Case No. S238001

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

T-MOBILE WEST LLC ET AL.,

Plaintiffs and Appellants,

v.

CITY AND COUNTY OF SAN FRANCISCO ET AL.,

Defendants and Respondents.

On Appeal from the Court of Appeal of the State of California,
First Appellate Division, Division Five, Case No. A144252

Superior Court of the State of California,
County of San Francisco, Case No. CGC-11-510703
The Honorable James McBride, Judge

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF OF AMERICAN CONSUMER INSTITUTE CENTER FOR CITIZEN RESEARCH IN SUPPORT OF PLAINTIFFS-APPELLANTS T-MOBILE WEST LLC, ET AL.

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Request to File Amicus Curiae Brief in support of Plaintiffs-Appellants T-Mobile West, LLC, *et al.*, to the Honorable Tani G. Cantil-Sakauye, Chief Justice of the Supreme Court of California

Pursuant to California Rule of Court 8.520 (f), the American Consumer Institute, Center for Citizen Research, ("ACI") respectfully requests leave to file the attached amicus brief in support of Plaintiffs-Appellants T-Mobile West LLC, Crown Castle NG West LLC, and ExteNet Systems (California) (collectively "Appellants"). This brief is timely, because it is filed within 30 days after the last reply brief was filed.

Statement of Interest

ACI is a 501c3 nonprofit educational and research institute with a mission to identify, analyze, and project the interests of consumers in technology and related matters. Recognizing that consumers' interests can be variously defined and measured, and that numerous parties purport to speak on behalf of consumers, the goal of ACI is to bring to bear the tools of economic and consumer welfare analyses as rigorous as available data will allow, while taking care to assure that the analyses reflect relevant and significant costs and benefits of alternative courses of governmental action. Appointed by Federal Communications Commission (FCC) Chairman, ACI is a current member on the FCC's Consumer Advisory Committee (CAC), which deals with a host of consumer and regulatory issues, including wireless and broadband communications topics. ACI's president, Steve Pociask, participates on the CAC's Broadband Working Group and Chairs its Technology Transition Working Group. The comments expressed in this brief are ACI's alone.

ACI is interested in this matter because local regulation of and burdens on wireless facilities threaten telecommunication infrastructure development and innovation, jeopardize consumer choice, and risk higher communication costs.

The brief will provide assistance to the Court in understanding the implications of granting municipalities the type of discretionary authority over the infrastructure buildout of new wireless technology at issue here.

For the foregoing reasons, ACI respectfully requests that the Court grant its application and accept the enclosed brief for filing and consideration.

No party or counsel for any party, other than counsel for ACI, have authored the proposed amicus curiae brief in whole or in part or funded the preparation of the brief.

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AMICUS CURIAE BRIEF

I. INTRODUCTION

Regulation is not costless, and it has consequences. The costs and burdens of regulation, whether in the form of delayed introduction of new technology, reduced investment, or simply higher costs, generally fall on consumers who may have to wait for new service offerings and pay higher prices. The costs and burdens of regulation are often greatly multiplied when matters of broad state-wide (or national) significance, capable of being addressed at a state-wide (or national) level, are regulated as well at the local level. A grant of local authority over a statewide development project multiplies the number of regulatory schemes that must be satisfied, increases the number of proceedings, decision-makers and decisions, and expands the interests to be satisfied. The result is increased complexity, cost, and delay, which adversely affects consumer welfare and the economy.[1]

Here, the likely result of a decision increasing local power over communications infrastructure development will be delay in the ability to make new technology available to the public, increased cost, and decreased investment. Interpreting local discretionary authority broadly, as did the lower court, also enhances the potential for discriminatory treatment in which regulators rather than the market picks winners and losers.

