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June 1, 2021

Honorable Asm. Laurie Davies
California State Capitol, Room 3141
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Sacramento, CA 94249-0073
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Re: Floor Alert for June 1, 2021 — Please Vote No on AB.537

Dear Assemblymember Davies,

A vote for Assembly Bill 537 (Quirk) will likely create nothing but significant harms, unfunded liabilities due to lack of adequate insurance, unrest and legal controversy.

While AB.537 provides for a *slightly* faster rollout of dense 4G/5G so-called "small" Wireless Telecommunications Facilities (sWTFs), such benefits come at a large cost to the cities, counties and constituents. The bill would create significant harms to public safety, privacy and property values. Most importantly, **AB.537 has no real power to close the Digital Divide**, as claimed.

Your cities, counties and constituents **do not want** their local rules set aside to further enrich multi-billion dollar Telecoms at their expense. Have you asked them yourselves? Please do.

I suspect that you will learn that they wish to retain all of their rights given to them by the 1996 Telecommunication Act ("1996-TCA") and its cooperative federalism principles: whatever is not claimed as narrow preemption at the federal level, falls to the states and locals to regulate. Clearly, cities and counties are the most knowledgeable of what technology choices (wired or wireless) would be **best to close the Digital Divide** in their communities.

A one-size-fits all program for a state of nearly 40 million people with vastly different climates, geographies and topographies (compare South Lake Tahoe to San Diego to Modesto) is doomed to fail. **California's Cities and counties, therefore, need to retain their power to set their own policies** for the placement, construction and modification of personal wireless service facilities. That is the best way that the cities and counties can balance the needs of high tech businesses and the needs of their community to achieve the following:

- to provide sufficient telecommunications service
- to preserve the quiet enjoyment of streets (and homes)

- to mitigate the significant nuisances caused by constructing sWTFs in the public rights-of-way
- to keep sWTF antennas from being too low to the ground and too close to homes
- to protect against insufficiently-regulated maximum effective radiated power — a certified RF expert measured **electromagnetic power through-the-air** in a bedroom in Sacramento from a sWTF that is 60 feet away at **30 million times higher than what is needed** for excellent telecommunications service.

This excessive electromagnetic power caused **two young children sleeping in that bedroom to become sick in a matter of weeks**. They were each diagnosed by their physician in 2019 with ICD-10-CM Diagnosis Codes: W90.0XXA: Exposure to Radio-frequency Radiation, initial encounter; W90.0XXD: Exposure to Radio-frequency Radiation, subsequent encounter; W90.0XXS: Exposure to Radio-frequency Radiation, sequela. The family was forced to abandon the use of their front yard and to spend over $15,000 to shield their home.

In 2017, the Wireless industry attempted to pass a very similar bill, SB.649, which faced stiff resistance from the League of CA Cities, over 300 California cities, and hundreds of citizen organizations. The deliberation ended with votes of 22-18 in the Senate, 46-33 in the Assembly and a veto by Gov. Jerry Brown, writing on Oct 15, 2017:

California Gov. Jerry Brown:

> "I believe that the interest which localities have in managing rights-of-way requires a more balanced solution than the one achieved in this bill [SB.649]."

The Wireless industry plan for 2021 is to force California to deliberate again on an almost identical bill, but split the desired provisions across three separate bills: CA's 2021 "Demolish Local Control" Telecom bills: AB.537, SB.556 and SB.378. **Why is the Wireless industry wasting everyone's time and the taxpayer's money to attempt this same industry heist of local control all over again**?

AB.537 is a Power Grab That is Built on a Foundation of Sand

Text of AB.537, amended on May 27, 2021

> "regulations contained in Subpart U (commencing with Section 1.6001) of Part 1 of Subchapter A of Chapter I of Title 47 of the Code of Federal Regulations."

