

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

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
Local Government

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.*

SENATE
Amended 2nd Reading
March 28, 2017

HOUSE
3rd Reading Unamended
March 7, 2017

HOUSE
Amended 2nd Reading
March 3, 2017

<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), (4), and (7); and **add** (1.5), (3.5), 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.

1 (3.5) "MICRO WIRELESS FACILITY" MEANS A SMALL WIRELESS
2 FACILITY THAT IS NO LARGER IN DIMENSIONS THAN TWENTY-FOUR INCHES
3 IN LENGTH, FIFTEEN INCHES IN WIDTH, AND TWELVE INCHES IN HEIGHT AND
4 THAT HAS AN EXTERIOR ANTENNA, IF ANY, THAT IS NO MORE THAN ELEVEN
5 INCHES IN LENGTH.

6 (4) (a) "Small cell facility" means either:

7 (a) (I) A personal wireless service facility as defined by the
8 federal "Telecommunications Act of 1996", as amended as of August 6,
9 2014; or

10 (b) (II) A wireless service facility that meets both of the following
11 qualifications:

12 (H) (A) Each antenna is located inside an enclosure of no more
13 than three cubic feet in volume or, in the case of an antenna that has
14 exposed elements, the antenna and all of its exposed elements could fit
15 within an imaginary enclosure of no more than three cubic feet; and

16 (H) (B) Primary equipment enclosures are no larger than
17 seventeen cubic feet in volume. The following associated equipment may
18 be located outside of the primary equipment enclosure and, if so located,
19 is not included in the calculation of equipment volume: Electric meter,
20 concealment, telecommunications demarcation box, ground-based
21 enclosures, back-up power systems, grounding equipment, power transfer
22 switch, and cut-off switch.

23 (b) "SMALL CELL FACILITY" INCLUDES A MICRO WIRELESS
24 FACILITY.

25 (6.5) "TOWER" MEANS ANY STRUCTURE BUILT FOR THE SOLE OR
26 PRIMARY PURPOSE OF SUPPORTING ANTENNAS LICENSED OR AUTHORIZED
27 BY THE FEDERAL COMMUNICATIONS COMMISSION AND THE ANTENNAS'

1 ASSOCIATED FACILITIES, INCLUDING STRUCTURES THAT ARE CONSTRUCTED
2 FOR WIRELESS COMMUNICATIONS SERVICES INCLUDING PRIVATE,
3 BROADCAST, AND PUBLIC SAFETY SERVICES; UNLICENSED WIRELESS
4 SERVICES; FIXED WIRELESS SERVICES SUCH AS BACKHAUL; AND THE
5 ASSOCIATED SITE.

6 (7) "Wireless service facility" means a facility for the provision
7 of wireless services; EXCEPT THAT "WIRELESS SERVICE FACILITY" DOES
8 NOT INCLUDE COAXIAL OR FIBER-OPTIC CABLE THAT IS NOT IMMEDIATELY
9 ADJACENT TO, OR DIRECTLY ASSOCIATED WITH, A PARTICULAR ANTENNA.

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

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

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

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

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

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

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

26 (3) An applicant and a local government ENTITY may mutually
27 agree that an application may be processed in a longer period than set

1 forth in subsection (1) of this section.

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

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

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

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

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

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

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

1 (1) "Broadband" or "broadband service" has the same meaning as
2 set forth in 7 U.S.C. sec. 950bb (b)(1) as of August 6, 2014, and includes
3 "cable service", as defined in 47 U.S.C. sec. 522 (6) as of August 6, 2014.

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

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

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

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

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

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

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

26 ~~(3)~~ (9) "Telecommunications provider" or ~~"provider"~~ means a
27 person that provides telecommunications service, as defined in section

1 40-15-102 (29), ~~C.R.S.~~, with the exception of cable services as defined
2 by section 602 (5) of the federal "Cable Communications Policy Act of
3 1984", 47 U.S.C. sec. 522 (6), pursuant to authority granted by the public
4 utilities commission of this state or by the federal communications
5 commission. "Telecommunications provider" or "~~provider~~" does not mean
6 a person or business using antennas, support towers, equipment, and
7 buildings used to transmit high power over-the-air broadcast of AM and
8 FM radio, VHF and UHF television, and advanced television services,
9 including high definition television. The term "telecommunications
10 provider" is synonymous with "telecommunication provider".

