

## **Frequently Asked Questions about Municipal Regulation of Telecommunications Antennas**

These FAQ are intended to clarify the scope of the Village's power to regulate the operation of wireless telecommunications equipment used for cellular communications. The Village of Lombard declares its intent to review applications for wireless telecommunications equipment in a non-discriminatory manner and without malice towards cellular carriers. The Village's regulations are established under the philosophy of "trust, but verify," since this represents a rational allocation of the Village's scarce resources.

Nothing in this FAQ should be interpreted as a decision by the Village to waive any of the authority granted by State law and not limited by Federal law.

### **Q: Does Federal law regulate the power of telecommunications equipment?**

A: Yes. Federal safety regulations enforced by the Federal Communications Commission govern both *radiation frequency exposure limits (47 CFR §1.1310)* and *effective radiated power limits (47 CFR §22.913)*.

Radiation frequency exposure limits measure the specific absorption rate (SAR) in human tissue resulting from the operation of a radio signal at a given frequency for a particular duration. These rules also define how to measure the SAR for a particular antenna.

Effective radiated power (ERP) limits directly limit the power emitted from radio antennas operated for cellular services. It is important to note that these regulations describe both a base ERP limit and an elevated ERP limit for which an operator can qualify depending on the environment where the antenna is located. These rules also define how to measure the ERP for a particular antenna.

Under Federal law, routine environmental evaluation for RF exposure is required for transmitters, facilities or operations that are included in certain categories of facilities. These categories include equipment used for cellular communication when the facility is installed below 10 meters above ground level to the lowest point of antenna *and* the total power of all channels is greater than 1000 W ERP.

### **Q: Does Federal law limit the authority for municipalities to regulate the operating power of telecommunications antennas?**

A: Yes. Under Federal law, there is an express preemption provision in *47 U.S.C. §§ 253(a), (d)*, authorizing the FCC to pre-empt "any [local] statute, regulation, or legal requirement" that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." Likewise, as described in *47 U.S.C. § 332 (c) (7)*, Congress intended that the FCC have exclusive jurisdiction over disputes regarding RF emissions. See *N.Y. SMSA Ltd. P'ship v. Town of Clarkstown*, 603 F. Supp. 2d 715 (S.D. NY 2009). In the *Clarkstown* case, the Court found, "a town plainly may not impose separate, stricter certification requirements for wireless technology than those set forth by the FCC."

Federal law has preempted the field of technology authorization and station licensing, and there is no room for state and local authorities to regulate in these areas.”

**Q. Can the Village pass a moratorium on all 5G applications?**

A. No. The FCC has interpreted Federal law to hold the deadline for final action on permit applications may expire notwithstanding a putative moratorium. In other words, if the Village fails to take final action before the “shot clock” expires, it is subject to legal challenge and corresponding expenses. For the State, we look at the Illinois Small Wireless Facilities Deployment Act, 50 ILCS 840/1, *et seq.* The Act is the State law which governs how local governments license or permit the erection of small wireless facilities within their jurisdiction. The Act does not permit a local government to adopt a moratorium, which is a temporary or permanent refusal to accept applications for permits. The Act provides for a strict timeline by which a local government must normally review and respond to a permit application. For example, within 30 days after receiving an application, the Village must determine whether the application is complete. Additionally, an application to collocate a small wireless facility must be processed within 90 or 120 days, depending on whether a new utility pole will be erected. The Act does permit the Village to delay action on permit applications in limited circumstances, including a local, State, or federal disaster declaration or similar emergency that causes the delay. 50 ILCS 840/15(d)(10)(B).

Based on the information provided above, here is a summary of how small wireless device construction can continue:

- A) Carriers who already have permits may perform construction to exercise the rights granted by those permits;
- B) Carriers may continue to submit applications for new small wireless facility installations;
- C) The Village will exercise its authority to review the applications under its locally adopted regulations which are not inconsistent with the Act; and
- D) The Village will process permit applications as it normally does. A permit official may delay final action on a permit application if the delay is caused by a local, State or federal disaster declaration or similar emergency. The delay described above should not be an indefinite delay, but only what is necessary to permit staff to review the application in light of the restrictions in place on the Village’s employees during the current emergency.

