Summary by Ben Levi

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Q: What legal arguments can be used to stop the installation of 5G and 4G antennas, whether they're near my home office or school or children's school?

AC: The majority of the 5G rollout are coming in the form of small cells, and DAS nodes. And they're not being installed by wireless carriers like Verizon and AT&T. They're being installed by site developers, which are companies that don't actually provide wireless services. They make money by installing these facilities.

Two very simple grounds are in cases where they install a facility where it will inflict an adverse aesthetic impact or reduction of property values on someone's private property, either because it's too close to their home, or in view of their home. These are both perfectly valid reasons to deny an application for any local zoning board or planning board. The key to this, however, is that any denial must be based upon substantial evidence.

So if you want to kill a specific application, whether it's for a cell tower, or DAS node or a small cell, you must not only raise the argument, you must submit substantial evidence, and you have to know what that is. And that's because one of the constraints of the Telecommunications Act says, any denial of a wireless facility must be based upon substantial evidence. So you have to raise the argument, and you have to know what evidence to submit.

It's not enough to get the Board to turn it down. If they don't turn it down for a valid reason, with substantial evidence, you're going to lose anyway. Because within 30 days after the denial, the site developer is going to file an accelerated federal lawsuit. And within 90 days, we'll get an order from a federal judge ordering the local government to allow them to put it in.

A third one is that granting the application would be inconsistent with the local government's smart planning provisions. Local governments have forced applicants to prove two things. If they want to put in a facility near a residential neighborhood, they have to prove that they suffer from a significant gap in personal wireless services, and that their installation is the least intrusive means of remedying that gap. In the world of 5G, in 90% of the applications, they can't meet that test. And so granted, the application would be inconsistent with their local zoning requirements.

A fourth issue is a lack of sufficient fall zone, especially around churches and schools. Local governments enact fall zone requirements. It is often very easy to show, especially if they want to put it near a school, that the application doesn't afford a sufficient fall zone, so that no students or any member of the public would be within the danger zone of the tower, either for structural failure, icefall, debris fall.

A special condition applies to property that's been donated, e.g. to a school or church. When somebody donates property to a school or a church, one of the most common things they do is they put a restrictive covenant in the deed that says the property can't be used for commercial purposes. I've had many cases where I found that silver bullet and killed the application, even if they got zoning approval.

Q: If you're electro-hyper-sensitive, could the ADA help protect you from having a tower put up by your home?

AS: The ADA is a standalone law, along with the Fair Housing Act. And it's important that any applicant or any person who seeks to remedy under those laws, makes a request specific to those laws. And those requests should be made, citing that law and identifying the requirement to engage in interactive process. This is distinct from somebody who's opposing the facility in an administrative proceeding, a zoning proceeding, or anything like that. It's important that they assert that they're entitled, based on disability, to have a particular proceeding, a particular interaction with the city or the county, that will be responsive to their specific needs, and that will assess specifically whether it's reasonable to relocate, or in some other way change the permit that would be issued for that site, based on the specific medical conditions of that individual.

Q: What legal arguments can be used to revoke a permit or license for a tower, once it is approved, or remove a tower once it is installed? For example, in residential neighborhoods and schools?

AC: Very often, when a site developer submits plans, it will give designs of the plans, and then it gets approval, and then it will actually build something which is different than what's shown in the plans. If they do that, the municipality can immediately revoke the permit and make them start the whole process over again. I've had cases where the permit has been revoked, and they know they can't challenge it.

Another grounds revoking the permit is if the applicant fails to comply with local zoning requirements for notice. For example, each local zoning code, if you have to get a special use permit to build a wireless facility, each local zoning code has their own notice requirements, and it requires them to give some formal notice to local property owners who may be adversely impacted. And if they fail to comply with those notice requirements, that's an easy one to get the permit revoked.

Finally, if there's some type of defect in the authorization. One of the first towers I had ripped down was when T-Mobile filed an application to build a cell tower on property owned by a water district, and it signed a lease with the water district, while in the state of New York, water districts have no legal authority to lease their own property. So under state law, the lease was invalid, and I made them rip down the tower after it was built.

