



POLICYMAKER PRIMER:

PUBLIC WORKS AND ROW MANAGEMENT

1. Public works professionals (PWP) are responsible for managing the multiple users of the Public Right of Way (ROW). Without proper coordination, public works professionals are in the dark regarding installation of 5G and broadband technology, threatening safety of other ROW users.
2. Small cell is not just a clever name, it also accurately describes the physical nature of the technology. For this technology to work effectively and efficiently, equipment is required to be installed every few hundred feet, and an extensive underground fiber network must also be installed. Due to this need, the impacts and problems can increase exponentially.
3. Putting artificial deadlines on permit approval places unnecessary strain on already thin permitting resources. Public works departments and communities across the country do not support putting arbitrary "shot clock" timers on permit applications because they limit necessary coordination and place additional pressure on public works professionals and detract from public safety and well-being.
4. PWPs support streamlining the permitting process and support the installation and deployment of broadband technology across the country, but current legislative and regulatory efforts remove requirements to coordinate with local municipalities and public works professionals.
5. Public agencies are specialists in installing and maintaining similar infrastructure in the ROW and need to be at the table to ensure the safety and coordination of all systems.
6. Coordinating projects and minimizing project footprints is an important asset management practice, and a way to ensure the most efficient use of the ROW and of taxpayer dollars. By removing the requirement to coordinate with local public works departments, broadband companies may risk having to redo or relocate projects (potentially disrupting service) and increase costs due to public works improvements planned or being implemented in the same area.
7. The ROW exists and was obtained for a specific purpose: to benefit the greater good of the public and the community. The ROW is used for essential services such as transportation (rail, vehicle, pedestrian, bicycle, etc.), power distribution, telecommunications, heating fuel distribution, water distribution and wastewater collection, emergency services equipment, and other critical infrastructure. All these uses must be balanced. If not properly coordinated, use of the ROW for broadband and small cell deployment takes away space for these essential services.
8. Safety is paramount. Public works is responsible for managing the ROW. The more equipment and infrastructure within the ROW, and less coordination in the installation of that equipment, the more likely there will be conflicts and accidents that will threaten the safe installation and operations of all services.
9. Aesthetics do matter. Many communities invest substantial public dollars to ensure the ROW not only meets their needs but also improves the appearance of their community to encourage private investment in residential and business activities. Limiting authority to review the ROW planned facilities related to broadband and small cell technology, communities will have less control over the aesthetics of their ROW.
10. Without appropriate coordination, PWPs will not be able to manage the safe, equitable access to ROW properly, effectively, and efficiently adding additional burden on taxpayers within the community.

SMALL CELL/WIRELESS BROADBAND DEPLOYMENT'S IMPACT ON PUBLIC WORKS

With the increasing usage of wireless devices and data, municipalities are facing increased demand for reliable wireless service resulting in increased deployment of 5G/4G small cell facilities. This demand prompted federal action by the Federal Communications Commission (FCC) in the form of FCC Order 18-133, "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment" and proposed legislation such as H.R.3319 (118th Congress), the "Broadband Resiliency and Flexible Investment Act".

Municipalities (counties/cities/towns) support implementation and advancements of small cell wireless technology for their residents, businesses, and their own use. The intent of the FCC order was to eliminate perceived regulatory barriers that inhibit the deployment of broadband infrastructure. However, efforts to limit municipal participation in this deployment process exist in the FCC order, plus state and federal legislation. This jeopardizes the ability of municipalities to properly manage their ROW. The fact the FCC order has been largely upheld further imperils the ability of municipalities to protect ROW and its intended uses.

FEDERAL LEGISLATION, THE FCC ORDER, STATE LAWS THREATEN MUNICIPAL REGULATORY AUTHORITY

Contradictions exist among federal and state legislation, the FCC order, municipal ordinances, and proposed legislation at all levels leading to confusion, increased costs, and undue delays.

The use of public right-of-way for small cell wireless facilities should be subject to public health, safety, and welfare requirements.

Fee restrictions do not allow the recovery of costs (unfunded mandate), including the review process and the ongoing use and monitoring of the ROW.

In lieu of arbitrary "shot clock" deadlines for agency review, cooperative planning and coordination between the broadband provider and permitting agency, and flexible permit fees can prevent permit review overload, overcome staff shortages, and expedite permit reviews.

Arbitrary 'shot clock' deadlines can also prevent the valid denial of permits that are based upon environmental impacts and negative consequences on overall community aesthetics, and reasonable preferred locations.

If permit response (approval or denial) is not returned within the allotted timeframe, the permit application is automatically considered to be approved, threatening the health and safety of ROW users and abutters of the ROW.

The FCC order and proposed federal/state legislation have been crafted without equal representation from all stakeholders. Attempts to clarify provisions of the 1996 Telecommunications Act to regulate deployment of wireless infrastructure have caused confusion and placed unnecessary burdens on municipalities. The FCC's interpretation of the 1996 Telecommunications Act is preferential to telecommunication providers. Based on this, federal and state legislators are sponsoring industry-driven legislation with detrimental impacts to municipalities and their citizens.

** Policymaker Primers supplement APWA's official Public Policy Priorities, providing additional information and context for issues tangential to emergency management, transportation, and water resiliency.

The American Public Works Association (APWA) represents over 32,000 public works professionals across North America, dedicated to providing essential, high-quality equitable and sustainable services to millions of people in rural and urban communities, both small and large.

APWA members serve in the public and private sectors, providing expertise to the local, state, and federal government levels. Working in the public interest, our members plan, design, build, operate, and maintain, and oversee our vast infrastructure networks essential to our economy, environment, safety, and way of life.

APWA collaborates with all levels of government and supports federal investment in our shared infrastructure. APWA is opposed to unfunded mandates and any effort to impede the appropriate use of public right-of-way, and strongly encourages industry to partner with public works, and all state and local government entities.

APWA Government Affairs Policymaker Primer

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