


The FCC

1. RIF Order (cont'd)

- ✦ Largely disclaims FCC jurisdiction over broadband; cedes that to FTC and antitrust
 - ✦ In other words, broadband should be treated like just another run-of-the-mill product – like, say, toasters!



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The FCC

2. Wireless/Wireline Infrastructure Dockets

A. Wireless Docket (DN 17-79)

- ✦ 1st R & O (November 2017)
 - ✦ Adopts new NHPA exemption for certain pole replacements
- ✦ 2nd R & O (March 2018)
 - ✦ Excludes small cell facilities from NHPA/NEPA review
 - ✦ Streamlines NHPA/NEPA review for larger wireless facilities
 - ✦ Recon petition & Tribes' appeals pending


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The FCC

2. Wireless/Wireline Infrastructure Dockets (cont'd)

- ✦ Declaratory Ruling (August 2018)
 - ✦ Preempts express and *de facto* state and local moratoria on the acceptance, processing and approval of permits for telecom services or facilities
 - ✦ § 253 vs § 332(c)(7)
 - ✦ But, after the *RIF Order*, what "telecom services" are left?



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The FCC

B. Wireline Docket (DN 17-84)

- ✦ **Declaratory Ruling and R & O (November 2017)**
 - ⊞ Streamlines carrier service discontinuance, network change notification and copper retirement requirements
 - ⊞ Revises pole attachment rules, lowering rates and speeding access
- ✦ **2nd R & O (June 2018)**
 - ⊞ Further streamlining of service discontinuance requirements and network change requirements
 - ⊞ Completes effective repeal of "Obama" FCC's rules on these topics
- ✦ **3rd R & O (August 2018)**
 - ⊞ Adopts new OTMR rules
 - ⊞ Overlapping
 - ⊞ Treatment of ILECs and joint pole agreements

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The FCC

C. What's Next? – Preemption of State & Local ROW and Infrastructure Authority

- ✦ Likely an order (or orders) that –
 - ⊞ Set new, tighter shot clocks
 - ⊞ Adopt a "deemed granted" remedy
 - ⊞ Compel small-cell access to local ROW and infrastructure
 - ⊞ Restrict "ROW compensation" to costs
- ✦ Locals' choice: Surrender? Or Fight?



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3. BDAC

- ✦ Membership issues
- ✦ State and Local Barriers reports
- ✦ State and Local Model Codes
- ✦ Rates and Fees Working Group

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The FCC

4. Video Franchising (DN 05-311)

- ✦ Cable industry argues that:
 - ✦ Localities can impose no fee (other than incremental cost) on cable operator's use of ROW to provide non-cable services
 - ✦ Operators should be free to hang "micro" wireless facilities on their wires and pole attachments with no notice to locals or permitting requirements
 - ✦ Cost of complying with undergrounding requirements that are less favorable than utilities' undergrounding requirements are a cable "franchise fee"
- ✦ Arguments also raised in DN 17-84

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The Courts

1. SCOTUS

- ✦ South Dakota v. Wayfair, Inc.
 - ✦ Online sales/use tax collection case
 - ✦ Court overrules "physical presence" test
 - ✦ Huge victory for state and local governments
- ✦ Murphy v. NCAA
 - ✦ Holds that federal statute prohibiting states and their subdivisions from sponsoring or authorizing sports betting violates 10th Amendment's "anti-commandeering" rule
 - ✦ Broader implications?

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The Courts

2. Courts of Appeal

- ✦ FTC v. AT&T Mobility (CA9) (en banc)
 - ✦ Holds FTC Act's common carrier exemption is activity-based, not status-based
- ✦ Mozilla Corp. v. FCC (CADC)
 - ✦ Pending appeals of FCC's RIF Order
- ✦ United Keetoowah Band v. FCC (CADC)
 - ✦ Pending appeals of FCC's 2nd R & O in DN 17-79

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The Hill

- RAY BAUM'S Act & MOBILE NOW Act**
 - ✦ Rolled into omnibus legislation and enacted into law
- STREAMLINE Small Cell Deployment Act (S. 3157)**
 - ✦ Would grant mandatory, expedited access to state and local ROW and infrastructure, at cost
- CRA Resolutions on FCC's RIF Order**
 - ✦ Passed Senate, pending in House

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Questions?



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