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

CONCERNING THE INSTALLATION OF SMALL WIRELESS SERVICE INFRASTRUCTURE WITHIN A LOCAL GOVERNMENT'S JURISDICTION, AND, IN CONNECTION THEREWITH, CLARIFYING THAT AN EXPEDITED PERMITTING PROCESS APPLIES TO SMALL CELL FACILITIES AND SMALL CELL NETWORKS AND THAT THE RIGHTS-OF-WAY ACCESS AFFORDED TELECOMMUNICATIONS PROVIDERS EXTENDS TO BROADBAND PROVIDERS AND TO SMALL 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.)
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 telecommunications 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.

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

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

29-27-401. Legislative declaration. (2) The general assembly further finds and declares that:

(a) Small cell facilities often may be deployed most effectively in the public rights-of-way; and

(b) Access to local government structures is essential to the construction and maintenance of wireless service facilities or broadband facilities.

SECTION 2. In Colorado Revised Statutes, 29-27-402, amend (1), (4), and (7); and add (1.5), (3.5), and (6.5) as follows:

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

(1) "Broadband facility" means any infrastructure used to deliver broadband service or for the provision of broadband service. "Antenna" means communications equipment that transmits or receives electromagnetic radio frequency signals used to provide wireless service.

(1.5) "Broadband facility" means any infrastructure used to deliver broadband service or for the provision of broadband service.
(3.5) "Micro wireless facility" means a small wireless facility that is no larger in dimensions than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that has an exterior antenna, if any, that is no more than eleven inches in length.

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

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

(β) (II) A wireless service facility that meets both of the following qualifications:

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

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

(b) "Small cell facility" includes a micro wireless facility.

(6.5) "Tower" means any structure built for the sole or primary purpose of supporting antennas licensed or authorized by the Federal Communications Commission and the antennas'
ASSOCIATED FACILITIES, INCLUDING STRUCTURES THAT ARE CONSTRUCTED FOR WIRELESS COMMUNICATIONS SERVICES INCLUDING PRIVATE, BROADCAST, AND PUBLIC SAFETY SERVICES; UNLICENSED WIRELESS SERVICES; FIXED WIRELESS SERVICES SUCH AS BACKHAUL; AND THE ASSOCIATED SITE.

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

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

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

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

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

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

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

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

(3) An applicant and a local government ENTITY may mutually agree that an application may be processed in a longer period than set
SECTION 4. In Colorado Revised Statutes, 29-27-404, amend (1) and (2) introductory portion; and add (3) as follows:

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

(b) For a consolidated application filed pursuant to subsection (1)(a) of this section, each small cell facility within the consolidated application remains subject to review for compliance with objective requirements and approval as provided in this article. The local government's denial of any individual small cell facility is not a basis to deny the consolidated application as a whole or any other small cell facility incorporated within the consolidated application.

(2) If a wireless service provider applies to locate or collocate several wireless service facilities within the jurisdiction of a single local government ENTITY, the local government ENTITY shall:

(3) The siting, mounting, placement, construction, and operation of a small cell facility or a small cell network is a permitted use by right in any zone.

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

38-5.5-102. Definitions. As used in this article, unless the context otherwise requires:
(1) "Broadband" or "broadband service" has the same meaning as set forth in 7 U.S.C. sec. 950bb (b)(1) as of August 6, 2014, and includes "cable service", as defined in 47 U.S.C. sec. 522 (6) as of August 6, 2014.

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

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

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

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

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

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

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

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

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

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

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

(2) No A political subdivision shall NOT discriminate among or grant a preference to competing telecommunications providers or broadband providers in the issuance of permits or the passage of any ordinance for the use of its rights-of-way, nor create or erect any unreasonable requirements for entry to the rights-of-way for such the providers.

(3) No A political subdivision shall NOT regulate a telecommunications provider or a broadband provider based upon the content or type of signals that are carried or capable of being carried over the provider's facilities; except that nothing in this subsection (3) shall be construed to prevent such prevents regulation by a political subdivision when the authority to so regulate has been granted to the political subdivision under federal law.

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

38-5.5-104. Right-of-way across state land. Any domestic or foreign telecommunications provider or broadband provider authorized to do business under the laws of this state shall have the right to construct, maintain, and operate lines of communication, switches, and related facilities, and communications and broadband facilities, including small cell facilities and small cell networks, and obtain a permanent right-of-way for the facilities over, upon, under, and across all public lands owned by or under the control of the state, upon the payment of such just compensation and upon compliance with such reasonable conditions as
may be required by the state board of land commissioners MAY REQUIRE.

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

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

(1) Except as provided in subsection (2) of this section and subject to the requirements and limitations of this article 5.5, sections 29-27-403 and 29-27-404, and a local government entity's police powers, a telecommunications provider or a broadband provider has the right to locate or collocate small cell facilities or small cell networks on the light poles, light standards, traffic signals, or utility poles in the rights-of-way owned by the local government entity; except that, a small cell facility or a small cell network shall not be located or mounted on any apparatus, pole, or signal with tolling collection or enforcement equipment attached.

