Holland & Knight

315 South Calhoun Street, Suite 600 | Tallahassee, FL 32301 | T 850.224.7000 | F 850.224.8832
Holland & Knight LLP | www.hklaw.com

Karen D. Walker
+1 850-425-5612
Karen.Walker@hklaw.com

November 25, 2019

Via E-mail (susan.schwartz@dot.state.fl.us)

Susan Schwartz
Assistant General Counsel
Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399

Re: Proposed Rule 14-46.005, Wireless Utilities

Dear Susan:

As you know, we represent Crown Castle Fiber LLC ("Crown Castle") with respect to rulemaking by the Florida Department of Transportation ("FDOT" or the "Department") involving the installation, operation, maintenance, relocation, and adjustment of Small Wireless Equipment and Small Wireless Structures within FDOT controlled rights-of-way. The purpose of this letter is to provide the Department with Crown Castle's comments on Proposed Rule 14-46.005, Wireless Utilities (the "Proposed Rule") as published in the November 4, 2019 issue of the Florida Administrative Register in advance of the public hearing scheduled to be held on December 2, 2019.

Written Comments on, and Suggested Changes to, the Proposed Rule

Proposed Rule 14-46.005(2)(a) – Terms and Acronyms. Wireless Equipment.

The definition of "wireless equipment" in this section of the Proposed Rule appears to track the definition of "wireless facility" in Section 337.401(7)(b)12, Florida Statutes, with a few exceptions. Subsection (2)(a) of the Proposed Rule should be amended as follows so that the definition of "wireless equipment" in the Proposed Rule is consistent with the definition of "wireless facility" in Section 337.401:

> (a) Wireless Equipment: means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other

> cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes Small Wireless Equipment. The term does not include any structure or pole on which the equipment is attached, physical lines for backhaul facilities, physical lines between wireless structures, or technology installed as part of or in support of electric distribution pursuant to and consistent with UAM Section 2.3.1(8).

Proposed Rule 14-46.005(3) – Utility Permits.

Subsection (a) should be amended as follows to clarify that a utility permit may be issued for Small Wireless Equipment, a Small Wireless Structure, or both consistent with the definition of UAO in section (2)(e) of the Proposed Rule:

> (a) The UAO shall obtain a utility permit pursuant to the UAM prior to installing Small Wireless Equipment, a Small Wireless Structure, or both in FDOT's right-of-way. The UAO shall comply with this rule and the UAM. To the extent the UAM and this rule conflict, this rule shall control; however, if the conflict is one in which this rule is silent and the UAM addresses the specific circumstances at issue, the UAM shall control.

Additionally, new subsection (d) should be added to Section (3) of the Proposed Rule as follows to confirm that the Proposed Rule will operate prospectively and will not affect permits for Small Wireless Equipment issued by FDOT prior to the effective date of the rule:

> (d) This rule shall not affect permits issued by FDOT prior to the effective date of this rule pursuant to which Small Wireless Equipment was installed in FDOT's right-of-way.

Proposed Rule 14-46.005(5) – Signal Interference.

There appears to be a typographical error in the first sentence of this section of the Proposed Rule. Crown Castle believes that the reference to "Federal Communication Regulations" is intended to be a reference to "Federal Communication Commission regulations." In addition to correcting this apparent error, because a Utility Agency/Owner ("UAO") must comply with Federal Communication Commission regulations relating to signal interference, the last sentence of section (5) is unnecessary. If the last sentence of section (5) remains, however, it should be clarified to confirm that the UAO must comply with Federal Communication Commission regulations when addressing interference with previously permitted and operational Wireless Equipment, which regulations provide for both elimination and mitigation of interference.

Accordingly, Crown Castle requests that section (5) of the Proposed Rule be amended to read as follows:

> **(5) Signal Interference.** The UAO shall comply with all applicable Federal Communication Commission ~~R~~regulations relating to signal interference. If, at any time, including after installation of the Small Wireless Equipment, the UAO's Small Wireless Equipment interferes with any existing, proposed or new FDOT Wireless Equipment, the UAO shall immediately eliminate the interference. If the UAO's Small Wireless Equipment interferes with any previously permitted and operational Federal Communications Commission-licensed Wireless Equipment in FDOT's rights-of-way, the UAO shall immediately eliminate or mitigate the interference as required by Federal Communication Commission regulations.

Proposed Rule 14-46.005(6)(a) – Utility Permit Application Package.

Subsection (6)(a) of the Proposed Rule requires both the UAO and the third party that owns a Small Wireless Structure to which the UAO will attach its Small Wireless Equipment to certify that the UAO is authorized to attach its Small Wireless Equipment to the third-party's Wireless Structure. The Proposed Rule does not describe how the third-party certification must be provided, and agreements between the UAO and the third-party are often confidential. Accordingly, Crown Castle submits that the rule should be revised as follows to provide flexibility in the type of certification that may be provided:

> (a) If the Small Wireless Equipment is attached to a Small Wireless Structure owned by a third-party, documentation from both the UAO and the third-party ~~shall~~ certifying that the UAO is authorized to attach its Small Wireless Equipment to the third-party's Small Wireless Structure. Such documentation from the third-party may include the first and last page of an agreement between the UAO and the third-party, a statement in writing signed by an authorized representative of the third-party, or an e-mail from an authorized representative of the third-party. The documentation may address more than one Small Wireless Structure owned by the third-party to which the UAO is authorized to attach Small Wireless Equipment.

Proposed Rule 14-46.005(6)(c) – Utility Permit Application Package.

Subsection (6)(c) of the Proposed Rule would require an application for a wireless utility permit to include "[a]n engineering analysis documenting the operational frequency band, any potential interference effects, and an RF interference survey." This information is not currently

required by FDOT for a utility permit for Small Wireless Equipment. Providing this type of analysis with every permit application would be a costly and unnecessary exercise.

The Federal Communications Commission regulates interference. Section 5 of the Proposed Rule already requires that the UAO comply with all applicable Federal Communication Commission regulations relating to signal interference and that the UAO eliminate interference if it occurs. Moreover, the frequency band would be determined by the provider of the wireless communications which may or may not be the same entity as the UAO. Further, an applicant for a wireless utility permit could not provide the engineering analysis as described in subsection (6)(c) of the Proposed Rule without knowing what else is around the location of the proposed Small Wireless Equipment that emits a signal. The UAO would likely need to obtain this information from FDOT thus creating additional work for FDOT and potential delays in the permitting process. Accordingly, FDOT should remove subsection (6)(c) from the Proposed Rule.

Information Regarding Statement of Estimated Regulatory Costs and Lower Cost Regulatory Alternative

In addition to providing the Department with comments on the Proposed Rule, Crown Castle is providing information regarding the Statement of Estimated Regulatory Costs ("SERC") prepared in connection with the Proposed Rule and Crown Castle's lower cost regulatory alternative. This information is being provided to the Department within 21 days of the Department's publication of the Notice of Proposed Rule in compliance with Sections 120.54(3)(a)1. and 120.541(1)(a), Florida Statutes.

A statement of estimated regulatory costs is required to include an economic analysis showing whether the rule directly or indirectly "[i]s likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule." § 120.541(2)(a)3., Fla. Stat. A statement of estimated regulatory costs also is required to include "[a] good faith estimate of the transactional costs likely to be incurred by individuals and entities . . . required to comply with the requirements of the rule." § 120.541(d), Fla. Stat. "Transactional costs" are defined as:

> direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and ***any other costs necessary to comply with the rule.***

§ 120.541(d), Fla. Stat (emphasis added).

The SERC prepared in connection with the Proposed Rule concludes that the Proposed Rule is not likely, directly or indirectly, to increase regulatory costs, including any transactional costs in excess of $1 million in the aggregate within 5 years after the implementation of the

Proposed Rule. In support of this conclusion the SERC cross references paragraph D.4. of the SERC which states, in pertinent part:

> The Department does not expect UAOs or other individuals to incur additional transactional costs as result of complying with the Rule. Conversely, it is reasonable to assume that the cost of complying with the Rule that enables the UAO to install its Small Wireless Equipment within FDOT rights-of-way with no license or lease rental fee will be less costly than similar installations outside of FDOT rights-of-way. This is due to the added cost that the UAO will likely incur to lease or purchase the required access or attachment rights from private property lessors or owners.

Contrary to what is stated in the SERC, UAOs, such as Crown Castle, will incur additional transactional costs as a result of complying with the Proposed Rule, if adopted, because of the requirement in subsection (6)(c) of the Proposed Rule for an engineering analysis to be included in the permit application. No such analysis is currently required and the preparation of the engineering analysis described in subsection (6)(c) of the Proposed Rule will be costly. Further, an engineering analysis is unnecessary to prevent interference as section (5) of the Proposed Rule already requires the UAO to comply with Federal Communication Commission regulations governing interference. Moreover, there is no basis for the assumption in the SERC that the cost of complying with the Proposed Rule will be less costly than similar installations outside of FDOT rights-of-way. The analysis should not compare a permit on FDOT rights-of-way to access to other property for Small Wireless Equipment. Instead, the analysis should compare current FDOT requirements for obtaining a permit to place Small Wireless Equipment in FDOT's rights-of-way with what would be required under the Proposed Rule. Again, the requirement of an engineering analysis would be new and would require a UAO to incur transactional costs that it does not incur today.

