

Strafford

---

*Presenting a live 90-minute webinar with interactive Q&A*

# **Municipal Regulation of Wireless Telecommunication Facilities in the Public Right of Way: Guidance for Counsel**

Zoning Challenges and Interplay Between Federal, State, and Local Laws

---

THURSDAY, OCTOBER 29, 2020

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

---

Today's faculty features:

Andrew W. McCardle, Attorney, **Best Best & Krieger**, Los Angeles, CA

Alexander J. Thibodeau, Attorney, **Foster Swift Collins & Smith**, Grand Rapids, MI

---

The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 1.**

## *Tips for Optimal Quality*

FOR LIVE EVENT ONLY

---

### Sound Quality

If you are listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, you may listen via the phone: dial **1-877-447-0294** and enter your **Conference ID and PIN** when prompted. Otherwise, please **send us a chat** or e-mail [sound@straffordpub.com](mailto:sound@straffordpub.com) immediately so we can address the problem.

If you dialed in and have any difficulties during the call, press \*0 for assistance.

### Viewing Quality

To maximize your screen, press the 'Full Screen' symbol located on the bottom right of the slides. To exit full screen, press the Esc button.

## *Continuing Education Credits*

FOR LIVE EVENT ONLY

---

In order for us to process your continuing education credit, you must confirm your participation in this webinar by completing and submitting the Attendance Affirmation/Evaluation after the webinar.

A link to the Attendance Affirmation/Evaluation will be in the thank you email that you will receive immediately following the program.

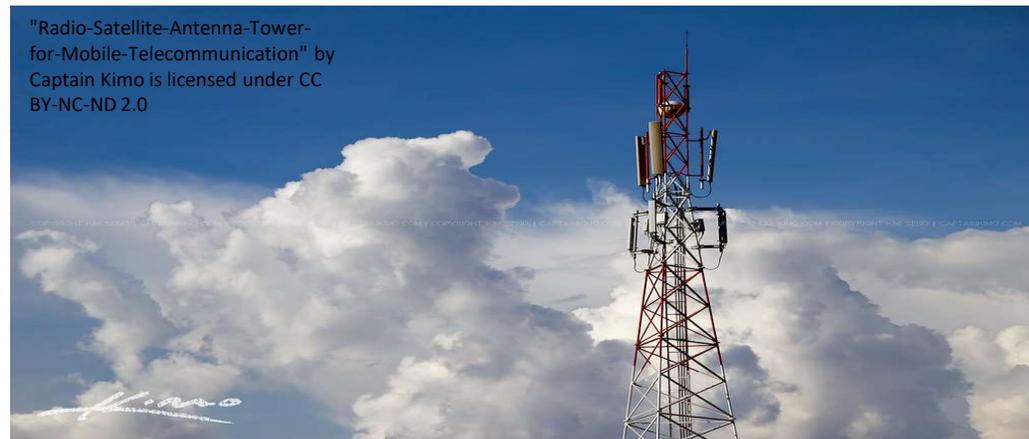
For additional information about continuing education, call us at 1-800-926-7926 ext. 2.

If you have not printed the conference materials for this program, please complete the following steps:

- Click on the link to the PDF of the slides for today's program, which is located to the right of the slides, just above the Q&A box.
- The PDF will open a separate tab/window. Print the slides by clicking on the printer icon.

# Current Trends

---



## Wireless Technologies & Access to the Municipal Right-of-Way

By: Alexander J. Thibodeau

# The Race to 5G

- FCC moves to reduce barriers
- Fundamental change from previous generations
- Modified federal review
- Limitations on fees
- Most (80%) of all new deployments will be small cells
- Multi-year roll out; 800,000 small cells by 2026
- COVID exacerbating demand

# What is 5G, really?

- Next generation of wireless technology
  - New frequencies
  - Will require new devices
- Small Cell Wireless Deployment vs. Localized Pico Cell Deployment
- Reduced Latency
- Three options for building network:
  - 1. Low-band (broad coverage, higher latency)
  - 2. Mid-band (balance of coverage and speed)
  - 3. High-band (narrow coverage and permeation, virtually no latency)