(2) If, at any time, the construction, installation, operation, or maintenance of a small cell facility on a local government entity's light pole, light standard, traffic signal, or utility pole fails to comply with applicable law, the local government entity, by providing the telecommunications provider or the broadband provider notice and a reasonable opportunity to cure the noncompliance, may:

(a) Cause the attachment on the affected structure to be removed; and

(b) Prohibit future, noncompliant use of the light pole, light standard, traffic signal, or utility pole.

(3)(a) Except as provided in subsections (3)(b) and (3)(c) of
THIS SECTION, A LOCAL GOVERNMENT ENTITY SHALL NOT IMPOSE ANY FEE OR REQUIRE ANY APPLICATION OR PERMIT FOR THE INSTALLATION, PLACEMENT, OPERATION, MAINTENANCE, OR REPLACEMENT OF MICRO WIRELESS FACILITIES THAT ARE SUSPENDED ON CABLE OPERATOR-OWNED CABLES OR LINES THAT ARE STRUNG BETWEEN EXISTING UTILITY POLES IN COMPLIANCE WITH NATIONAL SAFETY CODES.

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

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

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

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

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

OR

(IV) REQUIRES ANY SPECIFIC PRECAUTIONS TO ENSURE THE SAFETY OF THE TRAVELING PUBLIC; THE PROTECTION OF PUBLIC INFRASTRUCTURE; OR THE OPERATION OF PUBLIC INFRASTRUCTURE; AND SUCH ACTIVITIES EITHER WERE NOT AUTHORIZED IN, OR WILL BE CONDUCTED IN A TIME, PLACE, OR MANNER THAT IS INCONSISTENT WITH THE APPROVAL TERMS OF THE EXISTING PERMIT FOR THE FACILITY OR STRUCTURE UPON WHICH THE MICRO WIRELESS FACILITY IS ATTACHED.
SECTION 9. In Colorado Revised Statutes, amend 38-5.5-105 as follows:

38-5.5-105. Power of companies to contract. Any domestic or foreign telecommunications provider shall have the power to contract with any person or individual; corporation; or the owner of any lands, or any franchise, easement, or interest therein over or under which the provider's conduits; cable; switches; and communications or broadband facilities, including small cell facilities and small cell networks; or related appurtenances and facilities are proposed to be laid or created for the right-of-way for the construction, maintenance, and operation of such facilities and for the erection, maintenance, occupation, and operation of offices at suitable distances for the public accommodation.

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

38-5.5-106. Consent necessary for use of streets. (1) (a) Nothing in this article shall be construed to authorize any telecommunications provider or broadband provider to erect, within a political subdivision, any poles or construct any communications or broadband facilities, including small cell facilities and small cell networks; conduit; cable; switch; or related appurtenances and facilities along, through, in, upon, under, or over any public highway within a political subdivision without first obtaining the consent of the authorities having power to give the consent of such the political subdivision.

(b) A telecommunications provider or broadband provider that, on or before April 12, 1996 or July 1, 2017, either has obtained
consent of the political subdivision having power to give such consent or
is lawfully occupying a public highway in a political subdivision shall
need not be required to apply for additional or continued consent of such
the political subdivision under this section.

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

(2) (a) The consent of a political subdivision for the use of a
public highway within a political subdivision shall be based upon a lawful exercise of the
its police power of such political subdivision and shall not be unreasonably withheld. nor

(b) A political subdivision shall not create any preference or
disadvantage through the granting or withholding of such its
consent. A political subdivision's decision that a vertical
structure in the right-of-way, including a vertical structure
owned by a municipality, lacks space or load capacity for
communications or broadband facilities, or that the number of
additional vertical structures in the rights-of-way should be
reasonably limited, consistent with protection of public health,
safety, and welfare, does not create a preference for or
disadvantage any telecommunications provider or broadband
provider, provided that such decision does not have the effect of
PROHIBITING A PROVIDER'S ABILITY TO PROVIDE SERVICE WITHIN THE
SERVICE AREA OF THE PROPOSED FACILITY.

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

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

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

38-5.5-108. Pole attachment agreements - limitations on
required payments. (1) NEITHER A LOCAL GOVERNMENT ENTITY NOR
A municipally owned utility shall request or receive from a
telecommunications provider, BROADBAND PROVIDER, or a cable
television provider, as defined in section 602 (5) of the federal "Cable
Communications Policy Act of 1984", in exchange for permission to
attach SMALL CELL FACILITIES, BROADBAND DEVICES, OR
telecommunications devices to poles OR STRUCTURES IN A RIGHT-OF-WAY,
any payment in excess of the amount that would be authorized if the
LOCAL GOVERNMENT ENTITY OR municipally owned utility were regulated
pursuant to 47 U.S.C. sec. 224, as amended.

(2) A municipality shall NOT request or receive from a
telecommunications provider OR A BROADBAND PROVIDER, in exchange
for or as a condition upon a grant of permission to attach
telecommunications OR BROADBAND devices to poles, any in-kind
payment.

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

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