



OVERVIEW OF DRAFT BDAC MODEL CODES

On April 25, 2018, the FCC’s Broadband Deployment Advisory Committee (“BDAC”) voted to accept the work product of the State Model Code and Municipal Model Code Working Groups. The draft Model Codes are currently under review by a “harmonization working group” aiming to eliminate any inconsistencies between the Models. While we do not yet have the final recommendation from the BDAC, it is important for local governments to understand the issues likely to be addressed in the final Model Codes.

State Model Code

The State Model Code consists of 13 Articles intended to be modular and severable, meaning that a state could choose to enact any or all of the Articles, depending on their policy goals.

Key Provisions for Local Governments:

- **Costly Mandates:**
 - Must register with the state all municipally-owned infrastructure that could be used to deploy broadband.
 - Must give communications providers access to municipal dark fiber, support structures, buildings and vertical assets on a cost-based basis; no market-based rents.
- **Significant Preemptions:**
 - Limits local authority over placement of communications facilities in the rights of way (ROW); small wireless facilities (SWF) would be a permitted use in all zones; providers would have a right to locate SWFs on municipal property with limited bases for denial.
 - More stringent shot clocks than current federal law and a “deemed granted” remedy.
- **Risks and Budget Impacts:**
 - Limits on fees/charges that may be less than the municipalities’ actual costs.
 - Limited ability to require indemnification/insurance from providers.
 - May lose significant franchise/ROW fees and have limited ability to effectively manage the ROW, especially if other ROW users successfully argue for the same deal as SWFs.

Municipal Model Code

The Municipal Model Code covers ROW and non-ROW deployment of communications facilities and related poles, towers and support structures. It is intended as a “non-binding, flexible guideline” for local governments to use in crafting their own requirements consistent with unique community needs. As a guideline—as opposed to a mandate—municipalities can make necessary changes to avoid the mandates, preemptions and risks outlined above.

Key Provisions for Local Governments:

- Suggests the types of communications deployments that should be permitted uses subject only to administrative (non-discretionary) review.
- Specific requirements for ROW use agreements, fees and charges, design standards, etc. are not provided; these are to be determined by local governments.
- Suggests ROW-related provisions on location, relocation and undergrounding of communications facilities that may be problematic for many communities.