# Why 5G?

- Reduces latency by up to 100x
- Increased bandwidth = more devices
- Seamless cloud connectivity
- New tech
  - Industry automation
  - SMART lifestyle
  - Artificial Intelligence
  - Streaming habits
  - Defense
  - Critical grids (electrical, water distribution)

# 5G Opposition

- Local, state, and national interest groups
- Environmental groups
- A minority of scientists and medical professionals
  - Most calling for a delay until more research is conducted
- Primary concerns:
  - Proliferation
  - Health impacts of radiofrequency waves
  - Cosmetic concerns
  - Planned obsolescence of devices
  - Security

# Types of Small Cell Facilities in ROW

## Colocation on Lighting Poles



## Colocation on Electrical Poles



# Types of Small Cell Facilities in ROW

## Wireless Support Structures



## Internal Pole Mount



# Federal Trends

- Broad support for Telecom Companies by FCC
- Proliferate small cell deployments in dense environments
  - Preemption of zoning and land use approvals
  - Exceptions for areas of environmental or historical significance
  - Shot clocks and automatic approvals (60/90 days)
  - Limitations on fees and aesthetic changes (aggregate impact)
- Expedited adjudication of issues regarding the placement, construction, and modification of personal wireless service facilities.

# Federal Trends (cont'd)

- Upgrade existing macro structures to allow access to rural environments
  - Streamline state and local government review for modifications
  - Provide access to a large spectrum of bands to serve the various needs of different types of communities
  - Approval clocks and automatic approvals (60/90 days)
  - Limitations on fees and aesthetic changes
- FCC created Broadband Development Advisory Committee (“BDAC”) to develop model codes related to ROW and small cell deployment
  - But beware, very provider friendly (scope exceeds ROW, shorter shot clock)

# State and Local Trends

- Adoption of state laws in line with FCC Order
- Adoption of local ordinances to allow for regulation to the extent permitted by state and federal law
- Limitations on fees
- Shot clocks

# State and Local Trends (cont'd)

- Resistance to Proliferation = Big Cities
- Hesitant Envy = Rural Communities
- Everything in Between
- Survey the Community
  - Public Meetings/Stakeholders/Interest Groups



# Federal Communications Regulations: Wireless Facilities in the Public Right-of-Way

Strafford Webinar

October 29, 2020

Andrew McCardle



**BEST BEST & KRIEGER**  
ATTORNEYS AT LAW

# Key Provisions of Federal Communications Law

- 47 U.S.C. 332(c)(3) No State or local government may regulate the entry of or the rates charged by any commercial mobile services provider
- 47 U.S.C. 332(c)(7) generally preserves local authority to decide on placement of “personal wireless services” facilities, subject to certain substantive and procedural limits
- 47 U.S.C. 1455(a) (Section 6409(a)) *requires* local governments to allow eligible changes to “existing” wireless facilities (Eligible Facilities Requests or EFRs)
- 47 U.S.C. 224 allows FCC to regulate rates and conditions for attachments to utility poles unless state choose to do so
- 47 U.S.C. 253 related to “telecommunications services”, and right-of-way management and compensation



# 47 U.S.C. 332(c)(3)

- State and local governments cannot regulate the entry of or rates charged by a commercial mobile service or private mobile service provider
- State and local governments can still regulate other terms and conditions of commercial mobile services



# 47 U.S.C. 332(c)(7)

- Limitations on local regulatory authority:
  - Action within reasonable period of time
  - No effective prohibition of personal wireless services
  - Denials in writing and supported by substantial evidence
  - No consideration of RF emissions if meet FCC standards
  - No unreasonable discrimination among providers of functionally equivalent services
  - Expedited appeals of final actions to court



# 47 U.S.C. 1455(a) (Sec. 6409)

- Applies to “eligible facilities requests”
  - Any request for modification of an existing wireless tower or base station that involves—
    - (A) collocation of new transmission equipment;
    - (B) removal of transmission equipment; or
    - (C) replacement of transmission equipment.
- State or local government **may not deny, and shall approve**, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.



