Appendix A: Deemed-Approved Remedies Are NOT Consistent with Federal Telecom Statutes or FCC Orders

AB.537 violates the 1996 Telecommunications Act and is inconsistent with various U.S. Court of Appeals Rulings in the 9th Circuit and an important CA Supreme Court Ruling from 2019:

- 2005 Ruling in 9th Circuit Case No. 03-16759 — Metro PCS v San Francisco https://scientists4wiredtech.com/metro-pcs-vs-san-francisco/
- 2008 Ruling in 9th Circuit Case No. 05-56076 — Sprint v San Diego https://scientists4wiredtech.com/2008-sprint-v-san-diego/
- 2019 Ruling in CA Supreme Court Case No. S238001 — T-Mobile v San Francisco https://scientists4wiredtech.com/2019-ca-supreme-court-decision-t-mobile-v-san-francisco/
- 2020 Ruling in 9th Circuit Case No. 18-72689 — City of Portland. v. FCC https://scientists4wiredtech.com/ninth-circuit-case-repeal-of-fcc-18-133/

2021's AB.537 attempts to replace 2015's CA AB.57 and then attempts to tie CA State law to the current — and future — orders from a fully-captured Federal agency: the Federal Communications Commission (FCC). The FCC is staffed with members of the American Legislative Exchange Counsel (ALEC), and is a revolving door for people moving to and from the FCC and the Wireless Carriers and Wireless Industry Trade associations. The current FCC "60-day shot clock" order for so-called "small" Wireless Telecommunications Facilities (sWTFs), FCC 18-133, lacks foundation and is subject to case-by-case adjudication, as admitted by FCC Attorney Scott Noveck in US Court of Appeals, 9th Circuit:

From Feb 10, 2020 *Oral Argument by FCC Attorney Scott Noveck → https://youtu.be/zoZHNSOibmo?t=38m10s*

> "These Orders [FCC 18-111 and FCC 18-133] are **not self-enforcing.** The contemplate **the need** in many circumstances **for further case-by-case adjudication** and in those instances either someone would have to come back to the Commission or go into court."

AB.537 is attempting a Wireless Industry end-run around the established framework of "cooperative federalism" (a balancing of the needs of local communities and Wireless carriers) which was recognized as the legislative intent of the 1996-TCA by the US Supreme Court in their 2005 Ruling in Palos Verdes v Abrams:

> "Congress initially considered a single national solution, namely a Federal Communications Commission wireless tower siting policy that would preempt state and local authority. Ibid.; see also H. R. Conf. Rep. No. 104-458, p. 207 (1996). But Congress ultimately rejected the national approach and substituted a system based on cooperative federalism. Id., at 207-208."

The 1996-TCA Conference Report includes plain language that explains that the 1996-TCA only provides limited preemption of local authority for personal wireless services (wireless phone calls).

Appendix B: AB.537 Would Unnecessarily Demolish Local Control over Wireless Infrastructure

Please do not unwittingly rubber-stamp such a demolition of local control by voting for AB.537, a draconian and unnecessary deemed-approved power grab — which attempts to codify the current (and future, yet to be defined) "presumptive" FCC shot clocks as CA State law.

This affects not just co-locations but also **the construction of new Wireless Telecommunications Facilities (WTFs)** of any size or any "G". This bill is so ambiguous that it even self-contradicts, making the

language of the bill even internally inconsistent. We are surprised that such a fatally-flawed bill has made it past CA State Legislative Counsel.

The following statements from Assemblymember Bill Quirk,the sponsor of AB.537 are **false**. He can make no claims of safety because he is not a medical professional. We already have medical professionals in Sacramento diagnosing children with microwave radiation sickness from RF Electromagnetic Microwave Radiation (RF-EMR) exposures — **at Signal Strength power that is 30 million times higher than needed for telecommunications service** — from a Verizon so-called "small" Wireless Telecommunications Facility (sWTF) installed 60 feet from a Sacramento home.

