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Mayors Eye Two-Pronged Attack on FCC's Preemptive 5G Order.

The latest effort is a new bill in Congress that would overturn the agency on its rule that strictly limits how much local governments can charge providers and how long officials can take to process applications.

WASHINGTON — Mayors expressed optimism Thursday a new House bill could provide an alternative path to overturning a Federal Communications Commission order preempting local authority over fifth-generation wireless deployments.

H.R. 530, authored by U.S. Rep. Anna Eshoo, a California Democrat, would undo rules that went into partial effect on Jan. 14 requiring cities to move on wireless providers' small cell applications within set timeframes while capping fees to access public rights of way.

FCC restrictions on the aesthetic limits cities can impose on providers take effect April 15, unless Congress acts or cities led by Portland, Oregon, are successful in their lawsuit against the commission pending in the 9th U.S. Circuit Court of Appeals asserting irreparable harm.

Portland Mayor Ted Wheeler told his U.S. Conference of Mayors colleagues at their winter meeting in D.C. that the city's right of way—access to which is at the heart of its lawsuit—was its largest asset, costing taxpayers millions of dollars to establish and millions more to maintain and manage. Companies shouldn't just be able to take advantage of this public property without paying their fair share, he said.

"[Digital equity] can't be achieved without reliable, high-speed broadband to access essential services like education, employment opportunities and health care," Wheeler said. "But I will never ask Portland residents to subsidize multi-billion-dollar companies, who currently have no obligation whatsoever to serve low-income communities."

While the suing cities' attempt to stay the FCC order failed in the 10th Circuit, their cases were shifted to the 9th Circuit. The move should give cities "home-field advantage" because the FCC order overturned two long-standing rulings by that court, said Gerry Lederer, partner at the law firm Best Best & Krieger.

If the order is overturned, the FCC would be back to square one, said Alex Hoehn-Saric, chief counsel with the House Subcommittee on Communications and Technology.

U.S. Rep. Frank Pallone, a New Jersey Democrat, is the newly appointed chairman of the House Energy and Commerce Committee and believes in swift 5G deployment in collaboration with state and local officials, Hoehn-Saric said.

"Congress did not authorize or empower the FCC to trample on localities and effectively usurp our property rights, yet this is what they've done," said Piscataway, New Jersey Mayor Brian Wahler, whose city is in Pallone's district.

The FCC commissioners who backed the order, all Republicans, argued it would save $2 billion in the U.S.'s race to deploy 5G, the faster wireless service expected to boost economic opportunity, before other countries—thereby dictating the technology's applications.

Route Fifty

By Dave Nyczepir,
News Editor

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