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ATTORNEYS AT LAW

Local Governments and Wireless Siting

Law Seminars International
Monday, October 28

PRESENTED BY

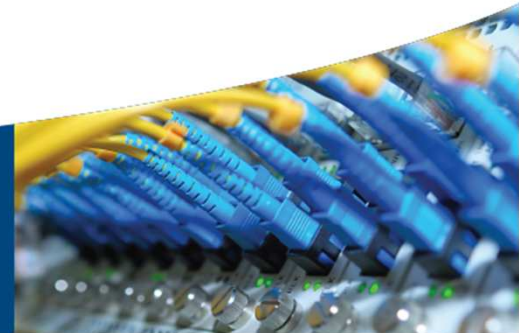
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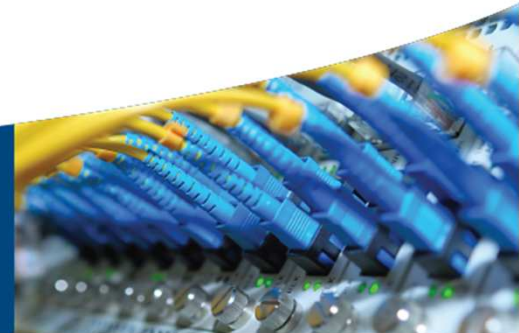


Telecommunications Law



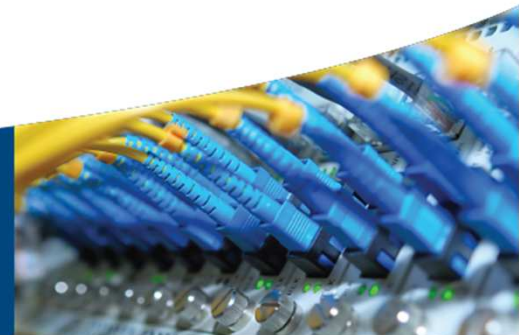
Local Authority Over Wireless Siting

- Local Government is NOT the Enemy
- Our Interests
 - Consumer Protection/Property Rights
 - Largest User of Wireless Services
 - Landlord of Preferred Sites
 - Community Development and Quality of Life
- Your Interests: Listen to the Local Community!



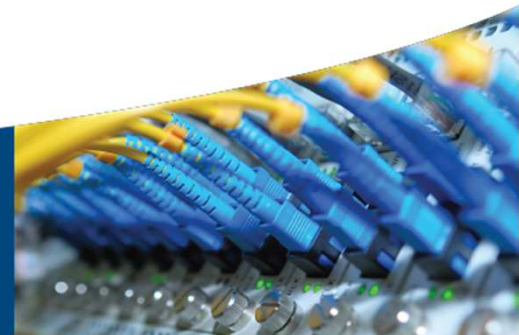
Local Authority over Wireless Siting

- Basic Police Power Authority
 - Public Safety
 - Environmental Protection
 - Zoning—managing “externalities” of property uses to preserve quality of life of community
 - Economic Development
 - Aesthetics
 - Property values
 - Benefits to the broader community
 - Historic Preservation
 - Right of Way Management
- One Size does NOT fit all.



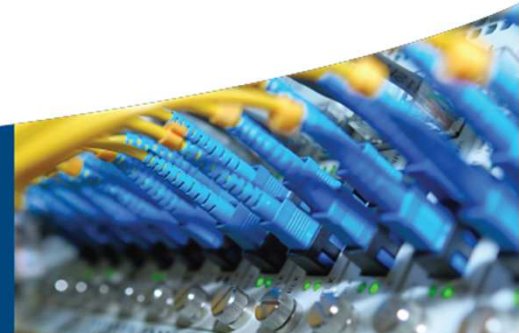
Federal Law Since 1996

- 47 U.S.C. § 332 (c)(7)(b)—Balance National Interest in Wireless Deployment and Local Police Power Authority:
 - Locality may not prohibit or effectively prohibit provision of service;
 - locality may not unreasonably discriminate against functionally equivalent services;
 - locality should act on an application within a reasonable period of time;
 - in writing
 - supported by substantial evidence.
- Feds define RF risks.