So there are ways to get it ripped down after the fact, but it's far more difficult. I will tell you that when my assistance is enlisted before the application is granted, I kill it 75-80% of the time; but after the tower goes up, my success rate to get it removed drops to around 5%; it's very difficult. Not impossible, but very difficult.

AS: It's very important that anyone who's concerned about a tower or any facility try to get involved at the earliest possible moment, and pay very close attention to those appeal timelines set forth in the county code. Once you miss those appeal deadlines, you have very few good options. The city or county always has the authority to revoke a permit that was issued incorrectly. But the ability of a resident to go ahead and make that happen, it's very hard. So it's critical that anyone who's concerned about it, both generate a good

record, so that when it comes before the city council or the county board of supervisors, they have all the evidence that they need, as well as make sure that they don't miss their own appeal deadline.

SM: While I'm a regulatory lawyer, and a lot of people who do administrative law, they think everything needs to be or should be in a regulatory commission, sometimes you can find your rights just invoking the standard old cause of action, in a court, and not have to fool with the regulator, or state zoning, or a local zoning authority.

AS: One thing that does happen with after the fact towers is that when we invoke the ADA, the city or council has to assess whether the accommodation requested is reasonable, determining whether there will be a non-insignificant burden on the city or county issuing that accommodation. So one problem that arises once it's built is, that burden shifts a bit, because there's more of a burden perhaps on the county or city, or on the applicant, when you try to revoke that permit.

Q: Our city officials are afraid of the FCC and telecoms, and think their hands are tied. What legal arguments can be used to convince them that they not only have the authority, but the duty to take protective action?

AC: Even if a local government somehow violates the Telecommunications Act of 1996, there's nothing to be fearful of. And the reason is, if a wireless company sues a local government under the Telecommunications Act, they don't win money damages and they don't win attorneys fees. So there's no threat of financial loss to the local government.

As far as the hands being tied, quite the contrary is true. Congress specifically preserve power to local governments to regulate the placement of wireless facilities. I'm going to give you this specific citation for the section of the Telecommunications Act. It's 47 USC 332 C 7a, and you can read for yourself. It says that basically, the general rule is, local governments have that power . And the greater import, the reason that it's most important that they do something to regulate these things, what most people have no idea is, while the FCC has set general population exposure limits, meaning they set a limit, allegedly, on the maximum level of radiation they can expose members of the general public to, the FCC does virtually nothing to actually apply those limits. As a general rule, the FCC never ever tests wireless facilities, and never requires the owners to test them. So local governments are the first and only line of defense against their constituents being exposed to illegally excessive levels of radiation emanating from wireless facilities in their jurisdiction.

Q: What is the best legal argument against the claim that the 1996 Telecom Act prohibits consideration of health or environmental harms in challenging installation of cell towers? If the best argument is that the act unconstitutional? What is the best argument as to what specific constitutional article has been violated? Can we litigate based on constitutional rights?

MP: When the discussion turns to insurance, a discussion of insurance has to include the discussion of risk. What are you insuring for? What are you insuring against? What liability are you protecting the city from by requiring insurance and that is the time when you can raise these questions about health and environment. You're not in violation of 332, you're coming in the back door, you're talking about insurance. 332 does not limit the ability of a municipality to protect itself with insurance. And so that becomes your platform that becomes your end run.

AC: The problem with the way that the FCC is applying the Telecommunications Act is, it's essentially taking the position that local governments cannot regulate wireless facilities based upon environmental concerns, while at the same time failing to actually test these facilities. In my view, someone can raise a challenge for the fundamental right of self-defense; that as it is being applied, the Telecommunications Act not only violates the 10th Amendment by stripping local governments of their power to protect their local citizens, but violates a fundamental right of self-defense under the Constitution, because it prevents

individuals from protecting themselves against intrusion into their homes of illegally excessive levels of RF radiation. And there are documented cases, I think it's a vulnerable case. I'm just looking for plaintiffs to file the case for.

