

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0734.01 Jennifer Berman x3286

HOUSE BILL 17-1193

HOUSE SPONSORSHIP

Kraft-Tharp and Becker J.,

SENATE SPONSORSHIP

Tate and Kerr,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE INSTALLATION OF SMALL WIRELESS SERVICE**
102 **INFRASTRUCTURE WITHIN A LOCAL GOVERNMENT'S**
103 **JURISDICTION, AND, IN CONNECTION THEREWITH, CLARIFYING**
104 **THAT AN EXPEDITED PERMITTING PROCESS APPLIES TO SMALL**
105 **CELL FACILITIES AND SMALL CELL NETWORKS AND THAT THE**
106 **RIGHTS-OF-WAY ACCESS AFFORDED TELECOMMUNICATIONS**
107 **PROVIDERS EXTENDS TO BROADBAND PROVIDERS AND TO SMALL**
108 **CELL FACILITIES AND SMALL CELL NETWORKS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

[http://leg.colorado.gov.\)](http://leg.colorado.gov.)

Sections 1 through 4 of the bill clarify that the expedited permitting process established for broadband facilities applies to small cell facilities and small cell networks. Section 1 adds language concerning small cell facilities and small cell networks to a legislative declaration. Section 2 adds statutory definitions of "antenna" and "tower". Section 3 requires a local government to process an application for a small cell facility or a small cell network within 90 days after receiving the completed application. Section 4 declares the siting and operation of small cell facilities and small cell networks are a permitted use in any zone and clarifies the approval process for a consolidated application for multiple small cell facilities or small cell networks.

Sections 6 and 7 clarify that the rights-of-way access afforded to telecommunications providers for the construction, maintenance, and operation of telecommunications and broadband facilities extends to broadband providers as well as small cell facilities and small cell networks and, in conjunction, **section 5** defines "collocation", "small cell facility", and "small cell network".

Section 8 states that if a telecommunications provider or broadband provider complies with applicable law, it has the right to locate or collocate small cell facilities and small cell networks on a local government entity's light poles, light standards, traffic signals, or utility poles.

Section 9 adds small cell facilities and small cell networks to the types of facilities for which a telecommunications provider or broadband provider may contract with a private property owner to obtain a right-of-way for the construction, maintenance, and operation of the facility.

Section 10 concerns the consent a telecommunications provider or broadband provider must obtain from a political subdivision to erect communications or broadband facilities along, through, in, upon, under, or over a public highway, and adds small cell facilities and small cell networks to the facilities for which the consent is required. Section 10 further provides that a political subdivision shall not create a preference or disadvantage to any telecommunications provider or broadband provider in granting or withholding its consent, and that a decision by a political subdivision denying or limiting the placement of communications or broadband facilities based on the protection of public health, safety, and welfare does not create a preference for or disadvantage a telecommunications provider or broadband provider if the decision does not have the effect of prohibiting the provider from providing service within the service area.

Section 11 makes a conforming amendment.

Section 12 specifies the amount and type of payment a local

government or municipally owned utility may receive from a telecommunications provider, broadband provider, or cable television provider in exchange for granting permission to attach small cell facilities, broadband devices, or telecommunications devices to poles or structures that are in a right-of-way and are owned by the local government or municipally owned utility.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 29-27-401, **add** (2)
3 as follows:

4 **29-27-401. Legislative declaration.** (2) THE GENERAL ASSEMBLY
5 FURTHER FINDS AND DECLARES THAT:

6 (a) SMALL CELL FACILITIES OFTEN MAY BE DEPLOYED MOST
7 EFFECTIVELY IN THE PUBLIC RIGHTS-OF-WAY; AND

8 (b) ACCESS TO LOCAL GOVERNMENT STRUCTURES IS ESSENTIAL TO
9 THE CONSTRUCTION AND MAINTENANCE OF WIRELESS SERVICE FACILITIES
10 OR BROADBAND FACILITIES.

11 **SECTION 2.** In Colorado Revised Statutes, 29-27-402, **amend**
12 (1); and **add** (1.5) and (6.5) as follows:

13 **29-27-402. Definitions.** As used in this part 4, unless the context
14 otherwise requires:

15 (1) "~~Broadband facility~~" means any infrastructure used to deliver
16 broadband service or for the provision of broadband service. "ANTENNA"
17 MEANS COMMUNICATIONS EQUIPMENT THAT TRANSMITS OR RECEIVES
18 ELECTROMAGNETIC RADIO FREQUENCY SIGNALS USED TO PROVIDE
19 WIRELESS SERVICE.

