

State Legislation on Small Cells Issue Brief

SUMMARY

Numerous states have either passed or are considering passing legislation dealing with the deployment of small cellular (small cell) communications devices on municipally owned infrastructure, including utility poles owned by public power entities. Although the bills contain differences depending on the state, the legislation generally follows the same basic approaches: 1) streamlining the process for permitting small cell attachments to municipal infrastructure; and, 2) capping fees on such attachments.

UTC POSITION

The Utilities Technology Council (UTC) is concerned that these bills ignore the complexities involved with permitting small cell attachments, and worse, jeopardize utility operational reliability, as well as overall safety. These bills are a coordinated effort by the communications industry to undermine local control and force municipalities and public power utilities to adhere to unreasonable timeframes, and rates, terms and conditions for pole attachments.

BACKGROUND

Generally, legislation introduced or passed so far in several states has a number of common provisions, which include:

1. Requirements on the municipality to permit attachments by a small cell wireless facility to a wireless support structure owned or operated by the municipality and located in the public right-of-way (ROW).
2. Tight timelines (i.e.; 60 days) to process applications for access to municipal infrastructure in the rights-of-way. If the application is incomplete, the municipality is required to give the attaching entity another 30 days to complete the application. There are also specific restrictions on the timing for the municipality to notify the attaching entity of the defect in the application.
3. Presumptions in favor of granting the application and additional requirements on the municipality to support its denial of an application for small cell access to municipal infrastructure.
4. Prohibitions on any zoning or other approval, consent permit, certificate or condition for the construction, replacement, location, attachment, or operation of a small cell.
5. Prohibitions against municipalities requiring consent for routine maintenance or replacement of wireless facilities that are either substantially similar to the existing wireless facilities or (b) the same size or smaller than the existing wireless facilities.
6. Prohibitions on municipalities from instituting a moratorium on small cell wireless facilities.
7. Caps on the total annual charges and fees for attachments and any activities related to the attachments to the actual direct costs related to the use of the wireless support structure by the operator – or \$200-250/attachment—and no additional fees for rights-of-way or state occupation taxes. For example, in Florida the bill would cap annual rental rates at the lesser of \$15 or the rate allowable under Federal Communications Commission (FCC) rules, which is approximately \$7/pole per year.

Florida also requires municipalities to bring existing rates into compliance by Jan. 1, 2018. In Ohio, the municipality has the burden of proof in justifying its fees.

8. Requirements that the fees be nondiscriminatory as to all attaching operators, regardless of the types of services provided.
9. Rights for communications service providers to file applications in batches, and mandatory approval of applications if they meet industry standards or building codes.
10. Prohibitions on additional licenses, franchises or other agreements for wireless collocation.
11. Terms of 10 years for permits, and an automatic renewal of the permits for up to three successive terms (five years each) in some bills.
12. Requiring municipalities to follow the FCC's make-ready rules to pole attachments on poles that are already used for wireline aerial attachments; and if the poles do not support aerial attachments, requiring that municipalities provide a "good faith estimate" within 60 days and requiring that make-ready must be completed within 60 days thereafter – including pole replacement. The cost of make ready must only cover the costs of the work and may not include any more work than is minimally necessary to pass code.
13. Requiring that make ready must be non-discriminatory (i.e. no additional requirements above those that are required by other ROW users), and prohibiting any moratoria on the placement of small wireless facilities. Also, municipalities are prohibited from using space on or near the small cell equipment or requiring services from the small cell service provider, except if the municipality pays the market rate for the space on the pole or the service provided.
14. Restrictions on clearance requirements for wireless attachments on the poles, which could threaten safety and operational reliability of utility systems on the poles, as well. Similarly, specifications for the permissible heights of poles that are used for small cell wireless at-

tachments.

To date, 18 states, including Arizona, California, Colorado, Florida, Iowa, Indiana, Kansas, Minnesota, North Carolina, Ohio, Texas, and Virginia, have passed these kinds of laws.

UTC expects additional bills to be introduced at the state level. In addition, there is a pending petition at the FCC that proposes federal rules that are similar to the provisions of these state bills. That petition could be acted on in parallel with the introduction of legislation at the state level.

UTC has opposed many of these state bills as well as the federal petition proposing access and rate regulations for small cells on municipal infrastructure. In early 2018, UTC sent letters to members of the Missouri legislature, which is also considering small-cell legislation. UTC encourages member participation and input in this effort.

ABOUT UTC

The Utilities Technology Council (UTC) is a global trade association dedicated to serving critical infrastructure providers. Through advocacy, education and collaboration, UTC creates a favorable business, regulatory and technological environment for companies that own, manage or provide critical telecommunications systems in support of their core business.

UTC CONTACTS

Sharla Artz, Vice President of Government Affairs, Policy and Cybersecurity

Email: Sharla.Artz@utc.org

Brett Kilbourne, Vice President & General Counsel

Email: Brett.Kilbourne@utc.org

Rob Thormeyer, Director of Communications and Advocacy

Email: Rob.Thormeyer@utc.org



Utilities
Technology
Council™