

FCC Limits Local Government Ability to Restrict 5G Deployment

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In a series of reports and orders, the Federal Communications Commission has imposed strict deadlines, limited costs and placed restrictions on aesthetic limitations for small cell facilities.

Local governments are no longer allowed to restrict the deployment of small-cell wireless infrastructure sites in ways that the FCC considers unreasonable. To accomplish this, the Federal Communications Commission on Sept. 26 placed limits on restrictions localities can place on cell infrastructure, and strict shot clocks of 60 and 90 days for consideration of applications for small cells.

The 60-day limit applies to colocation on existing sites, and the 90-day limit applies to new builds. The shot clocks for larger cell sites remain unchanged but are now codified under the order.

This move is critical for the deployment of 5G wireless communications. Because of the very short range of wireless signals in the 24- and 28-gigahertz bands, where high-speed 5G will operate, a significant number of new cell sites will need to be built. But because they're much denser, these sites don't need to be as large and obtrusive as the cell sites you see today. In many cases, they'll be placed on existing structures, such as street lights.

Some Localities See Cell Site Fees as Significant Revenue Source

The order also limits the fees that localities can charge for approving these small cell sites to amounts that are related to their actual costs. According to FCC Chairman Ajit Pai, a number of localities were using cell site fees as a significant revenue source.

“So today, we address regulatory barriers at the local level that are inconsistent with federal law,” Pai explained in an advisory provided to *eWEEK*. “For instance, big-city taxes on 5G slow down deployment there and also jeopardize the construction of 5G networks in suburbs and rural America. So today, we find that all fees must be non-discriminatory and cost-based. And when a municipality fails to act promptly on applications, it can slow down deployment in many other localities. So we mandate shot clocks for local government review of small wireless infrastructure deployments.”

“Installing small cells isn't easy, too often because of regulations,” Pai explained. “There are layers of (sometimes unnecessary and unreasonable) rules that can prevent widespread deployment.”

The order takes a number of steps to prevent localities from slowing down 5G deployment. In addition, it frames excessive fees and some regulations as an “effective prohibition of service.” Because the Communications Act allows only the FCC to restrict wireless service, such a prohibition of service would be contrary to federal law.

Exercises in NIMBY-ism Are Common

Some of those actions are fairly common and involve lengthy approval processes for considerations of aesthetics of the proposed installation, hearings on the dangers of wireless communications, approval processes for towers and the like. In many cases they're exercises in NIMBY-ism (not in my back yard), in which people object to any type of cell installation--including those that are effectively invisible--because they're don't want them in their back yards.

Such limitations by local governments have resulted in vast areas of poor or non-existent cell service in populated areas where the limits on cell service create serious public safety issues. During the comment period for this order a number of localities responded in support of the FCC's action, but some objected. [One such letter](#), from the mayor of Baltimore, Catherine Pugh, said that the city already has too many utility poles and that she's afraid that 5G sites would only add more.

While Baltimore could probably do with fewer such poles in what the mayor calls its post-industrial redevelopment, the fact is that 5G will be a critical part of the future she envisions. Without 5G deployment, that redevelopment could easily stall as companies and users go elsewhere for better communications.

The new order also provides guidance on non-fee requirements, such as requirements for undergrounding all utilities—something that won't work with 5G, and as the commission noted, creates an effective prohibition of service.

FCC: Actions Must Happen Within Time Limits

In addition, the FCC order requires that all local and state government authorizations and actions must take place within the time limits of the FCC imposed shot clocks. There's also new guidance on when missing those deadlines constitutes a prohibition of service.

That phrase, "prohibition of service" crops up a lot in the new orders. Effectively, this is a way of imposing the new rules on state and local governments in a way that they simply can't ignore. This means that when a wireless company asks for a building permit for a cell site, the city can't simply file the application and take no action, which is a common approach until now.

The action also effectively places limits on the seemingly endless rounds of public hearings in which each individual site, even if it's simply a new antenna on an existing cell tower, may have to have a new round of hearings. While the FCC isn't stopping the hearings, it is placing limits on how long they can take and on what restrictions, if any, can be placed on the site.

While the FCC's order won't eliminate local control over cell sites, it will put limits on reasons they can be delayed or stopped. For example, localities can prevent a site from being built where there's an obvious safety issue. Historic locations can preserve their historic appearance, because other FCC rules allow this, but localities can't prohibit a cell site just because it doesn't like it.

There will be localities that don't like these rules, and it's likely there will be lawsuits, but without some action like today's ruling by the FCC, large-scale 5G deployment would quickly descend into chaos.