20 (1.5) "BROADBAND FACILITY" MEANS ANY INFRASTRUCTURE USED
21 TO DELIVER BROADBAND SERVICE OR FOR THE PROVISION OF BROADBAND
22 SERVICE.

9 **SECTION 3.** In Colorado Revised Statutes, 29-27-403, amend
10 (1) and (3) as follows:

11 **29-27-403. Permit - approval - deadline - exception.** (1) A local
12 government may take up to:

13 (a) NINETY DAYS TO PROCESS A COMPLETE APPLICATION FOR:

14 (I) LOCATION OR COLLOCATION OF A SMALL CELL FACILITY OR A
15 SMALL CELL NETWORK; OR

16 (II) REPLACEMENT OR MODIFICATION OF A SMALL CELL FACILITY
17 OR FACILITIES OR SMALL CELL NETWORK.

18 (a) (b) Ninety days to process a complete application that involves
19 a collocation of a tower, building, structure, or replacement structure
20 OTHER THAN A SMALL CELL FACILITY OR SMALL CELL NETWORK; or

21 (b) (c) One hundred fifty days to process a complete application
22 that involves a new structure or a new wireless service facility, OTHER
23 THAN A SMALL CELL FACILITY OR SMALL CELL NETWORK AND other than
24 a collocation.

1 **SECTION 4.** In Colorado Revised Statutes, 29-27-404, **amend**
2 (1) and (2) introductory portion; and **add** (3) as follows:

3 **29-27-404. Permit process.** (1) (a) For small cell networks
4 involving multiple individual small cell facilities within the jurisdiction
5 of a single local government ENTITY, the local government ENTITY shall
6 allow the applicant, at the applicant's discretion, to file a consolidated
7 application and receive a single permit for the small cell network instead
8 of filing separate applications for each individual small cell facility.

9 (b) FOR A CONSOLIDATED APPLICATION FILED PURSUANT TO
10 SUBSECTION (1)(a) OF THIS SECTION, EACH SMALL CELL FACILITY WITHIN
11 THE CONSOLIDATED APPLICATION REMAINS SUBJECT TO REVIEW FOR
12 COMPLIANCE WITH OBJECTIVE REQUIREMENTS AND APPROVAL AS
13 PROVIDED IN THIS ARTICLE 27. THE LOCAL GOVERNMENT'S DENIAL OF ANY
14 INDIVIDUAL SMALL CELL FACILITY IS NOT A BASIS TO DENY THE
15 CONSOLIDATED APPLICATION AS A WHOLE OR ANY OTHER SMALL CELL
16 FACILITY INCORPORATED WITHIN THE CONSOLIDATED APPLICATION.

17 (2) If a wireless service provider applies to LOCATE OR collocate
18 several wireless service facilities within the jurisdiction of a single local
19 government ENTITY, the local government ENTITY shall:

20 (3) THE SITING, MOUNTING, PLACEMENT, CONSTRUCTION, AND
21 OPERATION OF A SMALL CELL FACILITY OR A SMALL CELL NETWORK IS A
22 PERMITTED USE BY RIGHT IN ANY ZONE.

23 **SECTION 5.** In Colorado Revised Statutes, **amend** 38-5.5-102
24 as follows:

25 **38-5.5-102. Definitions.** As used in this ~~article~~ ARTICLE 5.5,
26 unless the context otherwise requires:

27 (1) "Broadband" or "broadband service" has the same meaning as

1 set forth in 7 U.S.C. sec. 950bb (b)(1) as of August 6, 2014, and includes
2 "cable service", as defined in 47 U.S.C. sec. 522 (6) as of August 6, 2014.

3 (2) ~~(1.2)~~ "Broadband facility" means any infrastructure used to
4 deliver broadband service or for the provision of broadband service.

5 ~~(1.3)~~ (3) "Broadband provider" means a person that provides
6 broadband service, and includes a "cable operator", as defined in 47
7 U.S.C. sec. 522 (5) as of August 6, 2014.

8 (4) "COLLOCATION" HAS THE SAME MEANING AS SET FORTH IN
9 SECTION 29-27-402 (3).

10 ~~(1.7)~~(5) "Political subdivision" OR "LOCAL GOVERNMENT ENTITY"
11 means a county; city and county; city; town; service authority; school
12 district; local improvement district; law enforcement authority; water,
13 sanitation, fire protection, metropolitan, irrigation, drainage, or other
14 special district; or any other kind of municipal, quasi-municipal, or public
15 corporation organized pursuant to law.

