

LCS Cell Phone Connectivity Interim Study Committee

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COLORADO
MUNICIPAL
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The CCUA represents its members in all matters of concern related to telecommunications, utility and rights of way issues

It is comprised of approximately 65 local government member entities, comprising about 68% of Colorado's population



CML represents the interests of 271 cities and towns in Colorado

CML advances municipal interests, is the leading resource on municipal issues, and empowers its members to be leaders throughout the State

CCUA and CML members SUPPORT and PROMOTE broadband deployment throughout Colorado – we appreciate this Committee’s efforts!

Our members believe strongly in principals of local control

While most local governments have no interest in regulating the business of broadband providers, they do insist on managing competing interests to the public’s property, and preserving the unique aesthetics of our communities

Most of our members have demonstrated that network deployment goals of the industry can be accomplished while access to public property is respected and protected

The permitting process works when the applicants and the localities collaborate to respect the legitimate interests of each



Examples of Small Cell Facilities



Oakland, CA



Santa Fe, NM

Seattle, WA



Colorado Springs



Federal Statutes, FCC Regulations and State Law all preserve and respect local land use authority subject to certain exceptions intended to facilitate deployment of broadband networks, including permitting of facilities in the public rights of way



State Law

C.R.S. §29-27-404(3)

The siting, mounting, placement, construction, and operation of a small cell facility or a small cell network is a permitted use by right in any zone.

C.R.S. §38-5.5.106

No telecommunications or broadband provider may construct, operate and maintain facilities within any “public highway” (as defined in C.R.S. § 38-5.5-102(6)) without first obtaining consent of the jurisdiction with jurisdiction over these areas .

C.R.S. §38-5.5-107

(1)(a) No political subdivision shall levy a tax, fee, or charge for any right or privilege of engaging in a business or for use of a public highway...*

(1)(b) All fees and charges levied by a political subdivision shall be reasonably related to the costs directly incurred by the political subdivision in providing services relating to the granting or

Federal Law and FCC Regulations

47 U.S.C. §332(c) (Wireless)

47 U.S.C. §253 (Rights of Way)

(a) No State or local statute or regulation ... **may prohibit or have the effect of prohibiting** the ability of any entity to provide any interstate or intrastate telecommunications service.

(c) Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, **on a competitively neutral and nondiscriminatory basis**...

- (7)(a) ...nothing in this chapter shall limit ... the authority of a ... local government ... over decisions regarding the placement, construction, and modification of personal wireless service facilities, except:
- Regulations may not unreasonably discriminate among providers of functionally equivalent services
- Locality must act on a request within a reasonable period of time
- Decisions to deny must be made in writing and based upon evidence in a written record
- No...local government...may regulate...wireless facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such

Permitting Access to the ROW for Installation of Broadband Equipment

Process:

- Applicant approaches locality to obtain access to ROW
- Parties negotiate non-exclusive agreement as required by C.R.S. § 38-5.5-106 – can be for fiber optics, small cell poles and related equipment
- Once agreement is reached, applicant can apply for permits to construct

ROW use agreements can cover:

- General construction provisions in permits
- Amount of area permits will cover and how many may be open at one time (addressing staffing capacity concerns)

Permitting Access to the ROW for Installation of Broadband Equipment

ROW use agreements can cover:

- Information to be submitted with permit application – for example:
 - pothole and boring locations, the boring and installation method, number and size of conduits, dimension clearance from the proposed conduit and existing utilities, the horizontal and vertical locations of any other existing underground utility or other facilities in the ROW in the proximity of the proposed work area, what work will be self-performed and what work, if any, will be performed by subcontractors
 - Construction drawings, stamped by Colorado licensed engineer, identifying all utilities, network facilities to be installed, where the installation will occur (back of sidewalk, in the paved surface of the roadway, etc.), a profile with potholed locations of existing utility crossings (including water and sanitary sewer service lines), a plan for conducting emergency repairs and all anticipated restoration work

Permitting Access to the ROW for Installation of Broadband Equipment

ROW use agreements can cover:

- Types and amounts of coverages to address damages issues
- How damages and repairs will be addressed
- Relocation obligations
- Notification of nearby residents/building owners
- Insurance, Indemnification, Warranties
- Hazardous materials
- Site clean-up obligations
- The parties can, and often do, agree upon the form of the site-specific permit or license that will be required, thus saving time involved in negotiating specific permit terms as deployment throughout the community proceeds

Design Standards for Small Cell Poles – Determining Acceptable Designs in Advance Speeds Up Permit Review

- Design standards dictate what small cell facilities should look like and where they should be placed
- Examples:
 - https://www.lakewood.org/files/assets/public/v/4/public-works/pdfs/engineering/small-cell-design-manual-edits-02_24_2020.pdf
 - <https://www.townofbreckenridge.com/home/showpublisheddocument/22955/638170744190100000>
 - <https://www.lovgov.org/home/showpublisheddocument/58229/638150801554800000>
 - <https://www.fcgov.com/engineering/files/smallcelldesignguidelines.pdf>
 - <https://www.thorntonco.gov/media/file/small-cell-design-guidelines>



How Local Governments and Industry Can Improve the Permitting Process

Local Governments

- Educate local elected officials and staff, when necessary
- Educate local citizens
- Update code requirements
- Make regulatory processes transparent
- Develop design standards

Industry

- Review local regulations in advance
- Review permitting fees in advance
- Avoid use of third-party firms to file applications and negotiate permit terms
- Have the decision makers at the table
- Internal coordination between permitting and construction teams

Local Governments Respectfully Suggest:

- No new restrictions on local control should be added to the preemptions already existing in State and Federal law
 - In particular, the compromise agreements on siting wireless facilities in the rights of way that local governments and industry agreed to in 2017 legislation should not be abrogated
- Consider state monetary support through grants or tax incentives for deployment in hard to reach areas – they must come with specific, enforceable requirements that these areas actually see the broadband service they need within defined time periods
- Engage the Colorado Broadband Office in these discussions
- Encourage collaboration between the State, industry and local governments to
 - Create joint educational programs addressing deployment and permitting, and
 - Informal meetings to address areas of concern before problems become less manageable

Thank you