There is a lower cost regulatory alternative.[1] That alternative would involve removing subsection (6)(c) of the Proposed Rule so that an engineering analysis would not be required with the permit application. As previously noted, if the purpose of the engineering analysis described in subsection (6)(c) is to address interference, there is no need for such an analysis considering section (5) of the Proposed Rule requires the UAO to comply with Federal Communication Commission regulations and to eliminate signal interference. Thus, deleting subsection (6)(c) of the Proposed Rule would accomplish the objectives of the law being implemented at no additional cost to the UAOs.

[1] By letter dated January 31, 2019, Holland & Knight responded on behalf of Crown Castle to the request for Carr, Riggs & Ingram, LLC for information to assist it in preparing the SERC. That letter requested elimination of subsection (6)(c) for the same reasons as set forth in this letter.

Request for a Public Hearing

The Notice of Proposed Rule published in the Florida Administrative Register on November 4, 2019 states that a hearing will be held at 1:00 p.m. on December 2, 2019. To the extent, however, that a request for a public hearing is required for such hearing to occur, please consider this a request for a public hearing pursuant to Section 120.54(3)(c)1., Florida Statutes.

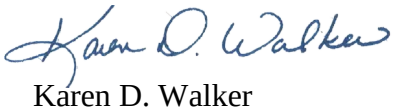
* * *

In accordance with Section 120.54(3)(c)1., Florida Statutes, these comments shall be considered by the Department and made a part of the record of the rulemaking proceeding. Crown Castle appreciates the opportunity to submit these written comments on the Proposed Rule and looks forward to providing additional information at the public hearing on December 2, 2019.

Crown Castle does not waive any rights, and instead, expressly reserves all of its rights under Chapter 120, Florida Statutes, the Administrative Procedures Act, relating to the Proposed Rule.

Sincerely yours,

HOLLAND & KNIGHT LLP



Karen D. Walker

KDW:jg

BERGER SINGERMAN

Floyd R. Self
(850) 521-6727
fself@bergersingerman.com

November 26, 2019

VIA ELECTRONIC MAIL

Susan Schwartz
Assistant General Counsel
Florida Department of Transportation
605 Suwanee St., MS 58
Tallahassee, FL 32399-0458
susan.schwartz@dot.state.fl.us

Re: CTIA Comments on Florida Department of Transportation Proposed Rule 14-46.005 ("Wireless Facilities"), Florida Administrative Code, Issued November 4, 2019

Dear Ms. Schwartz,

This firm represents CTIA.[1] Pursuant to the Florida Administrative Register Notice of November 4, 2019, CTIA hereby provides the Florida Department of Transportation ("FDOT") the following comments regarding new Proposed Rule 14-46.0005, Florida Administrative Code ("Proposed Rule").

I. INTRODUCTION

CTIA appreciates FDOT's work to clarify its rules regarding small cell deployment in its rights-of-way. FDOT's rights-of-way are important siting locations for next-generation wireless network deployment ("5G"), which will require denser networks than are presently deployed, and

[1] CTIA – The Wireless Association ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

small cells are crucial to densify networks to meet rapidly-growing consumer demand. CTIA believes its revisions to the Proposed Rule, outlined below,[2] will help this effort by rectifying some ambiguities in the current Proposed Rule to the benefit of both FDOT and attachers. In addition, CTIA advises FDOT that its representatives and some members intend to participate in the rule hearing, originally scheduled for December 2, 2019, and since postponed, and at the rescheduled rule hearing we may have further comment at that time on the Proposed Rule.

II. CTIA REVISIONS TO THE PROPOSED RULE

Proposed Revision 1: Rule 14-46.005(2)(c)

FDOT should revise the definition of "Small Wireless Structure" to clarify that Small Wireless Equipment (as defined in the Proposed Rule) may be attached to any structure, regardless of the structure's overall height, provided the attachment occurs at or below 50 feet on such pole or structure, by modifying the Proposed Rule as follows:

> (c) Small Wireless Structure: means an existing, proposed, or new pole or other structure, regardless of the overall height of the pole or other structure, that has or is intended to have Small Wireless Equipment attached to it and any attached Small Wireless Equipment is not attached higher ~~taller~~ than 50 feet above ground level at the location of installation.

There are existing, proposed, and new poles and other structures that exceed 50 feet in height, such as light poles, that are suitable for Small Wireless Equipment. The currently proposed language implies that attachment to such taller facilities is permitted "at the location of installation." Per that implication, CTIA's revision would make explicit that Small Wireless

[2] Additions to the Proposed Rule are indicated by underlined text, and deletions to the Proposed Rule are indicated by ~~strikethrough~~ text.

Equipment, as defined by the Proposed Rule, may be attached to poles and other structures that are taller than 50 feet, provided the Small Wireless Equipment is attached at or below 50 feet up the structure.

Proposed Revision 2: Rule 14-46.005(3)

FDOT should revise the scope of a "Utility Permit" to include ground-based enclosures that are associated with the Small Wireless Equipment, by adding the following language:

> **(3) Utility Permits.** No Wireless Equipment other than Small Wireless Equipment attached to a Small Wireless Structure may be installed pursuant to a utility permit in FDOT right-of-way. A permit may include ground-based enclosures less than 5 feet in height for equipment associated with the Wireless Equipment. This provision shall not preclude the right of a Department lessee to install, locate or maintain other wireless equipment in accordance with the terms of their lease with the Department.

The definition of Small Wireless Equipment in Proposed Rule 14-46.005(2)(b)2.e presently excludes ground-based enclosures, and the Proposed Rule is otherwise silent regarding the placement of associated ground-based equipment that is frequently necessary to support Small Wireless Equipment. CTIA's revision would clarify that ground-based equipment may be installed in rights-of-way provided it does not exceed 5 feet in height, allowing for supporting equipment without a significant additional footprint.

Proposed Revision 3: Rule 14-46.005(3)(b)

FDOT should revise the Proposed Rule to make explicit that the Proposed Rule would also apply to FDOT poles and structures, by adding the following language:

> (b) An existing structure that is already authorized to be within FDOT's right-of-way, which may include an FDOT pole or structure, may be used as a Small Wireless Structure provided it meets the requirements of this rule and the UAM. If the existing

> structure is owned by a third party, the UAO must obtain the owner's consent for attachment prior to applying for a permit.

The second sentence of Paragraph (b) already implies that the Proposed Rule includes FDOT poles or structures, so CTIA's revision would make this explicit. Clearly allowing the use of existing FDOT poles and structures would lessen the need for third party poles and structures in FDOT rights-of-way, promoting efficiency and reduced space demands.

Proposed Revision 4: Rule 14-46.005(6)(c)

FDOT should revise the Proposed Rule to delete paragraph (c):

> ~~(c) An engineering analysis documenting the operational frequency band, any potential interference effects, and an RF interference survey.~~

FDOT does not currently require the submission of radiofrequency ("RF") information to obtain a permit. Requiring this information is unnecessary because the Federal Communications Commission ("FCC") fully and completely regulates the use of spectrum, including the resolution of any interference that may occur between licensees. Resolving such issues falls under the FCC's exclusive jurisdiction over the use of spectrum, so FDOT's collection of RF information serves no useful purpose.[3] Further, Proposed Rule 14-46.0005(5) already requires that the Utility Agency/Owner ("UAO") "shall comply with all applicable Federal Communication Regulations relating to signal interference"[4] and dictates how such conflicts are to be resolved. Because UAOs agree to comply with the FCC's rules, interference should be minimized or avoided entirely, and

[3] *See Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311 (2d Cir. 2000).
[4] CTIA also suggests that FDOT amend Proposed Rule 14-46.0005(5) to read "[. . .] shall comply with all applicable Federal Communications Commission regulations [...]." This appears to be the intent of the rule, but the inadvertent misstatement of the federal agency's name introduces unnecessary ambiguity and makes possible an interpretation of Proposed Rule 14-46.0005(5) other than that intended by FDOT.

because prior attachers have rights over subsequent attachers, and FDOT retains the rights over all attachers, an interference study will not advance FDOT's interest in avoiding interference for itself and prior attachers. For these reasons, there is no need or statutory basis to require attachers to file this information with FDOT. Accordingly, the requirement should be removed.

III. CONCLUSION

CTIA believes its suggested revisions will clarify and improve the Proposed Rule to all parties' benefit. CTIA looks forward to continuing to work with FDOT as it develops final regulations that will promote the deployment of advanced wireless services that will serve all Florida's citizens. Please let us know if you have any questions or require any follow up.

