

STRATEGIC CAPITOL

C O N S U L T I N G

Independence, Missouri
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HB 1991(2018)

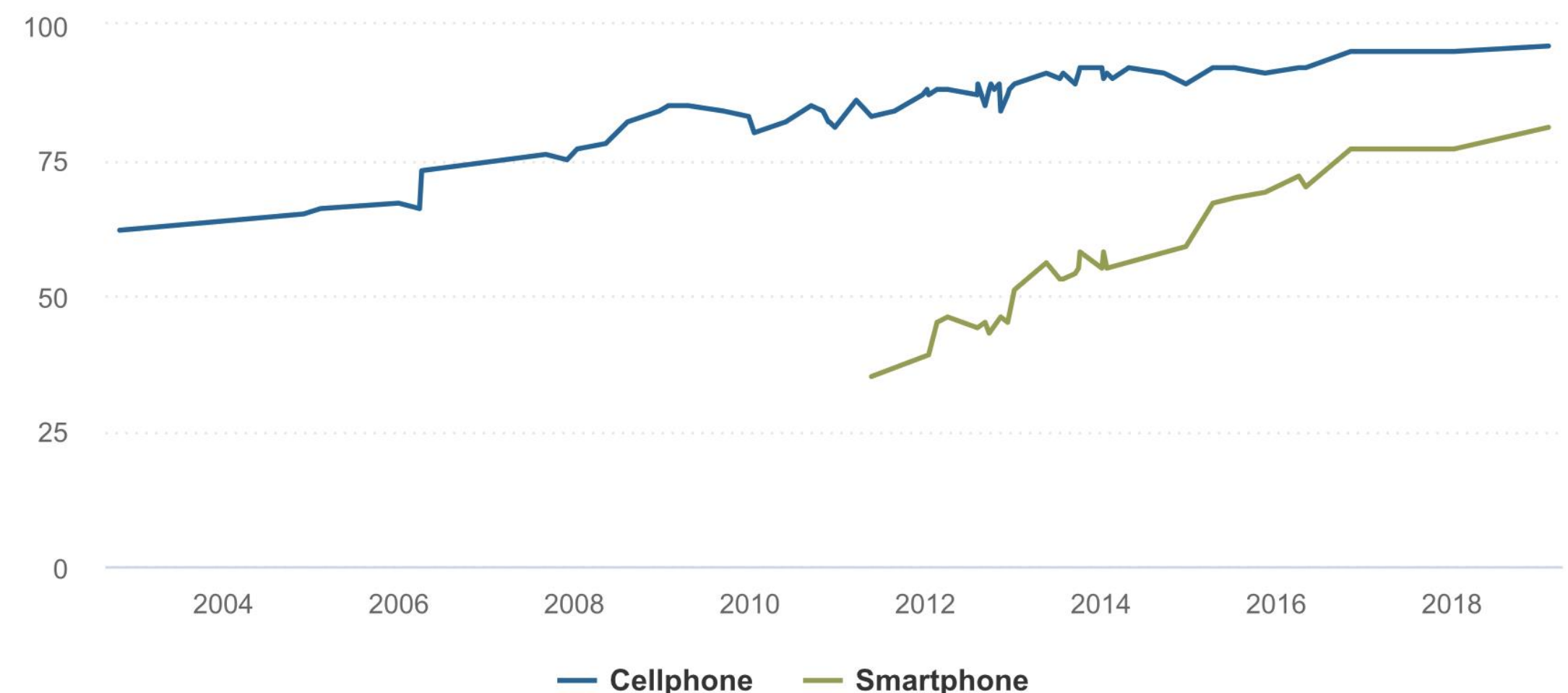
- **Pre-August 28, 2018**

- Certain political subdivisions could enact ordinances charging a public utility right of way user a linear foot fee if the public utility right of way user did not pay gross tax receipts.
 - Big telecom (Verizon, Sprint, AT&T et al) hired a legion of lobbyists & lawyers to come to Jefferson City to apply the full court press to set uniform costs for the installation of cell towers and associated equipment. AT&T alone had 15 lobbyists on retainer.
 - They argued additional infrastructure was necessary to facilitate larger and faster data transfer requirements.
- HB 1991 (2018) sought to address this issue and was introduced by then-State Rep. Shawn Rhodes (R-West Plains).
 - Mr. Rhodes became a registered lobbyist for Verizon in Dec. 2019.
- Act includes 16 new provisions as the result of compromises w/ the wireless carriers, spearheaded by SCC.

Increase is Cell Phone/Smart Device Use

- Pew Research Poll from mid-2019 highlights the rise of cell phone/smartphone use by Americans has increased significantly
- 96% of all Americans own a cellphone
- Since 2011, there has been an 46% increase in smartphone ownership. 81% of Americans now own a smart device.
- The large increase in wireless ownership has led wireless carriers installing additional technology & equipment the equipment to support it, including new cell towers.

% of U.S. adults who own the following devices



Source: Surveys conducted 2002-2019.

