

FLORIDA LEAGUE OF CITIES 2017 ANNUAL CONFERENCE

Attack of the Mini Cell Towers in Public
Rights-of-Way
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2017: The Year of Wireless Broadband Infrastructure

The growth in wireless data traffic is expected to grow 5 times by 2020.

Over the next 7 years, advanced services, including 5G-capable networks, are expected to create up to 3 million jobs and result in \$275 billion in network investment.

Once these new networks are up and running, it is projected they will create another 22 million jobs and produce up to \$12.3 trillion of goods and services by 2035.

It is estimated that between 100,000 and 150,000 small cells will be deployed by the end of 2018, with 455,000 expected by 2020, and approximately 800,000 by 2026.

And where will all of these small cells be deployed?

IN YOUR COMMUNITY'S PUBLIC RIGHTS-OF-WAY

What is a Small Cell?

- ▶ Low-powered cellular radio access nodes with limited range. “Small cell” refers to the Coverage area, not necessarily the size of the infrastructure.
- ▶ They are “small” compared to traditional macro towers. Often characterized as the size of a pizza box or no larger than a laptop or about the size of a paperback book.
- ▶ Recently enacted state legislation often defines “small wireless facilities” as antenna installations of no more than 6 cubic feet, with associated equipment no more than 28 cubic feet in volume.
- ▶ And watch out for 120-foot monopoles!



But Not Everything is Perfect

- ▶ 5G wave frequencies do not travel easily through buildings – so “small cell” antennas will have to be densely placed on utility poles, street lights, signage structures, and other structures in the public rights-of-way. This is referred to as “densification.”
- ▶ 5G still requires macro towers.
- ▶ 5G requires a lot of fiber backhaul to get network data to a point where it can be distributed over a network.
- ▶ Small cell 5G is best suited for densely populated areas – it is not a fix for the lack of connectivity in rural and unserved America.



State Preemption of Local ROW Authority Over Wireless Infrastructure

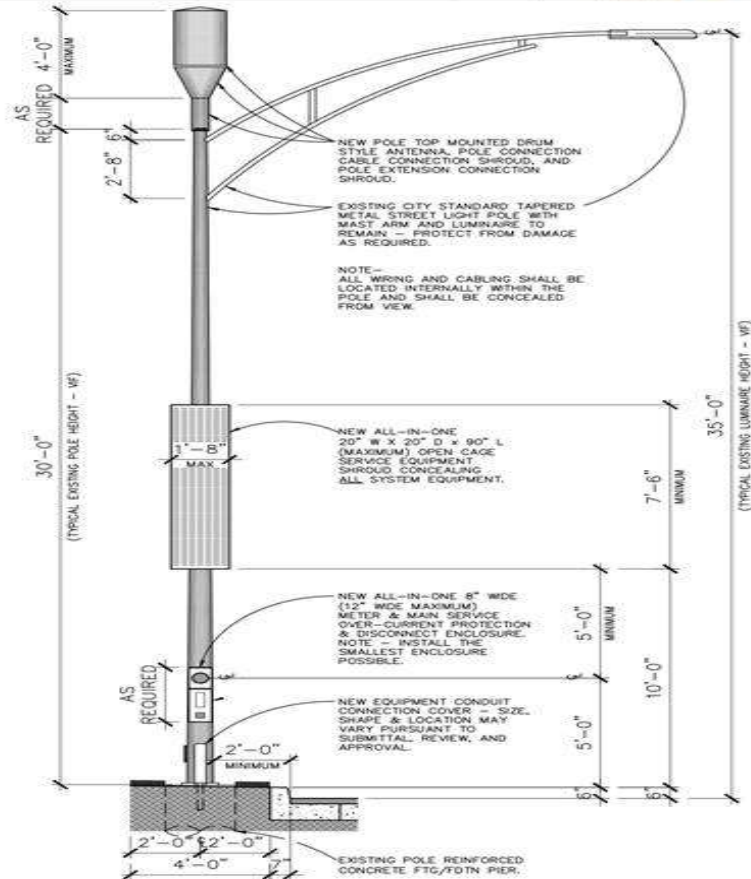
- ▶ Industry-supported legislation discussed or introduced in approximately two dozen states to date.
- ▶ Bills enacted in **Arizona, Colorado, Delaware, Florida, Indiana, Iowa, Kansas, Minnesota, North Carolina, Ohio, Texas and Virginia.**
- ▶ Court fight ongoing in Ohio; recent decision by one court finds legislation violated the state's "single subject" rule
- ▶ Bills currently moving through the legislative process in California, Pennsylvania, Rhode Island and Wisconsin.
- ▶ Florida Bill Signed By Governor June 26.

