Recommendations to Improve SB 426
March 20, 2018
Association County Commissioners of Georgia

Please note that SB 426 guarantees nearly unregulated authorization for wireless providers to construct and place poles (50' high'), antennas (up to 6 cubic feet in volume and 10' higher than poles), equipment boxes (up to 25 cubic feet in volume), plus up to 4 cabinets (undefined size) and other infrastructure in county and city right of way (ROW). Local government management of the above is all but entirely usurped by this bill and the grounds by which applications can be denied are few. Accordingly, if citizens have future complaints or concerns about the deployment of this equipment or the effects on local government ROW, under this law, local officials will have no choice but to refer them to local legislators since state law now governs the entire permitting process.

ACCG has attempted to work with wireless industry, legislators and other stakeholders since last year to try to incorporate safeguards into the legislation. Many suggestions were unilaterally rejected by the industry, some were incorporated, but the bill is still in much need of improvement.

Specific Recommendations, by line:

Fees

Throughout the bill, the application fees paid by the provider should reasonably approximate the cost of the permitting process to the local government in order not to be subsidized by local taxpayers. This is not currently the case. To ensure this, and regarding the appropriate cost of location in the public's right of way:

ACCG suggests that Section 36-66C-2(h) (beginning at Line 239) be stricken in its entirety. We also suggest that Sections 36-66C-5 (b) (beginning at Line 471), (e) and (beginning at Line 490) be stricken in their entirety.

If the General Assembly feels compelled to set "hard" permitting fees, ACCG recommends the below fee schedule:

1. One-time $50.00, paid up front, for an application review fee per facility, perhaps allowing discount for several (not to exceed 10) on one joint application.
2. One-time installation flat fee of $1,000 for either collocation on an authority pole or a new pole; this is because an inspector must ensure that the installations are proper and spend similar amounts of staff time regardless of whether the provider is attaching to an authority pole, or is installing a new pole.
3. Annual maintenance fees for ROW-$200 per facility, regardless of who owns pole: if provider is on a county's traffic signal, there are additional costs to working around that equipment while maintaining county equipment; for all poles there are additional costs every year to inspect and ensure that all equipment is being appropriately maintained and not presenting any hazards to the public.

Please add EMCs to bill for collocation purposes

Add between lines 70 and 71: 'Existing structure' shall mean an existing utility pole owned or controlled by a local governing authority, Electric membership corporation, or utility service as the phrase 'utility service' is used in O.C.G.A. 46-2-70(4)." Please remove lines 579 - 583, which further exempts EMC poles, though EMCs cover over 70 percent of the state, thus are the largest owners of existing poles in Georgia. Having EMCs exempted necessitates the need for wireless providers to install new poles in the ROW. Again, collocation should be encouraged and incentivized throughout the bill.

Please add Georgia DOT under the definition of "authority" in lines 38-39

Despite proponents championing a statewide, streamlined process governing 5Gs' permitting and deployment of poles, equipment boxes, antenna, cabinets and the like in the ROW, this bill leaves state ROW out of the picture. Why should state roads be treated any differently than local roads? The author states that this is because DOT is working up a master permitting agreement, but we have no idea what conditions that will entail. **Another Option**: allow local government to choose between this bill's preemptions/prescriptions or following the state DOT utility accommodations policy, whenever that may be finalized. This would ensure the consistency that proponents seek, and treat state and local government ROW equally.

Relocation of small cell infrastructure in right of way

Lines 225 - 238 – Please add a hard shot clock of 90 days for wireless providers to remove/relocate poles, equipment, antennas, and other facilities in the public's ROW. If mandated shot clocks on permitting are good for local governments throughout the bill, then certainly they should also apply to the industry which is gaining from this public gratuity. We suggest penalizing the wireless companies for failing to meet their shot $500 per day until the equipment is removed.

Please consider revised language to truly encourage collocation

Lines 266 - 278 – Please change language to "A wireless provider shall not apply to install a utility pole unless such wireless provider has determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an Existing (see above in defining "existing" in definitions to include EMC poles) structure that meets the criteria set forth in paragraph (1) and (2) of this subsection. The authority may require a wireless provider to certify that such wireless provider has made such a determination in good faith of a licensed engineer, and to provide a documented summary of the basis for such determination. The wireless provider's determination shall be based on whether such wireless provider can meet the service objectives of the permit by collocating small wireless facilities on an Existing structure on which: (1) Such wireless provider has or could acquire the right to collocate, subject to reasonable terms and conditions of the owner of the Existing structure; and (2) Such collocation would not impose unreasonable technical limitations that would undermine the Existing structure's ability to meet its service objectives or significant additional costs"

Mutual collocation requirement among providers

Lines 546 - 558 – Please change the below language: "A wireless provider that installs utility poles designed to support its own small wireless facilities in rights of way in this state shall allow another wireless provider to collocate small wireless facilities on such utility poles, with each agreeing to reciprocal rates, terms, and conditions with the only limitation on this automatic right of collocation being if such collocation would impose unreasonable technical limitations that would undermine the utility pole's ability to meet its service objectives. ~~subject feasibility and commercially reasonable rates, terms, and conditions, if the other wireless provider agrees in writing to make available similar utility poles in the right of way in this state for collocation subject to the same rates, terms, and conditions~~."

