



January 13, 2020

The Honorable Brad Roae  
Chairman  
House Consumer Affairs Committee  
162 East Wing  
Harrisburg, PA 17120

The Honorable Robert Matzie  
Minority Chairman  
House Consumer Affairs Committee  
121 Irvis Office Building  
Harrisburg, PA 17120

Re: Omnibus Amendment to House Bill 1400 – Small Wireless Facilities Deployment

Dear Chairmen Roae and Matzie,

Thank you for providing the omnibus amendment for us to review in advance of Tuesday's Committee meeting. We wish to reiterate our strong support for the deployment of wireless broadband throughout the Commonwealth. We recognize that high-speed internet service is essential for economic growth, educational advancement, the delivery of quality healthcare, and the provision of public safety and other local government services. For this reason, Pennsylvania municipalities have already approved hundreds of small wireless facilities in the public rights-of-way for the past eight years.

We also wish to acknowledge the work that has been done to address some of our concerns with House Bill 1400. We note that this amendment brings the bill in line with the FCC Order on the size and height of the facilities and makes improvements to the indemnification and restoration provisions, as well as the addition of a rural broadband component.

These issues are secondary in nature, however, compared to our central issue, which is the preemption of local zoning authority over the management of wireless facilities in the public rights-of-way. From the outset of this process three years ago, we have expressed to the Committee that our preeminent issue is the preservation of this important and well-established authority. This issue has been and continues to be the most important issue to our members. We find this very disappointing, as it forces us to remain opposed to the bill.

Preservation of local zoning authority over wireless facilities is not an unrealistic wish of local governments, but rather a longstanding tenet of federal law. The Telecommunications Act of 1996 (“TCA”) explicitly preserves local zoning authority over wireless facilities. 47 U.S.C. §332(c)(7)(a). This authority is subject to certain key limitations, which have been expounded upon by the Federal Communications Commission on multiple occasions since the passage of the TCA. Most recently, the FCC’s 2018 Declaratory Ruling and Third Report and Order (“Order”) prescribed further restrictions on municipal authority over newly-defined “small wireless facilities”.

Even with the FCC’s extensive regulations and specific limitations on local government’s management of small wireless facilities in the public rights-of-way, **the FCC has never suggested that local control of such facilities should be eliminated in its entirety.** In fact, the Order clarifies how local governments are permitted to use their local zoning authority to regulate small wireless facilities within the confines of federal regulations. Our members understand the limitations that are contained within federal law, and our municipalities have operated within these limitations. We do not agree with the need to turn a federal Order that establishes new limitations on municipalities into a complete and total prohibition of local authority.

We further note that the Order establishes short timeframes in which municipalities must make decisions on applications and imposes remedies when municipalities fail to comply with federal requirements. These requirements are friendly to the wireless industry and ensure that municipalities do not delay deployment. It is contradictory to eliminate municipal zoning authority when the expert agency tasked with promoting wireless deployment acknowledges that common sense municipal regulations play a role in ensuring that such deployment is undertaken responsibly. It is also misguided to remove the only level of government that has the experience and expertise to protect public safety and manage all facilities in the public rights-of-way from the process.

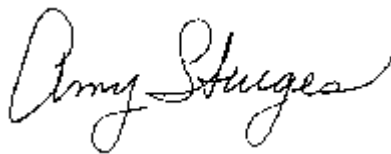
Preservation of local zoning authority is also a longstanding tenet of state law. Zoning is a well-established local tool to protect the health, safety and welfare of residents and their property. It is also a tool to guide growth and preserve the natural and historic features of a community. In fact, Pennsylvania and its local governments have a duty to preserve the natural and esthetic elements of the environment and consider the consequences to the environment before enacting state and local laws. The zoning preemption contained in HB 1400 will compromise local governments’ ability to uphold this duty.

Several times we have offered a compromise on the zoning preemption. Again, we would be agreeable to an administrative process to approve the collocation of wireless facilities on existing poles, thereby only subjecting new poles to local zoning; and, of course, only within the shortened approval timeframes set by the FCC.

Finally, we are concerned that the split fee of \$220 (right-of-way fee) and \$50 (municipal pole fee) should be a straight \$270 so as to match the FCC Order. Additionally, Pennsylvania's municipalities with costs higher than \$270 per year should be able to substantiate a higher fee as allowed by the FCC Order. Otherwise, local taxpayers in those jurisdictions are subsidizing the wireless companies for use of the rights-of-way.

The addition of these concepts to the bill would bring us to a "neutral with concerns" position on the amendment and bill. We remain open to working on the items raised above. We can provide language again to address these issues, but this language is in the mark-up provided in late September to the Committee staff.

Sincerely,



Amy Sturges, Director of Governmental Affairs  
PA Municipal League  
PA State Association of Township Commissioners



Ed Troxell, Director of Governmental Affairs  
PA State Association of Boroughs

C: Philip Kirchner, Executive Director  
Elizabeth Rosentel, Executive Director  
Members of the House Consumer Affairs Committee