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

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

23 (b) The construction, maintenance, operation, and regulation of
24 ~~such~~ THE facilities DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION,
25 including the right to occupy and utilize the public rights-of-way, by
26 telecommunications providers and broadband providers are ~~hereby~~
27 ~~declared to be~~ matters of statewide concern. ~~Such~~ THE facilities shall be

1 ~~so~~ constructed and maintained SO as not to obstruct or hinder the usual
2 travel on ~~such~~ A highway.

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

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

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

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

1 ~~may be required by~~ the state board of land commissioners MAY REQUIRE.

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

4 **38-5.5-104.5. Use of local government entity structures.**

5 (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION AND
6 SUBJECT TO THE REQUIREMENTS AND LIMITATIONS OF THIS ARTICLE 5.5,
7 SECTIONS 29-27-403 AND 29-27-404, AND A LOCAL GOVERNMENT
8 ENTITY'S POLICE POWERS, A TELECOMMUNICATIONS PROVIDER OR A
9 BROADBAND PROVIDER HAS THE RIGHT TO LOCATE OR COLLOCATE SMALL
10 CELL FACILITIES OR SMALL CELL NETWORKS ON THE LIGHT POLES, LIGHT
11 STANDARDS, TRAFFIC SIGNALS, OR UTILITY POLES IN THE RIGHTS-OF-WAY
12 OWNED BY THE LOCAL GOVERNMENT ENTITY; EXCEPT THAT, A SMALL CELL
13 FACILITY OR A SMALL CELL NETWORK SHALL NOT BE LOCATED OR
14 MOUNTED ON ANY APPARATUS, POLE, OR SIGNAL WITH TOLLING
15 COLLECTION OR ENFORCEMENT EQUIPMENT ATTACHED.

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

23 (a) CAUSE THE ATTACHMENT ON THE AFFECTED STRUCTURE TO BE
24 REMOVED; AND

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

27 (3) (a) EXCEPT AS PROVIDED IN SUBSECTIONS (3)(b) AND (3)(c) OF

1 THIS SECTION, A LOCAL GOVERNMENT ENTITY SHALL NOT IMPOSE ANY FEE
2 OR REQUIRE ANY APPLICATION OR PERMIT FOR THE INSTALLATION,
3 PLACEMENT, OPERATION, MAINTENANCE, OR REPLACEMENT OF MICRO
4 WIRELESS FACILITIES THAT ARE SUSPENDED ON CABLE OPERATOR-OWNED
5 CABLES OR LINES THAT ARE STRUNG BETWEEN EXISTING UTILITY POLES IN
6 COMPLIANCE WITH NATIONAL SAFETY CODES.

7 (b) A LOCAL GOVERNMENT ENTITY WITH A MUNICIPAL OR COUNTY
8 CODE THAT REQUIRES AN APPLICATION OR PERMIT FOR THE INSTALLATION
9 OF MICRO WIRELESS FACILITIES MAY, BUT IS NOT REQUIRED TO, CONTINUE
10 THE APPLICATION OR PERMIT REQUIREMENT SUBSEQUENT TO THE
11 EFFECTIVE DATE OF THIS SECTION.

12 (c) A LOCAL GOVERNMENT ENTITY MAY REQUIRE A SINGLE-USE
13 RIGHT-OF-WAY PERMIT IF THE INSTALLATION, PLACEMENT, OPERATION,
14 MAINTENANCE, OR REPLACEMENT OF MICRO WIRELESS FACILITIES:

15 (I) INVOLVES WORKING WITHIN A HIGHWAY TRAVEL LANE OR
16 REQUIRES THE CLOSURE OF A HIGHWAY TRAVEL LANE;

17 (II) DISTURBS THE PAVEMENT OR A SHOULDER, ROADWAY, OR
18 DITCH LINE;

19 (III) INCLUDES PLACEMENT ON LIMITED ACCESS RIGHTS-OF-WAY;
20 OR

21 (IV) REQUIRES ANY SPECIFIC PRECAUTIONS TO ENSURE THE
22 SAFETY OF THE TRAVELING PUBLIC; THE PROTECTION OF PUBLIC
23 INFRASTRUCTURE; OR THE OPERATION OF PUBLIC INFRASTRUCTURE; AND
24 SUCH ACTIVITIES EITHER WERE NOT AUTHORIZED IN, OR WILL BE
25 CONDUCTED IN A TIME, PLACE, OR MANNER THAT IS INCONSISTENT WITH,
26 THE APPROVAL TERMS OF THE EXISTING PERMIT FOR THE FACILITY OR
27 STRUCTURE UPON WHICH THE MICRO WIRELESS FACILITY IS ATTACHED.

