

GRAY ROBINSON
ATTORNEYS AT LAW

Relationships. Resources. Results.

How to Deal With Florida's New "Advanced" Wireless Law

**Florida League of Cities
91st Annual Conference**

August 17-19, 2017

Thomas A. Cloud, B.C.S.
407-843-8880
thomas.cloud@gray-robinson.com

Copyright © Thomas A. Cloud (2017). All rights reserved.

GRAY ROBINSON
ATTORNEYS AT LAW

WHAT TO DO?

- **THE TELECOM INDUSTRY SECURES YET ANOTHER NEW STATUTE**
- **OUR LEGISLATURE IMPOSES YET ANOTHER PREEMPTION**
- **OUR GOVERNOR WAITS UNTIL LATE JUNE TO IGNORE THE LEAGUE'S VETO REQUEST**
- **YOUR FILL IN THE BLANK TELLS YOU ABOUT THE LAW**
- **YOU REALIZE YOUR CITY HAS MORE THAN ONE TELECOM LAW**
- **YOUR CLERK TELLS YOU THE LAW HASN'T BEEN TOUCHED IN YEARS**

Copyright © Thomas A. Cloud (2017). All rights reserved.

DON'T PANIC

- **THERE ARE ANSWERS TO YOUR QUESTIONS**
- **YOU HAVE TIME TO DEAL WITH IT**
- **WHILE THE LAW IS ALWAYS CONFUSING, YOU CAN MANAGE THIS**
- **YOU CAN GET THE HELP & ADVICE YOU NEED WITHOUT BANKRUPTING THE BUDGET**

STAY CALM AND ORDAIN ON

Copyright © Thomas A. Cloud (2017). All rights reserved.

TELECOM INDUSTRY HAS IMPRESSIVE TRACK RECORD OF GETTING WHAT THEY WANT FROM FLORIDA LEGISLATURE

- **THE COMMUNICATIONS SERVICES TAX SIMPLIFICATION LAW (CABLE PREEMPTION)**
- **THE TELE-COMPETITION INNOVATION AND INFRASTRUCTURE ACT, CHAPTER 2003-32, LAWS OF FLORIDA (RATE REBALANCING, VOIP DEREG, BROADBAND PREEMPTION)**
- **CONSUMER CHOICE ACT OF 2007, CHAPTER 2007-29, LAWS OF FLORIDA (TERMINATED RATE REBALANCING)**
- **CONSUMER CHOICE AND PROTECTION ACT, CHAPTER 2009-226, LAWS OF FLORIDA (NO MORE FPSC SERVICE OVERSIGHT)**
- **REGULATORY REFORM ACT OF 2011 (REMOVED VIRTUALLY ALL FPSC OVERSIGHT EXCEPT ISSUING CERTIFICATES)**
- **FLORIDA EMERGENCY COMMUNICATIONS NUMBER E911 STATE PLAN ACT, FS § 365.172(13) (STATE SHOT CLOCK FOR CELL TOWERS)**

Copyright © Thomas A. Cloud (2017). All rights reserved.

**PRIOR TO 2017, NOTHING REQUIRED CITIES TO PERMIT
CELL TOWERS IN RIGHT OF WAY**

- **NOTHING MANDATES OR REQUIRES CITIES TO GRANT ANYTHING FOR INSTALLATION OF TELECOMMUNICATIONS TOWERS IN CITY RIGHT OF WAY**
- **NOTHING MANDATES OR REQUIRES CITIES TO GRANT ANYTHING FOR INSTALLATION OF TELECOMMUNICATIONS TOWERS IN CITY RIGHT OF WAY**
- **MOST LOCAL GOVERNMENTS IN FLORIDA COULD RELY ON THEIR CELL TOWER ORDINANCES AS A PART OF THEIR LOCAL LAND DEVELOPMENT REGULATIONS**

**THANKS TO THE 2017 LEGISLATURE, HOWEVER, THE
RULES HAVE CHANGED**

Copyright © Thomas A. Cloud (2017). All rights reserved.

