

FLORIDA ASSOCIATION OF COUNTIES
Small Wireless Facilities (SWF)
A Comparison of State Law and Pending FCC Ruling

Issue Summary:

- Under current law (and prior to the passage of HB 687) communication service providers are authorized to locate traditional communication services infrastructure (i.e., poles, lines, etc.) within and along county rights-of-way, subject to local rules and regulations. In turn, and for the privilege of using taxpayer property, these companies charge and remit back to the local government communication services tax (CST) revenue.
- On June 23, 2017, Governor Scott signed HB 687 into law authorizing “Wireless Services Providers” to collocate small wireless facilities (a.k.a., Small Cells) on county utility poles located in the right-of-way (ROW). The law extends this authority to “Wireless Infrastructure Providers,” who do not provide wireless services but, rather, construct stand-alone poles and towers for Wireless Service Providers. While the law preempts counties from prohibiting both the collocation of small cells and the placement of new poles by Wireless Infrastructure Providers, it allows limited local regulation, including location standards and height limitations.

State Law - Definitions

- "Micro wireless facility" means a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.
- "Small wireless facility" means a wireless facility that meets the following qualifications:
 - Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.

FCC - Definitions

- “Small Wireless Facility” (SWF) means a facility that meets the following conditions:
- The structure on which antenna facilities are mounted:
 - Is 50 feet or less in height, or
 - Is no more than 10 percent taller than other adjacent structures, or

- Is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and,
- Each antenna associated with the deployment (excluding the associated equipment) is no more than three cubic feet in volume; and
- All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
- The facility does not require antenna registration under part 17 of this chapter; and
- The facility is not located on Tribal lands, as defined under 36 CFR 800.16(x); and

State Law – Preemption

- Prohibits a locality from regulating small cells in public ROWs using traditional zoning. It does, however, allow locals to require registration processes and permit fees. While the law precludes denial based on location alone, it provides the following:
 - Small wireless facilities may be no more than 10’ feet above the height of the utility pole or support structure where they are installed, unless the height limitation is waived by a locality.
 - New poles and replacements of existing poles cannot be greater than:
 - 10’ above the tallest existing utility pole within 500’; or
 - 50’ above ground level if there are no other poles.

FCC - Preemption

- The Ruling would adopt a broad interpretation of the “effective prohibition” provisions of Section 253 and 332(c)(7) of the Communications Act, finding that a state or local government need only “materially inhibit” a SWF deployment to violate the provisions.

State Law – Fees

- Permit fees allowed.
- Collocation fee: Cannot exceed \$150 annually.

FCC – Fees

- \$500 “for a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five”
- ▪ \$270 per SWF, per year for all recurring fees (including “any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW”).

State Law – Review Timeline (Shot Clock)

- Total Review Period: 60 – 90 days* (see below)
- Sufficiency Review: 14 days (deemed complete if local does not notify applicant of sufficiency issue).
- Alternate Location: Local also has 14 days to request applicant consider alternative location. The request triggers a 30-day* negotiation period between the local and the applicant.
- If the local and the applicant agree on the alternative location, the application is deemed approved.
- If the local and applicant cannot agree on a new location, the local must approve or deny the application within 90 days
- If denied, the local must specify in writing the basis for the denial, including specific code provisions, and must send this information by electronic mail to the applicant on the day the application is denied.
- Denials: The law provides that an authority may deny an application if the proposed collocation:
 - Materially interferes with the safe operation of traffic control equipment
 - Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
 - Materially interferes with compliance with the Americans with Disabilities Act or similar law;
 - Materially fails to comply with the 2010 edition of the DOT Utility Accommodation Manual; or
 - Fails to comply with “applicable codes” as defined in law (e.g., Uniform building, fire, electrical, plumbing, or mechanical codes)
- The applicant may cure the noted deficiencies by resubmitting the application within 30 days after notice of denial. The authority must then approve or deny the revised application within 30 days or the application will be deemed approved.
- Consolidated Applications: Provider may bundle a single application to include up to 30 SWFs.

FCC – Review Timeline (Shot Clock)

- Clock starts when application is submitted not when deemed complete (i.e., sufficient).
- Mandatory preapplications meetings cannot be used to circumvent the shot clock.
- A local may pause within 30 days if application is incomplete; subsequent pauses may only be within 10 days of receipt of supplemental info.
- Collocation of small wireless facilities: 60 days.
- Collocation of facilities other than small wireless facilities: 90 days.
- Construction of new small wireless facilities: 90 days.
- Construction of new facilities other than small wireless facilities (macro site): 150 days.¹
- The ruling also allows for more restrictive shot clocks at the state level.

¹ Macro sites were not addressed in the 2017 state legislation (HB 687)

State Law – Aesthetics

- Locals may enforce historic preservation zoning regulations.²
- Locals may enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area.
- Locals may require objective design standards that require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment; and
- Objective design standards adopted by ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, provided that the authority may waive such design standards upon a showing that the design standards are not reasonably compatible with a particular location of a small wireless facility or that the design standards impose an excessive expense.
 - The objective standards do not apply if the applicant demonstrates the standards inhibit the use of the SWF or are cost prohibitive.

FCC - Aesthetics

- Aesthetic requirements that are reasonable in that they are reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible.
- Aesthetic requirements that are more burdensome than those the state or locality applies to similar infrastructure deployments are not permissible.

Note: *The FCC ruling specifically addresses “Third Party Contractors” and extends the provisions of the ruling to these entities. Accordingly, the ruling would be consistent with state law that allows for the application and review processes, including fees, to apply to Wireless Services Providers.*

² Regulations consistent with the preservation of local zoning authority under 459 47 U.S.C. s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National 461 Historic Preservation Act of 1966.