Sincerely,

Floyd R. Self, B.C.S.
Counsel for CTIA

FRS/CM/am

extenet SYSTEMS

Mobile Connectivity Everywhere

Haran C. Rashes
Senior Counsel for Regulatory Affairs
O – (630) 245-2064
M – (734) 660-9283
hrashes@extenetsystems.com

Admitted to the Practice of Law in
Illinois, Michigan and New York

November 25, 2019

Via Electronic Mail and Overnight Courier
To: Susan.Schwartz@dot.state.fl.us

Susan Schwartz
Assistant General Counsel
Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 32399

Re: In the matter, on the Department's own motion, to promulgate rules governing the permitting of wireless facilities on Department controlled right-of-way
Proposed Wireless Utility Rule 14-46.005
Comments of ExteNet Systems, Inc.

Dear Ms. Schwartz:

Attached please find Comments of ExteNet Systems, Inc. on the Florida Department of Transportation's proposed Wireless Facility Rule. We will not be attending the Rulemaking hearing on Monday, December 2, 2019.

If you have any questions, please feel free to call me at (630) 245-2064 or reach me via e-mail at <hrashes@extenetsystems.com>.

Very truly yours,

Haran C. Rashes

Attachment

STATE OF FLORIDA
BEFORE THE DEPARTMENT OF TRANSPORTATION

In the matter, on the Department's own motion, to promulgate rules governing the permitting of wireless facilities on Department controlled right-of-way.	))) /	Proposed Rule 14-46.005 Wireless Facilities

INITIAL COMMENTS
OF EXTENET SYSTEMS, INC.

ExteNet Systems, Inc. ("ExteNet"), pursuant to the Notice and schedule published in the Florida Administrative Register, Vol. 45, No. 215, p. 4886 (Nov. 4, 2019), hereby submits the following comments on the Department of Transportation's proposed Wireless Facilities Rule ("Rule").

ExteNet has a vital interest in the proposed Wireless Utility Rule because ExteNet designs, builds, owns, manages & operates indoor and outdoor distributed network systems to help meet the growing demand for improved mobile and wireless broadband coverage and capacity in key strategic markets across the United States – including many such markets in Florida. Distributed network systems bring wireless network elements such as low-powered wireless antennas and access points closer to the user to ensure ubiquitous and high-capacity wireless broadband connectivity.

Utilizing distributed antenna systems, remote radio heads, small cells, Wi-Fi and distributed core soft-switching technologies, ExteNet enables wireless service providers, enterprises, and venues to better serve their subscribers, customers, workers, residents, tenants and communities.

ExteNet owns and operates multi-carrier -- often referred to as "neutral-host" -- and multi-technology distributed network systems to ensure multiple wireless service providers can provide their 3G, 4G LTE and eventually 5G services in the most effective and efficient manner. ExteNet creates a scalable network design utilizing its high-bandwidth fiber network to ensure the network

densification needs of the wireless service providers are met and can evolve over time as user demands dictate.

Typically, ExteNet installs its distributed network systems on existing utility poles, street lights, and other existing poles located in the public right-of-way or on its own utility poles installed in the public right-of-way. Access to public rights-of-way, such as those of the Florida Department of Transportation, for such distributed network systems is essential not only to ExteNet but also to the residents of the state of Florida, who are clamoring for more and more wireless access and bandwidth which they can only get from the natural increase in the number of wireless facilities installed by ExteNet and similar providers.

ExteNet supports the proposed Rule with minor reservations. ExteNet commends the Department on its long and hard work developing a rule that ultimately will allow wireless infrastructure providers nondiscriminatory access to the Department's right of way and "protects the safety of the travelling public [and] provides for the effective and orderly management of the right-of-way."

ExteNet is concerned that the requirement in Section 6 of the Rule that Applicants (defined under the Rule as Utility/Agency Owner "UAO") provide the following as part of the application process:

> (c) An engineering analysis documenting the operational frequency band, any potential interference effects, and an RF interference survey.

ExteNet contends that such a requirement is duplicative, overly broad, and will unnecessarily increase the cost to the Applicant/UAO. The Rule correctly already states at Section 5:

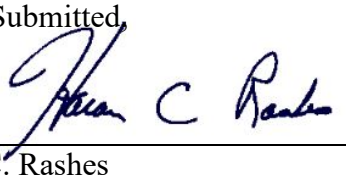
> (5) Signal Interference. The UAO shall comply with all applicable Federal Communication Regulations relating to signal interference. If, at any time, including after installation of the Small Wireless Equipment, the UAO's Small Wireless Equipment interferes with any existing, proposed, or new FDOT Wireless Equipment, the UAO shall immediately eliminate the interference. If the UAO's Small Wireless

> Equipment interferes with any previously permitted Wireless Equipment in FDOT's rights-of-way, the UAO shall immediately eliminate the interference.

The Federal Communications Commission ("FCC") licenses and allocates operational frequencies utilized by Small Wireless Providers and by the Department. If parties maintain compliance with the frequencies they are licensed to utilize, there should be no interference. ExteNet believes that the Department may require an attestation from the Applicant/UAO of the frequencies to be utilized in the proposed equipment and the basis for such FCC licenses, where applicable. Requiring an engineering survey of such is overly broad and will create an unnecessary duplicative expense when the FCC, in licensing such frequencies, has already taken interference into account. In the very highly unlikely event that interference does occur, the Department can fall back on Section 5 of the rule and require that "the UAO shall immediately eliminate the interference."

ExteNet Systems, Inc. encourages the Department to promulgate the Wireless Facility Rule with the elimination of, or change to Section 6, as discussed above. Such a Rule will encourage encourages private investment in much needed telecommunications infrastructure development in the Department's public rights-of-way that will benefit the people of the State of Florida.

Respectfully Submitted,

By: 

Haran C. Rashes
Senior Counsel for Regulatory Affairs
EXTENET SYSTEMS, INC.
3030 Warrenville Road, Suite 340
Lisle, IL 60532
(630) 245-2064 – Office
(734) 660-9283 – Mobile
hrashes@extenetsystems.com

Dated: November 25, 2019

COCONUT CREEK
BUTTERFLY CAPITAL OF THE WORLD®

CITY MANAGER'S OFFICE
4800 WEST COPANS ROAD
COCONUT CREEK, FLORIDA 33063

KAREN M. BROOKS
CITY MANAGER

December 9, 2019

Florida Department of Transportation (FDOT)
Attn: Susan Schwartz, Assistant General Counsel
605 Suwannee Street
Tallahassee, FL 32399-6544 Sent via: susan.schwartz@dot.state.fl.us

Re: Updated Comments on Proposed Rule 14-46.005, "Wireless Facilities"

Dear Ms. Schwartz,

Please allow the following comments to serve as an update to the City of Coconut Creek's previous comments dated May 2, 2018 filed with then-State Utility Engineer, Mr. Thomas Bane, regarding the earlier version of the proposed rule.

Primarily, the City reiterates its desire for notification of the filing of a Small Wireless Utility Permit Application Packet. The City respectfully submits that Section (6) of the proposed rule be amended to add subparagraph (d) to read as follows: "proof of sending, by certified mail, a letter addressed to the chief administrative officer of the municipality in which the installation is proposed to be located, notifying him/her of the proposed installation either by providing the assigned FDOT permit number or a map identifying the proposed installation location." The notification is not cumbersome on the applicant and will not disrupt FDOT's processing, yet it will serve a vital public purpose by allowing local jurisdictions the opportunity to monitor these installations to ensure compliance with all electrical and other health and safety codes within their purview.

Next, the City has expended countless hours and expended significant resources to maintain the beauty of this community. Through the adoption of local ordinances, the City requires that such installations meet concealment and camouflaging requirements. Nothing in the proposed rule addresses the aesthetic impacts of these installations; however, FDOT can play a role in successfully integrating communications facilities into the very communities that they are intended to serve by requiring concealment, if and when possible, and require neutral colors and landscaping in all other circumstances.

Last, the proposed rule does not address the placement of signage on these types of installations. The City respectfully requests that FDOT take all reasonable steps to prevent the use of these installations for unintended purposes.

Thank you for your consideration of the City of Coconut Creek's comments. Please do not hesitate to contact me with any questions or concerns regarding this matter.

