



COMMUNICATIONS WORKERS OF AMERICA

Small cell wireless network deployment:

Recommendations to safeguard public assets and protect the public interest

Carriers are making substantial demands of cities and localities in their rush to deploy wireless technology on public infrastructure. While older network infrastructure was placed on large macro towers, newer infrastructure relies on small cell technology that is often deployed in the public rights-of-way and on public assets, such as light poles and traffic poles. Cities want robust access to next generation networks, but must navigate multiple interests to ensure that deployment is done in a way that protects public assets and the public interest. Small cell deployment can be an opportunity to improve digital equity and promote good jobs. Although preemption efforts at the state and federal level have serious and substantial implications for what cities can do, recent FCC rulings and restrictive state legislation do not mean that cities are powerless or must agree to whatever terms industry proposes. Cities continue to protect public assets and protect the public interest.

This document provides guidance on how local governments can plan for and manage the deployment of small cell wireless infrastructure.

We recommend cities take the following into consideration when planning for future networks:

- Develop a template agreement for access to the right-of-way and use of publicly-owned assets (often referred to as a Master Lease or License Agreement). This approach ensures a level playing field for all carriers and allows for inclusion of contract terms that protect the public interest.
- Ensure an open public input process, so community members can stay informed, participate and have a voice in network planning, construction, and deployment.
- Protect public and worker safety by including transparency requirements for subcontractors working in the right-of-way.
- Incorporate provisions that require companies to comply with existing laws.
- Include measures that promote digital equity and digital inclusion.

- Safeguard public resources, including provisions for retaining public ownership of assets and abandonment of equipment.
- Ensure that cities are protected if federal law changes.

Develop agreements for use of the right-of-way and attachment to publicly-owned assets

We recommend cities adopt agreement structures that establish requirements for small cell deployment that address issues related to both working in the right-of-way and use of publicly-owned assets. To build wireless networks, telecommunications companies must have access to underground conduit in order to lay fiber that will be connected to a small cell, which will often be placed on various types of poles and street furniture. Because this process requires excavation and construction in the right-of-way, cities have an interest in ensuring the work is done safely and in a way that minimizes disruptions to other utilities that share conduit space, such as water and gas. Where installations involve access to publicly-owned property to place the small cells, cities have a proprietary interest in ensuring public assets are properly maintained and that the city is properly compensated for the use of public property. A master lease approach allows for consistency in contract terms and terms that protect the public interest.

These agreements have varying titles: Master Lease Agreements, Master License Agreements, Small Cell Agreements, Franchise Agreements, Right-of-Way Use Agreements, etc., but have a common purpose of creating a mechanism for cities to manage network planning, construction, and deployment, and to facilitate negotiation with telecommunications companies about what this process looks like. Agreements should ideally include the components described below: public input, subcontractor transparency, compliance with existing laws, digital equity components, preservation of city-owned assets, and protection for cities if federal preemption law changes.

Provide for meaningful public input

Prior to entering into any agreement with a telecommunications or infrastructure company, the terms of the pending agreement should be made public and allow for citizen and stakeholder input. This should include a public hearing and process for submission of written feedback. This will help ensure that community needs are heard and addressed in a public setting, and allow for transparency and accountability in the negotiation process.

Telecommunications companies should also be required to provide notification to all households in a planned small cell deployment area, and allow for resident input. Robust communication with

the public also ensures that residents are aware that cities have limited options under the current FCC's rules and educates citizens about the ways in which federal overreach limits a city's power.

Ensure safety and transparency in the rights-of-way

Installation and maintenance of telecommunications equipment is sensitive work that requires diligent consideration of safety concerns. However, providers are building wireless networks using webs of subcontracted labor instead of locally-based direct employees, and often these subcontractors are non-union. Multi-layered employment structures can weaken the city's ability to hold contractors accountable for ensuring safe conditions, impacting both workers and the public. Work is reportedly often paid on a piece rate, which can incentivize workers to rush through jobs and increase the likelihood of mistakes.

