



August 15, 2017

The Honorable Lorena Gonzalez-Fletcher
Chair, Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, CA 95814

Subject: OPPOSITION to SB 649 (Hueso) – Elimination of public input, full design review, and negotiated benefits for “small cell” wireless equipment.– In Assembly Appropriations Committee August 23rd (as amended 7/18/2017)

Dear Assembly Member Gonzalez-Fletcher:

The California Chapter of the American Planning Association (APA California), the League of California Cities (League), the Urban Counties of California (UCC), the Rural County Representatives of California (RCRC) and California Association of Counties (CSAC), a coalition of local governments and our key partners representing nearly every Californian at the local level, must all **STRONGLY OPPOSE SB 649.**

SB 649 eliminates public input, full local environmental and design review, mandates the leasing of publicly owned infrastructure and eliminates the ability for local governments to negotiate leases or any public benefit for the installation of “small cell” equipment on taxpayer funded property.

Amendments Make the Bill More Problematic

In every Senate and Assembly Committee hearing so far, members have asked for important amendments on clarifying design review, requiring 5G technology, deployment requirements and other concerns, yet those amendments have not been made. Amendments have been offered by some cities, but have been rejected. Moreover, the bill was voted out of the Senate on the premise that amendments would be made to address member’s concerns regarding the fee calculations. However, the amendments were so hastily drafted that more amendments were needed in Assembly Local Government Committee to fix some of the issues. As with all amendments taken to this point, revisions made in committee were made without any meaningful input from local governments in opposition.

Unfortunately, any meaningful amendments that would address underserved deployment, public benefits, design review, mandatory leasing, and other concerns raised by the opposition and members of the Legislature would fundamentally change the core of the bill. Our coalition remains concerned that the sponsors are unwilling to make any changes to the bill in its current form. However, the League has highlighted these key concerns with the author and the undersigned organizations are committed to working towards a solution should the author and sponsors be willing to do so.

Our coalition finds it troubling that documents are being circulated by the sponsors suggesting that the amendments that have been made address our concerns. **This is not the case.** This bill continues to move with empty and broken promises, failing to address critical concerns inherent in such a monumental shift in telecommunications law. Major concerns not changed in the recently amended bill are as follows:

By-Right Approval for "Small Cells"- Full Discretionary Review ELIMINATED

While the wireless industry promises local governments will retain their discretion, the bill eliminates the full discretion locals currently have to require that such equipment blends into the communities they are entering and that providers maintain their equipment. The bill eliminates the ability of a city or county to negotiate any public benefit such as providing network access for the local library. In addition, by requiring a complicated formula for leasing public property for industry small cells, the bill effectively caps the flexible revenue cities and counties can generate for public services such as infrastructure, police, fire, libraries, and human services.

Mandatory Leasing of City or County Property

SB 649 forces local government to rent space for small cells on public property at rates far below fair market value and requires that every jurisdiction, in order to use its own public property, provide "substantial evidence" that the space is needed by that community. Rents from the use of public property, which every other for-profit business pays, help defray the cost of essential public services that are otherwise provided at taxpayer expense. **SB 649 sets a dangerous precedent for other private industries to seek similar treatment, further eroding the ability to fund local services.**

SB 649 proposes to calculate the maximum rate for these non-consensual leases using a formula designed only for electricity and telephone poles - a limited category of installations, with fairly uniform features and costs. Application of this formula to the vast variety of "vertical infrastructure" covered by SB 649 is both unfair and uncertain. The capital and operational cost components for these facilities vary widely in both complexity and amount, and efforts to apply the "Buchanan" formula to these facilities are virtually certain to result in continual disputes and confusion statewide.

Furthermore, the plain language of the bill allows wireless companies to install their own poles on any public property if necessary, and at the request of wireless corporations, public agencies could also be forced to modify/renovate/or replace public facilities to accommodate the installation of small cell facilities at upfront taxpayer expense.

Uncertainty About Applicability of Public Works Requirements

SB 649 would allow telecommunications companies to put up small cell infrastructure without expressly triggering public works requirements, including paying prevailing wage, that would otherwise be invoked when a city or county constructed a project or private construction takes place on public property offered for a private company's use at a below marketrate price.

Moreover, the rent caps and below market-rate leases mandated by SB 649 appear to constitute a greater than “de minimis” public subsidy. For instance, the rent cap for leasing pole space on city or county traffic signals and streetlights appears to be *thousands* of dollars below market rate. If a city or county is currently charging approximately \$4,000 per cell per year, a generous estimate of the attachment rate and lease fee that would be allowed under SB 649 would be about \$400 per cell per year. This is 90% discount in siting costs for each individual cell. We believe this likely constitutes a greater than “de minimis” public subsidy—especially when the providers are likely to deploy these cells in bundles of 100 plus per each agreement.

No Required Deployment of 5G or Deployment in Underserved Areas

While the supporters continue to state that the purpose of the bill is to deploy in rural or underserved areas of the state, there is still no requirement for such deployment. This bill does not provide anything to our constituents in exchange for giving up our public property nor does it require actual 5G deployment as it applies to existing wireless technologies.

Full Discretionary Review ONLY for Coastal and Historical Districts

The bill explicitly allows for a discretionary review in areas within the coastal zone or in historical districts. Cities, counties, and their communities that do not fall into a coastal zone, are not included in this exemption and are left with little ability to apply meaningful design standards, negotiate leases or any public benefits. **With these amendments, it’s clear that the bill’s sponsors concede discretionary review is important, but only for *certain areas* of the state.**

Small Cell Deployment is New – Where’s the Problem?

Small cells are just in the beginning stages of being deployed. Given that many jurisdictions haven’t even processed a small cell permit yet, or only handled a small number, it is unclear why there is such an urgent need for this bill. This bill is being passed with the assumption that there **will be** issues, which supporters have yet to demonstrate. Even more troubling is that this bill’s reach is so broad, it applies to the installation of equipment for existing wireless technologies, not even remotely related to 5G wireless equipment.

What other types of structures or industries will be next in line to demand free or low cost access to public property to boost corporate profit margins?

*While the undersigned organizations support the deployment of wireless facilities to ensure that Californians have access to telecommunications services, this goal is not inherently in conflict with appropriate local planning and appropriate fee negotiations on publically owned infrastructure. **For the above reasons, and many more, we respectfully urge a NO vote.***

Sincerely,



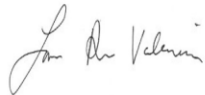
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