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[1] According to one estimate from the U.S. Bureau of Economic Analysis, a one dollar reduction of Internet service sales in California results in a $2.1 decrease in total economic output, along with reductions in employment and job earnings. *See* U.S. Bureau of Economic Analysis, "Rims II Multipliers, Table 3.5 Total Multipliers for Output, Earnings, Employment, and Value Added by State (41-Internet and other Information Services (Type II)," 2010 Input-Output Model.

The decisive point here is that the kind of expansion of local authority over communications infrastructure development contemplated by the decision below is inconsistent with the basic philosophy underlying Section 7901 of the Public Utilities Code. At its core, Section 7901 was designed to facilitate investment and development of communications infrastructure by ensuring that regulation would be limited, and centralized. Section 7901 has been a success, contributing to technological advances and the effective deployment of communications infrastructure in the state, to the great benefit of the state's citizens. Therefore, this Court should be extremely reluctant to construe local power under Section 7901 and related provisions broadly, as did the court, improperly, below.

II. CALIFORNIA'S GRANT OF AUTHORITY TO TELECOMMUNICATIONS COMPANIES TO BUILD INFRASTRUCTURE, REGULATED AT THE STATE, NOT LOCAL, LEVEL REFLECTED A BASIC—AND SUCCESSFUL—POLICY CHOICE.

A. The Statewide Franchise – Section 7901 of the Public Utilities Code

In 1850, when the California Legislature first convened, it recognized that telegraph operations—the new communications technology of its time—required a uniform statewide regulatory structure that would facilitate growth and expansion. *E.g.*, *Los Angeles Cty. v. S. Cal. Tel. Co.*, 32 Cal. 2d 378, 381–82, 196 P.2d 773, 776 (1948) (citing 1850 Cal. Stat. p. 369); *Cal. State Tel. Co. v. Alta Tel. Co.*, 22 Cal. 398, 426–27 (1863), *overruled on other grounds by City & Cnty. of San Francisco v. Spring Valley Water Works*, 48 Cal. 493, 515 (1874). By statute, the State conferred on telegraph companies "the right to construct lines of telegraph along the public roads." *Alta Tel. Co.*, 22 Cal. at 427; *see also Los Angeles Cty. v. Gen. Tel. Co. of Cal.*, 249 Cal. App. 2d 903, 904–05 (1967) (setting forth relevant text of 1850 statute).

That early decision to grant companies the power to construct lines on public rights of way, largely free from local regulations, reflected a fundamental policy choice. That policy choice rested then—and continues to rest now—on the recognition that communications, by its very nature, is a matter of statewide (indeed nationwide) concern. Moreover, it reflects the understanding that California's interest is best furthered by facilitating innovation and investment in communications infrastructure in order to give Californians access to state-of-the-art communications systems. That statewide interest would be frustrated by any attempt to balkanize control over communications infrastructure development.

California courts have a long history of sustaining the State's decision to both centralize ultimate control over the development of communications infrastructure, and to grant communications broad freedom to use the public way in aid of making their systems available to the public.[2] Indeed, this Court has repeatedly declared that the communications networks built on public rights of way are a matter of statewide concern; they are "not a municipal affair." *See, e.g.*, *Pac. Tel. & Tel. Co. v. City & Cty. of San Francisco*, 51 Cal. 2d 766, 768, 336 P.2d 514, 515 (1959) ("[T]he construction and maintenance of telephone lines in the streets and other public places within the city is today a matter of state concern and not a municipal affair."); *Pac. Tel. & Tel. Co. v. City of L.A.*, 44 Cal. 2d 272, 279–80, 282 P.2d 36, 41 (1955) ("The authority to grant a franchise to engage in the telephone business resides in the state, and the city is without power to require a telephone company to obtain such a franchise unless the right to do so has been delegated to it by the state.").

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[2] Michael W. Shonafelt, *Whose Streets? California Public Utilities Code Section 7901 in the Wireless Age*, 35 HASTINGS COMM. & ENT L.J. 371, 373–79 (2013).