MP: Don't forget that if you bring a class action for battery or for assault, your defendant is going to be the telecom company, or the operating company which is operating the facility, you're not going to be suing the city. So it's not a mandamus action. It's not an action to compel the city to withdraw a permit, or cease and desist on an inappropriately issued permit, or caused the removal of the cell towers on the basis of the permit itself. Rather, this would be a damage claim on behalf of a group of people against the telecom, which means you're going to be fighting a much more funded entity than if you were suing a city.

Q: Can we use anything from the Irregulators lawsuit as leverage with our municipality to use Fiber To The Premises instead of 5G? Following the Irregulators win in New York, how do state counties and cities go about recovering back the billions from telecoms that we now know were stolen from taxpayers and government coffers?

SM: Yes, there are many things that from the Irregulators case could be taken on the road, either at the local area or before your state commission. The whole premise of that case was to get this issue of people being charged very high local rates to pay for fiber they never got, which instead went to a wireless tower. The whole purpose of that case was to get the Court of Appeals in the District of Columbia to rule that, Yes, the states actually can deal with this issue. They're not preempted. And that's what the court ruled. So you could go to your cities, and we'd be happy to work with you build a little package of things you can take to them. Cities, consumers have been harmed. One of the other things that they can do when they're negotiating a local franchise agreement, like Mark mentioned, they can begin to insist on getting access to some of the dark fiber for local networks, maybe municipal network, or maybe at least one of their own institutional networks. One of the gems that we found in that case, while we were going through the accounting, is that many of these folks are significantly under-remitting the value of the property that they have in local taxing jurisdictions. And I can practically guarantee you, it doesn't matter which one of them it is, or what city it is, somebody who does an audit of some provider, with a view towards really calculating the value of the property there, whether it be fiber in the streets, or in the conduit, or even the towers, might just find that they've been underpaid for their taxes by a lot. And so when I'm talking with my cities, if you want to get the cities mad, just let them know that they've been underpaid for a very long time by these providers for the value of the assets that are in the city.

Q: How can we work together as communities with you as attorneys to stop the 5G rollout, including the satellites and ground stations? How can this be turned into a giant lawsuit against these telecom sharks? With all cities pulling together to fight it as one entity?

AC: Local governments still have the power to regulate the placement of these things. So you don't have to file a class action suit, it's very expensive and you have to serve notice on the world. Pinpointing legal issues, in finite lawsuits across the country, would be far more effective in stopping the 5G rollout. That's, in a nutshell, the easiest way to kill the 5G rollout.

Q: Can a legal case be made that the telecoms cannot install small cells or antennas without liability insurance in place. It is our understanding that the wireless infrastructure is uninsurable, Lloyd's of London actuaries have actually excluded EMF RF radiation from future policies.

MP: Municipalities recognize their exposure and their exposure is not only from EMF, but it's also from falling objects. It's also from fire. It's also from injury to installers. All of these things can subject the municipality to liability, and they attempt to protect themselves from this liability by requiring insurance. So

the way that they require insurance is, they have the telecom company execute a Master Licensing Agreement. Under the Master Licensing Agreement, the telecom company will list a shell company as a licensee. The reason that they're doing this is to avoid exposure, by promising indemnity instead of insurance. So when people get in front of these boards, Planning Commission's city councils, they should hammer home to the elected officials that they need to require as part of the licensing agreement, General Liability Insurance *without a pollution exclusion*, because a pollution exclusion under the policy lists EMF as a pollutant. If you require that kind of insurance, you can slow the process down to a halt, because they can't get EMF insurance.

Q: What legal avenues can be taken to enact or strengthen city ordinances prohibiting or highly restricting 5G, that would most likely not be defeated in a suit filed by telecom companies? Where has this been done, that has survived a lawsuit, what law firms work in this area of interest that our city might utilize? How do we quickly stop cities from implementing changes to their ordinances, like taking out the part of their ordinance requiring a notice to residents, things like that. That's enabling the rollout. And then finally, one city in Northern California was told that it would cost a $25,000 deposit to file an ordinance amendment application. Is that even legal?

