



**Division of Local
Government Services**

Tips for Regulating Telecommunications Facilities

A Division of New York Department of State

What is the 2020 Census?

- Count of **every** resident living in the United States
- Mandated by Article 1, Section 2 of the U.S. Constitution
- Conducted every 10 years ending in zero since 1790
- **Goal: Count everyone once, in the right place**



2020 Census is Critical to New York's Future

Why is the Census important?

- Impacts \$53 Billion in federal funding for community services and economic development
- Impacts number of congressional seats and redistricting
- Data is used for planning by government and businesses for the next 10 years

Challenges to a full count

- Hard to Count Communities
 - Urban & Rural, Low Income, Children under 5, Seniors, Language/Limited English Proficiency (LEP)
- Non-Traditional Housing
 - Transient populations
- Access to Technology
 - Limited computer skills, internet access

2020 Census Timeline

On or between:	You'll receive:
March 12 - 20	An invitation to respond online to the 2020 Census
March 16 - 24	A reminder letter
	If you haven't responded yet:
March 26 - April 3	A reminder letter
April 8 - 16	A reminder letter and paper questionnaire
April 20 - 27	A final reminder poster

Other Dates:

- April 1, 2020: **National Census Day**
- May - July 2020: Non-response follow-up

2020 Census: General Information

- NYS Census 2020 Website:
<https://www.ny.gov/programs/2020-census>
- US Census Website: <https://2020census.gov/en.html>
- If you have **questions** about completing the Census, you can call the US Census Bureau at 1-800-923-8282 to speak with a local **Census Bureau** representative.
- To **report a scam**, call the NYS Division of Consumer Protection hotline at 1-800-697-1220.

Course Outline

1. Introduction
2. Telecommunications Act of 1996
3. Safety
4. Aesthetics
5. Middle Class Tax Relief and Job Creation Act of 2012
6. Litigation
7. 5G



Background

- Utility
- Mostly unregulated by federal or state government
- Local governments limited in extent they can regulate
- Redundant, not singular, infrastructure
- Lucrative for site developers



Telecommunications Act of 1996

Section 332(c)(7)(b)

1. Government may not *unreasonably* discriminate among providers
2. May not prohibit wireless facilities
3. Must act in “reasonable time”
4. Decision supported by substantial evidence
5. May not regulate based on radio frequency emissions if emissions comply with FCC regs.



1. Unreasonable discrimination

- Any discrimination must be *reasonable*
- Preservation of neighborhood character reasonable and permissible.
- Increase in number of towers can justify differential treatment of providers.
- Rarely a problem for local governments



2. Prohibiting Wireless Service

- Local governments may not prohibit or have the effect of prohibiting wireless service
- “Significant gap” not defined in Telecommunications Act
- US District Court defined in New York SMSA Limited Partnership v. Town of Oyster Bay ZBA, 2010
- Nextel Partners, Inc. v. Town of Amherst



Tips

- Drive survey
- ~20 people make ~20 calls in various locations in the “significant gap” area
- Record locations, if calls were possible, how many were dropped.
- Collect data into a report and determine if the number of calls not able to be placed or dropped is “significant”



