



# Update on Telecom Legislation

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# Communications Services CS/CS/CS/SB 1000 (Hutson) Effective July 1, 2019

- The bill makes extensive changes to section 337.401, Florida Statutes, which governs the use of public rights-of-way by providers of communications services, including provisions on small wireless infrastructure.
- In addition, the bill eliminates many provisions of the Advanced Wireless Infrastructure Deployment Act of 2017.
- The bill prohibits a local government from instituting a moratorium, either expressly or de facto, that would delay the filing or processing of registrations, or issuance of permits or other approvals for the collocation of small wireless facilities or installation of utility poles.



## Treatment of Providers

- Prior to the passage of this legislation, the law contain legislative intent language that local governments treat providers of communications services in a nondiscriminatory and competitively neutral manner.
- In direct contrast to this “nondiscrimination language,” the bill requires local governments to consider factors, such as distinct engineering, or construction and operation considerations, when imposing rules or regulations on the placement or maintenance of communications facilities in right-of-way.



# Definitions

- The bill modifies several definitions, including the definitions of “application,” “applicable codes”, “wireless infrastructure provider,” and “wireless support structure.”
- The definition of “application” now includes both a permit to collocate small wireless facilities and a request to place a new utility pole to support a small wireless facility.
- The definition of “applicable codes” also includes reference to the National Electrical Safety Code and the 2017 edition of the FDOT-Utility Accommodation Manual.



# Registration

- Prohibits a local government from requiring wireless providers to submit certain information, such as an inventory of communications facilities, maps, locations of such facilities or other information, as a condition of registration, renewal or for any other purpose.
- It authorizes a local government to require, as part of a permit application, that the applicant identify ground-level communications facilities within 50 feet of the proposed installation location for the placement of at-grade communications facilities.



# Design Standards and Spacing

- The bill creates a new subsection 377.401(7)(r), which provides that local governments may require providers comply with objective design standards established by ordinance and modifies the standards to address both small wireless facilities and new utility poles.
- Under the 2017 law, the installation of a new utility pole in the rights-of-way to support a small wireless facility was subject to certain spacing, height and permit application review timeframes, but a local government was authorized to otherwise apply its “rules and regulations governing the placement of utility poles in the rights of way.”
- The bill deletes this language.



# Permitting

- The bill requires a local government to treat a permit application to locate a new utility pole in the right-of-way the same as a permit application to collocate a small wireless facility onto an existing utility pole.
- This includes the “shot-clock” timeframe for permit approvals and other prohibitions and limitations applicable to review of collocation of small wireless facilities.





# Prohibitions

- The 2017 law prohibits a local government from requiring the placement of small wireless facilities on any specific pole. This bill adds to this prohibition, and specifies a local government may not:
  - Require a demonstration that collocation on an existing structure is not legally or technically possible as a condition for granting a permit;
  - Require, in a right-of-way controlled by FDOT, compliance with local government rules and regulations absent a delegation from FDOT;
  - Require a meeting before filing an application;
  - Require direct or indirect public notification or a public meeting before placement of the facilities in the right-of-way;
  - Limit the size or configuration of a small wireless facility;
  - Prohibit installation of a new pole to support collocation if the installation otherwise meets the requirements of the law; or
  - Require that any component of a small wireless facility be placed underground, except as provided in the law.



# Undergrounding Utilities

- The 2017 law required that a provider comply with a local government's nondiscriminatory undergrounding requirements that prohibit above-ground structures in the right-of-way.
- The bill specifies conditions under which a local government may prohibit the placement of new poles used to support small wireless facilities in areas where the local government has required undergrounding.
- A local government may prohibit the placement of new poles if: the undergrounding requirements were in place at least 90 days prior to the permit application; structures that are allowed to remain above ground are reasonably available to providers for the collocation of small wireless facilities; and the provider is allowed to install a new pole in a designated area of the right-of-way that complies with these requirements, provided it is not reasonably able to provide the service by collocating on any remaining utility pole or other structure in the right-of-way.
- If small wireless facilities were installed prior to the local government's adoption of undergrounding requirements, the local government must allow the facilities to remain in place or allow the provider to replace the associated pole within 50 feet of the prior location



