



Testimony in Support of SB 68
Senate Utilities Committee
February 6, 2019

Chairman Masterson and Members of the Committee:

My name is Michael Bagley and I am the Director of State Public Policy for Verizon, covering several states, including Kansas. I appreciate the opportunity to testify today in support of SB 68.

Verizon is currently moving forward throughout the United States to deploy the technology infrastructure that will serve as the foundation for 5G services, the next level of evolution in wireless technology. The densification of small wireless facilities, or small cells, creates the framework by which 5G will be possible. Small cells are needed to meet the exploding consumer demand for data, spur economic development, fuel innovation, and to drive innovation for smart cities, connected cars, intelligent traffic solutions, and a variety of other consumer-demanded needs.

Verizon is very pleased to have previously worked with this Committee, the League of Kansas Municipalities, and other stakeholders to pass the first statewide small cells legislation in the United States, the Kansas Wireless Siting Act, which was passed in 2016 with overwhelming support in the Legislature. The bill created a straight-forward set of rules for municipalities and companies to ensure the deployment of small wireless facilities. The Act provided for municipalities to maintain oversight and management of the public Right of Way (ROW), with carriers compensating municipalities for use of the ROW and municipally-owned structures. The Act also incorporated language taken directly from existing statutes to ensure that municipalities had the necessary safeguards and means to address any concerns with activities in the ROW. The wireless industry believed this first-of-its-kind legislation would pave the way to streamlined, economical small cell deployment, bringing improved wireless services to Kansas, along with jobs and other economic benefits.

However, following the Act's passage, when actually Verizon moved forward with deploying small cells, we found that some larger municipalities had decided to circumvent the Act and ignore legislative intent by requiring wireless service providers to enter into costly and burdensome franchise negotiations – a process not authorized by the Act or the franchise statute – in order to deploy small cells. We quickly learned that these negotiations take months or even longer than a year to complete, and are an attempt to extract extra fees and charges from those seeking to bring improved wireless technology to Kansas.

One of the challenges that emerged, and which only demonstrated that franchise agreements were never intended to be applied to the deployment of small wireless facilities, was charging franchise fees based on “gross receipts.” This was not practical since wireless service is mobile, unlike landline and cable that serve a particular, geographically-specific customer base. The negotiations thus resulted in a “per node” fee, based on a formula paid by infrastructure providers’ gross receipts. This became the model for cities to charge *all* wireless providers, without many of them even having a seat at the table.

Thus, despite passage of the Kansas Wireless Siting Act, companies have essentially been held hostage for extra fees by cities requiring a franchise agreement – and additional fees – on top of a Master License

Agreement (MLA) and the fees expressly authorized by the Act. This has left companies like Verizon with two untenable paths: they can either refuse to enter into franchise agreements, thus depriving their customers of service improvements and expansion; or they can enter into franchise agreements to address the urgent customer demand for data capacity and to ensure the access and viability of the 911 system, but be compelled to pay additional municipal fees on top of those authorized in the Act.

Recently, Verizon experienced challenges with the city of Leawood. The city is forcing us to remove an existing cell tower in a few months. To replace coverage now so that customers do not experience a gap, we have been forced to move forward immediately, rather than wait for the outcome of this legislation. A couple of weeks ago, Leawood's city council considered a Verizon Master Lease Agreement (MLA) for small cell deployment, which had a \$270 per small cell, per year attachment rate, which is the maximum rate a recent Federal Communications Commission order said could be considered presumptively reasonable. However, Leawood is attempting to exceed this rate cap by also forcing Verizon to enter into a franchise agreement that would impose an additional \$25 per small cell, per year fee. Verizon has declined to enter into a franchise with Leawood because adding the \$25 annual fee to the \$270 annual rate in the MLA would exceed the FCC's rate cap. Verizon is in continued negotiations with the City to try to resolve this concern.

Leawood is therefore an example of why the passage of SB 68 is so important. Under present conditions, which violate the intent of the Kansas Wireless Siting Act, municipalities are able to hold wireless carriers hostage for additional unjustified fees by requiring a franchise agreement on top of an MLA, because providers have no other option to move forward when they urgently need to address a capacity issue that is critical to maintaining a viable network supportive of promoting public safety and 911 response. Forcing carriers to agree to something under duress to address an exigent circumstance to resolve 4G capacity exhaust or avoid a gap in existing coverage, is an anomaly and unfortunate real-world circumstance under present conditions.

While carriers have at times had to acquiesce to this sort of conduct to address one-off 4G capacity issues, they will not do so when it comes to deploying 5G technology on a widespread basis. Instead, carriers will invest in 5G deployment in places where state law has created a hospitable and helpful environment, with streamlined processes and low deployment costs, including Kansas' neighboring states of Iowa, Missouri, and Colorado, rather than places like Kansas, where municipalities are overriding legislative intent by making it difficult to deploy economically by imposing franchise requirements. The conduct of these Kansas municipalities is depriving the state (and your constituents) of the benefits of 5G.

This critical concern can be addressed easily and effectively through a narrow change to Kansas law, K.S.A. 12-2001 (d), to explicitly address and prohibit cities from requiring wireless franchise agreements.

Please note that SB 68 does not alter any of the existing authority that cities have to manage and administer the public right-of-way (ROW) as outlined in the Kansas Wireless Siting Act, nor does it alter any existing agreements that providers have made with cities for small cell deployment.

SB 68 simply reinforces the Wireless Siting Act's intent to create a uniform framework to ensure that the deployment of small wireless facilities occurs predictably and expeditiously in the context of reasonable costs, which results in a better wireless experience and faster speeds for Kansas consumers, and ensuring that Next Generation 5G happens in Kansas sooner rather than later.

Mr. Chairman and Member of the Committee, thank you again for the opportunity to testify. I urge the immediate passage of SB 68. Thank you.