Sincerely,

Karen M. Brooks
City Manager

Enclosure

cc: City Commission
Terrill C. Pyburn, City Attorney

COCONUT CREEK
BUTTERFLY CAPITAL OF THE WORLD®

CITY MANAGER'S OFFICE
4800 WEST COPANS ROAD
COCONUT CREEK, FLORIDA 33063

MARY C. BLASI
CITY MANAGER

May 2, 2018

Florida Department of Transportation
Attn: Thomas Bane, P.E., State Utility Engineer
Re: Proposed F.A.C. Rule 14-46.005, "Wireless Facilities"

Sent via: Thomas.Bane@DOT.state.fl.us

Dear Mr. Bane,

On behalf of the City of Coconut Creek, thank you for the opportunity to comment on the proposed Rule 14-46.005, F.A.C., "Wireless Facilities." Most importantly, the City would like to see notice provided to the local jurisdiction(s) in which a wireless facility subject to FDOT permitting is proposed to be located. This will allow the municipalities and counties the opportunity to learn more about the installation and assess other wireless facilities in proximity to the proposed installation. The objective always being to assist with the broader land-planning aspects of wireless facilities installation. Without such information, a municipality or county cannot properly assess future installations in its own rights-of-way. The City of Coconut Creek asks that FDOT add language to this Rule to require that the permit applicant notify the municipality and county upon submission of a permit application to FDOT for an installation located within its jurisdiction.

Secondly, the City of Coconut Creek would like to see appropriate distance requirements for ground-mounted equipment and design standards for the wireless facilities that focus on an effort to conceal the facilities from view as much as possible. Ideally, the Rule would require a wireless facility built within the FDOT right-of-way located within a given municipality to match similar existing wireless facilities within the municipality's rights-of-way in terms of design/aesthetics to achieve conformity throughout the community. If the wireless facilities cannot be completely concealed, a requirement that the facility and its associated equipment blend into the surrounding environment by employing neutral colors, and requiring landscaping, would go a long way to protect the beauty of our community. In addition, the City would like to see a prohibition on signage or other lettering on the facilities or the associated equipment that is not mandated by the FCC.

Last, the City of Coconut Creek asks that FDOT mandate proof of proper permitting from cities when electrical or other permits are required. By requiring proof of the permit, it allows the state and local governments to work in tandem to serve the residents of this state. That said, it will open a pathway for communication between FDOT and the local jurisdiction and allow all parties to operate on a cohesive stage when regulating this new technology.

Thank you for your consideration of the City of Coconut Creek's comments to proposed Rule 14-46.005, F.A.C., "Wireless Facilities." Please do not hesitate to contact me with any questions or concerns regarding this matter.

Sincerely,

Mary C. Blasi
City Manager

cc: Terrill C. Pyburn, City Attorney

FLORIDA ELECTRIC POWER COORDINATING GROUP, INC. (FCG)

3000 Bayport Drive, Suite 600, (813) 289-5644 • FAX (813) 289-5646

TAMPA, FLORIDA 33607-8411

November 22, 2019

Ms. Susan Schwartz
Assistant General Counsel
Florida Department of Transportation
605 Suwannee Street, Mail Station 58
Tallahassee, FL 32399-0458

Re: FCG TAC Comments on 14-46.005 Rulemaking
FAR Vol. 45/215, Notice of Proposed Rule (Nov. 4, 2019)

Dear Ms. Schwartz:

The Florida Electric Power Coordinating Group, Inc.'s Transportation Advisory Committee (FCG TAC) appreciates the opportunity to submit comments on the Florida Department of Transportation's proposed rule language to create Rule 14-46.005, Fla. Admin. Code, as published in the *Florida Administrative Register* on November 4, 2019. The FCG is a non-profit corporation whose membership includes investor-owned utilities, rural electric cooperatives, and municipal electric utilities that provide electricity throughout Florida. The FCG's Transportation Advisory Committee (TAC) represents its members regarding transportation issues that affect the electric utility industry, particularly those affecting transmission and distribution facilities within Florida's public rights-of way.

The FCG TAC participated in the Department's rulemaking workshop regarding this proposal on Wednesday, February 7, 2018, and submitted comments on February 15, 2018 regarding the Department's draft rule language presented at the workshop. We appreciate the Department revising the draft language in response to the FCG TAC's first two comments, to exclude an electric utility's wireless equipment and not require submittal of the agreement between the utility and wireless provider. The FCG TAC remains concerned about its other two comments, however, regarding not requiring retroactive permitting and allowing small wireless equipment higher than 50'. These comments are described below, and we are hopeful that they can be addressed via minor revisions and offer the attached draft requested revisions in this regard (Attachment A).

1) **Clarify that retroactive permitting is not required for existing third-party wireless equipment** – There are currently electric utility poles in Florida to which third-party wireless-provider equipment is attached. To more closely follow the statutory language in Section 337.401(7), Fla. Stat., which deals with *new* equipment, and to avoid the increased cost and burden associated with retroactive permitting of *existing* third-party equipment on existing poles, we request that the word "existing" be removed from the draft rule language, and the word "new" added in several places for clarity. If the Department needs information regarding *existing* third-party wireless-provider installations, which has

not already been submitted, the electric utilities are happy to discuss with the Department how best to compile such information.

2) **Allow small wireless structures taller than 50 feet, and wireless equipment higher than 50 feet –** The proposed rule language provides that a small wireless structure shall not be "taller than 50 feet above ground level at the location of installation." Assuming the phrase -- "at the location of installation" means where the pole goes in the ground, as opposed to where the wireless equipment is attached, this proposed language would prohibit small wireless structures from being taller than 50'. The FCG TAC has several concerns with this prohibition. For example, the only statutory restriction on the height of a pole, in Section 337.401(7)(d)5., is to be no higher than the "tallest existing utility pole as of July 1, 2017" within 500 feet. If there is not a pole within 500 feet, then the pole height is limited to 50 feet. Moreover, electric utilities currently have many poles taller than 50 feet, and do not want to foreclose the option of permitting new wireless equipment on such poles, especially given the rapidly changing nature of wireless technology. Further, there may be some existing poles taller than 50 feet in the Department's right-of-way to which third-party wireless equipment is currently attached and properly permitted, and per the comment above, such existing equipment should not be prohibited or required to obtain additional permitting.

Second, even if a structure/pole can be taller than 50', this proposed language prohibits the installation of wireless equipment higher than 50'. The FCG TAC is not aware of a legitimate basis for this prohibition and has several concerns. For example, has the Department evaluated whether its prohibition in Proposed Rule 14-46.005(2)(c) conflicts with 47 U.S.C. 1455(a), and FCC rules promulgated thereunder? This federal statute prohibits a State or local government from denying certain requests to add wireless equipment to certain structures. Further, to the extent the Department is relying on "contractual obligations under any leases entered into pursuant to Section 337.251, F.S.," as referenced in Proposed Rule 14-46.005(1), we have additional concerns. Specifically, the FCG TAC members are not a party to these leases, and it not fair or reasonable to limit our rights based on such lease's provisions. Further, pursuant to Section 337.251, F.S., Department leases "may not interfere with . . . present or future utility needs for that property nor be contrary to the best interests of the public."

Accordingly, we request that the Department revise its proposal to limit this new rule to *new* wireless equipment and allow the permitting of new wireless equipment on a pole taller than 50 feet, and at a location on the pole higher than 50'.

Thank you for your time and consideration of these comments. We look forward to working with you as this rulemaking proceeds. If you have any questions, or need any additional information, please feel free to contact me at (352) 459-4671, or Robert Manning at Hopping Green & Sams at (850) 222-7500.

Respectfully,

Robb Brown
Chair, FCG Transportation Advisory Committee

Cc: Mr. Austin Hensel, FDOT
Mr. Patrick Overton, FDOT
Mr. Will Watts, FDOT
FCG TAC
Robert Manning, HGS

ATTACHMENT A

FCG-TAC REQUESTED REVISIONS TO FDOT'S PROPOSED RULE 14-46.005

14-46.005 Wireless Utilities

(1) Purpose. This rule is established to provide requirements for the installation, operation, maintenance, relocation, and adjustment of Small Wireless Equipment and Small Wireless Structures within the Florida Department of Transportation's (FDOT) rights-of-way in a manner that protects the safety of the travelling public, provides for the effective and orderly management of the right-of-way, and is consistent with ~~the FDOT's contractual obligations under any leases entered into pursuant to~~ Section 337.251, F.S.

(2) Terms and Acronyms. All terms in this rule shall have the same meaning as those in Section 334.03, F.S. Additionally, the following terms are defined:

(a) Wireless Equipment: means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, and equipment associated with wireless communications. The term includes Small Wireless Equipment. The term does not include any structure or pole on which the equipment is attached, physical lines for backhaul facilities, physical lines between wireless structures, or technology installed as part of or in support of electric distribution pursuant to and consistent with UAM Section 2.3.1(8).

(b) Small Wireless Equipment: means Wireless Equipment that meets all the following conditions:

1. Each enclosed antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all its exposed elements can fit within an enclosure of no more than six (6) cubic feet in volume;

2. All other associated wireless equipment is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume:

a. electric meters,

b. concealment elements,

c. telecommunications demarcation boxes,

d. ground-based enclosures,

e. grounding equipment,

f. power transfer switches,

g. cutoff switches,

h. vertical cable runs for power and other services, and

i. Small Wireless Structures.

