



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

February 9, 2016

Motion 14560

Proposed No. 2015-0276.1

Sponsors McDermott

1 A MOTION approving the report in response to the
2 2015/2016 Biennial Budget Ordinance, Ordinance 17941,
3 Section 28, Proviso P1, department of executive services,
4 in compliance with Ordinance 17941; and authorizing the
5 release of \$75,000 currently held in reserve.

6 WHEREAS, the 2015/2016 Biennial Budget Ordinance, Ordinance 17941,
7 Section 28, Proviso P1, states that \$75,000 shall not be expended or encumbered until
8 the executive transmits a report on the impacts of and options for updating the county's
9 wireless telecommunications facility right-of-way use agreement fees and a motion that
10 approves the report and the motion is passed by the council, and

11 WHEREAS, the King County executive has transmitted to the council a report on
12 the impacts of and options for updating the county's wireless telecommunications facility
13 right-of-way use agreement fees as required by the Ordinance 17941, Section 28,
14 Proviso P1, and this motion approves the report when it is passed by the council, and

15 WHEREAS, the council has reviewed the department of executive services,
16 facilities management division report;

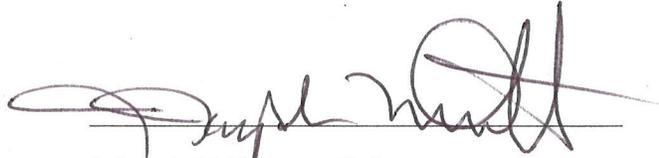
17 NOW, THEREFORE, BE IT MOVED by the Council of King County:

18 The report, which is Attachment A to this motion, is hereby approved and the
19 \$75,000 currently held in reserve under Ordinance 17941, Section 28, Proviso P1, general
20 fund, is hereby released.
21

Motion 14560 was introduced on 7/13/2015 and passed by the Metropolitan King
County Council on 2/8/2016, by the following vote:

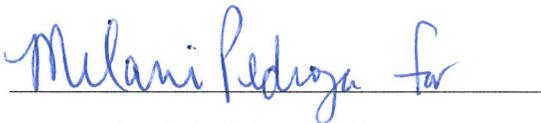
Yes: 9 - Mr. von Reichbauer, Mr. Gossett, Ms. Lambert, Mr. Dunn,
Mr. McDermott, Mr. Dembowski, Mr. Upthegrove, Ms. Kohl-Welles
and Ms. Balducci
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



J. Joseph McDermott, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments: A. Wireless Telecommunications Right of Way Use Agreement Fees

Wireless Telecommunications
Right-of-Way Use Agreement Fees

Proviso Response to Council

June 2015

Executive Summary

King County currently assesses an annual fee on right-of-way use agreements that authorize use of King County property for wireless telecommunications facilities. This report details the legislative background of the right-of-way use fee for these facilities; provides a market comparability analysis across over 20 municipalities, addresses options for updating regulations, and discusses wireless service levels as requested by the proviso.

This has been a collaborative effort across several County agencies with a stake in the use of the County's right-of-way. The following conclusions are drawn from this effort:

1. The existing use fee structure is unduly complex, confusing to both customers and Real Estate Services staff, and should be revisited at some point in the near future to maximize the efficiency of use agreement issuance and provide better service to customers.
2. Fees for right-of-way use vary by municipality, but King County right-of-way use fees appear to have some room for upward adjustment without exceeding any standard of reasonableness as set by the market. Several surveyed municipalities do not charge an annual use fee but do have alternative revenue mechanisms in place, including permit fees and utility taxes.
3. Sufficient evidence does not yet exist of a preferred alternative use fee that accommodates lighter technology for wireless communications and that is consistent with the service needs of King County's unincorporated areas.
4. Wireless telecommunications services are available in King County's urban and rural areas, with the exception of more remote resource lands. Existing County policy provides for the siting of telecommunications facilities, while recognizing and mitigating potential impacts in rural areas.
5. The existing regulatory apparatus is sound, and balances service delivery considerations with land-use, environmental, and driver safety interests.

Real Estate Services and the Office of Performance, Strategy and Budget intend to continue exploring the issue of fees and oversight for the use of County property. A revised fee ordinance may be prepared if it is determined that an improved method exists for regulating use of the County right-of-way by telecommunications carriers. This approach will ideally recover the fair value of the use of County property, not conflict with any existing policy priority or regulation, and not present an undue barrier to the provision of wireless service at a level appropriate for areas with the County's jurisdiction.

Introduction

This report has been completed in response to the budget proviso in Ordinance 17941, enacted on November 20 2014, affecting the General Fund's Real Estate Services appropriation for the 2015-16 biennium. The proviso reads:

"Of this appropriation, \$75,000 shall not be expended or encumbered until the executive transmits a report relating to the impacts of and options for updating the county's wireless telecommunications facility right-of-way use agreement fees and a motion that approves the report and the motion is passed by the council. The motion shall reference the subject matter, the proviso's ordinance, ordinance section and proviso number in both the title and body of the motion.

The report shall include, but not be limited to:

A. A detailed description of the results of a comparability analysis carried out by the real estate services section. The comparability analysis shall focus on right-of-way use fees charged by other local jurisdictions. A charge that includes charges for the use of properties or assets in addition to the right-of-way shall not be considered to be a comparable right-of-way use fee;

B. An analysis of a variety of options for updating the county's wireless telecommunications facility right-of-way use agreement fees. Options analyzed shall include, but not be limited to:

1. The expansion of the current multitiered use agreement fee structure to adjust for changing technology;

2. Any zoning or other regulatory changes, that might be necessary to allow for the expansion of use of the county's right-of-way to include placement of equipment, such as ground-mounted equipment, in the right-of-way;

3. The feasibility, including estimated impacts, of allowing the placement of equipment in the right-of-way, particularly ground-mounted equipment; and

4. The implementation of an incentive-based right-of-way use fee structure, such as an annual use fee that is inversely proportional to the number of right-of-way use agreements an entity enters into with the county or quantity of equipment placed in the right-of-way; and

C. An analysis of the impacts of each option identified in the report on rural areas of the county, focusing on the likelihood that the option will increase or decrease wireless service and access in the rural areas.

The executive must file the report and motion required by this proviso by June 30, 2015, in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff, the policy staff director and the lead staff for the budget and fiscal management committee, or its successor."

The completed response is the result of collaboration between the Facilities Management Division's Real Estate Services unit and the Executive's Office of Performance, Strategy and Budget (PSB), and includes input from several agencies across County operations, including PSB's Regional Planning section, the Department of Permitting & Environmental Review, the Department of Transportation's Road Services Division, and the Office of Equity and Social Justice. Representatives from each agency were provided with copies of the complete proviso language and interviewed regarding their input on the respective sections that overlap with their expertise. Each conversation included discussion of the proviso intent, the potential operational impacts of policy or regulatory changes, and the impact of the Executive Office's strategic direction.

While the intent of this response is to address the information requests as given in the proviso, the Office of Performance, Strategy and Budget also intends to use this medium as an opportunity to clarify the role of use fees and address potential misunderstandings regarding their application. These applications include their use as a tool for valuing use of public property and as a revenue mechanism to recover this value. In addition, this response will clarify Executive policy regarding land use and service provision to unincorporated areas, safety concerns related to use of the right-of-way particularly in rural unincorporated King County, and the level of current wireless service in King County's rural areas.

Current State & Legislative Background

In September 2014, the County Executive submitted to Council a fee ordinance prepared by the Real Estate Services (RES) unit as part of the 2015/16 Proposed Budget. The proposed ordinance related to “fees and other charges for processing real estate services section right-of-way use agreements that authorize use of King County property for wireless telecommunications facilities”, and amended sections of King County code identifying the fee amount and escalation rate¹.

The purpose of the fee ordinance was twofold: to simplify the fee structure and to bring its per-use amount up to date given changes in conditions since its original enactment. These goals are intended to ease administrative costs and time delays, streamlining the process for both RES personnel and external customers, and to update a General Fund revenue source that was judged to be no longer reflective of the market.

