

Mississippi Association of Supervisors
2018 Annual Summer Conference

Legislative Issues
Trending in the Southeastern Region

By: Steve A. Gray

Topics of Discussion

- Right-Of-Way (ROW) Preemption (Small Cell 5G Towers)

- Dark Store Theory

Right-of-Way Preemption

Wireless Small Cell Towers

What is 5G Technology?

5th Generation Wireless Network Technology

- It's not Rural Broadband (Typically aimed at urban areas).
- Mobile data usage more than tripled nationwide between 2014 – 2016.
- 5G networks expect to offer Internet speeds 10 to 100 times faster than 4G.
- 5G expected to create \$250 billion in annual service revenue by 2025.
- Requires many more antennas (small cells), spaced about 500' apart per carrier.

Why is (ROW) Preemption Sought by the Wireless Industry

- They want “unrestricted” access to local government right-of-way (ROW).
- Various states have passed wireless industry’s ROW preemption legislation.
(Tennessee, Illinois, Indiana, Missouri, New Mexico, Ohio, Virginia)
- Currently, the FCC is also seeking to adopt a federal preemption. (Ajit Pai)
- Basically, why pay rent on private property when you can get a public gratuity?

Rhetoric Preemption Advocates May Use

- Local governments are money grabbers.
- Local governments impeded technology advancement.
- Local government are obstructionists, by not approving permits.
- Local governments don't understand the public's interest.
- Local governments are preventing investment in rural broadband.
- We'll just move our capital to other states that have passed the preemption law.
- These small cell towers aren't noticeable.
- We will be reasonable in deployment and work with the local government.

"Small Cells"



Without collaborative City input:
"Small Cell" at
4471 Moraga Ave
Oakland →
*(bulky boxes, tacky bundles of wiring below unpainted antennas and noisy cooling fans)**

← **With collaborative City input:**
Verizon at 1367 Jones Street
in San Francisco

(unobtrusive and noiseless)
320 built; another 200 expected for other carriers





Legislative Request By Providers

Based on information from other states

- Unrestricted access “along, across, upon and under” city & county right-of-way to construct, install, maintain, operate, and replace their equipment.
- They will want to govern the entire field of the placement and regulation of wireless facilities and poles within the local right-of-way.
 - Poles (50’ high)
 - Antennas (multiple, up to 6 cubic ft in volume and 10’ higher than poles).
 - Equipment boxes (up to 25 cubic feet in volume).
 - Up to 4 cabinets (of undefined size) and other infrastructure.
- All existing ordinances and agreements would be nullified.

Safeguards & Issues To Consider

- Collocation required first?
 - Providers should certify that after diligent investigation, it cannot meet its service objective by collocating on an existing structure at reasonable terms, conditions and costs.
- Timetable for removal/relocation of equipment
 - Providers should relocate or remove their equipment if locals find it “unreasonably” interfering with road/ROW widening, repair etc. - within the time “reasonably provided for the relocation of other similarly situated structures.
- Safeguarding Historic Districts and Decorative Poles
 - Locals may consider requiring “reasonable and technologically neutral design or concealment measures” in historic districts, but not to prohibit a provider’s technology.
 - Local may consider guidelines for “reasonable” stealth/concealment criteria for locating on decorative poles (or installing new poles) for downtown and residential areas.

Safeguards & Issues To Consider cont'd

- Public Safety & Damage to Right-of-Way
 - If locals believe provider activity creates an imminent risk to public safety, the provider should “reasonably” address it within 24 hours, or locals can address it and charge the provider the cost of such actions.
- Speculative & Abandoned Equipment
 - Locals may require that equipment be operational within nine months after a permit is issued unless power has not been provided.
 - After use, if equipment hasn’t been operational for 12 months, locals should require its removal following 60 or 90 days after written notice is provided.

Recent Action During Georgia's 2018 General Assembly Session

- Industry advocates moved fast without much room for compromise.
- Started with Christmas Tree list of items in the legislation.
- All negotiations were mainly direct with wireless corporate attorneys, and they decided what “concessions” to make, and what language to include.
- No neutral 3rd party; bill sponsors towed the industry line.
- Legislation came after only a year of talks
- ACCG could accept statewide standards, but not what was initially introduced.
- Over 35 well-apt industry lobbyists were hired for this one issue.

Dark Store Theory

Negative Impact to Ad Valorem Taxes

What is Dark Store Theory?

- **Dark Store Theory:** This theory is often described as a tax loophole. Just as homeowners pay taxes on their houses, stores pay taxes on their properties. In this situation, big box retailers utilize a legal argument dubbed the “dark store theory” to decrease their annual property taxes.
- Simply put, these Big Box retailers believe the tax assessors and appraisers should value their retail property based on its unoccupied or “dark” value, rather than its highest and best use, which typically assumes the property is occupied by a retailer paying a market rent.
- **Comparables:** If a Big Box retailers think their tax bills are too high, they will use “comparables” (*comparing it to a similar property*) to justify a cheaper tax bill. With Dark Store Theory, these retailers like to compare their operating property to their vacant property. These retailers believe that their taxes should be calculated as if their store was vacant or “**DARK,**” rather than when they are at full capacity.

How is Mississippi Currently Assessing Big Box Retailers?

- **True Value:** True value shall mean and include, but not be limited to, market value, cash value, actual cash value, proper value and value for the purposes of appraisal for ad valorem taxation. In arriving at the true value of all CLASS I and CLASS II property and improvements, the appraisal shall be made according to CURRENT USE, regardless of location.
- Mississippi assesses its Big Box retailers based on “Current Use.”