There are numerous cases where subcontractors hired to do work on behalf of major carriers were responsible for accidents that caused fatalities and property destruction. For example, in July 2018, a contractor for Verizon in Sun Prairie, Wisconsin hit a gas main, causing an explosion that leveled half a city block and killed a volunteer firefighter.ⁱ In February 2019, a contractor in San Francisco laying fiber for Verizon caused an explosion and three-alarm fire, with over 50-foot flames that burned for hours and caused substantial property damage.ⁱⁱ Mistakes can also cause costly utility disruptions. For example, in Sacramento, between May 2018 and January 2019, Verizon contractors caused at least 41 utility hits, costing the city thousands of dollars and hundreds of employee hours.ⁱⁱⁱ

As a basic standard, cities should ensure transparency and accountability for subcontractors. Often, when dangerous incidents like these happen, it is not even immediately obvious which company employs the workers operating on public property. Basic information sharing requirements as to subcontractors, licenses, and work conditions are a first step towards ensuring that low-road subcontracting doesn't endanger public safety or city property. In both Sun Prairie and San Francisco, Verizon contracted with a company that contracted with another company that contracted with another company. In Wisconsin, the subcontractor VC Tech was delinquent in its registrations to work in the state at the time of the explosion.^{iv} In San Francisco, the subcontractor Advanced Fiber Works did not have a required license in California at the time of the incident.^v Information sharing requirements to ensure transparency around multilayered structures are a first step towards accountability. Cities should consider what types of disclosures will help ensure safety, for example:

- A list of the companies directly responsible for performing work in the rights-of-way, including contracted companies;
- A description of the relationship between the provider and the contracted companies responsible for work in the rights-of-way, for example, do they have a direct contract or are there other companies in the contracting relationship;

- A copy of contracts between the provider and contracted companies, and between contracted companies;
- A copy of safety procedures and policies maintained by the contracted companies;
- A description of the job titles performing work on public property and whether the company requires certain safety certifications, licenses, and worker training and experience;
- A description of the compensation structure, for example by piece or hourly, and of the staffing and scheduling structures;
- A description of the equipment and tools to be used in order to safeguard public property;
- Verification that the workers performing work on public property have the required certifications, licenses, and worker training or experience;
- Requirements that should any worker issues arise, individuals can pursue their claims in a public court of law and with appropriate governmental agencies where the city and public will be able to learn of any problems, and not in confidential arbitration;
- Disclosures as to whether contracted companies have been found in violation of the Occupational Safety and Health Act and other workplace laws.

Cities should also ensure that the requirements they place upon providers will carry down even in a multi-level contracting relationship. For example, many cities require insurance, bonding and workers' compensation terms. If a contracted company will be doing the work in the rights-of-way, those requirements should apply to contracted companies as well.

Incorporate compliance with existing laws

There are many federal, state, and potentially local laws around workplace standards that apply to companies deploying wireless technology in your city. Too often, companies see violating workplace laws as simply a cost of doing business. Contractual provisions incorporating existing laws are common and tell companies that breaking the law isn't an option when they do business with the city.

For example, an agreement can require that a company will comply with all relevant workplace laws, including the Occupational Safety and Health Act, the National Labor Relations Act, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and relevant state and local laws. To ensure compliance in a heavily subcontracted industry, an agreement should also require a company to ensure that companies with which it contracts abide by those laws as well.

Workers have a right to organize and collectively bargain under federal law. In an environment where threats, retaliation, and discharge of union activists is the norm,^{vi} contract language can reinforce the importance of these federal rights for employers and employees. For example, franchise agreements in New York City reiterate federal law and require the company "to recognize the right of its employees to bargain collectively through representatives of their own choosing in accordance with applicable law," and state that the company "shall recognize and

deal with the representatives duly designated or selected by a majority of its employees for the purpose of collective bargaining.”^{vii}

Address digital equity and network access

Digital equity refers to the unequal ability of communities to access and use technology. The disparity between those who have access to networks and technology and those who do not is called the digital divide, a form of inequality that maps on to economic fault lines in communities large and small across the US.^{viii} When negotiating agreements to deploy wireless networks, cities should consider their ability to promote digital equity and bridge the digital divide. The efforts can include:

