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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 11(A)(7)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: April 22, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Resolution urging Florida Legislature to amend Florida Statutes concerning placement of communications facilities in the public roads or rights-of-way

Resolution No. R-443-08

The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Joe A. Martinez.

R. A. Cuevas, Jr.
County Attorney

RAC/jls

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: April 22, 2008

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 11(A)(7)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(7)
4-22-08

RESOLUTION NO. R-443-08

RESOLUTION URGING THE FLORIDA LEGISLATURE TO AMEND STATE LAW TO ELIMINATE THE REQUIREMENT THAT CITY OR COUNTY REGULATIONS RELATING TO PROVIDERS OF COMMUNICATIONS SERVICES PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN ITS ROADS OR RIGHTS-OF-WAY MUST BE GENERALLY APPLICABLE TO ALL PROVIDERS OF COMMUNICATIONS SERVICES

WHEREAS, the Federal Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7), preserves local government authority over zoning and other decisions regarding the "placement, construction, and modification of personal wireless service facilities," provided that the regulation does not "unreasonably discriminate among providers of functionally equivalent services" or "prohibit or have the effect of prohibiting the provision of personal wireless services"; and

WHEREAS, Florida Statutes § 337.401 goes further than mandated by the Federal Telecommunications Act because it requires that "[r]ules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services," where communications services means not only personal wireless services but also "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance"; and

WHEREAS, providers of personal wireless services contend that Florida Statutes § 337.401 requires local governments to treat them as equivalent to traditional telephone utilities in permitting installation of communications facilities in the public roads or rights-of-way; and

WHEREAS, a traditional telephone utility involved a single provider of telephone service; and

WHEREAS, unlike the traditional telephone utility, personal wireless services are offered by a multiplicity of providers, each of whom have differing types of equipment, including poles, towers, and cabinets, and each of whom serve overlapping areas of the County, including residential neighborhoods; and

WHEREAS, Florida Statutes § 337.401 also prohibits local governments from requiring providers of communications services to enter into franchise or license agreements as a condition of installing their equipment in the public roads or rights-of-way; and

WHEREAS, allowing personal wireless service providers to use the public roads or rights-of-way on the same terms as the traditional telephone utility may result in the proliferation of unsightly poles, towers, cabinets, and other equipment from multiple providers in the public roads and rights-of-way throughout the County, including many residential neighborhoods,

NOW, THERFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature to amend Florida Statutes § 337.401 to eliminate the requirement that "[r]ules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services."

Section 2. Directs the Clerk of the Board to transmit a certified copy of this resolution to the Governor, Senate President, House Speaker, Chair and Members of the Miami-Dade County State Legislative Delegation.

Section 3. Directs the County's state lobbyists to advocate for the legislation set forth in Section 1 above, and directs the Office of Intergovernmental Affairs to include this item in the 2008 State Legislative Package.

The foregoing resolution was sponsored by Commissioner Joe A. Martinez and offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Barbara J. Jordan**, and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman **aye**
Barbara J. Jordan, Vice-Chairwoman **aye**

Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**absent**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Joe A. Martinez	**aye**	Dennis C. Moss	**absent**
Dorrin D. Rolle	**aye**	Natacha Seijas	**aye**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of April, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.
Dennis A. Kerbel