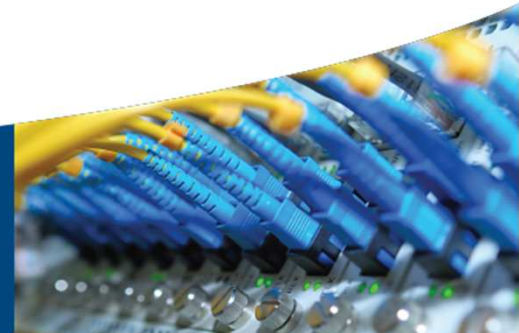
The Courts

- Supreme Court: FCC has broad discretion to implement 47 U.S.C. § 332 (c)(7)
 - *Arlington v. F.C.C.*, 133 S.Ct. 1863 (2013).
- Decision leaves in place:
 - FCC “shot clock” for local action on a complete application (90/150 days depending on facility);
 - locality that fails to act has “presumptively” acted unreasonably; and
 - locality cannot deny merely because another provider already offers service.



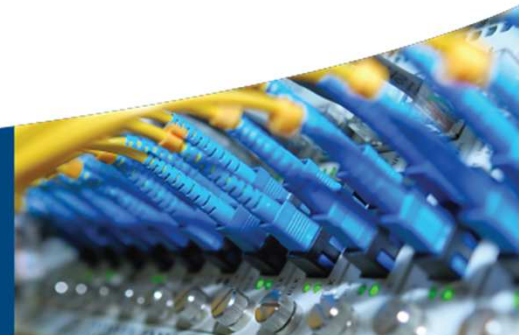
The Congress (recently)

- **47 U.S.C. §1455(a)** – Modification of Towers/Base Stations
 - “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.
 - “eligible facilities request” means any request for modification “of an existing wireless tower or base station” involving collocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment.



FCC Guidance (Jan 2013)

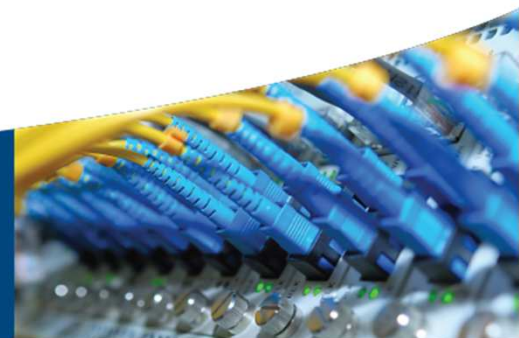
- Guidance Issued by FCC's Wireless Bureau.
 - Defines “substantially change” through criteria developed in a different context (historic preservation).
 - For example, no “substantial change” if an addition extends a facility less than 20 feet in any direction.
 - Offers broad definition of “base station” that could make statute apply to many facilities, including utility poles.



Historic Site – Now



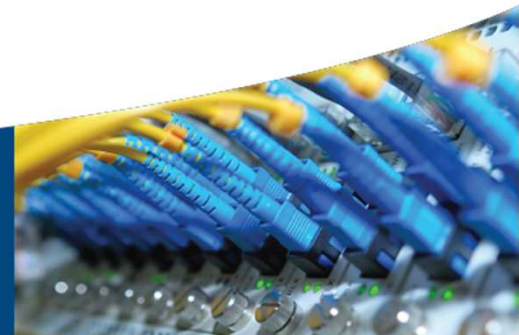
Photo of Simeon T. Toby's Bank Building, Columbia City Historic District, King County, WA. Blue arrows point to current location of cell towers. Building listed on National Registry of Historic Places



Historic Site – Post Guidance?



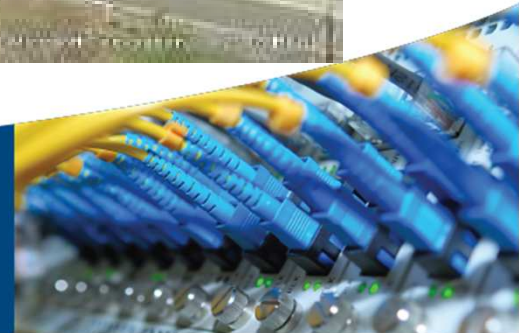
Illustration showing potential impact of co-location using photos of actual rooftop installations



