

**FMAA 2019**  
**HOT TOPICS: 5G/SMALL CELL UPDATE**  
**(STATE LAW AND FCC)**

JULY 12, 2019  
TOWN OF PALM BEACH

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**AGENDA – FAST MOVING ISSUES**

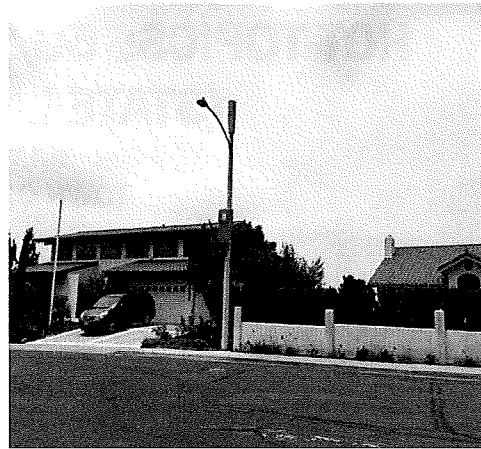
**Technology: Technology and Facilities To Be Deployed**

**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

**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 NPRM and Proposed Order



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



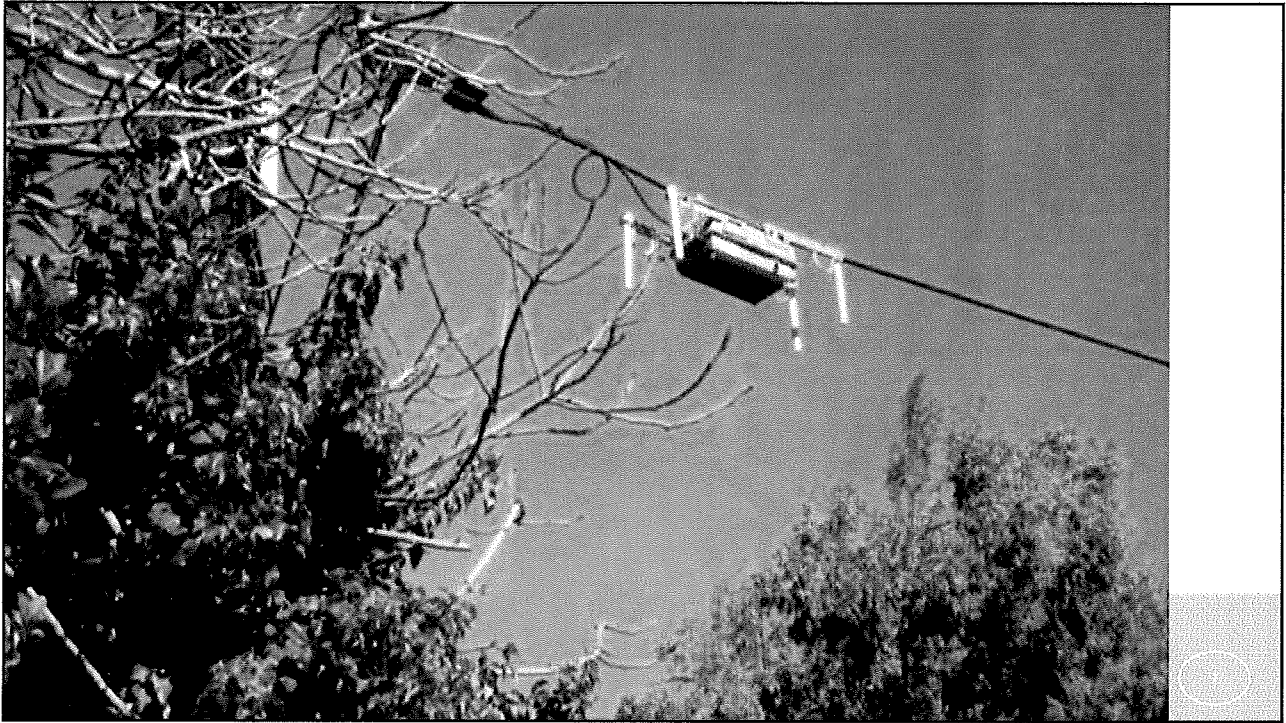


## EXCAVATION ISSUES ARE COMMON



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)





## **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.

## 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.

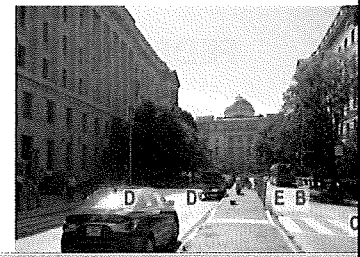
Case Is In Early Stages.

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## 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.

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 And Other Areas 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 for Urban Planning.

## 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 NPRM, 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 NPRM Regarding Cable Services. In Re Section 621(a)(1) Of The Cable Communications Policy Act Of 1984...; MB Docket No. 05-311. FCC Tentatively Concludes That Cable Related, In-kind Contributions Required By Local Franchise Authorities Are 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. Look For Possible Amendment To Ch. 610 of FL Statutes If FCC Order Passes And Is Upheld.

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.