The simplification of the fee entails moving away from assessing uses based on equipment types and towards fair value for use of public property. The existing fee structure, first codified in Ordinance 13734 in February 2000, provides for three types of annual use fee: \$5,000 for a separate support structure used solely for wireless antenna, with antenna/receiver transmitter and/or equipment cabinet; \$3,000 for an antenna/receiver transmitter (on an existing or replacement pole) and equipment cabinet; and \$2,000 for an antenna/receiver transmitter (on an existing or replacement pole) or equipment cabinet². The existing fee structure requires RES personnel to assess right-of-way applications for the type of equipment used while relying on definitions last revised 15 years ago. This presents a burden both for RES personnel and for customers who are expected to apprise RES of any equipment changes during the 10-year duration of the use agreement. A simplified approach would not be dependent upon evolving technology types and would focus on the fair value for the use of the right-of-way.

The modernization of the revenue source was to update the amount and indexing of the fee itself, which had not been adjusted since its initial determination in 2000. Currently, the fee for new use applications is ‘baselined’ at the amount identified in code and thereafter adjusted annually by the Consumer Price Index for All Urban Consumers (CPI-U). That is, a new use agreement will be billed at the amount as implemented in 2000 (e.g. \$5,000 for a support structure) while an agreement signed in a prior year would have been subject to inflation. This approach privileges new use agreements over preexisting ones and leads to separate fee amounts for similar and concurrent uses of County right-of-way. The inequity between new and preexisting agreements complicates and delays billing, leads to incorrect billing amounts, and frequently requires refunds or additional billings.

These initiatives were informed by a comparability analysis conducted in the summer of 2014 by the RES unit, which profiled 7 proximate municipalities with similar revenue mechanisms for valuing the use of

¹ <http://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=1912005&GUID=A361DD72-2B0A-4616-8872-4C3DE0F75A7C&Options=ID|Text|&Search=2014-0401>

² <http://your.kingcounty.gov/mkcc/clerk/OldOrdsMotions/Ordinance%2013734.pdf>

public property for wireless communication facilities³. The data gathered from survey respondents indicated annual fees ranging from lows of \$3,700 (Pierce County, for equipment placed on existing structures in the County right-of-way) to a high of \$27,000 (Washington State Department of Transportation, for wireless provider-owned support structures in the State right-of-way). Proximate entities, such as Seattle City Light and Seattle Public Utilities, also assessed fees that were higher than the existing King County fees. Given these data points, it was determined that a starting fee of \$2,000-\$5,000 was below market.

These considerations led to a proposal of a uniform \$10,000 annual use fee for wireless telecommunications facilities operating in the County right-of-way, to be escalated by a uniform annual inflation rate of 4%. Given the 2014 average rate for wireless right-of-way use of approximately \$6,400 per agreement, this increase would have been roughly a \$3,600 increase, or a 56% increase on average⁴. This would have simplified understanding of fees to customers, increased overall revenue collections to the General Fund by a modest amount (approximately \$310,000 over the 2015/16 biennium, based on the existing number of use agreements), and reduced burden on RES personnel. RES staff communicated the planned rate increase to wireless carriers through an outreach meeting in September 2014, attended by representatives from Verizon and AT&T, as well as representatives from the County's Prosecuting Attorney's Office and Seattle City Light.

Wireless carrier representatives notified leadership of the Facilities Management Division following the outreach meeting of concerns related to the increase in the fee amount, contending that the increase would impose barriers to providing wireless service, that the comparability analysis was flawed due to the inclusion of some fees that were purportedly not for the use of the right-of-way, and that use of emerging smaller-scale technology should not be subject to use fees. Council did not act on the fee ordinance in 2014 due to concerns as noted in the budget proviso and the ordinance lapsed due to inaction at year-end.

RES has continued to administer the use fee as currently defined in code and is not submitting a revised fee ordinance with this proviso response. The concerns noted above continue to be present and could be mitigated through a revised fee ordinance at a future date. At this time, the emphasis is on establishing the context for the need to reexamine the County's status quo approach to right-of-way use and clarifying the needed information in order to update practices.

³ See 'Other Local Government Agencies – Comparison of Fees' from Powerpoint presentation 'Wireless Minor Communication Facilities Right-of-way Use Agreement Terms' from September 9 2014. Via Legisearch: <http://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=1912005&GUID=A361DD72-2B0A-4616-8872-4C3DE0F75A7C&Options=ID|Text|&Search=13734>

⁴ The 2014 average rate is calculated across all existing right-of-way use agreements, including those that have been in place for several years and annually inflated by the CPI-U.

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Comparability Analysis

The criteria for the revised comparability analysis included the removal of any cases that were not considered to be strictly comparable revenue mechanisms, that is, any fees that were not explicitly identified by the billing entity as 'right-of-way use fees'⁵. This concern had been raised during Council deliberation in 2014 by representatives of wireless providers, who took issue with the fees described as market comparables, particularly at the higher end of the scale, and who also noted that many municipalities do not charge right-of-way use fees for telecommunications equipment. The revised comparability analysis has addressed these concerns, providing updated data from a broader cross-section of jurisdictions, and addresses the concern about whether/when right-of-way use fees are collected.

Two concerns should be noted with the revised comparability criteria as identified in the proviso language. First, the proviso requests that the analysis focus on the "right-of-way use fees charged by other local jurisdictions." The original comparability analysis had in fact restricted its focus to local jurisdictions; narrowing the criteria for inclusion in the comparability analysis as requested however, requires that a broader sample set be taken in order to identify additional comparables. For this reason, jurisdictions in each West Coast state were added to the sample, in addition to select jurisdictions elsewhere in the contiguous United States.

The other concern is with the insistence that the criteria be narrowed to right-of-way use only, rather than a broader focus on the fair use of public property. As noted in KCC 14.45.020A, right-of-way is related specifically to space dedicated to public motor vehicle transportation. By definition, this removes from consideration any jurisdiction without a direct or indirect public transportation function. This removes some public entities that do own property or possess easements that could be used for a similar function. For instance, Seattle Public Utilities has wireless telecommunications facilities located on its property, and charges a fee for use, but equipment is located on water tanks and/or reservoir sites and is not identified as 'right-of-way.' It would not be considered a valid comparison by the criteria identified in the proviso, but the reason for exclusion seems unclear if the use is identical.

RES personnel surveyed 23 municipalities, including 9 in Washington, 4 in Oregon, 7 in California, 1 in Florida, 1 in Illinois, and 1 in Minnesota. These municipalities are composed of County governments, City governments, and State Departments of Transportation (DOTs). Several of these were selected

⁵ King County Code 14.45.020A defines 'Right-of-way' as "land, property, or property interest, such as an easement, usually in a strip, as well as bridges, trestles, or other structures, dedicated to, or otherwise acquired by the county for public motor vehicle transportation purposes, including, but not limited to, roads, streets, avenues, and alleys, whether or not opened, improved or maintained for public motor vehicle transportation purposes."

King County Code 14.45.020B defines 'Right-of-way use agreement' as "an agreement between the county and a wireless telecommunications provider through which is granted a site-specific and revocable privilege to use county right-of-way at a location identified in the agreement for wireless telecommunications facilities, and through which are set forth the terms and conditions for exercising the granted privilege to use the county right-of-way."

specifically based on their matching demographic criteria for comparability, namely having similarly sized populations and ratios between incorporated and unincorporated populations.

Of the 23 municipalities surveyed, 2 did not respond to requests for information (Santa Clara County and Miami-Dade County) and 2 indicated that they do not hold any use agreements for wireless sites in the right-of-way (Seattle Public Utilities and Snohomish County⁶).

Municipalities without Right-of-way Use Fees

Of the 19 respondents, 10 municipalities reported that they do not have an annual fee that matched the exact criteria for this analysis (right-of-way usage for wireless telecommunications facilities). Those include Spokane County (WA), Clark County (WA), City of Kenmore (WA), Washington County (OR), Multnomah County (OR), Los Angeles County (CA), City and County of San Francisco (CA), San Diego County (CA), Riverside County (CA) and Hennepin County (MN).

