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To: Assembly Committee on Jobs and the Economy
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: May 30, 2017
Re: AB 348, Limiting the authority of local governments to regulate small cell wireless facilities in the right-of-way and authorizing local governments to impose setback requirements on cell towers in single family residential districts

Good afternoon. My name is Curt Witynski. I'm the Assistant Director of the League of Wisconsin Municipalities, a non-profit association representing 189 cities and nearly 400 villages.

I'm testifying this afternoon for information purposes only on AB 348. The bill contains changes to state law that we like, but also contains limitations on municipal authority about which we have concerns.

I want to emphasize at the outset, however, that the authors and proponents of the bill have met with League staff on several occasions and agreed to make specific changes to earlier versions of the bill that we requested. These changes addressed several of our major concerns and we continue to have conversations about making additional technical and other changes to the bill. We very much appreciate the approach the authors have used on this bill. The more open process being used to develop this bill is in stark contrast to the budget amendment passed several years ago without a public hearing or any opportunity to comment that fully preempted municipal authority to regulate the placement of traditional cell towers.

What we like about the bill:

1. Language restoring municipal authority to impose setback requirements on the placement of traditional cell towers within single family zoning districts. (We have concerns about the narrowness of this language, which I discuss below).
2. Language allowing municipalities to regulate by permit and possibly disallow wireless facilities in the right of way within historic districts and areas where all other utility facilities are required to be placed underground.
3. Language ensuring that the bill does not overturn existing contracts that municipalities have entered into with wireless providers establishing higher rates for use of municipal poles than allowed under the bill.
4. Language requiring a wireless provider to indemnify and hold harmless a municipality for any liability and loss that results from the use of the right-of-way.

Additional Changes we hope to see to the bill: We ask the author and proponents of the bill to consider making the following changes:

1. We have concerns about the narrowness of the language allowing municipalities to impose setback limits on cell towers in residential districts. The language in Rep. Ott's bill, AB 161, from which this part of the bill is modeled, is preferable from our perspective. It applies to any parcel of land that is subject to a zoning ordinance that permits residential use on that parcel. While that might be too broad from the industry's perspective, the bill as drafted is too narrow. It only allows setbacks on parcels that are zoned for only single-family residential use or for which only single-family residential use is a permitted use. So, a setback requirement would not apply to a church, for example, located in a single-family residential district.
2. We seek language clarifying that municipalities may disallow small cells in the right-of-way if necessary to protect the public's health and safety.
3. We seek language making it clear that wireless providers, like other utilities using the right-of-way, are responsible for covering the cost of moving their wireless facilities in the right-of-way to accommodate street widening and other municipal street construction projects.
4. Under the bill, the rate a municipality may charge a wireless provider for locating a small cell facility on a municipally owned pole is the lesser of a municipality's cost of regulation or \$100. In our discussions with the author on this topic we understood that the pole rental rate was a maximum of \$100 period, not the lesser of actual cost or \$100. We request that the lesser of language be stricken.

We will continue to have discussions with the author and the proponents of the bill on ways it can be improved. We appreciate the collaborative approach the author has taken, the opportunity to be heard, and that many of our concerns are being addressed.