



Advancing Georgia's Counties.

HB 184 and SB 66 – The Small Cell (5G) Compromise Bills

After months of complex negotiations between ACCG, GMA, AT&T and Verizon, ACCG is recommending that compromise legislation be endorsed due to numerous local government safeguards that were reached during the negotiation process.

With the understanding that local governments need new technology to remain connected and competitive, the overarching principle of the compromise telecommunications legislation is to encourage small cell wireless deployment through the collocation of new equipment on already-existing infrastructure. This process is more cost-effective for the providers and is the least invasive in the public ROW and less costly for counties and cities to maintain. Among collocation and other negotiation highlights:

Incentivize Collocation to Limit New Poles: By allowing local governments to levy higher permitting fees for new poles and facilities, and requiring shorter permit approval timelines for routine collocations, these provisions will act as incentives for collocations over the placement of new poles. Additionally, applicants must submit certified documentation by a licensed engineer proving the need for any new pole. Local governments have 30 days to act on a collocation permit application and 70 days for a new pole permit. Following each of those shot clocks, there is a 20-day period within which the wireless provider may notify the local government that it has failed to act. With no local government action, the permit will be deemed approved following this final 20 day period.

Protections for Historic Districts and Residential Areas: Additionally, cities and counties will maintain discretion over the placement of new poles in key community areas such as historical districts and residential neighborhoods. Local governments will have the ability to require the relocation of a proposed new pole placement sites within a 100ft radius to ensure that new poles are not erected in front of residences, and to also require certain design aesthetics to be met through stealth and concealment measures for poles or other facilities.

Permit Application Limits Based on Local Government Sizes: Recognizing that a one-size-fits-all process for processing small cell wireless permit applications is not always practicable, the draft legislation takes into consideration the differing size and needs of counties and cities through a tiered process that governs the permitting process over wireless deployment and requires providers to share build-out plans prior to deploying new facilities. To provide counties and cities time to adjust to this new process, applications are limited at first, but will increase over time.

Reasonable ROW Use Fees, Including Fee Incentives for Colocations: Although the FCC places caps on all permitting fees, ACCG and GMA were successful in negotiating an annual ROW usage fee, in addition to a larger fee of \$1,000 for new poles, with an annual 2.5-percent escalator to become effective in 2021.

Safe-Harbor in Case FCC Order is Overturned: In the absence of a small cell wireless law currently on the books, Georgia has the unique opportunity to draft the legislation in a way that recognizes the FCC order, but considers the possibility that the courts may overturn the decision on rates and fees. As a result, the draft legislation includes language for a two-year interim period to begin July 1 after any final court decision declaring the FCC order unconstitutional or invalid. For the first-year time period beginning July 1, local governments would be immediately authorized in Georgia's statute to double their rates. After that one-year time period, statutory caps on rates and fees would be repealed. From that point forward, absent any statutory changes enacted by the General Assembly, it would be up to each local jurisdiction to set a fair and reasonable rate for ROW usage and permit fees.

Expanded Grounds by which Permits may be Denied: Unlike last session's legislation, this draft legislation allows counties and cities to deny an application if the equipment will interfere with any planned road work or public works projects; fails to comply with laws addressing pedestrian or vehicular traffic and safety requirements; or other local laws addressing the occupancy (spacing) or management of the ROW.

Timeframes by which Small Cell Equipment Must be Removed: Cities and counties may require that small cell poles and equipment be removed or relocated, at the provider's expense, if they interfere with local road widening or other public works projects – so long as other utilities are subject to the same timeframe. Local governments must first provide notice and cannot require the equipment be moved any sooner than 45 days from that notice.

Other Notable Provisions: The draft legislation prohibits speculative permitting; requires the removal of abandoned equipment; sets conditions for locating equipment on city or county-owned poles, including "make ready" responsibilities and the removal of equipment for the reconditioning and replacement of poles; prohibits small cell interference with other utilities, traffic control equipment or infrastructure; protects other property owners abutting the ROW; requires that local aesthetic and decorative pole conditions be met; and shields local governments, their officials and employees from legal claims related to the siting or location of wireless equipment.