Both Sides of the Argument

- Opposition:
 - Argues that regardless of whether the original tenant is occupying the building, the landlord has re-tenanted the facility with an occupant paying a below market rent, or if the building is sitting vacant and no rent is being received, the value of the real-estate is the same and should be assessed as such.
- Supporters:
 - Argues that in order to support local economies by providing retail goods at low costs, not to mention creating and sustaining jobs in the area, they must be able to operate at the lowest possible cost. In addition, Big Box retail properties have become increasingly difficult to re-tenant, particularly with the growth of e-commerce. If Big Box tenants elect to vacate existing properties, the buildings could sit empty for months, if not years, as landlords struggle to re-lease the facilities to other tenants.

Significant Local Impact

- Local governments depend on property tax revenues to help finance schools, public safety, infrastructure, and other local government services.
- Example:
 - Consider a 150,000 square-foot big box home improvement store. If the current assessed value is \$50 per square foot, but the retailer petitions the county to reassess the property at a value of \$25 per square foot based on recent sale comparables from a nearby vacant store of a similar size and age, the corresponding tax revenue would be cut in half. The original assessed value of \$7.5 million would become \$3.75 million, and the county's tax revenue would be impacted significantly. Now, multiply that by hundreds or thousands of properties across a single community.

Fear of the Trend!!!

- Bexar County, Texas (Home of San Antonio)
 - In late 2017, Chief appraiser Michael Amezquita faced a tax appeal from hardware chain Lowe's. Mr. Amezquita said, "had Lowe's been successful, other stores would surely have piled on. Target would've been in line, Best Buy, Sears, Home Depot, and local grocery chains. I think it would've spread to other categories of property. We anticipated an \$850 million lost."
 - NPR: Taxes, Big-Box Stores And The 'Dark Store Theory'

Currently Battling in the Courts

- Across the county, numerous tax challenges by big-box retailer have been granted. Community battle over tax revenue from these retailers will likely continue.
- The trend is most pronounced in the upper Midwest, where hundreds of lawsuits and appeals have been launched in Michigan, Indiana, Kansas and Wisconsin. Unfortunately, the trend is starting to spark in southern states like Texas, Florida and recently Alabama.

67 Counties, *One* Voice

EVENTS EDUCATION AFFILIATES PUBLICATIONS RESOURCES COUNTY NEWS BLOG

Search

SEARCH

HOT FIVE Dark Store bill is signed into law, effective immediately | Hot 5

Published: March 26, 2018

This Week's Top 5 Things You Need to Know

+ *Hot 5's HOT TIP* | Watch Friday's Goat Hill Glance [here](#), and then tweet this! (Sample tweet provided below.)

+ *Key Dates This Week*

1. Dark Store bill is signed into law, effective immediately

Last week, ACCA bill SB182 was signed into law by Gov. Kay Ivey and became effective immediately. This new law requires retailers seeking to lower their appraised property value through the "Dark Store Theory" to be forthcoming with detailed information on properties using "comparable" sales or leases. Such a requirement should make it much more difficult for retailers' frivolous lawsuits to be advanced before the Board of Adjustments or the circuit court. [Read this new law in its entirety here.](#)



2. Department of Revenue bill impacting county tax revenue collections becomes law

POPULAR BLOG CATEGORIES

[Hot Five](#)

Alabama's Dark Store Legislation

- Alabama counties were fighting numerous lawsuits involving Dark Store Theory. (*Retailers utilized comparables to justify cheaper property taxes*)
- Senate Bill 182 of the 2018 Alabama Regular Legislative Session
 - This act really focused on what evidence should be considered when comparing properties
 - (1) Whether the comparable property was occupied/unoccupied
 - (2) Whether there are any deed restrictions
 - The purpose of this disclosure is so that the court can determine whether the proposed comparable property is similarly situated to the subject property. Failure to disclose this information shall result in the evidence being deemed inadmissible.

Right to Appeal Tax Assessment in Mississippi

- Statute: 27-35-119
 - Any taxpayer who feels aggrieved at the action of the Board of Supervisors in equalizing his assessments shall have the right to appeal to the circuit court in the manner provided by law, within twenty (20) days after the date the notice is mailed.

Dark Store Theory Challenge in Mississippi

- Madison County
- Walmart, Home Depot, & Lowes
- The judge dismissed the appeal

NOTE: If Dark Store Theory advocates continue to fail in the courts, they may seek relief through the legislative process.

Questions?

MS Laws Taking Effect in 2018

- House Bill 1649 (Omnibus Bond Package) *Effective July 1, 2018*
 - LSBP (\$50 million)
 - Limited Counties Small Municipalities (\$5 million)
- Senate Bill 2467 (Rural Fire Truck \$4.5 million) *July 1, 2018*
- Senate Bill 2418 (Vehicle Weight Limit) *July 1, 2018*
- Senate Bill 2963 (Homestead Exemption Reimb.) *July 1, 2018*

MS Laws Taking Effect in 2018 cont'd

- Senate Bill 2479 (Economic Development) *July 1, 2018*
 - This measure reduces from \$100 million to \$60 million, the amount that a project by certain new enterprises and certain private companies must total in order to be eligible to enter into a fee-in-lieu agreement.
- House Bill 1122 (Agricultural Activity) *Upon Passage*
 - Local governing authorities shall not restrict or prohibit any agricultural operation, forestry activity, or traditional farm practices being conducted on land.
 - **NOTE:** Final version was amended to allow local governing authorities to enact or impose ordinances and regulations that would prohibit or restrict agricultural, forestry or traditional farm practices or the erection of any building, structure or improvement upon land with such agricultural, forestry or traditional farm practices.