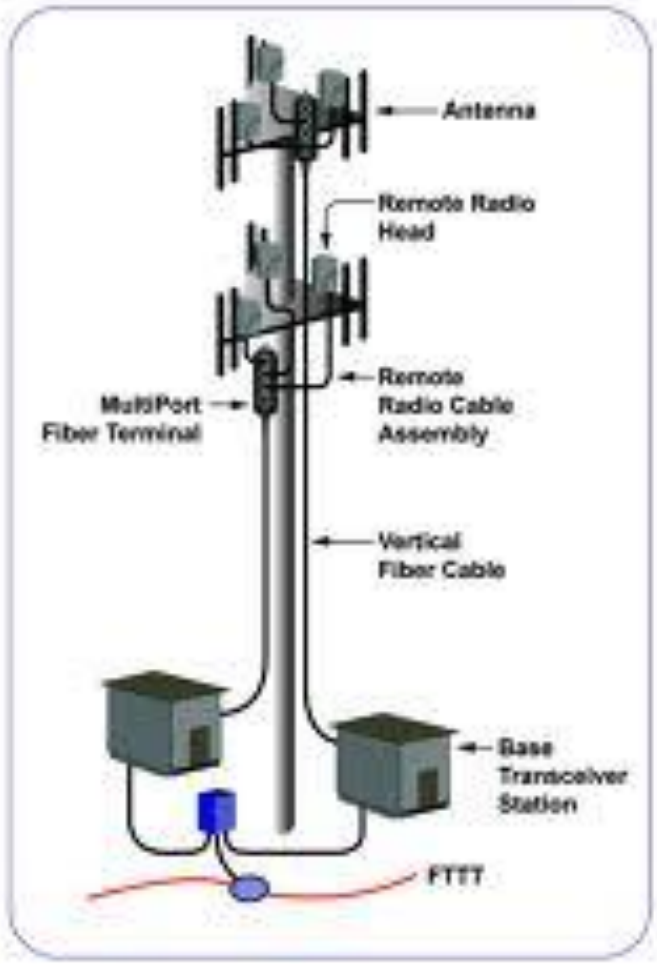
Types of Entities Deploying

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



Components

- Antenna(s)
- Equipment
- Connecting Cable(s)
- Support Structure
- Power Source/Meter/ Battery
- Backhaul