16 (2) (6) "Public highway" or "highway" for purposes of this ~~article~~
17 ARTICLE 5.5 includes all roads, streets, and alleys and all other dedicated
18 rights-of-way and utility easements of the state or any of its political
19 subdivisions, whether located within the boundaries of a political
20 subdivision or otherwise.

21 (7) "SMALL CELL FACILITY" HAS THE SAME MEANING AS SET FORTH
22 IN SECTION 29-27-402 (4).

23 (8) "SMALL CELL NETWORK" HAS THE SAME MEANING AS SET
24 FORTH IN SECTION 29-27-402 (5).

25 ~~(3)~~ (9) "Telecommunications provider" ~~or "provider"~~ means a
26 person that provides telecommunications service, as defined in section
27 40-15-102 (29), ~~C.R.S.~~, with the exception of cable services as defined

1 by section 602 (5) of the federal "Cable Communications Policy Act of
2 1984", 47 U.S.C. sec. 522 (6), pursuant to authority granted by the public
3 utilities commission of this state or by the federal communications
4 commission. "Telecommunications provider" ~~or "provider"~~ does not mean
5 a person or business using antennas, support towers, equipment, and
6 buildings used to transmit high power over-the-air broadcast of AM and
7 FM radio, VHF and UHF television, and advanced television services,
8 including high definition television. The term "telecommunications
9 provider" is synonymous with "telecommunication provider".

10 **SECTION 6.** In Colorado Revised Statutes, **amend** 38-5.5-103
11 as follows:

12 **38-5.5-103. Use of public highways - discrimination prohibited**
13 - **content regulation prohibited.** (1) (a) Any domestic or foreign
14 telecommunications provider or broadband provider authorized to do
15 business under the laws of this state ~~shall have~~ HAS the right to construct,
16 maintain, and operate conduit, cable, switches, and related appurtenances
17 and facilities, AND COMMUNICATIONS AND BROADBAND FACILITIES,
18 INCLUDING SMALL CELL FACILITIES AND SMALL CELL NETWORKS, along,
19 across, upon, ABOVE, and under any public highway in this state, subject
20 to ~~the provisions of this article~~ ARTICLE 5.5 and ~~of~~ article 1.5 of title 9.
21 ~~C.R.S.; and~~

22 (b) The construction, maintenance, operation, and regulation of
23 ~~such~~ THE facilities DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION,
24 including the right to occupy and utilize the public rights-of-way, by
25 telecommunications providers and broadband providers are ~~hereby~~
26 ~~declared to be~~ matters of statewide concern. ~~Such~~ THE facilities shall be
27 ~~so~~ constructed and maintained SO as not to obstruct or hinder the usual

1 travel on ~~such~~ A highway.

2 (2) ~~No~~ A political subdivision shall NOT discriminate among or
3 grant a preference to competing telecommunications providers OR
4 BROADBAND PROVIDERS in the issuance of permits or the passage of any
5 ordinance for the use of its rights-of-way, nor create or erect any
6 unreasonable requirements for entry to the rights-of-way for ~~such~~ THE
7 providers.

8 (3) ~~No~~ A political subdivision shall NOT regulate A
9 telecommunications ~~providers~~ PROVIDER OR A BROADBAND PROVIDER
10 based upon the content or type of signals that are carried or capable of
11 being carried over the provider's facilities; except that nothing in this
12 subsection (3) ~~shall be construed to prevent such~~ PREVENTS regulation by
13 a political subdivision when the authority to ~~so~~ regulate has been granted
14 to the political subdivision under federal law.

15 **SECTION 7.** In Colorado Revised Statutes, **amend** 38-5.5-104
16 as follows:

17 **38-5.5-104. Right-of-way across state land.** Any domestic or
18 foreign telecommunications provider OR BROADBAND PROVIDER
19 authorized to do business under the laws of this state ~~shall have~~ HAS the
20 right to construct, maintain, and operate lines of communication,
21 switches, and related facilities, AND COMMUNICATIONS AND BROADBAND
22 FACILITIES, INCLUDING SMALL CELL FACILITIES AND SMALL CELL
23 NETWORKS, and obtain A permanent right-of-way ~~therefor~~ FOR THE
24 FACILITIES over, upon, under, and across all public lands owned by or
25 under the control of the state, upon the payment of ~~such~~ just
26 compensation and upon compliance with ~~such~~ reasonable conditions as
27 ~~may be required~~ by the state board of land commissioners MAY REQUIRE.

