City of Tacoma

Mayor Victoria R. Woodards

July 17, 2018

The Honorable Maria Cantwell
United States Senator
511 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cantwell:

On behalf of the City of Tacoma, including the City's General Government and Tacoma Public Utilities, we write to express our concerns regarding S. 3157, the "Streamlining the Rapid Evolution and Modernization of Leading-Edge Infrastructure Necessary to Enhance Small Cell Deployment Act," and respectfully request you oppose the legislation. Based on our experience and recent efforts undertaken across the City of Tacoma, we believe this legislation would undercut the authority and responsibility of local government to manage and protect property in the responsive way our citizens expect.

As you know, under current federal law, municipal pole attachments and rights of way are already regulated at the state or local level. Local governments and their consumer-owned utilities charge fees and administer regulations responsive to the public interest and in accordance with state laws.

In the City of Tacoma, we have worked with telecommunications providers to provide access to publicly-owned infrastructure and rights of way in ways that make sense for our community. More recently, we collaborated with telecommunications providers on revisions to our fee structure and land use regulations to accommodate new technologies, including small cell attachments. Those new fees and municipal code revisions were enacted in 2018 following extensive stakeholder outreach and public processes.

If enacted, S. 3157 would amend that effective policy model and cede significant control of locally-owned assets to the policies of the Federal Communications Commission. There are many troubling provisions in the legislation, including:

- S. 3157 would overturn the exemption for municipal utility poles, light poles, traffic signals or other state or local government facilities from FCC oversight – this exemption has been in place for decades.
- S. 3157 gives the FCC jurisdiction over the "right-of-way" or facilities "in the right-of-way owned or managed by the State or local government."

747 Market Street, Room 1200, Tacoma, Washington 98402-3766, (253) 594-7848, FAX (253) 591-5123

- S. 3157 sets the stage for our taxpayers and utility customers to subsidize for-profit telecommunications operations by setting all fees at a rate "calculated in accordance with section 224" for attachments to a "pole, in a right-of-way, or on any other facility that may be established under that section."
- S. 3157 restricts right-of-way and municipal pole attachment compensation under both Secs. 332 & 253 to direct costs, in direct violation of the 5th and 10th Amendments.
- Municipal governments and their consumer-owned utilities would lose their ability to allow a use or not on publicly-owned facilities or in rights of way. The legislation provides a hollow, ambiguous exemption for engineering, safety, and aesthetic issues, but it would only allow utilities to challenge the "placement, construction, and modification" of the small cell devices.
- Sets strict application timeframes and applies burdensome "deemed-granted" requirements on pole attachment applications. Namely the legislation would shorten existing FCC shot clocks (new towers, from 150 days to 90 days, and collocations: from 90 days to 60 days). Failure to meet either deadline results in a deemed granted penalty.

The City of Tacoma has worked collaboratively to bring new technologies into our community for many years. Nationally there is not a record showing that communications companies are prohibited or unduly burdened when seeking to attach their wires and devices to municipally owned poles or in the municipal right-of-way. Based on our experience, S. 3157 does not solve any problems and disenfranchises local residents from decisions about the use of community assets that have been financed through their tax dollars or utility bills. For these reasons, we urge your opposition to S. 3157.

Thank you for considering our input on this. Should you have any questions or would like to discuss these issues in greater detail, please contact Alisa O'Hanlon at 253-591-5310 or Clark Mather at 253-441-4159.

Sincerely,

Victoria Woodards
Mayor of Tacoma

Woodrow E. Jones, Jr.
Chair, Public Utility Board

c: Narda Jones, Office of Senator Maria Cantwell
Megan Thompson, Office of Senator Cantwell
Rosa McLeod, Office of Senator Maria Cantwell

FMEA
FLORIDA MUNICIPAL ELECTRIC ASSOCIATION

July 16, 2018

The Honorable Bill Nelson
United States Senate
Washington, D.C. 20510

Dear Senator Nelson:

Re: Concerns with S. 3157, the STREAMLINE Small Cell Deployment Act

On behalf of the 34 community-owned, public power utilities in Florida, I am writing to express our serious concerns with a new legislative proposal, S. 3157, the STREAMLINE Small Cell Deployment Act. The bill is currently under consideration in the Commerce, Science, and Transportation Committee, and we understand that the committee may hold a hearing on this bill soon.

