

# FCC Plans to Ease Access to Rights-of-Way for Wireless Deployments

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The FCC plans to take major action to speed the deployment of small wireless broadband facilities to support 5G technologies at its [next meeting](#), scheduled for September 26, 2018. The FCC's draft [Declaratory Ruling and Order](#) may significantly tilt the balance of power in favor of wireless broadband providers over state and local governments concerning access to rights-of-way and deployment costs. The draft item highlights the FCC's recent emphasis on spurring the creation of next-generation wireless networks and follows recent moves to exempt [certain deployments](#) from environmental/historic preservation reviews and prohibit [moratoria](#) on infrastructure projects. Under its latest proposal, the FCC would: (1) restrict the types of fees assessed on deployments; (2) limit the aesthetic requirements imposed on deployments; and (3) establish "shot clocks" on responding to deployment requests. The action is likely to result in legal challenges from state and/or local governments. You will find more about the FCC's anticipated reforms as well as potential Congressional action on this issue after the jump.

## Restricting Deployment Fees

The Communications Act prohibits state and local governments from adopting requirements that effectively prohibit the provision of wireless services. The FCC's draft item finds that state and local rights-of-way fees and other charges associated with infrastructure deployment can effectively prohibit wireless services. As a result, the FCC plans to conclude that such fees are prohibited unless they are nondiscriminatory and represent a reasonable approximation of the state or local governments' actual costs related to the deployment, such as fees designed to recover the costs of permit reviews. The FCC also anticipates providing examples of fees that it will deem reasonable in advance. However, the draft item recognizes that the actual costs incurred by state and local governments may vary significantly based on the deployment's location and scope, and notes that particular fees will be judged for reasonableness on a case-by-case basis.

## Limiting Aesthetic Obligations

The FCC indicates that many wireless broadband providers claimed that state and local governments impose burdensome design requirements and other aesthetic obligations on new facilities. In particular, providers complained that they are often subject to vague or subjective criteria that are not spelled out in any official code or policy. The FCC's draft item asserts that aesthetic requirements for wireless broadband deployments are not necessarily unlawful, so long as the obligations are: (1) reasonable; (2) no more burdensome than those applied to other deployments; and (3) published in advance. The FCC cautions that one-size-fits-all mandates may not pass muster, such as rules requiring underground facilities deployments in all cases.

## Establishing Shot Clocks

The FCC's draft item would impose new shot clocks on small wireless broadband facilities deployments. State and local governments would have 60 days to process an application for collocation of small facilities on preexisting structures and 90 days to process an application involving new construction. These shot clocks mirror the deadlines recently recommended by the FCC's Broadband Deployment Advisory Committee in its [model code](#) for municipalities. If a state or local government fails to abide by the shot clocks, such failure will be considered a prohibition of service and a violation of federal law, enabling affected providers to seek expedited relief in court.

#### Legislative Action?

The FCC is not the only level of government pushing for faster wireless broadband deployment. Congress has teed up two significant pieces of legislation aimed at facilitating wireless network rollouts. First, the [STREAMLINE Small Cell Deployment Act](#) proposes to expedite wireless infrastructure deployments by implementing a "reasonable process and timeframe guidelines" for state and local governments' consideration of deployment requests and banning onerous conditions and fees. Second, the [SPEED Act](#) similarly would streamline federal agencies' permitting processes for wireless infrastructure deployments. Both pieces of legislation enjoy bipartisan support and Congressional leaders indicate that they plan to move the bills to a vote in some form this year. In addition, Derek Khlopin, Senior Advisor to the Assistant Secretary of the National Telecommunications and Information Administration discussed coordinating with the FCC on access for communications deployments on federal lands at the Mobile World Congress Americas conference yesterday.

With government and commercial wireless stakeholders already heavily involved in debates over infrastructure policy, the FCC's draft item is sure to generate significant input about the current costs of wireless network development and government control over rights-of-way and community planning. It remains to be seen whether the FCC or Congress will make the next move to reform deployments, but reform is coming and readers involved or impacted by the wireless industry should keep a close watch on these pending agency and legislative actions.