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## NJ Board of Public Utilities Agrees with Firm Attorney on Important Right-Of-Way Issue

Edward Purcell on January 20, 2018

The New Jersey Board of Public Utilities (NJBPU) has issued a Frequently Asked Question (FAQ) notice regarding the placement of wireless facilities in the municipal right-of-way (ROW) by [Competitive Local Exchange Carriers \(CLECs\)](#). CLECs are companies authorized by the NJBPU to provide “competitive” telecommunications services in the state of New Jersey. While this area still requires the advice of legal counsel, this FAQ provides some clarity to an issue that has been confusing for many municipalities.

By way of background, over the last few years, many CLECs have argued that their legal status allowed them an absolute right to place wireless facilities in the municipal ROW. These companies have also argued that their status exempts them from any oversight or siting requirements by municipalities. Edward Purcell, Esq., an attorney at DiFrancesco Bateman P.C., noted for his knowledge and experience in this area, has counseled municipalities that the NJBPU’s designation of these companies as CLECs does not give them automatic entry into the municipal ROW. Mr. Purcell has also counseled towns and stated publicly at seminars that these facilities were still subject to local siting requirements. Apart from counseling and educating municipalities, over the last few years, Mr. Purcell has worked with different stakeholders, including the New Jersey State League of Municipalities, certain CLECs, and the NJBPU in order to provide some clarity to this issue.

In adopting this FAQ, the NJBPU has adopted Mr. Purcell’s position in relation to the status of CLECs and their legal ability to gain access to the municipal ROW. The FAQ clearly provides that the NJBPU’s regulation of CLECs is solely based on their wireline activities. Thus, the siting of wireless facilities falls within a municipality’s zoning power and its authority to regulate the ROW. Put simply, CLECs that are seeking to place wireless facilities in the ROW are not exempt from local oversight.

We commend the NJBPU for providing some clarity to this issue. Additionally, we congratulate Mr. Purcell and thank him for his work in helping reach this result.

If you have any additional questions regarding this FAQ, please reach out to Mr. Purcell at (908) 757-7800 x 121.