- A tiered-pricing structure for deployment in underserved communities, such as the fee-structure under the franchise agreements in New York City.^{ix}
- Requirements that licensees contribute to a fund aimed specifically at supporting efforts to close the digital divide, such as the Digital Equity Fund established by the City of San Jose, California.^x
- Requirements that licensees provide periodic information on the locations in which small cell facilities are currently installed or under construction.^{xi} Transparency around deployment is a first step to ensuring equitable build-out.
- Negotiations to establish a timeline as to when network build-out will reach underserved neighborhoods. Los Angeles’ agreement with Verizon focuses infrastructure in areas with low broadband access during the initial network rollout.^{xii}

Safeguard public resources for the future

Cities should consider hidden costs that can affect public resources beyond the life of a given lease agreement.

Ownership of Infrastructure

In some cities, providers are installing small cell equipment on infrastructure that the provider builds – for example, light poles – and the provider retains ownership rights of the infrastructure as well.^{xiii} Localities need to be wary of hidden future costs of transferring control of public assets to private entities. For example, in 2008, Chicago signed a 75-year contract leasing operation of the city’s parking meters to a global consortium led by Morgan Stanley. Although the deal gave the city \$1.1 billion in the short term, the city’s inspector general later concluded that the city leased the meters for \$1 billion below their value. The contract included compensation clauses that required the city to pay the consortium for “lost revenue” when it made standard policy and planning decisions, for example, the creation of new bike or bus lanes, or temporary uses such as street fairs.^{xiv}

A best practice is for cities to retain ownership and control of infrastructure that will affect other city policy decisions. At the very least, cities must give full consideration to the potential future costs posed when a private corporation owns infrastructure in the rights of way.

Maintenance and Abandonment of Facilities

If equipment is neglected or abandoned, it can create substantial costs for cities. Cities should include terms that ensure the public is not stuck holding the bag or at risk of liability should circumstances lead providers to neglect equipment.

- ***Set a timeline for when equipment becomes abandoned*** - Agreements can define abandonment multiple ways: when a provider notifies a city that equipment is no longer being used; a number of days after equipment no longer transmits signal; or a number of days after a company has been delinquent in paying fees to the city. Agreements can set timelines that are triggered when the city sends notice to the company.
- ***Clarify a procedure for removing abandoned equipment*** - Agreements should obligate the company to remove abandoned equipment and return city property to its prior condition, but also outline a city's options should a company refuse or be unable to remove equipment, for example, if the company becomes insolvent. A city should have a right to remove equipment after it has been abandoned, with an appropriate cost-shifting provision so that the city does not accrue additional expense for ensuring that the rights-of-way are safe and free of nuisance.
- ***Create a fund for expenses*** - Agreements can provide for bonding requirements that require the company place funds in an account, so that in the event of abandonment or other expense accrued by the city, the city can directly draw on those funds in lieu of subsequently billing the company.

Ensure the city is protected when federal law changes

Dozens of municipalities and organizations are challenging the FCC's recent small cell orders in federal court and cities should consider that the orders may be vacated. Agreements should preserve the ability of cities to adjust requirements or renegotiate agreements if the Order is overturned. As the lawsuits argue, the FCC's order is an unconstitutional overreach by the federal government.^{xv} Cities should ensure they won't be stuck with bad terms that are no longer required if the order is overturned. For example, lease agreements can stipulate that if the Order is overturned, parties will renegotiate certain terms in good faith or provisions will terminate or change after a certain period. For example, fees will increase by a set amount or certain aesthetic requirements will be modified.

For more information, visit www.Fair5G.org

ⁱ Arp, J. "City of Sun Prairie releases construction permits for downtown area near explosion," Channel 3000 News, July 17, 2018. <https://www.channel3000.com/news/city-of-sun-prairie-releases-construction-permits-for-downtown-area-near-explosion/769418541>

Bowden, B. "OSHA cites 2 contractors in Sun Prairie Explosion," WPR, January 10, 2019. <https://www.wpr.org/osha-cites-2-contractors-sun-prairie-explosion>

ⁱⁱ KTVU Staff. "Contractor identified in massive, fiery San Francisco gas rupture." Fox KTVU. February 7, 2019. <http://www.ktvu.com/news/contractor-identified-in-massive-fiery-san-francisco-gas-rupture>

ⁱⁱⁱ Communications Workers of America, "Verizon's 5G Promise Rings Hollow in Sacramento," available at www.fair5g.org. Based on documents provided by the City of Sacramento through public records requests. This is not a full accounting of Verizon-related utility hits, due to the Department of Utilities changing its computerized maintenance management system (CMMS). The initial spreadsheet provided contained 41 incidents spanning from July 3, 2018 - January 28, 2019; DOU incident reports were provided for only 23 incidents spanning May 29, 2018 - January 1, 2019.

