



Testimony SB 380, Video Service Providers

Date: February 12, 2020

To: Chairman Masterson and the Senate Utilities Committee

From: City of Wichita – Gary Janzen, P.E., City Engineer/Assistant Director of Public Works & Utilities

Subject: Testimony in Opposition of Senate Bill 380, Video Service Providers

Thank you for the opportunity to provide testimony on this important matter. There are three main points we would ask that you consider:

1. State law has historically and reasonably governed cities' right-of-ways for all utilities and service providers in a manner that balances business growth with community safety and welfare. K.S.A. 66-2019 (Wireless Siting Act) establishes protocol and regulations for siting of wireless communication facilities, and FCC 18-133 defines "small wireless facilities" while establishing reasonable fees for use of public right-of-way. The Legislature is now being asked to exempt cable providers from these regulations for deployment of their own wireless communication facilities. The proposed bill would provide preferential treatment to just one of the industries that use City right-of-way without a rational factual basis or public policy reason to do so. If this bill succeeds, cities will likely face similar challenges from all other industries, existing and future, that use public right-of-way.
2. Under the requirements of the Wireless Siting Act and the FCC declaratory ruling, the City of Wichita has successfully negotiated multiple agreements with wireless communication and infrastructure providers for deployment of small cell facilities across the community. This has resulted in the installation of wireless communication devices and associated appurtenances at more than 130 locations throughout Wichita, with well over 200 more planned for the future. The City has worked closely with providers to develop a flexible yet predictable policy, along

with a common fee structure, for placement of facilities within existing right-of-ways. This competitively neutral process has been streamlined in partnership with multiple providers (Zayo, Mobilitie, Verizon) to enhance the speed of deployment for new technology. Additional agreements are currently being negotiated with AT&T, Cox and Extenet, amongst others. The proposed legislation suggests a separate “micro wireless facility” definition that is not necessary, and the plan to cable strand mount these facilities should not allow exemption from existing legislation. The definition appears to clearly fit within the existing description of a small wireless facility at both the state and federal levels.. The cable industry has not provided any explanation or evidence as to why these facilities should not follow the same rules and regulations as other wireless communication providers.

3. Finally, the wireless telecommunications industry already enjoys many legal protections from unreasonable regulation at both the federal and state levels. At the federal level, the 2018 FCC declaratory ruling limits the fees that state and local governments can charge to wireless providers to install small wireless facilities on public right-of-way, and establishes criteria to determine whether state and local aesthetic requirements are preempted. The ruling also establishes shot clocks that broaden the applicability of the same to cover a wider variety of authorizations necessary for deployment and creates new remedies for applicants when state and local governments fail to process small wireless facility applications before the shot clock expires. In Kansas, state laws further limit the amount of fees that providers can be charged, and provide significant allowances for the placement of small cell facilities, to the benefit of the industry. These cumulative restrictions already create unfair protections for wireless providers that other current right-of-way users don't realize. The proposed legislation could further erode or eliminate the ability for communities to continue utilizing proven and successful plans that already follow the confines of current legislation.

In conclusion, the City of Wichita currently holds franchise agreements with over 25 different utilities, many in excess of 20 years. These long-established relationships have not only created a level and consistent playing field, but provide for the protection of public safety, health and welfare, including the aesthetic environment. The current regulations for users of the right-of-way, including wireless communication providers, need to remain in place, without exception or exemption, to provide a consistent framework for all utilities using the same spaces and for protection of personal property rights. Wichita was one of the first communities to deploy small cell technology in Kansas and has a proven record of success in providing a fair, consistent, and

competitively neutral approach. We are confused and frustrated by the wireless industry's continued insistence to use state and federal tactics to solve a problem that does not exist, at least not in Wichita. For all these reasons, we respectfully request that the Committee not advance Senate Bill 380 to the full Senate. Thank you for your consideration.