Conversations with the survey respondents indicated that although a fee exactly matching the comparability criteria may not be charged, parallel revenue mechanisms often exist that are assessed on external parties using the municipalities right-of-way. For example, City and County of San Francisco Public Works personnel indicated that while there is no annual usage fee for the right-of-way, all utility companies are required to obtain an approved Utility Conditions Permit (UCP) that allows the utility to install and maintain their facilities on County property. This permit provides the rules used to govern the installation and maintenance of equipment. As part of the UCP, wireless carriers are subject to a utility user tax that generates revenue for the County based on their use of the right-of-way.

Spokane County also responded that while no road right-of-way fee is charged, telecommunication companies must obtain a franchise agreement, typically around 15 years in length, for use of County property, with the agreement reserving the right for the County to change policies in the future. State law also allows for city jurisdictions to impose taxes on the privilege of conducting a telephone business of up to six percent⁷. In these cases, the use of the right-of-way does have a recoverable dollar value, but the revenue mechanism is not identified as a 'right-of-way use fee'. The fact that some municipalities do not collect right-of-way fees despite allowing for the use of public property does not indicate that municipalities do not place a value on the right-of-way or are mindfully forgoing revenue as a means to incentivize use by utilities or service providers; it can often be an indicator of an alternative approach for cost recovery.

San Diego County (CA), Riverside County (CA), and Hennepin County (MN) were identified as peer counties' based on their population and composition of incorporated and unincorporated areas; each responded that while there are no annual recurring fees for the right-of-way, wireless companies are

⁶ Snohomish County has a provision in its code, SCC 13.110.010(8), to charge a right-of-way use fee. Snohomish County personnel indicated that no fee revenue is collected due to their lack of identified wireless sites in the County right-of-way.

⁷ See RCW 35.21.870

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subject to a permitting process for use of County property, with associated fees. Respondents from the City of Kenmore and Spokane County also responded that while they do not currently collect a right-of-way use fee, they have provisions for charging such a fee in the future. In these cases, the fact that recurring use fees are not currently collected does not bar the possibility of assessing such fees if future policy directions call for directly recovering the value of right-of-way use, or if financial practicalities call for recovering such costs.

In addition, it should be considered that some municipalities may make a conscious decision to not implement an ongoing use fee due to the costs of implementation. Given the limited revenue collected by King County from wireless use fees, scenarios are feasible in which the implementation costs, including market research, fee development, and negotiation with wireless carriers, potentially exceed the generated revenue.

Municipalities with Right-of-way Use Fees

The remaining nine surveyed municipalities do charge a right-of-way use fee for wireless telecommunications facilities that was judged to meet the comparability criteria. These include Seattle City Light, Pierce County, City of Bellevue, Washington Department of Transportation (WSDOT), Oregon Department of Transportation (ODOT), California Department of Transportation (CalTrans), City of Portland (OR), Cook County (IL), and Alameda County (CA).

Full survey results are listed in Appendix A. Findings by relative pricing tier are as follows:

Pierce County's right-of-way use fees were established in the early 2000's, and reflect a three-tier structure that closely resembles King County's current fees, with fee levels linked to the installed equipment (stand-alone tower/transmitter and cabinet/transmitter or cabinet). Pierce County's annual fees range from \$2,451 (for a transmitter or equipment cabinet on an existing structure) to \$6,129 (for equipment on a new support structure).

The City of Bellevue's wireless site fees are administered by the City's Department of Transportation. A single flat rate of \$7,200 is charged. Respondents from the city indicated that they believe that the rate is low and assessed on older lease agreements and staff plan to explore new options, including examining what comparable rates are charged for the use of private property.

The City of Portland charges a flat rate of \$7,500, adjusted annually by CPI-U. The city is also currently piloting a program where 'small cell' sites are charged a flat rate of \$1,200 per year.

Cook County (of which Chicago is the County seat) assesses two types of license fees for right-of-way use, for 'Major Users' and 'Other Users'; the distinction between the two categories is at the County Highway Department's discretion based on facilities using a 'significant' portion of the public right-of-way, versus those requiring continued regulation but not occupying a significant portion of the public ways. Major Users are charged \$12,350 annually, while Other Users are charged \$3,375.

Alameda County (of which Oakland is the County seat) right-of-way fees are administered by the County's Public Works Agency. Respondents indicated that while they currently do not have an approved fee schedule, the previous fee schedule included an annual payment of \$7,200 per antenna, along with a one-time payment of \$10,000 or more (based upon the size and nature of the project). Alameda County personnel are reevaluating the fee schedule as part of a general update of their controlling ordinance.

Seattle City Light (SCL) administers right-of-way usage fees for wireless equipment placed in the City's right-of-way as well as similar fees for equipment placed on SCL property or on SCL facilities (e.g. towers/poles) where SCL has easement rights. SCL administers separate rates for urban and rural sites, although all sites within King County are assessed at the 'urban' rate. Unlike the City of Bellevue and Pierce County, where the agency owns the right-of-way but not the pole/structure on which the equipment is located, SCL does not possess its own right-of-way; it only has easement rights and owns the pole/structure itself. SCL's rates range from \$115 for a small wi-fi antenna up to \$21,983 for towers in urban areas in which SCL has an easement.

The highest right-of-way fees, by a significant margin, are assessed by State Departments of Transportations in Washington, Oregon, and California. The fee schedules for these three entities are similar in structure and amount, with fees categorized by equipment type ('macro-cell', 'mini-cell', and 'micro-cell') and by location type ('prime-urban', 'urban', and 'rural')⁸. Annual right-of-way fees charges by these DOT's may range from \$9,900 to \$30,000.

Overall Findings

The revised comparability analysis indicates that the top-end of King County's existing tiered fee structure is below the starting rate charged by most other surveyed municipalities who charge a similar right-of-way use fee. City of Bellevue, City of Portland, and Alameda County all charge slightly higher fees (\$7,200-\$7,500). Cook County and Seattle City Light have a greater range of fees with the top ends well-exceeding King County's current starting fee. State DOTs in all three surveyed states charge

⁸ California Department of Transportation (CALTRANS) [Wireless Telecommunications Licensing Process and Siting Guidelines](#) defines these categories as follows:

Macrocell: Facility with nine (9) or more antennas and/or with equipment building or concrete pad space and space required for the foundation of the monopole or tower when combined exceeds 500 square feet, not to exceed sixteen (16) antennas or two thousand five hundred (2,500) square feet. A standard telecommunications facility with a vault or enclosed building is an example of a macrocell site.

Minicell: A facility with four (4) to eight (8) antennas and/or with equipment building or concrete pad space and space required for the foundation of the monopole or tower, when combined is in excess of 300 square feet but less than 500 square feet. A standard telecommunications facility with free-standing cabinets on a pad is an example of a minicell site.

Microcell: Facility with one (1) to three (3) antennas and/or with equipment building or concrete equipment pad space and space required for the foundation of the monopole or tower, when combined is less than 300 square feet." (http://www.dot.ca.gov/hq/row/wireless/guide/wireless_guide.pdf)

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significantly higher fees, with the lower end fees for 'microcells' nearly double King County's fee for separate support structures. Pierce County is the only municipality that charges a lesser fee with a similarly designed approach.

RES personnel found few instances of fee structures designed with lighter, less-intrusive technology in mind. The City of Portland (OR) was the only instance where a specific fee for 'small cell' technology had been implemented, although this was described as a pilot program. Alameda County also referred to their intent to coordinate new fee approaches with FCC direction in mind regarding the siting of wireless facilities given shifts towards smaller technologies for wireless broadband⁹. Wireless representatives had mentioned at the 2014 outreach meeting that technology was trending in this direction but had not provided information on how fees for this technology were structured by other municipalities. Among the most pertinent questions that would need to be determined is how comparable fees for small-cell technology would be considering the topography of King County's unincorporated areas. For instance, if small cell technology is more appropriate for denser urban populations in incorporated cities (where the County would not own the right-of-way) then fees specific to this technology may not be an appropriate comparison to the type of equipment installed in more rural areas where a broader range may be required.

