TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

BEFORE THE
HOUSE CONSUMER AFFAIRS SUBCOMMITTEE
ON TELECOMMUNICATIONS

ON

HOUSE BILL 1400 *(PN 2072)*

PRESENTED BY

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HARRISBURG, PA

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Chairman Farry and members of the House Consumer Affairs Subcommittee on Telecommunications:

Good morning. My name is David M. Sanko and I am the executive director for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today on behalf of the 1,454 townships in Pennsylvania represented by the Association.

The Association is a non-partisan, non-profit member service organization. Member townships represents 5.6 million Pennsylvanians — more residents than any other type of Pennsylvania municipal government and cover 95 percent of the commonwealth's land mass. Thank you for giving us the opportunity to comment on an issue that is impacting many of our members.

HB 1400 *(PN 2072)* provides for the regulation of small wireless facilities in the municipal rights-of-way. We understand that this legislation is an effort to provide compromise legislation to **HB 1620** and **HB 2564** from the 2017-2018 session and we appreciate the efforts of the sponsor to attempt to bridge this gap.

Improvements compared to prior session legislation

We recognize that there are improvements when comparing HB 1400 with the prior versions of the bill. For one, a previous version of the bill would have essentially eliminated municipal zoning authority over the placement of most, if not *all* wireless facilities including large tower and guyed-wired monopoles both within and outside the right-of-way. HB 1400, in contrast, only addresses the placement of small wireless facilities and supporting utility poles within the right-of-way.

From our perspective, improvements over prior versions are retained. Multiple iterations of this legislation continue to improve from a municipal perspective and several of our suggested changes have been incorporated into the current version.

One of our previous suggestions was to amend Section 3(e), size limits, to remove language that would have allowed a provider to go higher than the 50-feet height limitation simply by filing a waiver with the application. Under the current language, if collocation is not an option, a provider may install a new utility pole greater than 50 feet subject to applicable zoning regulations. This addresses a major issue with several prior versions of this legislation.

Section 3(i) was expanded to allow a penalty to be charged if a provider performs work within the right-of-way and fails to return the right-of-way to its prior condition. In addition, the new language would allow a municipality to withhold new permits until the provider has paid for repair costs and the assessed penalties. We believe this is a reasonable improvement that will help municipalities to protect and maintain their right-of-way.

Language was removed from the prior version of the legislation that would have made collocation of small wireless facilities in the right-of-way and installation of new utility poles with small wireless facilities within the right-of-way a permitted use, not subject to a zoning

review. This problematic language does not appear to be in HB 1400 and this is another reasonable improvement.

Language was added to Section 4(c) to require an applicant to provide documentation demonstrating that they have obtained all necessary approvals from the pole owner, which we believe is a reasonable addition and improvement.

Another previous suggestion was to include an indemnification provision for any damages caused by a provider's negligence. We note that an indemnification provision was added to HB 1400. However, it appears to be limited to damage caused solely by negligence on behalf of the provider or its agents. How would this apply if the provider or its agents was partially or a contributor to damage due to its negligence? This provision may need to be tightened.

FCC Order

Since the August hearing on a previous version of this legislation, the Federal Communications Commission established rules for municipalities nationwide. These rules include new shot clocks for the review of applications, caps on fees, and allowing aesthetic requirements within a limited framework. The legislation before us today appears to incorporate the order, as we will detail below.

Our position on HB 1400 is set by our membership. which has established numerous policies on small wireless facilities, management of rights-of-way, and fees. Our members are very concerned that they be able to continue to exercise reasonable oversight and collect fees for their right-of-way and the collocation of wireless facilities on municipal infrastructure.

Fee limitations

One of the significant changes from the prior version is the higher fee limitations. While these changes are an improvement over prior versions, we recognize that these revisions are due to the recent FCC order, which capped application fees at $500 for up to five small wireless facilities and an additional $100 for each facility beyond five. In addition, recurring fees for rights-of-way access and/or attachment to municipally-owned structures are limited to a combined $270 under the FCC order, which is reflected in HB 1400.

The $170 right-of-way fee combined with the $100 attachment fee are a step in the right direction, but further movement should be toward increasing the right-of-way access fee even at the expense of the pole attachment fee. Maintaining the right-of-way is more costly and represents an ongoing expense.

There is a new provision in HB 1400, Section 7(c), that addresses fee or rate adjustments if the FCC adjusts its caps on fees or if any portion of the FCC order is struck down. If the FCC adjusts its fees, municipalities would be authorized to adjust their fees accordingly, which we believe is reasonable. If the FCC order is struck down, municipalities could raise fees or rates by 1.5 percent annually beginning January 1, 2021.

Review process

One of the other major issues in the FCC order is the establishment of federal limitations on the municipal review of applications for small wireless facilities. Under the new FCC rule, which is incorporated into HB 1400, municipalities have 60 days to review applications for collocation on preexisting structures and 90 days for the installation of a new structure with attached small wireless facilities. The previous version would have granted only 60 days for all reviews, which was problematic.

However, there appears to be conflicting language in Section 4(f)(2), where the municipality would be required to document the basis for a denial within 60 days of receiving a completed application. This seems to be at odds with the above provision in Section 4(e) for new structures and we contend this language should be changed to allow 90 days for documenting the basis for denial of a new structure.

With that said, under HB 1400, the municipality would only have 10 business days to review an application for completeness and to notify the applicant if the application was incomplete. This is a change from the previous version, which would have allowed 15 business days to review the application for completeness, but would have required the municipality to notify all applicants if there submission was complete or incomplete. The new language only requires notice if the application is incomplete. In addition, if the application is incomplete, the deadline would now restart once the missing information was provided by the applicant. While we would prefer more time, this is a reasonable trade-off.

As in the previous version, HB 1400 has a consolidated application process, which is again reflected in the FCC rule. Under HB 1400, an application cannot exceed 20 small wireless facilities within 30 days in a single consolidated application or separate applications. HB 1400 does have improved language that provides an additional 15 days review time if more than one consolidated application or 20 single applications are received in a 45-day period. While this is an improvement over the prior version, a municipality could still be in a very tough position if it is swamped with even two consolidated applications at the same time, particularly with now having only 10 business days to determine completeness of the application. In addition, poles deployed by a third party are included in the total application count for the contracting provider. that the applicant has requested a third party to deploy are included as that provider's total application count.

Remaining issue

In HB 1400, the right-of-way includes the area on, below, or above any public road, street, sidewalk or alley. As written, the right-of-way includes both municipal and state-owned right-of-way along *any* public road. In addition, the definition includes utility easements on "similar property." Does "similar property" include utility easements on private property or only those located within the right-of-way along a public road? This needs to be clarified as this definition appears to be overly broad and should be restricted to the right-of-way along public roads.

Final thoughts

We applaud the progress the sponsors have made to protect municipal prerogative and local determination. We have worked in good faith to provide input on the legislation and for today's hearing. We would like to reserve the right to provide additional input as discussions unfold in committee

In closing, we want to acknowledge the work that has been put into this legislation when compared to prior versions from last sessions. We are encouraged by the progress of HB 1400, but some additional work needs to be done while the bill is in committee. We are willing to continue to work with the sponsor and this committee to address our concerns and provide this technology to our mutual constituents. Thank you for this opportunity, and I will now be available to answer any questions.