



UPDATE ON FEDERAL AND STATE TELECOMMUNICATIONS AND BROADBAND LAWS AND REGULATIONS AFFECTING MUNICIPALITIES

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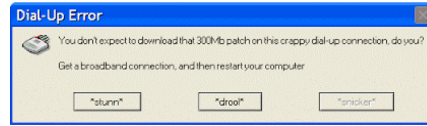
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WHY DO MUNICIPALITIES CARE ABOUT THIS?



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A NOTE OF THANKS

Some of the materials in this presentation have been graciously shared by some of my colleagues in other states:

- Jonathan Kramer and Tripp May, Telecom Law Firm, Los Angeles, CA
www.telecomlawfirm.com
- Brian Grogan, Moss & Barnett, Minneapolis, MN
www.lawmoss.com/brian-t-grogan/
- Nancy Werner, General Counsel, National Association of Telecommunications Officers and Advisors, Alexandria, VA
www.natooa.org

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BROADBAND SPEEDS IN THE US – HOW DO WE COMPARE?

- Akamai Technologies released its **First Quarter 2017 State of the Internet Report**, which found that the average broadband speed across the United States is 18.7 Mbps. This brought us up to tenth in the world in average broadband speed.
- US is behind first-ranked South Korea (28.6 Mbps), second-ranked Norway (23.5 Mbps), and third-ranked Sweden (22.5 Mbps), Hong Kong, Finland, Switzerland, Singapore, Japan and Denmark.
- Depending upon whose list you look at Colorado is between 22nd and 40th among the states, at around 16 Mbps. DC is first at around 28 Mbps.
- In mobile connectivity, the US averages 10.7 Mbps, putting us behind countries like Kenya, Egypt, Qatar, Cyprus and Romania.

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NATIONAL ASPIRATIONS 8 YEARS AGO

- Federal Communications Commission,
National Broadband Plan, 2010



“The United States must lead the world in the number of homes and people with access to affordable, world-class broadband connections. As such, 100 million U.S. homes should have affordable access to actual download speeds of at least 100 Mbps and actual upload speeds of at least 50 Mbps by 2020. This will create the world’s most attractive market for broadband applications, devices and infrastructure.”

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STATE LEGISLATION – SB 152 AND A FEW NEW LAWS FROM 2018



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CO BARRIERS TO LOCAL BROADBAND



- In general, SB 05-152 (Colo. Rev. Stat. Ann. § 29-27-101 et seq.) prohibits local governments from directly or indirectly providing cable television service, telecommunications service, or advanced service.
 - Colo. Rev. Stat. Ann. § 29-27-103

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KEY DEFINITIONS

- HB 1237 in 2014 amended some statutory telecom definitions
- Ties state definition of broadband to federal definition
- But did not make any similar change to the SB 152 definition of “Advanced Service,” so that “Broadband,” for most state law purposes tracks with federal law, but for local government involvement in “Advanced Service,” we’re still talking about 256 Kilobits per second

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ANALYSIS OF KEY STATUTORY TERMS

- Providing Service: The relevant portion of the legislation states that a local government “provides” cable, telecommunications or advanced service if the service is provided “directly” or “indirectly” to one or more subscribers. Colo. Rev. Stat. Ann. § 29-27-103(2)
- Subscriber: Does providing service to “subscribers” entail someone signing up and paying for the service? NO
- The statute defines “subscriber” as “a person that lawfully receives cable television service, telecommunications service, or advanced service.”
- In other words, if a person is using the service with permission, he or she is a “subscriber” under state law. Colo. Rev. Stat. Ann. § 29-27-102(5)

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EXCEPTIONS

- SB 152 identifies four ways in which a local government can engage in the provision of services:
 - a limited category of services that are not otherwise covered by the statute. Colo. Rev. Stat. Ann. § 29-27-102(5)
 - services that private providers choose not to provide within the gov’t jurisdictional boundaries. Colo. Rev. Stat. Ann. § 29-27-202(1)(a)
 - sell or lease to private entities excess capacity on its own network, if that excess capacity is “insubstantial” in comparison to the governmental uses of the network. Colo. Rev. Stat. Ann. § 29-27-302(3)
 - provision of services allowed after voter approval. Colo. Rev. Stat. Ann. § 29-27-201(1)

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YOU’RE EXEMPT FROM SB 152 – NOW WHAT?

