SB 426 Summary and Concerns
Association County Commissioners of Georgia, Feb. 26, 2018

The wireless industry's "**Broadband Infrastructure Leads to Development (BILD) Act**", or SB 426, guarantees telecommunications companies (providers) nearly unfettered access "along, across, upon and under" county and municipal (local) rights of way (ROW) to construct, install, maintain, operate and replace poles (50' high, or 10' taller than any existing pole within 500'), antennas (up to 6 cubic feet in volume and 10' higher than poles), equipment boxes (up to 28 cubic feet in volume, plus up to 4 cabinets of undefined size) and other infrastructure in order to deploy wireless facilities. A county or city (locals) may authorize poles and antennas exceeding these technical limits if it works out a non-exclusive arrangement with a wireless provider. This law fully occupies the entire field governing the placement and regulation of wireless facilities and poles within local ROW and any existing ordinances and agreements are, accordingly, null and void. Courts of competent jurisdiction shall determine all disputes arising under this law.

> **Concerns**: Line 52 - Definition of collocation is a problematic in that is defined to mean the installation of wireless facilities "adjacent" to an existing utility pole, including a 28 cubic foot equipment box. Whatever may be intended by the bill, the public's understanding of collocation does not anticipate the placement of wireless infrastructure "adjacent" to an existing pole; rather they're being told that collocation is only the placement "on" an existing pole.
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> An equipment box of up to 28 cubic feet in volume on a sidewalk/roadside is larger than your full-size family refrigerator/freezer combo. This will catch folks' attention, and be a hazard.

Not a Statewide, Streamlined Process

Despite championing a statewide, streamlined process governing this infrastructure's deployment, the State DOT (state roads) has now been exempted from the bill – see the new definition of "authority". EMCs, the largest owner of utility poles in most local governments' ROW, are also exempted. This necessitates the need for new poles, rather than collocation, in local ROW.

> **Concern**: Why should a bill which has the proclaimed objective of a prompt and efficient statewide deployment process of small wireless antennas, poles and other equipment in ROW exempt the DOT and EMCs?

Permitting, Rates and Fees:

Locals must be competitively neutral and nondiscriminatory in allowing access to the ROW. Locals must determine whether applications are complete within 30 days. If incomplete, locals must specify the missing information, and then the provider has 20 days to cure any deficiencies at no extra cost. If no action is taken by the local government an application is "deemed approved" after 75 days. All applications must be approved unless they:

- Materially interfere with the operation of traffic control equipment or sight lines or clear zones for transportation or pedestrians;
- Fail to comply with the Americans with Disabilities Act or state/federal pedestrian access standards;

- Fail to comply with "reasonable and nondiscriminatory spacing requirements of general application concerning the location of ground mounted equipment or new utility poles". Such spacing requirements shall not prevent a provider from serving any location;
- Fail to comply with applicable codes; or
- Fail to meet the requirements in this law.

Concerns: Lines 317 - 318 – Please remove "materially." What if the proposed infrastructure will just "interfere" (as opposed to *materially interfere*) with the operation of a traffic control equipment? Why should locals have to demonstrate that the interference will be "material?"

Lines 325-226 – The language above effectively renders any local spacing requirements a dead letter, thus a free-for-all on poles, antennas and equipment in ROW.

Locals must document the basis for any denied applications, including specific provisions of law on which denial is based. Providers have 30 days to resubmit application at no additional cost, and then locals have 30 days to act on a re-submittal.

Concern: Lines 331-322 – The requirement that local governments send the applicant documentation (confirming denial) on or before the day a local government "denies" the application presents a very unforgiving standard. How about using the industry's favorite phrase and simply provide that locals will provide documentation regarding a denial within "a reasonable time?"

Providers may file a consolidated application for the collocation of up to 25 small wireless facilities on existing poles and receive a single permit. Locals can prohibit a provider from submitting an additional application when they have at least 10 pending "consolidated" applications. Applications for a new pole count as a single permit.

Concern: Lines 337-346 - While this language is purported to address ACCG's concerns that local permitting offices not be overwhelmed with simultaneous applications, this provision still allows for 250 (25x10) applications to be submitted simultaneously by one provider. If there are three other providers rushing in, 1000 collocations (250x4) could be simultaneously submitted to the local permitting office – and the shot clock on local action is ticking toward "deemed approved".

Permits can be terminated at any point by the provider; otherwise the permit authorizes the installation and operation and maintenance of a small wireless facility and associated utility pole in the right of way for 10 years and shall be renewed automatically, indefinitely. Locals cannot enact moratoriums on applications or permits.

Concern: Lines 360-362 – We had requested that permits last 5 years. Has anyone thought of the bureaucratic nightmare keeping up with 10-year durational permits will cause. This language effectively makes a permit useless and permanent unless the use is abandoned.

Locals may only charge permit fees (up to $100 each) for up to five small wireless facilities addressed in an application and $50 for each additional small wireless facility, and only if "costs are not already recovered by existing fees, rates, or taxes payed by a provider". No fees can cover any expenses by third-party consultants. For locating on a county-owned pole, fees cannot exceed $200 for up to five small wireless facilities addressed in a single application and $100 for each additional facility. No permits or applications are required for micro-wireless facilities that are suspended on cables or power lines. Locals can charge only $20 per year per small wireless facility in the ROW.