In particular, when striking down an attempt by Los Angeles County to collect rents from telephone companies using county bridges for transmission cables decades ago, the Court of Appeal cogently explained the value and benefit of the franchise to California:

> Basic facts of California history will show compelling reasons for granting telegraph and telephone companies a franchise to use roads and highways for their systems . . . . The facts are of common knowledge; we merely call attention to them. With respect to the means of communication with the remainder of the country and within its own confines the State suffered great disadvantage. Communication by mail was by sailing vessels around the Horn; within the State it was by stage and river boats. Telegraph services were available to meet immediate needs and to prepare the State for nationwide communication that was to come. As an inducement to the companies the State offered the use of roads and highways, without which there would probably have been no company able or willing to enter the State. The franchise cost the State nothing. The rewards were great.

Gen. Tel. Co. of Cal., 249 Cal. App. 2d at 906–07.

California's state telecommunications franchise law, as now codified at Section 7901 of the Public Utilities Code, empowers "telegraph or telephone corporations" to "construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State" and to "erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines." Cal. Pub. Util. Code § 7901. The law now expressly includes wireless communications. *Id.* §§ 233 & 234(a). The sole and simple statutory restriction on the franchise is that companies must exercise the franchise to construct lines and other infrastructure "in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters." *Id.* § 7901.

The reference to "incommode" in relation to "public use of the road or highway" is plainly a reference to an obstruction of that public use of the road or highway. What is meant to be protected is the use of the road or highway; the communications infrastructure should not interfere with that use. There is no basis to extend beyond that. And that limited restriction is confirmed by the last clause of the Section, which refers to "interrupt[ing] the navigation of the waters." *Id.* Incommoding public use of highways, and interrupting navigation of the waters, should be interpreted in parallel to refer to improper physical obstructions—a perfectly reasonable limitation on the franchise that the State of California granted communication companies.

B. The Local Role – Section 7901.1 of the Public Utilities Code

In 1995/1996, the legislature enacted Section 7901.1 of the Public Utilities Code. Section 7901.1 permits municipalities to exercise "reasonable control" with respect to the "time, place, and manner" in which telecommunications companies "access[]" public rights-of-way. Cal. Pub. Util. Code § 7901.l(a). But municipalities may only exercise such power "consistent with Section 7901." *Id.*

The legislative history surrounding Section 7901.1 evidences that the "time, place, and manner" clause was intended to address construction and maintenance, not the basic franchise itself—and certainly not the modes and methods to be used to provide services:

> Construction of telecommunications networks often requires excavation of the streets for the installation of cable, wire, and substructures. To encourage the state-wide development of telephone service, telephone corporations have been given state franchises to build their networks. This facilitated construction by minimizing the ability of local government to regulate construction by telephone corporations. . . .

A consequence of the state-wide franchise is a lack of control by local government over construction in their streets. The telephone corporations' natural eagerness to build often clashes with the cities' desire to minimize public inconvenience. While current law is a great convenience to telephone companies, it can be a great inconvenience to the public, who has to suffer with the congestion and traffic disruptions.

Cities interpret their authority to manage telephone company construction differently. Telephone corporations represent their rights under the state franchise differently as well, sometimes taking the extreme position that cities have absolutely no ability to control construction. This lack of clarity causes frequent disputes. Among the complaints of the cities are a lack of ability to plan maintenance programs, protect public safety, minimize public inconvenience, and ensure adherence to sound construction practices. Cities are further concerned that multiple street cuts caused by uncoordinated construction shortens the life of the streets, causing increased taxpayer costs, as described in a recently commissioned study. . . .

Competition in telecommunications markets has exacerbated these problems. The opening of telephone markets to competition has created many new telephone companies who desire to exercise their state franchise rights. Further, to obtain a competitive advantage, the telephone companies want to excavate more quickly and secretively. (The ability to be the first to serve a customer with advanced telecommunications capabilities seems to be a competitive advantage.) Tension between the telephone companies' desire to build and the cities' desire to minimize public inconvenience has never been greater.

