

**CITY OF COLLEGE PARK, MARYLAND
REGULAR COUNCIL MEETING AGENDA ITEM**

AGENDA ITEM 18-G-120



Prepared By: Bill Gardiner,
Assistant City Manager

Meeting Date: September 11, 2018

Presented By: Bill Gardiner,
Assistant City Manager

Consent Agenda: Yes

Originating Department: Administration

Action Requested: Council approval of a letter stating the City's opposition to the Federal Communications Commission (FCC) draft ruling and order regarding small cell wireless infrastructure deployment.

Strategic Plan Goal: Goal 4: Quality Infrastructure

Background/Justification:

The FCC's draft Declaratory Ruling and Third Report and Order would enact substantial new limits on local government wireless siting review. The proposal would result in a loss of local control over issues like undergrounding, negotiations for public benefits and the ability to fully control the appearance of city streets.*

"Small wireless facilities" are defined as including an antenna of no more than three cubic feet and equipment totaling no more than 28 cubic feet, placed on a structure that is either no more than 50 feet in height, no more than 10 percent taller than adjacent structures, or no more than 10 percent taller than the structure's preexisting height after the new antenna is placed.

"Collocation" is defined as placing an antenna on *any* existing structure, regardless of whether that structure already has wireless equipment on it, or whether it has been zoned for placing that equipment.

Local governments would have 60 days to complete review of applications for collocated small cells, and 90 days for small cells on new structures. These review requirements include "all aspects of and steps in the siting process." They may only be paused if a local government notifies the applicant within 30 days of receipt that the application is incomplete, or through mutual agreement between the locality and the applicant.

The proposal limits application fees for all small wireless facilities to \$500 for up to five sites, and \$100 per site for each site thereafter, and limits recurring fees for small cells in the rights-of-way to \$270 per site, per year. *Existing agreements are not grandfathered.*

Local aesthetic requirements, including minimum spacing requirements, are limited to those that are "(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) published in advance."

The document may be approved by a majority of commissioners at the FCC's September 26 open meeting. If approved during the open meeting, the new regulations would go into effect 30 days after publication in the Federal Register.

* *Information provided by the National League of Cities*

Fiscal Impact:

If the proposal is approved the City's ability to charge fees for access to the City's ROW would be restricted.

Council Options:

- #1. Approve the letter.
- #2. Amend and approve the amended letter.
- #3. Do not approve a letter.

Staff Recommendation:

#1

Recommended Motion:

I move that Council approve sending the attached letter to the Federal Communications Commission.

Attachments:

Draft letter to Federal Communications Commission

Link to NLC Cities Speak information: https://citiesspeak.org/2018/09/07/fcc-proposes-preemption-fee-cap-for-local-small-cell-deployment/?_zs=O01WW&_zl=GKGM1

applied to other types of infrastructure deployments, and (3) published in advance.”

The FCC notes that undergrounding requirements for all wireless facilities would constitute an illegal prohibition of service by a local government, but it does not clarify whether local governments may require auxiliary equipment for small cell sites, such as equipment cabinets and fiber backhaul, to be undergrounded.

- **Determines that shot clock overruns are “prohibition on the provision of services,”** allowing wireless site applicants to seek expedited injunctive relief in court within 30 days of a local government missing a shot clock deadline. **More restrictive state laws will remain in effect** and will not be replaced by this order.

There are some small possible wins for local government in this ruling. The FCC considered, but declined to enact, a “deemed granted” remedy for shot clock overruns, in which any application not decided by the shot clock deadline would be automatically granted. However, it states that it retains the option to do so in future. The ruling also allows aesthetic requirements, with some restrictions.

If approved during the open meeting, the new regulations would go into effect 30 days after publication in the Federal Register. Local governments could then face enforcement action if wireless providers or other small cell applicants challenge them in court based on noncompliance with the above requirements. NLC has produced a Small Cell Wireless Infrastructure Municipal Action Guide to help city officials better understand this technology, regardless of what federal regulations go into effect.

NLC and its local government partners will oppose this proposal. To support our efforts, you can send a letter to the FCC expressing your opposition by September 18, before the FCC publishes its official “sunshine agenda” for the open meeting. To support our advocacy, use [this template letter](#) to register your opposition with the FCC no later than September 18, 2018.