CMC - Chapter 719 Wireless Communications Facilities
 DOTE Detailed Design Guidelines & Examples



NOTES:

1. **STRUCTURAL REQUIREMENTS:**
 - A. THE APPLICANT SHALL SUBMIT STRUCTURAL WIND LOAD, AND POLE PENETRATION DESIGN CALCULATIONS AND PLANS IN COMPLIANCE WITH AASHTO STANDARDS SIGNED AND STAMPED BY A STRUCTURAL ENGINEER LICENSED IN THE STATE OF OHIO.
 - B. EXCAVATION, CONSTRUCTION, AND/OR INSTALLATION OF THE REQUIRED NEW ADJACENT UNDERGROUND PULLBOX SHALL NOT NEGATIVELY IMPACT OR UNDERMINE THE EXISTING LIGHT POLE FOOTING / FOUNDATION PIER OR ANY OTHER NEARBY STRUCTURE.
2. **WIRING & CABLE MANAGEMENT:**
 - A. ALL WIRING AND/OR CABLING AND THEIR CONNECTIONS SHALL BE CONCEALED FROM VIEW.
3. **EQUIPMENT DESIGN:**
 - A. THE DESIGN OF POLE MOUNTED SYSTEM EQUIPMENT AND SHROUDS MAY VARY AS REQUIRED PER MANUFACTURER PER REVIEW AND APPROVAL OF COMPLIANCE WITH THE MAXIMUM DIMENSIONAL LIMITS NOTED.
 - B. THE DESIGN INTENT FOR ALL EQUIPMENT AND SHROUDS IS TO INSTALL THE SMALLEST, LEAST PHYSICALLY AND VISUALLY INTRUSIVE EQUIPMENT AND SHROUDS POSSIBLE.
4. **FINISHES:**
 - A. ALL POLE MOUNTED EQUIPMENT AND THE ABOVE GROUND CONDUIT CONNECTION COVER SHALL BE PAINTED MATTE SILVER TO MATCH THE EXISTING STREET LIGHT POLE.
5. **EQUIPMENT NOISE:**
 - A. NOISE GENERATING EQUIPMENT SHALL NOT BE INSTALLED.
6. **EQUIPMENT SIGNING:**
 - A. ALL EQUIPMENT IDENTIFICATION, COMPLIANCE, AND WARNING STICKERS SHALL BE THE SMALLEST SIZE AND FEWEST NUMBER ALLOWED BY LAW AND SYMMETRICALLY LOCATED.



Appendix-B:
 Standard Configuration - Existing Street Light Pole with Pole Mounted System

B



Florida HB 687: Advanced Wireless Infrastructure Deployment Act

Establishes a process by which “wireless providers” – which includes both service providers AND those that build or install wireless equipment, facilities, and support structures – may place “small wireless facilities” in the public rights-of-way that are under the control of a county or municipality.

The Act specifically excludes the Florida Department of Transportation rights-of-way.

The Act became effective July 1, 2017.

The Act provides that:

Except as provided, a city or county cannot:

- ▶ Prohibit,
- ▶ Regulate, or
- ▶ Charge for

the collocation of small wireless facilities in the public rights-of-way.



What is a “Small Wireless Facility”?

