

Not in My Right-of-Way! Municipal Regulation of Cell Phone Towers and Antennas in Local ROW

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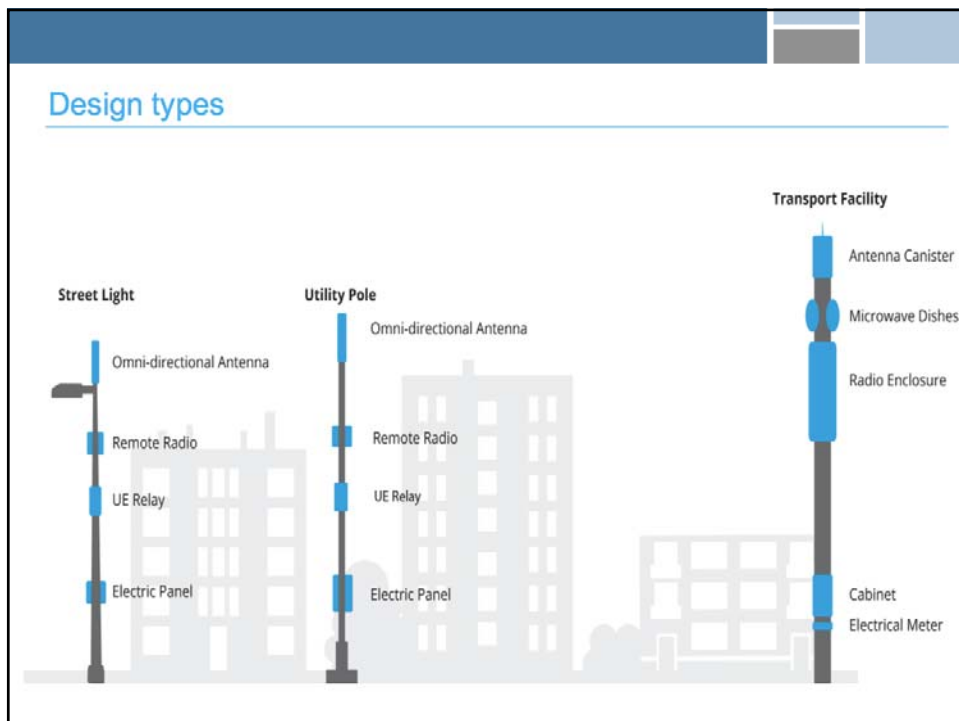
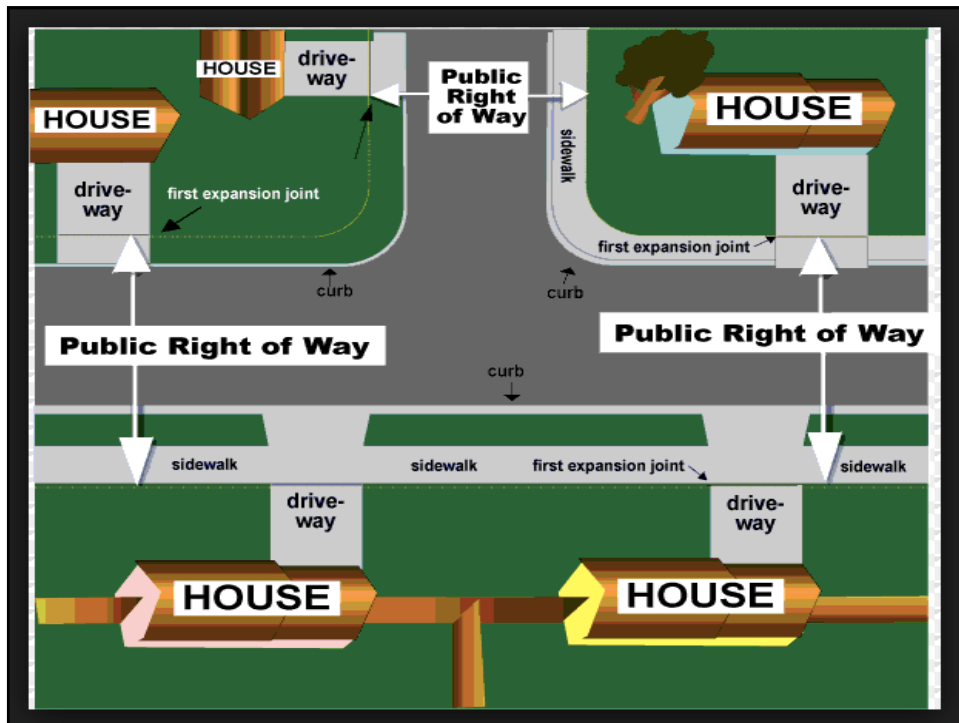


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Presentation Overview

- What is the ROW
- Demand for Broadband Data
- New Wireless Infrastructure to Meet Demand
- Right of ROW Access by Wireless Providers
- Municipal Authority to Regulate ROW
- Impact of Proposed Legislation
 - On Right of Access
 - On Municipal ROW Regulation
- How to Protect Local ROW





Small cell facility installations in Los Angeles and Atlanta



mobilitie

5

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LAW FIRM

Era of Big Data

- Global penetration of mobile subscribers reached 97% in 2014
- producing 10.7 ExaBytes (10.7×10^{18}) of mobile data worldwide
- Mobile data traffic will increase by 5 times from 2015 to 2020



source: <https://arxiv.org/pdf/1508.06369.pdf>

6

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Access to ROW Under Ch. 182

- “**Companies**” have right of access under Wis. Stat. § 182.017(1r).
- “**Company**” includes a provider of “telecommunications service.”
- “**Telecommunications service**” means “the offering for sale of the conveyance of **voice, data, or other information**, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication **regardless of the technology or mode used** to make such offering.” Wis. Stat. § 182.017(1g)(cq)



ROW Access for Wireless Providers/Infrastructure Builders

- Wireless providers (Sprint, AT&T, Verizon, US Cellular) have right of access under Ch. 182.
- Less clear that wireless infrastructure providers (e.g., Mobilitie, Crown Castle) do.
- What about Mobilitie’s CLEC Status?