# Taxpayer Protections

- The bill eliminates the statutory authority of local governments to require performance bonds or security funds from providers.
- It allows local governments to require a construction bond limited to no more than 18 months after the construction is completed.
- Prohibits a local government from requiring a provider to indemnify it for liabilities not caused by the provider.
- Requiring a local government to accept a letter of credit or similar instrument issued by any financial institution authorized to do business within the U.S.
- Allowing a provider of communications services to add a local government to any existing bond, insurance policy, or other financial instrument, and requiring the local government to accept such coverage.



# Fees and Taxes

- The bill prohibits requiring a wireless provider to pay any fee, cost or other charge for registration or renewal; adoption or enforcement of any ordinances, regulations or requirements as to the placement or operation of communications facilities in a right-of-way by a communications services provider; or imposition or collection of any tax or charge for providing communications services over the communications services provider's communications facilities in a right-of-way.
- The bill also prohibits a municipality and county from imposing permit fees for the use of public rights-of-way by communications services providers if it had not levied permit fees as of January 1, 2019. In contrast, municipalities and counties that were imposing permit fees as of that date may continue to do so or may elect to no longer impose permit fees.



# Legal Provisions

- The bill creates a cause of action for any person aggrieved by a violation of section 337.401, F.S.
- A party may bring a civil action in a U.S. district court or any other court of competent jurisdiction, and the court may grant temporary or permanent injunctions to prevent or restrain violations and direct the recovery of full costs, including the award of reasonable attorney fees.



# Questions & Contact Information

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**AUGUST 16, 2019  
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# AGENDA – FAST MOVING ISSUES

## Technology: Technology and Facilities To Be Deployed

What's Left For Cities to Regulate Best Understood By Looking At the Facilities to Be Deployed in the ROW

## Federal Law

- FCC Order Re Small Cell Facilities In ROW (FCC 18-233; Released 9-27-18)
- Litigation: Challenge To FCC's Order
- Congress: H.R. 530 / S. 2012: Reverses FCC Order; STREAMLINE Act S. 1699, Reintroduced In Senate, Places FCC Order In Statute.
- FCC OTARD Expansion
- FCC Cable Order – issued 8/7/2019

## Florida Law

- Rights-of-Way: Advanced Wireless Infrastructure Deployment Act (July 1, 2017)
- FL Legislation SB 1000 / HB 693: Amends Small Cell Act Among Other Statutes (July 1, 2019)
- Litigation: FLC Lawsuit Challenging Portions Of The Small Cell Act



# FACILITIES BEING DEPLOYED IN ROW

## ► 5 Types of Installations that May Occur in the ROW:

- 1) Collocate A Small Wireless Facility On An Existing Utility Pole/Structure - Either Public Or Private
- 2) Install A New Or Replace Or Modify An Existing Utility Pole For Collocation Of A Small Wireless Facility
- 3) Install A Ground Or Pole Mounted Small Wireless Facility For Equipment,
- 4) Install Micro Wireless Facilities On Existing Aerial Cable; and
- 5) Install Backhaul Or Fiber Facilities (Or An Antenna For Backhaul) and Associated Permits For (Electric, Utilities).



- ❑ Alternate Stealth Examples (Streetlight Co-location)  
47' or 37' top of antenna depending on desired coverage area.  
Co-located on existing JEA poles.