**ANATOMY OF THE ADVANCED WIRELESS
INFRASTRUCTURE DEPLOYMENT ACT**

- **PERMIT PROCESS FOR COLLOCATION & INSTALLATION OF WIRELESS FACILITIES**
- **FACILITIES COVERED**
- **GENERAL EXEMPTIONS**
- **APPLICATION REVIEW PROCESS**
- **BASIS FOR DENIAL**
- **APPLICABLE CODES**
- **LIMITS TO CONDITIONS**
- **FEES**
- **PROHIBITIONS**

Copyright © Thomas A. Cloud (2017). All rights reserved.

WIRELESS PERMIT PROCESS

- WIRELESS PROVIDERS
- COLLOCATE
- SMALL WIRELESS FACILITIES
- ON, UNDER, WITHIN, OR ADJACENT TO
- CERTAIN UTILITY POLES OR WIRELESS SUPPORT STRUCTURES
- WITHIN CERTAIN PUBLIC RIGHTS OF WAY
- WITH LOTS OF PROHIBITIONS & EXEMPTIONS
- CROWN CASTLE AMENDMENT—INSTALL NEW UTILITY POLES

Copyright © Thomas A. Cloud (2017). All rights reserved.



*AB 2799 would allow multiple poles, for multiple carriers next to each other, even if right in front of your driveway



The next day after building a "Small Cell" the carrier can use a Federal law to add more antennas and cabinets on the ground or pole. As well as additional height (10-20 feet) and width (6+ feet) and more antennas



Copyright © Thomas A. Cloud (2017). All rights reserved.

GENERAL EXEMPTIONS

- COLLOCATION OF SWFS ON PRIVATELY OWNED ELECTRIC UTILITY POLES & SUPPORT STRUCTURES (DUKE, FPL, TECO, GULF POWER, CHESAPEAKE)
- COLLOCATION ON UTILITY POLE OWNED BY “MUNICIPAL ELECTRIC UTILITY”
- COLLOCATION OF SWFS ON ELECTRIC COOP OR MUNICIPALLY OWNED ELECTRIC DISTRIBUTION POLES
- COLLOCATION OF SWFS ON UTILITY POLES IN CERTAIN RETIREMENT COMMUNITIES (>5,000 POP. & DEED RESTRICTED & UNDERGROUND)
- COLLOCATION OF SWFS ON UTILITY POLES IN CERTAIN CITIES (BARRIER ISLAND & < 5 SQUARE MILES & < 10,000 POP. & 7.1 UG DEBT REFERENDUM (SAY WINTER PARK))
- FDOT RIGHT OF WAY
- WIRELINE BACKHAUL FACILITIES
- COAXIAL OR FIBER CABLE BETWEEN WIRELESS STRUCTURES (IE, WIRE)
- HORIZONTAL STRUCTURES TO WHICH SIGNAL LIGHTS OR TRAFFIC CONTROL DEVICES ARE ATTACHED

Copyright © Thomas A. Cloud (2017). All rights reserved.

MUNICIPAL ELECTRIC UTILITY COLLOCATION EXEMPTION

- Cities can't prohibit collocation of SWFs in ROW “except as provided in this subsection” § 337.401(7)(c)
- Nobody is authorized to collocate on a utility pole owned by MEU § 337.401(7)(l)
- No collocation without owner consent except on city poles not owned by MEU
- Law's title limited to authority utility poles
- Utility poles broadly defined
- “Utility poles”... “owned by a municipal electric utility” or “used to support municipally owned or operated electric distribution facilities” are excluded from “authority utility poles.”
- Most cities that own/operate EDFs are an MEU
- No statutory definition of a MEU
- Cities that own EDFs are defined by § 366.02(2), Fla. Stat., as an “electric utility” by virtue of being “a municipal electric utility...which owns, maintains, or operates an electric...system within the state”
- Since 1951, FPSC treats cities that own EDFs as an “electric utility” pursuant to § 366.04(2), Fla. Stat.
- Chapter 366, Fla. Stat., treats “electric utility” and “municipality” as interchangeable
- Cities become a retail electric utility before qualifying as an “electric utility” subject to FPSC jurisdiction
- The exemption of “utility poles used to support municipally owned or operated electric distribution facilities” strongly implies exemption

Copyright © Thomas A. Cloud (2017). All rights reserved.

