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MUNICIPAL LAW GROUP

NEW FCC SMALL CELL RULING AND ORDER

Hard on the heels of the enactment of the Small Wireless Facilities Deployment Act (the “State Act”) in Illinois earlier this year, the Federal Communications Commission (“FCC”) has changed the game again, by issuing a Declaratory Ruling and Order (FCC Ruling) on September establishing new federal regulations governing small wireless facilities and providing the basis for how provisions of the Federal Communications Act will apply to the deployment of small wireless facilities.

While the new FCC Ruling applies to all facilities used to provide wireless services, specific rules have been adopted governing small wireless facilities. Small wireless facilities are defined as those facilities mounted on structures that are no more than fifty (50) feet tall (or no more than 10% taller than other adjacent structures), with an antenna size of no more than three (3) cubic feet and associated equipment of no more than twenty eight (28) square feet in volume.

The FCC Ruling is, in several respects, more restrictive than the provisions of the State Act. Significantly, the time limits for review and action on a small wireless facility application have been decreased. The time for taking action on applications for attaching small wireless facilities to existing structures is reduced from ninety (90) days under the State Act to sixty (60) days under the FCC Ruling.

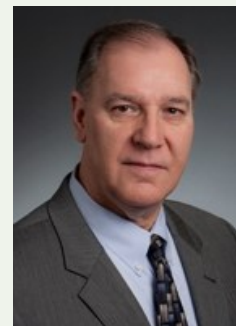
For any questions or comments you might have regarding this newsletter, please feel free to contact:

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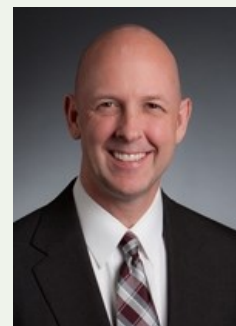
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Action on applications for small wireless facilities involving new support structures is ninety (90) days under the FCC Ruling, rather than one hundred twenty (120) days under the State Act. The federal time limits include any zoning review period that may be applicable. The time limit for determining whether an application is complete remains at thirty (30) days under the FCC Ruling, the same as in the State Act. However, the period of time for review of a resubmitted application has been decreased from thirty (30) days under the State Act to (10) days under the FCC Ruling. The FCC Ruling concludes that a failure to act within the new shot clocks constitutes an effective prohibition on the provision of wireless services.

The FCC Ruling makes clear that a state or local government legal requirement need only “materially inhibit” a particular small cell deployment in order to constitute an effective prohibition under the Federal Communications Act.

The FCC Ruling does not establish a maximum amount for application and collocation fees, but sets forth “safe harbor” amounts that are deemed to be reasonable. Any fees charged in excess of the safe harbor amounts are subject to challenge and will require proof that the fees are a reasonable approximation of the actual state or local government costs. The safe harbor fees are \$500 per application for up to five small wireless facilities, \$100 for each additional small wireless facility after five and a \$270 annual fee for all recurring fees, including right of way access and attachments to municipal-owned infrastructure.

The FCC Rules also regulate the ability of local governments to impose restrictions on small wireless spacing, undergrounding, equipment design, and aesthetics.

The attorneys at KTJ are performing a detailed review of the FCC Ruling and will be providing recommendations to our clients for amendments to their existing Small Wireless Facilities Ordinance. The full text of the FCC Ruling may be viewed here: [FCC Ruling](#)