



New Jersey State League  
of Municipalities

# 5G and Its Impact on Municipalities

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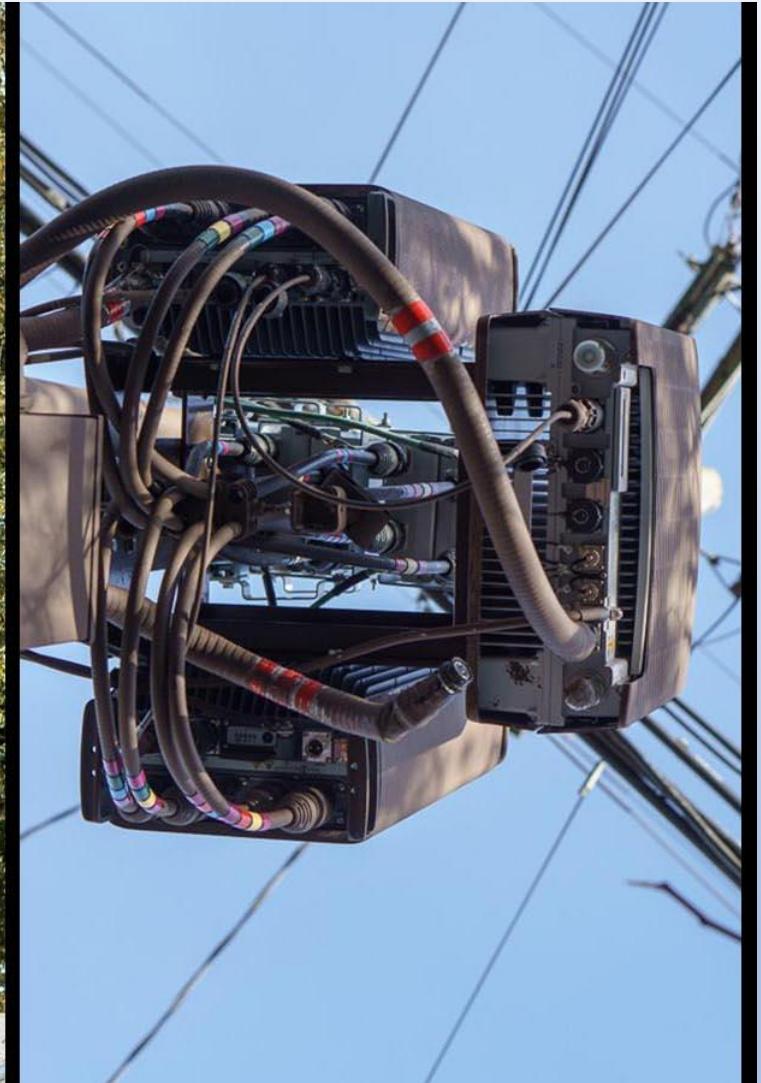
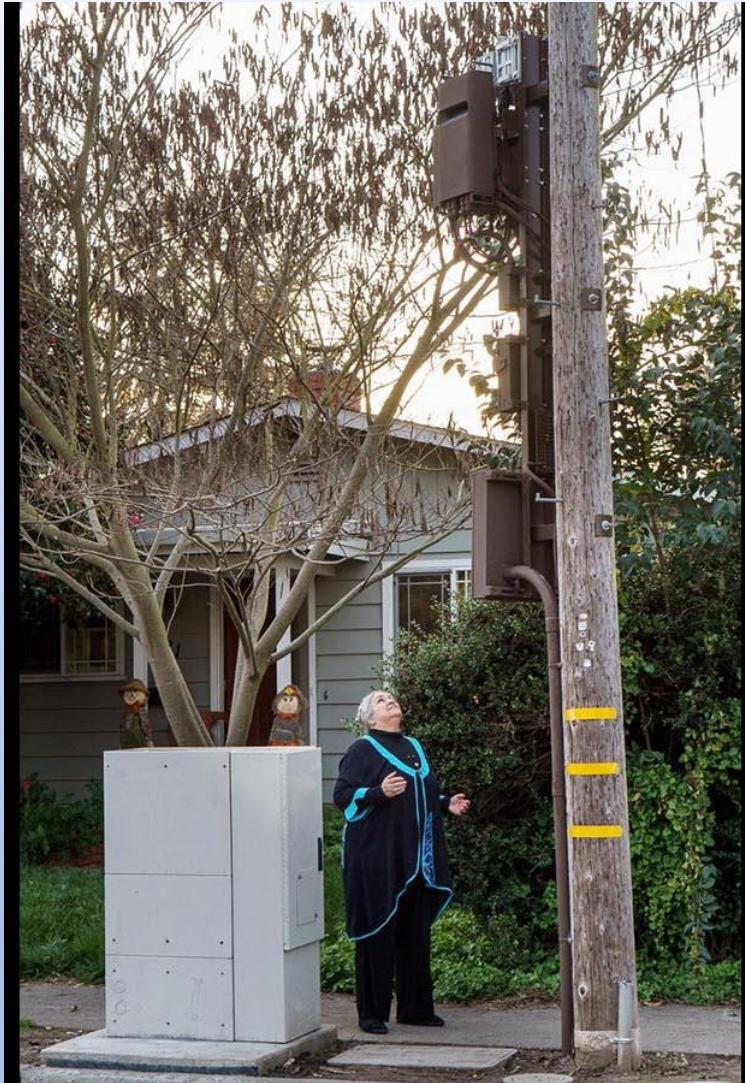
# Commonly Used Terms

