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Mayors Adopt Resolutions on ROW, Digital Equity

The U.S. Conference of Mayors' executive committee has given final approval to a resolution advocating for local control of the public rights-of-way (ROW) as 5G broadband access and efforts to bridge the digital divide accelerate due to the pandemic, as well as a resolution supporting federal efforts to promote digital equity.

The ROW resolution points out that "municipal government oversight of 5G broadband deployment is critical to ensure it is safe, equitable, and fiscally prudent, and local government officials have the most direct understanding of the needs of their communities and understand how best to implement policies that affect their citizens." The USCM would, therefore, "oppose any new regulation or legislation that would limit, in any way, local government oversight and authority regarding the deployment of broadband in communities and the fees that local governments may impose on private commercial businesses installing permanent facilities on local public property."

It further notes that members of the FCC, Congress, and state legislatures have "wrongly characterized this balancing act among competing interests for the public rights-of-way and maintenance of local authority as a barrier to 5G deployment and, instead, have put the interests of national corporations ahead of the needs of communities by imposing on municipalities a one-size-fits-all policy which preempts existing state and local policies." The resolution specifically points to the FCC's declaratory ruling and notice of proposed rulemaking adopted earlier this month "construing section 6409(a) of the 2012 Spectrum Act" and says it will place new obligations on local governments and further constrain their ability to review applications to enlarge or modify wireless facilities.

And while local governments are facing major budgetary constraints due to the pandemic, they have also incurred "extraordinary legal costs contesting these repeated FCC actions intruding on municipalities' ability to manage and receive fair compensation for private commercial use of public property and to exercise their longstanding authority to regulate land use." In addition, the "FCC's continuing changes in the rules it imposes on local governments require constant revision of ordinances and procedures, diverting time and resources from essential work such as responding to the COVID-19 pandemic," the approved resolution states.

The resolution, therefore, calls on President Trump, Congress, the FCC, and state governments "to protect municipal authority to balance the needs of all parties, including small cell access to the public rights-of-way, while maintaining municipal authority to retain control over their local rights-of-way and to receive fair-market compensation for access to all public assets." The mayors contend via this resolution that Congress should "recognize that the FCC's preemptive actions threaten the continued

ability of the nation's local governments to provide essential public safety and health services during the COVID-19 pandemic.”

The resolution also supports legislation, such as the Accelerating Broadband Development by Empowering Local Communities Act (HR 530), the Restoring Local Control Over Public Infrastructure Act (S 2012), and the Protecting Community Television Act (S 3218 and HR 5659), that seek to reverse FCC actions that limit local authority.

Another resolution approved by the executive committee points out that the pandemic has brought to light disparities in the area of broadband Internet access and “our nation's enduring digital divide,” as well as the various efforts to address the issue being taken by Congress, the FCC, and other agencies.

The resolution thanks the agencies that have taken steps “to leverage and otherwise use relief funding to address the digital divide,” and calls on Congress, the FCC, the Institute of Museum and Library Services, and other federal agencies “to robustly fund and otherwise bolster federal efforts to address the digital divide and lay the groundwork for an equitable, robust, and resilient post-pandemic economy and society.” —Carrie DeLeon, carrie.deleon@wolterskluwer.com

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