

# Scenic Watch



Special  
Edition  
April  
2017

Breaking legislative news:

Florida to preempt local regulation  
of both wireless installations and  
utility transmission lines



Florida League of City's Wireless Alert:

[CS/CS/SB 596](#) (Hutson) and [CS/HB 687](#) (La Rosa) "...would eviscerate local control for Florida cities with respect to taxpayer owned public structures and right-of-way (generally roadway and sidewalk areas) for placement of "small" or "micro" wireless antennas and equipment by the multi-billion dollar wireless communications industry.

The bills prohibit local governments from regulating anything except



Fun Festivals  
and Events

Central

May 1-31  
Seminole County During  
the First World War,  
Sanford  
May 5-7  
Orchid Show and Sale,

applicable building codes for this wireless infrastructure.

Wireless communications providers and speculators will be able to ignore land development regulations, pedestrian movement, traffic view zones, traffic circulation as well as safety and aesthetic considerations.

By unreasonably capping the permit application and attachment fees as well as limiting the permit review timeframe, the bills require taxpayers to subsidize the business interests of wireless communications providers.

The bills require a city, at its taxpayers' expense, to develop engineering and other structural reports on the city's own structures that a wireless company may or may not decide to use for an antenna.

Should this legislation pass, there WILL be a proliferation of wireless infrastructure, in some cases the size of a refrigerator, in areas where such equipment and infrastructure is unsightly, unsafe and inappropriate for that particular community... "

-- Summary, Florida League of Cities Legislative Alert

[Read issue brief and see advocacy talking points at Florida League of Cities](#)

View detailed information bills and progress of each bill here:

[CS/CS/SB 596](#)

[CS/HB 687](#)

**Exemptions from "Development"/Transmission Line Siting**

"[SB 1048 \(Lee\)](#) and [HB 1055 \(Ingram\)](#) would revise the statutory definition of 'development' in Chapters 163 and 380, and would also revise statutory provisions applicable to transmission line and power plant siting.

Under current law, activities that do not constitute 'development' are not required to obtain development order approval. Currently, work or construction by a water or gas utility on established rights-of-way are exempt from the definition of 'development.'

The bills would add electric utilities to this exemption, and would also include within the exemption work by water, gas and electric utilities in established 'corridors' and 'to be established' corridors and rights-of-way.

In addition, the bills would require the State Siting Board to consider specified variance standards when imposing conditions for certification of power plants and transmission line corridors. Finally, the bills specify the Public Service Commission has exclusive jurisdiction to require underground transmission lines. [SB 1048](#) passed the full Senate on April 6 (34-3). [HB 1055](#) is in the [House Commerce Committee](#). (O'Hara)"

View detailed information bills and progress of each bill here:

[SB 1048](#)

[HB 1055](#)

-- Holly McPhail, Florida League of Cities Legislative Alert

Nationwide battle:  
"Fight carries big stakes for Sprint,

Merritt Island

May 6

First Saturday Jam,  
Barberville

May 6

Siesta Key Sand Sculpture  
Contest, Siesta Key

May 6-7

St Johns River Festival of  
the Arts, Sanford

May 6-7

Jazz on the Vineyard

Green, Clermont

May 10

Climb to the Moon, Ponce  
Inlet

May 11-13

Harvey Milk Festival,  
Sarasota

May 11-14

New Smyrna Beach Blues  
Festival, New Smyrna  
Beach

May 12

Downtown Melbourne  
Friday Fest, Melbourne

May 12

Clearwater Beach Taste  
Fest, Clearwater

May 13

Temple Terrace Craft  
BrewFest, Temple Terrace

May 13

Endangered Species Day,  
Sanford

May 13

Taste of Soul, Orlando

May 13

Art and Music in the Park,  
Casselberry

May 13-14

Mayfaire by the Lake,  
Lakeland

May 14

Mother's Day Carillon  
Concert, Lake Wales

## South

May 3-7

Sunfest, West Palm Beach

May 3-31

Art by the DisABLEd,  
Sanibel

May 5-7

Rolling Loud Festival,

# AT&T"

Industry efforts to remove local control target over 24 states and a national level proposal to the FCC is scheduled for vote on April 24th.

"...A private wireless infrastructure company's running battle with cities and towns across the U.S. may have a far-reaching impact on plans by Sprint Corp., AT&T Inc. and Verizon Communications Inc. to build next-generation wireless networks that can handle billions of connected devices in the burgeoning internet of things.

