

Regular Meeting
Connecticut Metropolitan Council of Governments
Thursday, December 19, 2019 at 10:00am
MetroCOG Conference Room Bridgeport, Connecticut

Name	Representing
Joseph Ganim, Mayor (Ken Flatto, Proxy)	Bridgeport
Brenda Kupchick, First Selectwoman (Jackie Bertolone, Proxy)	Fairfield
Ken Kellogg, First Selectman, Chairman	Monroe
Laura Hoydick, Mayor (conference call)	Stratford
Vicki Tesoro, First Selectman	Trumbull
Matthew Fulda, Executive Director	MetroCOG
Patrick Carleton, Deputy Director	MetroCOG
Devin Clarke, Transportation Planner	MetroCOG
Colleen Kelleher, Finance Director	MetroCOG
Meghan Sloan, Planning Director	MetroCOG
Sara Radacsi (conference call)	CTDOT
Meg Haffner	Kennedy Center
Paska Nayden, Easton	
Dan Pflug, Easton	

Minutes

I. Call to Order (MetroCOG Officer)

The meeting was called to order by the Vice Chairman, Mayor Hoydick, at 10:05 AM.

II. Election of Officers

Mayor Hoydick nominated First Selectman Kellogg Chairman, the nomination was seconded by First Selectman Tesoro. There were no other nominations, the nomination carried unanimously.

First Selectman Kellogg nominated Mayor Hoydick Vice Chair. The nomination was seconded by Mr. Flatto. The nomination carried unanimously.

Mayor Hoydick nominated First Selectman Tesoro Secretary. First Selectman Kellogg seconded the nomination, the nomination carried unanimously.

Mr. Flatto congratulated and showed his appreciation for the growing number of female board members.

III. Public Participation

Paska Nayden of Jessie Lee Drive in Easton expressed her concern over the 5G activation scheduled to happen in Bridgeport beginning in January or February. She was at the meeting to share some facts that she thought the board should be made aware of and the effects of 5G on humans, animals and the environment. (Attachment A)

Dan Pflug of Palmer Place in Easton also expressed his concern of 5G and noted that Representative Hughes was looking to implement a safety study.

IV. Approval of Meeting Minutes

a. November 21st, 2019

A motion to approve the meeting minutes from November 21st was made by Mr. Flatto and seconded by First Selectman Tesoro. The motion carried with Ms. Bertolone abstaining.

V. Communications & Announcements

a. FY 20 Regional Performance Incentive Program (RPIP)

Mr. Fulda announced that OPM had released RPIP funding and the application was due at the end of December and legislative resolutions were due at the end of February.

First Selectman Kellogg acknowledged the more lead time the better.

VI. Other Business

- a. MetroCOG Annual Meeting
Mr. Fulda noted the annual meeting would begin at 6PM and he looked forward to seeing everyone there.

- b. Local Transportation Capital Improvement Program (LOTICIP)
Mr. Fulda commented that the Legislature has not passed the bond program yet and projects could not be programmed until the bonding was approved.

First Selectman Kellogg inquired if the State Bonding Commission met this month.

Mr. Fulda responded that only historical projects were approved.

- c. Next Meeting Dates
 - i. January 30, 2020 (immediately after MPO meeting)
 - ii. February 27, 2020

VII. Communications & Announcements

- a. Presentation by Ms. Kristen Brown from Waste Zero
Ms. Brown explained that she was presenting to COGs to determine interest in the SMART Waste Program. She proceeded to provide her background.

Ms. Brown explained that the purpose of the program was to reduce trash through education and innovation. She then described how the program worked and the impact it has had on municipalities who have implemented the program.

First Selectman Tesoro and First Selectman Kellogg expressed concerns regarding the high recycling rates.

There was a brief discussion regarding who was responsible for picking up the SMART bags.

Mayor Hoydick noted that she has worked with Ms. Brown before and credited her for the compactors in Stratford.

VIII. Adjourn

A motion to adjourn was made by First Selectman Tesoro and seconded by Mayor Hoydick. The meeting was adjourned at 11:02 AM.