Brickyard Rd. DAS Site – Neighborhood



Photos by: Robert P. Hunnicutt, Columbia Telecommunications Corporation

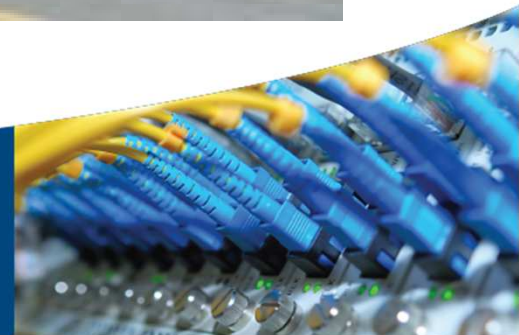


Brickyard Rd. DAS Site – Now

Pole to support DAS antennas (68' high) now at Brickyard Road in Montgomery County (part of a multi-node installation that extends down Brickyard Road)



Photos by: Robert P. Hunnicutt, Columbia Telecommunications Corporation

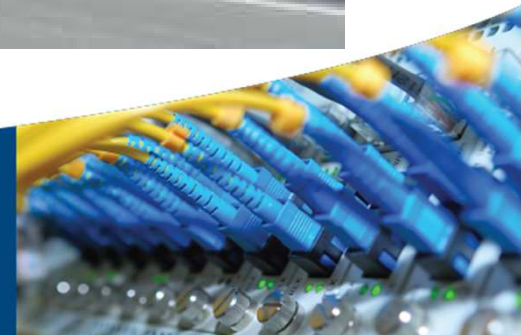


Brickyard Rd. DAS Site – Post Guidance?

Illustration of an extension to existing utility pole with additional structural bracing and guy wires to support the extension, which rises approximately 20' above existing DAS antennas. Blocks at bottom reflect related typical pole-mounted equipment cabinets.

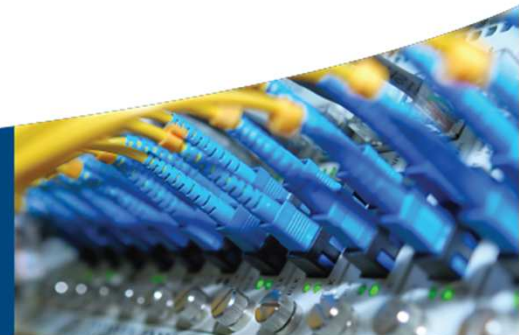


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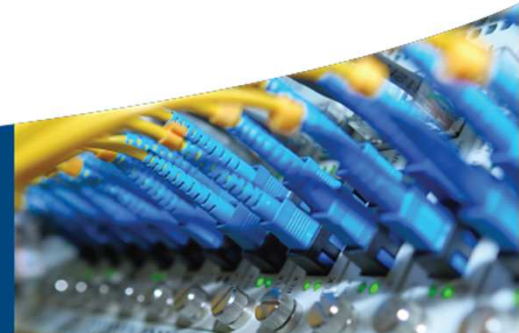
The FCC Rulemaking

- Provides a real opportunity to address the deficiencies in the Guidance.
- Presents a real risk that FCC will exceed authority and undo many state and local laws that protect neighborhoods, the environment and historical areas.
- Importance compounded by industry push to write Guidance into state law.



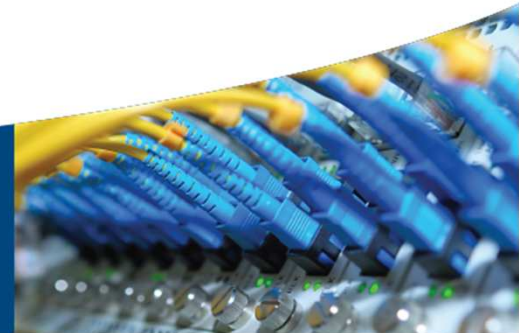
Implementation of Sec. 6409

- Should the FCC make rules in this area?
(alternatives: give localities first opportunity; or provide for a transition period).
- What services are reached? (tentative conclusion, any licensed or unlicensed wireless service).
- What is “transmission equipment” (does it include power supplies)?



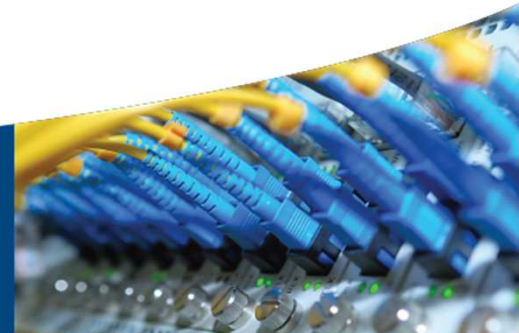
Implementation of Sec. 6409

- What is a substantial change in physical dimension?
 - Just size or something more?
 - Is it an absolute or relative standard?
 - Does same test apply to all structures or are different tests appropriate for light and utility poles, buildings, etc.? To stealth facilities?
 - Are changes measured from original structure or from structure as modified?