Those municipalities that do not charge recurring right-of-way fees appear to either rely on other revenue mechanisms to recover the value of property use (including permit fees, utility taxes, and franchise agreements), or have deliberately chosen to not pursue use fees despite authority and potential to do so. Several peer counties (San Diego, Riverside, and Hennepin) that have similar jurisdiction over unincorporated areas assess permit fees for use of the right-of-way but do not have recurring fees.

In sum, King County's current approach appears to be on the lower end of the scale for those municipalities that utilize a similar approach to cost recovery. Approaches vary by municipality, but given the proviso direction to analyze similar right-of-way fees, King County fees appear to have some room for upward adjustment without exceeding any standard of reasonableness as set by the market.

⁹ See Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Federal Communications Commission Report, Released October 21, 2014. <https://www.fcc.gov/rulemaking/11-59>

Policy Landscape and Options Analysis

Before addressing the suggested options as identified in the proviso, it is useful to call out the strategy and priorities that inform the policies of agencies reporting to the Executive. In many cases these priorities are related to the operational concerns of County agencies (such as the Road Services Division and the Department of Permitting & Environmental Review), and some cases priorities are linked explicitly to the County's policy agenda related to growth management and equity and social justice.

At the minimum, it should be noted that right-of-way use agreements, while being administered by the Real Estate Services unit, are done so within a greater operational, financial, and policy context as determined by the Executive and Legislative Branch. The policy affecting these agreements is within the purview of several different Executive agencies. These policy priorities will therefore influence the options considered for updating the wireless telecommunications use agreements.

Regional Planning, Growth Management, and Local Service Provision

The Regional Planning section within the King County Office of Performance, Strategy and Budget (PSB) is responsible for comprehensive and regional planning, including policies related to service provision in unincorporated areas. The section's function and approach is informed by the King County Comprehensive Plan (KCCP), which contains land use policies and guides development regulations for unincorporated King County and guides regional services throughout the County¹⁰. Per the KCCP, "As annexations and incorporations of unincorporated urban areas continue, King County government will focus more on its role as the provider of regional services and *protector of the county's Rural Area and Resource Lands.*" (Italics added). Decisions affecting the placement of wireless telecommunications equipment in the Rural Area and Resource Lands are made in the context of the KCCP's direction to "support a rural level of development and not facilitate urbanization." (F209)

The Rural Area and Resource Lands (including areas of Eastern King County primarily used for agriculture, mining, forest, and wilderness) have a 2014 population of about 126,000 people, or about 6.2% of King County's total population of 2,017,000. This figure does not include incorporated rural cities and towns or the Redmond Ridge development. Counting these areas would bring the population living outside the contiguous UGA up to 179,000, just less than 9% of the County's total population. That 9% of the population living outside the contiguous borders of urban growth is spread over 1,700 square miles, or about 80% of the County's land area¹¹.

Unincorporated King County has a 2014 population of 252,000, or about 12.5% of the County's total population. Half of that unincorporated population is in the Rural Area, the other half in several urban unincorporated communities mostly near cities. It is anticipated that as urban areas are annexed, the rural population will grow as a share of the population under King County's direct jurisdiction. Among

¹⁰ King County Comprehensive Plan; <http://www.kingcounty.gov/depts/executive/psb/regional-planning/king-county-comprehensive-plan.aspx>

¹¹ Correspondence with Chandler Felt, King County Demographer, May 8, 2015

the Regional Planning section's priorities are working with cities to annex adjoining unincorporated areas¹².

The telecommunications industry is to a great extent regulated by the federal government. However, local governments may regulate the siting of telecommunications facilities through development regulations such as zoning. The KCCP includes policies on telecommunications including cable services and public internet access¹³. These policies recognize the importance of effective telecommunications services to County residents, and encourage coordinated long range planning between County government and the industry. However, the KCCP does not address the appropriate level of service for personal wireless broadband access within the Rural Area. Because the County has limited regulatory authority, levels of service are largely determined by the business decisions of individual telecommunications companies.

Per the KCCP, County policy is to not incentivize development of rural lands. At the same time, the County is the service provider for both regional services (those that are provided to the entire County, such as Superior Court, property assessments, and Transit service) and local services (those that are provided specifically for residents in unincorporated areas, such as road maintenance, parks, and police protection). Thus, some services are generally not provided in rural areas (sewers, sidewalks), and some are provided but at a lower level of service (slower emergency response times, less frequent bus service, fewer public health clinics). Consistent with this approach, County policy directs that greater weight be given to the impacts of telecommunications facilities proposed for location on rural (and residential) lands. The policy is implemented via the County's development regulations and zoning code, which is discussed in the following sections.

In conclusion, the County seeks to employ a balanced policy approach that encourages the provision of telecommunications services while recognizing and mitigating potential impacts in rural areas.

Permitting, Zoning, and Inspections Policy

The King County Department of Permitting & Environmental Review (DPER) is responsible for regulating and permitting building and land use in unincorporated King County. This includes permit review and inspections, activity often supported by fees collected from permit applicants. The department provides a level of regulation that promotes desirable environmental practices and corrects for unpermitted development in unincorporated areas.

Legislation affecting land use policy for wireless telecommunications activity predates the right-of-way use fee by several years. Ordinance 13129 (enacted in May 1998) established land use policies and development standards regulating the siting of minor communication facilities and "encourages location of wireless telecommunication towers in non-residential areas, joint use of new and existing wireless

¹² 'Local Services for Unincorporated King County', 2015/16 Biennial Budget, Executive Proposed.
<http://www.kingcounty.gov/exec/PSB/Budget/2015-2016/2015-2016%20ProposedBudget.aspx>

¹³ KCCP (Dec 2012), Chapter 8, pages 56-57.

telecommunications tower sites and tower and antenna siting in areas where the adverse impact on the community is minimal”¹⁴. Development standards for communication facilities are covered in the zoning section of King County Code 21A.26 – 21A.27.

Zoning policy for equipment location in the right-of-way is covered in KCC 21A.27.110. The placement of equipment in the right-of-way is allowed, subject to restrictions identified in the Roads section of code. DPER does not issue permits for equipment associated with collocation on utility poles in the right-of-way; DPER’s involvement with the siting of wireless telecommunications equipment is initiated when a wireless carrier applies to put equipment on private property. This also includes those cases where equipment is placed on a support structure in the County’s right-of-way, but connected to an equipment shelter on adjacent private property. This is often the case for equipment installations abutting residential zones; code indicates that equipment cabinets are to be built underground when within three hundred feet of a residence¹⁵. Underground installations being more costly to install and maintain, this requirement is often avoided by leasing space from adjacent property owners, which requires DPER review and may require issuance of a Conditional Use permit, if the facility exceeds certain parameters. In some cases DPER is also tasked with administering review to ensure compliance with the State Environmental Policy Act; this is normally triggered by vertical or horizontal expansion of 20 feet from the existing facility¹⁶.

Examples of criteria enforced by DPER review are setback requirements, landscape standards, height standards, and visual compatibility with existing structures. According to DPER staff, the majority of support structures with wireless telecommunication as their sole purpose are on private property versus in the County’s right-of-way. However it is the preference per code that equipment be located within the right-of-way on collocated utility poles versus private property¹⁷. The regulation of equipment placement within the right-of-way lies outside of DPER’s purview; the Road Services Division is the lead agency for the regulation of equipment within the right-of-way.

Regulatory Landscape for Roads Right-of-way

The King County Department of Transportation’s Road Services Division maintains and operates roads in the County’s unincorporated areas, including ensuring compliant use of the right-of-way along County roads. Title 14 of the King County code covers Roads and Bridges policy, with wireless communication facilities covered in chapter 14.45.