First Selectman Vicki Tesoro
MetroCOG Secretary

Attachment A

First Selectman, David Bindelglass, eAddress: DBindelglass@eastonct.gov
Selectman, Kristi Sogofsky, eAddress: KSogofsky@eastonct.gov
Selectman, Robert Lessler, eAddress: RLessler56@gmail.com
225 Center Road
Easton, Connecticut 06612

Matt Fulda, eAddress: MFulda@ctmetro.org
Executive Director
Connecticut Metropolitan Council of Governments
1000 Lafayette Boulevard, Suite 925
Bridgeport, Connecticut 06604-4902

Re: Notice of Appellate Decision relating to processing Small Cell applications and from allowing any placement, construction, modification that involves the addition of any antenna, and operations of any new Wireless Telecommunications Facilities (WTFs)

December 19, 2019

Dear Easton First Selectman, Selectmen and Executive Director of Connecticut Metropolitan Council of Governments and all the Board Members of the CT Metro Council of Governments: Bridgeport, Monroe, Fairfield, Stratford, and Trumbull which are not directly listed above.

You have currently before you, or soon will have, applications submitted to you or your staff requesting authorization to locate and construct new wireless communications facilities (WTFs) to facilitate a new, 4G-5G network. We want to advise you that on August 9, 2019 the FCC 18-30 Order exempting such facilities from environmental review was invalidated by the final decision of the United States Court of Appeals for the District of Columbia in Case Number 18-1129 (a copy of which is attached hereto for your reading convenience).

In addition, the DC Circuit Court of Appeals further ruled against FCC overreach on October 1, 2019, as follows:

Case 18-1051 page 146, re: *Restoring Internet Freedom*, 33 *FCC Rcd.* 311 (2018) ("2018 Order") states:

"[because] the Commission's Preemption Directive, see 2018 Order ¶¶ 194–204, lies beyond its authority, we vacate the portion of the 2018 Order purporting to preempt "any state or local requirements that are inconsistent with [the Commission's] deregulatory approach[.]" see id. ¶ 194."

As such, we recommend that you delay any authorizations for such applications until you can be assured that the environmental assessments and environmental impact statements required by law have been completed, submitted to the FCC, and approved.

Lastly, the Telecommunications Act of 1996 (TCA) does not pre-empt the state's and local governments' obligations and duties to protect safety and property as within their regulatory authorities. At base, 47 U.S. Code § 151, the US Congress created FCC "for the purpose of promoting safety of life and property". And at 47 U.S. Code § 332, Congress reiterated its purpose for telecommunications: "to promote the safety of life and property". Any official acting so as to harm either is ultra vires.

Moreover, per the below reprint, TCA § 704 subpart iv preempts environmental effects but does not preempt health effects. Thus, inclusively, the placement, construction, modification and operations of WTFs must all be regulated on the basis of the health effects of the radiofrequency radiation therefrom. Furthermore, because Congress excised the initially attempted preemption of WTF *operations* from out of TCA, the environmental effects of the operations of WTFs remain within state and local authorities as a basis for regulatory action. We observe that the Selectmen, Mayors, and the CTMetro Council of governments, as a state and local governance and / or instrumentality thereof, are each authorized and thereby obligated to regulate WTFs' operations on any and every basis, including health effects, environmental effects, effects upon agriculture, real estate, historic preservation, aviation safety, weather forecasting, state and local economies, and more.

States and Local municipalities control operations and decisions based on health effects. No mention of Operations and Health Effects being pre-empted.
110 STAT. 152 PUBLIC LAW 104-104—FEB. 8, 1996
“(iv) No State or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.”

We thank you for your assistance in this matter and we look forward to receiving your response in 15 calendar days.

Sincerely,



Dan Pflug
Easton, Conn.



Paska Nayden
Easton, Conn.