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Initial Provisions of the Act

- Modifies provisions related to utility structure implementation
- Modified meaning of “managing the public right-of-way” to mandate consistent permitting requirements pursuant to the Uniform Wireless Communications Infrastructure Deployment Act & the Uniform Small Wireless Deployment Act.
 - Political subdivisions are prohibited from assessing a linear foot fee or antenna fee, so long as the right-of-way-user paid certain fees and taxes that are imposed specifically on communications-related revenue, services and equipment.

Uniform Small Wireless Act

- **Wireless Providers in the Right-of-Way**

- This act prohibits the state or any political subdivision, **excluding municipal electrical utilities**, from entering into an exclusive arrangement with any person for the use of the right away for the collocation of small wireless facilities for installation or replacement of utility polls.
- Wireless providers are permitted to collocate small wireless facilities and install and replace utility poles in the public right away, **except in single-family residential neighborhoods or historic neighborhoods**.
- Small wireless facilities collocated outside the right-of-way zone, and in non-residential zones land, shall be classified as permitted and not subject to zoning review or approval.
- Any new or replaced utility poles must meet certain criteria set forth in this act and small wireless facility code locations shall not interfere with existing utility facilities. **The city can require a wireless provider to repair all damage to the right of way caused by the providers activities and if the provider does not make the required repairs the city may affect those repairs and charge the provider.**

Rates & Fees for Placement of Wireless Facility, Support Structure or Utility Pole

- The act prohibits cities from requiring a wireless provider to pay any rates, fees, or compensation to the city for the right to use right-of-way, for collocation of small wireless facilities or for the installation and replacement of utility poles in the right-of-way.
 - This Section does not limit city's ability to Recover specific removal cost from the attaching wireless provider for abandon structures/
- Application Fee Criteria
 - The city may assess application fees based on actual administrative costs and any such costs recovered by existing fees, rates, licenses, or taxes paid by a wireless service provider shall not be included in setting the application fee.
 - The total application fee for collocation of a small wireless facility on an existing utility pole shall not exceed \$100 per small wireless facility, including for consolidated applications.
 - The total application fees for installation, modification, or replacement of utility pole and collocation of a small wireless facility shall not exceed \$500 per pole, and the rate for collocations of small wireless facility to a city pole shall not exceed \$100 per pole per year.
 - The city shall not demand any fees from small wireless facilities except those authorized under this section, applicable taxes, applicable linear foot fees, and right of way permit fees, which shall be competitively neutral, and shall not be in the form of a franchise for your tax, or other fee based on non-cost related factors.

City Planning, Zoning, Ordinances, Pole Attachment Agreements and Jurisdiction

- Subject to the provisions of the Act, Independence may continue to exercise zoning, land-use, planning, and permitting authority within its boundaries, including wireless support structures and utility poles. However, the city shall not have jurisdiction over the installation or operation of any small wireless facility in the interior structure, or upon the site of any campus, stadium athletic facility not under control by the City
- Nothing in this Act shall nullify any mutual agreement between a city and a wireless provider entered into prior to August 28, 2018.
- Independence may adopt indemnification, insurance, and bonding requirements related to small wireless facility permits, but may only require a wireless provider to indemnify and hold harmless the city in certain claims. Independence may require a wireless provider to obtain and provide proof of insurance coverage, or a comparable self insurance program, prior to the effective date of any permit issued.
- Independence may adopt bonding requirements for small wireless facilities and such bonds shall provide for the removal of abandoned or improperly maintained small wireless facilities, restore the right of way in connection with such abandoned facilities, and assist in recouping rates and fees that have not been paid by wireless provider in over 12 months.
 - The bonding requirements shall not exceed \$1500 per small wireless facility and not exceed \$75,000 across all facilities w/in the city jurisdiction.

Effective Dates

- The Uniform Small Wireless Deployment Act shall become effective January 1, 2019. This most recent session we successfully amended Rep. Miller's sunset language to HB 1768, one of the few bills that passed in this shortened session. The Act will now expire on January 1, 2025, except that collocation rate for small wireless facilities shall remain in effect for the duration of the permit authorizing the collocation.

Final Thoughts

- Upon learning of the complaints re: the Lee's Summit Rd. towers (built in 2017), SCC leveraged its network of friends, allies and colleagues to persuade Verizon to move some of their poles, at Verizon's expense.
- Furthermore, we successfully battled the Goliath that is telecom, securing for Independence the second highest wireless service equipment attachment fees in the country for non-utility municipal poles. We further protected your core revenues by negotiating no cap for attachment fees of utility poles.
- In 2018, this was seen as a major victory for Independence, considering the telecom industry was trying to use municipal assets without notice or paying reasonable attachment fees. Ultimately, we traded some local control to protect and enhance Independence's core revenues.
- SCC also made sure to include provisions to protect residential neighborhoods and historic districts and neighborhoods, including the Truman Library, the Truman Home, the Old Courthouse, the original county jail.

Questions?

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Thank you.

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