# 47 U.S.C. 253

- No State or local government statute or regulations “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.”
- States can still impose, on a neutral basis, requirements to protect public safety and welfare and safeguard consumers’ rights
- States and local governments have authority to manage the public right-of-way and to require reasonable compensation from telecommunications providers for use of the public right-of-way on a nondiscriminatory basis



# State and Federal Initiatives

- Industry has been actively seeking further regulatory action for small cells and 5G deployments
  - Small cell bills introduced in state legislatures
  - Multiple proceedings at FCC focused on local preemption



# States with Small Cell Laws

- 28 states have passed small cell legislation
- Typically their provisions:
  - Streamline reviews
  - Require access to municipal infrastructure
  - Cap rental rates and application fees that may be charged
  - Exempt micro devices such as cable WiFi
- Check your state law for details. These are separate obligations and limitations on local authority.



# 28 States with Small Cell Laws

- Arizona
- Arkansas
- Colorado
- Connecticut
- Delaware
- Florida
- Georgia
- Hawaii
- Illinois
- Indiana
- Iowa
- Kansas
- Maine
- Michigan
- Minnesota
- Montana
- Nevada
- New Mexico
- North Carolina
- Ohio
- Oklahoma
- Rhode Island
- Tennessee
- Texas
- Utah
- Virginia
- West Virginia
- Wisconsin



# Key FCC Orders

- 2009 – Established two wireless application shot clocks (90 and 150 days)
- 2014 – Established rules for Eligible Facilities Requests (plus 60-day shot clock)
- 2018 – Established that small wireless facilities are not a “federal undertaking” or a “major federal action” under NEPA/NHPA
- 2018 – Banned express and *de facto* moratoria on processing applications
- 2018 – Adopted new shorter shot clocks for small wireless facilities (60 and 90 days) and put limits on local fees and aesthetic rules. Order in effect Jan 14, 2019 (shot clocks/fees) and on April 15, 2019 (aesthetics).
- 2020 – “Clarified” existing EFR rules and adopted new rules



# 2018 Moratoria Ban

August 3, 2018: FCC released *In the Matter of Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment*, FCC 18-111, Third Report and Order and Declaratory Ruling, WT Docket No. 17-79

- *De jure* moratoria and *de facto* moratoria on wireless and wireline deployment generally “prohibit or effectively prohibit” provision of telecom services in violation of federal law, and are not saved from preemption as a form of rights-of-way management
- *De facto* moratoria are “...state or local actions that are not express moratoria, but that effectively halt or suspend the acceptance, processing, or approval of applications or permits for telecommunications services or facilities in a manner akin to an express moratorium.” (¶139)
- *Example*: street cut moratoria that do not allow alternative means of deployment such as aerial lines
- Went into effect immediately



# 2018 Small Cell Order

Sept. 26, 2018: FCC Adopts *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79

- Establishes special rules for small wireless facilities (SWFs)
  - Defines “small wireless facility” (SWF)
  - Redefines “effective prohibition” (materially inhibit)
  - Sets new 60-day and 90-day shot clocks for action
  - Limits fees and rents that can be charged for use of public right-of-way and municipal infrastructure for placement of small cells to reasonable, cost-based fees, and creates “safe harbors” (\$500, \$1000, and \$270)
  - Adopts new standards for limiting aesthetic regulations
- Also holds:
  - All permits/authorizations subject to FCC shot clocks
  - Collocation does not require existing wireless facilities, only an existing structure



# Small Wireless Facility

47 C.F.R. 1.6002(l)...(1) The facilities—

(i) are mounted on structures 50 feet or less in height including their antennas  
..., **or**

(ii) are mounted on structures no more than 10 percent taller than other  
adjacent structures, **or**

(iii) do not extend existing structures on which they are located to a height of  
more than 50 feet or by more than 10 percent, **whichever is greater;**

(2) Each antenna associated with the deployment, excluding associated  
antenna equipment ... is no more than three cubic feet in volume; **(Note: no  
limit)**

(3) All other wireless equipment associated with the structure, including the  
wireless equipment associated with the antenna and any pre-existing associated  
equipment on the structure, **is no more than 28 cubic feet in volume...**

(4)... (5) ... and

(6) The facilities do not result in human exposure to radiofrequency radiation in  
excess of the applicable safety standards specified in section 1.1307(b).