Small Cells/DAS -Typical Structures





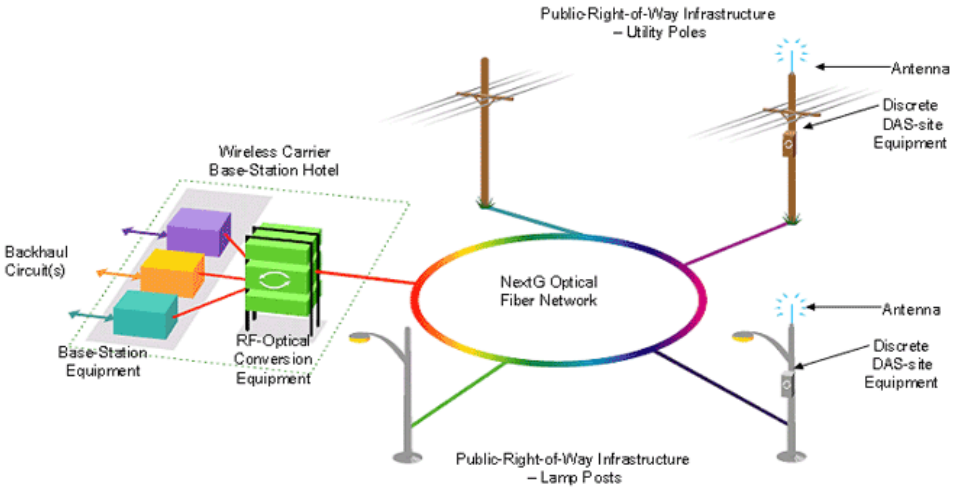


Figure 2: Distributed Antenna System

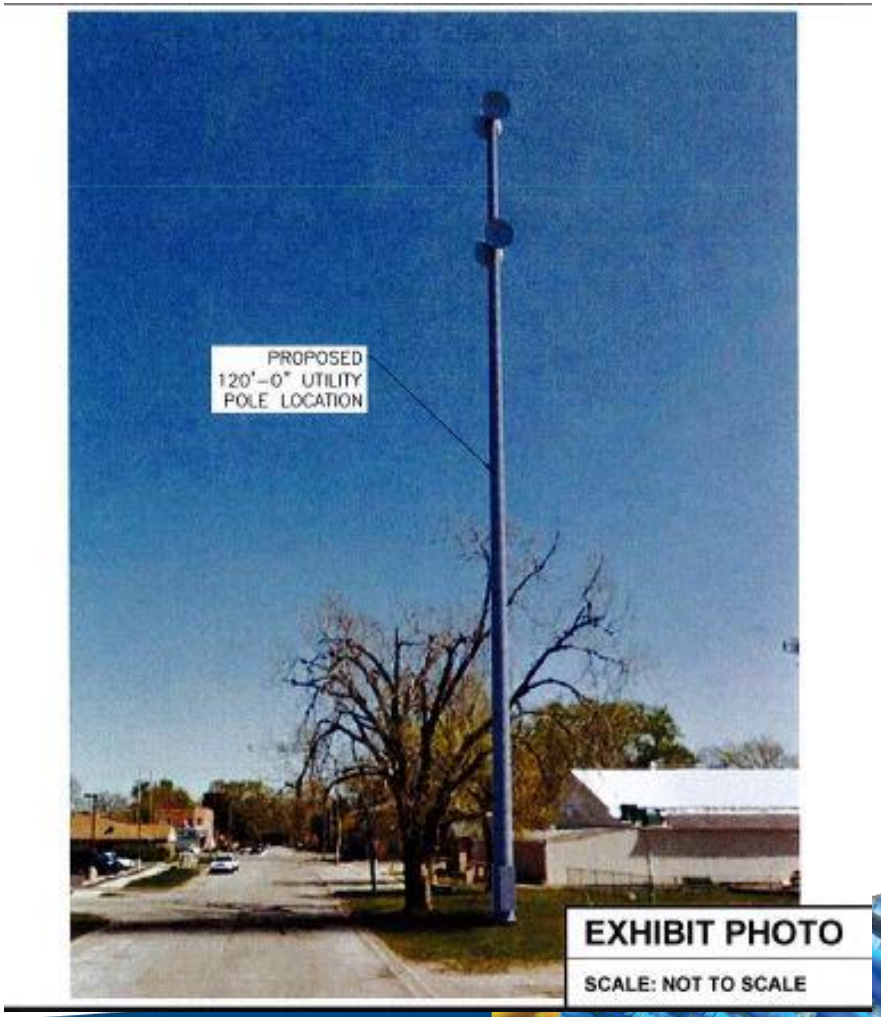
NextG DAS Diagram





But Also Mid-Strand or 120 Ft. Pole





Wireless in PROW

Applicants

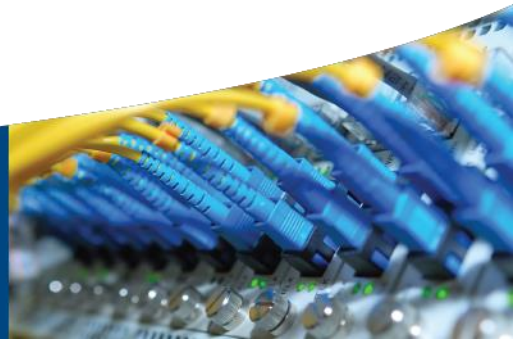
- May or may not be wireless carriers
- May not be owner of all components to be installed
- May not have required licenses for all components
  - May be state-authorized telco with CPCN
  - May be cable operator
  - But may not have authorizations needed to install or operate wireless facilities or telecom facilities
- May not have necessary franchise
- May not have necessary pole attachment rights



Wireless in PROW

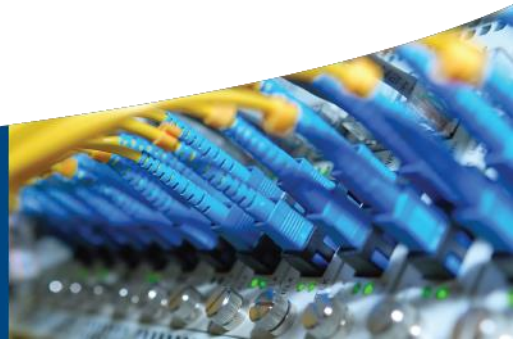
Any or All Levels of Gov't Could be Involved

- FCC licenses/environmental and historic properties review
- State PUC authorizations/review
- State/Local franchising
- Local zoning and/or encroachment permitting, subject to federal and state restrictions
- Federal or state pole attachment rules or unregulated local proprietary

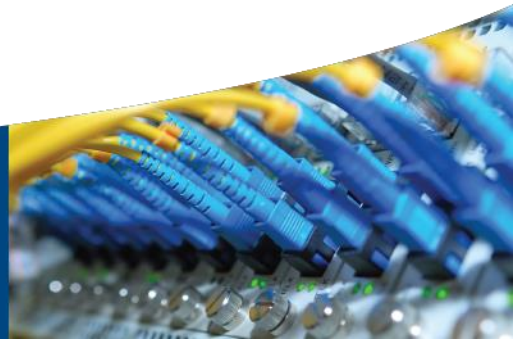


Applications Raise Questions

- Does entity have all authority for placement?
- Do different rules apply to different components?
- Is this a piecemeal application?
- Is this new structure a utility pole or a wireless facility?
- Do zoning rules apply in public right-of-way?
- Does any shot clock apply?



