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LEGISLATIVE REVIEW COMMITTEE STAFF REPORT

Meeting: July 23, 2019

Subject

Consider adopting a position on H.R. 530 (Eshoo) – Accelerating Broadband Development by Empowering Local Communities Act and S. 1012 (Feinstein) – Restoring Local Control Over Public Infrastructure Act

Recommended Action

Adopt a position supporting HR 530 and S.1012 and authorize the Mayor to send a letter of support to the State Legislature

Summary

H.R. 530 and S. 1012 are identical bills that would nullify the Federal Communications Commission (FCC) rules adopted by the FCC on August 2, 2018, September 26, 2018, and October 15, 2018. Specifically, it would:

- Remove cap on rents on utility poles
 - Current cap per pole: \$270 per year
 - Past average fee per pole: \$2400 a year
 - This is an average of negotiated rates that wireless companies agreed to
 - Cap estimated to result in a nearly 90% cut to utility pole rents wireless providers pay to local governments nationwide, worth approximately \$3 billion annually.
- Remove cap on fees levied on wireless applications to local governments
 - Current application fee: \$100
 - Past average fee per application: \$1000
 - Based on urban estimates
- Remove ban on negotiating for in-kind contributions
 - In some cases, cities previously negotiated for more service in poor neighborhoods in return for wireless providers using existing municipal conduits.
 - In these areas, profits can be smaller because fewer people buy add-ons to their cell phone services such as data, texts and voicemail.

- Also, many cities negotiated utility pole rents with discounts as wireless providers rent more poles, in order to encourage better service in poor neighborhoods, narrowing the digital access divide.
- Lengthen timelines
 - Raise to 90 days, from 60, the time limit for localities to review new small antennas on existing structures
 - Raise to a 150-day limit for considering new installations, up from 90 days.
- Remove provisions that prevent local environmental and design review.
- Remove limitations on requirements to include constituents in the approval.

Status

Both bills have been introduced and referred to Committee. Both bills require a hearing and markup, which have not been scheduled, before they can be voted on in Committee and sent to the House or Senate floor.

While there is no timeline for the Committee to do so, either or both bills must move through the process in each chamber by the end of the 2020 calendar year, or they will expire and need to be reintroduced.

Support

Supporters of the bills cite local control issues and take issue with the process by which the FCC approved these rules. Bill supporters argue that the FCC did not adequately include municipalities in the conversation prior to adopting the rules, and that the rules are unconstitutional limitations on local control. Many municipal supporters of this bill have also signed on to a concurrent lawsuit against the FCC, arguing that the rules go too far to limit local control.

There are currently 49 cosponsors of the House bill, including Congressman Ro Khanna (D-CA). There are six original cosponsors of the Senate bill: Senators Kamala D. Harris (D-CA), Chuck Schumer (D-NY), Michael Bennet (D-CO), Ron Wyden (D-OR), Ben Cardin (D-MD) and Richard Blumenthal (D-CN).

Support for the bills also includes:

- Over 126 mayors, city councils, town councils, county executives, and boards of supervisors
 - Representing 42 million Americans
 - Including six of the ten most populous cities in the U.S.
 - Including formal resolutions of support adopted by 10 local governments
- 132 public utilities and associations of public utilities
- Statewide associations in California (League of California Cities), Florida, Virginia, and Nebraska
- National groups including the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, National Association of

Telecommunications Officers and Advisors, American Public Power Association, Communications Workers of America, and the American Public Power Association

Opposition

Opponents to the bill believe that not only are the FCC rules' limits on local control reasonable, but that in some cases, they did not go far enough. Bill opponents believe that the expansion of 5G technology is a national priority, and that since the technology inherently works based on small but more frequently placed units ("small cells", placed approximately every three city blocks), standardization across local ordinances is necessary. To have an unstandardized process, bill opponents argue, would mean that wireless companies would be delayed in rolling out new technology, and the United States would be behind the curve compared to other countries. Many opponents to the bill are also party to a lawsuit against the FCC that argues that these rules did not go far enough in their local control limitations.

Opponents of the measure include wireless companies, such as AT&T and Verizon.

Potential Impact

H.R. 530 and S. 2012 would reverse local control limitations on wireless infrastructure permitting to exactly the restrictions in place in July 2018. This could cause some confusion for entities who had to rewrite their permitting process because of the new FCC rules, but the reversal of the rules would ultimately create less of a bureaucratic burden and create more opportunities for municipalities to negotiate with wireless providers.

Prepared by: Townsend Public Affairs