

Registering & Creating Opposition To Big & Small Cell Towers (When An Application exists)

[Overview of Telecommunications Issues, Fed Legislation, Needs \(Outside Resource\)](#)

Very Important: On Oct 1, 2019, the DC Circuit Court of Appeals ruled in [Case 18-1051](#): the [ruling](#) means the FCC no longer regulates the Internet (web pages, video/music streaming, online gaming and other [information services](#)). Wireless has **NO PREEMPTION** to install or operate personal wireless facilities that emit wireless "information services" transmissions in any municipality in the USA or if wireless phone service is already available.

This is a reference for the above: <https://www.lexology.com/library/detail.aspx?g=187cc486-ed1d-4324-8856-9e27ad6f3a3e>

Pole Attachments: The Mozilla court held that the FCC had not adequately considered the impact of deregulating broadband service on the pole attachment rights of broadband providers. The underlying concern is that under 47 U.S.C. § 224, only cable operators and "telecommunications carriers" have the right to access investor-owned utility poles, and pure broadband providers—if broadband is not classified as telecommunications—do not. On this issue, the FCC agrees with the court that pure broadband providers are not covered by Section 224, but explains that this does not warrant keeping broadband classified as a telecommunications service, for three reasons:

First, it notes that its authority over pole attachments is limited and does not cover a large fraction of poles in any event (by virtue of the fact that when a state certifies that it regulates pole attachments, the FCC loses

Please consider supporting Last Tree Laws legislation. Caveat: This handout, by K. Beatty, may have errors and be outdated in areas – reader beware!

jurisdiction, and by virtue of the fact that Section 224 does not cover poles owned by cooperatives and/or municipal utilities).

Second, it notes that most broadband is provided by entities that are either cable operators or telecommunications carriers, and that under the Supreme Court's Gulf Power ruling, those entities do not lose pole access rights under Section 224 if they provide information services too.

Finally, the FCC notes that even without statutory pole attachment rights, pure-play broadband entities (such as Google Fiber) have been able to negotiate access deals with pole owners anyway.²

AND also:

Very Important: See the calls to action at the top of the page (as of Nov. 11, 2019) scientists4wiredtech.com/action: [here](#). This link has several useful ideas. EHTrust might have suggestions as well. Here is one example from scientists4wiredtech.com/action:

1. Check and make sure all applications in your town include the **court-mandated** Environmental Assessment (**EA**) or possible Environmental Impact Statement (**EIS**) in completed for for the FCC's Close Proximity Microwave Radiation Antenna (CPMRA) Wireless Telecommunications Facilities (WTFs). Each application is incomplete **if it does not** include the EA/EIS, required by the National Environmental Policy Act (NEPA) OR certification one is not needed (*see below for more about EA*).
2. Prepare a competing local environmental and health impact statement for submission to establish controversy exists.
3. *For ideas on creating a competing assessment*, see ideas below (public, municipalities), but also scroll further down to the section directly below in blue.

Public:

Municipalities:

Please consider supporting Last Tree Laws legislation. Caveat: This handout, by K. Beatty, may have errors and be outdated in areas – reader beware!

- See & support MA legislation at LastTreeLaws.com!
- Organize locally with education and information on the hearings – the more people in attendance, likely the more time allotted per person to speak, although it is good to prepare a coordinated group presentation.
- To organize, drop off flyers with city councilor/leadership names & telephone numbers along with quick summation of the problem (see sample image below). Write a petition. Get numbers and set up a phone tree or provide online contact points, such as Last Tree Laws LinkedIn or Facebook groups, as a reminder to attend hearings and to continue organizing. *Please also ask support for Last Tree Laws' legislation.* Last Tree Laws also has a sample petition online.
- Submit factually-accurate objections with citations and accompanying copies of relevant scientific documents,
- The FCC lost its case that small cells are exempt from environmental review. Also, local & state can have their own environmental review. To use environmental arguments, visit <https://egsc.usgs.gov/> to order a topographic map of the area and mark all distances from schools, libraries, day cares, etc., and
- Require and prominently make available in public addresses and names of legally responsible corporate owners and board members, etc., for new or all wireless facilities, in particular those on public rights of way. There are many corporations with the same name – hence, board members help ID.
- Resolve and demand the state legislature pass a law to register all such facilities with full addresses and names of those legally responsible, that communications be hard-wired, and further ask for a prohibition of small wireless in the entire state to deflate federal power (see our legislation & contact us to endorse); finally, demand the attorney general assist.
- *Caveat:* Allow health concerns to be expressed by the public, but if wishing to avoid a lawsuit targeted at the town, then state when receiving these concerns: "The town recognizes citizens have health concerns, however the Federal Telecommunications Act of 1996 does not allow consideration of environmental health in siting wireless infrastructure, only federal guidelines."
- *Additionally state objections to caveat:* "The town finds the environmental health exclusion an

