

Public Right-of-Way Access: A Changing Regulatory Field

Massachusetts Department of
Telecommunications and Cable

Massachusetts Municipal Association
Annual Meeting & Trade Show
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Cable Rates

- Federal law limits DTC rate regulation to basic service tier rates in communities without “effective competition,” as determined by the FCC
- What is “effective competition”?
- The FCC’s *Other* Further Notice of Proposed Rulemaking
- February 2019 refund to Charter subscribers in rate-regulated communities

Broadband Deployment Advisory Committee (BDAC)

- FCC intends to re-charter for two additional years
- DTC Commissioner Karen Charles Peterson has been nominated for reappointment
- New BDAC Working Groups
 - Disaster Recovery
 - Deployment to low-income communities

Western Mass Broadband Deployment

- Federal funding from the FCC's Connect America Fund Auction
 - Sandisfield, Tolland, Florida, Hawley, Monroe, Savoy, Windsor, Washington, Becket, Otis, Alford, New Ashford, Rowe, Charlemont, Heath, Colrain, Leyden, Wendell, New Salem, Ashfield, Blandford, Chesterfield, Goshen, Plainfield, Cummington, Royalston
- First greenfield initial cable licenses in several years (Princeton, Tyringham, Montgomery, Worthington, more to come)
- 44 unserved communities →
No remaining communities without a proposal or plan forward

Pole Attachment Regulation Review

- Pursuant to Executive Order No. 562
- 220 C.M.R. 45.00
 - Applies to utility-owned poles and utility-controlled rights-of-way
 - Non-discriminatory access
 - Reasonable attachment rates, terms, and conditions
- DTC/DPU joint proceeding

The FCC's Small Cell Order

- Right-of-Way or Public Right-of-Way?
- What constitutes the “Public Right-of-Way”?
- Compliance

Right-of-Way or Public Right-of-Way?

- FCC Small Cell Order: no explicit definition of either, but...
 - Note 71:
 - The “right-of-way” includes “the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property”
 - Paragraph 92:
 - The “public right-of-way” that the government owns or controls includes “areas on, below, or above public roadways, highways, streets, sidewalks, or similar property.”

Right-of-Way or Public Right-of-Way?

- Merriam-Webster, “Right-of-Way”
 - the strip of land over which is built a public road
 - the land occupied by a railroad especially for its main line
 - the land used by a public utility (as for a transmission line)
- Merriam-Webster, “Public Way”
 - Any passageway (as an alley, road, highway, boulevard, turnpike) or part thereof (as a bridge) open as of right to the public and designed for travel by vehicle, on foot, or in a manner limited by statute (as by excluding pedestrians or commercial vehicles).
- MA DTC/DPU, utility-owned, private right-of-way
 - A utility’s means for supporting or enclosing wires or cables for telecommunications, including over private property. (D.T.E. 98-36-A Order, July 24, 2000).

What Constitutes the Public Right-of-Way?

- Massachusetts State Law, “Public Way”
 - Any way laid out by public authority. MGL c. 161, § 1.
- Town of Tewksbury Bylaws, “Right-of-Way”
 - The surface and space on, along, above and below any real property which is a public way or other way in which the Town has an interest in law or equity, whether held in fee or other estate or interest, or as trustee for the public including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, park skyway, or skyway bridge.

Compliance

- How is public right-of-way defined?
- Is the application for a “Small Wireless Facility”?
- What are the costs related to and caused by the deployment?
- Recurring fees for government-owned property outside the public right-of-way
- One-site-per-application limit?
- Non-fee legal requirements
 - Section 253(b) allowances
 - *E.g.*, Aesthetics; Undergrounding; Spacing

Commonwealth of Massachusetts Small Cell Licensing Policy

- State-controlled public rights-of-way, and state-owned property
- Statewide policy, tailored by each asset-owning agency to meet agency-specific needs
- Transparency and consistency regarding an agency's small cell application and deployment requirements



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Department Notice

The Department of Telecommunications and Cable has received several inquiries about mobile broadband infrastructure deployment on publicly owned property. The Department offers the following questions for stakeholders' consideration.

What is the proposed installation?

- Is the proposed installation a new pole specifically for small cell use?
 - Will other utilities or wireless carriers be able to attach to the new pole?
- Is the proposed installation new equipment on an existing utility pole?
 - If so, has the utility authorized the new attachment?
- Can the new equipment be placed on some other structure (street light pole, traffic light pole, municipally-owned building or other structure)?
- Is the proposed installation in the right-of-way?
- How big is the proposed installation (height, width, weight)?

What type of accessory equipment will be needed?

- How will this infrastructure be powered? Will generators or back-up power be required?
- Will this infrastructure require a physical connection to backhaul?
- How much space will this accessory equipment occupy?

What costs does the installation involve?

- What are the costs of managing the right-of-way?
- What are the costs of filing and reviewing an application?

Other considerations

- What review timeframe(s) (i.e., "shot clocks") apply to the installation application?
- Who benefits from the installation?
- Do any zoning ordinances apply to the installation?
- Are there current or planned utility undergrounding requirements?

DTC Consumer Division

- Enforce and monitor compliance with Massachusetts laws and Department regulations
- Respond to consumer inquiries
- Investigate and resolve consumer complaints
- Provide consumer education
- Conduct over 30 outreach events each year
- Contact info:
 - 1-800-392-6066
 - consumer.complaints@mass.gov