In addition, there are no Federally-mandated shot clocks for Wireless Telecommunications Facilities (WTFs) because the FCC rules from 209, 2019 and 2018 only state FCC preferences and presumptions. These FCC Orders are not federal law or federal mandates, they are merely guidance from the FCC and **set up only presumptive shot clocks** -- without any deemed-approved remedies.

Finally, the foundation for the proposed 60-day shot clocks for sWTFs was erased by the FCC actions mandated by the DC Circuit Court of Appeals Ruling in Case No. 18-1129, *Keetoowah v FCC* which is described here:

- https://scientists4wiredtech.com/2019/08/federal-court-overturns-fcc-order-bypassing-environmental-review-for-4g-5g-wireless-small-cell-densification/#summary
- https://scientists4wiredtech.com/2019/08/federal-court-overturns-fcc-order-bypassing-environmental-review-for-4g-5g-wireless-small-cell-densification/#mandate

The FCC took actions, based on that court mandate, as described by Ms. Garnet Hanly, Division Chief of the Competition & Infrastructure Policy Division, FCC Wireless Telecommunications Bureau on Oct 19, 2020:

> "The FCC when it modified its rules [Title 47, C.F.R. § 1.1312(e) by its October 2019 Order that became effective on Dec 5, 2019], after the DC Circuit issued its mandate [in its Ruling of Case No. 18-1129 Keetoowah v FCC] we **[the FCC] took the position that we were reviewing Small Wireless Facilities as [Federal] undertakings and major Federal actions**, pursuant to the DC Circuit decision and that is what we've been doing."

Asm. Quirk Comment in April 13, 2021 Assembly Committee on Local Government Hearing re AB.537:

> "With updated Federal rules, AB.537 ensures that local governments make decisions within the **federally-mandated** timelines . . . we do not intend to change the federal guidelines and the purpose of this bill is to have a remedy if governments don't meet those guidelines, so **I guarantee you that this bill will not emperil safety**. Thank you. "

Asm. Quirk in all AB.537 Assembly Committee Analyses:

> " AB 537 **will align California law with federal law** to ensure that local jurisdictions approve of these projects within reasonable periods of time** and utilize permitting best practices."

- 2021-0413-AB537-Assembly-Local-Government-Analysis
- 2021-0428-AB537-Assembly-Communications-and-Conveyance-Analysis
- 2021-0519-AB537-Assembly-Appropriations-Analysis
- 2021-0521-AB537-Assembly-Floor-Analysis
- 2021-0527-AB537-Assembly-Floor-Analysis

From AB.537 Analysis by Angela Mapp

> "The FCC adopted a new remedy whereby inaction within the shot clock time frames constitutes a "presumptive prohibition" on the provision of wireless services pursuant to federal law. The FCC considered this remedy sufficient, as an applicant would 'have a straightforward case for obtaining expedited relief in court.'"

The federal judges in the US Courts of Appeals are very clear on this point:

Ruling on Ninth Circuit Case 18-72689, City of Portland et al v FCC re: FCC Order 18-133

> "the FCC concluded that under its new shot clock rules, which shorten the time frames and expand the applicability of the rules, there will be no similar bar to wireless deployment. Because the FCC reasonably explained it has taken measures to reduce delays that would otherwise have occurred under its old regime, **the factual findings here do not compel the adoption of a deemed granted remedy**."

Presumptive defined:

> "based on a legal inference as to the existence or truth of a fact **not certainly known** that is drawn from the known or proved existence of some other fact

***From 1996**, in the 1996-TCA Conference Report:*

> "the time period for rendering a decision will be the usual period under such circumstances. It is **not the intent** of this provision **to give preferential treatment to the personal wireless service industry** in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision.