Please consider supporting Last Tree Laws legislation. Caveat: This handout, by K. Beatty, may have errors and be outdated in areas – reader beware!

check endangered species and wetlands via State Department of Environmental Protection,

- Environmental bird protections discussed by Manville and case law are helpful [here](#).
 - Formally register objections to placement within 1/2 mile of significant wildlife habitat or within 1500 feet of a school (internationally recognized as a precautionary standard),
 - Where possible, use official diagnosis of electromagnetic or other disability to establish exemptions under Americans with Disabilities Act, and, with the help of a skilled lawyer, consider claiming lack of due process.
 - [Assess health](#) before and after operations start; contact your local health department, hospital, or university to see if a health survey, ideally including a full physical, can be conducted before wireless infrastructure is built, and then 3-6 and 12 months afterwards,
 - Use small claims courts for any out-of-pocket costs for relevant doctors and remediation, and
 - Contact state and federal representatives to attend and speak in opposition to further infrastructure.
- abrogation of human & state rights, and will seek remedies to address health [i.e. via legislation or lawsuit]."
- Encourage residents to assess health before and after operations start (as listed at left),
 - *Additionally state intent:* "The town will support residential health investigations surrounding new installations so as to assess environmental health risks and prospects of personal injury lawsuits"
 - *Further intent statement:* "The town will measure levels, notifying public [and holding wireless providers accountable for illegal levels]"
 - Require material proof of a gap in wireless service, denying that refusal is "presumptive prohibition" especially when indeed wireless service exists,
 - Ideally obtain independent analysis of "gaps," including encouraging citizens to check mobile, service availability in said "gaps," and
 - Demand telecommunications companies appear on record, preferably under oath, to represent that the technology is safe and complies with federal limits.
 - Please see the ordinance page at Last Tree Laws for tons of information.

Please consider supporting Last Tree Laws legislation. Caveat: This handout, by K. Beatty, may have errors and be outdated in areas – reader beware!

FEDERAL CODE (LAWS) ON WIRELESS

Remember that the law is open to INTERPRETATION. The law can be interpreted in more than one way, like the Bible. So, reading the law is helpful. Setting aside constitutional law, federal codes state:

State and local governments have

the Right, "on a **competitively** neutral and **nondiscriminatory** basis," to [47 USC § 332(b) or (c)]:

- "manage the public rights of way"
- "require fair and reasonable compensation "
- make "decisions regarding the placement, construction, and modification of personal wireless service facilities"
- "insure the continued quality of telecommunications services"
- "safeguard the rights of **consumers**"

Zero Right to:

- "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 USC §253(a) [*meant hard-wired service*]
- "regulate the placement, construction, and modification [*operation notably omitted here*] of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions [*wireless uses radiofrequencies and microwaves*] to the extent that such facilities comply with the Commission's regulations concerning such emissions" 47 U.S.C. § 332(c)(7)(B)(i)(I) [*Controversial, but means environmental & health aspects from wireless are not to be a factor in denial of applications, however, does not prohibit discussion of the topic*]
- "unreasonably discriminate"

Please consider supporting Last Tree Laws legislation. Caveat: This handout, by K. Beatty, may have errors and be outdated in areas – reader beware!

In regulating intrastate telecommunications, **the Federal Communications Commission has the responsibility to:**

- "promote the safety of life and property" [47 U.S.C. § 332(c)(7)(B)(a)(1)]

And also from CityScape Consultants, Inc., in the *Berkshire Edge*: According to Lepore, Congress included a small paragraph in the Middle Class Tax Relief and Job Creation Act of 2012 –*Section 6409(a)*; saying:

1. "...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"
2. *Congress* said it only applied to collocation, removal or replacement of existing facilities that did not "substantially change" the physical dimensions of existing structure.

FURTHER READING

On Environmental Review

The following was shared by email as an exchange between an advocate and the FCC

In black from the FCC, responding to an advocate:

The D.C. Circuit decision in *United Keetoowah Band of Cherokee Indians v. FCC* vacated those portions of the Commission's order that exempted certain small wireless facilities from federal environmental and historic preservation review. See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Second Report & Order*, FCC 18-30, (released Mar. 30, 2018). In vacating portions of the Second Report and Order, the court determined that small wireless facilities are not exempt and must therefore be reviewed under the National Environmental Policy Act and National Historic Preservation Act.

