



Testimony of

Ed Mooney
International Vice President
Communications Workers of America, District 2-13

Before the Senate Communications and Technology Committee

Monday May 10, 2021

Good morning Chair Phillips-Hill, Senator Kane, and members of the Senate Communications & Technology Committee.

My name is Ed Mooney and I serve as the International Vice President of the Communications Workers of America, District 2-13. Thank you for the invitation to testify today before the Committee on the industry's efforts to burden localities and risk public and worker safety the name of small cell deployment.

We appreciate the opportunity to participate in these conversations. We believe that legislation to address deployment in Pennsylvania requires a cooperative process involving all stakeholders and full consideration of the current deployment landscape in Pennsylvania. We want Pennsylvania to lead the way forward with well-built networks that serve all aspects of the community – not legislation that sets Pennsylvania back with wrong-headed standards that will be difficult to rectify.

As currently written, the bill is a giveaway to large wireless companies on the shoulders of taxpayers. Small cell preemption bills like this one place a financial double whammy on cities: they limit what localities can bring in, while forcing them to spend more on administration. When private companies deploy equipment in public right-of-ways – property funded and maintained by taxpayers – the bill limits what localities can charge. At the same time, the bill places a heavy administrative burden on localities to facilitate this deployment. Local governments are forced to hire staff to meet strict processing timelines and bulk permitting requirements, and limited in what costs they can pass through to the companies, for example, many expenses for make-ready work.

For proof of the financial burden, we only need to look at the experience of localities dealing with the forms of preemption already in place. In a survey of 48 local governments across the country, 40% of localities reported that preemption has resulted in a loss in revenue, including 56% of large localities. At the same time, preemption had increased government expenses.

Four in five mid-size localities, and 63% of large localities reported increased staffing expenses, for example, through overtime or additional hiring necessary to process applications. Over a third of localities reported increased expenses from make-ready work.¹

It doesn't make sense to lock Pennsylvania into these regressive restrictions when the federal landscape is changing. Firstly, this bill goes further than the federal standards set by the Federal Communications Commission (FCC). For example, the bill provides for an aggressive deemed approved remedy, meaning companies are effectively given free rein to build on public property if a municipality misses a deadline, regardless of any safety concerns. The FCC specifically did not provide a deemed approved remedy in its 2018 small cell rulings. More importantly, the federal regime is in flux. The FCC has recently come under new Democratic leadership, and the small cell rules are on appeal before the Supreme Court. While all this is happening, this bill would freeze Pennsylvania into a harmful, wrong-headed standard. A small cell built the day after this bill goes into effect is locked into that standard for fifteen years – the bill requires municipalities to grant providers approvals that last at least five years, with two additional five-year periods, Sec. 4(J). That ties Pennsylvania's municipalities to yesterday's legal standards when in fifteen years the technology and the legal landscape will look very different.

Most importantly, in the midst of a crisis, the bill does nothing to address the digital divide crisis facing average Pennsylvanians. Any suggestion that this type of corporate giveaway will help needy Pennsylvanians is an insult. The pandemic has demonstrated what happens when wireless providers receive giveaways with no regulation and no accountability. Thousands are left without quality internet access and unable to fully participate in our economy. Some comments suggest that when fees are lowered, providers will suddenly have reason to build in their communities. But history has shown the reality of unregulated deployment: providers will only build where it is profitable, and needy communities will be left behind. Small cells require fiber and as such are only built in areas where there is already fiber access. If anything, the bill only serves to exacerbate the digital divide, by allowing providers to focus their build in wealthy areas, while tying the hands of local governments to do anything about it. For example, the bill prevents municipalities from requiring providers to enter into agreements and prevents municipalities from requiring in-kind donations, for example, access to dark fiber or coverage of low-income populations. In a survey of local governments, 35% of all localities, and over half of large localities, reported that if it weren't for preemption, they would be pursuing digital divide initiatives that they currently are not.

The bill also makes it harder for our local governments to ensure safety in the right-of-way, for workers and the general public. Although the industry would like to make it sound as if deployment is as simple as attaching a shoebox to a pole, this is complex work that affects public safety. Workers often have to dig under sidewalks and streets to access conduit, and

¹ National Association of Telecommunications Officers and Advisors, March 2021, "Stretched Thin and Feeling the Squeeze: The Harmful Effects of small Cell Preemption on Local Governments," https://assets.noviams.com/novi-file-uploads/natoa/20210317_NATOA_CWAReport.pdf.

navigate other underground utilities, like water, sewer, or gas. Providers also often use multiple layers of contractors, and those doing the work down the line are often small non-union companies that disregard safety. When things go wrong in the right-of-way, the consequences are real. For example in 2019, a subcontractor for Crown Castle in North Carolina hit a gas line, and caused an explosion that killed two people, injured twenty-five, and destroyed multiple businesses.² Also that year, a Verizon subcontractor in San Francisco hit a gas line and caused an explosion and a three-alarm blaze that burned for hours.³ Again in North Carolina in 2016, a 19-year-old hired as an independent contractor by a subcontractor for AT&T had his finger crushed in a ditch-digging machine while operating the machine without oversight less than a week after being hired.⁴

Localities need to be able to ensure safety in the right-of-way. In addition to the administrative burdens of additional make-ready expenses, limited bases for denying a permit, and large batch permitting requirements, the bill freezes Pennsylvanian municipalities into very strict deadlines, with harsh deemed approved remedies if a municipality can't meet a deadline. These burdens make it much more difficult for cities to ensure that work is done safely in the right-of-way. The bill also limits municipalities' ability to oversee key issues like collocation, pole replacement, height increases, and equipment approval. These limitations mean that wireless carriers would not be responsible for ensuring safety, efficiency, and responsible maintenance of poles owned by localities and utilities. These structures are in public areas and often bear heavy equipment. Reducing oversight means greater safety risk for everyone in our streets.

CWA strongly supports policies that will encourage job-creating investment in high-speed next-generation communication networks. Unfortunately, as currently written, the bill is none of those things. The bill serves only as a giveaway to big wireless companies on the backs of regular Pennsylvanians, putting municipalities in a financial bind and doing nothing to bridge the digital divide.

We urge the Committee to explore fully the information available on deployment in Pennsylvania, including information on the current state of municipal agreements in the state. As many of us have seen from the advertisements, most carriers are already advertising the availability of 5G networks. Indeed, many municipalities in the Commonwealth have already negotiated agreements with the providers. It would be informative for the Committee to consider those carefully negotiated municipal agreements, and the state of deployment today, before locking the entire state into low standards that would cause permanent harm.

² Joe Johnson and Anna Johnson, "Deadly Durham gas explosion ruled accident, report says," The News & Observer, August 9, 2019, available at <https://www.newsobserver.com/news/local/counties/durham-county/article233713942.html>.

³ Ted Goldberg, KQED, "Contractor Tied to San Francisco Pipeline Explosion Didn't Have a License," February 15, 2019, available at <https://www.kqed.org/news/11725622/contractor-tied-to-san-francisco-pipeline-explosion-didnt-have-a-license>.

⁴ Communications Workers of America, "AT&T's Web of Subcontractors," October 2020, <https://cwa-union.org/sites/default/files/20201005attsubcontractorreport.pdf>.

Thank you again for inviting CWA to speak at this hearing. We look forward to working with you in a cooperative process on this bill and appreciate your consideration as we work on policies to bring Pennsylvanians real investment in quality internet access for all.