CROWN CASTLE AMENDMENT

- **LAW NOT INTENDED TO OPEN DOOR FOR INSTALLATION OF NEW POLES**
- **CROWN CASTLE ASKED FOR “WIRELESS INFRASTRUCTURE PROVIDER” PROCESS**
- **A “WIP” MAY APPLY UNDER EXPEDITED SHOT CLOCK RULES (“IN ACCORDANCE WITH SUBPARAGRAPH (D)6”) TO INSTALL NEW UTILITY POLE. § 337.401(7)(J)**
- **THE “WIP” IS SUBJECT TO “ANY” APPLICABLE CODES AND OTHER LOCAL CODES GOVERNING THE PLACEMENT OF UTILITY POLES IN THE PUBLIC RIGHTS-OF-WAY**
- **THIS WOULD INCLUDE ZONING, LAND USE, TELECOMMUNICATIONS TOWER, HISTORIC PRESERVATION, AESTHETIC, & FORESEEN ROAD EXPANSION STANDARDS**
- **DEFINITION OF “COLLOCATION” EXCLUDES “THE INSTALLATION OF A NEW UTILITY POLE OR WIRELESS SUPPORT STRUCTURE IN THE PUBLIC RIGHTS-OF-WAY”**
- **STILL SUBJECT TO '96 FEDERAL TELECOM ACT**

Copyright © Thomas A. Cloud (2017). All rights reserved.

RX FOR SUCCESS

- **MAKE SURE YOU HAVE ACCESS TO THE SAME KNOWLEDGE TELECOM DOES**
- **USE CAUTION WHEN CONSIDERING A MORATORIUM**
- **CHECK YOUR EXISTING CITY CODE & LAND DEVELOPMENT REGS TO DETERMINE WHAT YOU HAVE**
- **ASSESS YOUR CODES FOR WEAKNESSES AND STRENGTHS**
- **IF YOU NEED AN ORDINANCE, GET TO WORK NOW—DON'T WAIT**
- **DETERMINE WHO ON YOUR STAFF WILL RECEIVE RESPONSIBILITY FOR THE NEW “SHOT CLOCK”**
- **IF YOU RECEIVE APPLICATIONS, REACH OUT TO THE APPLICANT NOW—DON'T WAIT**

Copyright © Thomas A. Cloud (2017). All rights reserved.

CLOUD'S COMMUNICATIONS ORDINANCE CHECKLIST

- ✓ CONFIRM WHETHER YOU NEED COMPETENT SPECIAL COUNSEL TO ASSIST IN CREATING NEW OR MODIFYING EXISTING CITY/TOWN COMMUNICATIONS PROVISIONS
- ✓ FAMILIARIZE YOURSELF WITH CITY'S NOMENCLATURE, FORMAT, & NUMBERING
- ✓ CHECK BOTH CHARTER & CODE FOR ENABLING/ENACTMENT LANGUAGE FOR ORDINANCE & ANY OTHER SPECIAL PROVISIONS FOR ORDINANCES
- ✓ USE PROPER NAME OF CITY OR TOWN
- ✓ CONFIRM WHETHER IT'S A COMMISSION OR COUNCIL
- ✓ CONFORM SECTION NUMBERING & LETTERING SYSTEM
- ✓ CONFIRM ADOPTION OF CST BY RESOLUTION OR ORDINANCE
- ✓ CONFIRM WHETHER CITY IS A MUNICIPAL ELECTRIC UTILITY
- ✓ ASCERTAIN THE EXISTENCE & LOCATION OF ANY OLD CABLE REGULATION ORDINANCE PROVISIONS
- ✓ ASCERTAIN THE EXISTENCE & LOCATION OF TELECOM TOWER ORDINANCE FOR LATER CROSS REFERENCE IN SMALL WIRELESS FACILITIES ("SWF") REGULATIONS & NEW UTILITY POLE ("NUP") REGULATIONS
- ✓ ASCERTAIN THE EXISTENCE & LOCATION OF EXISTING HISTORIC PRESERVATION ORDINANCE FOR LATER CROSS REFERENCE IN SMALL WIRELESS FACILITIES ORDINANCE
- ✓ ASCERTAIN THE EXISTENCE & LOCATION OF REGISTRATION REGULATIONS & LEVY OF PASS THROUGH PROVIDER \$500 PER LINEAR MILE FEE (§ 337.401(6)(B), FS)
- ✓ DETERMINE WITH CITY ATTORNEY & STAFF WHETHER TO ADD REGISTRATION, NUP, & SWF PROVISIONS
- ✓ CHECK CITY CODE FOR CHAPTER REFERENCES TO SELECT MOST LOGICAL PLACE TO INSERT SELECTED REGULATIONS IN THAT CITY'S CODE
- ✓ DETERMINE WHETHER CITY ISSUES PERMITS FOR CONSTRUCTION/INSTALLATION IN PUBLIC RIGHTS OF WAY (PROW)
- ✓ IF SO, LOCATE SECTION NUMBER OF PROW INSTALLATION PERMIT IN CODE
- ✓ DETERMINE NAME OF PROW INSTALL PERMIT FOR USE IN DEFINITIONS

