

Station #2 – Aesthetics and Wireless Safety Regulations

Relevant Orders and Recent Case Law

Recent California Case Law

- ***T-Mobile West LLC v. City and County of San Francisco*, 3 Cal.App.5th 334 (2016)**
 - Cities may apply discretionary review processes to requests under PUC 7901 for permanent wireless installations in the public rights-of-way, and applications may be decided based on aesthetics, as well as other factors. **ON APPEAL TO CAL. SUP. CT.**
- ***Exenet Systems, California, LLC v. City of Burlingame*, Court of Appeal, 1st District, Division 4 (filed Nov. 9, 2017)(unpublished, 2017 WF 5185481)**
 - Denial of 6 of 8 permits for a proposed DAS project in a residential neighborhood on aesthetic grounds upheld by court.
 - Among other things, Court found denial did not effectively prohibit telecommunications service under Sec. 253.
- ***Pacific Bell Telephone Co. vs. City of Livermore*, Court of Appeal, 1st District, Division 3, (filed Dec. 28, 2017)(unpublished, 2017 WL 8232408)**
 - Court recognized City authority to regulate aesthetics under PUC 7901.
 - However, it directed issuance of permit for additional above-ground line, finding the street was already “cluttered” with other utility and telecommunications facilities and the decision lacked substantial evidence to support conclusion that the overlashed line would incommode the public’s use.
- ***Aptos Residents Association v. County of Santa Cruz, Crown Castle Inc.*, (20 Cal.App.5th 1039)**
 - Upheld approval of 10 antenna ROW applications in face of CEQA challenge.
 - Class 3 “small structure” exemption properly applied as a single project.
 - Not piecemealing to handle each facility as a separate application.
 - No exceptions applied—speculative evidence of “cumulative impact” alongside future projects is not sufficient to support an exception.

Key Federal Communications Commission (FCC) Orders

- **2009** – Established two wireless shot clocks (90 and 150 days)
- **2014** – Established rules for Eligible Facilities Requests (and 60 day shot clock)
- **August 2018** – Banned moratoria on processing applications
- **September 2018** – Adopted new shorter shot clocks for small cells (60 and 90 days) and put limits on local fees and aesthetic rules. Effective Jan 14, 2019/April 15, 2019 unless stayed.

Key California Public Utilities Commission (CPUC) Orders

- General Orders on construction, operation and maintenance
 - GO 95 – overhead electric lines, poles, communications lines, antennas
 - GO 128 – underground electric and communications systems
 - GO 131-D – generation and certain electric transmission facilities
 - GO 159-A – defers to local zoning for cellular facilities
- Pole Attachment Rights
 - D.98-10-058 provided competitive local exchange carriers and cable television providers with nondiscriminatory access to public utility infrastructure.
 - D.16-01-046 provides wireless carriers with nondiscriminatory access.