# Small Cell Order: Shot Clocks

- Apply to all permits required for deployment, not just wireless permits
- Mandatory Pre-Application Meetings
  - “We conclude that if an applicant proffers an application, but a...locality refuses to accept it until a pre-application review has been completed, the shot clock begins to run when the application is proffered...” Para. 145
- No special shot clocks for “batched” applications. Paras. 114-115
  - “...[I]n extraordinary cases, a siting authority ...can rebut the presumption of reasonableness of the applicable shot clock period where a batch application causes legitimate overload on the siting authority’s resources.” Para. 115
- Failure to meet shot clocks deemed an “effective prohibition”
- **NO FEDERAL DEEMED GRANTED REMEDY**



# Processing Small Cell Applications

- FCC shot clocks start to run upon receipt of the application
- There are two ways to “toll” or stop the running of a shot clock: (1) to provide *timely notice of incompleteness*; (2) toll the shot clock by mutual agreement
- For non-SWF applications, the municipality has **30 days** from the submission of the application to issue the notice of incompleteness (NOI)
  - The first timely NOI tolls the shot clock
- For SWF applications, the municipality has **10 days** from the submission of the application to issue the notice of incompleteness (NOI)
  - The first timely NOI *resets* and tolls the shot clock
- For all application types, any subsequent NOIs will stop the shot clock, rather than resetting it, if the municipality provides written notice within 10 days that the supplemental submission did not provide information identified in the initial NOI
- The initial NOI must contain all of the missing information/items, or they cannot be claimed in a subsequent NOI



# Small Cell Order: Effective Prohibition

- **FCC on effective prohibition:**
  - “We clarify that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services or otherwise improving service capabilities...an effective prohibition includes materially inhibiting additional services or improving existing services.” (Para. 37)
  - “[P]rior approaches erred by requiring coverage gaps...”
    - “Significant gap” (9<sup>th</sup> Cir.) and “least intrusive alternative” (2<sup>nd</sup>, 3<sup>rd</sup>, and 9<sup>th</sup> Cir.) appear abandoned – See *n.* 94



# Small Cell Order: Aesthetic Standards

- Small Cell Order stated that aesthetic requirements (and undergrounding and spacing) *not* preempted if:
  - (1) reasonable,
  - (2) no more burdensome than those applied to other types of infrastructure deployments, and
  - (3) objective and published in advance
- “...aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible.” (Paras. 84-89)



# Small Cell Order: Fees

- FCC reviewed its pole attachment rate formula, small cell legislation in 20 states, local legislation, and comments in the record to determine “safe harbor” fees that do not violate federal law
- “...we presume that the following fees would not be prohibited by Section 253 or Section 332(c)(7):
  - a) \$500 for non-recurring fees, including a single up-front application that includes up to five Small Wireless Facilities, with an additional \$100 for each Small Wireless Facility beyond five, or \$1,000 for non-recurring fees for a new pole (i.e., not a collocation) intended to support one or more Small Wireless Facilities;
  - b) \$270 per Small Wireless Facility per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW.”(Para. 79)



# Small Cell Order: Fees (*cont'd*)

- The FCC acknowledged that there are limited circumstances in which a local government can charge fees in excess of the FCC's "safe harbor" amounts and still comply with federal law
- "...a locality could prevail in charging fees that are above this level by showing that such fees nonetheless comply with the limits imposed by Section 253—that is, that they are (1) a reasonable approximation of costs, (2) those costs themselves are reasonable, and (3) are non-discriminatory."  
(Para. 80)