Various options (and options within options) to promoting broadband by local governments

- Direct service provider (ex. Longmont)
- Regional projects (ex. SWCCOG, Region 10, NW CO Broadband)
- Individual jurisdiction in public-private partnership (ex. Wray)

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YOU’RE EXEMPT FROM SB 152 – NOW WHAT?

- Are there state regulatory issues?
 - Probably not – state broadband legislation in 2014 pretty much ended PUC authority over telecommunications and broadband issues
 - Exceptions if you want to be a provider of last resort of facilities based voice service ... and you probably don’t
 - Depending upon service provided, may be collection and reporting obligations for universal service and E911 fees

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YOU'RE EXEMPT FROM SB 152 – NOW WHAT?

- Intergovernmental Agreements
 - Individual contracts under Colo. Rev. Stat. Ann. § 29-1-203
 - Creation of separate intergovernmental entity under Colo. Rev. Stat. Ann. § 29-1-204
- Creating a non-profit, non-governmental entity
 - There are advantages and disadvantages, compared to IGAs
 - Can you qualify for tax-exempt status?

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LEGAL DOCUMENTS

A handful of documents you'll need to address in addition to form of entity:

- Grant documents (if you receive state or federal grants)
- E-Rate reporting (if you receive federal E-Rate funds)
- Indefeasible Right to Use (IRU) for fiber (essentially, long term capital leases)
- Service contracts (if you are in a public-private partnership or a service provider)
- Acceptable use policies and service contracts
- Service Level Agreements
- Leasing of excess capacity
- Insurance contracts
- Perfecting easements written for more limited uses

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SOME OF THE LEGAL ISSUES...

- Easement perfection (is there a legislative fix in our future? See, Indiana SB 478 from 2017 - also known as the Facilitating Internet Broadband Rural Expansion (FIBRE) Act)
- Construction and maintenance damages
- Failure to report (if applicable) service outages and failures
- Damage claims caused by work on private property

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2018 STATE LAW CHANGES

- SB 2 – amends state broadband fund created in 2014
 - reallocation of monies in the state High Cost Support Mechanism (HCSM) from high cost land line development to high cost broadband infrastructure development, making an estimated \$115 M available for broadband grants from the State Broadband Administrative Fund over the next five years
 - Access limited to private entities proposing to serve "unserved" areas
 - areas of 7500 pop. or less which lack access to a provider providing service at speeds equal to or greater than the FCC standard

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2018 STATE LAW CHANGES

- Work still to be done after passage of SB 2
 - Make funds available to local governments, including PPPs
 - More balanced make up of the Board

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2018 STATE LAW CHANGES – HB 1099

- Grew out of abuse of the broadband fund grant process by CenturyLink in Ridgway
 - When Board is ready to award a grant to improve broadband service, the incumbent provider may exercise a "right of first refusal," effectively blocking the grant award by promising to provide service
 - In Ridgway, after using this device to kill a proposed fiber project, CenturyLink then provided the community with a plainly inferior DSL line
 - HB-1099 provides that any incumbent exercising such a right of first refusal must agree to provide service at comparable speeds and price to that proposed by grant applicant

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2018 STATE LAW CHANGES – OTHER BILLS

- SB 158 – grant program for public safety communications for schools
- HB 1325 - \$2M to OIT for new towers to address critical coverage gaps in public safety radio system after consultation with impacted local and regional governments
- HB 1373 – authorizes OIT to enter into lease agreements with private entities for space on state towers, at market rates
- HB 1184 – requires PUC to annually report to General Assembly on state of E-911 service in Colorado

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COLORADO MUNICIPAL LEAGUE

The Courts

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COLORADO MUNICIPAL LEAGUE

Montgomery County, MD v. FCC 863 F.3d 485 (6th Cir. 2017)

- Background
 - in-kind consideration: FCC had ruled that “cable-related noncash exactions” count toward the 5% cap on local franchise fees
 - Cable operators starting modifying franchise language about free service to public buildings – claimed under FCC rules, value would be considered part of franchise fees
- Held
 - “franchise fee” can be other than cash, but . . .
 - rules invalidated b/c FCC failed to adequately explain its interpretation

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Wireless Facilities Deployment Injunctive Relief under 47 USC § 332

- question: should a court order a local government to issue permits when it finds a § 332 violation?
- case law: courts retain discretion to craft appropriate remedies. courts appear receptive to injunctions when denial violated a “substantive” limitation on local authority, or when the record suggests other remedies would be ineffective.
- interesting examples:
 - Up State Tower Co., LLC v Town of Kiantone, NY, 718 F.App'x 29 (2d Cir. 2017)
 - PI Telecom. Infrastructure V LLC v Georgetown-Scott Planning Commission, 234 F.Supp. 3d 856 (E.D. Ky, 2017)

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RIGHT-OF-WAY CONTROL: You Have It (but the FCC and Congress want it!)