***From 2013** , in the US Supreme Court Ruling in Arlington v FCC:*

> In November 2009, the [FCC], relying on its broad statutory authority to implement the provisions of the Communications Act, issued a declaratory ruling responding to CTIA's petition. In the Declaratory Ruling, 24 FCC Rcd. 13994, 14001 . . . A "reasonable period of time" under §332(c)(7)(B)(ii), the Commission determined, is **presumptively (but rebuttably)** 90 days to process a collocation application (that is, an application to place a new antenna on an existing tower) and 150 days to process all other applications. Id., at 14005.

From the August 1, 2020 Ninth Circuit Court of Appeals Ruling on FCC Order 18-133, which proposed 60-day shot clocks: the Ninth Circuit judges wrote in the Case No. 18-72689 Ruling, City of Portland et al. v FCC:

> "It must be remembered that the 'shot clock requirements create **only presumptions**'. As under the 2009 Order, if permit applicants seek an injunction to force a faster decision, local officials can show that additional time is necessary under the circumstances."

Appendix C: Make AB.537 a Two-Year Bill in the CA 2021-2022 Legislative Session

AB.537 requires another Quality Assurance (QA) step to clean up this language before an Assembly floor vote. Given current 2021 Legislative deadlines, this would make AB.537 a two-year bill to be first corrected and then considered in Jan 2020. That is a reasonable next step for such a bill that is essentially void ab initio in its current form and, therefore, could be subject to immediate legal challenge by any California city or county.

Firefighters received an exemption in AB 537 based upon the science showing negative health consequences from excessive radiated power from Wireless Telecommunications Facilities (WTFs) placed on

the facilities where the firefighers lived and worked. Californians' children, pregnant women, elderly and those with compromised immune systems, and with implanted medical devices deserve similar protection.

In previous legislation, 2015's CA AB.57, California legislators recognized the need to protect the health of public safety for firefighters, but not for the residents of communities. Every firefighter tested had measurable brain abnormalities from exposure to excessive radiated power from WTFs.

Note: AB 537 has the identical exemption as AB.57. This part of the bill admits that the wireless transmitters located in close proximity to people are dangerous.

2021 AB 57: Sec 1. (f)

> "Due to the unique duties and infrastructure requirements for the swift and effective deployment of firefighters, this section does not apply to a collocation or siting application for a wireless telecommunications facility where the project is proposed for placement on fire department facilities."

2021 AB 537: Sec 2. (h)

> "Due to the unique duties and infrastructure requirements for the swift and effective deployment of firefighters, this section does not apply to a collocation or siting application for a wireless telecommunications facility where the project is proposed for placement on fire department facilities."

This web page is one of three legs of the stool that establishes local control over the operations of Wireless Telecommunications Facilities (WTFs); the other two are the US House/Senate Conference Report for the 1996 Telecommunications Act ("1996-Act") and the stated purpose of the 1996-Act: **to promote the safety of life and property.**

Appendix D. Wireline Broadband and Wireless Broadband are NOT Functionally Equivalent Services

Wireline Broadband is far superior to Wireless Broadband as one can see in the following table.

	Wireline FTTP Broadband	**Wireless Broadband**
Data Medium	Wireline glass fiber	Wireless through the air
Spectrum	Visible Light	Microwave
Frequencies	Terrahertz	Megahertz
Frequency Ranges	405,**000,000,000,000** Hz to 790,000,000,000,000 Hz	600,**000,000** Hz to 86,000,000,000 Hz
Frequency Ranges	405 × **1012** Hz to 790 × 1012 Hz	600 × **106** Hz to 86,000 × 106 Hz
Wireless Interference	None	Ubiquitous
Data capacity	Huge	Limited
Download speed	1,000 Mbsp down	25-100 Mbsp down
Upload speed	1,000 Mbsp up	5-10 Mbsp up
Latency	1-5 milli-seconds	10-50 milli-seconds

	Wireline FTTP Broadband	**Wireless Broadband**
Energy-efficiency	Extremely efficient	Extremely inefficient
More Frequent Installation	Underground	On poles
Less Frequent Installation	On poles	Underground
Ease of date capture	Difficult	Easy
Security	Much more secure	Much less secure
National Security	More reliable	Much less reliable
Electromagnetic Pulse Attack	Survives	Does not survive
Fire: Natural or Attack	Survives Underground	Does not survive
Health Effects	None	Many Proven*
Biological Effects	None	Many Proven*
Environmental Effects	None	Many Proven*
Impacts in/from PROW	None	Significant**

