

LEGISLATIVE LOCATOR

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New Wireless Infrastructure Bill Still Presents Significant Issues for Local Government

Representative Frank Farry (R-Bucks) introduced a new wireless bill on July 13, with 34 bi-partisan co-sponsors. [House Bill 2564](#), is entitled the “Small Wireless Facilities Deployment Bill.” Although it is structured differently from the previous (and now dead) HB 1620, the impact of HB 2564 on municipalities would be much the same. On August 9, the House Consumer Affairs Committee held a much anticipated [hearing on the bill](#). PML and PSATC oppose the bill as written and were represented by Attorney Dan Cohen, Cohen Law Group, at the hearing. Specifically, our concerns with HB 2564 can be broken down into three main issues:

Local Zoning Preemption

HB 2564 strips municipalities of their zoning authority over all wireless facilities, including new poles and antennas, in the rights-of-way (Section 3j). While prescribing a maximum permitted height of 50 feet for poles, it also gives wireless companies the “right” to exceed this height limit via a “height limit waiver request” (Section 3e). Consequently, municipalities would be forced to approve *any* pole of *any* height at *any* location regardless of its appropriateness.

Take Action!

Watch the House Consumer Affairs Hearing on the Small Wireless Facilities Deployment Act -- [click here](#).



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Substantial Limitation of Municipal Fees

HB 2564 drastically reduces fees that municipalities are permitted to assess for use of the rights-of-way. Specifically, the bill limits fees as follows: 1) application fee = \$100; 2) fee for new poles = \$25 per year; 3) fees for new antennas = \$25 per year; and 4) fee for new antennas on municipally-owned poles = \$50 per year (Sections 3c, 4n, and 5d). These minimal and one-size-fits all fees would not allow municipalities to recover their costs of processing applications and managing wireless facilities in the rights-of-way. This will result in local taxpayers subsidizing the wireless industry.

Shortens Application Approval Times

HB 2564 significantly shortens the FCC's mandatory approval timeframes. For example, the FCC allows 30 days for review of an application for completeness. HB 2564 would cut this period to 15 days. The FCC also allows 150 days for action on a new pole, after which it is deemed approved. HB 2564 would shorten this period to 60 days (Sections 4d and 4e). The bill also allows wireless companies to submit up to 20 permit requests in a single application with no increase in the time for municipalities to review bulk requests (Section 4g).

During the hearing, Representative Farry expressed a willingness to work with the municipal associations and wireless industry in an effort to produce a compromise bill. The associations have submitted alternative language that would make the bill more palatable to local government. PML and PSATC are looking for a constructive dialogue that will achieve a compromise -- streamlining the deployment of wireless infrastructure while allowing municipalities to manage their rights-of-way and preserve the character of their communities.

All indications are that the Committee Chairman, Representative Godshall, plans to bring the bill up for a vote prior to the end of session, therefore we expect negotiations to move quickly. We will keep you closely informed on all major developments regarding this process. Please contact Amy Sturges, Director of Governmental Affairs, with any questions. And please visit the links in this article to read the current bill and watch the video of the August 9th hearing.

House and Senate Session Days:

Senate: September: 24, 25, 26
October: 1, 2, 3, 15, 16, 17
November: 14

House: September: 12, 13, 24, 25, 26
October: 1 (NV), 2 (NV), 9, 10, 15, 16, 17
November: 13

Session dates are subject to change.

Approximately twice a month, the [National League of Cities](#) issues a Federal Advocacy Update to let you know what is happening at the national level. You can catch these updates on our website [here](#).

FCC Votes to Uphold OTMR and Ban Moratoria on Wireless Siting

During the August Open Meeting of the Federal Communications Commission (FCC), Commissioners voted to approve a report and order on one-touch make-ready (OTMR) requirements and a declaratory ruling on state and local moratoria.

This item sets out an explicitly preemptive posture for the FCC on state and local regulations. With regards to moratoria, the [declaratory order](#) enacts an immediate blanket prohibition on all state and local government moratoria for telecommunications services and facilities deployment, and expands the definition of those covered moratoria. Under this change, providers who believe that a jurisdiction has an express or *de facto* moratoria in violation of the order can petition the FCC's Wireline Competition Bureau and Wireless Telecommunications Bureau, which have been directed to expedite these kinds of challenges.

Commissioner Michael O'Rielly, in particular, made clear the intent to take more authority away from local governments [in his comments](#). "Every ounce of Congressional authority provided to the Commission must be used as a counterforce against moratoriums, which is just another word for "mindless delay" or "extortion attempts to generate some local officials' wish list", said O'Rielly. "And, the record is replete with examples of such out-of-bound practices, such as digital inclusion funds, that unnecessarily create political slush funds and raise the cost of service for consumers." This last remark was likely a shot at the City of San Jose, California, which recently [struck a deal](#) with three carriers to build the country's largest small cell deployment and establish a municipal digital inclusion fund to close the digital divide by providing more broadband coverage in underserved, low-income neighborhoods.

NLC released the following statement in response to the vote:

"The National League of Cities (NLC) is disappointed that the Commission chose to further preempt local authority with today's Report and Order.

NLC strongly disagrees with Commissioner Michael O'Rielly's characterizations of local governments and their associations as obstacles to broadband deployment. In fact, local governments share the Commission's goal of closing the digital divide. It is local innovative approaches, from investing in public broadband infrastructure to working with providers to address digital inequity in communities, that will allow for cutting-edge technology to be implemented equitably across the country. Cities must retain the flexibility to protect their residents' interests and ensure appropriate management of public property.

In our view, Commissioner Jessica Rosenworcel's assessment that this decision on moratoria will lead to more, not less, litigation is accurate. Unelected officials in Washington do not know better than the mayors and councilmembers in cities and towns about how best to protect local needs.

NLC remains concerned by the expansive approach the Commission has taken to its interpretation of the law regarding preemption, and we believe that the Commission is overreaching its statutory authority."