# EXCAVATION ISSUES ARE COMMON



May 12, 2018, contractor for a wireless carrier installing fiber via directional bore struck a water main, which caused a flood and the road collapsed, creating a sink hole which blocked the entrance to a neighborhood in Cooper City. (Sun Sentinel picture)

# FT. LAUDERDALE WATER MAIN BREAK - 07/17/19



# FEDERAL: FCC ORDER ON SMALL CELL

- ▶ FCC Order Providing Federal Regulations for Deployment of Small Cell Infrastructure In The Public Rights-of-way. Order Became Effective Jan. 14, 2019.
- ▶ FCC Adopted Broader Reading Of Its Own Authority Under the Telecom Act's "Prohibition Of Service" Than Previously Afforded By Circuit Courts.
- ▶ Does Not Expressly Preempt State Statutes And In Large Part Consistent With Florida Statute. Preserves Local Authority To Manage Rights-of-Way, Address Public Safety, and to Adopt Aesthetic Standards by Ordinance. However, the FCC Order Does Not Contain Carve Outs.
- ▶ Over 100 Local Governments And Organizations Filed Appeals. Pending in US Court of Appeals for 9<sup>th</sup> Circuit. *City of Portland, OR v. FCC*, Case Nos.: 18-72689; 70144, et al
- ▶ Some Carriers Sued As Well, Claiming the FCC Did Not Go Far Enough Because it Did Not Include A Deemed Granted Remedy for Missing the Shot Clock
- ▶ Briefs for Petitioners Were Submitted In June 2019.



# FEDERAL: H.R. 530, FCC CABLE ORDER, OTARD NPRM

- H.R. 530 Introduced By Congresswoman Anna Eshoo (CA-18) – Would Overturn The FCC Order. Needs Bipartisan Support. Companion Senate Bill: S. 2012: Streamline Act S. 1699, Reintroduced In Senate, Places FCC Order In Statute.
- FCC Notice Of Proposed Rulemaking On Updating The Commission’s Rule For Over-the-Air Reception Devices (OTARD) (WT Docket No. 19-71). Expand OTARD Beyond Customers’ Satellite Dishes To Cover Carriers’ Wireless Transmission Antennas. Local Zoning Regulations And Condo/Apt. Restrictions That Unreasonably Restrict Siting Wireless Antennas Would Be Preempted.
- ▶ FCC Order Regarding Cable Services. Released Aug. 2, 2019: Will become effective mid Sept. In Re Section 621(a)(1) Of The Cable Communications Policy Act Of 1984...; MB Docket No. 05-311. FCC Concludes That Cable Related, In-kind Contributions Required By Local Franchise Authorities Are Franchise Fees and Subject To The 5% Cap On Franchise Fees Set In The Act. Would Affect Free Services Provided To Schools, Libraries And Government Facilities And PEG Access Channels Per Local Franchising. Provides That Costs Must Be Deducted From Franchise Fees Or Paid For By Governments. Cost Local Governments Hundreds Of Millions Of \$\$\$\$. FL Statute Ch. 610 Provides For Free Services To Schools, Libraries And Government Buildings and for PEG Channels, But Franchise Fees Were Replaced With CST.
  - ▶ Issues: 1) Whether Other Statutes That Prohibit Franchise Fees Prohibit the Services Required Per Ch. 610 of FL Statutes or 2) Does the FCC Order Preempt Ch. 610. Complicated Because Cable Operators Are Supposed to Pass Franchise Fee Savings Through To Customers.

# ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT

Preempts Local Authority. Establishes Process For “Wireless Providers” – Which Includes Both Service Providers And Infrastructure Providers (Install and Manage Facilities) – To Place “Small Wireless Facilities” In Municipal And County Public Rights-of-Way. Except As Authorized In The Statute, a City Or County Cannot:

Prohibit, Regulate, Or Charge For The Collocation Of Small Wireless Facilities In The Public Rights-of-way.

- ▶ 4 Types Of installations That May Occur In The ROW That Are Addressed In the Statute:
  - Collocate a Small Wireless Facility On An Existing Utility Pole/Structure
  - Install a New Utility Pole For Collocation Of A Small Wireless Facility
  - Install a Ground Mounted Small Wireless Facility For Equipment, and
  - Install Micro Wireless Facilities On Existing Aerial Cable

The Act Defines Small Wireless Facility As:

- ▶ Deployments With Enclosed Or Exposed Antennas No More Than 6 Cubic Feet In Volume; And
- ▶ All Other Associated Wireless Equipment That Is No More Than 28 Cubic Feet In Volume

# ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT

A “Utility Pole” includes a pole used for communications or electric distribution, lighting, traffic control, or signage.

