

Municipal Regulation of 5G Wireless Facilities in the Wake of Pennsylvania Act 50

Pennsylvania Municipal League
Cohen Law Group
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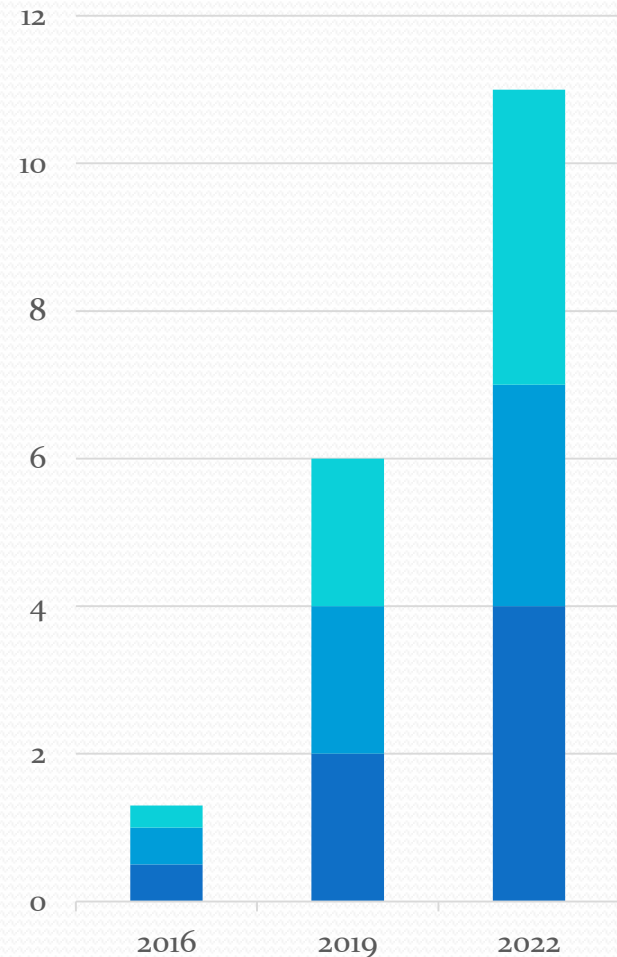
Overview of Presentation:

1. Background on the demand for wireless broadband and the facilities being deployed to meet this demand
2. Legal rights of municipalities to manage wireless facilities under federal and state law
3. The FCC's consequential *Third Report and Order* of 2018
4. Pennsylvania's new Act 50: The "Small Wireless Facilities Deployment Act"
5. Recommendations on how to respond to changes in wireless regulations and technology

The Wireless Data and Facilities Explosion

Wireless Data Explosion

- Wireless data traffic in North America was 1.6 exabytes per month in 2016. By 2022, it is expected to increase six-fold to 10.8 exabytes per month. (Ericcson Mobility Report)
- Mobile traffic worldwide grew 71 percent in 2017 alone. (Cisco)



Small Wireless Facilities

- Small wireless facilities (“SWFs”) boost network capacity (not coverage) to allow more rapid download speeds and improved network capacity in areas of high demand.
- Installed by both wireless carriers (e.g. Verizon, AT&T, and T-Mobile), and by wireless contractors (e.g. Crown Castle, Mobilitie, ATC, ExteNet).
- An estimated 150,000 Small WCFs were constructed by the end of 2018. the number is expected to reach over 800,000 by end of 2026. (S&P Global Market Intelligence)

Examples of Small WCFs



Examples of Small WCFs



Examples of Tower-Based WCFs



Examples of Non-Tower WCFs



Legal Rights of Municipalities to Manage Wireless Facilities

Legal Authority for Wireless Facility Management by Municipalities

- The Federal Telecommunications Act of 1996 states that local governments cannot “prohibit or have the effect of prohibiting wireless facilities,” but it also **preserves local zoning authority** over the “placement, construction, and modification of wireless facilities.”
- This standard has been further refined by FCC Order.

Legal Authority for Wireless Facility Management by Municipalities

- Limitations:
 - May not regulate wireless services based on environmental or health effects of radio frequency emissions.
 - May not “prohibit” or “have the effect of prohibiting” wireless facilities.
 - FCC reinterpreted this as a “material inhibition” standard.
 - May not unreasonably discriminate against providers of “functionally equivalent services.”
 - Must act on a request for approval within a “reasonable period of time” after the request is filed.
 - Any denial must supported by substantial evidence.

*FCC's Third Report and Order &
Declaratory Ruling of 2018*

FCC Third Report and Order

- Establishes newly-defined category known as “Small Wireless Facilities.”
- Creates new “shot clocks” for review and either approval or denial of applications for Small Wireless Facilities.
- Limits fees to cost recovery and details “presumptively reasonable” fee ceilings for Small Wireless Facilities.
- Authorizes and establishes new requirements for local design standards relating to Small Wireless Facilities.