- Broadband – Commonly understood to mean high-speed internet.
- Small Cell – An overarching term for low-powered radio access nodes that help to provide broadband service to both indoor and outdoor areas. Often used to supplement larger macro-networks.
- 5G – This is the newest generation (Fifth Generation) of technology for wireless service. 5G has greater bandwidth, giving higher download speeds. In light of this 5G is expected to serve not just cellphones but also home internet purposes. 5G signal does not travel very far. Thus for 5G to be effective, small cell networks must be developed and deployed.

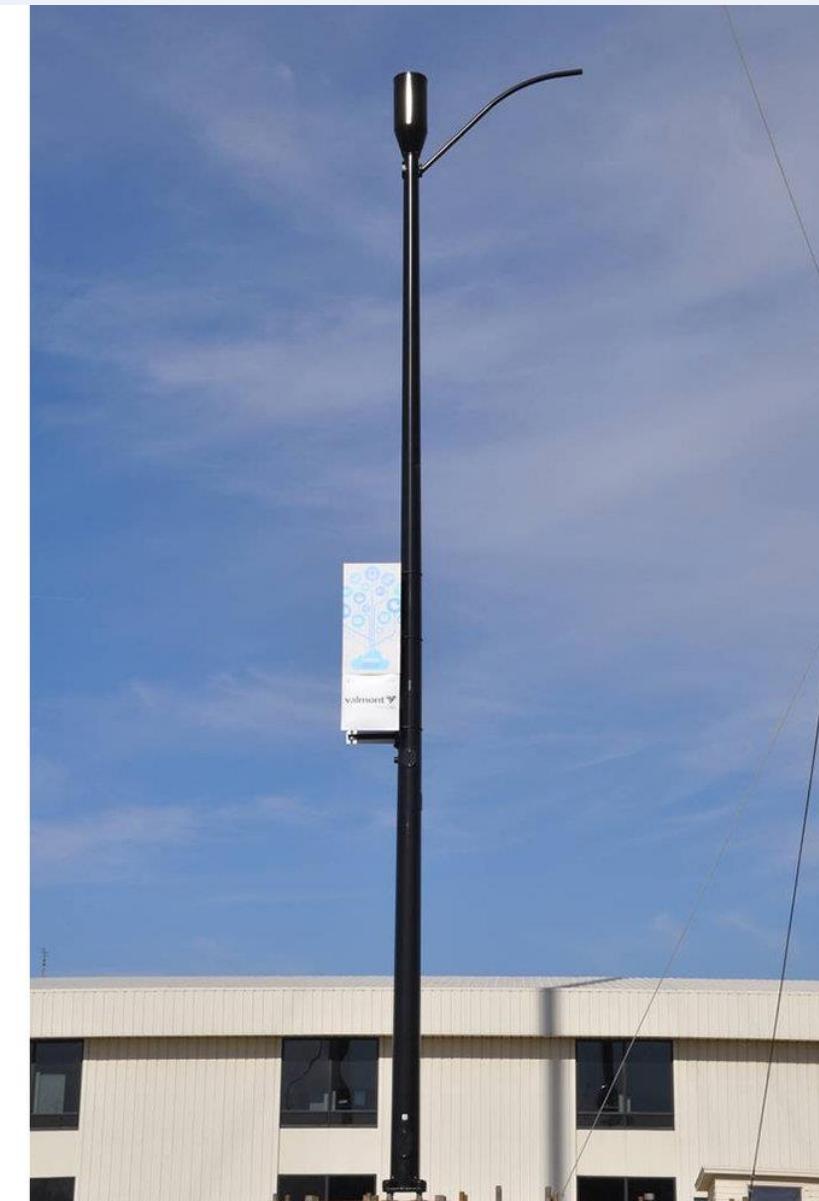
# What does 5G deployment look like?

