



**Testimony Regarding House Bill 2564 on behalf of the PA Municipal League and the PA State Association of Township Commissioners
August 9, 2018**

Introduction

Chairman Godshall, Chairman Caltagirone, and honorable members of the Consumer Affairs Committee, thank you for the opportunity to testify today regarding House Bill 2564, called the “Small Wireless Facilities Deployment” bill. My name is Dan Cohen and my testimony today is on behalf of the PA Municipal League and the PA State Association of Township Commissioners. The Municipal League has been assisting local governments throughout the Commonwealth for over 110 years. Its 98-member municipalities comprise more than one-third of Pennsylvania’s total population. The Pennsylvania State Association of Township Commissioners is comprised of townships of the first class. PSATC has been advancing the interests of first class townships for nearly 90 years. Together, PML and PSATC represent over 160 full-service urban and suburban communities.

Both of these municipal associations are fierce advocates for the deployment of high speed broadband throughout the Commonwealth. We know first-hand that, like railroads in the 19th century and electricity in the 20th century, broadband in the 21st century is essential for economic growth, educational advancement, and the delivery of quality healthcare. For local governments, broadband is also critical for providing eGovernment services and the development of “smart” cities, townships, and boroughs.

We are keenly aware that many Pennsylvanians lack access to high-speed broadband service, especially in rural areas. Approximately 10% of all Americans do not have the benefit of the minimum internet speeds prescribed by the FCC, but this is true of 39% of rural Americans. This is especially problematic in Pennsylvania, where, according to the Governor’s Office, over 800,000 residents lack high speed internet service.

Because municipalities are advocates for the build-out of broadband networks, they have been approving the facilities needed for broadband deployment for decades. Beginning with the franchising of cable systems and then the permitting of fiber construction, municipalities are on the front lines of approving the build-out of broadband networks. Approximately seven years ago, wireless companies in Pennsylvania started contacting municipalities to install wireless facilities in the public rights-of-way. These include large antennas on existing utility poles and new fiberglass towers as part of wireless networks known as “distributed antenna systems” or DAS. These networks were called 4G. The next generation of wireless service, 5G, does not yet exist commercially, but whether you call the technology DAS, 4G, or 5G, municipalities in Pennsylvania have been approving these facilities in the rights-of-way for seven years.

Local Management of the Rights-of-Ways

The reason is that the Commonwealth has legally assigned municipalities with the task of managing their streets and roads. Every municipal Code (whether it’s the City Code, Township Code, or Borough Code) requires municipalities to control and manage their public rights-of-way. Pennsylvania’s citizens expect their local governments to uphold this obligation.

The right-of-way is a very narrow ribbon of real estate and numerous companies want to install their facilities within it—gas companies, electric companies, telephone companies, water authorities, fiber companies, wireless carriers, wireless contractors, the list is quite long. There is no other level of government closer to the action or better equipped to juggle the competing interests vying for space on that property. Municipalities manage these facilities in a manner that protects public safety while allowing companies to offer their services.

What’s involved in managing the rights-of-way? By way of example, it includes:

- Receiving and reviewing applications for new facilities.
- Requesting additional information, including construction drawings, etc.
- Managing the approval process.
- Inspecting facilities during construction and periodically thereafter.
- Managing vehicular and pedestrian traffic during construction.
- Responding to citizen complaints.
- Ensuring repair of public and private property damage.

H.B. 2564 Would Strip Local Zoning

House Bill 2564 would almost completely emasculate the ability of municipalities to manage their rights-of-way with respect to wireless facilities. In other words, it would prevent them from doing their jobs as required by the Commonwealth. First, it would strip local governments of their zoning authority over these facilities. Zoning is an essential tool to maintain the character of our communities and federal law expressly preserves local zoning for the regulation of wireless facilities. Section 3(j) of the H.B. 2564, however, states that a wireless company would have the right “as a permitted use...**not subject to zoning review or approval**” to install a new tower or large antenna. This means that the application must be approved at the permit counter without any zoning process and without opportunity for public comment.

If H.B. 2564 is enacted, a municipality would not be able to require that new towers and wireless facilities in the rights-of-way: 1) be subject to zoning approval; 2) comply with collocation incentives to place antennas on existing poles rather than new poles; 3) be limited to certain zoning districts or roads that provide ample areas for such facilities; 4) employ stealth technology to be as unobtrusive as possible; or 5) be subject to insurance and indemnification requirements. Municipalities would be forced to approve any facility proposed by a wireless company regardless of its appropriateness.

While Section 3(e) of the bill states that the maximum height of a tower is either 50 feet or 5 feet higher than the tallest pole within 500 feet, the same section gives a wireless company the “**right to...install...a utility pole that exceeds these height limits**” so long as it files a “height limit waiver request.” The bill fails to include any requirements for the consideration of such a waiver request, suggesting that municipalities would have no ability to review the impact of a significant wireless installation. The bill effectively gives a wireless company the right to install a new tower at any height it wishes.