The bill in question, S. 3157, ostensibly is aimed at ushering in the next generation of wireless technology, including encouraging widespread broadband deployment. We support that effort, but not at the expense of state and locally owned electric utilities. The Communications Act of 1934, still the standard for today's telecommunications industry, is quite clear—Section 224 explicitly exempts public power utilities from Federal Communications Commission (FCC) pole attachment regulations. That section exempts municipally owned and rural electric cooperative utilities from pole attachment regulation because these entities are already subject to "a decision-making process based upon constituent needs and interests." Indeed, Congress has consistently upheld this long-standing tradition.

But this legislative proposal puts the municipal exemption in jeopardy. Specifically, the bill would change section 332 of the Communications Act, which currently gives the FCC jurisdiction over mobile telecommunications services and gives nondiscriminatory access to state and local rights of way. S. 3157 would revise section 332 to require mandatory access to attachments to a "facility in a right of way owned or managed by a State or local government." The bill would also allow the state or locality to charge fees for the "placement, construction, or modification" of a small wireless facility that is "in accordance with section 224."

Because utility pole attachments are the *only type* of facility covered under section 224, and because public power utility poles are the *only types* of poles "owned or managed by a State or local government" in the public right of way, this decision would give the FCC jurisdiction over all public power pole attachment decisions. All told, these provisions would effectively repeal the public power exemption from FCC regulation.

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The bill would also create conflicts among several provisions of the Communications Act, may run afoul of state constitutional provisions that prohibit political subdivisions from subsidizing private enterprise, and would create a one-size-fits-all approach to pole attachment decisions. Further, we have legitimate concerns about reliability, liability, and safety – critical issues when dealing with our public infrastructure. Safety is of utmost concern to us in Florida, especially given our susceptibility to hurricanes.

As you know, Florida tackled this issue just last year. The Florida Legislature developed new law in this area (HB 687) when it passed the Advanced Wireless Infrastructure Deployment Act, which addresses broadband infrastructure in the public rights of way and provides local governments with an application timeframe. Critical to Florida's public power community, the Act exempts municipal electric utilities, *as well as ALL electric utilities*, from the new law. Perhaps this Florida model can be utilized in future Commerce Committee discussions.

We appreciate your continued support of Florida's public power communities and look forward to working with you on this important issue. Please contact me at (850) 224-3314, ext. 1, or azubaly@publicpower.com if you have any questions.

Sincerely,

Amy Zubaly

Amy Zubaly
Executive Director

LEAGUE® OF CALIFORNIA CITIES

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July 10, 2018

Senator Dianne Feinstein
United States Senate
331 Hart Office Building
Washington, D.C. 20510

Senator Kamala Harris
United States Senate
112 Hart Office Building
Washington, D.C. 20510

Dear Sen. Feinstein and Sen. Harris,

RE: Opposition to S. 3157 (Thune & Schatz) – STREAMLINE "Small Cells" Act

On behalf of the League of California Cities, we urge your opposition to S. 3157 (Thune & Schatz), the STREAMLINE Act. The bill would force local governments to lease out publicly owned infrastructure, eliminate reasonable local environmental and design review, and eliminate the ability for local governments to negotiate fair leases or public benefits for the installation of "small cell" wireless equipment on taxpayer-funded property.

Just last year, the wireless industry pursued similar failed legislation here in California that sought to achieve many of the elements present in this bill. The industry's effort here was met with overwhelming opposition from over 325 cities concerned about shifting authority away from our residents, businesses, and communities over to a for-profit industry whose shareholder returns potentially outweigh their considerations for the health, safety, aesthetic, and public benefits of the communities we serve.

To be clear, cities across California share in the goal of ensuring all our residents have access to affordable, reliable high-speed broadband and eagerly welcome installation of wireless infrastructure in collaboration with local governments. However, this bill will not help in achieving these goals.

Instead, this bill interferes with local governments' management of their own property and their ability to receive fair compensation for its use. Local governments actively manage the rights of way to protect their residents' safety, preserve the character of their communities, and maintain the availability of the rights of way for current and future uses. By stringently limiting those factors that local governments may consider in their own land use decisions, and restricting the compensation they receive to the "actual costs" they incur to process applications, this bill limits local governments' ability to adequately serve and protect residents.

Furthermore, this bill would transfer public property to private companies with no public obligation. S. 3157 restricts the rental rates cities can charge for use of public property such as the right-of-way and municipally owned poles, in direct violation of the 5th and 10th

Amendments of the U.S. Constitution while also limiting rental rates to "actual and direct costs" which also violates the gift prohibition of many state constitutions. This forces taxpayers to subsidize private, commercial development, without any corresponding obligation on providers to serve communities in need or contribute to closing the digital divide in those markets.