¹⁴ <http://your.kingcounty.gov/mkcc/clerk/OldOrdsMotions/Ordinance%2013129.pdf>

¹⁵ KCC 14.45.130 (B)

¹⁶ Department of Ecology, State of Washington: <http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

¹⁷ “The placement of antenna on existing or replacement structures within street, utility, or railroad rights-of-way is the preferred alternative in residential neighborhoods and the Rural Areas...” KCC 12A.27.110(B).

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County right-of-way is in the unincorporated areas, which are largely rural areas outside of the urban growth boundary. County Code provides that wireless minor communication facilities¹⁸ can be located or constructed within improved and maintained county road right-of-way through issuance of a right-of-way use agreement.¹⁹ The use agreement is issued by the Real Estate Services (RES) section of the Facilities Management Division after consultation with Roads Services and the Department of Permitting and Environmental Review. The Roads Services Division reviews and evaluates applications with respect to the hazard and risk of the proposed construction and location of the proposed construction in relation to other utilities in the right-of-way.

There are a number of operational challenges in placing ground-mounted equipment in the County's right-of-way. The location of wireless minor communication facilities within County road right-of-way, pursuant to the terms of the use agreement, is governed by county road standards, zoning code, and other standing policies.²⁰ Wireless minor communication facilities are roadside obstacles and may be potential hazards to the driving public. Accordingly, on shoulder or mountable curb roads, such as rolled curb, extended curb, or thickened edge, wireless minor communication facilities "shall be placed as close as to the right-of-way line as practicable and a minimum distance of 10 feet measured from the edge of the traveled way or edge line..." On urban vertical curb roadways with speed limits less than 40 mph, wireless minor communications facilities are to be placed as far from the edge of the traveled way or edge line as practical.

There are additional regulations regarding wireless minor communication facilities if the right-of-way in which they are to be constructed abut residential zones.²¹ Roads policy also specifies other conditions of using the County right-of-way placement or construction of a wireless minor communication facility, with failure to comply considered cause for revoking the agreement and removing the facility.²² The agreement holder must carry insurance²³, and the agreement must contain a provision by which the agreement holder indemnifies, holds harmless, and defends the County against any and all claims, including but not limited to third-party claims arising out of the construction, repair, maintenance or

¹⁸ Wireless telecommunications facility is defined as "the capital, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, pedestals, and electronic equipment within the right-of-way used for the purpose of transmitting, receiving, distributing, providing, or offering wireless telecommunications." K.C.C. 14.45.020(C).

¹⁹ Wireless telecommunications facilities located or constructed by King County or under contract to King County; and Wireless telecommunications facilities for wireless telecommunication service providers that have current franchise agreements pursuant to K.C.C. chapter 6.27A can be placed within the right-of-way without issuance of a right-of-way agreement. K.C.C. 14.45.030.

²⁰ Before issuing the agreement, the division shall ensure that the proposed facility is located, designed and proposed to be constructed in a manner that complies with all applicable county policies and codes, including but not limited to, Ordinance 13734, zoning code, the county Comprehensive Plan, county road standards, and the Regulation for Accommodations of Utilities on county Roads Right-of-way adopted by K.C.C. 14.44.060. K.C.C.

²¹ See K.C.C. 14.45.130.

²² K.C.C. 14.45.050. Failure to comply with the terms and conditions of the right-of-way agreement, including payment of required annual compensation, is cause for revoking of the use agreement. The agreement holder shall remove facilities authorized the agreement from the county right-of-way upon expiration of the agreement, unless renewed, or upon revocation of the agreement for cause.

²³ K.C.C. 14.45.100.

operation of its facilities, or in any way arising out of the agreement holder's enjoyment or exercise of the right-of-way use agreement.

In summary, the construction of wireless minor communication facilities is permitted under the County's code through issuance of a right-of-way use agreement, and current safety regulations adhere to reasonable safety standards.

Options for Updating Wireless Right-of-way Use Fee

Four options were identified in the proviso language: using a multi-tier structure to accommodate for differing technology, implementing zoning or regulatory changes, updating limitations on equipment placement, and an 'incentive-based' use fee. Of these options, only two actually refer to the use fee itself, and the remaining options refer to code restrictions driven by the Road Services Division and Department of Permitting & Environmental Review.

Multi-tier versus single fee

The existing fee structure is an example of taking technology into account when determining fees. Other municipalities, as noted in the comparability analysis, have similar considerations of types of equipment installed, such as City of Portland, State DOTs, and Seattle City Light. King County's intent with the 2014 proposal was to simplify the fee by moving away from assessing fee amounts based on the type of equipment and towards a method based on the value of property usage. Adding additional tiers would move in the opposite direction, towards a more complex fee structure that would be more cumbersome to administer.

The multi-tiered fees offered by surveyed entities vary based on whether a separate support structure is authorized and on the size of the equipment being installed. For example, Portland is piloting a lesser fee for 'small cell' antennas, while the State DOT's refer to 'macro/mini/micro' cells. King County's current code does not refer to different types of antenna but only differentiates between support structures, antennas, and equipment cabinets. Wireless carriers who attended King County's stakeholder meetings during the development of the 2014 fee ordinance mentioned the advent of 'small cell' technology, which could potentially replace or reduce the incidence of large cell towers. DPER staff have mentioned that a significant share of commercial construction permits in the unincorporated areas are related to wireless services with existing and new support structures, so it is unclear to what extent this technology is currently being deployed outside of cities and urban areas with dense populations.

As mentioned in the King County Comprehensive Plan, "telecommunication technologies are changing rapidly and will continue to change during the horizon of this plan. The future telecommunication system may make little distinction between cable, telephone, and cellular."²⁴ While RES is not altogether opposed to offering a fee that accommodates technology with a smaller physical footprint and potentially lighter environmental impact, RES does not have the resources to track dynamically changing wireless technology and would prefer to investigate an approach that is general enough to be applicable across shifting technologies, reflective of the value of King County property, and simple for RES personnel to administer.

²⁴ KCCP (Dec 2012), Chapter 8, page 55.

'Incentive-based' Use Fee

The other fee-specific option requested for review is a use fee providing a discount for large-scale deployments of wireless telecommunications equipment in the right-of-way, such that entities would pay less for marginal increases in the number of use agreements, or would pay less for additional installed equipment. The assumptions behind this option are that wireless carriers require a financial incentive in order to install additional antenna in the right-of-way; that it is the role of the County to maximize the placement of antenna in the right-of-way; and that the true costs to the County reflect declining marginal costs from additional equipment placed in the right-of-way. This approach may be reasonable if all these conditions hold. Based on existing conditions, this approach is not supported and Executive staff believe that unintended consequences could result.

It appears that the existing fee and regulatory structure does not provide an unreasonable barrier to providing wireless service, particularly for residents in the County's unincorporated rural areas. Wireless carriers have expanded service such that there are few outright gaps in wireless access outside of the County's incorporated areas (where King County does not own the right-of-way). Further, a case has not been made that this is an area where an identified market failure exists that would merit the County intervening to provide incentives to expand placements of wireless equipment. It would be more accurate to say that the incentive provided by the County is towards prudent placement of equipment, such that it does not present threats to driver safety or inappropriate encroachments on rural residences, per the Road Services Division and DPER policy considerations.

RES has not identified a marginally decreasing cost associated with the review and implementation of use agreements. Individual use agreements require an identical level of review as the approval process is contingent upon the geographic placement, equipment types, and compliance with code restrictions. There is no reduced cost linked to a wireless carrier having preceding use agreements already in place. The implementation of a marginally decreasing fee would also be problematic to implement as RES would need to reference different fee levels across numerous wireless carriers, compounded over time. RES would need to be responsible for tracking the existing use agreements for each carrier so as to determine that a marginally decreasing rate is to be applied for new agreements. Given that billing errors are currently occurring related to the indexing of use fees to CPI, it would be expected that a more complicated approach would compound billing errors and frustrate both customers and RES staff.

