



**CALL TO ACTION: AT&T PURSUING LEGISLATION THAT TRAMPLES MUNICIPAL RIGHTS;
URGENT CALLS TO STATE LAWMAKERS NEEDED NO LATER THAN NOVEMBER 29TH**

TO: OMEA Principal Contacts
AMP Principal Contacts in Ohio

FROM: Jolene M. Thompson, OMEA Executive Director/AMP Executive Vice President
Michael Beirne, AMP/OMEA Vice President External Affairs
Charles Willoughby, AMP/OMEA Director of Government Affairs

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AT&T is pursuing a legislative proposal that would eliminate local control for Ohio municipalities with respect to their rates, zoning and maintenance efforts regarding pole attachments of “small cell” wireless antennas and accessory equipment. The bill is extremely broad and gives wireless internet companies and speculators unrestricted access to not just municipal electric infrastructure, but also all municipal structures capable of supporting wireless antennas i.e. street lights, stop signs, water towers, public right-of-way and any other public facilities.

AT&T is pursuing this legislation as an 11th hour amendment to any pending legislation in the lame duck session. *We need your help – please call your state senator and representative and oppose this onerous legislation.*

Background

In July, FCC opened 11 GHz of new spectrum for 5G and issued federal guidelines encouraging its national deployment. AT&T's legislative effort is a part of their nationwide strategy to preempt local regulation of these facilities.

AMP/OMEA staff reviewed an informal legislative proposal we received a few weeks ago with the AMP and OMEA Boards and it was agreed that we would request a meeting with AT&T officials in an effort to negotiate a non-legislative solution to the issue – similar to the pole attachment agreement AMP/OMEA reached with the Ohio Cable Telecommunications Association in 2014. Any such agreement would be subject to approval by the AMP Board of Trustees and OMEA Board of Directors.

Despite discussions with AT&T, it appears that they are intent on pursuing some version of their legislation during the lame duck period over the final weeks of the legislative session this year. Their argument is that the legislation is necessary for their corporate headquarters to agree to invest in a 5G build out in Ohio.

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Concerns with Legislation

Below are some concerns with how damaging this complex legislation would be to your community and municipal electric utility.

- This proposal strips away a municipality's constitutional authority for local control. Specifically, the draft bill would:
 - Permit any entity who files a completed request (this is not limited to telecommunications companies – could include speculators seeking to reserve space on your poles for resale) to attach a wireless antenna to any structure owned by a municipal corporation or build a new free-standing pole in the public right-of-way.
 - This would include attachments to critical infrastructure, such as water towers, police and fire facilities, and substations, raising security concerns.
 - This could also lead to multiple companies placing numerous poles within the right-of-way.
 - Permit the entity requesting consent to place accessory equipment (any size) anywhere in the right-of-way.
 - Exempt all proposed actions (construction of new facilities, pole attachments, increasing pole or other structure height up to 50 feet) from any local zoning requirement.
- Any dispute arising from local concerns with applications would be heard and decided by the Public Utilities Commission of Ohio (for those requests that are not automatically approved under the bill). Municipal electric utilities are currently regulated and accountable to their local communities and not the PUCO.
- Many small cities and villages do not have the necessary resources to negotiate, comply or challenge agreements through the costly PUCO process.
- One or more entities requesting consent could file a single city-wide application for multiple wireless antennas (1, 100, 1,000 antennas) and a municipality would have 30 days to undertake an initial review, and 90 days to approve.
- Abandoned wireless facilities would be the responsibility of the municipality.
- The legislation singles out municipalities and does not include infrastructure owned by rural cooperatives, investor owned utilities, townships, counties or the State of Ohio.
- We are unaware of any issues that AT&T or others have experienced in Ohio that warrant blanket Draconian restrictions specifically on municipalities through statute.
- Municipalities are already required to provide non-discriminatory access. This bill creates a special carve-out for telecommunications companies or other entities requesting consent.
- Municipalities are already required to charge fees that are reasonably related to the cost.

Additionally, permitting wireless attachments and the equipment needed to operate them on poles and other structures throughout a municipality's right-of-way could have negative reliability implications for electric utilities, as well as safety concerns for municipal employees responsible for infrastructure maintenance.

Concern with Precedent

Adoption of this legislation would set a terrible precedent for local control. Decisions about the safety and aesthetics of municipal infrastructure would be taken out of the hands of local decision makers and placed into the hands of corporations with no local interest other than financial. And although the language as drafted only applies to municipalities, it would be safe to assume that county, township and state property would be subject to the same restrictions in the future.