# *Sprint Corp. v. FCC, No. 19-70123 (9th Cir.)*

- All appeals of Moratoria and Small Cell Orders consolidated in 9th Circuit
- FCC and 10th Circuit denied stay requests
- 9th Circuit denied the FCC's request to hold the case in abeyance pending resolution of reconsideration petitions
- Oral arguments took place on 2/10/2020
- Decision issued on 8/12/2020



# *Sprint Corp. v. FCC (cont'd)*

- **In Favor of Local Governments**
  - Court vacated portions of FCC aesthetic standards requirements
  - Aesthetic requirements (and undergrounding and spacing) *not* preempted if:
    - (1) reasonable,
    - ~~(2) no more burdensome than those applied to other types of infrastructure deployments, and~~
    - ~~(3) objective~~ and published in advance
  - Rejected industry request for “deemed granted” remedy for FCC shot clocks
    - This decision does **not** impact state shot clock rules or remedies



# *Sprint Corp. v. FCC (cont'd)*

- **In Favor of Status Quo** – Court upheld portions of the Order:
  - Limiting fees to cost recovery (2 to 1 vote)
  - Adopting “materially inhibits” standard and rejecting significant gap/least intrusive means test
  - Requiring aesthetic standards to be published in advance and be reasonable (technically feasible)
  - Adopting shortened shot clocks for small wireless facilities
  - Applying FCC shot clocks to all permits and authorizations
- Court also:
  - Upheld ban on moratoria (under certain conditions)
  - Dismissed as moot Montgomery County’s challenge based on FCC’s failure to act on RF standards



# *Sprint Corp. v. FCC (cont'd)*

- **En banc petition** filed on 9/28/2020
- Four main issues in en banc petition:
  1. Ninth Circuit panel wrongly upheld the FCC's interpretation of the phrase "prohibit or have the effect of prohibiting" from 47 U.S.C. 253(a) and 332(c)(7)(B)
  2. Ninth Circuit panel adopted the FCC's cost-based limits on municipal fees and rents, including use of city-owned poles
  3. The FCC ignored established tests to distinguish proprietary and regulatory activities, and Ninth Circuit panel failed to heed Supreme Court guidance
  4. Ninth Circuit panel upheld an overly broad interpretation of Sections 253 and 332, which encroaches on the constitutional limits set by the Fifth and Tenth Amendments
- Petition denied on 10/22/2020
- Petition for writ of certiorari due on 3/22/2021



# Section 6409 Orders

- Section 6409(a) of the 2012 Spectrum Act
  - “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”
- FCC 2014 implementing order set detailed parameters for EFRs (47 C.F.R. 1.6100)
- **Clarifications**
  - On 6/9/2020, in response to industry petitions FCC adopted “clarifications” to Section 6409 rules



# Section 6409 Clarifications Order

- **Concealment Elements** – protections for concealment elements *only apply to stealth facilities*
- **Aesthetic Conditions** – placement of a facility behind or beneath surrounding structures is aesthetic condition that *cannot* prevent a non-substantial increase in height
- **Equipment Cabinets** – limit of 4 ground-mounted cabinets applies separately to each EFR and is *not cumulative*
- **Height Increases** – for towers outside of PROW, height can increase 20 feet *plus* the height of new antenna, and there is **no limit** on new antenna's height
- **Shot Clock Rules** – shot clock triggered if applicant: (1) takes first procedural step; and (2) submits documentation addressing EFR criteria
- **Environmental Assessments** – under certain circumstances, an environmental assessment is not needed if applicant and the FCC have entered into a memorandum of agreement



# Section 6409

## Clarifications Order Appeal

- Filing deadline for appeals was 8/10/2020
- Appeals were filed by local governments:
  - Ninth Circuit Court of Appeals
  - D.C. Circuit Court of Appeals
  - Appeals will be consolidated in the Ninth Circuit
- Deadline to file interventions was 9/9/2020