- Because of technical limitations, 5G will not be deployed using large, 200ft towers, that 4G and 3G currently use.
- Instead, 5G will be deployed using small cell networks consisting of hundreds of antennas and nodes.
- These antennas and nodes often times need to be placed within line of sight of each other in order to function effectively.









# Federal Small Cell/5G Deployment Regulation

- The Telecommunications Act of 1996 is the basis for nearly all Federal regulations of the deployment of telecommunications infrastructure.
- Section 253(a) of the Act provides “No State or local statute or regulations, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications service.”
- Courts have interpreted this to mean that Section 253 provides the FCC with broad preemption authority.

# Federal Small Cell/5G Deployment Regulation

- Section 332(c)(7) – “The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—(I) shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.”<sup>18</sup> Clause (B)(ii) of that section further provides that “[a] State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”<sup>19</sup> Section 332(c)(7) generally preserves state and local authority over the “placement, construction, and modification of personal wireless service facilities” but with the important limitations described above.

# Federal Small Cell/5G Deployment Regulation

- In 2012 Congress adopted Section 6409 of the Middle Class Tax Relief and Job Creation Act (the Spectrum Act).
- “[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.” Subsection (a)(2) defines the term “eligible facilities request” as any request for modification of an existing wireless tower or base station that involves (a) collocation of new transmission equipment; (b) removal of transmission equipment; or (c) replacement of transmission equipment.

# Federal Small Cell/5G Deployment Regulation

- To further the Spectrum Act, the FCC adopted rules to expedite the processing of eligible facility requests.
- These rules create:
  - A 60-day period for states and localities to review requests.
  - Provide for a “deemed granted” remedy.

# Recent Examples of FCC Preemption of Local Control

- *2018 Declaratory Ruling and Third Report and Order*

# *2018 Declaratory Ruling and Third Report and Order*

- Shorten the time local governments have to process applications for small cells to either 60 or 90 days, depending on whether they are being mounted on an existing or new structure;
- Limit application fees for small cells to \$100 per site, and recurring fees to \$270 per site, per year, for small cells in the rights-of-way;
- Prohibit local governments from assessing fees that include anything other than a “reasonable approximation” of “reasonable costs” directly related to maintaining the rights-of-way and the small cell facility; and
- Limit aesthetic review and requirements (including undergrounding and historic/environmental requirements) to those that are reasonable, comparable to requirements for other rights-of-way users, and published in advance.

# BDAC

- The Broadband Deployment Advisory Committee was formed on January 31, 2017.
- Purpose: Provide advice and recommendations for the FCC on how to accelerate deployment of high-speed internet access, by reducing and/or removing regulatory barriers to infrastructure investment.
- Outcome: *2018 Declaratory Ruling and Third Report and Order*

# BDAC Controversy

- Make-up of BDAC stacked in favor of industry.
- Of the 30 members there s only one elected official and five total representatives of state or local governments. The remaining 25 were mainly from telecommunication companies and academics with a known opposition to municipal broadband investment.
- Work began with assumption that state and local governments presented a barrier to broadband deployment, as evidence by the immediate creation of the “Remove State and Local Regulatory Barriers Workings Group.”

# NJ Regulation of Small Cell Facilities

- S-860/A-1116 – “Provides for uniform regulation of small wireless facility development in this State.”
- Goes further to preempt local control than the FCC Order and Ruling.
- Currently awaiting schedule of Committee hearing.
- League has been advocating for municipal protections/control and working with stakeholders to create consensus language.

# S-860/A-1116

- Unlike the FCC Ruling and Order, S-860/A-1116 bill as currently drafted includes a “deemed granted” provision.
- As currently drafted this bill would set hard caps on the fees municipalities can charge to recover costs of application reviews.

# Quiz Question