^{iv} Wisconsin Department of Financial Institutions. Corporate records for VC Technologies, LLC. <https://www.wdfi.org/apps/CorpSearch/Details.aspx?entityID=V026292&hash=646382736&searchFunctionID=bcfae0-316d-4297-82f0-9646dbc3ad9f&type=Simple&q=vc+tech>

^v Goldberg, T. "Contractor Tied to San Francisco Pipeline Explosion Didn't Have a License," KQED, February 15, 2019. <https://www.kqed.org/news/11725622/contractor-tied-to-san-francisco-pipeline-explosion-didnt-have-a-license>

^{vi} Bronfenbrenner K. "No Holds Barred: The Intensification of Employer Opposition to Organizing," Economic Policy Institute Briefing Paper, available at <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1037&context=reports>.

^{vii} New York City Department of Information Technology and Telecommunications, Mobile Telecom Franchises, <https://www1.nyc.gov/site/doitt/business/mobile-telecom-franchises.page>

^{viii} Pew Research, "Digital divide persists even as lower-income Americans make gains in tech adoption," May 29, 2019. <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>

^{ix} Franchise Agreement between the City of New York and Mobilitie Investments II, LLC, January 4, 2012. Page 63 https://www1.nyc.gov/assets/doitt/downloads/pdf/2011_Poletop_Franchise_Agreement_FINAL_Mobilitie_Investments_II_LLC.pdf.

^x City of San José Press Release, "San José Launches Digital Inclusion Fund to Close the Digital Divide." February 12, 2019. <http://www.sanjoseca.gov/DocumentCenter/View/82743>

^{xi} See, for example, Small Wireless Facilities Master License Agreement between the City of Syracuse and Verizon Wireless, Section 8. "Reporting," Signed May 20, 2019.

^{xii} Dean, S. "5G service rolls out - but not without controversy." LA Times. October 6, 2018.

<https://www.latimes.com/business/technology/la-fi-tn-5g-fcc-rollout-20181006-story.html>

^{xiii} Small Wireless Facilities Master License Agreement between the City of Syracuse and Verizon Wireless, Section 1(b), Signed May 20, 2019. Memorandum of Understanding between the City of San Diego and Verizon Wireless, Page 6 Section 1.2(d)(i), Signed April 8, 2019

^{xiv} In the Public Interest, "Understanding and Evaluating Infrastructure Public-Private Partnerships (P3s)," January 24, 2017, <https://www.inthepublicinterest.org/guide-understanding-and-evaluating-infrastructure-public-private-partnerships-p3s/>. Cohen, D. and Farmer S. Next City, "Why Chicago's Botched Parking Meter Privatization Is Also Bad for the Environment," June 4, 2014, <https://nextcity.org/daily/entry/infrastructure-projects-p3-contracts-chicago-parking>.

^{xv} *City of Portland v. FCC*, Ninth Circuit Court of Appeals, Case Nos. 18-72689, 19-70123, 19-70124, 19-70125, 19-70136, 19-70144, 19-70145, 19-70146, 19-70147, 19-70326, 19-70339, 19-70341, and 19-70344. See also Brief of Amici Curiae Communications Workers of America, National Digital Inclusion Alliance, and Public Knowledge in support of petitioner local governments seeking reversal in *City of Portland et. al. v. FCC and USA*, 19-70144, Ninth Circuit Court of Appeals, <https://www.publicknowledge.org/press-release/public-knowledge-joins-amicus-brief-asking-9th-circuit-to-invalidate-fcc-order-weakening-local-oversight-of-small-cells/>.