

City of Piedmont
COUNCIL AGENDA REPORT

DATE: May 20, 2019

TO: Mayor and Council

FROM: Paul Benoit, City Administrator

SUBJECT: Consideration of Joining Coalition To Oppose Proposed FCC Over-the-Air Reception Devices Rule and Authorize Comments in Response to Rulemaking

RECOMMENDATION

Approve joining a coalition of local governments organized by Best Best & Krieger LLP (BBK) in opposition to the proposed FCC Over-the-Air Reception Devices Rule, authorize the filing of comments on behalf of the City of Piedmont in FCC rulemaking proceedings, and authorize the City Administrator to execute a retainer agreement in an amount not to exceed \$2,500.

BACKGROUND

First adopted in 1996, the Over-the-Air Reception Devices (OTARD) Rule prohibits state and local governments from restricting the ability of local residents to install over-the-air reception devices, such as satellite dishes and other antennas used to receive video programming, on their owned (or in some cases, leased) property. The OTARD rule covers video antennas and satellite dishes that are less than one meter (39.37") in diameter, TV antennas, and wireless cable antennas. The rule prohibits most restrictions that: (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal. The rule applies to state or local laws or regulations, including zoning, land-use or building regulations, private covenants, homeowners' association rules, condominium or cooperative association restrictions, lease restrictions, or similar restrictions on property. Under the existing rule, if a consumer feels that a local rule or ordinance limits the ability to install such a covered device, they can file a complaint with the FCC to force the local government to suspend all enforcement action.

In 2000, the OTARD rule was amended to cover customer-end antennas that receive and transmit fixed wireless signals, such as those used to provide telephone service or high-speed internet access to a fixed location. In 2004, the rule was extended to protect equipment capable of processing network functionality. Despite these additions, the OTARD Rule required that the equipment installed had to primarily serve a user at the premises.

In its proposed expansion of the OTARD rule, the FCC would effectively eliminate the requirement that equipment be directed towards serving an on-premises customer. The proposed rule would authorize the construction of hub and relay antennas, which are antennas used to transmit signals to and/or from multiple customer locations. The removal of the existing restrictions on hub and relay antennas would likely allow cellular network providers to install antennas, including 5G equipment, on private property without notifying local agencies or being subject to local community control, provided they obtain the consent of the property owner or resident and meet the size limitations in the OTARD Rule. Existing provisions in the Piedmont City Code prohibit the installation of wireless facilities on residential buildings (except for communications equipment for interior use such as wi-fi routers, satellite dish antenna less than one meter in diameter for receiving radio or television stations, and other facilities exempt from regulation under federal or state law). These provisions would be subject to legal challenge under the proposed OTARD Rule.

Best Best & Krieger LLP is inviting local agencies to join a coalition in objecting to FCC’s expansion of the OTARD Rule as it imposes a limitation on local authority. Comments against the proposed rule must be filed no later than June 3, 2019. Best Best & Krieger LLP has requested the following contributions from agencies seeking to join:

<u>Population</u>	<u>Not to Exceed</u>
Less than 100k	\$2,500
100k to 1 million	\$5,000
Over 1 million	\$7,500

These costs would only cover participation in the rulemaking proceeding, and would not cover any other proceedings or litigation. Currently, coalition members include Boston, Los Angeles, Dallas, Montgomery County MD, the Texas Coalition of Cities for Utility Issues and the US Conference of Mayors.

FISCAL IMPACT:

Fiscal impact of this action is anticipated to be \$2,500.

CONCLUSION:

The proposed OTARD rule change would reduce Piedmont’s ability to control the installation of wireless communication facilities. Joining the BBK-led coalition to comment on and oppose the OTARD Rule expansion advances the City’s interests in maintaining its already limited control over the installation of wireless communication facilities to ensure their conformance with the City’s General Plan, Zoning Ordinance, Design Guidelines and Building Code requirements.

By: Kevin Jackson, Planning Director