AS: In terms of an ordinance, you want to understand whether you trust your city or not. If you think your city is working for you and trying to limit this, then you want to create an ordinance that is very rigid, but that has a master License Agreement option. And you want to shuffle as many of those permit applicants into the master license process and therefore require them, or negotiate with them, terms that are more restrictive than otherwise would be the case, The master license agreement that's negotiated can include restrictions that aren't in the ordinance. It can include restrictions on RF emissions, it can include additional procedures or timelines, it could waive a shot clock, it can do a whole host of things, so long as it's negotiated. If you don't trust your city, you probably don't want a Master License Agreement, because you don't really have any perspective into what they're going to do. You don't necessarily have, let's say, proper notice, things like that, because in the public right away with franchisees and their right of away, they are probably going to strip that from the Master License Agreement and just use it to obtain more fees.

Now, back to what you actually want in that ordinance, it has to have a constellation of features that's going to address all the various elements and impact of this technology:

- It's going to have to address RF to some extent, by recognizing that there isn't ADA and FHA responsibility there. So you clearly avoid staff disclaiming that that applies.
- You want to make sure that you have a search radius for comparison of alternatives that is at least as large as the possible propagation of the RF from the antenna.
- You want to make sure that there are locations that are off-limits, unless the applicant can demonstrate that they have an entitlement under state or federal law to put it there, so that you can bring in these issues like gap in coverage or that it's not providing personal wireless services.
- You want to make sure that you have a very detailed checklist of requirements, so that the city at the outset can determine whether an application is complete or not complete, and kick it back for not fulfilling the numerous requirements that would have connected to the design criteria, or to demonstration of the area to be served, or the safety features of it, or the ability to comply with the fire safety standards.

There are other aspects too. But I think that is a good overview. I'd say about the $25,000 deposit, it's unfortunate that's common in California. I don't know if it's law or not. But it is common and many cities do it.

AC: In 90% of the applications that I've seen across the entire United States, applicants submit false or misleading information. And unfortunately, ordinances do not empower local governments to understand

when they're being deceived. And I'm talking about false FCC compliance reports, false propagation maps. A well drafted ordinance would not only require local zoning boards to make factual determinations, but would identify the types of evidence they require an applicant to provide, to show that the applicant is not deceiving the local zoning board.

SM: And everything that's submitted by the applicant needs to be under oath and penalty of perjury.

AC: In California, three cities have adopted random testing requirements. Burbank, Berkeley and Davis have required and put in provisions that say the government can randomly test these facilities to ensure that they're not emitting radiation levels which exceed the FCC limits.

Q: Regarding residential small cell fire hazards in high risk areas, regulating co-locations on existing cell locations. The overloading of utility poles with wireless colocation equipment was determined to be the cause of the 2007 Malibu fire, and likely almost all the fires in our area since. Utility companies are known to lease three to five co-locations to different wireless carriers per pole. Is there any way to regulate or restrict cell antenna co-locations and high fire hazard areas or high wind areas, and do fire prevention safety needs of cities trump the FCC order or other FCC rules for co-location?

MP: We're working on this from an interesting angle in Napa, CA under Title 8, California Code of Regulations subchapter V, group 2, Article 37, section 2946. It specifically prohibits the placement or operation of machinery, apparatus or materials above high tension power lines. The group that I'm working with in Napa was able to locate 12 projected placements, and photographed the lines and the polls, and show that they were going to be putting the antenna directly above the high tension power lines. So this is being attacked with the Department of Public Works in Napa, and collaterally with the Public Utilities Commission, so that we're trying to get the Utility Commission to come in, if they erect the towers, to have them removed.

AS: The FCC is explicit in its 2015 order implementing the co-location statute, that it does not preempt public health and safety standards in building codes, fire codes, or other standard codes that apply to any other structure. So you have a choice or latitude in that area. And there are limitations on the number of attachments that there can be, at least with respect to the number of new cabinets that will be added. Since often the applications are efficiently deficient. And often cities don't even have any particular code standards of their own to address these co-locations; they simply say they are exempt. And it's very important that cities address that explicitly.

Q: Does the NEPA NRDC lawsuit decision apply to those not on tribal lands, and how can we use it to prevent installations?