The new networks depend on 'small cells', equipment that can handle wireless traffic within a radius of about two city blocks. Mobilitie LLC, the infrastructure company, has embarked on a massive nationwide effort for Sprint to install small cells in cities and towns from San Antonio, Texas to Bloomfield, N.J. to Daleville, Ga. Sprint is one of Mobilitie's top clients, though it says it works with all major telecom carriers...

To cover a town with '5G' fifth-generation wireless broadband service, wireless companies need to deploy dozens to hundreds of small cells. The infrastructure required for a small cell network varies from equipment the size of a large shoebox attached to existing utility poles to new, 120-foot poles. Under pressure from wireless providers and contractors like Mobilitie, towns and cities nationwide are resisting a 'one-size-fits-all' permitting approach that could deprive them of oversight of public property.

For the wireless industry, keeping network deployment costs down is crucial to earning a profit. Saying that some local officials have sought what the company sees as excessively high fees for each installation permit, Mobilitie in November 2016 asked the Federal Communications Commission to step in to 'stop excessive and unfair rights of way fees that are impeding wireless broadband deployment.'

The regulatory showdown will help determine how fast carriers can build networks to handle exploding data traffic.

'Small cells are at the core of 5G, and municipalities have the ability to make it happen or stop it,' wireless industry analyst Roger Entner, of Recon Analytics, told Bloomberg BNA.

Mobilitie wants the FCC to set ground rules governing how much cities and towns can charge wireless companies to deploy in public rights-of-way. It argues that cities should be able to charge fees for issuing permits and managing the rights-of-way, but no more. 'Many localities are using their authority to manage rights-of-way as a pretext for raising revenue,' Mobilitie said in its FCC petition.

But municipal advocates say Mobilitie just wants the FCC to help it get around zoning regulations and compensation typically required for any company deploying equipment on or near roadways and sidewalks.

**FCC Chairman Ajit Pai has teed up a vote on a rule proposal for the commission's [FCC] April 20 meeting.**

Miami  
May 6  
Great Dock Canoe Race,  
Naples  
May 7  
Taste of the Beach, Fort  
Myers  
May 10-14  
Key West Songwriters'  
Festival, Key West  
May 11-14  
Discovery Series, Miami  
Beach  
May 13  
7th Annual Fairy & Pirate  
Festival, Vero Beach  
May 13-15  
Sunshine State Games  
Spring Festival, Manatee  
County  
May 13  
Turtle Trot 5K, Fort Myers  
May 13  
5th Annual Key Lime  
Festival, Punta Gorda  
May 14  
Battle in the Bay Dragon  
Boat Festival, Marathon

## North

May 3  
Nashville Songwriters  
Florida Sunshine Tour,  
Destin  
May 3-6  
Suwannee River Jam, Live  
Oak  
May 3-7  
Thunder Beach Spring  
Rally, Panama City Beach  
May 5  
Cinco de Mayo Pub Crawl  
Fiesta, Destin  
May 5-6  
Spring Tour of Historic  
Homes, Apalachicola  
May 5-7  
Gamble Rogers Folk  
Festival, St Augustine  
May 5-7  
Isle of Eight Flags Shrimp  
Festival, Amelia Island  
May 5-14  
Romanza Festivale Week,

## High Stakes, High Costs

Small cells are critical infrastructure, essential to industry efforts to build 5G networks. They complement existing networks but help carriers meet growing data demand now, and help prepare for an explosion of 'internet of things' devices predicted to come online in the next decade...

In addition to its small cell deployments, Mobilitie also uses transport facility poles ranging from 70 to 120 feet to mount equipment that delivers wireless data from consumer devices to the core network and back. That's sparking many of the complaints to the FCC from city officials, with some municipalities saying the company is deploying the structures without sufficient consideration for public safety or local input. Accommodating a small cell attachment to a new or existing pole in the right-of-way is one matter, but accommodating a new 120-foot pole is a 'very different consideration,' the American Association of State Highway and Transportation Officials said...

## Network of the Future

Between 2016 and 2021, global mobile data traffic usage is forecast to increase sevenfold, of which approximately 78 percent will be video traffic by 2021, according to Cisco Systems Inc. estimates.