. . . The author intends the bill to provide the cities with some control over their streets. While respecting the continuing state interest in the widespread deployment of advanced communications networks, the author sees room for local government to exercise reasonable management of its streets and waterways. This bill is intended to bolster the cities' abilities with regard to construction management and to send a message to telephone corporations that cities have authority

> to manage their construction, without jeopardizing the telephone corporations' statewide franchise.

Analysis of SB 621, Cal. Sen. Rules Comm., Office of Senate Floor Analyses (S. 1994-95 Reg. Sess.) (Aug. 31, 1995).

This history reflects a desire to grant cities some power over construction, excavation and similar issues because of its impact on public convenience and safety. It reflects no broader grant of authority to cities to control the means and manner and type of technology, including the physical aesthetic aspects of particular technological innovations.[3]

What the provisions of Section 7901, taken together, reflect is that, California has recognized that there is some role for local government in the management of construction and excavation, local government's role is a limited one. It is intended (as noted above) to provide cities with the ability to "protect public safety, minimize public inconvenience, and ensure adherence to sound construction practices . . . [including] multiple street cuts caused by uncoordinated construction [that] shortens the life of the streets, causing increased taxpayer costs."

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[3] Of course, this early history does not speak directly to wireless communications. Mobile phone usage was not common until after the California legislature enacted Section 7901.1. In 1994, just over 24 million people in the U.S. had a cell phone. U.S. Census Bureau, Statistical Abstract of the United States: 2009, t. 1149, Cellular Telecommunications Industry: 1990 to 2010, *available at* https://www.census.gov/library/publications/2011/compendia/statab/131ed/information-communications.html. In 1995, less than 34 million had one. *Id.* And in 1996, approximately 44 million had one. *Id.* The important point is that the principles underlying these provisions, developed in connection with wireline operations, are readily applied to demonstrate that localities have very limited authority over wireless infrastructure on public rights of way.

The modest role assigned cities to protect the public safety under Section 7901.1 does not suggest any general regulation of communication infrastructure, including the modes or methods of communication. To the contrary, the power assigned local government over construction was never intended to threaten the "telephone corporation's statewide franchise." Indeed, even with respect to the original, basic, limitation in the Section 7901 grant—the "incommode" provision—Section 7901.1 did not expand upon or assign to municipalities that the authority to determine what activities "incommode the public use" of the roads and highways. Cal. Pub. Util. Code § 7901. That word does not appear at all in Section 7901.1. Section 7901.1 explicitly provides municipalities with limited authority to "control" how public rights of way are "accessed," with respect to the "time, place, and manner" of access, but no more. *Id.* § 7901.1(a). It further cabins this grant by requiring that any local rules and regulations on access be "consistent with Section 7901" and otherwise "reasonable." *Id.*; *see also id.* § 7901.1(b).

The basic structural framework and purpose underlying the 1850 law therefore remains. Section 7901 continues to reflect adherence to California's historic precept that development of communications infrastructure will benefit all the citizens of the State, and is therefore is not a matter of local regulatory concern— "not a municipal affair." Thus, relevant decisions should be made on a statewide, not a local, level. Localities ought not to be permitted to threaten development and innovation in any way lest the basic, and successful, promise underlying the 1850 law, will be frustrated. To now interpret local powers broadly would dampen continued growth and development of telecommunications infrastructure at a time when innovation and investment, to the great benefit of California's citizens, is abounding.

C. Success – By the Numbers

The franchise granted to communications companies by the State, allowing communications infrastructure construction to proceed with minimal local involvement, provided and continues to provide the fertile field for growth and development that was envisioned at the outset. Telegraph developed quickly. Telephone brought the state together. Investment in, and by, communications companies flowed into new projects and development, including the initial generations of wireless. And the economy of California developed with and around that communications infrastructure. One can easily imagine the very different pace of development of communications networks in the state, if a company seeking to construct facilities had to individually seek approval at the local level for their technological advancements.