AS: The answer is yes, it does apply across United States. It applies. But what it does when it applies is different, depending on the actual circumstances where the facility is located. So there is a requirement in the federal code that every applicant is going to try to avail themselves of, the exemption from doing an environmental assessment; that they do an independent self-certification to confirm that they are eligible for an exemption from an environmental assessment under NEPA. And therefore, the FCC has directed them to complete this checklist. So every facility now has to complete a checklist. And a city or county would be under good authority to request that that checklist be provided to them, to confirm that the facility actually has the license that it is required to have from the FCC, and there's good case law saying that cities can require a combination compliance with federal law.

Q: What is the best, most accurate site developer/telecom language to use in letters with City Council open comment periods and requests for information? How do we serve an injunction after a cease and desist has

been ignored or rebutted? What are the implications if a record request is not accommodated within 10 days, and what recourse do we have? When information revealed and records requested in the case of the city taking money for over a decade from site developers and Telecom.

AS: On the cease and desist, Civil Code of procedure, section 1094.6 provides a 90 day statute of limitations for appealing some action or inaction via city or county; that potentially would apply. With respect to Public Records Act requests, that some Government Code 6253 C, and that's the section that would apply that requires that cities and counties do respond within 10 days to identify whether they will be providing documents; they also can extend that by 14 days. And then there is a right under Section 6259 for an expedited hearing if the city does not provide the documents, either the documents that are responsive, or does not respond within that timeframe. So I can send out those codes in the chat box.

MP: A personal service on the injunction, whoever the defendant is has to be personally served in order for the injunction to be effective. So if the injunction was issued against the telecom, it could be served on any responsible manager. If it was an injunction issued in mandamus, against the municipality, it would probably be the clerk of the city, or the mayor or a chief executive officer.

Q: What can we do if the city already gave a telecom company a Master License, what can we do to prevent them from constructing after they have one? Do they have to give us notice according to the FCC law, or do they only have to give us notice if it is written in the ordinance that they do? If they do not give us notice, what recourse do we have if they install the wireless facility within 1,500 feet of our home?

MP: Start with the face of the document itself, get a hold of the Master License Agreement and take a look at who the licensee is. Then, subject to the Master License Agreement, somebody is going to have to come back to the city and get encroachment permits for each individual cell site. To do the installation, you will find that the entity that comes in to get the encroachment permits is not the licensee, which means that they can't go forward. You can object on the basis that they are not in compliance of the local ordinance, because they don't have a Master License Agreement with the city, and you can object and you can stop it on that basis.

Q: Question about private communities with homeowners associations. Can the HOA prohibit or limit cell antennas on rooftops, and restrict adding small cells if there are no poles currently, can they make their own rules? And also can private covenants and homeowner association rules be amended to keep 5G or any cell towers from deployment in their area?

AC: Bottom line is yes, private homeowners can restrict and associations can restrict in any way they want, as can, for example, school districts.

AS: The HOA ordinances must be very explicit. There are a number of cases where there were some general parameters saying, 'no offensive uses,' or things like that. And the courts have found that that's not specific enough. So it's very important that it be language that would say, 'any commercial uses,' or some other type of language that would tie into a very explicit prohibition on it.

Often homeowners associations do cede or deed back the public right of way to the city to avoid paying for the upkeep of that. If that were the case, and they are building these antennas on, let's say, a telephone pole or something like that, you still may end up with those restrictions applying, even if your home itself is in the HOA.

SM: There's an FCC proceeding right now where it may change. That's the proceeding that I mentioned earlier, when I told you all that Children's Health Defense had some comments. It's the over-the-air device rule making. And the Commission is actually contemplating allowing homeowners to put the equivalent of a cell tower, or any other kind of transmitting device, in their backyard and serve multiple premises. And part of the proposed rule purports to overrule any homeowners association, or municipal zoning, or other ordinance prohibitions that might otherwise prevent it. And it has a really arcane procedural rule about how

somebody might contest it. And of course, the deck is stacked in favor of the wireless provider. So I agree with what they said about the present law, but the FCC is thinking about changing that.

AS: And the FCC has taken that step with respect to other types of technologies already. So I think you should expect that they're going to do it, if they're not stopped doing it.