H.B. 2564 Would Drastically Reduce Fees

H.B. 2564 would also strip municipalities of their right to recover their costs related to wireless facilities. There are typically four fee categories for wireless facilities in the rights-of-way: 1) an application fee; 2) a fee for new antennas on existing utility poles; 3) a fee for new

antennas on municipally-owned poles; and 4) fees for new poles. Based on our experience in working with municipalities and negotiating directly with wireless companies, the current fees for these categories in Pennsylvania fall within the following ranges:

- Application fee: **\$750-\$1,500**, depending on the wireless facility.
- Fees for new antennas on existing utility poles: **\$250-\$500** per year
- Fees for new antennas on municipally-owned poles: **\$1,500-\$3,000** per year
- Fees for installation of new poles: **\$750-\$1,250** per year

These fee ranges are in line with actual municipal costs. The maximum fees prescribed in H.B. 2564 are:

- Application fee: **\$100** (Section 4(n))
- New antennas on existing utility poles: **\$25** per year (Section 3(c))
- New antennas on municipally-owned poles: **\$50** per year (Section 5(d))
- Installation of new poles: **\$25** per year (Section 3(c))

Not only are these fees a tiny fraction of the fees that municipalities are assessing today, but they clearly would not allow municipalities to recover their actual costs. Given that the fees do not come close to allowing for cost recovery, local taxpayers would be forced to subsidize the wireless companies. It would effectively impose a new tax on residents and businesses. Meanwhile, the wireless industry will see huge savings by not paying market rates (or anything close to market rates) for property that they use.

H.B. 2564 Shortens the Application Review and Approval Process

H.B. 2564 would also curtail the process for approval of wireless facilities applications that has been established by the FCC. The FCC has prescribed specific time frames for local governments to review and act on wireless facilities applications. These time frames are aimed at streamlining municipal review and promoting rapid broadband deployment. They are:

- 30 days for initial review of an application for completeness.
- 90 days for action on a new antenna collocated on a utility pole or other structure.
- 150 days for action on a new tower.

If a municipality fails to act within these time periods, then the application is deemed approved under federal law. H.B. 2564 would significantly shorten these deadlines to:

- 15 days for initial review of applications for completeness (Section 4(d))
- 60 days for action on a new tower or antenna (Section 4(e))

These shorter time periods are unworkable for most municipal governments. In addition, the bill allows a wireless company to submit requests of up to 20 facilities in a single application. This exponential increase in the number of requests would make it virtually impossible for municipal staffs, who must balance the many competing interests inherent in managing a municipality, to review and act on these requests on time. Many communities would be forced to hire outside engineers and/or planners to complete the process in a timely fashion, which would significantly increase their costs. Again, local taxpayers would have to subsidize the industry to pay for these increased costs.

Municipal Survey Results

So the question becomes “why”? Why is it advisable for the General Assembly to strip municipalities of their zoning authority, make it impossible for them to recover their costs, and demand unworkable deadlines for acting on wireless applications? Have municipalities been an obstacle to the build-out of wireless networks in Pennsylvania? Earlier this year, our law firm conducted a survey of our municipal wireless clients to find the answer to this question.

Of the approximately 130 municipalities that we’ve worked with on wireless matters, 71 of them (from 26 counties) completed the survey. Of those 71 municipalities, 41 said that they had been contacted by wireless companies seeking to locate towers or antennas in the rights-of-way. Each of these municipalities had their own experiences with wireless companies, including many who could not get a response from company representatives during the approval process, others that were likewise ignored once such facilities were approved and new issues arose, or companies that submitted applications and then withdrew them without explanation. But the bottom line is that **not one of the 41 municipalities that were contacted by wireless companies denied a wireless application.** Not one. Every single municipality that received applications for wireless facilities in the rights-of-way approved them. And they did so within the FCC timeframes

or, in a few instances, within agreed upon time frames. We are happy to provide this Committee copies of the survey responses. So again, what is the public policy problem here that requires a legislative solution?

Service to Unserved Areas

There is one legitimate public policy problem when it comes to wireless broadband and that is that there are unserved areas in the Commonwealth. Many rural areas still do not have access to high speed broadband service. Regrettably, there is nothing in H.B. 2564 that requires wireless companies to address this legitimate issue and expand their networks into unserved rural areas.

Conclusion

For all of these reasons, House Bill 2564 is a flawed bill and the Pennsylvania Municipal League and State Association of Township Commissioners urge this Committee to reject it as written. Our associations remain open to working with the sponsor and the wireless industry to make this bill workable for both the industry and local governments. There is room for compromise. Unfortunately, there has been no substantive engagement to date with the municipal associations about this legislation. We look forward to having such a discussion in order to achieve the mutual goals of expanding wireless broadband while properly managing the rights-of-way and preserving the character of our communities. Thank you.

Respectfully submitted,

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