Further, providing a use fee with a declining rate for additional use agreements would privilege those entities that already have large-scale deployments of equipment in the right-of-way. A use fee that provides a lower rate for each additional use agreement would likely require a higher rate for the initial use agreement in order to generate adequate fees to meet any identified revenue requirements. This may disadvantage smaller carriers; the lower rate for additional placements could incentivize additional placements primarily for those carriers that currently have financial means and market share to expand.

As suggested earlier, the Executive prefers a policy approach that is not based strictly on cost recovery but instead based on the value of the property itself, or on what is deemed to be a reasonable fee based on market rates (as determined by the revised comparability analysis). An incentive-based use fee would

be problematic to administer and potentially unfair to smaller carriers and would not be reflective of the cost to the County. Additionally, such an approach could interfere with the County's goal of minimizing adverse impacts to the rural/unincorporated community, and is not deemed to be necessary in order to close an identified gap in service to the rural areas.

Zoning or Regulatory Changes and Feasibility of Equipment Placement

As mentioned in the policy priorities section above, current policy on land use, zoning, and right-of-way is centered on driver safety, responsible growth management, and appropriateness for maintaining neighborhood character in rural unincorporated areas. Potential changes in zoning and regulations would need to be considered alongside the standard set by current policy. As such, surveyed county staff did not determine that sufficient gaps exist in service or that unreasonably cumbersome regulatory barriers are currently present.

Current code does allow for placement of ground-mounted telecommunications equipment in the County's right-of-way pursuant to issuance of a permit. This placement is in fact encouraged over the use of private property by the KCCP: "Regulatory standards shall require placement in street rights-of-way, especially within residential neighborhoods and Rural Areas, unless such a location is not feasible or not consistent with service quality and access." (F-351). This placement is subject to the safety and review standards as outlined in the Roads section of code.

Potential code changes have been focused on placement of equipment cabinets/ground-mounted equipment within the "clear zone" and the underground placement of equipment cabinets.

Placement of equipment within the ROW: The King County Road Standards define the Clear Zone as "[T]he total roadside border area starting at the edge of the traveled way available for use by errant vehicles." Given the purpose of the clear zone, on roads bounded by shoulder or mountable curbs, the King County Road Standards forbid the placement of structures that could pose a hazard to the driving public within the 10 foot clear zone. Roads staff mentioned that illegally installed equipment has occasionally been placed within the clear zone and has been removed by Roads staff.

There has been a suggestion that in order to improve functionality, wireless firms may wish to place wireless minor communication facilities as close to the clear zone as possible or even within the clear zone. This suggestion must be carefully considered. Wireless minor communications facilities typically are a monopole or other support structure and/or an equipment cabinet. Collisions with fixed roadside structures like power poles and utility boxes pose a serious risk to the driving public. Like King County, the Federal Highway Administration policy also requires that that utility facilities be located as close to the right-of-way line as feasible. The *American Association of State Highway and Transportation Officials (AASHTO) Highway Safety Design and Operations Guide* and the *AASHTO Guide for Accommodating Utilities within Highway Right-of-way* all state that utilities should be located as close to the right-of-way

line as feasible²⁵. Given the unanimity of opinion on the preferred placement of utilities within the right-of-way, the current County standards relating to the location of utilities within the right-of-way is not considered to be an area where restrictions should be relaxed to incentivize wider placement of wireless telecommunications equipment.

Underground Placement of Equipment Cabinets: The Roads section of County Code currently requires that "electronic equipment cabinets or buildings shall be constructed underground when there is an existing residential dwelling unit within three hundred feet..." (14.45.130). The KCCP stipulates that that the "County shall give greater weight to the visual impacts of telecommunications facilities proposed to be located on residentially-zoned lands or in the Rural Area." An obvious additional benefit of this requirement has been increased driver safety. Roads staff support retention of this provision.

²⁵ See <http://rightofway.transportation.org/Pages/Home.aspx>

Wireless Service and Access in Rural Areas

The final portion of the proviso requested an impact analysis of wireless service and access in rural areas. The scope of this effort is limited by the County's resources and available data, but the existing landscape for wireless service in the Rural and Resource Areas can be profiled through mapping existing sites in the County's right-of-way, using Federal Communications Commission (FCC) data on wireless service availability, and addressing service provision through the perspective of local and federal policy considerations. Finally, we can indicate next steps and estimated costs if a larger study is to be pursued to better identify the likely impacts of updating the telecommunications right-of-way use fees.

Wireless broadband access is recognized by the FCC as a good that should ideally be available to widespread communities; the National Broadband Plan released in 2010 indicates that "broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life", and states that government can influence the "broadband ecosystem" through policies that encourage competition between providers, ensuring efficient allocation of government assets (including the right-of-way), ensuring low-income families can afford service, and maximizing broadband's benefits in government sectors.²⁶ Among the specific long-term goals of the plan is that "The United States should lead the world in mobile innovation, with the fastest and most extensive wireless networks of any nation." The federal tools to pursue these goals include freeing up additional megahertz of spectrum for wireless use, creating a Broadband Data Depository using www.broadband.gov as a public information resource, and establishing Broadband Performance Dashboards to track metrics related to the plan's desired outcomes.

This concern with providing broadband access is also reflected in the priorities of local government. Mayor Murray of Seattle has introduced a Broadband Initiative to reduce regulatory barriers (such as Seattle Department of Transportation rules restricting equipment placement), exploring partnerships with internet service providers, and exploring the feasibility of offering a municipal broadband solution.²⁷ Next Century Cities is a multi-city initiative to ensure broadband Internet access, and includes municipalities of Seattle, Portland (OR), Mount Vernon (WA), and Palo Alto (CA), among others.²⁸ Broadband access is broadly recognized as a good that municipalities can and should take interest in helping develop, whether through public/private partnerships, regulatory action, or direct infrastructure investments.

King County aims to provide a fair regulatory framework for private investments in the sorts of infrastructure that could ensure wireless broadband service is available in lands under County jurisdiction, while upholding the restrictions currently in place to maximize citizen safety and the character of rural areas and residential neighborhoods. The King County Comprehensive Plan (KCCP) specifically addresses telecommunications with wireless service mentioned in the context of Wi-Fi

²⁶FCC National Broadband Plan, Executive Summary, March 2010 <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan-executive-summary.pdf>

²⁷ City of Seattle, Office of the Mayor, Broad Initiative (accessed May 2015)
<http://murray.seattle.gov/broadband/#sthash.AB5cVApa.dpbs>

²⁸ Next Century Cities; <http://nextcenturycities.org/member-cities/>

'hotspots' – "King County encourages public and private organizations to create wireless internet connections where the public can access the Internet. This will create additional opportunities to reduce traffic, lower GHG emissions, and enhance convenient information exchange."²⁹ Though addressed by the KCCP, Wi-Fi hotspots should be considered as a separate telecommunications medium than mobile broadband connection points; the former is a service that one accesses through an intermediary (for example using the Wi-Fi access point at a public library or an airport), whereas mobile broadband service is usually provided via a connection point directly provided by the wireless carrier, using the wireless carrier's spectrum, and paid for via a data plan charged to the customer.

RES maintains records of the current locations of wireless telecommunications equipment in the County's right-of-way, which can be mapped to show the relationship of existing placements to the unincorporated areas and the County's Urban Growth Boundary. This map (shown in full in Appendix B) indicates that most placements in the County's right-of-way are either within urban unincorporated, a potential annexation area, or abutting an incorporated area. Less than half of the sites appear to be in an unambiguously rural area. DPER staff have mentioned that the majority of support structures with wireless telecommunication as their sole purpose are on private property versus in the County's right-of-way, but permits for these locations have not been mapped. The availability of wireless broadband is best addressed not through the maps of equipment placements but through the service mapping tools available via the State Broadband Initiative's National Broadband Map³⁰.