3. Does not extend more than 10 feet above the Small Wireless Structure to which it is attached.

(c) Small Wireless Structure: means ~~an existing, proposed, or new~~ a pole or other

structure that has or is intended to have Small Wireless Equipment attached to it ~~and is not taller than 50 feet above ground level at the location of installation~~.

(d) UAM: 2017 Utility Accommodation Manual, as incorporated in Rule 14-46.001, F.A.C.

(e) UAO: The Utility Agency/Owner of Small Wireless Equipment, a Small Wireless Structure, or both.

(3) Utility Permits. No new Wireless Equipment other than Small Wireless Equipment attached to a Small Wireless Structure may be installed pursuant to a utility permit in FDOT right-of-way. This provision shall not preclude the right of a Department lessee to install, locate or maintain other wireless equipment in accordance with the terms of their lease with the Department.

(a) The UAO shall obtain a utility permit pursuant to the UAM prior to installing new Small Wireless Equipment in FDOT's right-of-way. ~~The UAO shall comply with this rule and the UAM. To the extent the UAM and this rule conflict, this rule shall control; however, if the conflict is one in which this rule is silent and the UAM addresses the specific circumstance at issue, the UAM shall control.~~

(b) An existing structure that is already authorized to be within FDOT's right-of-way may be used as a Small Wireless Structure provided it meets the requirements of ~~this rule and~~ the UAM. If the existing structure is owned by a third party, the UAO must obtain the owner's consent for attachment prior to applying for a permit.

(4) Placement Limitations. The UAO shall not install or maintain any Small Wireless Equipment pursuant to a utility permit that interferes with the function of, replaces, or is intended to replace any FDOT structure, transportation facility, or equipment, including Wireless Equipment.

(5) Signal Interference. The UAO shall comply with all applicable Federal Communication Regulations relating to signal interference. If, at any time, including after installation of the Small Wireless Equipment, the UAO's Small Wireless Equipment interferes with any existing, proposed, or new FDOT Wireless Equipment, the UAO shall immediately eliminate the interference. If the UAO's Small Wireless Equipment interferes with any previously permitted Wireless Equipment in FDOT's rights-of-way, the UAO shall immediately eliminate the interference.

(6) Utility Permit Application Package. Application for a wireless utility permit shall be made through the online One-Stop Permitting website available at: https://osp.fdot.gov. In addition to the submittals required in UAM Section 2.4, the UAO shall include the following:

(a) If the Small Wireless Equipment is attached to a Small Wireless Structure owned by a third-party, the UAO ~~and third-party~~ shall certify that the UAO is authorized to attach its Small Wireless Equipment to the third-party's Small Wireless Structure;

(b) Plans view drawings (to scale) showing the location of the proposed Small Wireless Equipment and Small Wireless Structure, including the power source; and

(c) An engineering analysis documenting the operational frequency band, any potential interference effects, and an RF interference survey.

Holland & Knight

315 South Calhoun Street, Suite 600 | Tallahassee, FL 32301 | T 850.224.7000 | F 850.224.8832
Holland & Knight LLP | www.hklaw.com

Karen D. Walker
+1 850-425-5612
Karen.Walker@hklaw.com

November 25, 2019

Via E-mail (susan.schwartz@dot.state.fl.us)

Susan Schwartz
Assistant General Counsel
Florida Department of Transportation
605 Suwannee Street
Tallahassee, FL 32399

Re: Proposed Rule 14-46.005, Wireless Utilities

Dear Susan:

As you know, we represent Crown Castle Fiber LLC ("Crown Castle") with respect to rulemaking by the Florida Department of Transportation ("FDOT" or the "Department") involving the installation, operation, maintenance, relocation, and adjustment of Small Wireless Equipment and Small Wireless Structures within FDOT controlled rights-of-way. The purpose of this letter is to provide the Department with Crown Castle's comments on Proposed Rule 14-46.005, Wireless Utilities (the "Proposed Rule") as published in the November 4, 2019 issue of the Florida Administrative Register in advance of the public hearing scheduled to be held on December 2, 2019.

Written Comments on, and Suggested Changes to, the Proposed Rule

Proposed Rule 14-46.005(2)(a) – Terms and Acronyms. Wireless Equipment.

The definition of "wireless equipment" in this section of the Proposed Rule appears to track the definition of "wireless facility" in Section 337.401(7)(b)12, Florida Statutes, with a few exceptions. Subsection (2)(a) of the Proposed Rule should be amended as follows so that the definition of "wireless equipment" in the Proposed Rule is consistent with the definition of "wireless facility" in Section 337.401:

> (a) Wireless Equipment: means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other

> cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes Small Wireless Equipment. The term does not include any structure or pole on which the equipment is attached, physical lines for backhaul facilities, physical lines between wireless structures, or technology installed as part of or in support of electric distribution pursuant to and consistent with UAM Section 2.3.1(8).

Proposed Rule 14-46.005(3) – Utility Permits.

Subsection (a) should be amended as follows to clarify that a utility permit may be issued for Small Wireless Equipment, a Small Wireless Structure, or both consistent with the definition of UAO in section (2)(e) of the Proposed Rule:

> (a) The UAO shall obtain a utility permit pursuant to the UAM prior to installing Small Wireless Equipment, a Small Wireless Structure, or both in FDOT's right-of-way. The UAO shall comply with this rule and the UAM. To the extent the UAM and this rule conflict, this rule shall control; however, if the conflict is one in which this rule is silent and the UAM addresses the specific circumstances at issue, the UAM shall control.

Additionally, new subsection (d) should be added to Section (3) of the Proposed Rule as follows to confirm that the Proposed Rule will operate prospectively and will not affect permits for Small Wireless Equipment issued by FDOT prior to the effective date of the rule:

> (d) This rule shall not affect permits issued by FDOT prior to the effective date of this rule pursuant to which Small Wireless Equipment was installed in FDOT's right-of-way.

Proposed Rule 14-46.005(5) – Signal Interference.

There appears to be a typographical error in the first sentence of this section of the Proposed Rule. Crown Castle believes that the reference to "Federal Communication Regulations" is intended to be a reference to "Federal Communication Commission regulations." In addition to correcting this apparent error, because a Utility Agency/Owner ("UAO") must comply with Federal Communication Commission regulations relating to signal interference, the last sentence of section (5) is unnecessary. If the last sentence of section (5) remains, however, it should be clarified to confirm that the UAO must comply with Federal Communication Commission regulations when addressing interference with previously permitted and operational Wireless Equipment, which regulations provide for both elimination and mitigation of interference.

Accordingly, Crown Castle requests that section (5) of the Proposed Rule be amended to read as follows:

> **(5) Signal Interference.** The UAO shall comply with all applicable Federal Communication Commission ~~R~~regulations relating to signal interference. If, at any time, including after installation of the Small Wireless Equipment, the UAO's Small Wireless Equipment interferes with any existing, proposed or new FDOT Wireless Equipment, the UAO shall immediately eliminate the interference. If the UAO's Small Wireless Equipment interferes with any previously permitted and operational Federal Communications Commission-licensed Wireless Equipment in FDOT's rights-of-way, the UAO shall immediately eliminate or mitigate the interference as required by Federal Communication Commission regulations.

Proposed Rule 14-46.005(6)(a) – Utility Permit Application Package.

Subsection (6)(a) of the Proposed Rule requires both the UAO and the third party that owns a Small Wireless Structure to which the UAO will attach its Small Wireless Equipment to certify that the UAO is authorized to attach its Small Wireless Equipment to the third-party's Wireless Structure. The Proposed Rule does not describe how the third-party certification must be provided, and agreements between the UAO and the third-party are often confidential. Accordingly, Crown Castle submits that the rule should be revised as follows to provide flexibility in the type of certification that may be provided:

> (a) If the Small Wireless Equipment is attached to a Small Wireless Structure owned by a third-party, documentation from both the UAO and the third-party ~~shall~~ certifying that the UAO is authorized to attach its Small Wireless Equipment to the third-party's Small Wireless Structure. Such documentation from the third-party may include the first and last page of an agreement between the UAO and the third-party, a statement in writing signed by an authorized representative of the third-party, or an e-mail from an authorized representative of the third-party. The documentation may address more than one Small Wireless Structure owned by the third-party to which the UAO is authorized to attach Small Wireless Equipment.

Proposed Rule 14-46.005(6)(c) – Utility Permit Application Package.

Subsection (6)(c) of the Proposed Rule would require an application for a wireless utility permit to include "[a]n engineering analysis documenting the operational frequency band, any potential interference effects, and an RF interference survey." This information is not currently

required by FDOT for a utility permit for Small Wireless Equipment. Providing this type of analysis with every permit application would be a costly and unnecessary exercise.

