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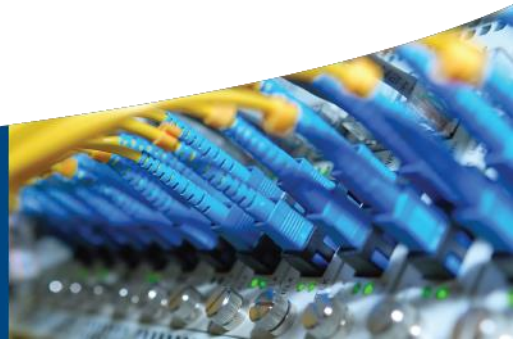
How Will The New Administration in Washington Affect Local Interests in Communications?

IMLA Spring Conference
Washington, D.C. 2017

PRESENTED BY

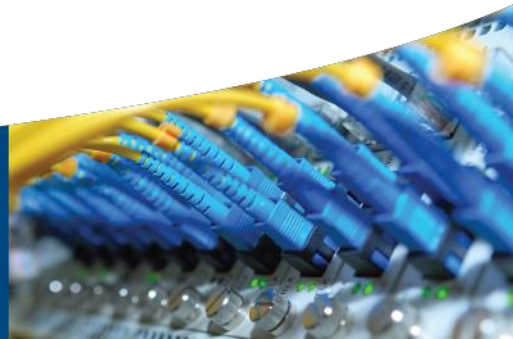
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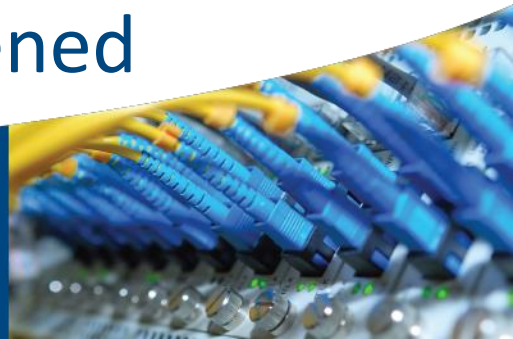
Buzzwords for 2017

- "Internet of Things"
- "Big Data"
- "5G"
- "Smart City"
- "Abundant Broadband/Wireless Broadband"
- These buzzwords translate to:
  - Dealing with small cell deployment
  - Ensuring your community has adequate connectivity
  - Protecting consumer/advancing community interests
  - Protecting local revenue streams



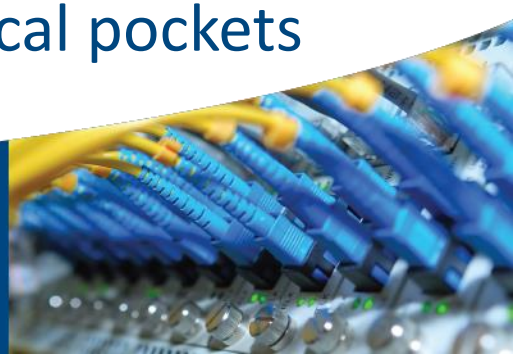
What's In – What's Out

- Broadband deployment still in but changing focus
  - *Significant* new threats to local authority to control right of way *and* proprietary property
  - *New barriers* to municipal deployment
  - *Significant reliance* on models developed by industry
- Consumer privacy protections – out
- Net neutrality – significantly threatened



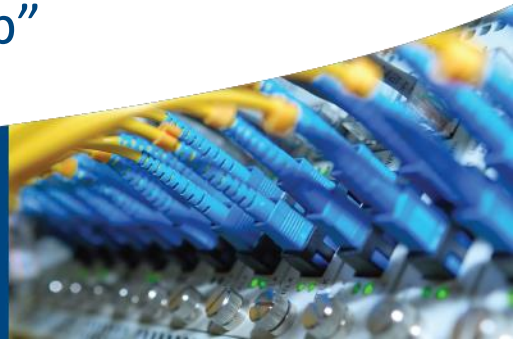
What's In – What's Out

- "Universal service" subsidies for broadband – likely to be modified
- Copper wire – out
- Mergers – likely even more "in"
- FirstNet – AT&T awarded contract - moving forward (180 days to state plans/90 days for states to opt out) – 5 states opted/ready to opt out
- Infrastructure $$ to states and localities
  - Not looking hopeful
  - $ may effectively come from state and local pockets