But the past has just been prelude. With the advent of increased competition and technological advances, the communications sector has grown rapidly, changing all of our lives for the better. And to meet the challenges of competition, and to deliver the levels of service that we demand, the need for new infrastructure has increased multifold. The need to compete, to innovate and to provide new technology and new infrastructure, has attracted substantial investment. And time is of the essence. Major investments in new infrastructure are often justified precisely because new infrastructure provides new benefits to the public and a competitive edge. The quicker that infrastructure can be installed, the quicker its benefits will be provided to the citizenry, and the quicker investors can achieve a return on their investment—helping to ensure continued investment in this critical sector of the economy.

For example, the most recent year for which public data is available show that the total number of wireless customers from companies with over 750 employees (i.e., AT&T, Verizon, Sprint, and T-Mobile) in 2014 was

37.8 million, up seven percent from 35.4 million in 2013.[4] This California customer base represented approximately 13% of such companies total domestic customer base in 2014. *Id.* Wireless companies also plowed around $5.3 billion in to the California economy in 2014—up from $3.5 billion in 2013. *Id.* at 7 & 10.

All of this benefits California consumers. Between 2001 and 2015, the California communications market doubled in size, opening many new communication technologies and services, including "apps" that provide consumers access to banking and shopping, free GPS services, social media, video and other services.[5] Moreover, the demand for communication technologies and services is growing rapidly. While the California communications market grew 113% between June 2001 and June 2013, the State's population grew about 12% over the same period. *Id.* at 8.

The future is with wireless, and with new generations of wireless technology. As of June 2013, wireless voice and mobile broadband comprised 68% of all communications subscriptions in California. *Id.* And this number is likely to grow. The next generation of wireless

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[4] California Public Utilities Commission, UC Annual Report of Telegraph and Telephone Corporation Employment, Investment, and Contracting in California 6, 8 (Oct. 7, 2015), *available at* http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Reports_and_Presentations/Final2015PUCode7912Report.pdf.

[5] California Public Utilities Commission, Market Share Analysis of Retail Communications Report 4, 7 (Jan. 5, 2015), *available at* http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Reports_and_Presentations/MktShareFIPUC%20Reports%20on%20the%20Telecommunications%20Marketplace%20in%20California.pdf.

technology—5G—will be significantly faster than 4G and some landline broadband services, allowing for faster download speeds, the ability to run more complex mobile internet applications, and higher productivity across all capable devices generally. Communication companies "are expected to invest approximately $275 billion in infrastructure, which could create up to 3 million jobs and boost GDP by $500 billion."[6] In California alone, the State could see more than 11,000 short-term jobs added to deploy 5G technology, and 5G may contribute to the creation as many as 375,000 long-term jobs. *Id.* at 5.

At the same time, the record of this case reflects no reason why California would now want to afford localities greater power and authority. Recent developments in infrastructure and technology, notably 5G, suggests no special problems or burdens warranting a shift in authority from the state, to localities. If anything, the "aesthetic" issues of the newest technologies are far less intrusive than earlier technologies. And there has been no showing that control over any issues that do arise cannot be addressed effectively at the state level.

But if there is to be a shift to localities, it must be granted by the State, debated and evaluated by the legislature. Localities cannot seize power reserved to the State. And the courts ought not to grant localities power and authority that is the exclusive preserve of the State under existing law. Critically, the risk of error here is high. Prior research has

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[6] Accenture, Smart Cities: How 5G Can Help Municipalities Become Vibrant Cities 1 (2017), *available at* https://newsroom.accenture.com/content/1101/files/Accenture_5G-Municipalities-Become-Smart-Cities.pdf.

indicated that for every billion dollars of lost investment, the communications sector loses 15,000 high-paying full time jobs.[7]

III. IN LIGHT OF CALIFORNIA'S STATUTORY FRAMEWORK FOR CONTROLLING COMMUNICATIONS INFRASTRUCTURE DEVELOPMENT, LOCAL AUTHORITY SHOULD BE INTERPRETED NARROWLY SO AS NOT TO RETARD DEVELOPMENT THAT WILL BENEFIT THE STATE.