The Federal Communications Commission regulates interference. Section 5 of the Proposed Rule already requires that the UAO comply with all applicable Federal Communication Commission regulations relating to signal interference and that the UAO eliminate interference if it occurs. Moreover, the frequency band would be determined by the provider of the wireless communications which may or may not be the same entity as the UAO. Further, an applicant for a wireless utility permit could not provide the engineering analysis as described in subsection (6)(c) of the Proposed Rule without knowing what else is around the location of the proposed Small Wireless Equipment that emits a signal. The UAO would likely need to obtain this information from FDOT thus creating additional work for FDOT and potential delays in the permitting process. Accordingly, FDOT should remove subsection (6)(c) from the Proposed Rule.

Information Regarding Statement of Estimated Regulatory Costs and Lower Cost Regulatory Alternative

In addition to providing the Department with comments on the Proposed Rule, Crown Castle is providing information regarding the Statement of Estimated Regulatory Costs ("SERC") prepared in connection with the Proposed Rule and Crown Castle's lower cost regulatory alternative. This information is being provided to the Department within 21 days of the Department's publication of the Notice of Proposed Rule in compliance with Sections 120.54(3)(a)1. and 120.541(1)(a), Florida Statutes.

A statement of estimated regulatory costs is required to include an economic analysis showing whether the rule directly or indirectly "[i]s likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule." § 120.541(2)(a)3., Fla. Stat. A statement of estimated regulatory costs also is required to include "[a] good faith estimate of the transactional costs likely to be incurred by individuals and entities . . . required to comply with the requirements of the rule." § 120.541(d), Fla. Stat. "Transactional costs" are defined as:

> direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and ***any other costs necessary to comply with the rule.***

§ 120.541(d), Fla. Stat (emphasis added).

The SERC prepared in connection with the Proposed Rule concludes that the Proposed Rule is not likely, directly or indirectly, to increase regulatory costs, including any transactional costs in excess of $1 million in the aggregate within 5 years after the implementation of the

Proposed Rule. In support of this conclusion the SERC cross references paragraph D.4. of the SERC which states, in pertinent part:

> The Department does not expect UAOs or other individuals to incur additional transactional costs as result of complying with the Rule. Conversely, it is reasonable to assume that the cost of complying with the Rule that enables the UAO to install its Small Wireless Equipment within FDOT rights-of-way with no license or lease rental fee will be less costly than similar installations outside of FDOT rights-of-way. This is due to the added cost that the UAO will likely incur to lease or purchase the required access or attachment rights from private property lessors or owners.

Contrary to what is stated in the SERC, UAOs, such as Crown Castle, will incur additional transactional costs as a result of complying with the Proposed Rule, if adopted, because of the requirement in subsection (6)(c) of the Proposed Rule for an engineering analysis to be included in the permit application. No such analysis is currently required and the preparation of the engineering analysis described in subsection (6)(c) of the Proposed Rule will be costly. Further, an engineering analysis is unnecessary to prevent interference as section (5) of the Proposed Rule already requires the UAO to comply with Federal Communication Commission regulations governing interference. Moreover, there is no basis for the assumption in the SERC that the cost of complying with the Proposed Rule will be less costly than similar installations outside of FDOT rights-of-way. The analysis should not compare a permit on FDOT rights-of-way to access to other property for Small Wireless Equipment. Instead, the analysis should compare current FDOT requirements for obtaining a permit to place Small Wireless Equipment in FDOT's rights-of-way with what would be required under the Proposed Rule. Again, the requirement of an engineering analysis would be new and would require a UAO to incur transactional costs that it does not incur today.

There is a lower cost regulatory alternative.[1] That alternative would involve removing subsection (6)(c) of the Proposed Rule so that an engineering analysis would not be required with the permit application. As previously noted, if the purpose of the engineering analysis described in subsection (6)(c) is to address interference, there is no need for such an analysis considering section (5) of the Proposed Rule requires the UAO to comply with Federal Communication Commission regulations and to eliminate signal interference. Thus, deleting subsection (6)(c) of the Proposed Rule would accomplish the objectives of the law being implemented at no additional cost to the UAOs.

[1] By letter dated January 31, 2019, Holland & Knight responded on behalf of Crown Castle to the request for Carr, Riggs & Ingram, LLC for information to assist it in preparing the SERC. That letter requested elimination of subsection (6)(c) for the same reasons as set forth in this letter.

Request for a Public Hearing

The Notice of Proposed Rule published in the Florida Administrative Register on November 4, 2019 states that a hearing will be held at 1:00 p.m. on December 2, 2019. To the extent, however, that a request for a public hearing is required for such hearing to occur, please consider this a request for a public hearing pursuant to Section 120.54(3)(c)1., Florida Statutes.

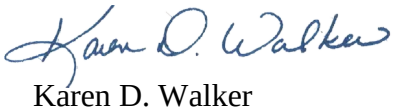
* * *

In accordance with Section 120.54(3)(c)1., Florida Statutes, these comments shall be considered by the Department and made a part of the record of the rulemaking proceeding. Crown Castle appreciates the opportunity to submit these written comments on the Proposed Rule and looks forward to providing additional information at the public hearing on December 2, 2019.

Crown Castle does not waive any rights, and instead, expressly reserves all of its rights under Chapter 120, Florida Statutes, the Administrative Procedures Act, relating to the Proposed Rule.

Sincerely yours,

HOLLAND & KNIGHT LLP



Karen D. Walker

KDW:jg

BERGER SINGERMAN

Floyd R. Self
(850) 521-6727
fself@bergersingerman.com

November 26, 2019

VIA ELECTRONIC MAIL

Susan Schwartz
Assistant General Counsel
Florida Department of Transportation
605 Suwanee St., MS 58
Tallahassee, FL 32399-0458
susan.schwartz@dot.state.fl.us

Re: CTIA Comments on Florida Department of Transportation Proposed Rule 14-46.005 ("Wireless Facilities"), Florida Administrative Code, Issued November 4, 2019

Dear Ms. Schwartz,

This firm represents CTIA.[1] Pursuant to the Florida Administrative Register Notice of November 4, 2019, CTIA hereby provides the Florida Department of Transportation ("FDOT") the following comments regarding new Proposed Rule 14-46.0005, Florida Administrative Code ("Proposed Rule").

I. INTRODUCTION

CTIA appreciates FDOT's work to clarify its rules regarding small cell deployment in its rights-of-way. FDOT's rights-of-way are important siting locations for next-generation wireless network deployment ("5G"), which will require denser networks than are presently deployed, and

[1] CTIA – The Wireless Association ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

small cells are crucial to densify networks to meet rapidly-growing consumer demand. CTIA believes its revisions to the Proposed Rule, outlined below,[2] will help this effort by rectifying some ambiguities in the current Proposed Rule to the benefit of both FDOT and attachers. In addition, CTIA advises FDOT that its representatives and some members intend to participate in the rule hearing, originally scheduled for December 2, 2019, and since postponed, and at the rescheduled rule hearing we may have further comment at that time on the Proposed Rule.

II. CTIA REVISIONS TO THE PROPOSED RULE

Proposed Revision 1: Rule 14-46.005(2)(c)

FDOT should revise the definition of "Small Wireless Structure" to clarify that Small Wireless Equipment (as defined in the Proposed Rule) may be attached to any structure, regardless of the structure's overall height, provided the attachment occurs at or below 50 feet on such pole or structure, by modifying the Proposed Rule as follows:

> (c) Small Wireless Structure: means an existing, proposed, or new pole or other structure, regardless of the overall height of the pole or other structure, that has or is intended to have Small Wireless Equipment attached to it and any attached Small Wireless Equipment is not attached higher ~~taller~~ than 50 feet above ground level at the location of installation.

There are existing, proposed, and new poles and other structures that exceed 50 feet in height, such as light poles, that are suitable for Small Wireless Equipment. The currently proposed language implies that attachment to such taller facilities is permitted "at the location of installation." Per that implication, CTIA's revision would make explicit that Small Wireless

[2] Additions to the Proposed Rule are indicated by underlined text, and deletions to the Proposed Rule are indicated by ~~strikethrough~~ text.

Equipment, as defined by the Proposed Rule, may be attached to poles and other structures that are taller than 50 feet, provided the Small Wireless Equipment is attached at or below 50 feet up the structure.

Proposed Revision 2: Rule 14-46.005(3)

FDOT should revise the scope of a "Utility Permit" to include ground-based enclosures that are associated with the Small Wireless Equipment, by adding the following language:

> **(3) Utility Permits**. No Wireless Equipment other than Small Wireless Equipment attached to a Small Wireless Structure may be installed pursuant to a utility permit in FDOT right-of-way. A permit may include ground-based enclosures less than 5 feet in height for equipment associated with the Wireless Equipment. This provision shall not preclude the right of a Department lessee to install, locate or maintain other wireless equipment in accordance with the terms of their lease with the Department.