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

3 **38-5.5-105. Power of companies to contract.** Any domestic or
4 foreign telecommunications provider ~~shall have~~ OR BROADBAND
5 PROVIDER HAS THE power to contract with any ~~person or~~ INDIVIDUAL;
6 corporation; OR the owner of any lands, ~~or any~~ franchise, easement, or
7 interest therein over or under which the provider's conduits; cable;
8 switches; ~~and~~ COMMUNICATIONS OR BROADBAND FACILITIES, INCLUDING
9 SMALL CELL FACILITIES AND SMALL CELL NETWORKS; OR related
10 appurtenances and facilities are proposed to be laid or created for the
11 right-of-way for the construction, maintenance, and operation of ~~such~~ THE
12 facilities ~~and~~ OR for the erection, maintenance, occupation, and operation
13 of offices at suitable distances for the public accommodation.

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

16 **38-5.5-106. Consent necessary for use of streets.**
17 (1) (a) ~~Nothing in This article shall be construed to~~ ARTICLE 5.5 DOES
18 NOT authorize any telecommunications provider OR BROADBAND
19 PROVIDER to erect, WITHIN A POLITICAL SUBDIVISION, any poles or
20 construct any COMMUNICATIONS OR BROADBAND FACILITIES, INCLUDING
21 SMALL CELL FACILITIES AND SMALL CELL NETWORKS; conduit; cable;
22 switch; or related appurtenances and facilities along, through, in, upon,
23 under, or over any public highway ~~within a political subdivision~~ without
24 first obtaining the consent of the authorities having power to give the
25 consent of ~~such~~ THE political subdivision.

26 (b) A telecommunications provider OR BROADBAND PROVIDER
27 that, on or before ~~April 12, 1996~~ JULY 1, 2017, either has obtained

1 consent of the political subdivision having power to give ~~such~~ consent or
2 is lawfully occupying a public highway in a political subdivision ~~shall~~
3 NEED not be required to apply for additional or continued consent of ~~such~~
4 THE political subdivision under this section.

5 (c) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A
6 POLITICAL SUBDIVISION'S CONSENT GIVEN TO A TELECOMMUNICATIONS
7 PROVIDER OR A BROADBAND PROVIDER TO ERECT OR CONSTRUCT ANY
8 POLES, OR TO LOCATE OR COLLOCATE COMMUNICATIONS AND BROADBAND
9 FACILITIES ON VERTICAL STRUCTURES IN A RIGHT-OF-WAY, DOES NOT
10 EXTEND TO THE LOCATION OF NEW FACILITIES OR TO THE ERECTION OR
11 CONSTRUCTION OF NEW POLES IN A RIGHT-OF-WAY NOT SPECIFICALLY
12 REFERENCED IN THE GRANT OF CONSENT.

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

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

1 PROHIBITING A PROVIDER'S ABILITY TO PROVIDE SERVICE WITHIN THE
2 SERVICE AREA OF THE PROPOSED █ FACILITY.

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

5 **38-5.5-107. Permissible taxes, fees, and charges.** (7) As used
6 in this section, "public highway" or "highway" as otherwise defined in
7 section 38-5.5-102 ~~(2)~~ (6) does not include excess and remainder
8 rights-of-way under the department of transportation's jurisdiction.

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

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

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

27 **SECTION 13. Effective date - applicability.** This act takes

1 effect July 1, 2017, and applies to permit applications received on or after
2 said date.

3 **SECTION 14. Safety clause.** The general assembly hereby finds,
4 determines, and declares that this act is necessary for the immediate
5 preservation of the public peace, health, and safety.