INDUSTRY AGENDA

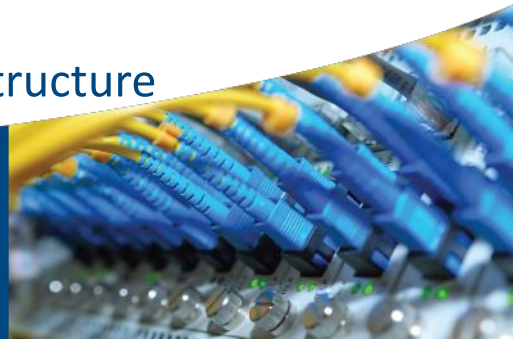


Wireless Industry Agenda

CTIA identifies three keys to infrastructure reform:

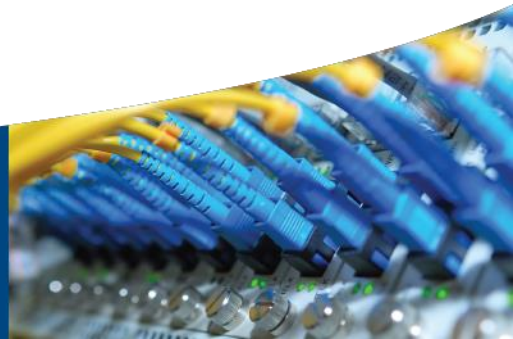
- ***Greater Access***. We must improve access to government-owned infrastructure, like utility poles and rights of way.
- ***Reduced Costs***. We must ensure reasonable rates for accessing this infrastructure that reflect the economics and architecture of wireless networks.
- ***Streamlined Processes***. We must simplify zoning process with reasonable timetables and more uniform procedures for approving wireless infrastructure deployments.

CTIA: http://www.ctia.org/policy/policy-position-details/infrastructure



Cable Industry Agenda

- Exempt “strand-mounted antennas” used for Wi-Fi hotspots (and increasingly for cellular backhaul) from any permitting requirements
- Eliminate need for separate franchise
- Secure pole attachment rights
- Ensure all video providers using PROW are treated the same regarding video franchising obligations



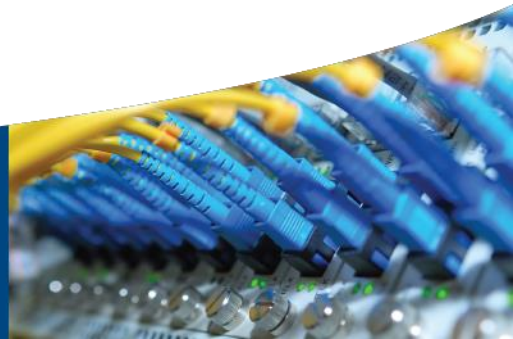
Small Cell Bills

- Introduced in many states
  - Liberal definition of “small cell” based on federal definitions; may or may not deal with structures
  - Shot clocks /bulk permits
  - Eliminate discretionary authority.
  - Access to government vertical assets and other property
  - Regulated low rental rates
  - Other state level fixes (permit renewals)
  - Cable industry / oppose without amendments
    - Then propose their agenda in amendments



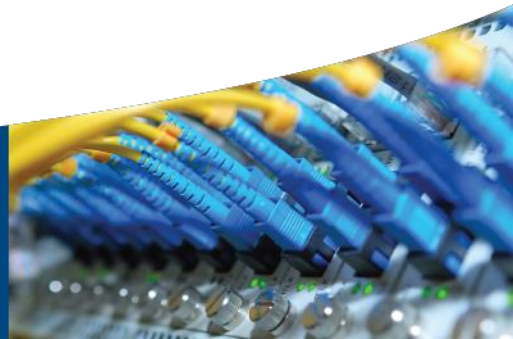
State Utilities Commissions

- Examining scope of service authorizations (CPCNs) related to wireless (PA, CA)
  - whether wireline telcos (non-wireless carriers) offering DAS are public utilities
  - whether DAS service is an interstate service, intrastate service, or both
- Examining fees and franchising rights (TX)
- Examining pole attachment rights for wireless (CA)
  - Wireless carriers, telcos and cable
- Examining implications of wireless for PROW safety and other uses (CA)



How Local Governments Can, Should and Are Responding

- *Coalition building*
- *Information sharing*
- *Committing time and resources*
- *Educating elected officials*



Thank You



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