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Red Flags on Wireless: A Recent Resignation Signals Industry-Weighted Regulations Ahead

Local Governments Should Speak Up Now for Local Control



When San Jose Mayor Sam Liccardo resigned from a FCC advisory committee last week, it was a move that should alert communities around the country that they are facing the imminent prospect of new

federal regulations (and possibly more rounds of state legislation). These new regulations would likely remove local authority to control the placement of wireless facilities, and to charge for — and control access by — wireless providers to community-owned properties, including street lights, parks and buildings.

Last year, the new FCC Chairman created a Broadband Deployment Advisory Committee with the goal of providing advice and recommendations for the Commission on how to accelerate the deployment of high-speed Internet to underserved residents and communities. The BDAC's specific objectives included identifying barriers to deployment, developing a model state legislation to encourage deployment and developing model local codes that could encourage deployment. The make-up of the Committee was cause for concern from the outset. Municipal and tribal authorities had few representatives on the Committee — its composition was heavily weighted toward industry.

At about the same time the BDAC was formed, the FCC commenced a new proceeding on wireline and wireless infrastructure deployment. Under the new proceeding the agency proposed to severely limit the ability of localities and states to charge for access to public property. Additionally, it was proposed to severely circumscribe local authority to control access to rights of way and private property by wireline and wireless infrastructure and service providers. There was concern that BDAC would provide a vehicle for endorsing and supporting the FCC's proposed limits.

People



Joseph Van Eaton

PARTNER

(202) 370-5306



Gerard Lavery Lederer

PARTNER

(202) 370-5304



Gail A. Karish

PARTNER

(213) 617-7491

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Nonetheless, Mayor Liccardo and others sought to work within the BDAC to see if solutions that respected legitimate state and local interests, as well as worker rights, could be developed. Last week, as the BDAC began to finalize its reports, Liccardo resigned. His [resignation letter](#) – which deserves a full read – explains that BDAC had turned into a vehicle for promoting an industry wish list, without any real regard for promoting broadband deployment:

“...[T]he industry heavy makeup of BDAC will simply relegate the body to being a vehicle for advancing the interests of the telecommunications industry over those of the public. The apparent goal is to create a set of rules that will provide industry with easy access to publicly funded infrastructure at taxpayer subsidized rates, without any obligation to provide broadband access to underserved residents.”

Liccardo went on, “...after nine months of deliberation, negotiation, and discussion, we’ve made no progress toward a single proposal that will actually further the goal of equitable broadband deployment.”

The Mayor’s position reflected the position of many communities throughout the U.S., including the 60 that submitted a [joint letter](#) to BDAC. The letter, in part, states: “...we oppose the inherent stance of the Broadband Deployment Advisory Committee’s work that assumes that state and local governments present the primary barrier to broadband deployment, while broadband industry provider practices and market structure are a secondary concern...We ask that in your final recommendations, you protect long-held local authority to manage the public rights of way, honor our Constitutionally guaranteed protection of fair compensation on the use of public assets, and maintain our Congressionally recognized right to govern the siting of cell towers and small cells in our communities.”

In a [minority report](#), authored by Liccardo and others including Kevin Pagan, city attorney of the City of McAllen, Tex. and Miguel Gamino, Jr., CIO of New York City, warned that the Committee “failed to live up to its mission” and went on to question the basis for — and the legality of — many of the BDAC’S recommendations.

Within the next few months, we fully expect the FCC to adopt a series of orders, and perhaps commence a series of new rulemakings, that will be designed to restrict state and local wireline and wireless authority, including authority to charge fees for use of the rights of way or other public property.

We also expect that the BDAC “models” will be taken to state legislatures to encourage them to adopt new restrictions on local authority.

It will be critical for localities to be aware of the threat, and to form coalitions that

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can support meaningful efforts to protect state and local interests. Localities may wish to support Liccardo, the joint letter or the minority report by [filing a supporting letter in GN Docket No. 17-83](#), and contacting Congressional and state representatives to alert them to the community's position, as well as the problems with the BDAC report.

Communities interested in working with a coalition on federal wireless issues, in developing responses to state legislative efforts, or filing comments in support of local or municipal rights should contact the authors of this Legal Alert to the right in the firm's [Telecommunications](#) and [Government Relations](#) practice groups, or your [BB&K attorney](#).

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