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Chairman Seiwert and Members of the Committee:

I appear today on behalf of AT&T in support of SB68, a straightforward bill amending the state Franchise Act (K.S.A. 12-2001) to clarify that Kansas municipalities cannot require wireless service providers and wireless infrastructure providers to enter into wireless franchise agreements before being allowed to deploy advanced wireless facilities or small cells and services in the municipality.

### **Need for SB68**

This change is needed to resolve an issue that arose after the implementation of the Kansas Wireless Siting Act ("WSA")(K.S.A. 66-2019), wherein some cities began requiring a wireless franchise in addition to requiring companies to comply with the provisions of the WSA – before approving any wireless network construction in their community.

Requiring a wireless franchise is detrimental to wireless investment and deployment for several reasons, but primarily because under Kansas law, there is no statutory framework for wireless franchises. Unless guardrails are put into place - protections and provisions that already exist in the WSA – cities have the unilateral ability to change their demands, terms and conditions, including the assessment of additional franchise fee payments, for wireless franchise agreements. SB68 will remedy this issue by clarifying that cities cannot require a wireless franchise but can continue to manage and be compensated for use of a city's public ROW through other means and as outlined in the WSA and in a manner consistent with federal law.

### **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 aimed to 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 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 public 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.

Since the legislature's passage of the WSA 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. By addressing this issue and providing additional clarity to local municipalities and the wireless industry, SB68 will remove a major roadblock to small cell deployment in Kansas and reaffirm the Kansas Legislature's previously expressed intent to help facilitate and speed the deployment of new and advanced small cell and wireless technologies to Kansas communities and consumers.

### **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 can 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. Yet, some Kansas municipalities are 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 some municipalities have said no to deployment despite the statutory right of wireless providers to be in the ROW as granted by the WSA.

### **SUMMARY**

SB68 will not alter any of the existing authority that municipalities have to reasonably manage and administer the public ROW, as is 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.

#### **As amended, SB68 specifies that a city can:**

- **Rights-of-Way:** Govern a wireless services provider's or wireless infrastructure provider's use of the public ROW through a variety of legally-binding options including: a small cell facility deployment agreement, a master license agreement, permitting requirements, municipal ordinance or code – or any combination thereof.

- **Fees:** Be compensated for small cells that use a city's public ROW on a reasonable, fixed fee basis.
- **Exceptions:** Ensure that these franchise restrictions will only apply to wireless services; they will not apply to other utilities or have any effect on any utility franchise that is related to other operations and services.

SB68 reflects an agreement reached between industry stakeholders and the League of Kansas Municipalities and its member cities after extensive negotiations on how to best balance local interests with the need to help speed deployment of small cell technology to improve and expand wireless services to Kansans as intended with the legislature's passage of the WSA in 2016.

As the League noted in a newsletter to its members explaining its neutrality on the amended bill, "Cities will not be able to require franchise agreements, but cities will retain significant abilities to control their public rights of way and will be able to require agreements with wireless providers prior to deploying service."

We believe 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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