* Link to tens of thousand of peer-reviewed studies — established science that proves Negative Health, Biological and Environmental Impacts of RF microwave radiation exposures

**Link to safety, privacy and property value harms from Wireless Telecommunications Facilities (WTFs) installed near homes

So why are the 2021 CA Broadband bills allegedly technology neutral, but point to wireless broadband as the preferred solution? The opposite is true.

Broadband regulation in the US has been a ping pong match for the last 25 years, based, in part, on these federal definitions:

The more complete answer is that the 1996-TCA set up a system of **cooperative federalism,** that rests on Title 47 U.S.C. § 332 . . .

Title 47 U.S.C. § 332

> (7) Preservation of local zoning authority
>
> (A)General authority
>
> **Except as provided** in this paragraph, **nothing in this chapter shall limit or affect the authority of a State or local government** or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.
>
> (B)Limitations
>
> (i)The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof . . .

. . . and rests on the 2005 US Supreme Court Ruling in Palos Verdes v Abrams:

Justice Breyer, with whom Justice O'Connor, Justice Souter and Justice Ginsburg join, concurring.

> "Context here, for example, makes clear that Congress saw a national problem, namely an "inconsistent and, at times, conflicting patchwork" of state and local siting requirements, which threatened "the deployment" of a national wireless communication system. H. R. Rep. No. 104-204, pt. 1, p. 94 (1995).

> Congress initially considered a single national solution, namely a Federal Communications Commission wireless tower siting policy that would preempt state and local authority. Ibid.; see also H. R. Conf. Rep. No. 104-458, p. 207 (1996). But **Congress ultimately rejected the national approach and substituted a system based on cooperative federalism.** Id., at 207-208..

> State and **local authorities would remain free to make siting decisions** They would do so, however, subject to minimum federal standards."

This 2005 US Supreme Court Ruling elevates the 1996-TCA Conference Report to the status of federal law, as a definitive source of legislative intent of the 1996-TCA. That is critically important to the voide ab initio status of AB.537 because the 1996-TCA conference is evidence that proves that both CA AB.57 (from 2015) and its proposed replacement AB.537 (from 2021) are **not consistent with the legislative intent of the 1996-TCA:**

H. R. Rep. No. 104-204

> "The conference agreement creates a new section 704 which prevents Commission preemption of local and State land use decisions and **preserves the authority of State and local governments** over zoning and land use matters . . . When utilizing the term **'functionally equivalent services'** the conferees are referring **only to personal wireless services** as defined in this section that directly compete against one another . . . will provide localities with the flexibility to treat facilities that create different visual, aesthetic, or safety concerns differently . . . For example, the **conferees do not intend** that if a State or local government grants a permit in a commercial district, it must also grant a permit for a competitor's **50-foot tower in a residential district**."

Finally, it has already been ruled in least two federal courts that:

- United States District Courts sitting in New York are bound to follow the States Court of Appeals' interpretation of the "effective prohibition" language of the 1996-TCA, and not the FCC's attempt to reinterpret the very same language within the 1996-TCA ; and
- just because Congress has not updated the 1996-TCA to keep up with changing technology, it is not up to the FCC to construe the 1996-TCA to say something it does not say."

The same thing applies in the U.S. Court of Appeals for the Ninth Circuit, which has ruled that a locality could violate the 1996-TCA's effective prohibition clause if it prevented a wireless provider from closing a "significant gap" in service coverage.

Such a claim generally "involves a two-pronged analysis (1) the showing of a 'significant gap' in service coverage and (2) some inquiry into the feasibility of alternative facilities or site locations."

The "effective prohibition" clause in the 1996-TCA is not affected by the FCC Orders from 2018.