**FEDERAL COMMUNICATIONS COMMISSION**

**BROADBAND DEPLOYMENT ADVISORY COMMITTEE**

**MODEL CODE FOR MUNICIPALITIES WORKING GROUP**

**DISCUSSION ITEMS FOR BDAC MEETING DATED NOVEMBER 9, 2017**

**THE FOLLOWING ITEMS ARE A LIST OF THE WORKING GROUP’S MOST SUBSTANTIALLY DEBATED TOPICS TO DATE. THE WORKING GROUP SEEKS FEEDBACK REGARDING THESE ITEMS.**

**APPENDED HERETO IS A COPY OF THE CURRENT, PRELIMINARY DRAFT OF THE MODEL CODE FOR MUNICIPALITIES. *AS NOTED THEREON, THE DRAFT MODEL CODE IS A PRELIMINARY DRAFT, AND SUBJECT TO SUBSTANTIAL FURTHER WORK BY THE WORKING GROUP, INCLUDING FURTHER CONSIDERATION OF VARIOUS FUNDAMENTAL CONCEPTS AND SPECIFIC PROVISIONS***

1. **Collocation Definition**

*What is the issue:*

Industry representatives are questioning whether to expand the collocation definition to all communications services.  However, local governments note that the current definitions for collocation are not necessarily expanded and we perhaps should not be expanding those definitions in the Model Code.

*Current language under discussion:*

“Collocate” means to install, mount, maintain, modify, operate, or replace a Communications Facility on or adjacent to a Support Structure or Utility Pole where a Communications Facility is already located, as of the date an Application is filed with respect to such Support Structure or Utility Pole. “Collocation” has a corresponding meaning.

1. **Decorative Pole Definition**

*What is the issue:*

Decorative poles differ from other poles as they have aesthetic qualities designed to enhance the character of the streetscape. Customizing installations for decorative poles can be more time consuming and costly for carries, but to communities they are considered important features to maintain and enrich the character of certain areas of the community.Therefore, how broad or limited the definition of a decorative pole can impact the necessary customization required by carriers to serve certain areas of the community.

*Current language under discussion:*

“Decorative pole” means an Existing Support Structure that is specially designed and placed for aesthetic purposes and with respect to which applicable state or local law, regulation, contractual requirements or administrative practice impose requirements regarding appurtenances or attachments that are not applicable to other Existing Support Structures with the same function.

1. **Fees & Rates**

*What is the issue:*

Industry seek cost-based fees for access to ROW infrastructure, especially in regards to small cell deployment given the number of wireless small cells expected to be deployed for 5G networks. Some local governments may seek market-based fees for access to the ROW, and in some cases, may be required by law to do so in order to ensure the public is fairly compensated. Issues around lack of transparency in pricing, bath faith actors on both sides, and lack of capacity in local governments exacerbate these issues.

*Current concepts under discussion:*

NOTE: When considering appropriate fees/rates to be charged, a local government should consider the following: Rental compensation charge for occupation of publicly-owned property for profit-making purposes. Inquiry may include review of rents charged by private property owners in the area for wireless installations to help evaluate fair market rental value of installation on Existing Support Structures (or “ESSs”, defined below) and/or New Support Structures (or “NSSs, defined below) in a competitive marketplace. To the extent local governments have the resources and the willingness to make access to Authority-owned ESSs in the ROW available for wireless installations, they should avoid, if practicable, creation of a “monopoly rent” approach to rental compensation for access to such poles, in which a single provider is selected to enjoy access to all such poles in the ROW via a highest rental bid process. Such a “monopoly rent” approach would likely not benefit local community users of wireless services in the long run and may violate federal law. A system that evaluates fair rental value, comparable to the way a private property owner would evaluate the value of making its property available for similar uses, is more likely to balance the interests of the community in fair market rental compensation for the profit-making use of its property and efficient use of such property, with desirability of robust, competitive wireless communications services.] Options: Rental compensation can take a variety of forms, including, for example, per-ESS rentals, reimbursement of municipal costs associated with the activities involved, provision of in-kind services to support local government needs, or some combination of these. Adjustments recognizing the desirability of wireless communications.