## Carve Outs:

- Excludes Florida Department Of Transportation Rights-of-way

- Excludes Utility Poles Owned By Municipal Electric Utilities

- Excludes Small Coastal Communities, That Before 7/1/17 Passed Referenda To Underground Electric Utilities

- Excludes Large Senior Retirement Communities With Underground Electric Utilities.

- Provides Protections for Historic Properties and HOAs.

The Act Specifies The Bases To Deny An Application.

The Act Became Effective July 1, 2017, and Is §337.401(7), Florida Statutes.

# LIMITS ON LOCAL AUTHORITY

## ▶ Shot Clocks to Process Applications for Permits;

A Local Government Has 14 Days To Determine If An Application Is Complete, And, If Not, To Provide Notice To The Applicant Of The *Specifically Identified* Missing Information.

A Complete Application Must Be Approved Or Denied Within 60 Days Or It Is “Deemed Granted.”

The Parties May Mutually Agree To Extend The 60-day Application Review Process.

## ▶ Local Government Fees:

▶ Cannot Charge Permit Fees;

▶ Cannot Charge Fees For Consultants To Evaluate Applications;

▶ Maximum A Local Government Can Charge To Collocate A Small Wireless Facility On Its Utility Pole Is \$150/Year.

# SB 1000 REVISIONS TO §337.401

- Registrations – Amends §337.401(3). May still require registration but may only require:  
Name, Address, Phone Number Of Contact;  
Number Of Current Certificate Issued By PSC, FCC Or Florida Department Of State;  
Whether The Registrant Is A Pass Through Provider;  
Fed. Employer Id Number; And  
Proof Of Insurance. Cannot Charge A Registration Fee.
- ▶ Added §337.401(8), Creates A Civil Cause Of Action In Federal Court Or Other Court Of Competent Jurisdiction For Any Person Aggrieved By A Violation Of §337.401, And Allows The Court To Grant Injunctions To Restrain Violations And To Direct The Recovery Of Full Costs Including Attorney Fees To The Prevailing Party.
- ▶ Performance Bonds/Security Funds: No Longer Expressly Allowed But Not Expressly Prohibited.

# SB 1000 REVISIONS

**Undergrounding:** Limits The Ability To Prohibit New Utility Poles For Small Wireless Facilities In Areas Where All Utilities Must Be Underground. There Must Be Structures Above Ground Reasonably Available To Wireless Providers For Collocation Of Small Wireless Facilities, and a Wireless Provider May Install A New Utility Pole If Not Reasonably Able To Provide Wireless Service By Collocating On A Remaining Utility Pole Or Other Structure In The ROW.

**Objective Design Standards and Spacing:** New Utility Pole That Replaces An Existing Utility Pole To Be Of Substantially Similar Design, Material, And Color; Reasonable Spacing For Ground-mounted Small Wireless Facility Which Does Not Exceed 15 Feet From the Associated Support Structure; Small Wireless Facility To Meet Reasonable Location Context, Color, Camouflage, And Concealment Requirements, Subject To The Statute's Limitations; And New Utility Pole Used To Support A Small Wireless Facility To Meet Reasonable Location Context, Color, and Material Of The Predominant Utility Pole Type At The Proposed Location Of The New Utility Pole.

**Permitting Exceptions:** No Permits Required For Routine Maintenance; Service Restoration, Replacement, Extension or Upgrade of Existing Aerial Wireline Facilities On Utility Poles; or Existing Aerial Lines or Underground Facilities Located On Private Property Outside the ROW. "Extension" includes from ROW to a Customer's Private Property for a Service Drop or to a Utility Easement.