The National Broadband Map is an interactive tool, developed by the National Telecommunications and Information Administration in collaboration with the FCC, to demonstrate broadband availability across the United States. The summary of broadband characteristics for King County indicates that 100% of the profiled population has access to wireless broadband service (compared to only 13.4% with access to Fiber), 99% of the profiled population live in areas with at least 5 wireless service providers, and the median Mobile broadband download speed is 2.3Mbps (a speed below that of home, school, and business access).

²⁹ KCCP, Section 8, page 55

³⁰ <http://www2.ntia.doc.gov/sbdd>

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Number of Internet Providers

Wireline Wireless

#	Percent Population	Nationwide
0	0.0%	0.1%
1	0.0%	0.2%
2	0.0%	2.5%
3	0.0%	5.9%
4	0.1%	29.7%
5	96.0%	26.3%
6	3.9%	16.5%
7	0.0%	9.3%
8+	0.0%	9.5%

Source API Call

Technology	Percent Population	Nationwide
DSL	98.5%	90.0%
Fiber	13.4%	25.4%
Cable	97.9%	88.8%
Wireless	100.0%	99.4%
Other	0.0%	0.0%

Source API Call

Broadband Speed Test (Mbps)

Download Upload

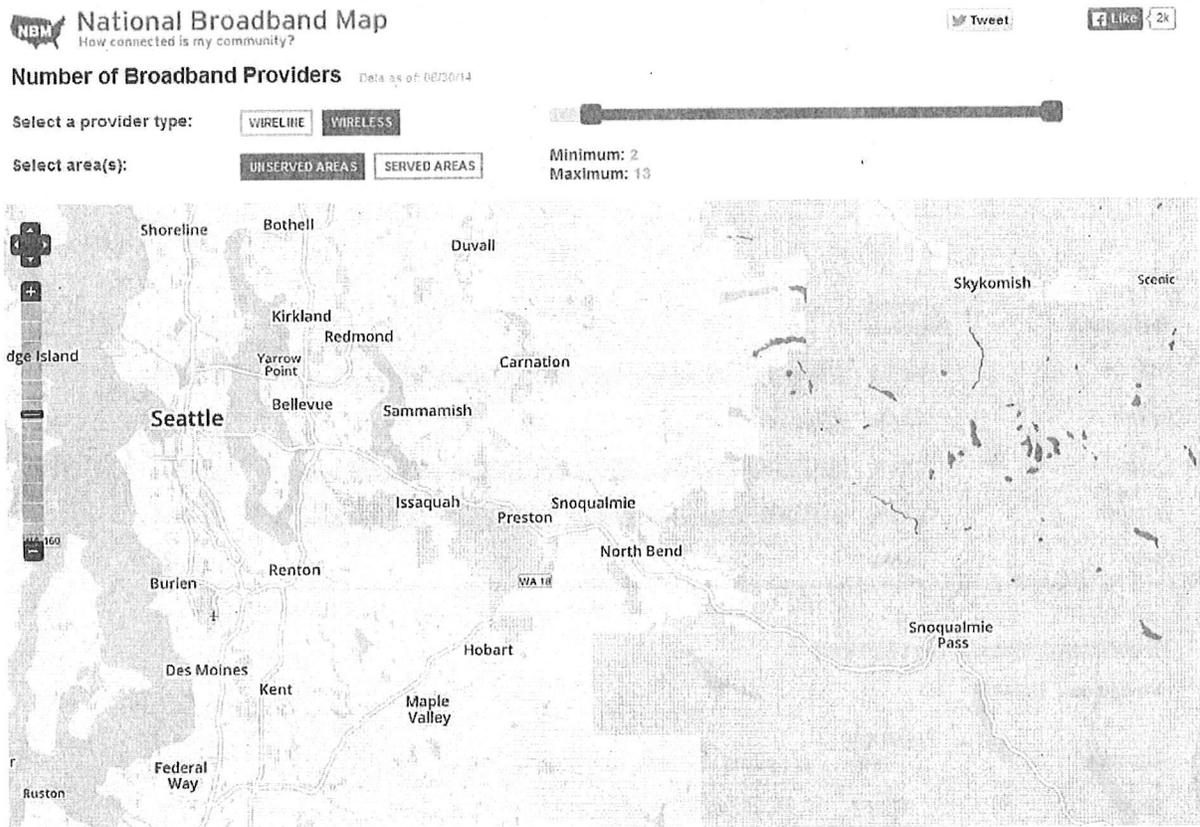
Location	Cumulative Tests	25 th percentile	median speed (Mbps)	75 th percentile
Home	12,262	2.8	18.0	
Schools, Libraries, Community Centers	160	3.6	50.5	
Medium/Large Business	483	2.6	32.6	
Small Business	647	1.3	11.2	
Mobile	79,858	0.9	5.2	
Other	97	1.3	22.1	

Source API Call



(all tables via <http://www.broadbandmap.gov/summarize/state/washington/county/king>; last accessed 5/29/15).

The National Broadband Map 'Number of Broadband Providers' shown below displays the areas unserved by at least two wireless broadband providers roughly within King County's borders. The map indicates few unserved geographic areas (shown in red), with those being primarily in the County's Resource Lands away from residential areas. Wireless service appears to be generally available in the County's rural areas, only lacking in hard-to-reach spots in forested areas far outside of any areas where services are concentrated.



(via <http://www.broadbandmap.gov/number-of-providers>, last accessed 6/16/15)

RES does not have the capacity, technical resources, or industry-specific expertise to conduct a true impact analysis of the identified options on the level of wireless service and access in the rural areas. This project would presumably include an inventory of existing service levels beyond the level demonstrated in the National Broadband Map; this data would need to be either gathered manually via field staff or obtained from the wireless providers themselves. The FCC Broadband initiative encountered its own issues with obtaining this data – service levels are proprietary data that are often closely held by providers out of concern for not revealing gaps in coverage that could be taken advantage of by competitors. Additional analysis on the expected impact of specific technologies would

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require deep technical expertise of how service deployment responds to technology changes and financial incentives within King County's regulatory environment.

Such a study could be completed with dedicated resources towards hiring an external consultant with industry-specific expertise. As a matter of due diligence, RES staff requested a sample scope of fees from a leading consulting service for a full-service study of options for updating wireless telecommunications right-of-way fees. Such a study would identify intersections between property configurations at cell sites and current and expected technology, provide a primer on technological advancements within the wireless telecommunications industry, and identify a recommended fee schedule. The proposed fee structure for such a study starts at approximately \$7,000 for a scope of work, \$20,000 for initial deliverables (flat fee for 60 hours) and \$20,000 for final report, with further work at \$300/hr. If such a study is deemed a priority then RES could develop a more formal Request for Proposal.

Conclusions

Several County agencies participated in the research and writing of this report, providing insight and perspectives on fee structure, County policy priorities, and existing code restrictions. The research points towards a general approach moving forward that includes further evaluation of some elements of the current approach while keeping other elements intact. The following conclusions are drawn from the research and deliberation across these agencies:

1. The existing use fee structure is unduly complex, confusing to both customers and Real Estate Services staff, and should be revisited at some point in the near future to maximize the efficiency of use agreement issuance and provide better service to customers.
2. Fees for right-of-way use vary by municipality, but King County right-of-way use fees appear to have some room for upward adjustment without exceeding any standard of reasonableness as set by the market. Several surveyed municipalities do not charge an annual use fee but do have alternative revenue mechanisms in place, including permit fees and utility taxes.
3. Sufficient evidence does not yet exist of a preferred alternative use fee that accommodates lighter technology for wireless communications and that is consistent with the service needs of King County's unincorporated areas.
4. Wireless telecommunications services are available in King County's urban and rural areas, with the exception of more remote resource lands. Existing County policy provides for the siting of telecommunications facilities, while recognizing and mitigating potential impacts in rural areas.
5. The existing regulatory apparatus is sound, and balances service delivery considerations with land-use, environmental, and driver safety interests.

