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Chairman Masterson and Members of the Committee:

I appear today on behalf of AT&T in support of SB68, a simple, straightforward bill amending the state Franchise Act (K.S.A. 12-2001) to prohibit Kansas municipalities from requiring wireless service providers and wireless infrastructure providers to enter into wireless franchise agreements before being allowed to deploy advanced wireless facilities and services in the municipality.

SB68 is necessary to prevent municipalities from circumventing both the provisions of the Kansas Wireless Siting Act ("WSA") (K.S.A. 66-2019) and the legislature's previously expressed intention to streamline and speed the process by which wireless service and infrastructure providers could deploy new and advanced small cell and wireless technologies to Kansas communities and consumers.

### **Wireless Siting Act**

In 2016, the Legislature, with overwhelming bipartisan support (House: 112-12; Senate: 35-4), took a leading role in making Kansas as one of the first states to enact legislation, the WSA, designed to streamline and speed deployment of small cell technology. Small cells are small wireless facilities attached to utility poles, traffic lights, light poles or even the sides of buildings, and are designed to boost network capacity and lay the foundation for future innovations such as 5G technology. The WSA would position Kansas to attract valuable network investment capital and spur wireless broadband deployment throughout the state to enable it to take advantage of what comes next – 5G, smart cities, telemedicine, autonomous vehicles and more.

The WSA was adopted after lengthy and sometimes contentious negotiations between representatives of the wireless industry, the Kansas League of Municipalities, the Kansas Association of Counties and representatives of some of the state's largest cities. As a result, the WSA includes provisions directly addressing and preserving cities' ability to reasonably manage the public right-of-way (ROW), Home Rule, as well as Planning and Zoning authority. It also preserves and includes permitting, indemnity, insurance and enforcement provisions, among other powers for city authorities to use. The WSA, for the first time, even expressly extended such ROW management authority to Kansas county governments. Equally as important, the WSA explicitly allowed for compensation to cities and counties for permit applications, use of the ROW and attachments to municipally-owned property and structures.

The WSA thoughtfully addresses all the concerns that cities are trying to manage with a wireless franchise agreement. Moreover, AT&T believes there are other, more appropriate ways to address a city's specific concerns – such as through permitting processes, a Master License Agreement (MLA) or through local ordinances that comply with the WSA.

## **Franchise Act**

AT&T's long history as an incumbent local exchange telephone company in Kansas means it also has a lot of experience with the Franchise Act and how municipalities in Kansas interpret and apply its provisions. Those interpretations can vary much like the Kansas weather.

Not surprisingly, the 74-year old Franchise Act is silent as to its applicability to wireless technology and services. After the 2016 adoption of the WSA, Kansas municipalities began relying on the Franchise Act's silence and their Home Rule authority to require wireless service providers to agree to wireless franchise agreements resembling those of traditional wireline telephone companies, including the payment of franchise fees. Unlike traditional wireline franchise agreements, there are no statutory limits on wireless franchise agreements or fees. The agreements, which often take months to negotiate, impose varying requirements and fees on providers not envisioned by the WSA, all of which serve as material impediments to the speedy and streamlined deployment of the new wireless technologies. Without a wireless franchise agreement and corresponding franchise fee payments, despite the statutory right of wireless providers to be in the ROW granted by the WSA, municipalities have said no to deployment.

AT&T and other wireless service providers have attempted and are continuing to engage Kansas municipalities individually and through the League of Kansas Municipalities to try and find a mutually agreeable solution to the franchise issue. Unfortunately, those efforts have largely been unsuccessful.

## **The Need for SB68**

As a direct result of the unchecked franchise authority being exercised by some Kansas municipalities, AT&T has not deployed any small cell wireless technology in Kansas despite its desire to do so and the promise of the WSA. The passage of SB68 would remove the one major roadblock for AT&T to begin deployment in Kansas.

Since the Legislature's action in 2016, approximately 20 other states have passed or are now considering legislation to encourage small cell deployment – none of which require a wireless franchise.

The Federal Communications Commission's (FCC) newly effective order establishing a national framework for small cell deployments may also preclude a wireless franchise as materially inhibiting the deployment of small cells, which are essential to our nation's 5G future.



## Summary

Allowing wireless franchises defeats the purpose of the WSA and discourages wireless service providers from deployment/investment, as they:

- Create an additional layer and patchwork of costs, regulation and bureaucracy on a city-by-city basis;
- Open the door for municipalities to impose new fees/taxes on retail wireless services, consumers and carriers without any limits;
- Apply a model designed for a monopoly utility's use of the public ROW to wireless technology – a fundamentally different technology that uses the right of way in much more limited manner;
- Unnecessarily delay and inhibit the deployment of small cells – putting Kansas significantly behind peer states in small cell deployment.

SB68 will not alter any of the existing authority that municipalities already have to reasonably manage and administer the public ROW, as explicitly stated in the WSA. It also does not alter any existing agreements that some providers were forced to enter into with some municipalities as a business decision in order to deploy limited numbers of small cells. SB68 is simply a necessary step to reinforce the WSA's intent to create a uniform statewide framework to help speed deployment of small cell technology to improve and expand wireless services to Kansans.

## Conclusion

SB68 is a necessary and important piece of legislation to ensure the success envisioned and promised by the enactment of the WSA. To help Kansas get back on track for the future, we urge your support of this legislation.

Thank you for your time and consideration.

Respectfully submitted,



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