Verizon sues city to avoid paying 5G fees, says the FCC has its back



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Verizon has sued the City of Rochester, New York, in order to avoid paying fees for deploying 5G equipment and fiber lines.

Verizon's lawsuit, filed in US District Court for the Western District of New York on Thursday, claims that the fees are higher than those allowed by federal law. As proof, Verizon

points to a Federal Communications Commission preemption order from last year that attempts to limit the fees and aesthetic requirements cities and towns impose on carrier deployments. Rochester imposed its new fees in February of this year.

Verizon may have a good chance of winning its lawsuit if that FCC preemption order stands. But the FCC is being sued by cities from Washington, Oregon, California, and Arizona, which claim that the preemption is illegal. (Cities from Florida, Colorado, Nevada, and New York also intervened in the lawsuit to support the case against the FCC.) The outcome of that case could affect the Verizon suit against Rochester and any similar lawsuits filed against cities in the future.

Rochester vowed to fight Verizon's lawsuit and called it "frivolous." The city told WROC and other news outlets that "Other communications providers are complying with the law while building out their networks and paying the necessary fees. These fees are comparable to what other cities required."

FCC preempted fees nationwide

Led by Chairman Ajit Pai, the FCC said it aimed to eliminate $2 billion worth of fees over five years, less than 1% of the estimated $275 billion that carriers would have to spend to deploy 5G small cells throughout the United States. Pai, a former Verizon lawyer, criticized cities and towns for "extracting as much money as possible in fees from the private sector" and claimed that lowering the fees would boost broadband deployment. But even Verizon previously said the FCC decision wouldn't change the pace of its 5G rollout.

In Rochester, the fees Verizon complained about include $1,500 per year for attaching a small cell to a city-owned pole. "These rates stand in sharp contrast with the FCC Ruling/Order," Verizon's lawsuit said.

As Verizon noted, the FCC determined that small cell fees of up to $270 a year "are presumptively consistent" with federal law. That doesn't mean cities can't charge more, but the FCC says they have to prove that the fees are a reasonable approximation of all costs and are "non-discriminatory."

"[W]hen Verizon Wireless requested that the City provide cost justification for these rates, the City did not provide any substantiation based on costs," Verizon's complaint said.

Rochester's letter to Verizon, included in an exhibit, said the following:

> *[W]e have concluded that our permit fees and recurring fees for use of the City's rights of way, including those for pole attachments related to the deployment of small wireless facilities, comply with all federal law requirements and limitations. You understand that requesting justifiable reimbursement from our telecom providers appropriately shifts that burden away from the City's taxpayers who would otherwise incur those costs irrespective of whether or not they are also a Verizon customer. It would be an unfair burden to place solely on our taxpayers.*

Verizon also objected to other Rochester fees, including $10,000 up front for deploying up to 2,500 linear feet of underground fiber, plus $5,000 annually in subsequent years. The per-foot charges decrease progressively for larger deployments, going as low as $0.50 per foot each year. But that first $10,000 charge applies even for deployments smaller than 2,500 feet, Verizon said.

"The Code imposes the same $10,000 first-year and $5,000 subsequent-year fees for 'underground' open-trenching use of either one linear foot or 2,500 linear feet, which inherently cannot accurately reflect Defendant's cost in each case," Verizon wrote. "These fees are thus not cost-based, are unreasonable, and are not objectively determined."

The different per-foot fees for longer fiber deployments “inherently cannot accurately reflect Defendant’s cost and is thus unreasonable,” Verizon also said. Rochester required the same fees for fiber lines that are hung on poles instead of buried, and Verizon raised the same objections to those fees.

While Verizon mostly stopped expanding its fiber-to-the-home service years ago, it still needs to deploy plenty of fiber to provide bandwidth for its 5G wireless network.

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