- How do we manage multiple demands on the same property?
- What is the primary purpose of the ROW?
- I would suggest it is the safe and efficient movement of pedestrian and vehicular traffic
- Other uses, while important, are secondary

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Are Municipalities Barriers to ROW Access by Broadband and other Utility Companies?

- What would happen if the municipalities just got out of the way?
- Let another entity “manage” the ROW, and eliminate the industry practice of accusing municipalities of being “barriers to entry”

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World Without Local Oversight



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Municipal Rights-of-Way

- What are some of the uses?
 1. pedestrian and vehicular traffic,
 2. shade trees,
 3. traffic signals and signs,
 4. street lights,
 5. water mains,
 6. storm and sanitary sewers,
 7. gas lines,
 8. electric wires,
 9. telephone and cable television wires and now ...
 10. small cell wireless facilities.

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A lot of Folks Want to be in ROW Today



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Example of What We're Up Against: FCC Commissioner Michael O'Rielly

- Wireless Deployment Summit in Monroe Township, NJ – October 2017
 - “Towers and antennas must be installed throughout American communities, which to date has generated improper and unacceptable behavior by some state, local or tribal governments,”
 - “Permitting applications are being rejected for indefensible reasons, such as aesthetics, radiofrequency concerns, or because localities don't agree with the proposed type or placement of equipment,”
 - “If this situation is not resolved quickly and satisfactorily, the Commission must be willing to use its preemption authority against those governmental entities...”

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Cities – Barriers or Partners?

- Do our citizens care what gets placed in their neighborhoods?
 - In front of their homes?
 - In front of their businesses?
- Should all local zoning be preempted with respect to broadband facilities?
- Does the FCC and the industry really want an environment where municipalities have no role to play?

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Pretty Sure There Was No City Permit Pulled



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Should Public ROW be Free to All Businesses – or Just Some?

- Why not allow Amazon to place kiosks on every street corner for parcel delivery and security?
 - Free of charge
 - 50% of U.S. buys from Amazon
 - Is Amazon an “essential service”?
- Why not let Walmart build store on municipal park land – free of charge?
 - They deliver products your residents desire, too

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47 USC Section 253, Telecommunications Act of 1996

- Preempts state and local laws that
 - Effectively or directly prohibit any entity from providing telecommunications
 - Subject to certain exceptions

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Section 253(a)

- The FCC process for Section 253 review
 - FCC determines if violation of Section 253(a)
 - Then determines whether the violation is permitted under Sections 253(b) and/or 253(c)
- FCC sets up burden as follows:
 - Provider that challenges must prove:
 - An explicit prohibition or
 - A practical effect of prohibiting the ability to provide telecommunications service
- If successful, the municipality must then
 - Demonstrate a safe harbor exception under 253(c)

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Section 253(a) - continued

- FCC established criteria to determine “effective prohibition”
 - Materially increase the costs without necessity
 - In the Matter of The Public Utility Commission of Texas
 - Materially inhibit a fair and balanced environment
 - In the Matter of California Payphone Association

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Section 253(c)

- Allows local governments to:
 - Manage the ROW;
 - Require fair and reasonable compensation
 - on a competitively neutral and
 - nondiscriminatory basis
 - NOTE: many state laws, including CRS 38-5.5-101, et seq. create state prohibitions on charges for use of the ROW

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Examples of ROW Provisions that Some Courts have Found to be Unacceptable

- Proof of financial, technical and legal qualifications
 Bell South Telecommunications v Town of Palm Beach, 252 F.3d 1169, 1176 (11th Cir. 2001)
 AT&T Communications v City of Dallas 52 F. Supp. 2d 763, 770 (N.D. Tex. 1999), vacated sub nom. AT&T Commun. of the S.W., Inc. v City of Dallas, Tex., 243 F.3d 928 (5th Cir. 2001), on reh'g in part sub nom. AT&T Commun. of S.W., Inc. v City of Dallas, Tex., 249 F.3d 336 (5th Cir. 2001)
- Description of telecommunications services to be provided
 Bell South Telecommunications v City of Coral Springs, 42 F. Supp. 2d 1304, 1308 (S.D. Fla. 1999), aff'd in part, rev'd in part sub nom.
- Regulation of stock transfers
 City of Auburn v Qwest Corp., 260 F.3d 1160, 1178 (9th Cir. 2001), overruled by Sprint Telephony PCS, L.P. v County of San Diego, 543 F.3d 571 (9th Cir. 2008)

