TESTIMONY BY
THE PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

BEFORE THE
HOUSE CONSUMER AFFAIRS COMMITTEE

ON

HOUSE BILL 2564 *(PN 3863)*

PRESENTED BY

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HARRISBURG, PA

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Chairman Godshall and members of the House Consumer Affairs Committee:

Good morning. My name is David M. Sanko and I am the executive director for the Pennsylvania State Association of Township Supervisors. Thank you for the opportunity to appear before you today on behalf of the 1,454 townships in Pennsylvania represented by the Association. Our members range in size from a couple of hundred residents to over 60,000 people and cover 95 percent of Pennsylvania's land mass. Thank you for giving us the opportunity to comment on an issue that is impacting many of our members.

HB 2564 *(PN 3863)* provides for the regulation of small wireless facilities in the municipal rights-of-way. It gives the wireless industry the right to place small wireless facilities on existing utility poles and other structures as well as to install new utility poles with small wireless facilities in the right-of-way with limited municipal approval and when collocation is not feasible. We understand that this legislation is an effort to provide compromise legislation to **HB 1620** *(PN 2146)* and we appreciate the efforts of the sponsor to attempt to bridge this gap.

Improvements compared to HB 1620

We recognize that there are marked improvements when comparing HB 2564 with the prior bill. For one, the scope of HB 1620 was very broad and would have essentially eliminated municipal zoning authority over the placement of most, if not *all* wireless facilities including large tower and guyed-wired monopoles both within and outside the right-of-way. HB 2564, in contrast, only addresses the placement of small wireless facilities and supporting utility poles within the right-of-way.

In addition, unlike HB 1620, HB 2564 does not amend or repeal Act 191 of 2012, the "Wireless Broadband Collocation Act" which deals with collocation on towers and self-supporting or guyed-wired monopoles. Again, the scope of HB 2564 is more limited when compared with HB 1620.

There is new language in HB 2564 that would give the municipality some discretion over whether collocation will be permitted on decorative poles and to provide additional oversight in historic districts. This language is also an improvement over HB 1620.

The underground utility provisions in HB 2564 are an improvement over HB 1620. HB 2564 would require wireless facilities to comply with rules in place three months prior to the submission of an application, where HB 1620 required the rules in place on June 1, 2017 be followed. There is new language in HB 2564 that would allow for a waiver request process but does not require the municipality to grant the waiver. Importantly, the legislation also takes into consideration the rights of the property owner in requiring the property owner in districts with underground utilities to also approve of placing a utility pole in the right-of-way on their property.

Regulatory environment

We understand that other states have passed legislation similar to HB 2564. We also recognize that this discussion is not taking place in isolation. Even if the General Assembly chooses not to act on this issue, another body may restrict municipal oversight of small wireless facilities. Congress is discussing legislation and the Federal Communications Commission is considering rulemakings. Within Pennsylvania, the courts continue to weigh the issue of whether the Public Utility Commission should grant small wireless providers with certificates of public convenience, thus granting these companies utility status to access the right-of-way.

We also want to be clear on what this discussion is NOT about. While you will hear the industry citing "the public" demand for faster and more reliable access, we encourage you to ask which "public" are we talking about? Is it "the public" from those areas of the state that are unserved or underserved by any type of broadband service, wired or wireless? Is this legislation going to help those areas of the state that can't even watch a video of a grandchild or a new great grandchild over the internet and may be relying only on dial-up? Or is "the public" a subset of wireless customers who want to rely on greater wireless access for their phones, tablets and household devices like thermostats and video door bells and may choose wireless instead of wired services? It is the latter. This is to provide capacity for their customer's insatiable desire for data and bandwidth, and not to provide service in underserviced areas.

If these small wireless facilities are intended to go into rural areas of the state that lack access to wired or wireless broadband, our members in those areas would generally greet these facilities with open arms and exercise only basic oversight of their right-of-way and there would be little need for this conversation. Instead, it is our understanding that these facilities are intended to be installed in suburban and urban areas, which are dealing with the proliferation of wired and wireless facilities and are attempting to do their best to manage their right-of-way. Today's cutting-edge facilities may become tomorrow's blight without reasonable municipal oversight.

PSATS policies and review of HB 2564

Our position on HB 2564 is set by our membership which has established numerous policies on small wireless facilities, management of rights-of-way, and fees. Our members are very concerned that they be able to continue to exercise reasonable oversight of their right-of-way and be able to negotiate for and collect reasonable fees for collocation of wireless facilities on municipal infrastructure. And, although there are similarities between the two bills, HB 2564 comes closer to the balance we are seeking.

To be sure that this legislation is limited to small wireless facilities on utility poles, the definition of utility pole needs to be clarified. The definition of utility pole beginning on page 5, line 29 should read "the term includes the vertical support structure for traffic lights but does not include wireless support structures, *electrical transmission towers*, or horizontal structures to which signal lights or other traffic control devices are attached."