It is a common and uncontroversial observation that regulation, particularly of emerging technologies, may increase the burdens of entering a market, slow entry of new technology, and increase the costs of the regulated good or service for both investors and consumers. That does not mean that regulation is wrong. What it does mean is that decisions about regulation, including about who should regulate and whether that regulation should have its locus at the national, the state, or at a local level, must be made wisely, with the likely consequences in mind. Section 7901 reflects that type of decision, and embodies a recognition that fragmented, balkanized regulation at a local level, would inhibit and slow the development and roll-out of new technology.

As described above, the development of communications infrastructure for the State of California has always been regarded by the State itself to be a matter of statewide, not local concern. The State has been unwilling to allow particular localities to exercise a veto power over a process of innovation and technological expansion that benefits the greater number of Californians. Thus, the State has taken for itself the authority to regulate telecommunications infrastructure, and has determined to grant and

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[7] U.S. Bureau of Economic Analysis, RIMS II, 2010 benchmark, Internet services, at www.bea.gov.

preserve the telecommunications companies' franchise to use public rights of way for that purpose.

Whatever the costs and burdens of regulating that franchise uniformly on a state level, those costs and burdens would be multiplied greatly if localities were permitted to exercise regulatory control over communications network infrastructure. Local regulation invariably creates multiple regulators with varying levels of specialization and sophistication, applying a range of standards, furthering sometimes conflicting, and occasionally idiosyncratic, objectives. Instead of one central authority, applying a uniform set of rules to which communications companies can gear their efforts, a fragmented regulatory approach may present insuperable—and certainly more complex and costly—regulatory burdens.

A balkanized process of obtaining approval for infrastructure expansion and innovation requires the innovator and developer to try to anticipate and adjust to what may be a bewildering array of concerns. The innovator/developer must convince many decision-makers, in many venues, to allow the project to proceed, or about the terms on which the project can proceed. The sheer multiplicity of proceedings is likely to increase uncertainty for investors and increase direct regulatory costs for wireless providers. And it is also likely to produce delay. Moreover, to the extent changes must be made to meet local demands, balkanization is likely to increase product design and development costs, as well. And as observed above, both those costs, and those delays, are a disincentive to investment, and (because new technology is beneficial) a form of direct harm to consumers and consumer welfare.

The State has determined that it is in the interest of California to facilitate the availability of new communications technology to Californians in every municipality—displacing any municipal interest. But it bears reminding that a municipality's interference with development does

not merely injure the municipality's citizens, but citizens throughout the State. To choose a mundane example, the development of communications is not, for example, like a determination about trash disposal where the municipality might weigh the benefits of more costly services against the tax burden that better service would impose on the municipality's citizens. Communications connectivity is limited by the "slowest link." A municipality that decides that 3G is good enough for its community is actually burdening everyone outside the locality that would prefer to send messages to that locality, and provide communications, entertainment and education services to that locality, using a 5G network.

Moreover, the need to meet aesthetic demands on a community by community basis could affect the overall cost of a project, and cost to consumers, as well as the speed at which the project is implemented. And if the municipality making demands is central or important, that municipality's aesthetic restrictions and conditions may effectively be imposed on other municipalities, limiting their options, access, and choices. Such restrictions could increase cost and delay equipment roll-outs for newer technology, particularly for low-income and disadvantaged populations.

Finally, fragmented, balkanized regulation at the local level increases the opportunities and occasions to discriminate among and between technologies, and among and between providers. And those opportunities to discriminate among and between technologies are especially rife when the municipality purports to make judgments about matters as subjective as aesthetics.