Q: Is the oath that our city, county, and state leaders take a contract with the citizens? And if so, could they be held personally liable for any damages to health for subjecting us to harm from 5G cell towers?

AC: It's very difficult to raise that type of challenge. The way that the wireless industry and the courts review this type of claim is that, so long as the wireless facility is emitting radiation levels which are within the FCC limits, there's really no breach of fiduciary duty. There is one great exception and that is fire districts. One of the soft targets that site developers try to put cell towers or wireless facilities on, is fire districts. Fire districts exists for the sole purpose of protecting properties that are in the geographic district. And when they agree to allow a cell tower go on, very often they will adversely impact the properties in their district. And in those cases, and only those cases, I've been successful in filing claims for breach of fiduciary duty, because the fire districts exist for the sole purpose of protecting those properties. But as far as the obligation on the part of local zoning officials to protect people from excessive RF radiation levels, it's a very difficult argument to succeed at.

AS: I think the answer will be found in Government Code 8205.6, which does lay out the standards for personal liability. It's a very narrow range of conditions. It's actual fraud, corruption, actual malice by an officer, so you'd have to show actual fraud actual malice against these people. And it's a very high bar.

Q: My county has recently amended the county code to now allow small wireless cells in residential areas, in response to the belief that by prohibiting cells in residential areas, it would prohibit, or have the effect of prohibiting under the Telecom Act and the declaratory ruling, and FCC order. They therefore amended the code to comply with the FCC order. How can I or how would you attack this argument?

AC: They're talking about the FCC September 2018 order, which has absolutely no effect on local government interpretation of the Telecommunications Act. Any time a wireless company wants to put a wireless facility in a residential area, the local government can still require them to prove two things. Number one, that they have a significant gap in personal wireless services. And number two, the proposed installation is the least intrusive means affirming that gap, and there's no potential less intrusive alternative locations. And in the realm of 5G, they can't meet that standard, which is exactly why they went to the FCC to get this ruling from the FCC to help them. But that's an easy case to kill if they try to put in a residential area.

Q: Senator Feinstein said cities will be liable for damages caused by 5G and other wireless equipment accidents. "What's worse, wireless companies won't bear the responsibility when things go wrong and poles come down, they pose significant risk for physical harm, property damage, blackout, and even wildfires in dry regions. And under FCC rules, cities and residents would be on the hook for that damage." Can you explain how cities would be on the hook? Do you know what FCC rules she's referring to? How many and how much insurance should cities require of Telecom carriers per incident? How much liability insurance should the city have to protect the city per incident?

MP: See this link for a slide deck on insurance.

Q: Orem Miller, a building biologist, recently wrote that all new 4G or 4G-light installations can be upgraded to 5G with just software changes. Can telecom carriers legally do those upgrades without even notifying the city about it? Wouldn't it be a violation of the existing building permit? Can the city regulate wireless cell antenna upgrades or modifications on an existing cell site?

AC: The answer is under the Middle Class Tax Relief And Job Creation Act, which was signed into law by President Obama. Wireless industries are able to change the frequencies and even the power output of their facilities, exempt from local authorities' ability to stop them. So unfortunately, due to the Act, they can not only change from 4G to 5G, they can increase the power output, they can also increase the size of the facility and increase the height of any tower, as long as the increase doesn't significantly increase the overall size of the wireless facility. So the short answer is: they're allowed to do it.

Q: I read that satellites are regulated by the FCC and the ITU. What are they regulating?

SM: The satellite service is regulating the communications portion, the frequencies that are used. The International Bureau at the FCC is the one that oversees the SpaceX constellation, for example. Constantly getting FCC approvals for certain things. So while the FCC is not the one that tells them they can shoot up the rocket, they are the ones who decide largely where the orbit is supposed to be, and the spectrum that is used, and the emissions guidelines that we've mentioned several times here; the Commission has guidelines for satellite communications as well.

Q: A lot of people have had problems where they've either made requests from city planning for documents, and they've either not been given them or been given incomplete information or being lied to, what kind of remedy do we have in those situations?

AS: It would be a violation of the Public Records Act (in CA).