This bill can have lasting damaging impacts on the character of each individual city, while simultaneously creating an undue burden on taxpayers to subsidize the irresponsible deployment of wireless infrastructure for private corporations. S. 3157 should be rejected and wireless providers should be instead encouraged to work in collaboration with their local government partners to deploy this critical infrastructure.

For these reasons, the League of California Cities is **OPPOSED to S. 3157 (Thune & Schatz)**. If you have any questions or need any additional information, please contact me or the League's Washington advocate, Leslie Pollner (leslie.pollner@hklaw.com) at 202.469.5149.

Sincerely,

Carolyn Coleman
Executive Director

cc: California Congressional Delegation

LEAGUE OF MINNESOTA CITIES

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July 11, 2018

The Honorable Amy Klobuchar
United States Senate
302 Hart Senate Office Building
Washington, DC 20510

Dear Senator Klobuchar,

The League of Minnesota Cities (LMC) respectfully requests you to oppose S. 3157 (Thune & Schatz), a bill referred to as the "Streamlining The Rapid Evolution And Modernization of Leading-edge Infrastructure Necessary to Enhance" (STREAMLINE) Small Cell Deployment Act.

Simply stated, this bill is a direct attack on local decision-making authority. S. 3157 would give the Federal Communications Commission (FCC) unfair power over local officials and Minnesota communities and would not grandfather in Minnesota's Right-of-Way Management (ROW) law that includes small cell wireless deployment provisions. Significant changes were enacted to Minnesota's ROW law following the 2017 legislative session. This followed intense and lengthy negotiations between LMC, other local government associations, wireless carriers, and cable providers. Dozens of cities have implemented or updated their ROW ordinances in accordance with the new law. Wireless providers and local governments are collaboratively working to deploy small cell wireless technology within the confines of statute, which has been confirmed by wireless industry representatives during a hearing this past legislative session and through informal conversations. Minnesota cities would be stifled by additional layers of preemptive legislation that would give the FCC jurisdiction over all public facilities in public rights-of-way.

The bill, like recent rulemaking by the FCC, inhibits local decision-making by changing current federal requirements for small cell siting by carving out a new category with new requirements, separate from existing wireless siting law. While the FCC's statutory authority to take these actions is debatable and could potentially be challenged in court, congressional action to limit local authority would be permanently damaging. New parameters in the bill eliminate the flexibility for cities to deny an application based on the general health, safety, and welfare of citizens. Protecting the health, safety, and welfare of the public is a core function of city government and the ability to do so must be preserved.

Attached to this letter is a table providing a comparison between the bill and Minn. Stat. § 237.162-163, Minnesota's telecommunications ROW law. We anticipate that the Senate Commerce Committee will hear this legislation this month. On behalf of our 833 member cities, we ask you to oppose S. 3157. Please contact Laura Ziegler at lziegler@lmc.org or 651-281-1267 with any questions you may have.

Thank you for the work that you do on behalf of all Minnesotans.

Sincerely,

Heidi Omerza
President, League of Minnesota Cities

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ST. PAUL, MN 55103-2044

PHONE: (651) 281-1200 FAX: (651) 281-1299
TOLL FREE: (800) 925-1122 WEB: WWW.LMC.ORG

CC: Senator Tina Smith
Representative Timothy Walz
Representative Jason Lewis
Representative Erik Paulsen
Representative Betty McCollum
Representative Keith Ellison
Representative Tom Emmer
Representative Collin Peterson
Representative Rick Nolan

Comparison Between "STREAMLINE" Act and Minnesota State Right-of-Way Law

Issue	S. 3157	Effect on MN Law
Wireless siting in the public rights-of-way	It would limit local consideration of "small personal wireless facilities" to "objective and reasonable" "structural engineering standards based on generally applicable codes; safety requirements; or aesthetic or concealment requirements."	Eliminates the flexibility for cities to deny an application based on the general health, safety, and welfare of citizens.
"Shot clock"/Time for local government to issue a decision	Modification of the application shot clock to 60 days for collocations, and 90 days for new sites.	Shortens time frame for decisions on applications for collocations from 90 days to 60 days. No impact on request for new wireless support structure decision.
Notice of incomplete application	Cities are allowed ten days to notify applicants in writing if their application is incomplete.	Shortens time frame from 30 days to ten days.
Special shot clock carveouts for small cities, defined as fewer than 50,000 residents	o 90 days for collocations if the provider has filed 50 or fewer applications in a 30-day period, or 120 days if the provider has filed more than 50 applications in 30 days o 120 days for new sites if the provider has filed 50 or fewer applications in a 30-day period, or 150 days if the provider has filed more than 50 applications in 30 days	This is new and would differ from state law, as described under the "shot clock" issue.
Moratoria prohibition	Prohibits moratoria/tolling to lengthen these shot clocks.	Same as state law.
One-time local government waiver	Allows local governments to request a one-time 30-day waiver from the FCC.	This is new. No comparable language in state law.
Automatic approval	Includes a deemed granted provision for applications not acted upon by the local government in the stated period.	Same as state law, but has a shorter time frame to act under federal regulations.
Fees – application, management, rent	Limits "fees," which the bill defines as "a fee to consider an application for the placement, construction, or modification of a small personal wireless facility, or to use a right-of-way or a facility in a right-of-way owned or managed by the State or local government for the placement, construction, or modification of a small personal wireless facility." This would include not only application fees, but also recurring rents for usage of public property.	This would be a massive financial hit to cities to combine one fee for all, and could result in a subsidy for the wireless industry by cities. MN state law allows cities to require telecommunications ROW users to get a permit for use of the ROW; however, it creates a separate permitting structure for the siting of small wireless facilities. Cities can recover their ROW management costs and charge rent for attaching small cell facilities to city-owned structures in the public rights-of-way. Rent is capped for collocation of small wireless facilities.

