March 28, 2017

The Honorable Ben Hueso
Chair, Senate Utilities, Energy and Communications Committee
State Capitol, Room 4035
Sacramento, CA 95814

Subject: **OPPOSITION to SB 649 (Hueso) – "Small Cell" Wireless Infrastructure Permitting (as amended March 28th) –**In Senate Energy, Utilities, and Communications Committee April 4th, 2017

Dear Senator Hueso:

The California Chapter of the American Planning Association (APA California), the League of California Cities (LCC), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC)and Protect our Local Streets Coalition(POLS) all must respectfully oppose your bill, SB 649.SB 649 wouldunnecessarily shut out public input by eliminating local consideration of the aesthetic and environmental impacts of "small cells." These not-so-small "small cell" structures would be required to be allowed on public property in ANY zone in a city or county. SB 649 would alsorequire cities and counties to lease or license publicly-owned facilities.

We appreciate the opportunity to meet with supporters of the bill prior to the amendments. However, the language in print is even more problematic than what was mocked up for discussion at our meeting. In fact, the new language in print leaves us with more questions and concerns, listed below:

By-Right Approval for "Small Cells"

SB 649 would tie the hands of local government byprohibiting discretionary review of "small cell" wireless antennas and related equipment, regardless of whether they will be collocatedon existing structures or located on new "poles, structures, or non-pole structures," including those within the public right-of-way. This would shut out the public from the permitting process and preempt adopted local land use plans by mandating that "small cells" be allowed in all zones as a use by-right.

Without a discretionary permit, the these not-so-small cell structures would not be subject to the California Environmental Quality Act (CEQA) or consideration of aesthetics, design and nuisance impacts. Nothing would prevent, for example, a small cell(s)to be placed on a city/county owned light pole that is directly in front of a resident's window, or placed on a traffic signal, which was never intended to hold wireless infrastructure.

It's important to note the Federal Communications Commission (FCC) still preserves local government's authority to require a discretionary permit. Why should California go beyond the FCC to remove local discretion?

Not So Small

Unfortunately, these "small cells" are not necessarily small. ***The definition is not inclusive of ALL infrastructure necessary to support 5G technology.***The definition explicitly excludes:

- Electric meters and any required demarcation box
- Concealment elements
- Any telecommunications demarcation box
- Grounding equipment
- Power transfer switches
- Cut-off switches
- Vertical cable runs

Unknown Terms

"Single administrative permit." (Sec. 65964.2(b)(1)) There are permits that are "ministerial," such as a building permits, and permits that involve "discretionary" authority, such as encroachment permits, and either may be "administrative" depending on the process adopted by a local government. Building permits involve a building inspector verifying the safety of a building project. Projects in a public right of way (PROW) may also require an encroachment permit, which involves an inspector verifying that a project complies with PROW requirements. Building permits and encroachment permits cover entirely different concerns. Building inspectors do not check for Americans with Disabilities Act requirements that are not in the California Building Standards Code, and encroachment permit inspectors do not check the safety of the electrical connections. It is untenable to suggest that local governments should be forced to choose only one, but that appears to be one possible interpretation. Another possible interpretation is that an administrative body, such as a planning department, would be free of all supervision of the elected body that it serves. (Elected bodies are not "administrative" bodies.) This is an admittedly unusual outcome, but it appears to be a reasonable interpretation.

Whatever the "single administrative permit" should mean, it is also not clear how it is used in the bill. Sec. 65964.2(b) exempts small cells from all discretionary review if the listed criteria are met. This would appear to call for items to be included in an application that demonstrate satisfaction of the exemption requirements, and the first two items do just that. The third item, however, is the phrase "single administrative permit." We fail to understand how this is an element of an application for a small cell.

"Similar construction projects" (Sec. 65964.2(b)(3)(B)) states that single administrative permits may include "the same administrative permit requirements as similar construction projects…" We are unaware of any construction projects similar to small cells. ***Placing small cells on publically owned property is a recent occurrence with no precedent to guide policy discussions. SB 649 attempts to borrow from over a century of policies applicable to utility poles, and graft them onto public property that has no prior connection to delivering utility services***

How is"the regulation of any antennas mounted on cable strands" to be interpreted? (Sec. 65964.2(b)(3)(D)) This section lists items that the single administrative permit may not be subject to. It's not clear what it means to say that a permit for a small cell may not be subject to the regulation of something that is not a small cell.***If this means strand mounted antennas may not be regulated, it is a threat to public safety.***

Mandatory Leasing of City or County Property at Little to No Cost

SB 649 takes an extensive body of policy and legal precedent developed for access to utility poles and applies it to publicly owned property. Utility poles have always been treated as "shared facilitates," meaning that each pole was intended to serve multiple utility users wherever possible. This has led to the extensive regulations governing access to utility poles. Street lights and traffic signals are not "shared facilities." They were installed for purposes unrelated to utilities and they were built at public expense. The costs associated with these public structures are unique, and, most importantly, they have never been the subject of utility-style regulations. SB 649 doesn't acknowledgethese critical differences, and simply treats any "vertical infrastructure in the public right of way" just like a utility pole.

Section 65964.2(b) would limit the rent a local government can charge a wireless company to place a small cell on public property to a "cost-based" fee. When local governments spend taxpayer money on street and traffic lights, it's not expected that they would one day become used for the benefit of one industry.SB 649 provides favorable treatment to one industry over others who are paying the appropriate market rate for access to city property. The public is entitled to the fair-market value for using their property, and the local governments are the legal owners and landlords renting the property. When local governments rent public property, they are obligated to act in the public's interest and receive fair-market value.

Control of property, including the ability to charge fair rent, is an essential property right. To the extent SB 649 deprives a local government of essential property rights, it raises policy concerns that underlie Separation of Powersissues, regulatory takings, or prohibited gifts of public resources under Art XVI§6 of the State Constitution.

Reinventing the Wheel

The Wireless Telecommunications Bureau recently issued a Public Notice for comment on potential FCC actions to help expedite the deployment of small cells, including streamlining at the local level. The comment period just closed in March of 2017. It is appropriate to allow this process to complete before taking action on this matter.

Small Cell Deployment is New

As we understand per discussions with supporters, small cells are just in the beginning stages of being deployed. Given that many jurisdictions may not have even processed a small cell permit yet, or only handled a small number, we are unclear where the concerns are coming from that have prompted the need for this bill.We haven't seen any examples yet to demonstrate a lack of deployment. We understand that there is a desire to have certainty for providers when

applying for these permits – local governments want certainty too. Complete applications help --quick response to potential redesign also helps, for example. ***To provide a more streamlined statewide process, it may be more beneficial to require the Office of Planning and Research (OPR) to develop a model ordinance or other guidance for both jurisdictions and providers to use, rather than passing legislation at this time.***

What's Next?

The wireless industry continues to push legislation every year to further remove local government's discretion over wireless structures. We can't help but wonder what else, or what other types of structures or industries will be next in line.

While the undersigned organizations support the deployment of facilities to ensure that Californians have access to telecommunications services, this goal is not inherently in conflict with appropriate local planning and consideration for the environmental and aesthetic impacts of such facilities. **A better approach would be one that encourages coordination and up-front planning to ensure that wireless technology can be deployed as quickly as possiblebut with due consideration for aesthetics and the environment**.

Finally, we want to note that we greatly appreciate the time your staff, Nida Bautista, has taken to meet with us todiscuss our concerns. Please do not hesitate to contact us with any questions about our position.

Sincerely,

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