Q: What about going for a temporary restraining order? Then preliminary and permanent injunctions. With a solid strategy in place, proof of irreparable harm, witnesses, data, etc.? Couldn't this be a very direct way to stop 5G deployment in your city?

MP: The problem with injunctive relief is that before you can seek injunctive relief against the city, you have to exhaust all your administrative remedies. You've got to go through the Planning Commission, you've got to go through the city council, before the case is right for mandamus. At that point in time, these guys can be well along on their way to implementation. But I certainly would like to hear what Ariel or Andrew had to say on the timing of the thing.

AC: The difficulty with injunctive relief is, under most standards in most states and certainly federal court, you have to show irreparable injury, and that's difficult. Theoretically, if someone claimed EMF sensitivity that could constitute irreparable injury, but in most cases, plaintiffs can't establish irreparable injury, because even if a cell tower is constructed, you can always rip it down. So it's very tough to get irreparable relief, at least from my perspective on the front line.

Q: When media outlets which can be proven to have a vested interest in 5G through ownership and are advertising actively whitewash or lie about 5G health concerns or research, can they be held liable or otherwise accountable for knowingly misrepresenting the dangers of 5G? Most of the major media outlets in the US and around the world are owned, at least in part by telecom.

AC: The problem is that, aside from being owned, the wireless industry is also one of the largest customers of the mass media, whether it's radio, television or newspaper. When we get really dramatic cases of adverse impacts of installations of wireless facilities, you can't get good favorable coverage of the people who are adversely impacted, because they don't want to print an article or tell a story that would adversely impact one of their clients. It's that simple.

Q: If our city keeps referring everyone to the FCC for rules and regulations, does the FCC language address notification, residential neighborhood RF levels, and how far away homes should be from transmitters? Legally is it up to local health departments or building inspectors to test RF levels for safety?

AS: The FCC doesn't get too involved in any of this at the local level. And generally, it's not supposed to. Generally, the locality is supposed to set up proper land use laws that respect local character of that city or town, and that the FCC is not likely to be very helpful or a source for addressing those issues.

AC: Under the FCC regulations, any facility under 200 feet in height does not have to be registered with the FCC. The FCC never tests the radiation emanating from one of these facilities, and doesn't requires the owners to test them. So in a practical world, this is what it means when you install a small cell or DAS system for the 5G rollout, the FCC doesn't know where these facilities are, and has no idea what level of RF radiation they're emitting. That's the simple truth.

Q: Our city council said that there's a federal preemption that prohibits states from deliberating the safety aspects of telecom installations. He said that those are stated in the FCC rulings and stated in the Telecom Act, therefore the members would not discuss the residents' concerns about safety, prior to voting on the Master License Agreement with Verizon for small cell 4G and 5G. Is this true? Do we have a chance to fight this for safety reasons, or do we need to take a different direction?

AC: As a practical matter, it phrases two issues. The first issue is, pertaining to the constraint on local governments pertaining to concern over environmental effects. One of the finite limitations which the Telecommunications Act imposes upon local governments is, the provision which says local governments cannot regulate wireless facilities based upon concerns over environmental effects, to the extent that a facility is FCC compliant. Now, that's been interpreted by many local governments as saying, as long as the proposed facility will not expose members of the general public to levels of RF radiation which exceed the general population exposure limits, local governments can't consider adverse health impacts. One of the things that local governments worry about is when they have a hearing on a permit to install a wireless facility. If people mention concerns about health, if they deny the application, what ordinarily happens across the country, a site developer will bring a federal lawsuit, they'll say, 'well, the local government claims it's denied the application because of adverse impacts on property values, but that was a pretext. Because if you look at the record, residents talked about health. And so we want this court to overturn their decision.' That's one issue. But the other issue is, to what extent can local governments regulate wireless facilities which are not FCC compliant? And what regulations can be imposed to make sure that they are? And three jurisdictions in California have imposed such restrictions. Burbank, Berkeley and Davis have adopted testing requirements to make sure that wireless facilities in their jurisdiction are in fact FCC compliant, simply because the FCC isn't doing it. So those are the two issues that are raised by this question.