The same collocation rates, terms and conditions that apply to local governments should also apply to the industry. Similar to seeking consistency with the above DOT and EMC language, why should Georgia have a double standard if it seeks to create a streamlined, statewide process?

With regard to risk issues

We suggest that Section 36-66C-8(a) (beginning at Line 531) be stricken and replaced with the following: "An authority may require a communications service provider to indemnify and hold the authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses or fees arising as a result of the placement, operation, or maintenance of wireless equipment, facilities, poles, or infrastructure, and an authority may also require a communications service provider to obtain insurance naming the authority, including its officers and employees, as additional insureds against any of the foregoing."

If the General Assembly feels it appropriate to allow near unfettered access to local government ROW, then we do not believe it is appropriate to then have taxpayers assume liability for these poles, antennas, equipment boxes and other equipment - particularly when local officials would be hereby preempted from effectively managing the permitting process.

Tighten up "abandonment" language

Lines 213 – 224: First, this language only applies to "small wireless facilities" and does not address the abandonment and removal of poles in the ROW. To fix this, on line 213, please add "A small wireless facility or utility pole"…

Secondly, on lines 215-216, local governments will not have the information by which to determine, and then notify a wireless provider, when a provider's small cell facility or pole is no longer in use and are thereby abandoned. Please change the language starting on line 213 to simply state that "A small wireless facility or utility pole that is not operated for a continuous period of 12 months shall be considered abandoned and the owner of such wireless facility or utility pole must remove such small wireless facility or utility pole within 90 days." Please remove the language "~~after receipt of written notice from the authority notifying such owner of such small wireless~~"… all the way to the word "period" on line 221.

Starting on line 221, begin new sentence: “Following that 90-day period, the authority may remove or cause….”

Historic preservation language should be tightened

Line 244: Remove the word “reasonable”. Nondiscriminatory and technology neutral gives providers plenty of wiggle room. Otherwise, the historic district language it too loose to be enforceable.

Please remove authority from stealth, concealment requirement

Lines 253 - 254: delete reference to “including the authority itself.” It doesn’t make sense to require government to “conceal” or impose “design criteria” on its property already existing. Does this mean that traffic signal poles would have to be of a specific “design” in order to impose any “design criteria” on providers?

Still opportunity for inundation with too many applications

Lines 346-355: 120 wireless applications pending *per provider* may be too many for jurisdictions to handle given the shot clocks and given the inability to hire staff with the trivial fees allowed. Please keep the number of pending permit applications to 8 per provider (but with each collocation and each pole counting as a single permit application) and tolling the shot clock time when there are 8 permits pending.

If this cannot be accomplished, please remove lines 468 -471 prohibiting moratoriums.

Please remove “deemed approved”

Line 313-316: We would suggest a penalty instead, or grounds by which to address grievances in a court of competent jurisdiction.

Spacing requirements don’t mean much

Lines 326 - 327: state that “such [local government] spacing requirements shall not prevent a wireless provider from serving any location”. This is too vague, likely nullifying the purported intent. What is “any location” and what is “serving”? Local governments need “reasonable” spacing requirements to avoid a picket fence of poles, equipment boxes, etc. on public sidewalks. Please remove the above sentence.

Please change notification language

Lines 331 - 333: An authority has to notify the provider BEFORE they deny an application? A lot of times the professional staff may have a good idea what the county commission may do but they’ve been known to changes their minds walking to the board meeting.

Make ready

Lines 513 - 515: Please shorten the time frame of an authority making its poles “ready” from 60 days.

Consultants are often necessary

Line 522: Locals often don’t have full time, experienced staff to do the load analysis and other studies necessary for “make ready” work on their poles. Instead, in fostering a public/private partnership, they utilize the services of consultants. Please add that

“reasonable” consultants’ fees and charges may be charged”, otherwise, again, taxpayers will be subsidizing this process.

Please add new section on authority regulation:

“An authority may regulate the height, size, appearance, and location of small wireless facilities and associated utility poles in the public rights of way for any public purpose, including preserving the safety of the public and addressing the aesthetics of residential neighborhoods.”