Issue	S. 3157	Effect on MN Law
Rent	Fees must be "competitively neutral, technology neutral, and nondiscriminatory; publicly disclosed; and based on actual and direct costs."	Conflicts with MN law as outlined above.
Definitions	The bill also defines "small personally wireless service facility," limits it to "a personal wireless service facility in which each antenna is not more than 3 cubic feet in volume; and does not include a wireline backhaul facility."	This is new. A “small wireless facility” is defined as “each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume.”
Tribal land	Orders a GAO study on broadband deployment on tribal land	This is also new, but it was an issue tabled by the Broadband Deployment Advisory Committee, referred to as BDAC, early on.

NYCOM New York State Conference of Mayors and Municipal Officials

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July 13, 2018

Hon. Charles E. Schumer
U.S. Senate
322 Hart Senate Office Building
Washington, DC 20510

Dear Senator Schumer:

On behalf of the cities and villages comprising the membership of the New York State Conference of Mayors, I write to express our strong opposition to the Streamlining the Rapid Evolution and Modernization of Leading-edge Infrastructure Necessary to Enhance (STREAMLINE) Small Cell Deployment Act (S. 3157). This legislation would severely restrict local governments' authority to regulate wireless facilities, grant wireless service providers unfettered rights of access to the municipal right-of-way (ROW) and mandate specific application procedures for wireless facilities installed in the ROW. While NYCOM supports universal high-speed internet access for all, the means by which this legislation mandates the installation of wireless facilities and eliminates the ability of local governments to obtain a fair return for wireless equipment installed on taxpayer property is fatally flawed and not in the public interest.

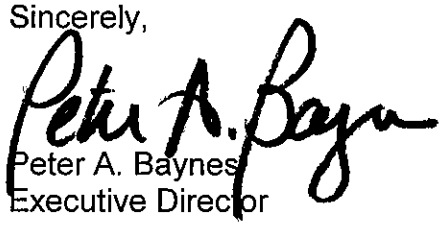
During 2018-2019 state budget negotiations, the wireless industry pursued a similar proposal here in New York that attempted to achieve many of the elements present in this bill. The industry's effort was met with overwhelming opposition from New York's municipalities dedicated to protecting the safety and welfare of New Yorkers and guarding against the misappropriation of taxpayer property. Local governments across New York State support the proliferation of broadband technology, especially in our underserved and rural communities. However, achieving meaningful internet access throughout the state will not be advanced by this legislation.

Maintaining the public ROW is an essential function of local governments and their capacity to protect the public's health, safety, and welfare and preserve the character of communities. The standard provided in this bill would fundamentally impinge on the ability and responsibility of local governments to make well-reasoned decisions in the best interest of their residents. Specifically, this bill would usurp local government authority to address particularized public safety and aesthetic concerns related to the installment of such facilities by limiting the factors that a municipality may include when reviewing a wireless application, and reducing the amount of time a local government has to consider an application. Furthermore, under this legislation, the failure to issue a determination on an application would result in the application's automatic approval.

This legislation also seeks to limit how much a municipality may charge a wireless provider when renting space on municipally owned structures. Compelling local governments to charge below-market rates for the use of public structures will foster the already inequitable deployment of broadband technologies. Additionally, limiting the fees that municipalities may charge a wireless applicant to the direct and actual costs of the installation will eliminate the ability of local governments to receive fair compensation for the use and maintenance of public property.

