



Empowering Texas cities to serve their citizens

---

President **Holly Gray-Moore**, Mayor Pro Tem, Roanoke  
Executive Director **Bennett Sandlin**

July 16, 2018

The Honorable Ted Cruz  
Russell Senate Office Bldg., 404  
Washington, D.C. 20510

Re: The STREAMLINE Act

Dear Senator Cruz:

I am writing on behalf of the Texas Municipal League in opposition to the *Streamlining The Rapid Evolution And Modernization of Leading-edge Infrastructure Necessary to Enhance (STREAMLINE) Small Cell Deployment Act* (S. 3157). The Texas Legislature passed a bill in 2017 that already preempts many facets of small cell deployment. Because of that, and because the federal government has no business getting involved in municipal right-of-way management, the League asks that you oppose the STREAMLINE Act.

As you know, Senators John Thune (R- South Dakota) and Brian Schatz (D – Hawaii) recently introduced the Act. Much like pending Federal Communications System (FCC) rules, it would federalize municipal right-of-way authority and compensation. While the FCC's statutory authority is debatable and would certainly be challenged in court, congressional action could be needlessly and permanently damaging.

The Act would make major changes to requirements for small cell siting by imposing new requirements, such as:

- Providing that fees must be “competitively neutral, technology neutral, and nondiscriminatory; publicly disclosed; and based on *actual and direct costs*.” This provision would eliminate market-based rents for small cell nodes.
- Limiting local authority over “small personal wireless facilities (e.g. small cell nodes)” to “objective and reasonable...structural engineering standards based on generally applicable codes; safety requirements; or aesthetic or concealment requirements.”

The Texas Legislature passed preemptive small cell legislation in 2017, but it doesn't go as far as the Act. Senate Bill 1004 requires a city to allow access for cell nodes and related equipment in city rights-of-way, and it also entitles cell companies and others to place equipment on city light poles, traffic poles, and other facilities.

Moreover, the bill limits cities to a rental fee of \$250 per node, which is far less than the \$1,500 to \$2,500 companies must pay on the open market. The federal Act would likely lower that \$250 cap even more.

Texas law on right-of-way compensation is different than that of most states. The relevant part of the Constitution is very simple:

“[T]he Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State...to grant...[any] thing of value in aid of, or to any individual, association or corporation whatsoever...”

The legislature or Congress mandating the use of city property for less than fair market value clearly violates the above provision, and the victims are city taxpayers who are forced to subsidize private industry. Because of that, the City of McAllen and a coalition of around 40 cities filed a lawsuit challenging the state law cap.

The low fee is a legislatively-mandated taxpayer subsidy to the cellular industry because it allows nearly free use of taxpayer-owned rights-of-way and facilities. Some legislators in Texas, and many industry representatives, characterized the lawsuit as being only about “cities wanting more money.” The lawsuit isn’t about a “money grab” for cities. It is about a mandate in the Texas Constitution that prohibits the legislature from doing what it did with S.B. 1004, and what the federal Act proposes.

One Texas legislator publicly spoke about his participation in a recent panel discussion relating to local control and why the state legislature (and, presumably, the FCC and Congress) keeps interfering with it. The comment was: “I answered, frankly, that it’s when the locals interfere with the free market system, that it’s time for the state to step in...let the free market system work, don’t interfere...”

The irony there is that the state and federal government are the ones attempting to interfere with the free market system. Prior to the state bill, several large cities had negotiated deals (just like any property owner would) to allow small cell nodes on their property for fair market value. Many applications had been approved. The legislature then interfered in that free market.

People often say that government should be “run like a business.” In this case, that’s exactly what those cities were doing. Even if they weren’t constitutionally mandated to get fair market value for the use of the property, any prudent private business would do the same thing. You can bet that a private business wouldn’t allow these facilities on its building for \$250 per year. Also, cell providers don’t have to use city facilities to deploy their networks. They could approach private business for a license or lease to use their facilities. It is troubling that the legislature would interfere in the market, but it is absurd that Congress would attempt to do so.

Because of your position on the Senate Commerce Committee, we ask that you stand with Texas cities in opposition to the STREAMLINE Act.

Please contact me at 512-750-8718 if I can be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Igo', with a stylized flourish at the end.

Shanna Igo  
*Director of Legislative Services*