

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner Horvath, Chair

AB 965 (Juan Carrillo) – As Amended March 16, 2023

**SUBJECT:** Local government: broadband permit applications

**SUMMARY:** This bill would require a local agency to undertake batch permit processing for broadband permits upon receiving two or more substantially similar broadband permit applications; and requires that the batch permit processing must be completed within a presumptively reasonable time, as defined. Specifically, **this bill:**

- 1) Establishes that the act shall be known as the Broadband Permit Efficiency and Local Government Staff Solution Best Practices Act of 2023.
- 2) Makes various findings and declarations to support the need for the bill.
- 3) Defines a “broadband permit application” to mean an application submitted for review by a local agency to permit the construction of broadband infrastructure of any type.
- 4) Defines “local agency” to have the same meaning as the term is defined in Section 65964.5 of the Government Code.
- 5) Defines “presumptively reasonable time” to mean no more than 60 days following submission of a complete broadband permit application.
- 6) Defines “substantially similar broadband permit applications” to mean broadband permit applications that are nearly identical in terms of equipment and general design, but not location or construction method.
- 7) Provides that broadband permit applications are deemed approved if the local agency does not approve or deny the applications within the presumptively reasonable time.
- 8) Provides that the requirements of this Act shall not apply to eligible facility requests, as defined and governed by Section 1455 of Title 47 of the United States Code.

**EXISTING LAW:**

- 1) Requires a collocation or siting application for a wireless telecommunications facility to be deemed approved if all of the following occur:
  - a. The city or county fails to approve or disapprove the application within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions. The reasonable period of time may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the applicant and the local government, consistent with applicable FCC decisions;

- b. The applicant has provided all public notices regarding the application that the applicant is required to provide under applicable laws consistent with the public notice requirements for the application; and,
  - c. The applicant has provided notice to the city or county that the reasonable time period has lapsed and that the application is deemed approved pursuant to this section. Allows, within 30 days of this notice, the city or county to seek judicial review of the operation of these provisions on the application.
- 2) Exempts eligible facilities requests from these requirements.
- 3) Provides the following definitions:
- a. “Applicable FCC rules” means those regulations contained in Subpart U (commencing with Section 1.6001) of Part 1 of Subchapter A of Chapter I of Title 47 of the Code of Federal Regulations.);
  - b. “Eligible facilities request” has the same meaning as in Section 1455 of Title 47 of the United States Code; and,
  - c. “Wireless telecommunications facility” to mean equipment and network components such as towers, utility poles, transmitters, base stations, and emergency power systems that are integral to providing wireless telecommunications services.
- 4) Provides that nothing, except these provisions, limits or affects the authority of a city or county over decisions regarding the placement, construction, and modification of a wireless telecommunications facility.
- 5) Provides that, due to the unique duties and infrastructure requirements for the swift and effective deployment of firefighters, these provisions do not apply to a collocation or siting application for a wireless telecommunications facility where the project is proposed for placement on fire department facilities.

**FISCAL EFFECT:****COMMENTS:**

- 1) *Expanding and upgrading broadband infrastructure has public benefits.* The positive social and economic benefits of access to reliable, affordable high-speed internet are well documented. Indeed, deploying affordable and reliable broadband networks throughout California will accelerate continuous improvements in economic and workforce development, infrastructure, public safety, education, economy, and an engaged citizenry<sup>1</sup>. For example, studies have forecasted that speeding 5G infrastructure deployment by even

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<sup>1</sup> Governor Newsom Executive Order N-73-20. <https://www.gov.ca.gov/wp-content/uploads/2020/08/8.14.20-EO-N-73-20.pdf>

one year would unleash an additional \$100 billion to the US economy.<sup>2</sup> Consumer demand for reliable, high-speed broadband connectivity continues to grow rapidly every year, and the COVID-19 pandemic has only highlighted the extent to which access to broadband has become essential for participating in virtually every aspect of modern society. Unfortunately, California’s persistent digital divide, or the gap between those with reliable broadband access and those without it, prevents many Californians from realizing the positive benefits of reliable internet access or from equitable access to those benefits. Protracted and expensive permitting processes at the local level are one of my various factors that may contribute to the digital divide by increasing the time and costs associated with new or upgraded broadband installations.

