



Federal Communication Commission (FCC) Regulatory History

1996 Telecommunications Act (1996 Act)

Citation: 47 USC 151 et seq.

The 1996 Telecommunications Act (1996 Act) overhauled the industry with broad regulations to allow equitable access to the emerging telecommunications market. The 1996 Act preempted many regulatory aspects of the telecommunications business and displaced state law or local ordinances that conflicted with federal standards. The County can develop regulations determined to best serve the public interest of its citizens. However, the 1996 Act preemption reduces the ability of local authorities to regulate communication facilities. The FCC modified the 1996 Act incrementally over the past 20 years. These changes made deployment of industry technology easier for telecommunication businesses.

Specific Citations:

- 47 USC 253 “removal of barriers to entry”
 - (a) regulations cannot effectively prohibit a business from providing telecom services.
 - (c) jurisdictions can manage the right-of-way and require fair and reasonable compensation through non-discriminatory fees. These fees must be published in advance.
- 47 USC 332 (c)(7) “preservation of local authority”. Regulations cannot unreasonably discriminate and decisions for permit requests must occur within a reasonable amount of time.

2009 Shot Clock Order (2009 Order)

Citation: FCC 09-99.

In 2009 the FCC adopted a declarative ruling that determined a “reasonable period of time” needed to process communication facility applications. The ruling required jurisdictions to:

- process applications requesting collocation on an existing wireless structure within 90 days. Collocation was interpreted as the use or addition of one or more wireless communications facilities on any existing structure previously approved as a wireless facility. The 2018 Order (described below) defines collocation to include structures not previously approved as facilities.¹
- process applications requesting new installations within 150 days.

2012 Middle Class Tax Relief and Job Creation Act of 2012 (2012 Spectrum Act).

In 2012 congress passed Section 6409(a) of the "Middle Class Tax Relief and Jobs Creation Act" (2012 Spectrum Act), codified at 47 USC §1455(a). The 2012 Spectrum Act builds on the preemptions authorized by the 1996 Act and intended to accelerate the speed of the

¹ “Collocation” means the use or addition of one or more wireless communications facilities on any existing structure, whether or not already used as a wireless communication facility. (see Attachment C – Planning Commission Draft Proposed Code).

collocation application approval processes. It required that state and local authorities approve qualifying requests for modifications to eligible facilities.

The 2012 Spectrum Act rules allows the County to:

- condition approval of a permit that requires compliance with building and other structural or safety codes.
- ask only for information reasonably necessary to qualify the application under Section 6409(a). The County cannot request other types of information, such as justification to support the need for the project.

2014 Clarifications Order for the 2012 Act (2014 Order) **Citation: FCC 14-153**

In 2014 the FCC adopted rules to clarify elements of the 2012 Spectrum Act (2014 Order). The 2014 Order provided greater flexibility for the wireless industry to collocate new wireless facilities.

The 2014 Order rules define, wireless tower, base station, modification, substantial change, collocation. These rules also establish:

- a new 60 day shot clock. The county must complete permit review within 60 days of receiving an application for facilities that do not substantially change the existing facility. This includes new facilities proposed to collocate on a non-conforming wireless communication facility.
- day 1 of the shot clock as the date of application, not date of completed application.
- limited tolling. Tolling refers to the stopping the clock when the county requests information to complete the application. A request for information may only stop the clock once and does not restart.
- an automatic approval for facility permit applications that exceed the “reasonable period of time for review” (shot clocks) from previous rulings.

2018 Small Wireless Facilities Order (2018 Order) **Citation: FC 18-133**

In 2018 the FCC adopted rules regarding small wireless facilities for the impending 5G technology rollout (2018 Order). The 2018 Order establishes:

- the definition of a “small wireless facility”.
- new shot clock criteria that includes:
 - a 90 day shot clock for a small wireless facility on a new structure.
 - a 60 day shot clock for a small wireless facility collocated on an existing structure. This includes structures not previously approved as the location for a wireless facility.
 - a shot clock that restarts when the applicant submits materials requested by the County. The ruling only allows one restart of the clock.
 - a 30 day appeal period for facility permit applications that exceed the “reasonable period of time for review” (shot clocks).
- application batching. Multiple small wireless facility applications for different deployment locations can batch into one permit.

- new fee structures. The county must publish non-discriminatory reasonable fees in advance. The new fee structure:
 - Restricts one time fees (e.g. permit, street closure).
 - Restricts recurring fees (e.g. rental fees for facilities).
- aesthetic requirements and other regulations. (e.g. stealth technology, undergrounding, spacing). These requirements must be:
 - published in advance.
 - non-discriminatory.
 - objectively reasonable.
 - no more burdensome than other wireless infrastructure.

The 2018 Order also allows the placement of small wireless facilities on public land and public structures with less permit review. Under the order, “small wireless facilities” can collocate on County owned non-wireless facility support structures (eg. light poles, water towers, well houses, community buildings) with limited permit review. Public land and structures can include Federal, State, or Local jurisdictions.