**Notice to Secretary of State:** Must Provide Notice Of Ordinances To FL Secretary Of State Prior To Hearings. SB 1000: Enforcement Of Ordinances Must Be Suspended Until 30 Days After The Local Government Provides the Required Notice.

# INCENTIVIZING NEW TECHNOLOGY – LAND USE

Many Cities Find Small Cell Technology In The ROW Challenging From Aesthetic, Historic Preservation, Urban Planning and Economic Development Standpoints.

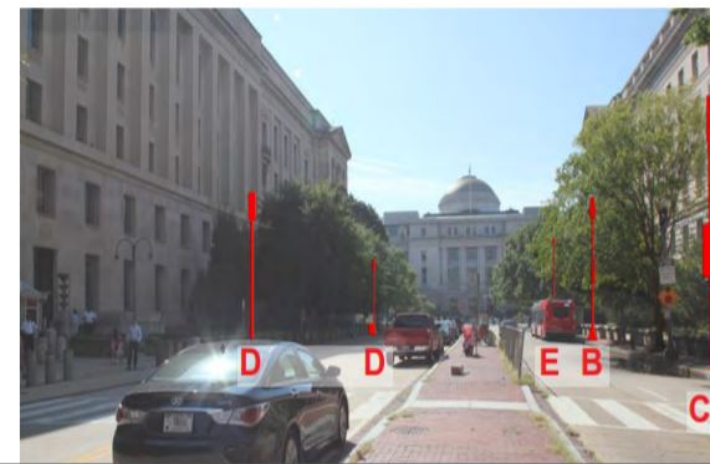
Many Companies Have Realized This And Are Developing New Technologies To Make Poles And Equipment Cabinets Less Intrusive. Some Of These Technologies Are More Appropriate On Private Or Public Property, For Example Parking Lots.

One Company Has Developed An Equipment Cabinet That Can Be Located Underground Under A Parking Space. They have This Deployed Nearby in West Palm Beach. Others Have Deployed New Poles That Can Accommodate More Than One Wireless Provider As Well As Cities' Technology and Basically Resemble Existing City Utility Poles

Your Local Land Use Codes Probably Treat Small Cell Facilities Outside The ROW As Towers And Equipment Facilities, And Require Several Public Hearings , Complex Leases and May Not Be Allowed Under City Zoning Codes.

Local Authority May Be Limited In ROW, But Companies Looking For Quick And Inexpensive Deployments Can Be Incentivized To Use Parking Lots & Other Technologies Cities May Prefer If They Did Not Have To Go Through A Difficult Land use Process.

Policies Other Than Preemption To Support Technology Innovation May Better Balance the Need to Deploy Facilities With Other Important City Needs.



## FLORIDA: LITIGATION CHALLENGING CERTAIN PROVISIONS OF § 337.401

In May, We Filed A Lawsuit On Behalf Of The FLC Challenging Certain Provisions Of The Act On FL Constitutional Grounds. Three Cities Are Also Plaintiffs Represented By Their City Attorneys. *Florida League of Cities v. Ashley Moody*, Case No. 2019-ca1071, 2<sup>nd</sup> Circuit in Leon County.

Basically We Are Challenging The Cap Of \$150/Pole Attachment Per Year And Other Provisions That Restrict Cities' Authority Regarding Collocation of Small Wireless Facilities On City Utility Poles.

Claims Include That These Provisions Constitute Taking Of City Property And Do Not Comply With Eminent Domain Requirements; Preempt City Exercise Of Proprietary Authority; Constitute Using Public Funds To Aid Private Corporations Without a Public Purpose; Constitute An Unfunded Mandate Without A Determination Of An Important State Interest.

We Are Also Seeking A Declaration That Cities Have The Right To Require Performance Bonds or Security Funds, Notwithstanding Amendments to the Statutes.

Finally, We're Challenging The 2019 Amendments' Addition Of A Private Cause Of Action In State Or Federal Court With Potential Exposure To Costs And Attorneys' Fee

Case Is In Early Stages.