Hundreds of thousands of small cells are expected to be deployed across the U.S. by 2020 to support that growth, according to Kagan Research. The number of small cell sites could surpass traditional wireless towers by 2019, possibly numbering approximately 455,000 by 2020, assuming speedy siting procedures, Kagan Research's John Fletcher said in a report...

## Define 'Small.'

Some of the tension reflected in the FCC's proceeding stems from the difference in precisely what different companies mean when they talk about 'small cells.' City officials across the country have blasted Mobilitie for trying to install large pieces of equipment near their roadways.

Papillion, Neb. city officials told the FCC that Mobilitie 'gave no consideration to the historic nature' of the city's downtown area when the company asked to deploy an 80-foot wooden tower between a downtown street curb and sidewalk.

In Midland, Mich., Mobilitie filed two applications to install 120-foot-tall towers in the rights-of-way on Midland County roads, a local county road administrator told the FCC. Mobilitie 'made no prior attempt to contact anyone regarding local rules and regulations governing the use of the right-of-way,' never completed its applications with site-specific criteria, and provided 'merely a dot imposed on a snapshot of a googlemap [sic]' by way of location information, Terry Palmer, managing director of Midland County Road Commission, told the FCC.

State and local governments are fighting back against a uniform regulatory approach. A ruling from the FCC limiting the types of fees municipalities can charge 'could potentially cost local governments billions of dollars annually for the private use of the public rights-of-way,' a coalition of governmental regulatory and municipal organizations, including the National Association of Regulatory Utility Commissioners (NARUC), told the FCC. It also risks interfering with ongoing collaboration between state and local governments and wireless companies on model ordinance and licensing agreements that let localities maintain control

St Augustine  
May 6  
First Coast Tour de Cure,  
St Augustine  
May 6-7  
3rd Annual Garden Show  
and Festival, Williston  
May 12-14  
Southern Shakespeare  
Festival. Tallahassee  
May 13  
Windsor Zucchini Festival,  
Windsor  
May 13  
Ironman 70.3 Gulf Coast,  
Panama City  
May 13  
Harry Potter Festival, St  
Augustine

[For many more events  
and details please visit  
the Orlando Times Travel  
Calendar here](#)



over infrastructure siting while also giving companies certainty on pricing and deployment timelines.

### Growing Number of State Laws

...Nearly two dozen states already have or are working on legislation to speed up small cell deployment, including California, Florida, Hawaii, Ohio, New York and Virginia. In Georgia, local governments recently completed model right-of-way licensing agreements to work with Mobilitie, and plan to complete more with other providers.

The Georgia Municipal Association's model agreement came out of local governments' decision to find a workable solution with Mobilitie. 'We want the technology. We don't want the unsightly poles or proliferation of new poles inside our cities,' Lamar Norton, GMA's executive director, told Bloomberg BNA.

'We need to work with them so that we win, our citizens win, they win. We want to have a good outcome so that the technology is in every city,' Norton said. 'It's a lot better than fighting at the legislature and attorney's office to see if we can work this out like ladies and gentlemen,' he added.

### Single Rule

However, a nationwide directive from the FCC preempting 'regulatory barriers threatening ubiquitous availability of wireless connectivity and 5G,' particularly on allowable costs cities can charge, would be better, according to a filing by wireless trade group CTIA, whose members include all four national carriers as well as tower companies including American Tower Corp. and equipment manufacturers such as Qualcomm Inc.

The telecom industry specifically wants to avoid a proliferation of different, state-based model ordinances, Entner said. 'If you're a telecom carrier, you want to have one rule to fit them all so that your process is repeatable,' he added.

A single federal small cell policy is precisely what local governments don't want. 'We need to take into consideration aesthetic considerations but also building codes, public safety codes, blocking pedestrian traffic with ground equipment. Those are all really, really valid and important issues that local governments have to address,' Kenneth S. Fellman, a former mayor and partner at Kissinger & Fellman, P.C. in Denver, told Bloomberg BNA.

### Court Battle Looms

The FCC may face legal challenges by local officials if it does decide to preempt local cost-recovery rules. Municipalities can charge fair and reasonable costs for public rights-of-way deployment, so long as it's done in a competitively neutral and nondiscriminatory manner, Fellman said. But an FCC interpretation that localities may only recover permitting and other related costs may face constitutional challenges regarding just compensation for state property, Fellman said. 'I think there are significant Tenth Amendment legal constraints on the commission's ability to deal with that without direction from Congress,' he said.

