Wireless Telecommunications
Ordinances After SB 331

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Presentation Overview

• Current Wireless Technology

• Applicable Federal Law

• Senate Bill 331

• Drafting Permissible Ordinances Under 331
Current Wireless Technology
Current Wireless Technology

**Macrocels**

Traditional high-powered cellular base stations that provide coverage to large metropolitan areas from a single tower
Current Wireless Technology

Micro Wireless Facilities

Typically cover targeted indoor or localized outdoor areas
- Intersections, shopping malls, hospitals, and metropolitan outdoor spaces

Small Cells
- Low-powered wireless base stations that have a range of 10 to 12 KMs

Distributed Antenna Systems (“DAS”)
- Networks of antennas connected to/controlled by a single hub
- Recently used to upgrade cell service in Ohio Stadium!

Typical Small Cell Aesthetic
Micro Wireless Facilities on the Rise

- Almost ½ of US homes are wireless only
  - More than 2/3rds of adults aged 25-34 and adults renting their homes are in wireless-only households

- On a per smartphone basis, mobile data traffic is expected to increase from 5.1 gigabytes per month (2016) to 25 gigabytes per month (2022)

- Micro wireless technology is estimated to account for 50% of all wireless infrastructure by 2020
  - Montgomery County, Maryland has approximately 200 pending applications: more applications have been filed in the past four months than the past 18 years
Applicable Federal Law
Overview of Federal Telecommunications Law

- **Statutes:**
  - Sections 253 and 332 of the Communications Act
  - Section 6409 of the Spectrum Act

- **FCC Regulations:**
  - FCC 14-153

- **Case law:**
  - *Am Tower Corp. v. San Diego*, 763 F.3d 1035 (9th Cir. 2014) (defining “unreasonable discrimination”)
Overview of Federal Telecommunications Law

• Federal statutes explicitly preserve—
  • Localities’ authority to control “placement, construction, and modification of personal wireless service facilities” (Section 332(c)(7)(A))
  • Localities’ authority to manage “use of public rights of way” (Section 253(c))

• Federal statutes prohibit—
  • Localities’ use of “unreasonable” criteria in decision making
Key Features of the Communications Act

(1) Shall not “unreasonably discriminate” between providers of “functionally equivalent services”

(2) May not enact ordinances that prohibit or have the effect of prohibiting the provision of personal wireless services

(3) Must act on any request to construct or modify a facility within a “reasonable period of time”

(4) Denials must be in writing and “supported by substantial evidence”

(5) May not deny an application over concerns regarding radio frequency emissions, if the application meets the FCC’s radio frequency emissions standards
Key Feature of the Middle Class Tax Relief Act

Localities “may not deny, and shall approve” any “request for a modification of an existing wireless tower or base station that does not substantially change the [facility’s] physical dimensions”
Senate Bill 331

Relevant R.C. Sections are 4939.01 to 4939.08
Overview of SB 331

- Effective March 21, 2017
- Describes new state policy: expediting “the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service throughout the state”
- Establishes that “no person [natural person, corporation, or partnership] shall occupy or use a public way without first obtaining . . . any requisite consent of the municipal corporation”
- Authorizes a “micro wireless facility operator” to construct and operate such facilities in municipal corporation ROWs
Definitions Under SB 331

- **Micro wireless facility**: a small cell facility or a DAS facility and their related wireless facilities
  - *R.C. 4939.01(N) & 4939.01(D) give detailed definitions for small cell facilities and DAS facilities, respectively*

- **Wireless facility**: antenna, accessory equipment, or other wireless device or equipment used to provide wireless service

- **Micro wireless facility operator**: public utility or cable operator that operates a micro wireless facility
Timeline for Applications

• For applications to install facilities to an existing structure (attachment applications), a municipal corporation has a 60-day evaluation window.

• For applications to install facilities to a new pole structure, a municipal corporation has a 90-day evaluation window.
  - Longer timeline for new structures due to necessary engineering evaluations of the impact of proposed poles.