*PA Act 50: The “Small Wireless
Facilities Deployment Act”*

PA Act 50: The Small Wireless Facilities Deployment Act

- PA Act 50 was enacted by the General Assembly and signed into law by the Governor on June 30, 2021.
- The Act was the culmination of a four-year battle between the wireless industry and PA municipalities, led by the PA Municipal League.
- The Act mirrors many, but not all, of the federal requirements for regulation of SWF's.
- The Act establishes additional state-level requirements for Small Wireless Facilities (“SWF’s”).

PA Act 50: The Small Wireless Facilities Deployment Act

- Act 50 expressly preserves local zoning authority.
- SWF's must be allowed, however, in the public rights-of-way in all zoning districts as a permitted use.
 - No conditional use/special exception
- The Act requires municipalities to permit attachment to “municipal poles”
 - Defined as “a utility pole owned, managed or operated by or on behalf of a municipality”
- All regulations are subject to “applicable codes.”
 - Meaning local ordinances that include “local zoning, land use, streets and sidewalks, rights-of-way and permitting ordinances” that comply with the Act.

PA Act 50: The Small Wireless Facilities Deployment Act

- Size Limits:
 - The structure on which antenna facilities are mounted—
 - (i) an existing utility pole, provided the installation does not extend more than 5 feet above the pole.
 - (ii) a new or replacement pole, provided the pole and antenna combined are not taller than 50 feet.
 - (iii) wireless provider may seek a “height limit waiver,” but only in accordance with “applicable codes.”
 - Each antenna associated with the deployment (excluding the associated equipment) may be no more than three cubic feet in volume; and
 - All other equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume.

PA Act 50: The Small Wireless Facilities Deployment Act

- Time frame for review and action (approval or denial) on wireless facilities applications
 - 60 days for collocation on existing poles.
 - 90 days for new or replacement poles.
 - Applicants may re-submit without additional fees within 30 days of a denial.
 - Municipalities have additional 30 days to make a decision on the re-submitted application.
- Batched applications
 - Maximum of 20 collocated facilities per application for municipalities with populations under 50,000
 - Only one batched application permitted per 45 day period
 - If more than one is submitted within 45 day period, timeframe for decision is extended 15 days

PA Act 50: The Small Wireless Facilities Deployment Act

- Permissible Fees
 - Application fees:
 - \$500 for 1-5 collocated antennas; \$100 per collocated antenna included in the same application thereafter.
 - \$1,000 for new or replacement poles.
 - Right-of-way use fees:
 - \$270 per wireless facility site per year.
 - Municipalities may exceed the \$270 fee upon a showing that actual reasonable costs are in excess of the \$270 per year.
 - No fees permitted for attachment to municipal poles.
 - If the FCC adjusts its fee levels for SWF's, municipalities may adjust their fees accordingly.

PA Act 50: The Small Wireless Facilities Deployment Act

- Design Guidelines for SWF's:
 - Municipalities are permitted to enact “objective design guidelines for a small wireless facility regarding the minimization of aesthetic impact” subject to the following requirements:
 - The guidelines must be technically feasible.
 - They must not have the effect of prohibiting the wireless provider's technology.
 - They must not unreasonably discriminate among wireless providers of functionally equivalent services
- Design guidelines have become a very helpful tool for managing wireless facilities.

PA Act 50: The Small Wireless Facilities Deployment Act

- Other Key Requirements:
 - Municipalities may restrict deployment of facilities in underground districts or areas.
 - Municipalities may require applicants to attempt to collocate antennas prior to installing new poles.
 - Municipalities may reserve space on municipal poles for their future use.
 - Make-ready work:
 - Municipalities have 60 days from receipt of application to provide a make-ready estimate, if necessary.
 - Make-ready work must be completed within 60 days of written acceptance of such estimate.

PA Act 50: The Small Wireless Facilities Deployment Act

- Effective date of the Act is August 29, 2021.
- Section 7(a) states that “a municipality may adopt ordinances that comply with this act and shall amend existing ordinances as necessary...within 60 days of the effective date...”
- **On October 28, 2021, the requirements of Act 50 will begin to govern applications if your municipality has not enacted or amended a wireless facilities ordinance.**
 - It is important to do so in a timely fashion in order to assert your rights over the deployment of small wireless facilities.

*Recommendations to Respond
to Changes in Wireless
Regulations and Technology*

Proposed Course of Action

- Draft a new ordinance, or amend your current ordinance, and prepare design standards to achieve the following:
 - Address new SWF's in the public rights-of-way.
 - Incorporate recent FCC and PA Act 50 regulatory changes and add key legal protections.
 - Amend or create fee schedule either by using new fee ceilings or by conducting a cost study.
 - Create comprehensive design standards for SWF's.
 - Strike a balance between addressing the need for wireless broadband service and preserving the character of your community.

Contact Information

Dan Cohen

(412) 447-0130 ext. 11

dcohen@cohenlawgroup.org

Mike Roberts

(412) 447-0130 ext. 16

mroberts@cohenlawgroup.org