

# Control of Local ROW: PSCW vs Municipalities

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# The Good Old Days

- Municipal Home Rule Authority
- Wis. Stat. § 196.58 (4)
- Wis. Stat. § 182.017(1) & (2)

# **Chapter PSC 130**

## **Municipal Regulation of Municipal Rights-Of-Way**

Effective July 1, 2003

# 2007 Wis. Act 42

- Eliminated Municipal Cable TV Franchises
- Amended § 182.017
  - Added a new definition of Company
  - Gave PSCW complaint authority over complaints brought by a Company

# Company

- A domestic corporation organized to furnish telegraph or telecommunications service or transmit heat, power, or electric current
- An ISO
- ATC
- A telephone or electric cooperative association
- A cable TV or video service provider

# 2008 ROW Cases Under §196.58

- WPSC v. City of Manitowoc, Docket 9300-GI-102 (Wis. PSC April 18, 2008)
- WPSC v. City of Oconto, Docket 9300-EI-102 (Wis. PSC April 18, 2008)

# 2013 Wis. Act 20

- Petition of Brett Healy for Declaratory Ruling to Determine Allocation of Costs for Relocation of Utility Structures for Milwaukee Streetcar Project, Docket 5-DR-107 (Oct 5, 2011)
- Amended both § § 182.017 and 196.58
- Purpose: Kill the Milwaukee Streetcar
- Makes municipalities responsible for the utility's cost to move its facilities out of the way of a streetcar project

# Today's Issue:

## Cell Towers in the ROW

- Increased demand for wireless data services
- Huge increase in number of
  - Monopoles
  - Traditional cell towers
  - DAS
  - Small cells



# The Players

## Wireless Providers

- Have FCC licensed spectrum to provide service
  - Verizon Wireless, US Cellular, Sprint
- Not subject to PSCW Regulation
- Have federal law right to build monopoles, DAS or small cell
- BUT still subject to municipal regulation

# The Players

## Facility Developers

- No FCC licensed spectrum and provides no wireless services
  - Mobilitie, Crown Castle, American Tower
- Build wireless infrastructure in ROW to rent to the wireless carriers (e.g., Sprint)
- Claim federal law right to build facilities in ROW
- ALSO – Claim right to ROW under PSCW CLEC/ATU Certification

# Issues Raised by Facility Developers

- Should developers be eligible for CLEC certification?
- Do developers have the right to use poles owned by electric utilities under Wis. Stat. § 196.04.
- Does CLEC certification limit municipal ROW authority over developers?

# Possible Legislation

- AT&T pushing for limits on municipal ROW authority over wireless facilities in the ROW
- Ohio recently passed such legislation
- Similar legislation pending in at least 20 states.