



Senate Bill 937

Wireless Facilities - Installation and Regulation

MACo Position: **OPPOSE**

To: Finance Committee

Date: February 26, 2019

From: Natasha Mehu

The Maryland Association of Counties (MACo) **OPPOSES** SB 937 as it significantly restricts local zoning authority, preemptively codifies controversial and unsettled federal laws, and advances corporate interests at the expense of community input and needs. Maryland deserves a better path forward to delivering improved wireless “5G” service in the years to come.

Counties support the innovation and expansion of small cell technology to improve the delivery of wireless service. However, care must be taken to ensure that small cells are deployed in a manner that comports with Maryland needs. A too-hasty grant of overbroad authority could easily trigger overdevelopment of unwelcome, unsightly, and redundant facilities across our neighborhoods.

Counties oppose granting the wireless industry “access by right” to local property and rights of way.

Planning and zoning are central components of local authority under Maryland law – this is the essential means for citizen and community input. Local governments must be able to protect the safety and interests of their communities as necessary through zoning reviews and approvals. Counties must also have the ability to respond to the contours of historically important, culturally significant, and aesthetically designed areas. SB 937 instead imposes a statewide “permitted use” inside and outside of the local rights of way. In other words, it grants the wireless industry a right to deploy small cells (up to 28 cubic feet in size, on poles 50 feet high) wherever they want in the public right of way – even in communities with undergrounded utilities -- with no substantive local government or community input. This sets a dangerous precedent of usurping local zoning authority over local rights of way.

Counties oppose preemptively codifying the controversial Federal Communications Commission (FCC) order into Maryland law

Counties are already barred from prohibiting or effectively prohibiting the deployment of small cells. The FCC order which went into effect on January 14 of this year (over local government opposition), significantly shifted the playing field even further in favor of the wireless industry. It sets shorter timelines for permit approvals and puts presumptive caps on local government fees, among other

provisions. However, a nationwide coalition of local government entities – including some in Maryland – are currently challenging the FCC order in the Ninth Circuit. It is anticipated that the Ninth Circuit will take between nine months and a year to render its decision. Additionally, California Representative Anna G. Eshoo has introduced the *Accelerating Wireless Broadband Development by Empowering Local Communities Act of 2019* (H.R. 530) to overturn the FCC small cell order and restore local control in deployment of 5G. It would be premature and logistically treacherous to codify a federal law that is currently being challenged on multiple fronts.

Counties believe it is important to advance small cell technology in Maryland. This is best accomplished in a fair and balanced manner, in partnership with local governments and their communities. SB 937 does not properly balance corporate and community interests – it removes public input and transparency from this process. Counties hope to forge a balanced path forward for continued wireless roll-out across Maryland, but this cannot be accomplished with SB 937. For these reasons, MACo urges an **UNFAVORABLE** report on SB 937.