These rules, which originated in FCC Orders 18-30 and 18-133 have significant problems of foundation, as explained in the subsequent pages. In the words of the nation's top Anti-Cell Tower attorney, Andrew Campanelli, Esq., from this video:

Andrew Campanelli, Esq.:

> "I don't think that FCC 18-133 has any effect on a town's ability [to regulate] because . . .

1. The FCC can’t take away the powers preserved to towns by Congress — it wasn’t intended
2. The FCC can’t wipe out twenty years of Federal judges’ interpretations
3. The FCC can’t strip local governments of 20 years of local zoning regulations

The Wireless industry is going from town to town, showing FCC 18-133 as gospel and the closest thing I have to a decision on this, so far, is one Federal judge in New York said and I’ll quote him:

‘**It is not up to the FCC to put words in the Telecommunications Act that aren’t there**.’

So, that’s why I think I am right. I know local towns still have the power to control the placement of Wireless Telecommunications Facilities (WTFs). To the extent an applicant says ‘You have to give [this permit] to us because of this [September 2018] interpretive Order’ — **I don’t think the Order has any effect on the ability of towns to control the placement of Wireless Facilities at all**."

AB.537 is a classic, gold-plated invitation to long-term litigation and liability. This bill would wipe out privacy of nearly every Californian and would significantly degrade public safety, community aesthetics and property values — before the litigation "kicks in"".

The 2019 CA Supreme Court Ruling in T-Mobile v San Francisco states:

"**The City has inherent local police power to determine the appropriate uses of land within its jurisdiction**. That power includes the authority to establish aesthetic conditions for land use . . . We also disagree with plaintiffs’ contention that section 7901’s incommode clause limits their right to construct [telephone] lines only if the installed lines and equipment would obstruct the path of travel. Contrary to plaintiffs’ argument, the incommode clause need not be read so narrowly.

. . ."Travel is not the sole use of public roads; other uses may be incommoded beyond the obstruction of travel. (T-Mobile West, at pp. 355-356.) For example, [Telecom] lines or equipment might **generate noise, cause negative health consequences, or create safety concerns**."

In conclusion, AB.537, SB.556 and SB.378 interfere with a City's inherent local police power to preserve the quiet enjoyment of streets, the **very powers that are needed to deliver actual public safety to its residents**.

Signing AB.537, SB.556 and SB.378 into Law Would Result in Far Too Much Harm

1. City and counties would be forced to participate in an insurance fraud scheme as no Wireless Carrier or agent can get insurance to cover claims for injury, illness or death from Electromagnetic Fields (EMF) or RF Electromagnetic Microwave Radiation (RF-EMR) exposures on city-owned streets, parks and workplaces, creating complex long-term litigation and

liabilities. (See https://scientists4wiredtech.com/thisworks)

2. Those living and owning businesses next to sWTFs will face 20-30% drops in property values of both residential and commercial properties.

3. Aesthetics harms will affect city, private residential and commercial properties

4. Public Safety hazards will be created in public rights-of way, including but not not limited to "noise [of all kinds] and negative health consequences."

5. The currently coordinated exercise of federal, state and local roles based on the "Police Power" reserved to the States by the U.S. Constitution, and largely delegated to cities by the California State Constitution are working fine right now. **AB.537 will scramble this process and force the cities and counties to assume too much liability**.

Even if one sympathized with the bill's goals, the bill would require extensive hearings, amendments and other changes to put it into a manageable form. Any attempt by a state to pass bills that are inconsistent with the US and California Constitutions and inconsistent with federal legislation, including but not limited to the 1996 Telecommunications Act (“1996--TCA”), the National Environmental Policy Act ("NEPA"), the Americans with Disabilities Act ("ADA") and the Fair Housing Amendments Act ("FHAA") would have a predictable outcome in the courts.

These problems are examined in more depth in the subsequent pages. If you have any questions about any of these points, or the references supporting them, please call me at the number above.

It is hard to imagine a more gold-plated invitation to litigate and a more obvious threat to the public safety, privacy and property values of the cities and the citizens of this state, than AB.537.

Sincerely.

/s/
Gary Widman
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/s/
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