



DISCUSSION ITEMS

Agenda Item # 7

AGENDA REPORT SUMMARY

Meeting Date: September 24, 2019

Subject: Summary of Coalitions Addressing Telecommunications Issues at the Federal Level Impacting Wireless Deployment and Local Government Authority

Prepared by: City Staff

Initiated by:
City Staff/City Council

Previous Council Consideration:
July 9, 2019
July 30, 2019

Fiscal Impact:
Fiscal impact will depend upon the precise coalition(s) the City ultimately elects to join.

Environmental Review:
Exempt. This is not a “project” within the meaning of Section 15378 of the State CEQA Guidelines, because they have no potential for resulting in direct or indirect physical change in the environment. Rather, it is only once an application is filed that CEQA would be implicated.

Policy Question(s) for Council Consideration:

- Does the City Council wish to authorize the City Manager to enter one or more coalitions organized by Best Best & Krieger LLP to address telecommunications issues affecting wireless deployment at the federal level, potentially including both Federal Communications Commission advocacy and appellate litigation?

Summary:

- A number of ongoing and forthcoming proceedings in the courts and before the Federal Communications Commission significantly impact local governments’ authority and powers with respect to the deployment of wireless infrastructure.
- Best Best & Krieger LLP organized coalitions to address these proceedings, and Los Altos may wish to participate in these, in conjunction with other communities in California and nationwide, to more proactively address threats to the City’s authority.
- Mayor Lee Eng requested a summary of active and forthcoming coalitions, and estimated commitment amounts, so that the Council may better understand these opportunities to participate and may authorize the City Manager to approve Los Altos’ participation.

Reviewed By:

City Manager

City Attorney

Finance Director

CJ

CD

SE



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Staff Recommendation:

- Authorize the City Manager to commit the City to participation in one or more coalitions organized by Best Best & Krieger LLP, in furtherance of the Council's goal of preserving its authority to manage wireless infrastructure deployment in the City.



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Purpose

Inform the Council as to the nature and scope of matters affecting local authority to address wireless deployment and provide guidance as to the potential financial obligations associated with participation.

Discussion/Analysis

Over the last several years, the Federal Communications Commission has taken a number of actions addressing telecommunications infrastructure deployment. The City Council has recently addressed issues presented by some of these actions in the course of developing and approving the City's recently adopted wireless ordinance.

These FCC actions are in some cases subject to ongoing challenge in federal appeals courts, and in other cases are merely at the proposal stage and have not yet been finalized. Advocacy before the courts and the FCC remains an important way for communities nationwide to push back against FCC actions which intrude on local authority. The City's law firm, Best Best & Krieger LLP ("BB&K"), frequently organizes coalitions of local governments to spread the costs of fighting these FCC initiatives, both in the regulatory process before the agency, and in the courts where necessary.

Los Altos is not currently a member of any of these coalitions. However, the City Council has indicated a desire to take a more proactive approach to addressing these concerns. This report therefore summarizes currently active and forthcoming BB&K coalitions which the City may wish to join.

Appeal of FCC 2018 Small Cell and Moratorium Orders

BB&K represents over 60 communities and local government associations in appealing the FCC's 2018 actions severely restricting local authority to regulate the placement and appearance of small cells, to manage rights-of-way, and to charge fair compensation for use of public rights-of-way and infrastructure. Litigation is ongoing before the 9th Circuit Court of Appeals. While it is too late in the process for Los Altos to join this coalition and have its name listed on appeals briefs, it may make a financial contribution to the work. Cities of Los Altos' size are asked to contribute \$5,000 to this coalition for membership.

Appeal of FCC 2019 Section 621(a) Cable Order

In August 2019, the FCC adopted an Order addressing cable operators' non-cash obligations to states and localities under their cable franchises, treatment of "mixed-use" networks, and preemption of local requirements affecting cable operators who also provide telecommunications services. In the near term, the preemption sections may hamper the City's ability to regulate the deployment of wireless equipment by cable operators. Furthermore, the legal framework on which the Order is based



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sets the groundwork for cable operators to ultimately reduce franchise fees paid to the City under state-issued cable franchises. That same legal framework may result in greater reductions in the future if the FCC takes further action related to PEG channel valuation, as well.

BB&K previously organized a coalition involved in the regulatory proceedings which led to this Order and led litigation in which resulted in the partial defeat, in 2017, of the FCC's last attempt to address these issues. BB&K is now organizing a coalition to sue the FCC to challenge this Order. Cities of Los Altos' size are asked to contribute \$5,000 to this coalition for membership.

"Over the Air Reception Devices" Proceeding

The FCC is considering changes to regulations governing "Over-the-Air Reception Devices," commonly called "OTARDs." These are small reception antennas (such as rooftop consumer TV antennas and DirecTV/Dish Network-type home satellite dishes). Localities have exceedingly narrow authority to regulate OTARDs. The FCC has proposed new rules to expand their scope to include small wireless hub antennas, potentially allowing commercial wireless facilities to be mounted on homes and businesses with little or no local oversight. BB&K formed a coalition which has completed a pleading cycle on these issues; however, the FCC may move to take further action in the future, and additional advocacy may be required. Los Altos' expected contribution to join this coalition would be \$2,500; in the event of an adverse FCC action and subsequent litigation, additional contributions may be necessary.

Wireless Infrastructure Association Petitions for Rulemaking

In August 2019, the Wireless Infrastructure Association, a trade group comprised of wireless carriers and infrastructure providers, petitioned the FCC for further action to strengthen the Eligible Facilities Request framework established by 47 U.S.C. § 1455, for collocations of antennas on existing structures. BB&K anticipates forming a coalition to address these petitions when and if the FCC seeks public comment. Contribution amounts have not been established yet but will likely be consistent with those requested for other coalitions.