

Local Government Telecommunications Policy Checklist for 2025 – 2026

The remainder of 2025, continuing into 2026, promises fundamental changes to federal policy across the board, and telecommunications is no exception. Local governments continue to face the twin challenge of addressing the broadband needs of families, businesses and schools while simultaneously enforcing their police powers, regulatory authority and property rights against an industry push to further preempt local control of land use and local public property through federal and state action. Strong advocacy before Congress, the Federal Communications Commission (FCC) and the courts will be critical to counter threats damaging to local interests. BBK has issued a [Call to Action: Impending Threat to Communities' Property Rights, Revenues and Police Powers Demands Planning and Response from new Telecommunications Legislation and Rules](#). Below is a useful checklist for municipalities to consider when implementing telecommunications initiatives this year:

1. Oppose proposals that further restrict local authority and revenues.

If the communications industry has its way, federal and state legislatures and regulators will expand their preemption of local authorities to manage and receive compensation for communications providers' private commercial use of local streets. Since the new Congress began in January, at least three new bills have been introduced in the House (HR 278, HR 339 and HR 1975) that would preempt a wide swath of local authority over right-of-way management and compensation; land use and zoning authority, with cable franchising and

broadband infrastructure permitting next on the industry's target list. With unified GOP control of the White House, Congress and the FCC, the prospects for enactment of such local preemption legislation and regulation are disturbingly high.

At the Federal Communications Commission, Chairman Brendan Carr, who authored the Project 2025 chapter on telecommunications policy is openly championing additional preemption of permitting and compensation authority. In docket, "[Delete, Delete, Delete](#)" (GN 25-133), he has sought to frame as an effort to collect information on FCC rules that should be deleted. We anticipate, however, that the docket will generate requests from various industry sectors to increase constraints on local government authority in order to alleviate allegedly unnecessary local level regulatory burdens. For example, the USTelecom Association urged the FCC to preempt local permitting to facilitate broadband infrastructure deployment.

AI/Data Center Preemption Efforts

The newest threat to local authority is grounded in the Administration's efforts to facilitate the deployment of AI/Data Centers.

The White House released "[Winning the AI Race: America's AI Action Plan](#)," and an Executive Order on [Removing Barriers to American Leadership in AI](#).

Two of the primary threats to state and local governments in this effort are to:

1. Withhold federal AI funds from any state that has what the federal government believes are restrictive rules on AI; and

2. Direct the FCC to identify and preempt any state and local laws that might be seen as a threat to the required fiber deployments needed to support AI and data centers.

A full moratorium on federal funding to local governments to support AI Deployments, in states with ai regulations, was contained in the Reconciliation, but removed at the last hour by a bi-partisan collection of champions of state and local governments. As noted above, the threat remains.

2. Be ready to fight to protect hard-won gains.

Successful advocacy before the courts has resulted in some industry defeats in recent years. Expect the industry to try to reverse those in new administrative rulings or laws. For example, the FCC's 2019 Section 621 Cable Order re-interpreted franchise fees to include many non-monetary or in-kind franchise requirements, such as providing an Institutional Network (I-Net) for local government use and complimentary cable services to government buildings. Local governments successfully challenged the 2019 Order in [*City of Eugene v. FCC*](#) resulting in a 2021 appeals court decision that rejected the FCC's market rate valuation of in-kind requirements in favor of marginal cost valuation. When the FCC will revise its published rules to conform with the court's decision remains unclear.

As another example involving wireless, local government advocacy at the FCC and in the Ninth Circuit resulted in meaningful limitations on the potential growth of existing wireless facilities through ministerial approvals required by federal rules applicable to eligible facilities requests or EFRs. Now we are seeing industry bills floated in state legislatures ostensibly seeking to enshrine federal rules into state law, but crafted in such a way to evade these limitations.

3. Prevent cable operators' attempts to avoid their existing obligations to communities.

Localities should beware that cable operators are already making demands of local jurisdictions based on the operators' skewed interpretations of the FCC's rules and the Eugene court decision, such as seeking fair market value for in-kind or

non-monetary franchise requirements instead of marginal cost. Where cable operators do seek compensation for in-kind requirements, local governments should seek proof of marginal costs where appropriate, unless the amount proposed is minimal. Additional insights can be found in this [BBK Legal Alert](#). Importantly, the Eugene court did not alter FCC rulings requiring operators to notify franchising authorities if they intend to claim franchise fee offsets, and directing that franchise terms must be renegotiated within a reasonable period of time (they do not automatically take effect).

