



Small Cell Wireless Deployment – Framework of a Compromise Agreement

State Background: During the 2018 legislative session of the Georgia General Assembly, cities and counties faced many preemption attempts from the wireless telecommunications industry to gain nearly unregulated access to the public rights-of-way (ROW) for the placement of 5G wireless small cell poles, antennas, and other communications equipment. While over 20 states had adopted versions of this national wireless initiative, these bills were unsuccessful in Georgia.

At the direction of General Assembly leadership, the Georgia Municipal Association (GMA) and Association County Commissioners of Georgia (ACCG) - along with the two major wireless carriers - AT&T and Verizon - were instructed to negotiate a compromise that would balance local management of the public's ROW with the need to deploy these new technologies in a streamlined fashion throughout the state. The message from leadership was that a failure to reach a compromise would result in 2019 legislation to authorize small cell wireless deployment with or without local protections that could be agreed to through negotiations.

Beginning in July, ACCG, GMA, Verizon and AT&T began meeting every two weeks to discuss a framework for compromise. This negotiation process included approximately 12 face-to-face meetings, numerous hours of conference calls, and over 30 draft versions of legislation.

Federal Action: At the same time as GMA, ACCG, AT&T and Verizon were negotiating a potential small cell wireless bill, the Federal Communications Commission (FCC) passed a declaratory rule and order preempting both state and local government regulatory control in the small cell deployment process. The order:

- Limits the time cities have to process applications for small cells to either 60 or 90 days, depending on whether they are being mounted (collocated) on an existing or on a new pole/structure, respectively;
- Caps application/permit fees for small cells to \$100 per site, and recurring fees to \$270 per site, per year, for small cells (whether they are collocated or on new poles) in the rights-of-way;
- Prohibits local governments from assessing fees that include anything other than a "reasonable approximation" of "reasonable costs" directly related to maintaining the rights-of-way and the small cell facility; and
- Limits aesthetic review and requirements (including undergrounding and historic/environmental requirements) to those that are reasonable, comparable to requirements for other rights-of-way users, and published in advance.

While the FCC Small Cell Order preempts state-level legislation, it allows states to enact even stricter preemptions on local governments. It is anticipated that the legitimacy of the FCC order will face numerous legal challenges and may be enjoined from going into effect pending litigation.

Regardless of the FCC order either becoming effective or being enjoined, the provisions of the order establish a federal roadmap that state lawmakers could adapt to any small cell wireless legislation in Georgia. With the FCC order looming, GMA and ACCG successfully negotiated on several key areas to maintain control and discretion over the most crucial stages of the small cell wireless deployment process in Georgia statute.

A draft version of this legislation is attached for your review.

Compromise Framework: With the understanding that local governments need new technology to remain connected and competitive, the overarching principle of the 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:** The bill incentivizes collocation by allowing higher permitting fees for new poles and facilities and offers shorter timeframes for routine collocations. 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. There is a 20-day period following each by 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 that 20 days.
- **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 relocate 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 decorative 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 permits is not always practicable, the draft bill 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 increase over time.

- **Reasonable ROW Use Fees, Including Fee Disincentive for New Poles:** 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 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, vehicular traffic and safety requirements; or other 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.
- **Other Notable Provisions:** The draft bill 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.

December 6, 2018