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Examples of ROW Provisions that Some Courts have Found to be Unacceptable

TCG New York, Inc. v. White Plains, 305 F.3d 67, 71 (2d Cir. 2002)

- Most favored community status – best available rates and terms
- Unspecified franchise terms - ability to revoke on unnamed factors

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FCC Open Dockets That Will Impact Local Authority

- Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79
- Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84
- Broadband Deployment Advisory Committee (BDAC), Accelerating Broadband Deployment, GN Dkt. No. 17-83

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The Broadband Deployment Advisory Council and the Status of Model Codes

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WHAT IS THE BDAC?

Broadband Deployment Advisory Committee

- Established by FCC Chairman Pai on January 31, 2017
- Mission: To make recommendations for the FCC on how to accelerate the deployment of broadband by reducing and/or removing regulatory barriers to infrastructure investment

BDAC Voted State and Municipal Model Codes Out of Working Groups on 4/25/18

- State Code – Unresolved issues, and not unanimous support from WG or BDAC (7 opposed; 1 abstention)
- Municipal Code – Finished and unanimous support from WG and BDAC (2 abstentions)

Next Steps

- Harmonization: Incorporate comments on state model; revise state and muni models to avoid conflicting recommendations
- Final Vote: Likely in July; will recommend the harmonized models and other work product to the FCC

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MODEL STATE CODE

- Purpose – To Encourage the Development and Deployment of Broadband Infrastructure (Art. 1)

Applies to:

- Authority: State, County, Municipality, District, Local Authority or "similar entity" authorized to make decisions on requests to site communications facilities: Intended to cover non-governmental pole owners
- Communications Services: Cable, broadband, telecom and wireless, including satellite
- Small Wireless Facility: Antenna that could fit in a 6 ft³ enclosure; associated equipment cumulatively no more than 28 ft³ in volume. Ancillary equipment (electric meters, ground-based enclosures, grounding equipment, cable runs, etc.) not included in measurement
- Utility Pole/Authority Pole: Excludes light poles

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MODEL STATE CODE

Covers Range of Issues:

- Network Support Infrastructure Register (Art. 3)
- Access to Poles in the Communications Space (Art. 5)
- Access to Railroad ROW/Easements (Art. 6)
- New and Modified Infrastructure to be Broadband Ready (Art. 7)
- Access to Commercial Buildings (Art. 8)
- State Franchise Agreements (Art. 10)
- Rural Broadband Deployment Assistance Fund (Art. 11)
- Rural Municipal-Owned Broadband Networks (Art. 12)
- State Broadband Infrastructure Manager (Art. 13)

Preempts Local Authority (Art. 4, 9, 10 and 12)

MODEL STATE CODE

Preempts local authority over siting in ROW and related fees/charges (Art. 9)

- Authority "may not prohibit, effectively prohibit, regulate, or charge for" the construction or collocation of communications facilities and support structures except as provided in the Model Code
- **Limits application requirements; limited conditions of approval; 60 day shot clock (new and modifications)/deemed granted remedy; limited indemnification/insurance requirements**
- ROW administration must be competitively neutral and not unreasonable or discriminatory
- Special provisions for small wireless facilities: permitted use in all zones; right to locate on Authority poles/property (with limited exceptions); limited bases for denial

MODEL MUNICIPAL CODE

- Covers ROW and non-**PO** **W deployment of communications facilities** related poles, towers and support structures
- Intended as a "non-binding, flexible guideline" for local governments
- Applies to:
 - Communications Service Providers: Federally-defined cable operators, information service providers, and telecommunications service providers
 - Pole includes traffic and light poles, in addition to utility poles; all pole subject to a maximum height
 - Small Wireless Facility: Similar to state model but max volume left blank

MODEL MUNICIPAL CODE

Permitted Uses are Subject Only to Administrative Review

- Collocation of SWF - includes installation of any communication facility on an existing pole, tower or support structure or any structure capable of supporting the facilities
- Modification of a pole, tower or support structure or pole replacement for collocation that involves a SWF that does not exceed height limits
- Construction of a new pole or monopole tower for collocation of a SWF that does not exceed height limits

