



July 19, 2018

The Honorable Cory Gardner
United States Senate
354 Russell Senate Office Building
Washington, DC 20510

Dear Senator Gardner:

The Colorado Municipal League appreciates the opportunity to share our comments with you and your staff regarding S. 3157, the “Streamlining The Rapid Evolution And Modernization of Leading-edge Infrastructure Necessary to Enhance (STREAMLINE) Small Cell Deployment Act.” For the reasons described in this letter, we urge you to oppose this bill.

As you know, the Colorado General Assembly adopted legislation in 2017 address the siting of small cell wireless facilities. That legislation was passed after months of significant negotiations and collaboration between representatives of the wireless industry and local government in Colorado. Subsequently, local governments have spent thousands of hours and dollars amending local codes in order to implement the provisions of the statute. Many local governments have since entered into license and permit agreements with the wireless industry to authorize the siting of small cell facilities, pursuant to state law. S. 3157 threatens to render those efforts meaningless.

S. 3157 conflicts with our state law in multiple respects. It creates shot clocks requiring decisions in shorter time periods than the shot clocks negotiated by the wireless industry with Colorado local governments and enacted in state law. It limits the fees that can be charged for attachments to traffic signal poles and street lights owned by local governments, contrary to our state law. This federal determination of the value of local government owned structures and the fees that can be charged to use those structures is, in our opinion, a taking in violation of the Fifth Amendment.

While our state law allows for the regulation based upon local government police powers to protect the health, safety and welfare of our citizens. Most municipalities have adopted generally applicable to all similarly situated parties, based upon those police power protections. S. 3157 creates a much narrower and more limited scope of local authority that can be exercised in siting decisions. For example, a locally adopted ordinances governing access to the rights-of-way regulating trenching, boring, closing lanes of traffic, repair obligations and the like, which currently govern telecommunications, gas and electric, water and sewer and other users of the rights of way, would be preempted as to small cell wireless facilities, and limited to enforcing “uniform” codes such as the Uniform Building Code, National Electrical Code, or a local amendment to that code. Most local governments have adopted uniform codes in addition

to their generally applicable rights-of-way ordinances. These generally applicable ordinances would apply to all other users of the rights-of-way, but for small cell wireless facilities, S. 3157 would create a special set of rules, significantly limiting the ability to act to protect public health, safety and welfare.

Also contrary to Colorado law, S. 3157 mandates that if a decision is not made within the time period of the federal shot clock, the application is deemed granted. Under Colorado law, a failure to comply with the shot clock provides an opportunity to seek legal action requiring compliance, but under S. 3157, the federal government will be the final decision maker on the granting of local permits. We have serious Fifth and Tenth Amendment concerns about these provisions.


We also have a problem with the provision in the bill that allows states to adopt more stringent regulations, because it implies that states like Colorado that have already adopted their own legislation with less stringent requirements are preempted. All of the work we did with our General Assembly and the wireless industry in developing a process that works in Colorado will be for naught.

Finally, federal law currently provides that local governments may not make siting decisions based upon the health effects of radio frequency emissions. Local governments that allegedly violate that provision can be challenged in state or federal court and can defend themselves locally through that process. S. 3157 would change the law and allow these kinds of challenges to be brought at the Federal Communications Commission, forcing local governments to travel to Washington to defend themselves, and creating a financial disincentive to challenge an appeal.

In sum, S. 3157 is an unwarranted and significant federal intrusion into both state and local government authority. It would create a situation where all users of state and local government property follow one set of rules as determined by the state or local government, while owners of small cell wireless facilities get a special set of rules where the federal government has determined it is appropriate to preempt these traditional areas of state and local control. You are probably also aware that the FCC is considering its own preemptory rules relating to these issues, and we urge your opposition to that process as well. From both a policy and a legal standpoint, it would be an inappropriate intrusion by the federal government to tell us that the work we've done here with the wireless industry is being preempted because Washington, D.C. had decided it knows the better way for us to manage our property.

We thank you for your service to the citizens of Colorado and urge you in the strongest possible way to please oppose this legislation.

Sincerely,



Samuel D. Mamet
Executive Director

Copy - I trust you remain well