Mailing address: Paska Nayden, P.O. Box 23, Easton, CT 06612
Email: Stop5GCT@gmail.com

Attachments:

Case Number 18-1129, Final Decision of the United States Court of Appeals for the District of Columbia

[https://www.cadc.uscourts.gov/internet/opinions.nsf/4001BED4E8A6A29685258451005085C7/\\$file/18-1129-1801375.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/4001BED4E8A6A29685258451005085C7/$file/18-1129-1801375.pdf)

Case Number Case 18-1051 page 146, re: *Restoring Internet Freedom*, 33 FCC Rcd. 311 (2018) (“2018 Order”)

[https://www.cadc.uscourts.gov/internet/opinions.nsf/FA43C305E2B9A35485258486004F6D0F/\\$file/18-1051-1808766.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FA43C305E2B9A35485258486004F6D0F/$file/18-1051-1808766.pdf)

Telecommunications Act of 1996: <https://www.congress.gov/bill/104th-congress/senate-bill/652/text>

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued March 15, 2019

Decided August 9, 2019

No. 18-1129

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN
OKLAHOMA, INDIVIDUALLY AND ON BEHALF OF ALL OTHER
NATIVE AMERICAN INDIAN TRIBES AND TRIBAL
ORGANIZATIONS, ET AL.,
PETITIONERS

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED
STATES OF AMERICA,
RESPONDENTS

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION
OFFICERS, ET AL.,
INTERVENORS

Consolidated with 18-1135, 18-1148, 18-1159, 18-1184

On Petitions for Review of an Order of
the Federal Communications Commission

Stephen Díaz Gavin argued the cause for petitioners United Keetoowah Band of Cherokee Indians in Oklahoma, et al., and supporting intervenors. With him on the briefs were *J. Scott Sybolt, Joel D. Bertocchi, Joseph H. Webster, F. Michael*

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued February 1, 2019

Decided October 1, 2019

No. 18-1051

MOZILLA CORPORATION,
PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED
STATES OF AMERICA,
RESPONDENTS

CITY AND COUNTY OF SAN FRANCISCO, ET AL.,
INTERVENORS

Consolidated with 18-1052, 18-1053, 18-1054, 18-1055,
18-1056, 18-1061, 18-1062, 18-1064, 18-1065, 18-1066,
18-1067, 18-1068, 18-1088, 18-1089, 18-1105

On Petitions for Review of an Order of
the Federal Communications Commission

Pantelis Michalopoulos and Kevin Kendrick Russell
argued the causes for non-government petitioners. With them
on the joint briefs were *Cynthia L. Taub, Markham C.*
Erickson, Michael A. Cheah, Brian M. Willen, Donald J.
Evans, Sarah J. Morris, Matthew F. Wood, Colleen Boothby,
James N. Horwood, Tillman L. Lay, Jeffrey M. Bayne,

CONGRESS.GOV

S. 652 - Telecommunications Act of 1996

104th Congress (1995-1996)

Sponsor: [Sen. Pressler, Larry \[R-SD\]](#) (Introduced 03/30/1995)
 Committees: Senate - Commerce, Science, and Transportation
 Committee Reports: [S. Rept. 104-23](#); [S. Rept. 104-230 \(Conference Report\)](#); [H. Rept. 104-458 \(Conference Report\)](#)
 Latest Action: 02/08/1996 Became Public Law No: 104-104. ([TXT](#) | [PDF](#)) ([All Actions](#))
 Roll Call Votes: There have been [28 roll call votes](#)
 Tracker: Introduced Passed Senate Passed House Resolving Differences To President **Became Law**

Summary (4) **Text (6)** Actions (228) Titles (11) Amendments (170) Cosponsors (0) Committees (1) Related Bills (2)

There are 6 versions: Text available as: [TXT](#) | [PDF](#)

Shown Here:

Public Law No: 104-104 (02/08/1996)

[104th Congress Public Law 104]
 [From the U.S. Government Printing Office]

<DOC>
 [DOCID: f:publ104.104]

TELECOMMUNICATIONS ACT OF 1996

[[Page 110 STAT. 56]]

Public Law 104-104
 104th Congress

An Act

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies. <<NOTE: Feb. 8, 1996 - [S. 652]>>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Telecommunications Act of 1996. Intergovernmental relations.>>

SECTION 1. SHORT TITLE; REFERENCES.

(a) <<NOTE: 47 USC 609 note.>> Short Title.--This Act may be cited