County Concerns and Suggestions: ROW Preemption Legislation of 2018

Presentation to Georgia House Rural Development Council
May 16, 2018
Blue Ridge, Georgia
Counties are not opposed to ROW small cell deployment.

Last year, the wireless industry addressed the RDC, noting elected officials can facilitate deployment of small cells by:

- Establishing streamlined access to ROW and permitting processes;
- Establishing universal Master Leasing Agreements (MLAs) for small cell deployment; and
- Ensuring pole attachment rates and fees are reasonable.

All the above is reasonable.

However, county officials must balance this need with the appropriate management of the public’s ROW.

That balance was not met.

ACCG’s concerns continue to focus on this balance.
ACCG fully supported as part of its 2018 policy platform.

Voluntary “Broadband Ready Community Program”:
- Locals must first have comp plan element,
- Single point of contact for all things broadband,
- Timely processing (applications complete, expedited processing),
- Reasonable and cost-based permitting fees,
- No discrimination among providers,
- No permitting moratoriums,
- Must authorize ROW access,
- DCA to develop model ordinance,
- Non-compliant locals can be decertified, and
- Locals given priority for state funding.
ROW Preemption Bills

- Bills not aimed at facilitating rural broadband deployment.
  - U.S. House testimony of Brad Gillen, Executive Vice President, Cellular Telecommunications and Internet Association, Jan. 30, 2018.
- Rural counties are not receiving applications for ROW permitting.
  - Would likely have fewer issues with ROW encroachment.
- Concern is with already-saturated metro county ROW.
- Cobb, Columbia, Gwinnett Counties have received applications; all have adopted master agreements covering permitting process.
- They understand the need for deployment, and for balance.
- Industry seeks treatment like utility but...
  - Doesn’t want to be regulated by PSC,
  - Be required to provide service statewide, nor
  - Pay franchise fees.
ACCG has met numerous times with industry since 2017.
They decided what “concessions” to make; no neutral third party.
Several improvements, but many concessions wrought with legal loopholes.
Snazzy pics of small cells, but bill authorizes near unfettered:
- Poles (50’ high),
- Antennas (multiple, up to 6 cubic feet in volume and 10’ higher than poles),
- Equipment boxes (up to 25 cubic feet in volume),
- Up to 4 cabinets (of undefined size) and other infrastructure,
- Once installed, right to expand equipment, exponentially, so long as it does not “substantially change the size”
- 500 feet apart? Per provider?
- Note “adjacent” language.

Governs entire field of the placement and regulation of wireless facilities and poles within local ROW.
All existing ordinances and agreements are nullified.
All applications must be approved unless they:

- “materially” interfere with traffic control equipment or sight lines,
- fail to comply with ADA 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.

Locals are giving up all but a remote semblance of ROW management.

Authority would rest entirely with the Georgia General Assembly.

Citizens only hope to change law would rest with the state.
ROW Preemption Safeguards

- Are fees appropriate?
- Will locals be inundated with too many applications at once?
  - Shot clocks are ticking and “deemed approved” awaits.
- Collocation is key, but is it really required?
- Removal or relocation for road widening adequate?
- Timely removal of abandoned equipment?
- Are safeguards adequate for historic areas and decorative poles?
- Is undergrounding language appropriate?
- Is public safety ensured - avoiding hazard areas and repairing damage to ROW?
- Is there adequate “spacing” to prohibit a free-for-all?
- Local poles mandate - enough time to make ready?
- Will speculative equipment be prohibited?
- Who is liable?
- Insurance or bonding? What enforcement exists for industry to comply?
ROW Preemption Challenges

- The State is exempted.
  - Many locals follow DOT expertise and utility accommodation guidelines.
  - This will force more equipment on local ROW.
  - Double standard impedes the statewide, streamlined process that proponents seek.
- EMC poles are also exempted. Collocations should be incentivized.
  - Will lead to proliferation of new poles.
  - Why double standard on local poles?
- Implications for cable and other franchise fees?
- Implications for others’ access to ROW?
- State law will govern entire process:
  - Best get it right the first time around; change will be difficult.
  - Legislators, not commissioners, are the only ones who can change process.
- Should wireless providers be required to provide statewide service for receiving this public ROW access/benefit?
Thank You

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