Again, achieving broadband ubiquity is an important and necessary goal for all municipalities in New York State and across the country. However, forcing local governments to abdicate their authority to protect and maintain public rights-of-way and preventing cities and villages from receiving a fair return for rented space on municipally owned infrastructure is simply untenable. For the aforementioned reasons, NYCOM vigorously opposes this legislation and urges you to reject this proposal.

Sincerely,



Peter A. Baynes
Executive Director

CITY OF RYE

JOSH COHN
MAYOR

July 20, 2018

By US Mail and Email

Senator Chuck Schumer
U.S. Senate
322 Hart Senate Office Building
Washington, DC 20510

Ms. Beatrice Pollard

beatrice_pollard@schumer.senate.gov

Dear Senator:

The City of Rye, NY ("Rye") respectfully requests that you oppose S. 3157, the so-called "Streamlining The Rapid Evolution and Modernization of...Small Cell Deployment Act", a bill which was to be the subject of a Senate Committee on Science, Commerce and Transportation hearing on July 25, but now awaits later action. S. 3157 (the "Bill") would virtually eliminate state and local regulatory jurisdiction over small cell siting in our rights of way and deprive local governments of the right to charge reasonable fees for access to local rights of way, something to which municipalities have been entitled for generations. The wireless industry seeks, by federal legislative action, to convert public assets for private gain without paying reasonable compensation.

Please note at the outset, the word "small" in the term "small cell" simply refers to the area served, not the size of the equipment. A small cell may not be seen as small when installed next to a typical house or business, especially in a suburban or rural setting. This issue of scale is compounded by already existing federal regulations (under the "Spectrum Act") that permit aggregations of small cells in a single location ("collocation") without meaningful municipal review once an initial small cell installation has been permitted in that location. (Under 47 CFR 1.14001, a small cell site can grow beyond that originally municipally approved by an additional 10 feet in height and an additional six feet on each side without new municipal approval.)

Rye has direct experience with the wireless industry's attempts to deny municipalities even the most minimal regulatory oversight over siting of telecommunications small cell infrastructure. Rye is presently being sued by Crown Castle, infrastructure builder for Verizon Wireless. That litigation has been brought in an attempt to deny Rye any meaningful review over Crown Castle's proposed siting of almost 70 so-called "DAS nodes" throughout our City. Rye, like municipalities everywhere, should be able to review proposed installations to protect aesthetic resources, community character and neighborhood quiet (from noise emitting equipment), as well as to prevent damage to property values..

The New York State Legislature this past session rejected industry-sponsored legislation similar to the Bill that would have significantly impaired municipal jurisdiction, making clear that the New York position is that municipal jurisdiction over small cell siting and franchise fees is to be protected.

The Bill would impair important state and local rights that have long been protected under the Telecommunications Act and would make the FCC, not the Federal Courts, the arbiter of disputes between wireless providers and local governments.

The Bill would federalize jurisdiction over both small cell siting and franchise fees, giving an FCC that is hostile to local control the ability to pass regulations that would make local jurisdiction irrelevant. The Bill would impose unrealistic and arbitrary federal deadlines on any surviving municipal review authority.

The Bill's limitation on franchise fees would end an important source of local revenue. This deprivation of revenue would be especially damaging in New York against the backdrop of the harm already caused by the SALT deductibility limitation now in the Internal Revenue Code.

The City of Rye urges your consideration of the following propositions responsive to typical wireless industry rationales for legislation of the Bill's type:

-The purpose of the present wave of small cell installations is to surround customers with sufficiently strong 4G LTE (present technology) transmitters to make wireless a more effective competitor with cable and fiber to the home providers -- to encourage cord cutting and *ultimately place all data access in the hands of the wireless industry.*

-The purpose is not installation of next generation, mobile 5G equipment: 5G is in its infancy, its equipment is developmental (and may well be different in positive respects from existing small cell equipment) and 5G, in its likely long introductory years, will not be in a form suitable for mobile use.

-The purpose is not to bring broadband to underserved rural areas: small cells are efficient only where there are sufficient concentrations of customers to make short range equipment effective, in other words, in towns and cities.

-The purpose is not to bring the best communications technology forward: the potential transmission capability of fiber optic cable is far beyond the capability of wireless devices -- wireless devices are a limiting factor in data transmission and wired fiber optic connections should continue to have an important role, assuming fiber optic providers survive wireless industry assault.

-The recent end of net neutrality makes it ever more important that the federal government not facilitate oligopolistic control of data transmission by the wireless industry.

The City of Rye is hopeful that you will strongly and effectively oppose S.3159. We are grateful for your efforts.

Sincerely,

Josh Cohn
Mayor

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