# Section 6409 NPRM

- NPRM (WT Docket 19-250) – FCC sought input on whether:
  - It should change its rules to allow deployment or excavation of up to 30 feet outside of an existing site
  - It should define “site” as the boundary of the leased or owned property surrounding the tower and any related easements “as of the date that the facility was last reviewed and approved by a locality” **or** “as of the date an applicant submits a modification request”
  - Formal comment period is closed



# Section 6409 Excavation Order

- Issued draft Excavation Order: 10/6/2020
- Adopted Order: 10/27/2020
  - Allows excavation up to 30 feet outside of site
  - Only applies to towers (no base stations)
  - Expansion is limited to transmission equipment
  - Baseline size of “site” as of 2/22/2012 (Spectrum Act)
  - Not to be used in public right-of-way or on municipal property
  - Local governments can still enforce setbacks, health codes, and public safety codes



# Summary of FCC Shot Clocks

| FCC Category   | Applicable Shot Clock  |         |
|--|--|---------|
| <u>Eligible Facilities Requests (EFR)</u><br>Must involve modification to existing wireless facility (tower or base station) and meet size and other requirements to qualify as EFR                  | 60 days  |         |
| <u>Small Cells (Small Wireless Facility (SWF))</u><br>Must be personal wireless services facility that meets size and other requirements to qualify as SWF.  | Placement on existing structure (need not be existing wireless facility) | 60 days |
|  | New  | 90 days |
| <u>Collocations</u><br>Must involve placement of personal wireless services facility (that does not qualify as EFR or SWF) on existing structure which need not have wireless facility already on it | 90 days  |         |
| <u>Other</u><br>Personal wireless services facility that does not fall in any other category   | 150 days   |         |



# Summary of NOI Deadlines

| FCC Category                                       | NOI Deadlines  |
|--|--|
| <u>Eligible Facilities Requests (EFR)</u>          | Initial Submission: 30 days<br>Resubmissions: 10 days                                  |
| <u>Small Cells (Small Wireless Facility (SWF))</u> | Initial Submission: 10 days*<br>Resubmissions: 10 days<br>*First NOI resets shot clock |
| <u>Collocations</u>                                | Initial Submission: 30 days<br>Resubmissions: 10 days                                  |
| <u>Other</u>                                       | Initial Submission: 30 days<br>Resubmissions: 10 days                                  |



# Questions?



**ANDREW McCARDLE**  
**ASSOCIATE,**  
**BEST BEST & KRIEGER**  
Andrew.McCardle@bbklaw.com  
Phone: 213.787.2543  
www.bbklaw.com



# Best Practices For Municipal Attorneys

---



## Siting Telecommunication Facilities

By: Alexander J. Thibodeau

# Relationship with Providers

- Reach out to providers and get a timeline about when they plan to roll out projects in your communities
- Community workshops
- Generating buy-in
- Collaborative leadership
- Isolated public comment periods
- Listening to concerns

# Understanding What Law Applies

- Federal regulations, and sometimes regulators, vary by type of technology, for example:
  - The Law
    - The Communications Act of 1934 (Foundation)
    - The Telecommunications Act of 1996 (Modern Framework)
    - Section 6409 of the Middle Class Tax Relief and Job Creation Act (the “Spectrum Act”)
    - FCC Orders
  - The Players
    - Public Utility Commissions = Intrastate Communication
    - FCC = Interstate Communication
    - FAA = Antennae and Tower Dimensions

# Understanding What Law Applies (cont'd)

- State laws tend to limit authority of municipal governments
- Municipalities regulate:
  - Zoning
  - Rights-of-way
  - Siting

# Considerations for Drafting

- Think ahead
  - Controlling proliferation is more easily done prospectively than retroactively
  - Structured and unambiguous application process
    - New Sites vs. Modifications
  - Create pinch points for review process
- Anticipate Contextually
  - Camouflaging for environment
  - Zoning and Planning Ordinances
  - State requirements for “written” regulation

# Practical Considerations

- Identify the Project-type Early (Deny vs. Convert)
  - § 6409(a)
  - Small Wireless
  - Wireline
  - Do not confuse
- Process-oriented Workflow
  - Identify resources? Who does what?
  - Appointments for Filings
  - Procedure for approvals/denials
  - Calendaring

