On September 27, 2018, the Federal Communications Commission (FCC) released its Declaratory Ruling and Third Report and Order (FCC Order) implementing new rules and regulations aimed at accelerating the deployment of wireless infrastructure for the development of 5G networks. Specifically, the FCC Order regulates the deployment of "small wireless facilities." The FCC Order implemented the following new rules and regulations:

1. Presumptively reasonable fee limits that political subdivisions (including counties) may charge wireless providers for the placement of small wireless facilities in or on public property.
2. Limited the regulatory authority of political subdivisions over "aesthetics," "underground requirements," and "minimum spacing requirements." 
3. New time limits on political subdivisions for review and final decisions for siting applications for small wireless facilities.

While the FCC Order largely preempts state and local law, many states have enacted their own small cell legislation with the intent of ensuring consistent enforcement and also often implementing more restrictive rules and regulations than those contained in the FCC Order. On July 10, 2019, Wisconsin became the 27th state to adopt new small cell legislation with the enactment 2019 Wisconsin Act 14 (Act). Importantly, the Act is one of the most local government friendly enactments of small cell legislation in the country.

This article will provide a brief summary of the key provisions of the Act and also discuss the restoration of some regulatory authority over large cell towers provided under the Act.

**REGULATION OF SMALL WIRELESS FACILITIES**
The primary purpose of the Act is to regulate the permitting of small wireless facilities and to set a cap on amounts that political subdivisions (including counties) are permitted to charge wireless providers to install and maintain small wireless facilities within a political subdivision's right-of-way. Additionally, the Act codifies the FCC Order's "shot clock" rules with respect to the permissible amount of time to review and respond to applications to install small wireless facilities within the right-of-way.

Permit Applications and Timing. Under the Act, political subdivisions may require wireless providers to submit an application for a permit to locate a small wireless facility within the right-of-way. Political subdivisions may require the following types of information in the permit application:

1. The applicant's name, address, telephone number, e-mail address, and emergency contact information.
2. The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
3. A general description of the proposed small wireless facility and associated utility pole, if applicable. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.

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A small wireless facility placed on a pole owned by the political subdivision.

For an application that includes five or fewer small wireless facilities, $500; for an application that includes five or more small wireless facilities, $500 plus $100 for each additional small wireless facility.

The Act also largely codifies the "shot clock periods" for processing a small wireless facility application. The following time limits are generally imposed on approval for applications for small wireless facilities.

- Approval of a small wireless facility application by a political subdivision that relates to a permit under subd. 1. d. or e., and the political subdivision fails to approve or deny the permit application within the specified 60-day or 90-day time frame, the adjustment may be applied incrementally.
- Approval of a small wireless facility application by a political subdivision that relates to a permit under subd. 1. d. or e., and the political subdivision fails to approve or deny the permit application within the specified 60-day or 90-day time frame, the adjustment may be applied incrementally.
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Furthermore, the Act provides a presumption of the political subdivision's jurisdiction. For example, if a small wireless facility is located on a utility pole or wireless support structure owned or operated by a wireless provider, and the political subdivision fails to approve or deny the permit application within the specified 60-day or 90-day time frame, the political subdivision must submit the application for approval to the small wireless facility provider.

If a permit application involves a new or reconfiguration of an existing utility pole, existing utility poles, or small wireless facility placement utility pole, and the state or a political subdivision fails to approve or deny the permit application within the specified 60-day or 90-day time frame, the adjustment may be applied incrementally.
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Large Cell Tower Setback Requirements. In addition to implementing new small cell requirements, the Act restored some authority to local governments with respect to setback requirements for large cell towers. The Act allows a political subdivision to enact an ordinance imposing setback requirements related to the placement of new or substantially modified “mobile service support structures” which are constructed or modified pursuant to Wis. Stat. § 66.0404(2). However, a setback requirement is only permitted when the mobile service support structure is or will be adjacent to a property that is zoned for single-family residential use. A permitted setback must be measured from the lot lines of the properties for which single-family residential use is permitted. Importantly, a setback requirement must also be based on the height of the mobile service support structure and may not be a distance that is greater than the height of the proposed structure.

CONCLUSION

The Act largely codifies the FCC Order with respect to the regulatory authority of local governments over the deployment of small wireless facilities. Importantly, counties and other political subdivisions retain regulatory authority in key areas, and may charge wireless providers fees to offset the additional costs and burdens of the additional facilities that will soon be located throughout rights-of-way.

The Act also restored some regulatory authority over large cell towers to counties and other political subdivisions when located adjacent to single-family zoning. If you have any questions about the Act or any other governmental law needs, please contact the association or any member of the von Briesen & Roper Government Law Group (www.vonbriesen.com).

Endnotes

1 “Small wireless facility” means a facility to which all of the following apply:
   a. The facility satisfies any of the following:
      i. The facility is mounted on a structure 50 feet or less in height including any antenna.
      ii. The facility is mounted on a structure no more than 10% taller than any other adjacent structure.
      iii. The facility does not increase the height of an existing structure on which the facility is located to a height of more than 50 feet or by 10 percent, whichever is greater.
   b. Each antenna associated with the deployment of the facility, excluding associated antenna equipment, is no more than 3 cubic feet in volume.
   c. All other wireless equipment associated with the facility specified in subd. 1., including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is no more than 28 cubic feet in volume.
   d. The facility does not require registration as an antenna structure under 47 CFR part 17.
   e. The facility is not located on tribal land, as defined in 36 CFR 800.16 (x).
   f. The facility does not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 CFR 1.1307.

2 “Applicable codes” means the state electrical wiring code, as defined in s. 101.80 (4), the state plumbing code specified in s. 145.13, the fire prevention code under ch. SPS 314, Wis. adm. code, the Wisconsin commercial building code under chs. SPS 361 to 366, the Wisconsin uniform dwelling code under chs. SPS 320 to 325, and local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

3 Political subdivisions may also enact an ordinance consistent with these obstructions. Failure to comply with such an ordinance may also serve as a basis for permit denial.

4 “Mobile service support structure” means a freestanding structure that is designed to support a mobile service facility. “Mobile service facility” means the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.