



Small Cell Regulation

Introduction to Small Wireless Facility Rules

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Small Wireless Facilities

- FCC Regulation
 - ✓ What is a Small Wireless Facility? (SWF)
 - ✓ What does FCC say about them?
 - ✓ How to regulate them

Small Wireless Facilities

- FCC Regulation
 - Initial framing of SWFs in 2014
 - FCC 14-153
 - Defined SWFs
 - Adopted environmental & historical review exclusions

Federal Communications Commission		FCC 14-153
Before the Federal Communications Commission Washington, D.C. 20554		
In the Matter of)	
)	
Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies)	WT Docket No. 13-238
)	
Acceleration of Broadband Deployment: Expanding the Reach and Reducing the Cost of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting)	WC Docket No. 11-59
)	
2012 Biennial Review of Telecommunications Regulations)	WT Docket No. 13-32
)	
REPORT AND ORDER		
Adopted: October 17, 2014		Released: October 21, 2014

Small Wireless Facilities

- FCC Regulation
 - Update adopted in 2018
 - FCC 18-133
 - Requires local regulations
 - Provides level field for applicants
 - Regulatory grace period expired
 - Sets limits on local fees
 - SWF shot clock

Federal Communications Commission **FCC 18-133**

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Accelerating Wireless Broadband Deployment by) WT Docket No. 17-79
Removing Barriers to Infrastructure Investment)
)
Accelerating Wireline Broadband Deployment by) WC Docket No. 17-84
Removing Barriers to Infrastructure Investment)

DECLARATORY RULING AND THIRD REPORT AND ORDER

Adopted: September 26, 2018 **Released: September 27, 2018**

Small Wireless Facilities

- Definition

- “Small Wireless Facilities,” as used herein and consistent with section 1.1312(e)(2), encompasses facilities that meet the following conditions:

- (1) The facilities—

- (i) are mounted on structures **50 feet or less in height** including their antennas as defined in section 1.1320(d), 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 (as defined in the definition of antenna in section 1.1320(d)), is **no more than three cubic feet** in volume;

- (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) The facilities do not require antenna structure registration under part 17 of this chapter;

- (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); 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 Wireless Facilities

- Definition does not mention public way
 - SWF can be in public way or on property
 - Needs Selectboard regulations for Grant of Location
 - Needs zoning rules for parcels
- Burlington created a common design guideline
 - both regulations refer to it
 - can be updated with less effort

Small Wireless Facilities

- Environmental/Historical Exclusions from review
 - Generally relates to using existing structures/poles
 - Must comply with safety standards

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- Shot clocks
 - (c) *Presumptively reasonable periods of time -*
 - (1) *Review periods for individual applications...*
 - (i)...collocate a SWF using an existing structure: 60 days.
 - (ii) ...
 - (iii)...deploy a SWF using a new structure: 90 days.
 - (iv) ...
 - Remedy for failure to act
 - Court injunction

Note – shot clocks also expressly apply to other permits, such as building and electrical

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- *Tolling period*
- Rule gives 10 days to notify of “materially incomplete” application
 - Eligible to unilaterally toll the shot clock
 - Identify missing information and specific rule calling for it
 - Shot clock resets on submission of complete application
- Applicant and town can agree to toll when desired

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- Fees
 - Presumptive
 - Higher fees may be defended in court based on actual costs
 - \$500 one-time fee for up to 5 SWFs in one application
 - \$100 for each additional SWF in application
 - \$1000 one-time fee for SWF on new pole
 - \$270 per SWF per year use fee

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- Other local controls/requirements
 - May not:
 - “materially limit or inhibit the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”
 - Safe harbors:
 - state requirements necessary to
 - preserve and advance universal service,
 - protect the public safety and welfare,
 - ensure the continued quality of telecommunications services, and
 - safeguard the rights of consumers.
 - state and local authority to manage the public rights-of-way.

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- Aesthetics?
 - “Aesthetics requirements are not preempted if they are
 - (1) reasonable,
 - (2) no more burdensome than those applied to other types of infrastructure deployments, and
 - (3) objective and published in advance.
 - Reasonable if
 - technically feasible
 - reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments
 - Objective
 - i.e., they must incorporate clearly-defined and ascertainable standards, applied in a principled manner—and must be published in advance

Small Wireless Facilities



The End