Concerns: These permitting fees will likely not cover the cost of the permitting process, thus shifting that expense to taxpayers, whose ROW is being used by the industry.

Line 373 - The mixing of "taxes" versus "fees" makes no sense. This paragraph seems to suggest that a local government cannot assess a regulatory fee if a "tax" already covers the "cost." But, a tax and fee do different things – and a tax will never cover the administrative expense of processing these applications. Only a fee can do that. ACCG suggests striking that entire sentence, that states: "Where such costs are already recovered by existing….."

Lines 525-527 - Many jurisdictions will need consultants to determine if poles can support the installations and/or what a "make-ready" work estimate would be. Rather than providers/applicants covering this cost, it will be shifted to taxpayers.

Before permitting new poles, locals may require a provider to certify that, after diligent investigation, it cannot meet its service objectives by collocating on an existing structure at reasonable terms, conditions and costs.

Removal or Relocation – Providers shall relocate or remove their equipment at their own cost if locals find it "unreasonably" interfering with road/ROW widening, repair, etc. – within the time "reasonably" provided for the relocation of other similarly situated structures".

Concerns: Line 236 - What if the provider just "interferes"…but does not "unreasonably" interfere? By adding the "unreasonable" language throughout this bill, it is just adding fodder for industry attorneys to dispute a local government's request to move their poles or for any other action on the part of the industry; and therefore makes every widening project or interaction with the industry into a protracted and possible litigious negotiation.

While this bill places stern, hard shot clocks on the local government reviewing applications, approving applications, and providing responsive comments; when it comes time for the wireless provider to move their poles out of right of way – the relocation need only occur within the time "reasonably provided for relocation…." A hard shot clock should be set here as well.

Historic Districts and Decorative Poles – Locals may require "reasonable and technologically neutral design or concealment measures" in historic districts, but measures cannot prohibit a provider's technology (pole mounted antennas). Locals may adopt guidelines for "reasonable" stealth or concealment criteria for locating on decorative poles (or installing new poles), but only in downtown and residential areas.

Concern: Line 250 – Is "technologically neutral" design and concealment understood?

Lines 256-257 - How do locals "designate" the downtown or residential areas?

Lines 255 and 260-261 - Local governments are authorized to establish reasonable and objective "stealth" criteria for residential areas; but ONLY if the government imposes such "stealth" criterial on its own poles. ACCG recommends removing this provision – as it suggests equivalency between taxpayer funded utility infrastructure – and private infrastructure serving a for-profit objective. They are not the same; and it is inherently reasonable to ask the industry to install stealth technology even if the local government does not do so.

Undergrounding – Undergrounding can be required in particular areas of right of way, provided all other cable and utility companies are required to do so in the same area at least 3 months prior to the application, and waivers can be sought.

Public Safety and Damage to ROW – If locals believe provider activity creates an "imminent" risk to public safety, the provider must "reasonably" address it within 24 hours or locals can take "reasonable" measures to do so, then charge the provider the "reasonable" documented cost of such actions. Providers must repair all damage to ROW they cause and return ROW to its "functional equivalency". If not done so within 60 days (following written notice), locals may fix and then charge provider.

> **Concerns**: Lines 203-207 - Why does the risk have to be "imminent?" If there is a risk to public safety; does adding *imminent* add anything except confusion as to what is intended? What if it is only a modest risk to public safety?
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> SB 426 includes the term "reasonably" throughout. The byproduct of this – is that it makes concepts that should be clear; unclear. If a wireless provider fails to address a risk to public safety within 24 hours that should be the end of the matter. What does adding "reasonably address" add to the equation?

Speculative and Abandoned Equipment – Locals may require that equipment be operational within nine months after a permit is issued unless power has not been provided or "lack of communications transport facilities to the pole". After use, if equipment hasn't been operational for 12 months, locals can require its removal following 90 days after written notice is provided.

> **Concerns**: Locals will not be able adequately determine whether provider equipment hasn't been operational for 12 months, then provide written notification. The provider should be responsible for automatically removing equipment, poles, structures and antennas from ROW when it is no longer operational.
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> Lines 306-311 - Lack of power or lack of communications transport facilities should not toll the time the facilities have to be operational; what are "communications transport facilities?"
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> Line 470-471 – Note that approval terms for applications are without expiration. While there is then language that "construction of the approved structure or facilities shall commence within one year of final approval, and be diligently pursued to completion", that language is too vague to associate definitive meaning.

Local Government Poles/Structures – Locals must allow collocation access to their poles within the ROW; cannot enter into exclusive arrangements with any provider; can only charge $40 annually for the privilege; provide an estimate of necessary "make-ready" cost within 60 days of an application receipt, then complete make-ready work, to include the possible replacement of the pole, within 60 days of the provider's acceptance of the estimate, to later bill the provider; and must allow access to their poles and structures outside the ROW to the same extent others have access.

> **Concern**: Lines 514-520 - Since locals must allow collocation on decorative poles (because they are included in the definition of "authority pole"), does this section mean that if the decorative light pole will not support the small cell installation then the government must allow the providers to substitute a new pole that does support it?

Note: Wireless poles, antennas, equipment boxes and other infrastructure in the ROW that are not subject to the above guidelines are guided by similar, but slightly less stringent, preemptions.