# Practical Considerations (cont'd)

- Ordinance
  - Closely conform to the legal requirements set by state and federal law
  - Implement any inflexible requirements of local law
- Administrative Policy
  - Flexible, adaptable
  - Implement variable conditions here, including waiver policy

# Conditions?

- Yes, both for a § 6409(a) Project and a Small Wireless Facility
  - General applicability
    - 6409(a) – Safety Codes (careful w/ zoning)
  - RF Standards (FCC)
    - Higher standard may be unenforceable (categorically excluded)
  - Minimum Spacing Requirements (could be prohibition)
  - Undergrounding (could be prohibition)

# Applications

- Identify the project
- Checklist approach to project (elements test)
- Verify Application completion
- Department delegation
- Independent review?
- Compliance with all safety codes
- Permits/Inspections
- Fees Paid

# Understanding Fees

- State law may provide specific guidance
- Federal law provides that fees must be:
  - 1) Reasonable approximation of the actual costs;
  - 2) Objectively reasonable;
  - 3) No higher than charged to similarly-situated competitors in similar situations

# Shot Clocks

- Small Wireless Facilities
  - Incomplete Application = 10 days
  - Colocation = 60 days
  - New Structure = 90 days
  - Major Modification = 90 days
  - Burden on Applicant if denied
- 6409(a)
  - Deemed granted after 60 days
  - Burden on Government if granted
- New siting applications (not SWF) = 150 days.

# Batching

- Must accept batches
- Be aware of shot clocks for batched groups of applications of same type = single shot clock
- Mixed deployments = 90 days default

# Incomplete Applications

- Must be specific about what is missing
- Tolling restarts after application is complete
  - Subsequent notice of deficiency must come on or before the 10<sup>th</sup> day, beginning the day after the supplemental materials are provided

# Justifying Need

- When an applicant submits an application
  - Local Gov. may require documentation “only to the extent reasonably related” to determining whether the request meets the requirements as 6409(a) or SWF.
  - May not require other documentation (e.g. justifying need or justifying decisions).

# Justifying Need (cont'd)

- However, if there are regulations imposed by local ordinance, proof of inability to comply may be requested.
- Coverage maps and Propagation Modeling
  - Okay for SWF; not allowed for §6409(a)

# Receiving Applications

- Application Portals
- Submission Procedure
- Provider Identification
- Payment Automation
- Queuing to Dept.
- Recording Date of Receipt (like Bates No.)

# Tracking

- Task Tracking Calendars
- Automatic Notice Triggers
- Extension Process
- GIS Mapping
  - Public vs Private Access

# Initial Application Checks

- Site Plan Submissions
- ADA Compliance
- Spacing Requirement Compliance
  - Waivers
- Traffic Controls
- Sight Lines and Clear Zones

# Initial Application Checks (con't)

- Drain Systems
- Public Utilities
- Backhaul/Electrical
- Buildings/Infrastructure
- Insurance/Bond

# Make Ready Work

- State Permitted?
- Commercially reasonable
- Competitively neutral
- Nondiscriminatory
- Good faith costs

# RF Testing and Monitoring

- Good way to address concerns
- Public buy-in
- Provider accountability
  - Remember, can't make justify need or reach higher standard than FCC.

# Reporting and Notice

- Consider public notice of new sites
- Limit scope if mailings (prohibitively expensive)
- Web updates best (but also self selecting)
- Know your community

# THANK YOU!

Alexander J. Thibodeau  
Foster Swift Collins & Smith PC  
616.726.2209  
athibodeau@fosterswift.com

## **Presentation Terms of Use**

Foster Swift Collins & Smith, PC presentations are intended for our clients and friends. This presentation highlights specific areas of the law. This communication is not legal advice. The information provided is current as of the date of the presentation. Those viewing the presentation should consult an attorney to determine how the information applies to any specific situation.

Copyright © 2020 Foster Swift Collins & Smith, PC