Further, the cable mixed use rule, which limits local authority and constrains franchise fee assessments, combined with changing cable industry business models, will require continued close attention in 2025. There is no question that a broad formulation of the FCC's mixed-use rule gives operators incentives to shift revenues to what are claimed to be "non-cable" services but continue to take advantage of their right, under the mixed use rule, to occupy rights-of-way by paying fees based on cable revenues alone—not broadband revenue.

In this fluid environment, it is imperative that local governments seek their own legal counsel's advice rather than relying on cable operators' self-interested views.

Likewise, increased consumer shifting to video streaming services, coupled with changes in cable operator accounting practices, are re-categorizing revenues and reducing local governments' cable franchise fees. Enforcing and monitoring current franchise agreements can make a big financial difference. Local governments have shown an appetite for pursuing streaming video revenues via numerous pending lawsuits seeking to capture franchise fees on video streaming services through state video franchising statutes, with little success so far. But the same industry trends underlying these changes could cause Congress and state legislatures to revisit laws based on outdated industry frameworks and take a fresh look at how best to manage, and have the communications industry pay its fair share for its use of, local public rights-of-way. Local governments must be a part of that conversation.

4. Ensure local wireless regulations and procedures are consistent with federal and state wireless rules.

After an onslaught of new FCC rules and court challenges in recent years, the top issues concerning wireless siting have largely moved from fighting *against* new federal rules and state laws, to addressing implementation challenges and litigation under those new rules and laws -- with a few exceptions. Local governments' challenge to the FCC's 2020 [Eligible Facilities Requests](#) declaratory ruling was argued before the Ninth Circuit in July 2023. The 2020 FCC ruling permitted a much wider range of wireless site modifications to take advantage of the federal rules that short-cut local procedures and mandate local approval. A court decision on local governments' challenge to the 2020 ruling in late 2024 resulted in a victory for local governments.

Updated ordinances, processes and forms continue to offer a local government the best protection in processing applications consistent with federal shot clocks and avoiding federal (and state) deemed granted remedies and litigation. While many jurisdictions have implemented code changes to fill in gaps in regulation to address small cell deployments in the public rights-of-way, local governments should also review and consider updating their traditional land use and zoning rules for wireless siting outside the public rights-of-way.

Monitoring the courts will also be important. The U.S. Supreme Court's June 2024 decision in [Loper Bright](#) overturning [Chevron](#) deference to federal agencies in certain circumstances may reduce the deference courts have historically given to FCC decisions. The Court's June 2025 decision in [McLaughlin Chiropractic Associates](#) ruling that federal courts are not bound by an agency decision in subsequent civil enforcement proceedings opens up the possibility, in certain circumstances, of challenging an FCC decision in later court actions rather than appealing the FCC's decision. Depending on the nature of an FCC decision, as well as the political makeup of the FCC, these cases could help, or hurt, local governments seeking review of, or relief from, FCC orders.

With the law in such a state of flux, it is wise for localities to seek expert counsel in these matters. Localities should also monitor cases in their own region. There might be opportunities to participate or intervene in a federal Court of Appeals case that will determine the law going forward for all localities governed by a particular federal circuit.

5. Strategic negotiation of wireless agreements.

Outside of permitting, strategic negotiation of agreements for placement of wireless facilities on public property can offer substantial benefits and avoid unnecessary pitfalls. BBK will be offering a Fall Clean Up webinar series with tips for local governments in Fall 2025.



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6. Access new and existing federal and state programs to facilitate broadband availability and affordability.

After many years of establishing state and federal broadband funding programs, 2025 should have been the year that broadband projects were commenced. Because the Trump Administration significantly modified the Broadband Equity, Access, and Deployment (BEAD) Program midstream, we encourage local governments to check regularly with their national organizations for updates to determine when projects might begin, and how they may change under new guidelines.

Resources can help communities pursue affordable broadband access for all of their constituents, residential and business alike. Building strong relationships with state partners and agencies will be key, as will careful attention to compliance with grant funding requirements and grant conditions. You should engage in federal and state policymaking processes early and often. You should also join with other local governments in resisting broadband



industry efforts to cast local government authority as a “barrier” to broadband availability.

7. Stay connected, informed and funded for action.

Things are moving fast, and it is more important than ever to stay connected with BBK, your state league, and national associations.

Now is the time to gather facts showing successful broadband deployments in your community and any barriers your community identified and eliminated. This will help you be prepared to counter the incorrect claims that local governments impede

successful deployment, as well as have information ready to keep your elected leaders up to speed on threats and responses.

Equally critical will be the need to set aside a budget to defend your local authority. That will enable your community to respond quickly to preemption threats as they arise.

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