The definition of Small Wireless Equipment in Proposed Rule 14-46.005(2)(b)2.e presently excludes ground-based enclosures, and the Proposed Rule is otherwise silent regarding the placement of associated ground-based equipment that is frequently necessary to support Small Wireless Equipment. CTIA's revision would clarify that ground-based equipment may be installed in rights-of-way provided it does not exceed 5 feet in height, allowing for supporting equipment without a significant additional footprint.

Proposed Revision 3: Rule 14-46.005(3)(b)

FDOT should revise the Proposed Rule to make explicit that the Proposed Rule would also apply to FDOT poles and structures, by adding the following language:

> (b) An existing structure that is already authorized to be within FDOT's right-of-way, which may include an FDOT pole or structure, may be used as a Small Wireless Structure provided it meets the requirements of this rule and the UAM. If the existing

> structure is owned by a third party, the UAO must obtain the owner's consent for attachment prior to applying for a permit.

The second sentence of Paragraph (b) already implies that the Proposed Rule includes FDOT poles or structures, so CTIA's revision would make this explicit. Clearly allowing the use of existing FDOT poles and structures would lessen the need for third party poles and structures in FDOT rights-of-way, promoting efficiency and reduced space demands.

Proposed Revision 4: Rule 14-46.005(6)(c)

FDOT should revise the Proposed Rule to delete paragraph (c):

> ~~(c) An engineering analysis documenting the operational frequency band, any potential interference effects, and an RF interference survey.~~

FDOT does not currently require the submission of radiofrequency ("RF") information to obtain a permit. Requiring this information is unnecessary because the Federal Communications Commission ("FCC") fully and completely regulates the use of spectrum, including the resolution of any interference that may occur between licensees. Resolving such issues falls under the FCC's exclusive jurisdiction over the use of spectrum, so FDOT's collection of RF information serves no useful purpose.[3] Further, Proposed Rule 14-46.0005(5) already requires that the Utility Agency/Owner ("UAO") "shall comply with all applicable Federal Communication Regulations relating to signal interference"[4] and dictates how such conflicts are to be resolved. Because UAOs agree to comply with the FCC's rules, interference should be minimized or avoided entirely, and

[3] *See Freeman v. Burlington Broadcasters, Inc.*, 204 F.3d 311 (2d Cir. 2000).
[4] CTIA also suggests that FDOT amend Proposed Rule 14-46.0005(5) to read "[. . .] shall comply with all applicable Federal Communications Commission regulations [...]." This appears to be the intent of the rule, but the inadvertent misstatement of the federal agency's name introduces unnecessary ambiguity and makes possible an interpretation of Proposed Rule 14-46.0005(5) other than that intended by FDOT.

because prior attachers have rights over subsequent attachers, and FDOT retains the rights over all attachers, an interference study will not advance FDOT's interest in avoiding interference for itself and prior attachers. For these reasons, there is no need or statutory basis to require attachers to file this information with FDOT. Accordingly, the requirement should be removed.

III. CONCLUSION

CTIA believes its suggested revisions will clarify and improve the Proposed Rule to all parties' benefit. CTIA looks forward to continuing to work with FDOT as it develops final regulations that will promote the deployment of advanced wireless services that will serve all Florida's citizens. Please let us know if you have any questions or require any follow up.

Sincerely,

Floyd R. Self, B.C.S.
Counsel for CTIA

FRS/CM/am

COCONUT CREEK
BUTTERFLY CAPITAL OF THE WORLD®

CITY MANAGER'S OFFICE
4800 WEST COPANS ROAD
COCONUT CREEK, FLORIDA 33063

KAREN M. BROOKS
CITY MANAGER

December 9, 2019

Florida Department of Transportation (FDOT)
Attn: Susan Schwartz, Assistant General Counsel
605 Suwannee Street
Tallahassee, FL 32399-6544 Sent via: susan.schwartz@dot.state.fl.us

Re: Updated Comments on Proposed Rule 14-46.005, "Wireless Facilities"

Dear Ms. Schwartz,

Please allow the following comments to serve as an update to the City of Coconut Creek's previous comments dated May 2, 2018 filed with then-State Utility Engineer, Mr. Thomas Bane, regarding the earlier version of the proposed rule.

Primarily, the City reiterates its desire for notification of the filing of a Small Wireless Utility Permit Application Packet. The City respectfully submits that Section (6) of the proposed rule be amended to add subparagraph (d) to read as follows: "proof of sending, by certified mail, a letter addressed to the chief administrative officer of the municipality in which the installation is proposed to be located, notifying him/her of the proposed installation either by providing the assigned FDOT permit number or a map identifying the proposed installation location." The notification is not cumbersome on the applicant and will not disrupt FDOT's processing, yet it will serve a vital public purpose by allowing local jurisdictions the opportunity to monitor these installations to ensure compliance with all electrical and other health and safety codes within their purview.

Next, the City has expended countless hours and expended significant resources to maintain the beauty of this community. Through the adoption of local ordinances, the City requires that such installations meet concealment and camouflaging requirements. Nothing in the proposed rule addresses the aesthetic impacts of these installations; however, FDOT can play a role in successfully integrating communications facilities into the very communities that they are intended to serve by requiring concealment, if and when possible, and require neutral colors and landscaping in all other circumstances.

Last, the proposed rule does not address the placement of signage on these types of installations. The City respectfully requests that FDOT take all reasonable steps to prevent the use of these installations for unintended purposes.

Thank you for your consideration of the City of Coconut Creek's comments. Please do not hesitate to contact me with any questions or concerns regarding this matter.

Sincerely,

Karen M. Brooks
City Manager

Enclosure

cc: City Commission
Terrill C. Pyburn, City Attorney

COCONUT CREEK
BUTTERFLY CAPITAL OF THE WORLD®

CITY MANAGER'S OFFICE
4800 WEST COPANS ROAD
COCONUT CREEK, FLORIDA 33063

MARY C. BLASI
CITY MANAGER

May 2, 2018

Florida Department of Transportation
Attn: Thomas Bane, P.E., State Utility Engineer
Re: Proposed F.A.C. Rule 14-46.005, "Wireless Facilities"

Sent via: Thomas.Bane@DOT.state.fl.us

Dear Mr. Bane,

On behalf of the City of Coconut Creek, thank you for the opportunity to comment on the proposed Rule 14-46.005, F.A.C., "Wireless Facilities." Most importantly, the City would like to see notice provided to the local jurisdiction(s) in which a wireless facility subject to FDOT permitting is proposed to be located. This will allow the municipalities and counties the opportunity to learn more about the installation and assess other wireless facilities in proximity to the proposed installation. The objective always being to assist with the broader land-planning aspects of wireless facilities installation. Without such information, a municipality or county cannot properly assess future installations in its own rights-of-way. The City of Coconut Creek asks that FDOT add language to this Rule to require that the permit applicant notify the municipality and county upon submission of a permit application to FDOT for an installation located within its jurisdiction.

Secondly, the City of Coconut Creek would like to see appropriate distance requirements for ground-mounted equipment and design standards for the wireless facilities that focus on an effort to conceal the facilities from view as much as possible. Ideally, the Rule would require a wireless facility built within the FDOT right-of-way located within a given municipality to match similar existing wireless facilities within the municipality's rights-of-way in terms of design/aesthetics to achieve conformity throughout the community. If the wireless facilities cannot be completely concealed, a requirement that the facility and its associated equipment blend into the surrounding environment by employing neutral colors, and requiring landscaping, would go a long way to protect the beauty of our community. In addition, the City would like to see a prohibition on signage or other lettering on the facilities or the associated equipment that is not mandated by the FCC.

Last, the City of Coconut Creek asks that FDOT mandate proof of proper permitting from cities when electrical or other permits are required. By requiring proof of the permit, it allows the state and local governments to work in tandem to serve the residents of this state. That said, it will open a pathway for communication between FDOT and the local jurisdiction and allow all parties to operate on a cohesive stage when regulating this new technology.

Thank you for your consideration of the City of Coconut Creek's comments to proposed Rule 14-46.005, F.A.C., "Wireless Facilities." Please do not hesitate to contact me with any questions or concerns regarding this matter.

Sincerely,

Mary C. Blasi

Mary C. Blasi
City Manager

cc: Terrill C. Pyburn, City Attorney

FLORIDA ELECTRIC POWER COORDINATING GROUP, INC. (FCG)

3000 Bayport Drive, Suite 600, (813) 289-5644 • FAX (813) 289-5646

TAMPA, FLORIDA 33607-8411

November 22, 2019

Ms. Susan Schwartz
Assistant General Counsel
Florida Department of Transportation
605 Suwannee Street, Mail Station 58
Tallahassee, FL 32399-0458

Re: FCG TAC Comments on 14-46.005 Rulemaking
FAR Vol. 45/215, Notice of Proposed Rule (Nov. 4, 2019)

Dear Ms. Schwartz:

The Florida Electric Power Coordinating Group, Inc.'s Transportation Advisory Committee (FCG TAC) appreciates the opportunity to submit comments on the Florida Department of Transportation's proposed rule language to create Rule 14-46.005, Fla. Admin. Code, as published in the *Florida Administrative Register* on November 4, 2019. The FCG is a non-profit corporation whose membership includes investor-owned utilities, rural electric cooperatives, and municipal electric utilities that provide electricity throughout Florida. The FCG's Transportation Advisory Committee (TAC) represents its members regarding transportation issues that affect the electric utility industry, particularly those affecting transmission and distribution facilities within Florida's public rights-of way.

