SUMMARY

Several states are considering legislation (and Virginia, Minnesota and Ohio have passed legislation) that would apply to the deployment of small cell communications devices on municipal infrastructure. Although different bills have been introduced in different states, they generally follow the same basic approach: 1) streamlining the process for permitting small cell attachments to municipal infrastructure; and, 2) capping fees on such attachments. 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.

BACKGROUND

Generally, legislation introduced (or considered) 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 cure the defect. 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 (a) 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. 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 intends to oppose these state bills as well as the federal petition proposing access and rate regulations for small cells on municipal infrastructure. 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.

History: UTC was founded in 1948, to advocate for the allocation of additional radio spectrum for power utilities. Over the last 68 years, UTC has evolved into a dynamic organization that represents electric, gas and water utilities, as well as natural gas pipelines, critical infrastructure companies and other industry stakeholders.

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