The Michigan Chapter
National Association of Telecommunications Officers and Advisors

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Comments in red to MML's (Michigan Municipal League) blog post on October 5, 2018 regarding: House Energy Committee Passes Small Cell Legislation

MML BLOG POST October 5, 2018 MINATOA Response October 16, 2018

MML blog text is in black font.

Michigan NATOA response is in red font.

House Energy Committee Passes Small Cell Legislation Posted on October 5, 2018

By: John LaMacchia II

MML does NOT support and is neutral on SB 637.

Please do not confuse MML's blog post regarding the House Energy Committee Passing Small Cell Legislation, which attempts to explain MML's neutrality, with an endorsement by MML of this bill. It is not. MML has never supported the bill. The Blog is an attempt to explain MML's neutrality on the current AT&T bill. The intent is to demonstrate improvements from the original bill. Despite that noble effort, the improvements are minimal. This bill guts our resources, revenues and local authority to govern our rights of way and, in turn, helps open the door to the FCC recent preemption of cable franchises and franchise fees.

Across the country the telecommunications industry has been pursuing legislation to streamline the deployment of small cell technology. Small cells are low-powered antenna nodes that are installed to relieve congestion for wireless users. These "small cells" are 31+ cubic feet, the size of a refrigerator. The term "small" refers to the footprint of the device but they typically are installed on their own or an existing utility or street light pole. The industry does not want to place cell technology on private property because they would have to pay fair market rent. They want to go in the ROW, because this bill gives the public ROW away virtually rent and regulation free.

In November of last year, Senate Bill 637 was introduced on behalf of the Industry and the League opposed the legislation. While we don't oppose the advancement of technology, we do want to make sure the deployment of that technology is done in a fair and balanced way.

As introduced, SB 637 may have had had bipartisan support and maybe/likely the votes necessary to pass both chambers. It would have provided nearly free and unfettered access for the deployment of small cells both inside and outside of the right-of-way. Since introduction the League's advocacy team has been negotiating with the Industry and the sponsor to protect municipal interests. Over the course of the negotiation, the League has worked with our members and outside counsel to identify key areas of concerns and successfully addressed many of those areas. By addressing those key areas, we switched our position from opposed to neutral to preserve the protections we fought for to be included. Had we not gone neutral, we would have run the risk that many of those key additions

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to the legislation would have strip out. Below is a list of key items we successfully advocated to be strengthened or included that were not in the original version of the bill.

MiNATOA takes issue with the current bill. The gains made from the initial at&t draft to the current version are largely cosmetic and still, substantially terminate local control of local public ROW and reduce chargeable fees to below actual cost and, terminate all rights to market rents.

- Hard cap on the height of utility poles at 40 feet within the right-of-way. A pole higher than 40 feet in the right-of-way or any pole outside the right-of-way would need to go through zoning.

However, SB 637 must be read with FCC orders that state, once such a pole is approved, it can be increased in height by 10 feet or 10%, whichever is greater. (The FCC also allows 6 feet of expansion horizontally) This combination of current law with SB 637 increases the pole height to 50 feet and, importantly, allows the installation of 31+ cubic feet of equipment **per carrier** horizontally. Because the FCC requires colocation, think about 4 (four) industrial sized refrigerators on that 50' pole.

- Separated the installation of new utility poles from the attachment to or replacement of existing utility poles.
- Created a rate structure that charges more for a new utility pole to incentivize using existing infrastructure.

$20 per year per pole in the ROW is 1% of market rates charged in the 25+ States that have said "No" to this at&t legislation.

$125 per year per pole in zoned area is 10% of market rates. Is that acceptable when the very streets, sidewalks and curb and gutter infrastructure we manage is crumbling? We do not find the fees acceptable.

This bill allows the ROW to be given away. We do not find this rate acceptable for rent in the public rights of way.

- Rates and fees are more than double when compared to the introduced version.

More than double next to nothing is still next to nothing. "double" = 1 - 10% of market rates. That is not a concession. It is an abandonment of actual cost recovery, local control and fair market rates.

- Includes a CPI factor for fees and rates.

CPI on $20? This means every 5 years it is increased by 10%; that is $2 per pole every 5 years. We do not find this factor acceptable.

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- Prioritizes the use of existing infrastructure.

The rates and differences between them are not enough to incentivize anything.

- Ensures that any installation cannot be done on a speculative basis and the industry needs to make the facility operational.

The statement is misleading to the extent that it suggests that the industry is compelled to do anything at all. The industry needs to do nothing. There is no requirement that the industry provide any service, anywhere ever. If they fail to build within a certain period of time after the application approval date, then the applicant can simply reapply and start the short timeline all over again.

- Grandfathers in agreements where facilities have been installed and are operational.

The term "grandfather" does not appear in the Bill and, the minimal language included is weak in terms of substance and location in the bill. If the concept applies to anything, it appears to only apply to new support structure systems which comprise only a very small percentage of current applications. This change in applications occurred following locals educating the industry and FCC on the dangers involved in adding new poles in the ROW.

- Protects areas where the under-grounding of utilities has happened or will happen.
- Protects historic districts.
- Allows for concealment measure in historic districts, downtown districts and residential districts.

All subject to FCC Preemption

- Extended time-frames to approve/deny the application.

The "extended" time frames, like the "improved" fees, are far short of the reality locals face in reviewing, investigating and approving or denying applications.

- Strengthens denial provisions.

Insignificant

- Provides the ability to revoke a permit.

Insignificant

- Allows a municipality to suggest an alternative location for the deployment of a small cell.

Non-binding and insignificant

- Requires a wireless to provide notice that the small cell is no longer operational and then remove that facility within 45 days.
- Allows for bonding to ensure payment, repair of the ROW and removal of abandoned infrastructure.
- Allows for insurance and indemnification.

The addition of insurance and indemnification is a significant improvement from the original draconian at&t language. But is it a true concession to "allow" what should and has always been **required?**

- Ensures our ability to hire outside consultants for make-ready work and charge actual cost for those services.

Cities/Townships/Villages do not "make ready" unless they own the utility pole which applies only to a very small % of municipalities.

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- Requires all small cell facilities to be labeled with an emergency contact number and information to identify the small cell and its location.

Versus what? No label? How is that a concession of substance?

The introduced version would have left Michigan with the lowest rates and fees in the Midwest, but the version that passed out of committee this week by a 9-1 vote has more than doubled every fee and rate throughout the bill. While the revenue component of this bill puts us on par with many in the Midwest and across the country, we believe the policy within the bill, when compared to our neighboring states and others who have faced similar legislative efforts from the wireless industry, is among the best.

We have had many partners along the way on this bill and a Chairman, Senator Nofs, who has been very helpful and open to addressing many of our key priorities. The Senate will likely vote on this issue before the end of the month.

Michigan NATOA believes the best municipal terms exist in the states that DID NOT PASS this AT&T legislation.

While we appreciate MML's blog attempt to explain the neutral position on this bill based upon some minimal improvements from the original bill language, we find it misleading. We are opposed to the bill and find the language unacceptable. More than half the states in the country have NOT PASSED this give away to at&t.

In addition, as many of you now know, three weeks ago, the FCC issued a proposed rule that will dramatically reduce cable franchise fees as well. That rule proposal is premised on this kind of ROW give away to the Telecoms. SB 637/894 remains a frontal assault on local control in every respect. We are opposed to the bill and are willing to work on efforts to improve the bill. But, the industry is using "neutrality" as "support" and as a defense of the bill. This bill is not an improvement in local ROW management.

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