Indeed, the court below seemed to endorse the notion that municipalities could "adjust the balance" between technological progress and local concerns, such as aesthetics. But the very act of balancing requires the municipality to consider the benefits of particular technical

proposals and to weigh them against aesthetic considerations. Yet that "weighing" of the benefits of the proposed technology brings the municipality into precisely the field that the State has declared off-limits. The State has opened the door wide to infrastructure expansion on public rights of way, and reserved for itself (to the extent consistent with federal legislation) any necessary regulatory authority in the field. Any consideration of the benefits of the technology at issue is off limits to municipalities.

The record already reflects one fundamental discrimination that inheres in the regulatory framework at issue here. This regulation is specifically targeted at wireless, indeed the most recent iteration of wireless technology. Thus, the regulation here permits the municipality to impair providers of one particular communications technology, and not all technologies equally, on the basis of aesthetic concerns.

But the discriminatory potential inherent in local aesthetic regulation goes much further. Not every communications company will meet the challenge of providing 5G—or any other infrastructure improvement—with precisely the same technical solution. There are going to be variations in equipment design and method. Yet the regulatory framework at issue here invites subjective decisions based on preferred designs and solutions. The inevitable result will be that some providers' solutions will be favored and advantaged over others, with some solutions perhaps quickly approved, while others have to be redesigned, adopted, or perhaps never approved at all.

The result of an expanded role for local regulators, particularly one in which subjective considerations such as aesthetics will play an important role, is that local regulators will be deeply involved in creating winners and losers. Yet that is exactly what California's historic approach to communications infrastructure been a bulwark against. Consumer demand

and consumer choice have been the drivers for expanded wireless services and innovation. Access to the public rights of way for infrastructure improvements has fostered vigorous competition, and spurred unprecedented levels of investment, innovation and development. Any expansion of local control over infrastructure development is, therefore, likely to slow progress in this vital sector of California's economy, and will at a minimum, increase costs—and do so in a manner inconsistent with the fundamental objectives of Section 7901.

CONCLUSION

For the reasons stated above, ACI urges the Court to reverse the judgment of the court below, hold that the ordinance at issue if invalid, and grant judgment for the appellants.

Dated: May 11, 2017

Respectfully submitted,

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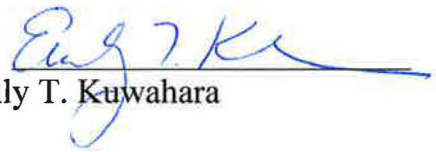
CERTIFICATE OF WORD COUNT

Pursuant to Rule of Court rules 8.520(c) and 8.630, I certify that this Brief of *Amici Curiae* American Consumer Institute, Center for Citizen Research, in support of Plaintiffs-Appellants T-Mobile West LLC, Crown Castle NG West LLC, and ExteNet Systems (California) contains 4,377 words, not including the Table of Contents, Table of Authorities, this Certificate, the caption page, signature blocks, or attachments.

Dated: May 11, 2017

Respectfully submitted,

By: 
Emily T. Kuwahara

DECLARATION OF SERVICE

I, Carol Romo, state:

My business address is 3 Embarcadero Center, San Francisco, CA 94111. I am over the age of eighteen years and not a party to this action.

On the date set forth below, I served the foregoing document described as:

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND *AMICUS CURIAE* BRIEF OF AMERICAN CONSUMER INSTITUTE CENTER FOR CITIZEN RESEARCH IN SUPPORT OF PLAINTIFFS-APPELLANTS T-MOBILE WEST LLC, ET AL.

AND

AMERICAN CONSUMER INSTITUTE CENTER FOR CITIZEN RESEARCH'S *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS-APPELLANTS T-MOBILE WEST LLC, ET AL.

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Executed on May 11, 2017, at San Francisco, California.

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