Access to Municipal Poles Under Ch. 196

- Telecommunications providers have right to access poles in the ROW, includ'g municipal electric poles and streetlight poles. Wis. Stat. § 196.04(2)
- Wireless providers -- but not infrastructure builders -- arguably have access rights to poles under Ch. 196, unless providing **only data** services.
- “Telecommunications service” under Ch. 196 pertains to providers of **voice** services only.
- Disputes over rates, terms, and conditions resolved by PSC.



Access to ROW Under AB 348

“[A] **wireless provider** shall have the right to **collocate** wireless facilities **and construct**, modify, maintain, and operate utility poles, wireless support structures, conduit, cable and related appurtenances and facilities along, across, upon, and under a right-of-way. . .”



Access to ROW Under AB 348

- Wireless provider = wireless service provider and infrastructure builder
- Both entities have right to:
 - Access ROW
 - **Non-discriminatory** access to municipally owned poles and structures in the ROW



11

Access to Poles Under AB 348

- Municipal electric poles:
 - Rate, terms and conditions governed by agreement
 - PSC review under Wis. Stat. § 196.04
- Municipally owned street light pole:
 - May charge amount sufficient to recover actual, direct, and reasonable costs, subject to max of \$100 per pole per year
 - Current agreements for installed small wireless facilities remain in effect through initial term
 - Court review of disputes



12

Conditions on ROW Access Under Ch. 182

- Company's facilities are subject to the local municipality's "**reasonable regulation.**" Wis. Stat. § 182.017(1r)
- Company's facilities shall not "at any time obstruct or incommode the public use" of the ROW. Wis. Stat. § 182.017 (2)
- Disputes resolved by the PSC under Wis. Stat. § 182.017(8).



Conditions on ROW Access Under AB 348

- Wireless "facilities and structures may not obstruct or hinder travel, drainage, maintenance, or the public health, safety, and general welfare on or around the [ROW] or obstruct the legal use of the [ROW] for other communications providers, public utilities, [electric, gas or water cooperatives]"
- Disputes resolved by the courts or by PSC under § 196.04 when dispute involves municipal electric utility.



Height Restrictions Under AB 348

- Utility pole or wireless support structure in ROW may not exceed greater of:
 - 10 feet above tallest existing utility pole located within 500 feet in the same ROW
 - 50 feet above ground level
- Wireless facility in ROW may not exceed greater of:
 - 10 feet above tallest existing utility pole or wireless structure
 - 50 feet AGL



Limitations Under Ch. 182 and PSC Ch. 130

- No moratoria
- Can't require utility to pay relocations costs to relocate the company's facilities to accommodate an urban rail transit system
- Can't charge rent for use of ROW; limited to actual cost of ROW management functions
- Can't order lines underground for aesthetic reasons
- Can't discriminate between companies seeking ROW access
- Can't unreasonably deny access to ROW
- Must act on ROW permits w/in 60 days or deemed granted (written denial w/ reasons)



Limitations Under AB 348

- No exclusive arrangements
- Rates/fees for use of ROW must be competitively neutral and only recover direct and actual cost of ROW management (capped at \$20 x no. of poles)
- Ordinances/agreement that charge fee or rate for use of ROW must be revised w/in 7 mos.
- Must administer and regulate ROW in competitively neutral manner
- Small wireless facilities in ROW not subject to zoning
- No moratoria on filing, receiving, or processing applications, or issuing permits for the collocation of small wireless facilities



Limitations Under AB 348 Within/Outside of ROW

- Except as provided in AB 348, can't prohibit, regulate, or charge any person for the collocation of small wireless facilities.
- Collocation of small wireless facilities is a permitted use, not subject to zoning ordinances if the property is not zoned exclusively for single-family residential use.



Limitations Under AB 348 on Permitting Within/Outside of ROW

- May require a permit to collocate small wireless facility and to construct, modify, maintain, or operate new or replacement utility pole or wireless support structure if:
 - Permit is of general applicability
 - Doesn't apply only to wireless facilities
- Must approve permit application unless the application doesn't meet applicable codes



Limitations Under AB 348 on Permitting Within/Outside of ROW

- Permits for collocation involving new construction must be acted on within 90 days of receipt; otherwise within 60 days of receipt
- Give notice w/in 10 days of incomplete application
- Can't require more information in a permit application from a wireless provider permit than from other communications service providers
- Can't place time limit on activity related to the permit (provider must start permitted activity within 365 days)
- Can't require provider to perform unrelated services



No Applications, Permits, Fees

- Routine maintenance of wireless facilities
- Replacement of wireless facilities with substantially similar or smaller facilities
- Installation, maintenance, operation, or replacement of microwireless facilities strung on cables between existing utility poles or wireless support structures
- Wireless support structures in compliance with applicable codes



Historic & Underground Areas

- May enact ordinance to prohibit **communications service providers** from installing structures in the ROW of a historic district or an area in which underground utilities are located
- Except that ordinance may not prohibit collocations or the replacement of existing structures
- Ordinance must have been in effect on/before January 1, 2014



Protecting the ROW

- Educate your departments and review existing ordinances and permit process
- Registration Process and Application Requirements
- Height limits as proposed in AB 348
- Traffic Hazard Studies
- Abandonment and Removal
- Bonds and Insurance
- Financial and Technical Ability
- Placement restrictions within terrace or between curb and sidewalk
- Designate Underground and Historic Areas



QUESTIONS

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