Real Estate Services and the Office of Performance Strategy and Budget intend to continue exploring the issue of fees and oversight for the use of County property. A revised fee ordinance may be prepared if it is determined that an improved method exists for regulating use of the County right-of-way by telecommunications carriers. This approach will ideally recover the fair value of the use of County property, not conflict with any existing policy priority or regulation, and not present an undue barrier to the provision of wireless service at a level appropriate for areas with the County's jurisdiction.

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Appendix A: Comparability Study Summary: Minor Wireless Facility Siting in ROW

No.	St.	Type	Municipality Name	Ann. ROW Fee Range	Explanation	Source:
1	WA	County	Pierce	\$2,451 to \$6,129	Three tier fee structure similar to King County's current three tiers.	Jerry West, Franchise Utilities
2	WA	County	Snohomish	"Fair Market Value", but no ROW wireless sites	Under Snohomish County Code Title 13 - Roads and Bridges, section 13.110.010(8) states "the lessee of any county right-of-way shall be charged an annual fee reflecting the fair market value of the leased land." However, per Public Works respondent, Snohomish County does not currently have any wireless sites in the ROW and as a result, does not have any current fees.	Brian Parry, Special Projects Coordinator, Snohomish County Public Works
3	WA	County	Spokane	None	"Spokane County does not charge for being within our road right of way. They have to obtain a Franchise and in our Franchise it states that we reserve the right at a future date to change our policy and charge them. Our Telecommunications Franchises are around 15 years in length."	Deborah Firkins, Administration Engineer
4	WA	County	Clark	None	No charge for use of right of way	Sleve Hanson, Real Property Services Mgr
5	WA	DOT	WSDOT	\$10,022 to \$26,660*	WSDOT has a fee calculator with numerous possible fee combinations based on intensity of equipment, quantity of equipment, and location. The fee range reflects the range for the three configurations currently captured by King County's 3-tier fee structure.	Robin Curt, Property Management Specialist
6	WA	Utility	Seattle Public Utilities	No ROW wireless sites	Wireless sites administered by SPU are located on water tanks, reservoir sites, and other non-ROW sites.	Bob Gambill, Sr. Real Property Agent
7	WA	City	Bellevue	\$7,200	Wireless sites in ROW are administered by Bellevue Transportation Dept. Current ROW Rate = \$600/Mo. or \$7,200/Yr. Correspondent indicated that these rates have not been reviewed recently and are very low. Bellevue Transportation Dept. is planning on updating their rates. Only one rate offered regardless of who owns the improvement (e.g. pole or tower)	Mike Murray, Tony Cezar
8	WA	City	Kenmore	None	Per Kenmore Code 12.58.090, they have the same three tier fee structure as King County. However, the fees are "imposed by the city council by resolution". However, in practice Kenmore does not collect a fee.	Andrew Bauer, Associate Planner
9	WA	City	Seattle City Light (in Seattle ROW)	\$115 to \$21,993	Per City of Seattle and Seattle Public Utilities, they do not have any ROW wireless sites. However, Seattle City Light (SCL) administers usage fees for wireless sites in the ROW. Typically for these sites, SCL owns the pole/improvement and has an easement on the ROW. The lowest rate of \$115 is for a wi-fi or similar antenna and highest rate of \$21,993 is for towers and transmission poles in urban area where Seattle City Light has an easement.	Doug Haberman
10	OR	County	Washington	None	No charge for use of right of way	Aaron Clodfelter, Engineering Associate
11	OR	County	Multnomah	None	No charge for use of right of way	Alan Young, ROW Permits Specialist
12	OR	City	Portland	\$1,200 and \$7,688	City of Portland charges a base rate of \$7,500/ wireless facility (adj. by CPI annually) in the ROW, and currently a pilot program is in place where small cell sites are charged a flat rate of \$1,200/site per year. In each instance, the pole is typically owned by a utility provider (i.e. a third party such as Portland General Electric or Pacific Light).	Jennifer Li, jennifer.li@portlandoregon.gov
13	OR	DOT	ODOT	\$21,600 to \$30,000	Very few wireless sites in active ROW. The few they have are in "prime" high density locations. ODOT has another fee schedule for wireless sites in inactive ROW (i.e. ODOT owned property acquired for and adjacent to ROW, but currently unopened). ODOT's fee structure is similar to WSDOT and CalTrans. Poles typically PGE owned.	Kely Atkinson, ODOT ROW Property Agent 503-988-3619
14	CA	County	Los Angeles	None	"Washington State may have very different regulations than California. I'm not aware of any such fees being charged by the County for wireless phone companies to occupy the right of way"	Rex Ball, Principal Real Property Agent
15	CA	County and City	San Francisco	None - Utility Users Tax	There is no annual usage fee request by DPW under wireless permit issued. However, all utility companies are required to obtain an approved Utility Conditions Permit (UCP). This allows the utility to install and maintain their facilities and provides the rules that govern the installation and maintenance. As part of Section 4.7 of a wireless carrier's UCP, wireless carriers are subject to a utility users tax that would generate revenue for the County for their use of the ROW.	Rassendyll Dennis, Dept. of Public Works, City and County of SF
16	CA	County	San Diego	None	Initial permit fees only, no annual fees. Per correspondent, there is interest within County government in exploring alternative approach.	Gregory Locke, Wireless Project Manager Real Estate Serv. Division SD County
17	CA	County	Santa Clara	Unknown	No response to inquiry request.	ron.jackson@rda.sccgov.org
18	CA	DOT	CalTrans	\$9,900 to \$21,000	3 location category types based on location/ pop density and 3 equipment types: 1) Macrocell: Facility with 9 or more antennas and/or fenced area containing equipment building or cabinet, foundation, and monopole/tower is 500 square feet (not to exceed 16 antennas and 2,000 square feet) 2) Minicell: Facility with 5 to 8 antennas and/or fenced area containing equipment building or cabinet, foundation, and monopole/tower is 150 to 499 square feet 3) Microcell: Facility with 1 to 4 antennas and/or fenced area containing equipment building or cabinet, foundation, and monopole/tower is less than 150 square feet.	http://www.dcl.ca.gov/row/wireless/guide/wireless_guide.pdf
19	CA	County	Riverside	None	Riverside County only has initial permit fees. No annual recurring fees.	Derek, DOT County of Riverside, (951) 955-6790
20	CA	County	Alameda	\$7,200	Previous fee schedule was a one-time payment of \$10,000 or more (based upon the size and nature of the project), plus an annually adjusted rental of \$600/mo. in 1999 dollars for each installed antenna. Currently re-evaluating as part of a general update of their controlling ordinance in response to recent changes in the FCC regulations. Per John Rogers, at the moment they don't have an approved schedule.	John Rogers (johnr@acpwa.org), Alameda County Public Works Agency
21	IL	County	Cook	\$3,375 and \$12,350	2 fee types: "Other Users" and "Major Users". Code of Ordinances of Cook County §66-102(a).	Michael D. Sterr P.E., Cook County Dept. of Trans and Highways
22	FL	County	Miami-Dade	Unknown	No response to inquiry request.	pwwm@miamidade.gov
23	MIN	County	Hennepin	None	Installations of a facility in Hennepin County's rights-of-way would necessitate the application of a Hennepin County Right-of-Way/Utility Permit by the wireless company to work in Hennepin County's rights-of-way. There is a flat fee of \$265 per permit. There are no additional annual use fees or lease fees.	Steve Groven 612-595-0337, Supervisor, Permits/ GSOC Office, Hennepin County Pub. Works

Wireless Telecommunication Facilities in King County Right-of-Way

King County
GIS CENTER
April 14, 2015

- ★ TRAILS END
- UNAPPROVED FACILITIES
- APPROVED FACILITIES
- FACILITIES WITHIN 200 FEET OF RIGHT-OF-WAY
- FACILITIES WITHIN 500 FEET OF RIGHT-OF-WAY
- FACILITIES WITHIN 1000 FEET OF RIGHT-OF-WAY
- FACILITIES WITHIN 2000 FEET OF RIGHT-OF-WAY
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