Copyright © Thomas A. Cloud (2017). All rights reserved.

CLOUD'S COMMUNICATIONS ORDINANCE CHECKLIST (CONTINUED)

- ✓ COMPARE PROW DEFINITIONS WITH ANY PRIOR DEFINITIONS IN YOUR CODE
- ✓ DETERMINE WHICH DEFINITION OF PUBLIC ROW TO USE
- ✓ DETERMINE WHICH OFFICIAL WILL REVIEW APPLICATIONS
- ✓ INTEGRATE SWF/NUP REGULATIONS
- ✓ INTEGRATE SWF/NUP REGULATIONS WITH REGISTRATION REGULATIONS
- ✓ INTEGRATE REGISTRATION & NUP REGULATIONS WITH TELECOM TOWER SECTIONS TO ORDINANCE
- ✓ INTEGRATE SWF/NUP REGULATIONS WITH HISTORIC PRESERVATION REGULATIONS
- ✓ REMEMBER TO ADD REFERENCE TO PASS THROUGH PROVIDER FEE IF REGISTRATION SYSTEM IS ADDED
- ✓ REMEMBER TO ADD REFERENCE TO CODE ENFORCEMENT PROVISIONS
- ✓ DETERMINE APPROPRIATE SIGNATURE/EXECUTION CLAUSES
- ✓ AS REQUIRED BY § 337.401(3)(d), FS, DON'T FORGET TO EMAIL 10-DAY NOTICE OF SCHEDULING FIRST READING OF ORDINANCE GOVERNING A TELECOMMUNICATIONS COMPANY THAT TO SECRETARY OF STATE AT FLORIDA ADMINISTRATIVE CODE & REGISTER SECTION ONLINE
- ✓ USE TIMES NEW ROMAN, 10-POINT FONT WHEN PREPARING 14 CENT PER WORD NOTICE FORM

Copyright © Thomas A. Cloud (2017). All rights reserved.

GOING FORWARD

- **WHETHER LEVYING POLL TAXES IN 1885, REFUSING TO REAPPORTION FOR 50 YEARS, OR ATTACKING HOME RULE, OUR STATE STRUGGLES AGAINST A PREDILECTION TO REACT TO THE REQUESTS OF THOSE WITH GREAT WEALTH**
- **THE GOAL OF THOSE LEADING THE ASSAULT ON HOME RULE IN THE 2017 LEGISLATURE IS THE CONCENTRATION OF POWER IN THE HANDS OF A FEW**
- **AT TIMES, FLORIDA RESEMBLES A MODERN DAY COMBINATION OF 19TH CENTURY “BOURBON” RULE AND JIM CLENDINEN’S ICONIC 1950s LABEL, “PORK CHOP GANG”**
- **TELECOM WILL ATTEMPT TO USE CONGRESS, THE FCC, & THE LEGISLATURE TO PERMIT PRIVATE INTERESTS TO USE TAXPAYER FUNDED ASSETS FOR PRIVATE GAIN**
- **THE LEAGUE’S LEGISLATIVE EFFORTS THIS YEAR WERE NOTHING SHORT OF MIRACULOUS**
- **FUTURE SUCCESS WILL DEPEND ON COORDINATED EFFORTS WITH OTHER ALLIED ENTITIES & THE RESTORATION OF A MORE BALANCED LEGISLATURE**

Copyright © Thomas A. Cloud (2017). All rights reserved.

Questions?



Thomas A. Cloud, B.C.S.
407-843-8880
thomas.cloud@gray-robinson.com

Copyright © Thomas A. Cloud (2017). All rights reserved.