Jurisdictions are advised that while they may choose to seek full fair market rental value for the use of the public ROW for installation of wireless facilities on Authority-owned Structures, many jurisdictions may determine that local access to wireless communications is a sufficiently desirable resource for the community that less than market rental value is acceptable. Indeed, many communities may, in evaluating the relevant priorities, choose to limit rental charges to a reimbursement of the jurisdiction’s incurred costs related to the installation (and some communities may be thus limited by applicable state or local law). However, jurisdictions that are able may seek to ensure via conditions on access that the benefits of accepting lower than fair market rental value redound to the community, not solely to the provider.

Methods for insuring such benefits may include, for example, provision for lower rental charges to where facilities are installed in underserved communities within the jurisdiction or that have special needs, or, similarly, by provision for lower charges in return for commitments to install across different communities within the jurisdiction to avoid “redlining” or similar effects.] Examples of actual compensation charged for attachments to Authority-owned structures include: [Highlight actual charges in municipalities of various sizes and in various locations across the U.S.]

1. **Small Cell Volume Size Issue**

*What is the issue:*

Industry representatives seek streamlining of approval for small cell installations in particular. The working group has discussed development of a definition of small cell attachment that establish volume sizes for equipment that will have simplified approval. Municipalities view current industry-recommended sizes as too large and industry representatives feel restrictions on the sizes are not realistic the need for heterogeneous networks (i.e., 3G/4G/LTE/5G co-location) and current technology limitations. A proposal for aggregate equipment volume sizes of 6 cubic feet for antennas and 28 cubic feet for all types of equipment have been made by industry. Local government representatives have indicated much smaller volume sizes are appropriate (e.g., 2.1 cubic feet for antennas).. Alternative proposals to the very large size also include designing for the average size deployed (i.e., not the worst case scenario of 28 c.f.) and requiring size reductions over time to incentivize smaller builds by OEMs. The question is whether volume sizes should be established and included in the Code for this purpose.

1. **Undergrounding of Facilities in the ROW**

*What is the issue:*

Local governments may seek to limit or prohibit placement of new above ground telecom infrastructure in areas where existing utility infrastructure is not already placed above ground, as well as placement of new telecom infrastructure underground in areas where there is not already utility infrastructure placed underground. Industry representatives view such prohibitions (and significant limitations) as problematic given the nature of network design, which typically requires locating infrastructure in narrowly defined geographic areas in order to provide network coverage. Aerial fiber is also substantially cheaper and quicker to deploy than undergrounding for service providers, however some communities value aesthetic, historic, or public safety needs (e.g., high hurricane areas) over faster broadband deployment which can cause conflict.

*Current language under discussion:*

Facilities may be installed above ground in areas where existing utility facilities are above ground and shall, unless otherwise approved by the Authority, be installed underground in areas where existing facilities are installed underground, subject to all applicable safety codes and subject to the Authority's ongoing authority to direct the undergrounding of utilities where utilities have previously been located above-ground.

1. **Relocation of Existing Facilities in the ROW**

*What is the issue:*

Local governments seek to have the ability to require relocation of telecom infrastructure placed in the ROW as a result of a “public project”. What are the circumstances and timeframes within which such relocation should appropriately be required?

*Current language under discussion:*

If relocation of facilities is required as a result of any public project, the Authority shall provide at least 90 days’ notice to any ROW occupant. Unless otherwise provided by applicable law, the ROW occupant, at no cost to the Authority, shall accomplish the necessary relocation within a reasonable time from the date of the notification, but, in no event, no later than seven working days prior to the date the Authority has notified the ROW occupant that it intends to commence its work, or immediately in the case of emergencies.

1. **Preliminary Reviews & Mapping of Installations**

*What is the issue:*

Local governments may not have current, up-to-date maps of ROW infrastructure within the local government boundaries (e.g., pole infrastructure locations and designs). From a planning perspective, cities and broadband providers will benefit from such maps in the long term. But, in the short term, broadband providers view these reviews as additional delays to their ability to deploy.