Billions of dollars are potentially at stake, either for local coffers or company balance sheets. Congress is expected to introduce new legislation addressing broadband deployment sometime this year, either as standalone measures or wrapped into a broader infrastructure bill.

It's unclear whether any of those measures might address small cell deployments specifically...."

-- Lydia Beyoud, Bloomberg

[Read entire article here](#)

Legal: Ohio cities file suits  
"Cities join forces to fight state law  
on wireless telephone antennas"





Photo: Crain's Cleveland Business

"Cities across the region are filing suit against a new state law that, the cities say, unconstitutionally, restricts their ability to regulate the next generation of wireless telephone antennas.

A lawsuit filed by the city of Cleveland on Monday, March 20, against the state of Ohio in Cuyahoga County Common Pleas court seeks to prevent the state from enforcing legislation passed at the end of December that would go into effect on Tuesday, March 21. A similar suit by 20 communities across the region was filed Friday, March 17, in Summit County Common Pleas Court.

"Our complaint challenges the constitutionality of S.B. 331," said Cleveland Mayor Frank Jackson at a news conference on Monday, referring to legislation passed in the waning days of the last legislative session.

"The Senate bill prevents the city from regulating the commercial installation of cell wireless equipment in our public right of way," Jackson said.

The cities believe the new law violates Ohio home rule rights, which grant municipalities the authority to adopt and enforce within their limits regulations that are not in conflict with what state law calls "general laws."

The cell tower rules were an amendment to S.B. 331, a bill introduced to regulate pet sales. Another amendment to the same bill prevents Cleveland and other cities from raising their minimum wage above the state minimum wage.

Cleveland's filing also challenges what Jackson called the "single subject rule," which says that legislation may contain no more than one subject, which must be clearly expressed in the title. That concept has not always been honored by the Ohio General Assembly.

Also at the news conference was Independence Mayor Anthony L. Togliatti. He said his community is one of 20, from five different Northeast Ohio counties, filing suit in a case in Summit County.

"In Independence, many of our business customers and residents chose to be in Independence based on the aesthetics of our community," he said. "To lose control of those aesthetics is very detrimental."

Togliatti said communities like his have committed to becoming more attractive by putting utilities underground in historic districts and in many subdivisions. He said that under this new law, cities can't deny a request to affix an antenna or put up a pole based on design, engineering or zoning consideration, even where no utility poles are currently allowed.

Jackson also pointed to the cost and administrative constraints the law imposes. It requires cities to approve or deny an application for new equipment, generally within 90 days of submission, and it caps application fees at \$250 per wireless attachment.

Jackson said Cleveland now charges \$750 to cover the cost of permitting and inspection.

Both lawsuits are headed for hearings in the weeks ahead.

In February, AT&T Ohio president Adam Grzybicki told Crain's the new micro cell technology is designed to meet the growing demand for high-speed wireless communications. Grzybicki said AT&T has seen a 250,000% increase in data traffic in Ohio since 2007.

These new micro cells, he said, provide additional wireless capacity and coverage to dense urban areas and to locations that are difficult to cover, like sparsely populated areas, with existing towers and antennas. They are part of the movement to the next generation of cellular transmission, called 5G.

None of the wireless companies are parties to the litigation....'



-- Jay Miller, Craine's Cleveland Business

[Read entire article here](#)

[News about original Ohio legislation](#)

## Additional background



Photo: ImageA, Morning Sun

"...A private wireless infrastructure company's running battle with cities and towns across the U.S.

may have a far-reaching impact on plans by Sprint

San Francisco city planning department materials:

[FAQ on their LOCAL plans](#) for small cell wireless on street light and transit poles

[Additional FAQ on wireless facilities on poles](#)

Proposed wireless tower installation in Ithaca being met with resistance:

[Read Sean Bradley's article](#) in the Morning Sun News

"Wireless Systems in the Right of Way *What You Need to Know*" from New Jersey State league of Municipalities:

[Download white paper here](#)

Sacramento took steps to be prepared in advance:

First of 11 cities nationwide to test 5G wireless connectivity

[Read Zack Quaintance article](#) in Government Times

Citizens for a Scenic Florida William D. Brinton Library:

Visit CSF's [cell tower page](#)