The Act defines 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



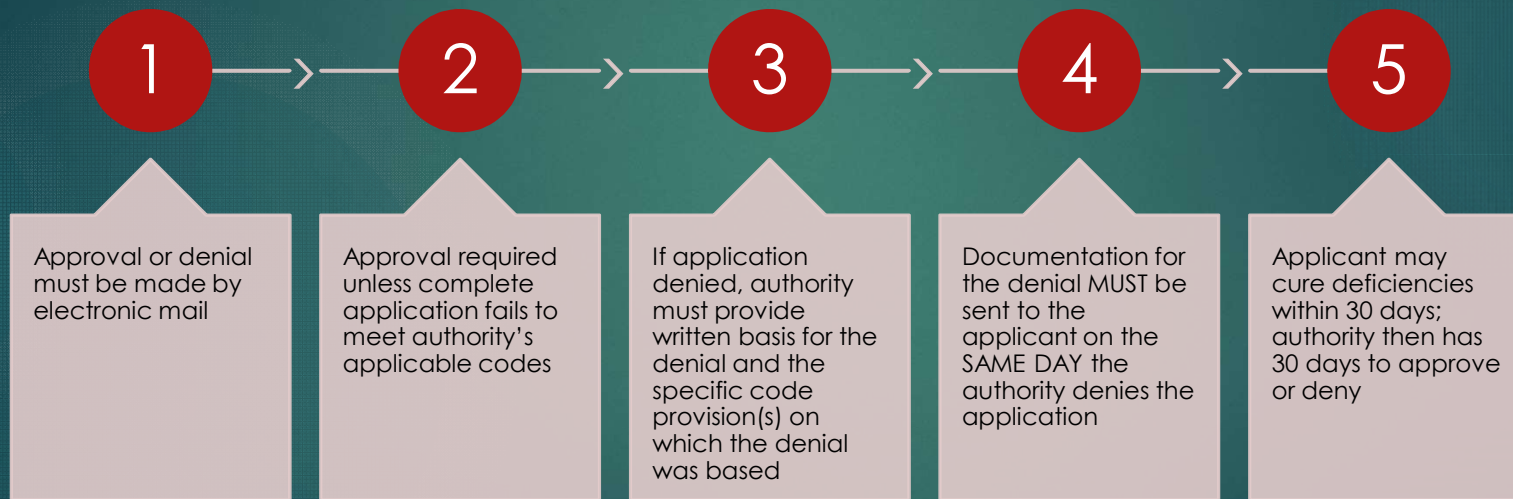




Requirements for Processing Applications

- ▶ The authority 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.
- ▶ The parties may mutually agree to extend the 60-day application review process (Practice hint: get any agreement to extend the period in writing).
- ▶ Failure to grant or deny the application within the 60-day review period results in a “deemed granted” application.

Notification Procedure



Consolidated Applications

At the applicant's discretion, a consolidated application may be filed for the collocation of up to 30 small wireless facilities in a single application.

If approved, a consolidated application results in the issuance of a single permit.

The authority may, at its option, remove from a consolidated application any facility for which incomplete information has been received or that is subsequently denied by the authority.

Requests for Application Modifications

- ▶ Within 14 days after an application is filed, the authority may propose a new location for the proposed installation.
- ▶ Parties may negotiate the new location, and any objective design standards, for 30 days.
- ▶ If the applicant accepts the modification, they must notify the authority and the application is deemed granted for the new location.
- ▶ If no agreement is reached, the applicant must notify the authority and the original application must be acted on within 90 days from the date of filing.
- ▶ Any required notifications must be in writing and provided via electronic mail.

Height Limitations

- ▶ An authority may limit the height of a small wireless facility to no more than 10 feet above the pole or structure on which the small wireless facility is to be collocated.
- ▶ A new pole is limited to the height of the tallest existing utility pole, as of July 1, 2017, located in the same ROW and within 500 feet of the proposed new pole.
- ▶ If there is no existing pole within 500 feet, the new pole is limited to 50 feet.

An Authority may deny an application for collocation of a small wireless facility if it:

- ▶ 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 the ADA or similar federal or state standards concerning pedestrian access or movement;
- ▶ Materially fails to comply with the 2010 edition of the FL DOT Utility Accommodation Manual; or
- ▶ **Fails to comply with applicable codes.**

What are Applicable Codes?

- ▶ Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes solely to address threats of destruction of property or injury to persons;
- ▶ **Local codes or ordinances adopted to implement this Act;**
- ▶ **Objective design standards adopted by ordinance.**

What are Objective Design Standards?

- ▶ May require new or replacement poles be of similar design, material, and color;
- ▶ May require ground-mounted equipment to meet reasonable spacing requirements;
- ▶ May require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements.

NOTE: Authority may waive such standards if not reasonably compatible to a particular location or impose an excessive expense. Any waiver request must be granted or denied within 45 days of receipt.







Cities and Counties May Impose Reasonable and
Nondiscriminatory Provisions Adopted by Ordinance
Addressing:

Registration, permitting, insurance coverage,
indemnification, **performance bonds, security
funds, force majeure**, abandonment, authority
liability, and authority warranties

Fees & Compensation

Permit Fees: Most Florida cities/counties waived permit fees in exchange for a higher Communications Services Tax per Section 337.401 (3).

