



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: 5 November 2020

SUBJECT: Public Chapter 819, Acts of 2018 (Small Cell)—Draft Report for Review and Comment

The attached Commission report is submitted for your review and comment. It was prepared in response to Public Chapter 819, Acts of 2018, which both created a framework governing the regulation of small cell wireless facilities in public rights-of-way and directed the Commission to study the effects of the Act, including

- the effect on deployment of broadband;
- the fiscal effect on local governments and the state resulting from the administrative process required by the Act;
- best practices both from the perspective of small cell applicants, local governments, and the state and from a review of other states; and
- opportunities to advance the quality of transportation in the state by utilizing technological applications, sometimes referred to as “smart transportation applications,” that are supported by small cells.

The Commission was further directed to make recommendations for any changes to the Act based on the study’s findings.

The draft report explains that the wireless industry is supplementing the large, several-hundred-foot-tall cell towers that characterized the first several generations of mobile wireless networks with smaller facilities—typically installed on utility poles, streetlights, or standalone poles no more than 50 feet tall. These small cells—so-named because of their relative size and range when compared to earlier wireless facilities—are

being used to enhance existing mobile wireless service—corresponding to services commonly referred to as 3G, 4G, or LTE—and support the latest advance in service commonly referred to as 5G—which is expected to “provide faster speeds, greater capacity, and the potential to support new features and services,” according to the Congressional Research Service.

Among its findings, the draft report identifies several new or enhanced applications in transportation and other sectors that likely could be supported by small cells. But it notes that there is some skepticism regarding whether small cells and 5G will yield expected benefits in the short-term, given uncertainty about how soon advances in wireless service can fuel new products consumers are willing to pay for.

Initial deployments of small cells have been located primarily in urban and suburban areas in need of added wireless capacity. Because broadband is more likely to exist in these areas already, the Act’s effect on broadband deployment in unserved areas has been minimal, though the wireless industry reports it has facilitated investment in Tennessee. An exact count of small cells in each community could not be obtained from providers because of the business-sensitive nature of these deployments, but the vast majority are in the state’s four largest cities, according to interviews with local officials.

Although the wireless industry remains generally supportive of Public Chapter 819, some local officials raised concerns about the maximum fees authorized under the Act. The caps in Tennessee law result in application fees lower than in most of the 21 other states that limit local application fees for small cells. The resulting fees are also generally lower than those authorized under the Federal Communication Commission’s (FCC) small cell order—which was also adopted in 2018 and applies to all states regardless of whether they have enacted small cell laws. However, officials from most of the 40 local governments interviewed did not raise concerns about the existing fee caps, and a few said that the cost of complying with the Act has been minimal. Commission staff did not attempt to quantify the Act’s fiscal effect given the limited number of local governments that had received more than a dozen small cell applications at the time of their interviews.

Other issues aside, the effect of small cells on community aesthetics is the most widespread concern among local officials interviewed. Local governments already have authority under the Act to require that small cells conform to adopted aesthetic standards provided that the standards are non-discriminatory, generally applicable to other entities deploying infrastructure in public rights-of-way, and don’t preclude all deployment of small cells. Many local officials report they are using this authority. The wireless industry supports the adoption of objective standards that meet the Act’s requirements as a best practice, and both the FCC order and 23 of the other states with

small cell laws preserve at least some local authority to regulate the aesthetics of these facilities.

But the draft report explains that adopting aesthetic standards likely won't fully address the concern of some local officials that the installation of numerous, new poles to support small cells in public rights-of-way could create visual clutter, because these standards must comply with other provisions in the Act: Local governments must allow small cell applicants to seek waivers that would authorize placement of new poles for small cells in areas where electric, cable, and other communications infrastructure is otherwise required to be underground; they cannot require that small cells be placed on specific poles or categories of poles, preventing them from requiring colocation on existing poles; and they cannot require that small cells or the poles supporting them be spaced a minimum distance apart.

Local governments are currently authorized to propose design alternatives—which could include colocation on existing poles—during the application review process, offering an opportunity for applicants to collaborate on solutions acceptable to both parties. Although colocation has support among local officials, the Tennessee Department of Transportation, and the wireless industry, some local officials are concerned that wireless providers won't let competitors colocate small cells on poles that those wireless providers own. One official further noted that local governments cannot require applicants to provide information needed to verify the necessity of either installing new poles or using specific locations, under Public Chapter 819.

Because concerns related to community aesthetics are unlikely to diminish as the number of small cells increases, the draft report includes two recommendations: First, the draft report **encourages local governments to both update existing ordinances that set aesthetic standards for their communities to ensure their requirements apply to small cells and include small cells in any new standards they adopt.**

Second, the draft report finds that **the General Assembly could consider authorizing local governments to require colocation of small cells in areas with existing poles. Care would need to be taken to ensure this authority could not be used to block the deployment of small cells in situations where applicants can demonstrate that colocation is not feasible either for technical reasons or because of added costs, similar to limitations on colocation requirements adopted in Georgia. Regardless, some new poles will be necessary to improve wireless service given the limited distance traveled by some of the wireless signals used by providers. And because colocation will likely involve the use of electric utility poles, any colocation requirements should also ensure the continued authority of local power companies to protect the safety and reliability of the electric grid.**