Control of Local Assets

- Broadband Deployment Advisory Committee (BDAC) - GN Docket No. 17-83
- Stated goal: "provide advice and recommendations for the Commission on how to accelerate the deployment of high-speed Internet access" by "reducing and/or removing regulatory barriers to infrastructure investment." BDAC expected to develop model ordinances/legislation
- Only one municipal rep initially named
- "Model Code for Municipalities.—Douglas Dimitroff of the New York State Wireless Association will serve as Chair of this working group…"
- "Competitive Access to Broadband Infrastructure.—Ken Simon of Crown Castle will serve as Chair of this working group,"
- "Removing State and Local Regulatory Barriers.—Robert DeBroux of TDS Telecom will serve as Chair of this working group"



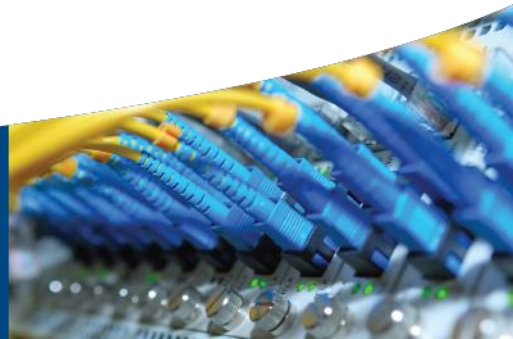
Control of Local Assets

- *In re: Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie LLC Petition for a Declaratory Ruling,* DA-16-1427, WT Docket No. 16- 421
- Comments filed (but ex partes possible)
- Issues include:
  - Shortening shot clock for "small cells"
  - Adopting a "deemed granted" remedy
  - Limiting costs that can be charged for
    - Use of public property (RoW, street lights, etc.)
    - Reviewing an application
    - Ongoing management of RoW (permitting, inspection, etc.)



Control of Local Assets

- *Removing Barriers to Investment Needed for America's 5G Future*, Notice of Proposed Rulemaking and Notice of Inquiry WT Docket Nos. 17-79 (adopted but not yet issued)
  - *NPRM*
    - Specifically invites participants in Mobilitie docket to submit information here
    - Seeks comment on "deemed granted" remedy for missing shot clocks other than Sec. 6409 . In draft proposed deemed granted in one or more of the following forms:
      - Irrebuttable presumption rather than rebuttable presumption)
      - Lapse of state or local authority
      - Preemption rule – failure to act in reasonable time is violation of Sec. 332(c)(7) which creates need for FCC action
    - Seeks comment on "reasonable period to act" – and whether there should be more and different shot clocks under 332.
    - Moratoria – are any localities still imposing them? What can FCC do to stop them?