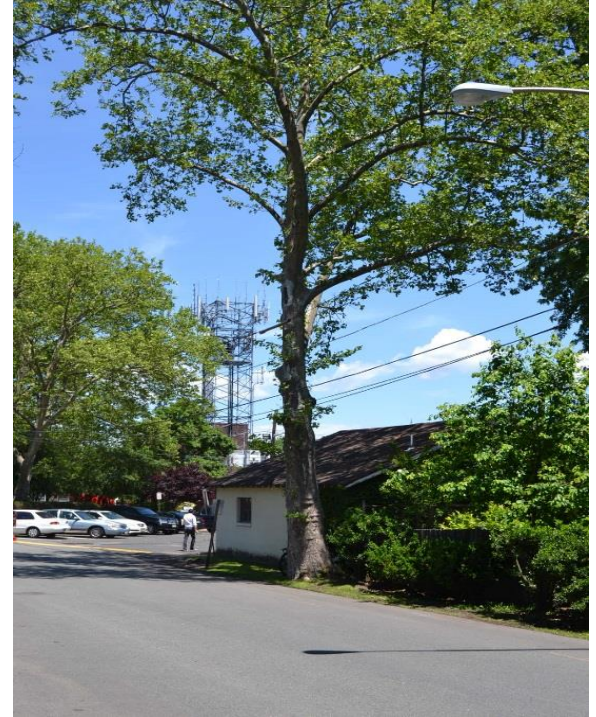
3. Reasonable Time

The “shot clock” – November 1999, FCC imposed time frames of

- 90 days for co-location application
- 150 days for siting of new facilities

If local gov fails to act, applicant can file a complaint with the federal court for a court order of approval.

If application is incomplete, review board must notify applicant within 30 days of receipt



4. Substantial Evidence in Record

- Local governments must provide their decision on wireless facilities in writing.
- Decision must be based on “substantial evidence” and contain sufficient explanation for reasons for denial to allow courts to evaluate evidence in the record supporting the decision
- Substantial evidence relevant and reasonable to support conclusion



5. Preclusion of Regulation for RF Emissions

- Local governments may not regulate construction or placement of wireless facilities on health effects of radio frequency emissions if those emissions comply with FCC emissions regulations
- If facilities comply with emissions regulations, local governments can't deny on their health effects
- Protection determined by facility's compliance with FCC emissions standards



Tips

- Some local governments enact requirements for random testing at facility owners' expense for excessive radio frequency emissions
- If found to exceed those maximums, facility must be dismantled by owner
- Towns of Huntington and Hempstead (Nassau County)



Safety

- Freestanding towers are exempt from Uniform Fire Prevention and Building Code and occasionally collapse
- Ice from a 150 foot tower, when it melts, can reach speeds of 70 mph by the time it reaches the ground
- Tips: Setbacks 100 – 200% the height of tower. Measure from base, not property line to prevent “postage stamp” construction.



Safety

- Radio frequency levels should be low and not hazardous except for prolonged exposure
- Towers far from residences results in least harmful exposure
- Face of building and distributed antenna systems (DAS) can be most problematic for their proximity to people



Safety

- Tip: Be diligent in review about distance people will be from radiation.
- Example from Hempstead in which RF engineer tested a proposed facility that complied, based on claim that general public would be 80 feet from tower. But it was discovered towers were being mounted only a few feet from inhabitants of a top floor apartment



Aesthetics

- Facilities towering over nearby residences can lower value of those nearby homes by 5 – 20%
- If towers are too close, potential buyers are unable to secure FHA federally guaranteed loans
- Tips: Local governments should identify ideal locations, including municipal-owned property



Facilities in the Adirondacks

- Very few applications between 2000 and 2010
- Lots of recent general permit applications to Adirondack Park Agency.
- Providers know rules (tall structures must be substantially invisible). Most are uncontroversial.



Section 6409

Middle Class Tax Relief & Job Creation Act of 2012

- Applies to support structures and transmission equipment used with any Commission-licensed or authorized wireless transmission
- Limits local control of co-location and replacement of equipment on existing towers

Tips

1. Look at base design
2. Ask independent engineer if tower could be 25 feet taller than proposed, based on design of tower base
3. Ask applicant to agree to a restrictive covenant that tower will never be taller than initial application
4. If not, lower height with initial application