The FCG TAC participated in the Department's rulemaking workshop regarding this proposal on Wednesday, February 7, 2018, and submitted comments on February 15, 2018 regarding the Department's draft rule language presented at the workshop. We appreciate the Department revising the draft language in response to the FCG TAC's first two comments, to exclude an electric utility's wireless equipment and not require submittal of the agreement between the utility and wireless provider. The FCG TAC remains concerned about its other two comments, however, regarding not requiring retroactive permitting and allowing small wireless equipment higher than 50'. These comments are described below, and we are hopeful that they can be addressed via minor revisions and offer the attached draft requested revisions in this regard (Attachment A).

1) **Clarify that retroactive permitting is not required for existing third-party wireless equipment** – There are currently electric utility poles in Florida to which third-party wireless-provider equipment is attached. To more closely follow the statutory language in Section 337.401(7), Fla. Stat., which deals with *new* equipment, and to avoid the increased cost and burden associated with retroactive permitting of *existing* third-party equipment on existing poles, we request that the word "existing" be removed from the draft rule language, and the word "new" added in several places for clarity. If the Department needs information regarding *existing* third-party wireless-provider installations, which has

not already been submitted, the electric utilities are happy to discuss with the Department how best to compile such information.

2) Allow small wireless structures taller than 50 feet, and wireless equipment higher than 50 feet – The proposed rule language provides that a small wireless structure shall not be "taller than 50 feet above ground level at the location of installation." Assuming the phrase -- "at the location of installation" means where the pole goes in the ground, as opposed to where the wireless equipment is attached, this proposed language would prohibit small wireless structures from being taller than 50'. The FCG TAC has several concerns with this prohibition. For example, the only statutory restriction on the height of a pole, in Section 337.401(7)(d)5., is to be no higher than the "tallest existing utility pole as of July 1, 2017" within 500 feet. If there is not a pole within 500 feet, then the pole height is limited to 50 feet. Moreover, electric utilities currently have many poles taller than 50 feet, and do not want to foreclose the option of permitting new wireless equipment on such poles, especially given the rapidly changing nature of wireless technology. Further, there may be some existing poles taller than 50 feet in the Department's right-of-way to which third-party wireless equipment is currently attached and properly permitted, and per the comment above, such existing equipment should not be prohibited or required to obtain additional permitting.

Second, even if a structure/pole can be taller than 50', this proposed language prohibits the installation of wireless equipment higher than 50'. The FCG TAC is not aware of a legitimate basis for this prohibition and has several concerns. For example, has the Department evaluated whether its prohibition in Proposed Rule 14-46.005(2)(c) conflicts with 47 U.S.C. 1455(a), and FCC rules promulgated thereunder? This federal statute prohibits a State or local government from denying certain requests to add wireless equipment to certain structures. Further, to the extent the Department is relying on "contractual obligations under any leases entered into pursuant to Section 337.251, F.S.," as referenced in Proposed Rule 14-46.005(1), we have additional concerns. Specifically, the FCG TAC members are not a party to these leases, and it not fair or reasonable to limit our rights based on such lease's provisions. Further, pursuant to Section 337.251, F.S., Department leases "may not interfere with . . . present or future utility needs for that property nor be contrary to the best interests of the public."

Accordingly, we request that the Department revise its proposal to limit this new rule to *new* wireless equipment and allow the permitting of new wireless equipment on a pole taller than 50 feet, and at a location on the pole higher than 50'.

Thank you for your time and consideration of these comments. We look forward to working with you as this rulemaking proceeds. If you have any questions, or need any additional information, please feel free to contact me at (352) 459-4671, or Robert Manning at Hopping Green & Sams at (850) 222-7500.

Respectfully,

Robert Manning

for

Robb Brown
Chair, FCG Transportation Advisory Committee

Cc: Mr. Austin Hensel, FDOT
Mr. Patrick Overton, FDOT
Mr. Will Watts, FDOT
FCG TAC
Robert Manning, HGS

ATTACHMENT A

FCG-TAC REQUESTED REVISIONS TO FDOT'S PROPOSED RULE 14-46.005

14-46.005 Wireless Utilities

(1) Purpose. This rule is established to provide requirements for the installation, operation, maintenance, relocation, and adjustment of Small Wireless Equipment and Small Wireless Structures within the Florida Department of Transportation's (FDOT) rights-of-way in a manner that protects the safety of the travelling public, provides for the effective and orderly management of the right-of-way, and is consistent with ~~the FDOT's contractual obligations under any leases entered into pursuant to~~ Section 337.251, F.S.

(2) Terms and Acronyms. All terms in this rule shall have the same meaning as those in Section 334.03, F.S. Additionally, the following terms are defined:

(a) Wireless Equipment: means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, and equipment associated with wireless communications. The term includes Small Wireless Equipment. The term does not include any structure or pole on which the equipment is attached, physical lines for backhaul facilities, physical lines between wireless structures, or technology installed as part of or in support of electric distribution pursuant to and consistent with UAM Section 2.3.1(8).

(b) Small Wireless Equipment: means Wireless Equipment that meets all the following conditions:

1. Each enclosed antenna is located inside an enclosure of no more than six (6) cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all its exposed elements can fit within an enclosure of no more than six (6) cubic feet in volume;

2. All other associated wireless equipment is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume:

a. electric meters,

b. concealment elements,

c. telecommunications demarcation boxes,

d. ground-based enclosures,

e. grounding equipment,

f. power transfer switches,

g. cutoff switches,

h. vertical cable runs for power and other services, and

i. Small Wireless Structures.

3. Does not extend more than 10 feet above the Small Wireless Structure to which it is attached.

(c) Small Wireless Structure: means ~~an existing, proposed, or new~~ a pole or other

structure that has or is intended to have Small Wireless Equipment attached to it ~~and is not taller than 50 feet above ground level at the location of installation~~.

(d) UAM: 2017 Utility Accommodation Manual, as incorporated in Rule 14-46.001, F.A.C.

(e) UAO: The Utility Agency/Owner of Small Wireless Equipment, a Small Wireless Structure, or both.

(3) Utility Permits. No new Wireless Equipment other than Small Wireless Equipment attached to a Small Wireless Structure may be installed pursuant to a utility permit in FDOT right-of-way. This provision shall not preclude the right of a Department lessee to install, locate or maintain other wireless equipment in accordance with the terms of their lease with the Department.

(a) The UAO shall obtain a utility permit pursuant to the UAM prior to installing new Small Wireless Equipment in FDOT's right-of-way. ~~The UAO shall comply with this rule and the UAM. To the extent the UAM and this rule conflict, this rule shall control; however, if the conflict is one in which this rule is silent and the UAM addresses the specific circumstance at issue, the UAM shall control.~~

(b) An existing structure that is already authorized to be within FDOT's right-of-way may be used as a Small Wireless Structure provided it meets the requirements of ~~this rule and~~ the UAM. If the existing structure is owned by a third party, the UAO must obtain the owner's consent for attachment prior to applying for a permit.

(4) Placement Limitations. The UAO shall not install or maintain any Small Wireless Equipment pursuant to a utility permit that interferes with the function of, replaces, or is intended to replace any FDOT structure, transportation facility, or equipment, including Wireless Equipment.

(5) Signal Interference. The UAO shall comply with all applicable Federal Communication Regulations relating to signal interference. If, at any time, including after installation of the Small Wireless Equipment, the UAO's Small Wireless Equipment interferes with any existing, proposed, or new FDOT Wireless Equipment, the UAO shall immediately eliminate the interference. If the UAO's Small Wireless Equipment interferes with any previously permitted Wireless Equipment in FDOT's rights-of-way, the UAO shall immediately eliminate the interference.

(6) Utility Permit Application Package. Application for a wireless utility permit shall be made through the online One-Stop Permitting website available at: https://osp.fdot.gov. In addition to the submittals required in UAM Section 2.4, the UAO shall include the following:

(a) If the Small Wireless Equipment is attached to a Small Wireless Structure owned by a third-party, the UAO ~~and third-party~~ shall certify that the UAO is authorized to attach its Small Wireless Equipment to the third-party's Small Wireless Structure;

(b) Plans view drawings (to scale) showing the location of the proposed Small Wireless Equipment and Small Wireless Structure, including the power source; and

(c) An engineering analysis documenting the operational frequency band, any potential interference effects, and an RF interference survey.