Costs and fees cannot be Imposed for:

- ▶ Routine maintenance
- ▶ Replacement of equipment of substantially same or smaller size
- ▶ Placement of micro wireless facilities (max of 24x15x12 inches) on suspended cables by an authorized communications provider with authorized access to the ROW and remitting taxes under Chapter 202

Compensation for Use of ROW: CST and pass through provider fees are not affected by the Act.

Collocation Charge: Collocation on authority utility poles may not exceed \$150 per pole annually.



Undergrounding of Facilities

A wireless provider shall comply with an authority's nondiscriminatory undergrounding requirements that prohibit above-ground structures in the public rights-of-way.

NOTE: An authority may waive any such requirements.

A word of caution: The FCC has signaled its concern that undergrounding requirements conflict with the installation of wireless facilities under the Communications Act.

Enforcement of Historic Preservation Zoning Regulations and HOA Restrictions

An authority may enforce historic preservation regulations under federal law and local codes, administrative rules, or regulations adopted by ordinance in effect on July 1, 2017, that are applicable to a historic area designated by the state or local authority.

NOTE: A city or county may waive any such ordinances or requirements.

HOA Restrictions Apply

New Utility Poles / Wireless Support Structures

- ▶ Wireless infrastructure provider may apply to place “utility pole” in ROW. Must include attestation that will be used to collocate a small wireless facilities and will be used by a wireless service provider to provide service within 9 months after the date applications is approved.
- ▶ Height is limited to tallest utility pole in ROW within 500 feet, or if none, 50 feet.
- ▶ Wireless Support Structure defined as a “freestanding structure, such as monopole, guyed or self-supporting tower or another existing or proposed structure designed to support or capable of supporting wireless facilities.” Does not include a utility pole. These are subject to your land use regulations for towers per §365.172, F.S. Can be prohibited or subject to distance separations, hierarchies, stealth as other towers.

Exclusions and Restrictions

The Act does not apply to:

- ▶ Collocations on privately owned utility poles or utility poles owned by electric cooperatives or municipal electric utilities.
- ▶ Privately owned wireless support structures or other private property without the consent of the owner.
- ▶ Retirement communities with more than 5,000 residents with underground utilities for electric transmission or distribution.
- ▶ Coastal barrier islands of less than 5 square miles, fewer than 10,000 residents, with voter approved debt to finance undergrounding of electric utilities.

Current Efforts by the FCC to (Further) Preempt Local ROW Authority

- ▶ Mobilitee Petition for Declaratory Ruling (WT Docket No. 16-421) – Waiting for Commission action that could establish guidelines on what constitutes fair and reasonable compensation for the use of public rights-of-way
- ▶ Wireless Notice of Proposed Rulemaking (WT Docket Nos. 17-79 and 15-180 – Comments June 15, 2017; reply comments July 17, 2017
- ▶ Wireline Notice of Proposed Rulemaking (WC Docket No. 17-84) – Comments June 15, 2017; reply comments July 17, 2017
- ▶ Expect Action in late Fall or early 2018.

Potential FCC Impact on State Legislation

- ▶ Could impose shorter timelines within which to act on wireless broadband infrastructure deployment applications
- ▶ Could impose limits on undergrounding authority
- ▶ Could impose limits on historical preservation authority
- ▶ Could impose limits on third party consultants for review process
- ▶ Could impose limits on local authority over Wireless Support Structures
- ▶ Could impose stronger “deemed granted” remedy
- ▶ Could impose restriction on use of moratoria
- ▶ Could impose limit on local authority over design standards / aesthetics
- ▶ Could impose limits on carve outs -- DOT ROW, Coastal Communities’ ROW, Retirement Communities ROW, and HOA ROW
- ▶ And more . . .

So, Now What?

- ▶ Review and amend existing codes to comply with HB 687, federal law, and FCC regulations and that they are as strong as they can be.
- ▶ Review current wireless broadband infrastructure application processes to ensure you can comply with required timeframes.
- ▶ Review applications to make sure you are asking for all the information you are entitled to obtain from the applicant.
- ▶ Develop “objective design standards” that fit your community’s needs and interests.
- ▶ Consider undergrounding and location options.