



Memorandum

Date: October 11, 2022
To: Mayor Vinis and City Council
From: Sara McKinney, 541-682-8497
Subject: Testimony Submitted

Attached is testimony submitted at the Public Forum October 10, 2022. A copy of this material is also included with the meeting materials posted on the web at:

<https://eugene.ompnetwork.org/embed/sessions/254868/city-council-meeting-october-10-2022>

Dear Mayor, City Counselors, Manager and Legal Counsel,

Oct. 10, 2022

In the last two years, I have offered extensive information to this body about the downsides of Wi-Fi (and now 5G) and the proliferation of electromagnetic frequencies that citizens, scientists and medical researchers around the world have, for decades, been urging us to halt or limit until their safety has been assured. It remained unspoken and unclear whether the council had time or attention for any of this, but we now understand—and are grateful—that the City of Eugene (with other cities) challenged the FCC's small cell order, but were saddened that the 9th Circuit Court of Appeals upheld a majority of the FCC's order, and the US Supreme Court denied the petition for review.

In a recent letter to the Mayor and Council about the 5G question, City Manager Medary wrote:

"From a legal standpoint, federal law, including the FCC, imposes significant limitations on a City's ability to regulate the placement and construction of telecommunications towers and facilities...."

But now, given your demonstrated interest in slowing the 5G rollout, let's question some of the particulars governing these restrictions—especially since there are now multiple examples of communities who've found a way to legally refuse the FCC's edicts.

The *federal law* alluded to by Sarah above is derived from Section 704 of the TELECOMMUNICATIONS ACT OF 1996; specifically, the restriction that "prohibits state or local regulations from having the effect of prohibiting the provision of wireless services." But the devil is in the details, and a number of legal firms have gotten hip to the "fast talk" the FCC has used to so convince communities around the country that this limitation is a *fait accompli*, that it is rarely challenged.

One well-known attorney, Andrew Campanelli put it this way:

"You are probably going to hear someone [on a City Council] say, 'Oh no, we are preempted; our hands are tied.' I hear that all the time."

In this light, please refer to the addendum on the reverse side of this statement. It contains a single page of text and link to a 10-minute video, explaining in direct and simple terms how to beat the FCC at their own game. Armed with this new information, it is my hope that someone in the City's legal department will be soon tasked with looking into these strategies, for the sake our city's sovereignty and health.

I look forward to discussions in a future meeting about the progress of this inquiry.

Thank you.

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Addendum to Hurwit testimony— October 10,2022

Wire America is a call-to-action and citizen journalist and advocacy organization, dedicated to preserving local control over Wired Broadband and Wireless Telecommunications infrastructure. Local communities must retain the freedom to integrate the best Broadband options for their residents. We have successfully worked at the federal, state and local levels to tame the unnecessary, dense deployment of 4G/5G so-called “small” Wireless Telecommunications Facilities (sWTFs) in residential neighborhoods.

One extremely seasoned lawyer in this field of endeavor is **Andrew Campanelli, Esq.** The information he’s provided on this site (and elsewhere) have proven crucial to many communities engaged in the same struggle with the FCC that Eugene is. On this page [<https://wireamerica.org/campanelli>] are three short videos providing timely advice on the basics of effective legal action against this incursion from without.

Note, Video Three is the most important one for our purposes, as it explicates (in just 10 minutes) what must be done, and why, to be effective in this work.

Other statements, excerpted from the other videos there, provide a basis for inspired action. I strongly request that move ahead, with the necessary preparations. Thank you again.

There is a [September 2018] interpretive Order [FCC 18-133]... which I think is ineffective. Federal courts have, for twenty years, interpreted the language in the Telecommunications Act that says when an effective prohibition occurs. These cases have gone up to the US Courts of Appeals for the 2nd Circuit and all the other Circuits. Federal judges are bound by these [No Significant Gap in Telecommunications Coverage and Least Intrusive Means] tests.

So if some [company] wants to claim that “you [the City] must give us an approval, even if it violates your code because saying no would be an effective prohibition”... and “you [the City] says no,”... then [the company] would have to file a law suit in Federal court and the Federal judges are bound by the Circuit Court Rulings, which say an effective prohibition occurs when the company proves there is a significant gap and the proposed installation is the least intrusive means.

But [the company] can’t meet that test in the [densified 4G/5G] rollout. So the Wireless Industry went to the FCC and got them to issue a new “interpretive” Order [FCC 18-133]... and here’s what the Order says:

“...after 24 years, we the FCC interpret that that effective prohibition language, meaning that applicants don’t have to prove that there is a significant gap in service, and they don’t have to prove —contrary to 20 years of Federal Court decisions— that their installation is the least intrusive means of remedying that gap. All they have to say is “they need this facility at the location they want, at the height they want, to either improve an existing service or to add a new service.”

I don’t think that has any effect on a town’s ability because . . .

- 1 The FCC can’t take away the powers preserved to towns by Congress — it wasn’t intended
- 2 The FCC can’t wipe out twenty years of Federal judges’ interpretations
- 3 The FCC can’t strip local governments of 20 years of local zoning regulations

The Wireless industry is going from town to town, showing this [FCC 18-133] as gospel and the closest thing I have to a decision on this, so far, is one Federal judge in New York said and I’ll quote him:

“It is not up to the FCC to put words in the Telecommunications Act that aren’t there.”

So, that’s why I think I am right. I know local towns still have the power to control the placement of Wireless Telecommunications Facilities (WTFs). To the extent an applicant says ‘You have to give [this permit] to us because of this [September 2018] interpretive Order’ — I don’t think the Order has any effect on the ability of towns to control the placement of Wireless Facilities at all.”