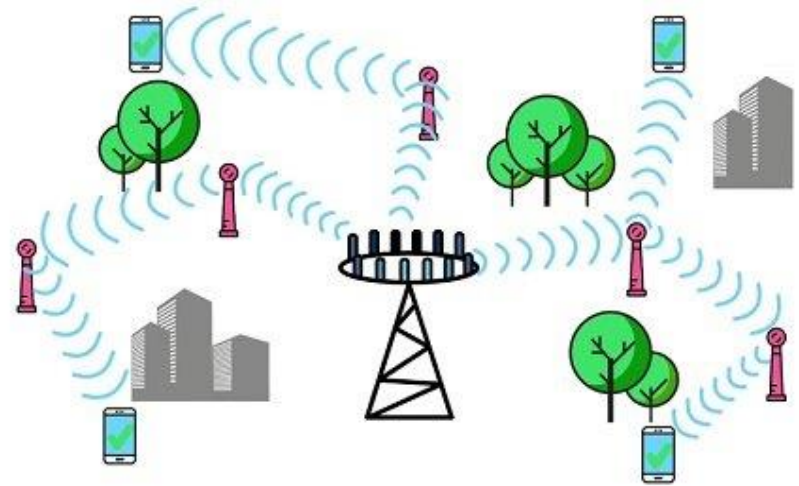
Lower risks of litigation

- Wireless companies can't recover monetary damages or attorneys fees
- Federal court orders permit be granted
- Cases are generally resolved through initial motion for summary judgement



What is 5G?

- 5G is the fifth-generation cellular wireless network
- Three new aspects:
 - Greater speed
 - Lower latency
 - Ability to connect more devices
- Uses higher frequency waves to transmit data
- Relies on small cell, low power transmitters placed throughout the landscape



5G, Small Cell

- September 2018, Federal Communications Commission (FCC) Declaratory Ruling to “remove regulatory barriers that inhibit the deployment of infrastructure necessary for 5G and other advanced wireless devices services”.
- WT Docket No. 17-79 and WC Docket No. 17-84 at <https://docs.fcc.gov/public/attachments/DOC-353962A1.pdf>.



New FCC Rules for 5G: Shot Clock

- Co-Location on Preexisting Structures: 60 days
- New Poles: 90 days
 - Delays could be argued by providers as effective prohibition of service. Carriers arguing so successfully in court would result in court order to permit.
- Shot clocks are the same for “batched” applications; can agree to different time periods by mutual agreement between municipality and carrier
- Shot clock commencement can’t be delayed by a pre-application meeting
- Applies to all permits required for deployment, including zoning, electrical, engineering, architectural, road closure permits, etc.



New FCC Rules for 5G: Shot Clock

- What happens if an application is incomplete?
- Local governments may re-set or pause the shot clock when it determines that an application is incomplete
 - 10 days: Municipality should make a determination that an application is materially incomplete
 - Municipality must notify the applicant of the deficiencies
 - The shot clock resets when the completed application is filed
- An incompleteness determination must be made by the 30th day after an application is filed, and within 10 days after resubmission if a re-submitted application is still incomplete



New FCC Rules for 5G: Fees

“Safe Harbor” fees:

- \$500 per application for up to 5 small cells; \$100 for each additional node.
- \$270 annual fee per small cell facility; it covers right-of-way access, attachments, and reoccurring fees
- \$1000 for non recurring fees for a new pole

- If carrier files lawsuit challenging fees above safe harbor amounts, local government has burden of demonstrating amounts are reasonable



Aesthetic Concerns

- Permissible for location, screening and color, but should not be more restrictive than local government requires for other infrastructure
- April 15, 2019: Deadline for municipalities with pending applications to adopt aesthetic criteria
- Examples of prescriptive and predictable regulations: Denver, CO and Montgomery County, MD



Right-of-Way Concerns

- Municipality should adopt standards for wireless installations on:
 - Traffic lights
 - Street lighting
 - Utility poles
- Establish rules for turning off wireless facilities when utility workers are present



Tips

Do not:

- Adopt a moratorium (forbidden in the order)
- Deny applications based on environmental effects of RF waves
- Impose spacing requirements (can be construed as effective prohibition)



Tips

- Be sure instructions and application materials required are clear to wireless companies
- Quickly determine if application is complete
- If fees exceed “safe” levels, the local government might be challenged in court to demonstrate how higher fees are reflected in higher administrative and permitting costs by municipality.



New York Department of State Division of Local Government

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www.dos.ny.gov/lg/index.html



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