*Current language under discussion:*

Preliminary reviews and mapping of new & existing installations. A local government may, as a preliminary matter, require maps and may conduct the following reviews prior to granting permission for installations[, but such reviews shall not extend beyond 60 days following receipt of an application]. (A) Inventory of existing available space. Review the number and location of existing poles on local streets that can accommodate “ground-based” wireless installations (as opposed to “strand-based”).

1. **Make-ready Requirements**

*What is the issue:*

There is a lack of consensus as to whether to include make-ready requirements in the Model Code.  There are concerns around local government authority over make-ready decisions, impact on  public safety, the implications for what types of contractors would be allowed to do this work, advanced notice requirements, what constitutes a non-complex installation, and impact on collectively bargained union jurisdiction over make-ready work.

1. **Evaluation of Potential Demand for Wireless Installations on Existing Poles or Other Possible Rights-Of-Way Locations**

*What is the issue:*

There are many demands in the public ROW, including electricity, water, sewer, traffic signals, and street lights in addition to pedestrian and vehicle traffic amongst other uses. The ability to plan for the longer term and balance operational demands over years is useful for local governments. However, broadband providers may not have visibility into network deployment needs and/or be unwilling to share those plans due to a number of factors including competitive interests, retaining flexibility in network deployment, or lack of clarity on long-term funding streams. Therefore, striking the right balance between these interests is important. In our on-going discussions, broadband providers and local governments have differing views on how best to balance these interests.

*Current language under discussion:*

Initial inquiry to industry regarding anticipated request volumes and most useful locations. A Request for Information (“RFI”) process may be considered, prepared to ensure serious, complete and useful responses while protecting competitively sensitive information and allowing flexibility for providers going forward to adjust requests based on changing technological and market conditions and to accommodate additional competitors as they arise.

Model Code Commentary: Local decision-makers are encouraged to recognize that expanding the availability of wireless broadband services can enhance local quality of life in many ways, such that local jurisdictions may choose additional levels of flexibility with respect to terms and conditions for allocation of ROW space occupancy that might otherwise prevail with respect to proposed above-ground installations that may serve some purposes with more limited quality of life scope or impact.

Review status of alternative non-ROW locations to evaluate the degree to which demand can be served via private sector locations. [Model Code Commentary: Private property owner leasing of sites for wireless installations is a meaningful revenue source for property owners in many communities and local jurisdictions may wish to be sensitive to unduly prejudicing the market toward publicly-owned, as opposed to privately-owned, locations. Unduly prejudicing the market toward use of public ROW space, in comparison to privately-owned locations, may also discourage ongoing technological and design innovation that could facilitate more effective use of private property locations.]

Evaluation of competing current and potential future demands on available ROW space. Possible users of space for wireless facilities in addition to commercial wireless providers may include public safety and traffic agencies, electrical, water or other utilities pursuing wireless meter reading, smart grid and other initiatives, etc. The degree to which these uses may be compatible with proposed commercial installations may depend on the specific space, technology and operational demands of the applicable alternative uses and the available ROW facilities.

1. **Eligible Facilities Requests**

*What is the issue:*

Under current federal law, “Eligible Facilities Requests” are subject to mandatory approval and timeframe for granting of such approval. There is disagreement among working group members regarding what constitutes an Eligible Facilities Request, whether it includes collocations on structures located in the ROW, and whether reasonable aesthetic restrictions (color, screening, etc.) may be imposed for such requests.

1. **Mutual Aid**

*What is the issue:*

Local governments are the first responders and coordinators of emergency and disaster response. Telecommunications are critical pieces of response, recovery, and resilience. Striking the right balance when requiring broadband providers to provide appropriate aid, data, and other critical information during a time of emergency is an important conversation that is on-going in the working group.

*Current language under discussion:*

Local governments with competitive infrastructure providers may consider developing or supporting a voluntary mutual aid consortium for competing providers to assist each other in large scale emergencies.

Resiliency. Local governments may consider requiring real time reporting to municipalities/local first responders in the event of outages and other emergency situations.

Transparency. Local governments may consider advocating for or requiring higher levels of transparency and reporting that will benefit consumers regarding wireless network outages, reliability, privacy and quality.

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