Implementation of Sec. 6409

- What does “shall not deny and shall approve” mean?
 - Are there any special circumstances where an application may be denied?
 - Does it require approval where a structure violates safety codes, or otherwise places persons and property at risk?
 - Can it be read to allow imposition of conditions?



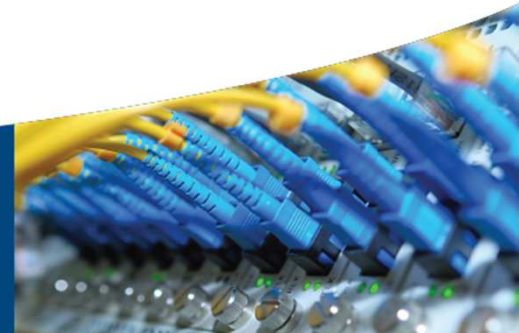
Implementation of Sec. 6409

- Does the statute apply where gov't is acting as a proprietor and not as a regulator? (tentative answer: no).
- What application process may be required if any, and before what entity? (tentative: an application can be required).
- What remedy is appropriate and constitutional? (tentative answer: deemed granted with FCC review).



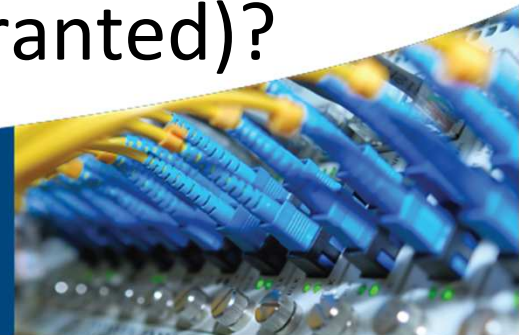
Revisions To Shot Clock (332(c)(7))

- Rulemaking does not invite or propose wholesale revision of existing rules.
- Should FCC change definition of collocation?
- Should FCC clarify when an application is complete?
- Do moratoria pause the shot clock? (tentative answer, “no”).



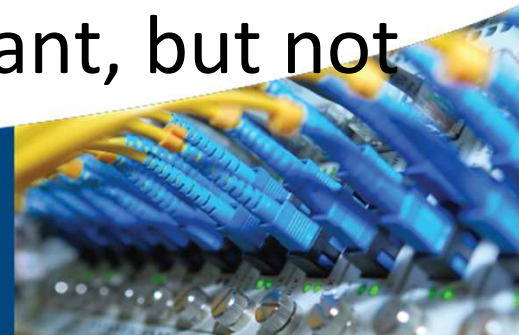
Revisions To Shot Clock (332(c)(7))

- Does shot clock apply to DAS and to small cells? (tentative answer, “yes”).
 - note: this is probably not the most critical issue; issue is how one determines whether an ordinance is or is not prohibitory.
- Are preferences for siting on muni property unreasonably discriminatory?
- Should FCC revisit remedies (deem granted)?



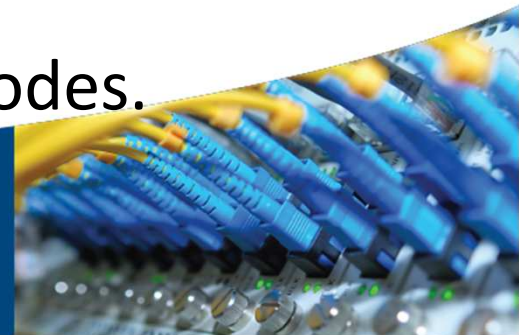
Approaching the NPRM

- NPRM is likely to significantly affect localities.
- NPRM **asks the right questions.**
- Provides an opportunity to deter state adoption of January FCC Guidance.
- If local governments participate, it could result in fair rules that balance interest in rapid approval of minor mods, and overreaching by providers.
- Participation by national orgs important, but not sufficient.



Approaching the NPRM

- Industry can be expected to attack many communities directly.
- For local practitioners:
 - If placement is an issue for your community, you will need to protect their interests through this proceeding.
 - The pending proceeding could affect approach to pending applications.
 - It is likely to require revision of zoning codes.



QUESTIONS?



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