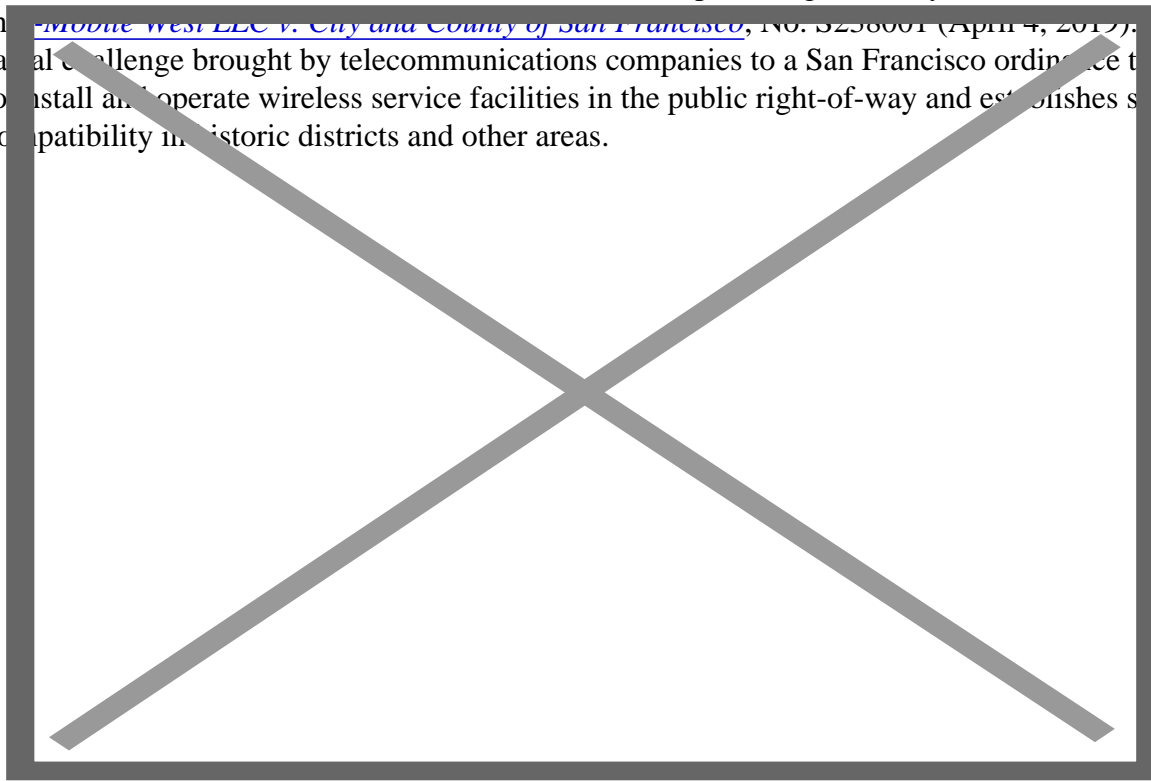


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California Supreme Court Upholds Validity of Local Aesthetic Regulation of Telecommunications Infrastructure

Local governments may require a permit conditioned on compatibility with aesthetic standards to install and maintain wireless communications infrastructure in the public right-of-way, the California Supreme Court held in [Mobile West LLC v. City and County of San Francisco](#), No. S238001 (April 4, 2019). The court rejected a facial challenge brought by telecommunications companies to a San Francisco ordinance that requires a permit to install and operate wireless service facilities in the public right-of-way and establishes standards for aesthetic compatibility in historic districts and other areas.



Public Utilities

Code Section 7901 Does Not Preempt Local Aesthetic Regulations Public Utilities Code section 7901 grants a statewide franchise to telecommunications companies to install equipment on public roads, waters or lands in the state "in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters." Plaintiffs argued that the San Francisco ordinance was preempted because it conflicted with the terms of Section 7901, hindered the accomplishment of the statute's purposes and intruded into a field that had been fully occupied by the legislature. The court rejected all three theories, finding that while Section 7901 prevented local governments from requiring a franchise for a telecommunications company, it did not prevent local governments from exercising their traditional authority over land use by requiring a permit based on aesthetic or other considerations. *Conflict Preemption.* The court found no conflict because it was possible to comply with both Section 7901 and local laws that required a permit on aesthetic grounds. The court explained that because Section 7901 "says nothing about the aesthetics or appearance of" telecommunications equipment, San Francisco's ordinance regulating those features "is not inimical to the statute." *Obstacle Preemption.* The court concluded that local aesthetic regulations did not hinder the accomplishment of the purposes of Section 7901. Assuming that the purpose of Section 7901 was to encourage technological advancement in the state's telecommunications networks, the court held that there was no indication that the Legislature intended to pursue that goal at all costs. Rather, the court reasoned, the Legislature's inclusion of the "incommode" clause indicated that the goal of technological advancement was not paramount to all other objectives. *Field Preemption.* The court ruled that the State Legislature did not indicate its intent to occupy the entire field of telecommunications infrastructure regulation. The court noted that Section

7901 contained a single sentence and did not provide a comprehensive regulatory scheme. The court held that Section 7901 left room for additional local regulation, given that there are "significant local interests" relating to use of public rights-of-way that may vary among jurisdictions. The court also explained that its interpretation of Section 7901 was consistent with the California Public Utilities Commission's understanding of the statutory scheme for utilities regulation: The Commission generally defers to municipalities on issues related to the design and location of wireless facilities, and only preempts local authority if it would undermine statewide goals (such as providing high-quality, reliable, widespread cellular services). **Public Utilities Code Section 7901.1 Does Not Prohibit Local Governments from Requiring a Permit for Wireless Communications Facilities to Occupy the Right-of-Way** Plaintiffs also contended that, even if not preempted, the ordinance violated Section 7901.1 by singling out wireless telephone corporations for regulation. Section 7901.1 states that "consistent with Section 7901, municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are *accessed*," and that such control "shall, at a minimum, be applied to all entities in an equivalent manner." (Emphasis added.) Plaintiffs maintained that the challenged ordinance required wireless communications companies to obtain a permit (conditioned on aesthetic approval) for long-term occupation of public right-of-way while not requiring such a permit for non-wireless telecommunications and utility companies. They argued that San Francisco's ordinance thereby violated Section 7901.1 by treating wireless communications companies differently from other entities with respect to permit requirements for accessing the public right-of-way. The court disagreed, finding that "accessed," as used in Section 7901.1, meant only short-term access during initial installation and construction, not long-term occupation of the public right-of-way. The court relied on statements in the statute's legislative history indicating that the purpose of the law was to give local governments more control over installation and construction of telecommunications facilities. Because San Francisco's ordinance treated all entities similarly with respect to requiring a permit for temporary access for initial installation and construction of telecommunications and utility equipment, it did not violate Section 7901.1.