All other installations subject to Discretionary Review (except Ordinary Maintenance/Repair)

MODEL MUNICIPAL CODE

- Action on Applications for Administrative Review
- "Shall issue" permit on nondiscriminatory terms and conditions if meets requirements
- 60 day (collocations) or 90 day (new structure) shot clocks; **deemed granted remedy** after written notice from applicant if no decision within 20 days after the notice
- Permit valid for 6 months with option for additional 6 months
- No Application/Review/Approval of Ordinary Maintenance Repair and Replacement
 - Replacement of antennas and/or other components "specifically, such as a swap out **addition** of 5G Antennas and radio equipment" that are:
 - "similar, in color, aggregate size and other aesthetics to that previously permitted by the Authority (and **are** consistent with the same height and volume limits for Wireless facilities under this Chapter)"

MODEL MUNICIPAL CODE

Other ROW Requirements

- Location/Relocation/Abandonment
- Undergrounding
 - Must be nondiscriminatory and in place prior to application
 - Wireless providers "shall retain the right" use same or replacement poles when other utilities are undergrounded; can install new poles in undergrounded areas
- Design standards
- Decorative poles
 - May install a SWF on a decorative pole or replace a decorative pole if the Authority judges the attachment/replacement "is in keeping with the aesthetics" of the pole
- Batch applications
- Penalties for each day a violation occurs

IMPACTS OF MODEL CODES

- Limited local review of deployments in ROW
- More stringent shot clocks and remedies than current federal law and rules Impacts to local budgets
- Expect legal challenges if BDAC “recommendations” become mandatory rules adopted by FCC

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5G Technology and Siting Small Cells in the Rights-of-Way

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Demystifying 5G – What is it?

- Great article by Karl Bode: “The Race to 5G is Just Mindless Marketing B*ll\$h!t” <https://t.co/4kb09VZUFc> (last checked June 11, 2018)
- It’s a natural, yet modest, evolution forward for wireless
- Wireless networks will be faster, more efficient, with less latency
- This and the next 3 slides summarize key points from the article

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What is 5G?

- It is not going to revolutionize wireless broadband
- It is not going to be, as Sprint’s chairman recently claimed, a “seismic shift” like “going from black and white to color...”
- Actual widespread deployment and handset availability is not expected until after 2020

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Why the Hype Over 5G?

- US consumers currently pay among the highest prices for wireless connectivity
- According to Open Signal, our average speeds are about 62nd in the world
- Do consumers care about “losing the 5G race with China” or are they more concerned about more competitive pricing for their wireless streaming? (oh, and if you believe it’s the latter, how does a T-Mobile - Sprint merger help consumers?)

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“Small Cells” – From a Legal Standpoint, What are they? (depends on who you ask)



- **FCC: (It had been):** All antennas in the deployment fit within enclosures no more than **3 cubic feet** in volume; or total of all antennas (including pre-existing) no more than **6 cubic feet**; all other equipment including on ground does not exceed **17 cubic feet** in volume
- **FCC: (In new order exempting small cells from NEPA and NHPA review):** Each antennas in the deployment is no more than **3 cubic feet** in volume; all other equipment associated with the structure does not exceed **28 cubic feet** in volume

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“Small Cells” – State Law Examples

- **Indiana:** antennas 6 cubic feet/all equipment 28 cubic feet
- **Minnesota:** antennas 6 cubic feet/all equipment 28 cubic feet
- **Virginia:** antennas 6 cubic feet/all equipment 28 cubic feet
- **Colorado:** antennas 3 cubic feet/all equipment 17 cubic feet
- **Washington:** antennas 3 cubic feet/all equipment 17 cubic feet

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“Small Cell” Under Colorado Law

- CRS § 29-27-402 (4) Small Cell is
 - (a) a personal wireless service facility as defined by the federal “Telecommunications Act of 1996”, as amended as of August 6, 2014, or (this is a DRAFTING ERROR – do not include it in your codes or license agreements!)
 - (b) meets both of the following qualifications:
 - (i) Each antenna is located inside an antenna enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and
 - (ii) Primary equipment enclosures are no larger than seventeen cubic feet in volume. The following associated equipment may be located outside the primary equipment enclosure and if so located, are not included in the calculation of equipment volume: Electric meter, concealment, telecomm demarcation box, ground-based enclosures, battery back-up power systems, grounding equipment, power transfer switch, and cut-off switch.

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How small is “small”?