In HB 2564, the right-of-way includes the area on, below, or above any public road, street, sidewalk or alley. As written, the right-of-way includes both municipal and state-owned

right-of-way along *any* public road. In addition, the definition includes utility easements on "similar property." Does similar property include utility easements on private property or only those located within the right-of-way along a public road? This needs to be clarified as this definition appears to be overly broad and should be restricted to the right-of-way along public roads.

Section 3(d) of HB 2564 gives a right of access to wireless providers to perform certain activities within the right-of-way. We are concerned that this language is not clear and provides too much discretion for the placement of these facilities with the provider with little or no oversight by the municipality, particularly to the placement of new poles. With the goal that collocation should always be preferred over new poles, this section should be clarified to specify that the final approval to collocate or install new poles should be made by the municipality in order to control the placement of an excessive number of poles.

Depending on the definition of "utility easement" mentioned above, this could allow for the proliferation of these devices in areas outside of the municipal right-of-way and clearly includes the state's right-of-way. It appears municipalities would have no oversight of the location of these facilities within the state's right-of-way as the new antennas and new poles with new antennas are considered a permitted use in Section (3)(j). In addition, while the processes in the bill and fee limitations affect only municipalities, how will the right of access language in Section 3(d) impact the state's ability to manage its right-of-way?

If collocation cannot be achieved for small wireless facilities, HB 2564 allows providers to install a new utility pole provided it is no more than five feet in height above the tallest existing utility pole within 500 feet of the new pole in the same right-of-way and in the same municipality. In addition, the legislation gives wireless providers the right to install a utility pole that exceeds these heights, provided they "file a waiver with the municipality along with the application." This appears to be a loop hole by allowing a provider "by right" to go higher than the 50-foot height limitation of a new utility pole by *simply filing the waiver with the application* (page 8, line 10). This exception could be interpreted to remove the height limitations (page 7, line 30) and was a major issue with the prior bill. This should be remedied by striking the words "shall have the right to" (page 8, line 11) and inserting "may" and make the waiver approval at the discretion of the municipality.

Fee limitations

Our issue with the fee language is that the fees are not realistic and would prevent a municipality from recovering their cost related to activities within their right-of-way. On page 17, line 2, municipalities may charge an application fee for work to be done within the right-of-way. Wireless providers are to be charged a rate "*similar to*" other applicants for the right to access the right-of-way, but the fee may not exceed $100. We would argue that this industry should not be treated differently from other applicants and should be charged fees that do not exceed the application fees other applicants are charged for the right to access the public right-of-way.

We must also question the annual fee a municipality may receive for the "use of the right-of-way." The legislation restricts this amount to $25 per year per small wireless facility or a new utility pole with a small wireless facility. Municipalities must continuously maintain the right-

of-way and the minimum amount that the legislation provides does not cover this cost. And others that have the right to use this public right-of-way pay substantially more. Out of fairness the fees charged should not exceed what are charged to others for access to the right-of-way.

The fee limit that we must strenuously oppose is on page 18, line 3, where municipalities would be limited to $50 per attachment for collocations on poles owned by the municipality. Our policy opposes any legislation that would take away the ability of municipalities to negotiate and collect reasonable fees for collocation on municipal infrastructure. In addition, since there is no limitation on private utility pole owners or the state to negotiate fees for collocation on their infrastructure, this legislation put the public and municipalities at a disadvantage? From a public policy perspective, this appears to create a private benefit at a public cost or loss for publicly-owned infrastructure. Why give an unregulated industry public benefits without fair public compensation?

Review process

The review process is less than currently allowed for the siting of towers and guyed-wired monopoles, but to our knowledge the review process for the collocation of small wireless facilities or the installation of a utility pole is not as complex. Our concern with a shorter time frame for approval stems from the ability of several applicants filing consolidated applications at the same time. Each consolidated application can contain up to 20 applications each within a 30-day timeframe, and if just the four major players submit their applications on the same day, a municipality would have up to 80 small wireless facility collocation applications, or the equivalent number of new utility pole installation applications. Even with the 30-day restriction on the submittal of consolidated applications this could be overwhelming. They would have 15 days to determine the completeness of the application and only another 15 days to review the 80 applications before they would automatically be deemed approved without having sufficient time for a proper review for safety. A solution to this issue would be to follow the existing federal time rules or allow municipalities additional time should they receive multiple applications. Viewing this in conjunction with the $100 application fee cap, municipalities would be hard-pressed to cover their costs to perform the necessary reviews within the allotted time and certainly would not be able to add staffing.

Final thoughts

Finally, we would argue that there should be a provision that the wireless provider indemnifies municipalities from any damages caused by their negligence.

In closing, we want to acknowledge the work that has been put into this legislation when compared to HB 1620. We are encouraged by the progress of HB 2564, but more work needs to be done while the bill is in committee. We are willing to work with the sponsor and this committee to address our concerns and provide this technology to our mutual constituents. Thank you for this opportunity, and I will now attempt to answer any questions you may have.

Future of Wireless

Pennsylvania House Consumer Affairs Committee

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