1 **SECTION 8.** In Colorado Revised Statutes, **add** 38-5.5-104.5 as
2 follows:

3 **38-5.5-104.5. Use of local government entity structures.**

4 (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION AND
5 SUBJECT TO THE REQUIREMENTS AND LIMITATIONS OF THIS ARTICLE 5.5,
6 SECTIONS 29-27-403 AND 29-27-404, AND A LOCAL GOVERNMENT
7 ENTITY'S POLICE POWERS, A TELECOMMUNICATIONS PROVIDER OR A
8 BROADBAND PROVIDER HAS THE RIGHT TO LOCATE OR COLLOCATE SMALL
9 CELL FACILITIES OR SMALL CELL NETWORKS ON THE LIGHT POLES, LIGHT
10 STANDARDS, TRAFFIC SIGNALS, OR UTILITY POLES OWNED BY THE LOCAL
11 GOVERNMENT ENTITY.

12 (2) IF, AT ANY TIME, THE CONSTRUCTION, INSTALLATION,
13 OPERATION, OR MAINTENANCE OF A SMALL CELL FACILITY ON A LOCAL
14 GOVERNMENT ENTITY'S LIGHT POLE, LIGHT STANDARD, TRAFFIC SIGNAL,
15 OR UTILITY POLE FAILS TO COMPLY WITH APPLICABLE LAW, THE LOCAL
16 GOVERNMENT ENTITY, BY PROVIDING THE TELECOMMUNICATIONS
17 PROVIDER OR THE BROADBAND PROVIDER NOTICE AND A REASONABLE
18 OPPORTUNITY TO CURE THE NONCOMPLIANCE, MAY:

19 (a) CAUSE THE ATTACHMENT ON THE AFFECTED STRUCTURE TO BE
20 REMOVED; AND

21 (b) PROHIBIT FUTURE, NONCOMPLIANT USE OF THE LIGHT POLE,
22 LIGHT STANDARD, TRAFFIC SIGNAL, OR UTILITY POLE.

23 **SECTION 9.** In Colorado Revised Statutes, **amend** 38-5.5-105
24 as follows:

25 **38-5.5-105. Power of companies to contract.** Any domestic or
26 foreign telecommunications provider ~~shall have~~ OR BROADBAND
27 PROVIDER HAS THE power to contract with any ~~person or~~ INDIVIDUAL;

1 corporation; OR the owner of any lands, ~~or any~~ franchise, easement, or
2 interest therein over or under which the provider's conduits; cable;
3 switches; ~~and~~ COMMUNICATIONS OR BROADBAND FACILITIES, INCLUDING
4 SMALL CELL FACILITIES AND SMALL CELL NETWORKS; OR related
5 appurtenances and facilities are proposed to be laid or created for the
6 right-of-way for the construction, maintenance, and operation of ~~such~~ THE
7 facilities ~~and~~ OR for the erection, maintenance, occupation, and operation
8 of offices at suitable distances for the public accommodation.

9 **SECTION 10.** In Colorado Revised Statutes, **amend** 38-5.5-106
10 as follows:

11 **38-5.5-106. Consent necessary for use of streets.**

12 (1) (a) ~~Nothing in This article shall be construed to~~ ARTICLE 5.5 DOES
13 NOT authorize any telecommunications provider OR BROADBAND
14 PROVIDER to erect, WITHIN A POLITICAL SUBDIVISION, any poles or
15 construct any COMMUNICATIONS OR BROADBAND FACILITIES, INCLUDING
16 SMALL CELL FACILITIES AND SMALL CELL NETWORKS; conduit; cable;
17 switch; or related appurtenances and facilities along, through, in, upon,
18 under, or over any public highway ~~within a political subdivision~~ without
19 first obtaining the consent of the authorities having power to give the
20 consent of ~~such~~ THE political subdivision.

21 (b) A telecommunications provider OR BROADBAND PROVIDER
22 that, on or before ~~April 12, 1996~~ JULY 1, 2017, either has obtained
23 consent of the political subdivision having power to give ~~such~~ consent or
24 is lawfully occupying a public highway in a political subdivision ~~shall~~
25 NEED not ~~be required to~~ apply for additional or continued consent of ~~such~~
26 THE political subdivision under this section.