Please consider supporting Last Tree Laws legislation. Caveat: This handout, by K. Beatty, may have errors and be outdated in areas – reader beware!

Under the Commission's procedures implementing NEPA, if an action may significantly affect the environment, applicants must conduct an environmental assessment (EA) to help the Commission determine whether "the proposal will have a significant environmental impact upon the quality of the human environment." The FCC has delegated aspects of its NEPA review to licensees and applicants; NEPA and EAs are a federal requirement, although local or state permitting may require its own environmental review process.

To determine whether an EA is required, the FCC licensee or applicant must complete an initial environmental and historic preservation review ("the EA checklist"). This review includes an analysis of whether its proposed facilities fall into any of the categories that trigger an EA. As part of this review, licensees and applicants must follow distinct procedures to determine whether the proposed facilities will, for example, have an adverse effect on historic properties under NHPA will affect listed species under the Endangered Species Act, or will affect wetland resources.

While neither the city nor a member of the general public can make a determination that an EA is necessary, the Commission can review concerns raised by interested parties and decide whether to require an EA.

If your concern is about a proposed antenna structure or physical modification of an existing antenna structure that you allege may have a significant impact on the quality of the human environment, or about the Commission's environmental notification process (see 47 CFR § 17.4(c)) in regard to an existing or proposed antenna structure, check if there is a related Antenna Structure Registration (ASR) application currently on environmental notice on the Commission's website:

<https://wireless2.fcc.gov/ASRManager/service/nationalNoticeReport.faces>. If there is a current application, you must submit your Request for Further Environmental Review by selecting "ASR Environmental Notice" at this link: <https://wireless2.fcc.gov/UlsEntry/pleadings/pleadingsType.jsp>.

Please consider supporting Last Tree Laws legislation. Caveat: This handout, by K. Beatty, may have errors and be outdated in areas – reader beware!

If you cannot find an ASR application currently on environmental notification for the antenna structure that you allege may have a significant impact on the quality of the human environment, then you should e-mail your comment to towercomments@fcc.gov and provide the following information:

- Your name, email address, and phone number
- Detailed tower/facility location (street address; coordinates; and/or nearest intersection, city, county and state)
- Construction status (constructed, under construction, or planned)
- Detailed description:
 - Describe the facility type (e.g., tower, antenna, collocation on a structure), and include as much additional information as possible (e.g., height and volume).
 - How does the tower/facility adversely affect a historic property (if applicable)?
 - What is the name/address of the historic property?
 - How does the tower/facility adversely affect a Native American religious or culturally significant site (if applicable)?
 - What is the nature of the adverse effects on the environment (if applicable). For example:
 - Wetlands/Floodplains/Change in surface features
 - Wilderness area or wildlife preserve
 - Migratory birds
 - High intensity lights located in residential areas
 - Endangered species/Critical habitat for plants or animals
 - Other environmental resources

Provide as much detail as possible concerning how each applicable subject matter is being affected by the tower/facility.

Tribal Communications Notification System (TCNS) submission number, if known.

Please consider supporting Last Tree Laws legislation. Caveat: This handout, by K. Beatty, may have errors and be outdated in areas – reader beware!

If a person has information that a proposed communications facility will have a significant environmental effect that is not included on the checklist, that person should still submit its comment in the applicable manner above.

When there are multiple communications facilities at a given site, all significant effects on the RF environment must be considered, not just those RF emissions associated with one specific facility. If at any time the RF emissions from multiple facilities **exceed the Commission's guidelines** in an area accessible to the public, it is the **shared responsibility of all licensees** whose facilities produce significant emissions (i.e., if their power density levels exceed 5% of the power density exposure limit), **to bring the area into compliance.** 47 CFR § 1.1307(b)(3).

Does this apply retroactively? "Building without following the requirements at 47 CFR 1.1301-1.1319 can constitute a violation of FCC rules and subject the constructing party to potential enforcement action; issuance of a license does not authorize building unless environmental requirements have been met."

If any person has information indicating that a communications facility was constructed without complying with the NEPA rules, that person should notify WTB. WTB will determine how to handle the matter and, depending upon the circumstances, may refer the matter to the Enforcement Bureau.

Who would pursue enforcement action? The FCC or the City? How can citizens provoke enforcement action?

If the matter involves an FCC licensee or applicant, an interested person should contact the FCC. Depending upon the circumstances, a person may also contact state and local government offices with jurisdiction over the matter as some of these offices may share jurisdiction with the federal government or have independent authority.

Please consider supporting Last Tree Laws legislation. Caveat: This handout, by K. Beatty, may have errors and be outdated in areas – reader beware!