• Unanswered applications are “deemed granted”
  • So, it is very important to make a streamlined process of review!
Tolling Applications Under SB 331

- The 90-day evaluation window for new structures may be tolled upon—
  - Mutual agreement between the entity requesting consent and the municipal corporation
  - The submission of an incomplete application
  - A municipal corporation having an extraordinary number of requests
    - In this case, the application may be tolled for a reasonable amount of days, not to exceed an additional 90 days

- To toll the time period—
  - The municipal corporation must (1) notify the entity within 30 days, (2) in a writing, (3) that delineates all missing documents/information
    - So, recommend an initial completeness review

- The time period resumes when the entity provides a supplemental submission
  - If that supplemental submission is incomplete, the municipal corporation then has 10 days to notify the entity
    - Municipalities have “one-bite”: subsequent notices of incomplete application may not pertain to missing documents/information that was not delineated in the original notice of incompleteness
Consent Under SB 331

- Denial of consent
  - If a municipal corporation denies consent, the consent must be supported by “substantial, competent evidence” in writing

- Consent exception
  - Entities do not need to get municipal consent for:
    1. Routine maintenance of wireless facilities
    2. Replacement of wireless facilities with wireless facilities that are substantially similar or are the same size/smaller than existing wireless facilities
Restrictions on Municipal Authority

• Much of the restrictions mirror those discussed in the Communications Act

• Here is a sampling of the SB 331 restrictions:
  1. No moratoria on the filing, acceptance of filing, consideration or approval of requests for consent
  2. No exclusive arrangements
  3. No unreasonable discrimination among functionally equivalent providers
  4. No unreasonable maintenance or appearance requirements
  5. No requirement of business information in applications
  6. No requirements re removal of existing wireless support structures (exception for public health, safety & welfare)
  7. No requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal
  8. No requiring entities to purchase, lease, or use facilities/networks/services owned by municipal corporation
Application to Public Utilities

• Generally, a municipal corporation may withhold or deny consent based upon the applicant’s failure to possess the financial, technical, and managerial resources *necessary to protect public health, safety, and welfare*.

• However, a municipal corporation may not deny an applicant on those grounds if:
  1. The applicant is a public utility recognize on the rolls of the public utilities commission or
  2. The applicant possesses a valid franchise.
Zoning & Fees

- Requests for consent are exempt from local zoning review

- Guidelines for fees:
  - The total annual charges and fees for the attachment (and related activities) must be the lesser of $250 per attachment OR the actual, direct, and reasonable costs related to the use of the wireless support structure
    - In the case of disagreement, municipal corporation has burden of proving the fee is reasonably related to its costs
    - Any fees must be nondiscriminatory
Drafting Permissible Ordinances Under SB 331
Best Practices for Drafting Ordinances Post-SB 331

• Because SB 331 limits potential ordinances, municipalities are best served by—
  1. Pre-approval meetings
  2. Design guidelines
  3. Incentives for following aesthetic guidelines
  4. Incorporating traffic safety setbacks
  5. When necessary, suggesting other locations within 50 feet
Municipalities may—

- Set reasonable design guidelines for wireless facilities
  - E.g., request wireless facilities comply with architectural requirements that would be applied to all utilities in that area
  - Some municipalities, for example, require small cell equipment in downtown to be on the ground—reasonable to avoid blocking signage
- Offer incentives
  - E.g., streamlined review processes for conforming to aesthetic gateways
  - Smaller municipalities (without own engineers) could offer faster review for companies that pay for third party review
- Apply applicable health, safety, or welfare rules and regulations
Drafting Ordinances

Municipalities may—

- Condition permits
  - E.g., entities will have to move their poles if the streets are widened
- Look to ODOT traffic safety setbacks
- Look to engineering requirements
  - E.g., poles 3 feet from gas/electric and 1 foot from water
  - E.g., poles capped at 50 feet in height
- Limit micro wireless facilities from becoming exclusive user of public ROW
- Propose other locations within 50 feet
Example “Unreasonable” Requirements

- Requiring micro wireless facilities to be underground
- Setting discriminatory bonding requirements
- Setting spacing requirements that frustrate the purpose of micro wireless technology
Examples of “Stealth” Small Cell Deployments
“Stealth” Deployments

Crown Castle small facility deployed in Central Park West

Crown Castle small facility deployed in historic Pittsburgh
Deployments in Historic Areas

Crown Castle small facility deployed in historic French Quarter, New Orleans

Crown Castle small facility deployed at the Williamsburg Inn in Colonial Williamsburg
AT&T small cell facility deployment at the Rose Bowl

Tunnel Elevation

Antenna

Antennas inside faux wall @ each tunnel
Questions?

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