**Q: Is NEPA review required prior to every installation of telecommunications equipment?**

A: No. In October 2014 the FCC issued a Report and Order which modified its rules in a manner designed to accelerate broadband deployment by changing wireless facilities siting policies. In the Report and Order, the Commission expressed:

We adopt measures to refine our environmental and historic preservation review processes under NEPA and NHPA to account for new wireless technologies, including physically small facilities like those used in DAS networks and small-cell systems that are a fraction of the size of macro-cell installations. In contrast to the large-scale antennas and structures that our review processes were designed to address, these smaller antennas (and their associated compact radio equipment) can operate on existing short structures such as utility poles as well as on rooftops or inside buildings. As described in detail in the Executive Summary and in Section III, we expand an existing categorical exclusion from NEPA review so that it applies not only to collocations on buildings and towers, but also to collocations on other structures like utility poles. We also adopt a new categorical exclusion from NEPA review for some kinds of deployments in utilities or communications rights-of-way. With respect to NHPA, we create new exclusions to address certain collocations on utility poles and other non-tower structures. We take these steps to assure that, as we continue to meet our responsibilities under NEPA and NHPA, we also fulfill our obligation under the Communications Act to ensure that rapid, efficient, and affordable radio communications services are available to all Americans.

In its implementation of the Report and Order in 2016 the FCC executed an amendment to the National Programmatic Agreement for the Collocation of Wireless Antennas (“NPA”) which expanded the categorical exclusions from Section 106 review under NEPA. Based on the Report and Order and the Amended NPA, some small wireless antennas can be installed without first being required to complete Section 106 review.

**Q. Does State law limit the ability for municipalities to regulate where small wireless facilities are located?**

A: Yes. In 2018 the State of Illinois enacted the Small Wireless Facilities Deployment Act, 50 ILCS 840/1, et seq. (the “Act”). Section 40 of the Act expresses the General Assembly’s intent to preempt local control by stating a home rule unit may not regulate small wireless facilities in a manner inconsistent with this Act. In relation to regulating the location of a small wireless facility, Section 15(d)(3) of the Act states:

Subject to paragraph (6), an authority may not require the placement of small wireless facilities on any specific utility pole, or category of utility poles, or require multiple antenna systems on a single utility pole; however, with respect to an application for the collocation of a small wireless facility associated with a new utility pole, an authority may propose that the small wireless facility be collocated on an existing utility pole or existing wireless support structure within 100 feet of the proposed collocation, which the applicant shall accept if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location and structure does not impose technical limits or additional material costs as determined by the applicant. The authority may require the applicant to provide a written certification describing the property rights, technical limits or material cost reasons the alternate location does not satisfy the criteria in this paragraph (3).

Based on this statute, the Village has limited control over the location where a carrier can install a small wireless facility.

**Q: What can the Village do to regulate small wireless facilities?**

- Require that the small wireless facility does not interfere with the frequencies used by a public safety agency for public safety communications; a wireless provider shall install small wireless facilities of the type and frequency that will not cause unacceptable interference with a public safety agency's communications equipment;
- Require that the wireless provider comply with applicable spacing requirements in applicable codes and ordinances concerning the location of ground-mounted equipment located in the right-of-way if the requirements include a waiver, zoning, or other process that addresses wireless provider requests for exception or variance and do not prohibit granting of such exceptions or variances;
- Require that the wireless provider comply with generally applicable standards that are consistent with this Act and adopted by an authority for construction and public safety in the rights-of-way, including, but not limited to, reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, utility pole extension requirements, and signage limitations; and shall comply with reasonable and nondiscriminatory requirements that are consistent with this Act and adopted by an authority regulating the location, size, surface area and height of small wireless facilities, or the abandonment and removal of small wireless facilities;
- Require that the wireless provider comply with the applicable codes and local code provisions or regulations that concern public safety;
- Require that site specific structural integrity analysis is provided by a structural engineer;
- Require that radio frequency emissions meet FCC standards and order or conduct compliance tests;
- Require evidence of NEPA Review or an applicable exemption for all current and future applications.

**Q: What can local residents do to enforce FCC regulations on radiation frequency exposure limits and effective radiated power limits?**

A: Federal law grants a private right of action to people who are injured by reason of a common carrier's acts or omissions which violate the FCC's safety regulations. Not only does a resident have the right to sue for relief from his/her injuries, but the law grants attorneys' fees if the resident prevails. Below is the complete language of 47 USC §206:

In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in

every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

**Q. Has the state of Illinois created a 5G Task Force?**

A. Legislation was filed in January to create a State 5G Task Force to identify any major health risks associated with the proliferation of 5G infrastructure. Although a subject matter hearing was held, the legislation has not proceeded and at present no task force has been organized by State government.

**Q: Where can I learn more information about 5G wireless?**

A: For those who want more information on the safety issues, the FCC has an RF Safety FAQ page which may be viewed at: <https://www.fcc.gov/engineering-technology/electromagnetic-compatibility-division/radio-frequency-safety/faq/rf-safety#Q6>