Comparison of Florida Law on the Deployment of Small Wireless Infrastructure and S. 3157, the Streamlining The Rapid Evolution And Modernization of Leading-edge Infrastructure Necessary to Enhance (STREAMLINE) Small Cell Deployment Act (Senators John Thune and Brian Schatz)

August 13, 2018

SUMMARY OF FLORIDA'S "ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT"

CS/CS/HB 687 was signed into law by Governor Scott on June 23, 2017 and became effective on July 1, 2017. The bill created the Advanced Wireless Infrastructure Deployment Act (Florida Act), which establishes a process by which wireless providers may place certain "small wireless facilities" on, under, within, or adjacent to certain utility poles or wireless support structures within public rights-of-way that are under the jurisdiction and control of a municipality or county. The Florida Act provides that a municipality or county may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way, except as specified in the bill. The Florida Act caps the rate for collocation on a utility pole owned by a municipality or county at $150 annually. The Florida Act does not apply to collocation on privately owned utility poles and wireless support structures or utility poles owned by an electric cooperative or municipal electric utility. The Florida Act also does not apply to collocation of small wireless facilities or the erection of wireless support structures in retirement communities or municipalities with specific characteristics or in locations governed by covenants and restrictions of a home owners association.

GOVERNMENTS COVERED

The Florida Act applies to rights-of-way controlled by municipalities and counties and does not apply to rights-of-way controlled by the Florida Department of Transportation (FDOT) or wireless support structures or utility poles owned by an electric cooperative or a municipal electric utility. S. 3157 applies to "states or local governments or instrumentalities thereof" and "facilities in a right-of-way owned or managed by the State or local government…" Therefore, S. 3157 would apply, for example, to rights-of-ways controlled by FDOT, utility poles owned by municipal utilities and to those municipalities and governmental entities, for example The Villages, that are exempt under the Florida Act.

FACILITIES APPLICABLE

The Florida Act and S. 3157 define "facility" differently therefore causing confusion as to which regulation applies to which facility. S. 3157 applies to a "small personal wireless service facility" defined as a facility "in which each antenna is not more 3 cubic feet in volume." The Florida Act addresses the size of the enclosure or antenna in small wireless facilities up to 6 cu. ft. and 28 cubic feet for the cumulative volume of all other equipment associated with the facility. Florida Statutes also applies the 60-day shot clock on applications for siting utility poles for collocation

of small wireless facilities. Because of different standards under the Florida Act and S. 3157, it will be necessary to obtain more information in permit applications about proposed antennas to determine which standards apply. More analysis is needed as to whether the federal bill applies to "micro wireless facilities" that are addressed in Florida Statutes.

REGISTRATION PROCESS

S. 3157 does not address a registration process, while under the Florida Act, cities and counties can require an effective registration process as a prerequisite to obtaining permits. It is unclear if such a registration would be consistent with the federal bill or whether the "shot clock" under the federal bill would apply notwithstanding an applicant not having an effective registration process pursuant to a local code under the Florida Statute.

PERMIT AND COLLOCATION FEES

S. 3157 allows state and local governments to charge fees for the consideration of an application to install small wireless infrastructure. The fee must be "competitively neutral, technology neutral, and nondiscriminatory; publicly disclosed; and based on actual and direct costs." The Florida Act provides two options for municipalities and charter counties in relation to permit fees. First, subsection 337.401(3)(c), F.S., authorizes municipalities and charter counties to either charge a permit fee not to exceed $100 or increase the rate of the communications services tax (CST) imposed under chapter 202, F.S. In 2001 or 2002, most municipalities chose to forgo a permit fee of up to $100 and opted to increase the rate of the CST. If the city chose to increase the CST, the city cannot charge a permit fee for permit applications under the Florida law. If the city opted to charge for permits, the permit fee for permit applications under the Florida law cannot exceed $100. While further analysis is needed, cities and counties may be able to charge permit application fees under S. 3157, notwithstanding Florida law to the contrary. The Florida Act authorizes a $150 per pole per year collocation fee for attachments to a city or county pole, which is not allowed under S. 3157.

CARVE OUTS AND LOCAL RESTRICTIONS

S. 3157 only allows regulations to address "objective and reasonable" engineering standards, safety requirements or aesthetic/concealment requirements. The bill does not contain carve-outs for small coastal cities that passed referenda to underground utilities, poles owned by municipal utilities, and FDOT controlled rights-of-ways or poles. In addition, S. 3157 does not allow local governments to preserve historic sites, undergrounding requirements, or HOA covenants (to the extent such restrictions are not related to such engineering standards, safety or aesthetic/ concealment requirements) all of which is allowed under the Florida Act.

Should you have questions or need additional information, please contact Amber Hughes (850) 701-3621; ahughes@flcities.com or Allison Payne (850) 701-3602; apayne@flcities.com.