

Telcom Solutions, LLC

Legal Services



1117 22nd Street South
Birmingham, AL 35205
Phone: 205-458-1145
Fax: 205-942-7094
lucienbb@bellsouth.net

Lucien Blankenship is a Municipal Attorney in Birmingham, Al who represents multiple cities and counties throughout Alabama on issues related to cell towers. He's currently working as a part of a statewide and national small cell task force.

“At the Heart of the Small Cell debate is local control, not 5G technology & IoT”

Cities across the US are filing lawsuits over 5G deployment. Small Cell legislation has seen success in several states, but it has caused some local governments to become concerned about the loss of local control.

What are “Small Cells”? Small cell antennas are defined by the Federal Communications Commission (FCC) as a lower powered wireless facility serving smaller coverage areas than micro cell towers such as stadiums, arenas, malls, office buildings, homes, hospitals and other targeted spaces.

The wireless industry has done an amazing job of convincing some elected officials at both the State and Federal level that the debate over small cells is about the speed of our devices (cell phones, iPad etc.) and whether our devices will or will not work.

This narrative is simply not true. Cities and Counties control a significant amount of ROWs on which wireless providers build their networks. Often what benefits wireless providers and their customers **come at the cost of control**, where public infrastructure and private equipment meets. To deploy Small Cells the wireless industry needs access to City owned poles, traffic lights, buildings, etc; all of which are in the right of ways that are owned by local governments.

By requiring municipalities to commit substantial taxpayer and public funds to accommodate Wireless providers collocation of facilities **on municipally owned utility poles**, while prohibiting Municipalities from charging appropriate fees to Wireless providers for that privilege, Alabama Senator Arthur Orr's proposed Small Cell bill would effectively require that Municipalities use taxpayer and public funds and property to subsidize private companies. The proposed legislation raises a series of constitutional arguments. 1) A taking of municipal property and 2) Capping of fees, both of which violate Alabama's Constitution (Unfair Compensation).

Section 220 of the Alabama Constitution requires municipal consent for the private use of public streets. An Alabama Supreme Court case described it as *"No" one shall be authorized or "permitted to use the streets" for the purposes named "without first obtaining the consent" of the "proper authorities" of the "city."*

Cities are protected property owners under the Alabama Constitution and are entitled, as property owners, to constitutional property protections from unjustified government takings.

By authorizing private wireless providers to place and to maintain small wireless facilities on municipally owned utility poles, without an appropriate process to determine the public purpose for such taking or the full compensation owed to Cities, the proposed law would deprive Alabama cities and counties of their rights under the Alabama Constitution.

In 2018 the FCC entered an order that provided a pathway for the deployment of small cells that severely restricted local governments control over local rights-of-way and gave the wireless industry uninhibited access to install 5G technology.

Senator Orr's bill is an attempt to preempt local government control over the installation of Small wireless facilities, like small cells, in cities throughout Alabama. The proposed legislation will significantly impede local governments' ability to serve as trustees of public property and the safety and well-being of the citizenry. This legislation will transfer significant local control and resources to

private companies, such as Verizon, AT&T, T-Mobile and Sprint without securing any guarantee of public benefit in return.

There's no need for Alabama to pass a preemptive Small Cell Law at this time. **More than 81 government entities and 18 state leagues of municipalities have filed lawsuits and appeals of the FCC order and state laws. Alabama should defer any action on State wide legislation until all the appeals and state legal challenges are resolved.**

The question we should ask our representatives to consider is **why does the wireless industry need state wide preemption laws in Alabama when the FCC has given them what they've asked for?** Cities and counties already have to comply with the FCC order.

AT&T, Verizon, Crown Castle and other wireless providers are crisscrossing the United States pursuing small cell wireless legislation in an effort to lock local governments into capped fees and other industry favorable provisions that are in the FCC order should the FCC order be overturned, amended or reversed. Industry lobbyists and special interests groups know it's easier to influence a few state lawmakers than hundreds of mayors and city councils around the country and across the State of Alabama. Senator Orr Bill is being driven by powerful corporations in an effort to expand the power of the state over local control and to strip powers from cities and counties. The ability of local governments to manage their poles and rights-of-way is critical.

Failure to pass Small Cell legislation will not prevent the deployment of Small Cells in Alabama. Therefore, I'm asking you to join municipal attorneys, mayors and City Councils and urge state policy makers to resist the temptation to pass unnecessary statewide legislation that will override the ability for communities to make decisions locally. Alabama's local communities are in the best position to make policy decisions for their local citizens regarding the use of public rights-of-way, and these agreements are already happening around the state.

Attorney Lucien Blankenship