



To: Cell Tower Right-of-Way Task Force Members

From: David G. Shields, Chair, Cell Tower Right-of-Way Task Force

Date: August 23, 2016

Subject: Follow up to August 22, 2016 Task Force Conference Call

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This memorandum summarizes and extends the discussion held on the August 22, 2016 Task Force Conference call.

Diana Johnson, Assistant County Attorney for Lake County, volunteered and was elected unanimously as Vice Chairman of the Task Force.

Inquiries have been made from attorneys who are not members of FACA to join the Task Force. After discussion, a motion was made, recorded and approved unanimously to limit membership on the Task Force to FACA members only. At a later time after this matter has been explored further, the Task Force may hold a joint conference with other groups representing local governments.

It is anticipated that many documents will be found and shared with the Task Force on this project. To facilitate this process, all documents should be e-mailed to Ginger Delegal who will make them available on the FACA website as discussed in the conference call.

An extended discussion ensued on the substance of this matter. It was the consensus that Robert Eschendelder's August 19, 2016 e-mail provided useful background material and a good list of issues to investigate. I also have some additional issues to pursue. To simplify matters, the following is a proposed list of areas to investigate or research:

- Contact a knowledgeable attorney at the Federal Communications Commission (FCC) to discuss the FCC's position on cell towers in public right-of-way.
- Orange County Assistant County Attorney Roberta Alfonso stated in the conference that she would follow up with Attorney Kelley Corbari at the

Florida Public Service Commission (PSC) to discuss the PSC's position on cell towers in public right-of-way.

- Research the legislative history of Sections 337.401 and 362.01, Florida Statutes (2016), to determine if there is anything in committee staff reports relevant to cell towers in public right-of-way. There does not appear to be any relevant case law under this statute in the Florida Statutes Annotated.
- Research reported cases, and FCC orders under possibly applicable provisions of the Telecommunications Act, including 47 U.S.C. §253, 47 U.S.C. § 224, and 47 U.S.C., § 257.
- Collect and submit to Ginger DeLegal any county or city ordinances in Florida dealing with cell towers in the public right of way. So far, I am aware of such ordinances in Cape Coral, Jacksonville, Orlando, Sanford and Tallahassee and I will be sending them.
- Research whether counties need to adopt a moratorium while reviewing this issue and the legal issues surrounding any such moratorium.
- Research whether there is any legal basis for a revenue source to local governments related to this matter. Section 337.401 and Chapter 202, Florida Statutes (2016), seem relevant to this issue.

In addition, all of the questions on page 8-9 of Robert Eschenfelder's e-mail seem worth investigating further. Some but not all of them overlap the above list. Overall, this matter seems very fluid right now. I welcome any suggestions of additional areas to look into.

DGS/dre