

Three Forks, Montana Legal and Regulatory Background Leading to Small Cell Regulations and Telecom Regulations

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January 5, 2026

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Company Bio-Municipal Telecom Consultant-Not a Service Provider

- Graduates of Univ. of Virginia- School of Law
- Over 3 decades helping municipalities-Billings, Great Falls, Helena, Butte-Silver Bow and Blackfeet Tribe in Montana
- Cable television, telecom, broadband and wireless projects
- 40 States and Puerto Rico

Small Cells-Telecom-Broadband

- Cable Acts of 1984 and 1992
- Telecom Act of 1996
- Middle Class Tax Relief and Job Creation Act of 2012
- 47 U.S.C. Sections 253 and 332(c)(7)
- FCC Wireless Orders/Rulings- Numerous and Complex- Small Cell and Mixed Use Rule- Broadband/Internet
- Important decision- U.S. Court of Appeals- Ninth Circuit and Sixth Circuit

5G and Fiber Growth

Why Have City Regulations?

- What is a small wireless facility (Federal definition)?
- SWF Aesthetics- not preempted if reasonable and published in advance
- Telecom Regs- Fiber Construction is extensive and sometimes damages the Right-of Way- Telecom Regs Protect your Constituents
- AI and Data Center surge fuels the Growth

Some Fiber is passing through and other Fiber serves customers in the City

Macro cells vs. Small cells

- Macro cells: Taller Towers
 - Larger Coverage areas
 - Monopoles
 - Lattice towers
 - Towers with guy wires
- Small Cells- smaller coverage areas-every 300-1500 ft.
 - Antennas on Street lights, new or replacement poles, traffic signals(if allowed), etc.











Small Wireless Facilities and Telecom Compensation

- SWF Fees for use of municipal structures within the Rights-of-way that are greater than a reasonable approximation of the local government's costs for processing applications and for managing deployments in the Rights-of-way are effective prohibitions under Federal law
- Telecom-new proposed NOI and Rulemaking at the FCC could limit City Fees to Cost Recovery instead of Rent for use of your Rights-of-Way

“Safe Harbors”

- \$500 application fee (for 5 Small wireless facilities plus \$100 for each additional Small wireless facility); \$1,000/new pole application
- \$270 /year for each site- limit on ROW access fee and attachment fee
- And if you want more:
- Show the reasonable approximation of your costs, the costs are reasonable and non-discriminatory (Perform a Cost Study)

Revenue Opportunities for Your Community

- Water Tanks, Towers and City Buildings (Vertical) and Fiber (Horizontal) Assets-these assets are treated differently-Proprietary Ownership
- Cost Studies- Substantially Increase ROW Fees
- Master License Agreements (pre-FCC 2018 Order) ranged from \$150-\$1900/year or more per site in the ROW
- Antennas on Towers and Water Towers- \$750-\$2500/month or more

Managing your ROW and Other Revenue Opportunities

- Cable Television Franchises- 5% of Gross Revenues-Important to define Gross Revenues broadly
- Telecom Franchises- 2%-3% of Gross Revenues or a Per Lineal Foot Charge depending on Conduit Size
- Impact of State Law and recovering actual costs and expenses- this is complicated
- Billings Case- Ordinance unilaterally imposed after Providers in place

Federal Shot Clocks

- Small Wireless Facilities-Definitional issues
 - 60 days for collocation on an existing structure;
 - 90 days for deployment on a new pole
- Other than Small Wireless Facilities
 - 90 days for collocation on an existing structure;
 - 150 days for a new, large tower
- Eligible Facilities Requests- 60 days: inaction leads to automatic approval

How Does the City Handle This?

- Develop Detailed 5G Small Wireless Facilities Regulations- - provide for City Oversight
- Draft and Implement Small Cell Aesthetic Guidelines
- Enact Telecom Regs with Indemnification, Performance Bonds, Letters of Credit and in the event of construction outside of a prescribed permit, or gas, water, electric and sewer line damage or if there is an uncured default, provide for the ability of the City to restore the Rights-of-Way and invoice the Telecom Providers

Another Illustrative Picture



And then-Illustrative Picture



THANKS

- For being here for this Presentation.
- Consider 3rd Party Technical and Consultant Reviews to assist City Staff
- If you have specific questions, please call or send an email.

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