We are also concerned about the precedent of subjecting municipal policies to PUCO jurisdiction – something we have long argued against and is not in keeping with the principles of Home Rule. Governance and decision-making is best handled at the local level and disputes over local decisions can already be challenged at the local court level. Requiring cities and villages to appear in Columbus before the PUCO would be costly and time consuming and would pit municipal law directors against a fleet of utility regulatory attorneys. Additionally, the local control aspect of municipal electric

operations has been an important factor cited by rating agencies in their favorable ratings on AMP's and its members financings.

Concern with Process

We are concerned about how the way in which this legislation is being pursued by the General Assembly. No formal legislation has been introduced, no legislative hearings have taken place and no widespread stakeholder meetings have been held. It wasn't until we reached out to AT&T that the first (and, to date, only) meeting took place. We have indicated our commitment to working towards a non-legislative solution, similar to the agreement we made with the cable industry in 2014, and we are attempting to negotiate in good faith with AT&T. However, it appears that they are intent on passing legislation during lame duck.

In the short-term and to assist in AT&T's efforts to get corporate investment dollars in Ohio for the deployment of 5G, we are proposing legislative language that would establish a statement of state intent that would include the creation of a working group to formulate recommendations by early 2017 for the deployment of advanced wireless services in rural and urban areas throughout the state. This working group would identify issues, barriers and opportunities and would be a collaborative approach to the roll out of 5G.

Should AT&T's legislation be adopted by the General Assembly, we fully anticipate a legal challenge to the constitutionality of the proposal. Such an outcome is likely to delay or complicate what AT&T is trying to achieve in the first place.

With the days numbered in this legislative session, please call your lawmaker no later than Nov. 29th to ask that they oppose AT&T's bill, and to ask their legislative leadership to also oppose. Additionally, please ask that they support the alternative proposal to identify the state's intent and create a working group to formulate recommendations.

To find your lawmakers, please visit: <https://www.legislature.ohio.gov/>

Thank you for your efforts and we will continue to keep you posted on developments. If you have any questions or need additional information, please contact Michael Beirne at 614-540-0835 / mbeirne@amppartners.org or Charles Willoughby at 614-540-1036 / cwilloughby@amppartners.org.

Below are several examples of wireless attachments to existing poles and a new pole (with equipment) erected in the right-of-way.



Additional examples of equipment enclosures (ground and pole mounted)



Background on pole attachment battles, previously with the cable industry

Since at least 2008, the telecom and cable industry began pursuing legislation that subjects municipal utility pole attachment regulations to the PUCO jurisdiction, as their counterparts in other states have been. For a variety of reasons, including the violation of Home Rule and the attack on local control, the OMEA strongly opposed these efforts.

In 2012, state lawmakers were again preparing similar legislation supported by the cable industry which prompted OMEA to issue a legislative alert to members. The resulting calls and emails from members to state lawmakers resulted in a stakeholder meeting and lawmakers requesting that the cable industry and OMEA develop a non-legislative solution. If we could resolve this issue ourselves, legislation would not be introduced.

It was determined in these meetings that the FCC formula to calculate pole attachments should be used. Because smaller municipalities do not use a specific form of complex accounting required under the FCC and the costs to study, establish and negotiate, let alone litigate, the resulting rates would be greater than the additional revenues would provide. As a result, it was agreed that a model rate for use by smaller municipalities would be developed.

OMEA hired outside consultants to assist in collecting a range of data needed to calculate the model formula. This data collected included items such as pole age and height, number of attachments, usable space, etc. Negotiations with cable continued until we agreed to a proxy rate based on the information and data from our studies.

Agreement

A master agreement was signed by AMP, OMEA and the Ohio Cable Telecommunications Association (OCTA) in February 2014. It established a template agreement and model rate structure, and prevented OCTA from pursuing legislation that subjects municipalities to state regulation. Under the agreement AMP, OMEA and OCTA will recommend the use of this model agreement for pole attachment policies. If a municipality decides against using the template agreement, cable providers retain the right to challenge the new policy in court, and AMP and OMEA would not provide legal assistance to such a municipality.

We believe this agreement has provided the best possible outcome for AMP and OMEA members. Additionally, for many of our members it provides a way to fairly recover costs without the time and cost of rate studies, negotiations and potential legal fights. In noting that the rates, terms and conditions are not unreasonable, we believe the benefit of this agreement for both sides has avoided onerous legislation and legal battles with infinite costs and a potentially detrimental court decision.