H. B. No. 478
Testimony of Dave Thomas, Counsel for the Ohio Cable Telecommunications Association ("OCTA")
January 29, 2018

Chairman Blessing and members of the committee, my name is Dave Thomas and I am a lawyer at Sheppard Mullin Richter & Hampton. I have been counsel to the Ohio Cable Telecommunications Association ("OCTA") on infrastructure issues for approximately 15 years. In addition to OCTA, I represent communications companies—primarily cable operators—on a variety of matters throughout the country, but with a particular focus on infrastructure and infrastructure deployment. The legislative interest and activity across the country, including in Ohio, with respect to wireless deployments on poles and other structures located in public rights-of-way has been particularly keen over the last year or two.

OCTA opposes H. B. 478 in its current form. The bill in its current state fails to strike a necessary balance between fast deployments and a level competitive playing field.

OCTA believes that any legislation in this area must support three fundamental objectives:

***First:* It Should Foster Economic Development and Promote Expeditious Broadband Deployment and Investment.**

***Second*: It Must Reflect Actual Burdens That the Facilities Place on the Public Way.**

***Third:* The Bill Must Ensure a Level Playing Field.**

We believe that H. B. 478 partially accomplishes these objectives, but falls short in its current form. OCTA has proposed concrete and practical ways to fulfill these goals and hopes that the Committee will include the proposals.

Comprising only a few lines of text, our revisions principally seek to maintain our current ability to deploy our services under current regulations without imposing new rules and costs. More specifically, the revisions that we have proposed:

1. Clarify that the small facilities that we attach to our cable system are not burdened with new permitting and regulatory requirements and fees.

    - Our strand-mounted devices are reasonable extensions of our cable systems that are similar to the sorts of visually unobtrusive system innovations and upgrades that routinely occur on our existing footprint, and are not subject to additional regulation and fees.
    - These devices are small (approximately the same size as similar aerial devices like amplifiers).
    - The devices are connected to the support wires that are strung between poles located in the public way. To be clear, they are attached directly to the property owned by our member companies.

2. Ensure that new and additional fees and regulations are not imposed for these facilities and for the services provided over the cable systems. Because these facilities are merely additions to an existing cable system, and impose no greater burdens on the right-of-way, additional regulation and fees should not be imposed.

3. Confirm that the small-cell permits that are subject to the expedited procedures that H. B. 478 contemplates relate only to the specific small-cell site and are not "blanket authorizations" to occupy the entirety of the public way—a requirement we believe essential to ensuring a level playing field.

    - The bill currently provides an expansive definition of "Wireless facility" that both (i) could place a larger burden on the ROW than cable operators' strand-mounted devices and (ii) could be interpreted to allow an expansive authorization beyond the permit grant at the specific location that is subject to the expedited process.
    - The bill defines "Wireless facility" as "equipment at a fixed location that enables wireless communications between user equipment and a communications network including . . . equipment associated with wireless communications[;] [r]adio transceivers, antennas, coaxial or fiber-optic cable, regular and back-up power supplies, and comparable equipment, regardless of technological configuration[and] small cell facilities." The term "does not include . . . the structure or improvements on, under, or within which the equipment is collocated [or] coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or associated with a particular antenna."

        - First, there are different kinds of small-cell plant configurations, including those that are made directly to the pole and others that are nearby (but not on) the pole, but in, on or around the right-of-way. We understand that the permitting process is to allow for the expeditious review of these different configurations on a site-specific basis. In the simplest terms, the authorization would be at or on the pole or structure in question. We seek to clarify this by defining it more precisely.
        - Second, while the bill suggests some limitation to the extent of the authorization subject to this permitting process, descriptions like cables "between wireless support structures or utility poles or . . . not otherwise immediately adjacent to or associated with a particular antenna" are not as clear or strong as they might be in defining the facility and extent of the authorization. There are a number of concerns and ambiguities in this definition that we seek to clarify as well.

    - Finally, on this point, OCTA notes that if cable operators were to attach "small cell facilities" directly to utility poles or support structures they would fully expect to follow the procedures for those facilities set forth in the bill.

In other states, the cable industry has been successful working with its counterparts in the wireless industry to secure nearly identical protections in similar bills, In addition to the substance of our proposed revisions, the fact that they have been accepted in other states is a good indicator of their reasonableness and why they should be incorporated into this legislation.

We appreciate the time and consideration that the sponsors, and the cities have extended to the cable industry to discuss our concerns. This is a complicated issue, but we believe strongly that only through a balanced approach that reflects the considerations we have outlined here, can diversified investments in wireless broadband, across a variety of technologies and providers, be fully realized. As we attempt to make clear in these comments, OCTA's and its members' focus is to ensure that this legislation does not choose winners and losers. We seek to ensure statutory transparency that allows the cable industry, like the wireless industry, to innovate, invest and compete fairly in the State of Ohio.

Finally, this deliberative process allows all stakeholders the opportunity to make this bill better—and with the continued leadership of the bill's primary co-sponsors in these discussions, we are hopeful that our concerns will be addressed.

Thank you for your consideration and the opportunity to testify before you today. I would be pleased to answer any questions that the Committee might have.

Thank you.