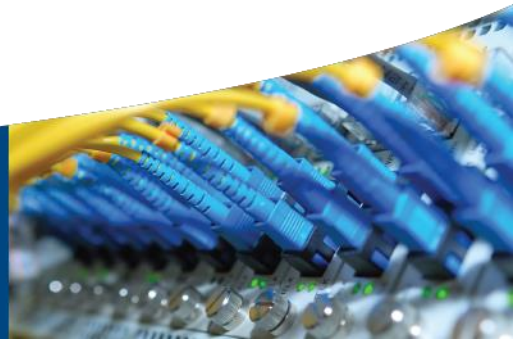
Wireless NPRM

- *Notice of Inquiry* asks how Sec. 253 and 332(c)(7) apply to wireless facilities
  - Discusses different tests in different circuits for what is "effective prohibition" and asks if FCC should make clear that some statutory interpretations are correct and others are not.
  - Seeks comment on proper role of aesthetic considerations and whether FCC should issue guidance on what are ok specific aesthetic impacts and what are not ok – generalized concerns.
  - Seeks comments on whether 253/332 apply to localities acting in a proprietary capacity
  - Unreasonable discrimination concerns related to more burdensome reviews for telecom than other developments, and whether undergrounding could be an effective prohibition to wireless, and whether there has been discrimination in treatment of functionally equivalent services
- Other issues: NHPA and NEPA processes – attacks tribal fees and costs of NEPA reviews; asks whether to have new categorical exclusions for small cells and DAS, pole replacements, and whether to expand exemption for wireless facilities in RoW



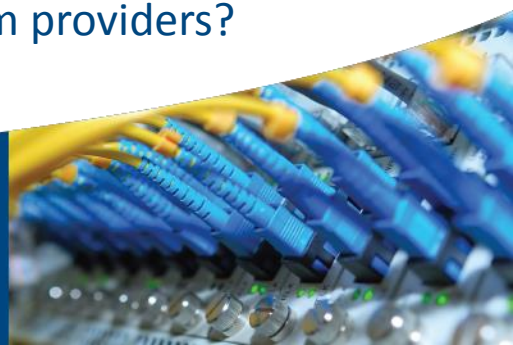
Control of Local Assets

- *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment,* Notice Of Proposed Rulemaking, Notice Of Inquiry, And Request For Comment, WC Docket No. 17-84 (released April 21, 2017)
- Initial comments due: 30 days after publication in Fed Reg; replies due 60 days after publication
- Main issues NPRM
  - New pole attachment rules ("one touch"/faster timelines)
  - Speeding retirement of copper lines (NOI asks whether to preempt state laws on copper retirement)
- Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-37A1.docx



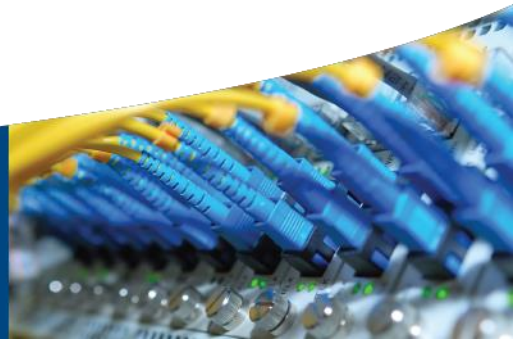
Wireline Deployment – cont'd

- *NOI to consider Section 253 preemption of practices that might prohibit or effectively prohibit provision of telecom services, including*:
  - *Moratoria; Delays in RoW Negotiation and Approval Processes*.
  - *Excessive Fees and Other Excessive Costs*. Seeks comments as to how to control excessive fees that "cut off" competition; asks whether fees paid by cable operators should be capped; or whether additional fees can be charged when additional services are provided; asks whether gross revenues based fees are reasonable.
  - *Unreasonable Conditions*. Seeks comments on "unreasonable" RoW access conditions. Gives examples of in-kind service or product requirements such as services provided free or at a discount, or requiring build out.
  - *Bad Faith Negotiations*. Asks what is bad faith conduct and whether a streamlined process for addressing bad faith would address it.
  - *Other Prohibitive State or Local Conduct*. Anything else industry needs preempted?
- *NOI re authority to act and Section 253 Interpretation*. Asks for comment on its authority to adopt general rules under Sec. 253 and Sec. 201(b) – and how this is impacted by Sec. 253(d). Also does Sec. 622 limit authority to adopt Sec. 253 rules that might apply to cable operators in their capacities as telecom providers?



Strategies

- Show up at FCC/Congress/state legislatures
- Form coalitions at state level
- Be prepared to face multiple challenges, at multiple levels
- …Think about creating a counter narrative – and changing the legal facts on the ground



Contact Information



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