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“Small Cells” – What are they? (depends on who you ask)



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“Small Cells” – What are they? (depends on who you ask)



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Local Police Power Controls?

- CRS § 29-27-404 (3) The siting, mounting, placement, construction, and operation of a small cell facility or a small cell network is a permitted use by right in any zone.
- Can take up to 90 days to approve complete application CRS § 29-27-403 (1)
- “Batch applications” permitted CRS § 29-27-404 (1) and (2)



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Local Police Power Controls?

- CRS 38-5.5-103. (1) (a) Any domestic or foreign telecommunications provider or broadband provider authorized to do business under the laws of this state has the right to construct, maintain, and operate conduit, cable, switches, and related appurtenances and facilities, AND COMMUNICATIONS AND BROADBAND FACILITIES, INCLUDING SMALL CELL FACILITIES AND SMALL CELL NETWORKS, along, across, upon, ABOVE, and under any public highway in this state, [subject to the provisions of this article 5.5](#) ...

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Local Police Power Controls?

- CRS 38-5.5-106(2)(a) The consent of a political subdivision for the use of a public highway within its jurisdiction shall be based upon a lawful exercise of its police power and shall not be unreasonably withheld.
- (b) A political subdivision shall not create any preference or disadvantage through the granting or withholding of its consent. A political subdivision's decision that a vertical structure in the right-of-way, including a vertical structure owned by a municipality, lacks space or load capacity for communications or broadband facilities, or that the number of additional vertical structures in the rights-of-way should be reasonably limited, consistent with protection of public health, safety, and welfare, does not create a preference for or disadvantage any telecommunications provider or broadband provider, provided that such decision does not have the effect of prohibiting a provider's ability to provide service within the service area of the proposed facility.

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Federal Law Issues

- Telecommunications Act of 1996, 47 U.S.C. § 332 (c)(7)
 - “no unreasonable discrimination” requirements
 - “no prohibition of service” requirements

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How are Many Colorado Local Governments Granting Authority to Locate Small Cells in ROW?

- Amending codes to be compliant with Colorado's small cell law and prior FCC orders
- Often granting general authority through a master license agreement, with individual site licenses for each facility
- Some are simply granting permits on a site by site basis when all provisions of the code are met

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What Should the Regulatory Framework Include?

- Note: most of these provisions can be included in the code and/or the license agreement – does not have to be one or the other
 - Preferred types of vertical structures
 - Maximum heights
 - Spacing of facilities
 - Requirements for ground equipment
 - Placement requirements for residential properties
 - Design standards/requirements

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WCFs in the ROW: Preferred Structures

- Existing street lights
 - » This can get complicated, depending upon who owns the street lights
- Electric distribution poles
 - » Also can get complicated, depending upon utility's standards
- Traffic signal poles
- Stand-alone poles for small cells



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WCFs in the ROW:
Maximum Height

Examples to consider:

- Maximum height in zoning district (perhaps plus a small, additional amount)
- No more than some incremental amount (5 – 10 feet) above the height of any utility poles on the street
- For structures outside or ROW, 10 feet above existing infrastructure

WCFs in the ROW:
Ground Based Equipment

- You don't need them underground everywhere – it is more expensive for the applicant
- But in cases where it is appropriate, localities have the authority to require it
- If the applicant tells you undergrounding is not feasible anywhere, they're wrong



WCFs in the ROW:
Design Standards

This:



versus:



Terms to Consider for Your MLA:
A note about collocations and small cell facilities:

- If you allow a small cell in the ROW at the maximum height in your code, and subsequently the carrier wants to increase it up to 10 feet to collocate additional facilities, must you let them?
 - If it is their own pole or
 - If they have permission from the pole owner, then
 - » YES under Sec. 6409 of the Spectrum Act and the FCC collocation rules
- So consider how best to address this in your MLA

Terms to Consider for Your MLA:

- Other issues:
 - Term (and renewals)
 - Fees
 - Insurance and Indemnification
 - Relocation obligations
 - Non-exclusivity
 - Applicability of all terms to any subtenants of permittee

Terms to Consider for Your MLA:

- Other issues:
 - Requirement to obtain other generally applicable local government permits
 - Duty to minimize interference
 - Emergency contacts and protocols
 - Duty to provide inventory of ROW sites
 - Default and remedies provisions (don't forget bankruptcy)
 - Sale and transfer provisions

**Thank
you!**



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City of Fort Collins, which is one of the members of CML.



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