27 (c) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A

1 POLITICAL SUBDIVISION'S CONSENT GIVEN TO A TELECOMMUNICATIONS
2 PROVIDER OR A BROADBAND PROVIDER TO ERECT OR CONSTRUCT ANY
3 POLES, OR TO LOCATE OR COLLOCATE COMMUNICATIONS AND BROADBAND
4 FACILITIES ON VERTICAL STRUCTURES IN A RIGHT-OF-WAY, DOES NOT
5 EXTEND TO THE LOCATION OF NEW FACILITIES OR TO THE ERECTION OR
6 CONSTRUCTION OF NEW POLES IN A RIGHT-OF-WAY NOT SPECIFICALLY
7 REFERENCED IN THE GRANT OF CONSENT.

8 (2) (a) THE consent OF A POLITICAL SUBDIVISION for the use of a
9 public highway within ~~a political subdivision~~ ITS JURISDICTION shall be
10 based upon a lawful exercise of ~~the~~ ITS police power ~~of such political~~
11 ~~subdivision~~ and shall not be unreasonably withheld. ~~nor~~

12 (b) A POLITICAL SUBDIVISION shall NOT CREATE any preference or
13 disadvantage ~~be created~~ through the granting or withholding of ~~such~~ ITS
14 consent. A POLITICAL SUBDIVISION'S DECISION THAT A VERTICAL
15 STRUCTURE IN THE RIGHT-OF-WAY, INCLUDING A VERTICAL STRUCTURE
16 OWNED BY A MUNICIPALITY, LACKS SPACE OR LOAD CAPACITY FOR
17 COMMUNICATIONS OR BROADBAND FACILITIES, OR THAT THE NUMBER OF
18 ADDITIONAL VERTICAL STRUCTURES IN THE RIGHTS-OF-WAY SHOULD BE
19 REASONABLY LIMITED, CONSISTENT WITH PROTECTION OF PUBLIC HEALTH,
20 SAFETY, AND WELFARE, DOES NOT CREATE A PREFERENCE FOR OR
21 DISADVANTAGE ANY TELECOMMUNICATIONS PROVIDER OR BROADBAND
22 PROVIDER, PROVIDED THAT SUCH DECISION DOES NOT HAVE THE EFFECT OF
23 PROHIBITING A PROVIDER'S ABILITY TO PROVIDE SERVICE WITHIN THE
24 SERVICE AREA OF THE PROPOSED SMALL CELL FACILITY.

25 **SECTION 11.** In Colorado Revised Statutes, 38-5.5-107, **amend**
26 (7) as follows:

27 **38-5.5-107. Permissible taxes, fees, and charges.** (7) As used

1 in this section, "public highway" or "highway" as otherwise defined in
2 section 38-5.5-102 (2) (6) does not include excess and remainder
3 rights-of-way under the department of transportation's jurisdiction.

4 **SECTION 12.** In Colorado Revised Statutes, **amend** 38-5.5-108
5 as follows:

6 **38-5.5-108. Pole attachment agreements - limitations on**
7 **required payments.** (1) ~~No~~ NEITHER A LOCAL GOVERNMENT ENTITY NOR
8 A municipally owned utility shall request or receive from a
9 telecommunications provider, BROADBAND PROVIDER, or a cable
10 television provider, as defined in section 602 (5) of the federal "Cable
11 Communications Policy Act of 1984", in exchange for permission to
12 attach SMALL CELL FACILITIES, BROADBAND DEVICES, OR
13 telecommunications devices to poles OR STRUCTURES IN A RIGHT-OF-WAY,
14 any payment in excess of the amount that would be authorized if the
15 LOCAL GOVERNMENT ENTITY OR municipally owned utility were regulated
16 pursuant to 47 U.S.C. sec. 224, as amended, OR TWO HUNDRED DOLLARS
17 PER POLE OR STRUCTURE, WHICHEVER AMOUNT IS LESS.

18 (2) ~~No~~ A municipality shall NOT request or receive from a
19 telecommunications provider OR A BROADBAND PROVIDER, in exchange
20 for or as a condition upon a grant of permission to attach
21 telecommunications OR BROADBAND devices to poles, any in-kind
22 payment.

23 **SECTION 13. Effective date - applicability.** This act takes
24 effect July 1, 2017, and applies to permit applications received on or after
25 said date.

26 **SECTION 14. Safety clause.** The general assembly hereby finds,

1 determines, and declares that this act is necessary for the immediate
2 preservation of the public peace, health, and safety.