



# NEWS RELEASE

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## **County Joins Court Action on 5G Technology**

*Marin now among coalition of public agencies against FCC ruling for deployment*

**San Rafael, CA** – The County of Marin is filing an action in the U.S. Court of Appeals to challenge federal deployment of fifth-generation cellular wireless service, widely known as 5G.

The Marin County Board of Supervisors reported out of a closed-session meeting October 30 that it would file the action against the Federal Communications Commission (FCC) and its September 26 order to accelerate the buildout and installation of 5G technology. The Town of Fairfax is the only other Marin County municipality to file such an action.

County Counsel reported that the County will join a coalition of public entities represented by Spiegel & McDiarmid, LLP, that will appeal the FCC order. In formal comments filed with the FCC last July, Spiegel & McDiarmid argued that the wireless industry wants to transform the FCC into “a regulator of state and local governments rather than a regulator of communications service providers.” Now that the FCC has adopted the industry-favorable rules, Spiegel & McDiarmid’s coalition will take those arguments to court.

The County is taking the legal step to protest the federal government’s seizing of local control on the deployment of 5G and how implementation costs can be recovered. While local governments have always been preempted from regulating based on radiofrequency (RF) radiation concerns, local governments always have been able to regulate neighborhood aesthetics and other safety matters. The new FCC ruling handcuffs traditional areas of local regulation with new time limits and constraints.

According to the FCC ruling, which is taking effect in January 2019, cellular service providers will have access to local infrastructure at cost rather than at fair-market-value. In addition, the FCC order shortens the “shot clocks” and wireless permitting timelines, forcing local entities to act on applications for deployments on existing structures within 60 days. On new structures, municipalities would have 90 days to approve or deny applications.

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5G technology requires the installation of a greater number of smaller antennas because they have shorter range. The FCC ruling limits local governments' ability to say "no" to the cellular industry's demands based on aesthetic concerns about the antennas.

In recent Board meetings, several residents have voiced opposition to the FCC ruling. Some cited health concerns of RF radiation, but data on health impacts of 5G is inconclusive at this stage. In addition to cell phone services, RF is commonly used in radio and television broadcasting, microwave point-to-point links, satellite communications, and in noncommunication devices such as microwave ovens and industrial heaters.

Cell service providers are planning to conduct test markets in major cities later this year, and the first 5G cell phones are expected to be released next year. 5G technology allows a user to download an entire movie on a phone or mobile device within seconds. Each generation of cellular technology is defined partly by its transformative increase in speed but also its incompatibility with the previous generation.

Once Marin's filing is official, a U.S. Circuit Court of Appeals will generate a briefing schedule for the multiple agencies involved and the matter will be fully briefed. County Counsel expects oral arguments and a final ruling sometime in 2019.

In addition to the County and the Town of Fairfax, the cities of San Jose and Piedmont have filed similar actions against the FCC. Nationally, more than 20 municipalities have filed, including Los Angeles and Seattle.

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