

## Draft Senate Bill Would Address Wireless Shot Clocks, Rates

A discussion draft of legislation circulated by Senate Commerce, Science, and Transportation Committee Chairman John Thune (R., S.D.), and Sen. Brian Schatz (D., Hawaii), ranking member of the communications, technology, innovation and the Internet subcommittee, would require states and localities to act within 60 days on applications to collocate wireless facilities on structures and 90 days for other wireless applications. If states and localities don't act within those timeframes or wrongly deny requests, applications would be deemed granted 31 days after written notice is given by applicants.

The measure also would restrict the use of moratoria by state and local governments on siting wireless infrastructure and would impose restrictions on the rates that governments could charge to site facilities.

"This staff working draft text is intended to solicit feedback for upcoming legislation that reduces barriers to broadband deployment," said Frederick Hill, a Republican spokesman for the committee. "While the MOBILE NOW Act, which was recently approved by the Senate, addresses barriers to deployment on federal lands, this new draft focuses on lands not under federal control. There is no current timetable for updating the draft or introduction as we gather input."

The staff discussion draft said that a state or local government would be illegally restricting the deployment of wireless services if it "restricts access to a pole, right-of-way, or other facility owned by the State or local government or instrumentality to support equipment for use by providers of wireless services except in the case of insufficient capacity, or for" (1) safety, (2) reliability, or (3) "engineering purposes;" "objective design standards for decorative utility poles;" or "reasonable concealment requirements."

States and localities also would not be permitted to grant "exclusive or preferential use to a pole, right-of-way, or other property owned or managed by the State or local government" to (1) "a particular provider of wireless service;" (2) "a class of providers of wireless service;" or "any entity or class of entity to which access is provided under section 224(f)(1)[.]"

The draft also would prohibit states and localities from requiring carriers to demonstrate the need for a facility and limiting the ability to "make technology or capacity upgrades, updates, or enhancements" or imposing "an express or de facto moratorium on the acceptance or processing of permits or other permissions to deploy wireless service facilities[.]" Governments also would not be permitted to approve or deny facilities "without reasonable, objective, and non-discriminatory guidelines" and would not be permitted to require facilities to be removed or replaced if they are in use. And they wouldn't be permitted to ban the placement of emergency backup power equipment that complies with federal and state regulations.

The discussion draft also said that it is not meant to affect the authority of a state or locality to "manage access to and use of poles, rights-of-way, or other property owned or managed by the State or local government or instrumentality for wireless service facilities or to require fair and reasonable compensation for that access or use if—(aa) the compensation is competitively neutral, technology neutral, and nondiscriminatory; (bb) the government or instrumentality publicly discloses the compensation; (cc) the compensation is based on actual and direct costs, except for compensation for a pole attachment provided under section 224, which shall be calculated in accordance with that section; and (dd) the management and access, including the requirement of fair and reasonable compensation, is not inconsistent with State law[.]"

The measure also said it is not intended to affect the authority of a state or locality to "charge a fee to consider a request for the placement, construction, or modification of wireless service facilities within the jurisdiction of the State or local government or instrumentality thereof if the fee is based on actual and direct costs of—(aa) issuing and processing permits; (bb) reviewing plans; and (cc) conducting physical inspections related to issuing and processing permits."

The draft also would require the Government Accountability Office to study broadband deployment on tribal land and draft a report within a year on "the process for obtaining a grant of a right-of-way from the Bureau of Indian Affairs to deploy broadband infrastructure on tribal land[.]"

It also said that it's 'the sense of Congress that State and local governments should consult with local and national telecommunications providers, including telecommunications service and equipment providers, and other stakeholders before beginning a highway construction project to determine whether to install broadband conduit under hard surfaces as part of the highway construction project.'

And it includes language that would provide automatic access to ROWs and easements for cable franchisees for cable, telecom, broadband, VoIP, and business data services.

"By modernizing how wireless networks are deployed, this draft bill would help enable the wireless industry to invest hundreds of billions of dollars to win the global race to 5G," said Kelly Cole, senior vice president-government affairs for CTIA. "We look forward to its quick passage."

Gerry Lederer, an attorney for Best, Best & Krieger LLP who represents local governments, said that local government parties have seen the discussion draft and would note "that a great many of the proposals in the draft were removed through the leadership of Chairman Thune and Ranking member [Bill] Nelson [D., Fla.] when industry sought their inclusion in the MOBILE NOW Act. We would hope that we might rely upon their continued leadership to protect communities' right to self-govern. For instance, we are sure that no Senate leader would treat local government property with any less protection than they are affording federal property in the MOBILE NOW Act. The MOBILE NOW Act creates a 270-day shot clock for action and provides full market compensation for use of federal property. Why would the standard be any less protective of local property?"

He added, "The bill would rewrite of 47 USC 541 and 542 to basically permit a cable operator to use its cable franchise as the legal authority to provide any service and deploy any equipment that they choose to deploy in the rights of way, but the rental payment would be capped at 5% of revenue generated by providing cable service over cable system." —Paul Kirby, [paul.kirby@wolterskluwer.com](mailto:paul.kirby@wolterskluwer.com)

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# Inside Towers

## [Bill to Ease Wireless Infrastructure Siting Circulating in Senate](#)

Senate Commerce Committee Chairman John Thune (R-SD) and Brian Schatz (D-HI) circulated a draft bill aimed at helping the wireless industry's transition to 5G. The measure would limit the ability of a state or local government to prohibit infrastructure siting access to a pole or right-of-way except in cases of "insufficient capacity" or for safety, engineering, reliability or concealment reasons, according to the 18-page draft discussion document examined by *Inside Towers*.

It also limits local governments' ability to restrict infrastructure upgrades or impose moratoria outright. States or municipalities must act on requests by wireless providers to co-locate their infrastructure within 60 days and 90 days for other permitting requests.

The measure does not interfere with the ability of a state or municipality to “manage access to and use of poles, rights-of-way” or other government-owned property for wireless infrastructure. It also does not impede their right to require “fair and reasonable compensation” for that access if the compensation is “competitively neutral, technology neutral, and nondiscriminatory,” and the local government discloses the compensation. Fees must be based on “actual and direct costs” of issuing and processing permits, reviewing plans and conducting physical inspections related to permitting.

Not more than a year after passage, the federal government would “study the process for obtaining a grant of a right-of-way from the Bureau of Indian Affairs to deploy broadband infrastructure on tribal land” and submit the report to Congress. State and local governments should consult with local and national telecom providers and other stakeholders before beginning a highway construction project to determine “whether to install broadband conduit under hard surfaces” as part of that project.

CTIA praised the draft language. “By modernizing how wireless networks are deployed, this draft bill would help enable the wireless industry to invest hundreds of billions of dollars to win the global race to 5G,” said CTIA SVP Government Affairs Kelly Cole. “We look forward to its quick passage.”

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