To the extent that this bill will expedite widespread deployment of broadband projects, it will arguably benefit those communities where providers choose to deploy their services and facilities. However, beyond the expedited review times this bill requires, the bill does not explicitly require or encourage communications providers to deploy infrastructure in unserved areas of the state or consider digital equity when seeking approval from local governments.

- 2) *Existing federal regulations cover permit review times for small wireless facilities.* In September 2018 the FCC adopted an order<sup>3</sup> (“FCC Small Cell Order”) in a proceeding focused on streamlining the rollout of infrastructure for broadband services, including small cell wireless facilities (“small cells”) for 4G and 5G wireless service. According to FCC Small Cell Order, 5G has the power to “unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country”. Given the potential of 5G, the order was designed to remove various state and local barriers that would prevent 5G providers from accessing existing facilities for installation of small cells. The order summarily has two parts: the first was a new set of regulations that govern “shot-clocks”, or permit review deadlines; the second part of the order was regarding the fees governments may charge to provide fair, reasonable, and non-discriminatory access to local government infrastructure, such as street light poles. The relevant part of the order for purposes of this bill are the shot-clocks, which would apply to a subset of all the broadband applications that are included under the provisions of this bill.

The FCC Small Cell Order provided several shot-clocks by which local governments should respond to applications to install small cells on public property. In summary, the FCC shot-clocks gave local governments 60-days to act on applications to collocate small cells on existing sites or 90-days for applications to construct new small cell facilities. The order also provided for the resetting or pausing of the shot clock when a local government determines that an application is incomplete. Following adoption of the FCC’s Small Cell Order, dozens of cities and the National League of Cities signed onto a lawsuit challenging the order. In 2020, a three-judge panel of the United States Court of Appeals for the Ninth Circuit ruled against the petitioners in the case *City of Portland v. FCC*<sup>4</sup>, and upheld the FCC’s Small Cell

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<sup>2</sup> 1 See Accenture Strategy, Accelerating Future Economic Value from the Wireless Industry at 2 (2018) (Accelerating Future Economic Value Report), <https://www.ctia.org/news/accelerating-future-economic-value-from-the-wirelessindustry>

<sup>3</sup> 2018 FCC Small Cell Order. <https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>

<sup>4</sup> *City of Portland v. FCC*. See: <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/12/18-72689.pdf>

Order. Following that decision, the petitioners sought to have the Ninth Circuit's decision reviewed by the Supreme Court, which was also denied as of June 28, 2021.

- 3) *This bill would require local agencies to undertake batch permit processing.* The State of California's Local Permitting Playbook describes "batch permitting" as grouping several sites under a single permit. Under batch permitting, an applicant would apply for a single permit for several projects that the applicant intends to undertake. The Playbook references the City of Long Beach, which developed a "bulk permitting process" for small cell wireless facilities that allows up to 10 sites to be grouped under a single permit. Sites are grouped into two categories: commercial arterial and residential roads. The Playbook notes that "local interests" are "protected" by distinguishing siting locations proposed on commercial arteries and residential roads.

The definition of "batch broadband permit processing" used in this bill does not align with the Playbook definition, as it could be read as applying to applications from different applicants. Potentially, many applicants could submit applications for many different sites and a local agency would be required to process them at the same time. Although that does not appear to be the author's intent, it may be reasonable to consider aligning the definition in the bill with the Playbook definition to avoid confusion about the intent. Additionally, the bill places no limits on the number of different sites that could be considered under a single permit. For example, some cities may wish to consider batches of 10 sites. While 60 days might be reasonable for less sites, it is unreasonable for an unlimited number of sites, especially for a less resourced city.

- 4) *This bill would apply shot-clocks to any broadband permit application.* While the FCC Small Cell Order applies narrowly to small cell wireless facilities, this bill takes the unprecedented step of broadly applying a 60-day shot-clock for any broadband permit application. The definition of broadband permit applications used in this bill encompasses the construction of broadband infrastructure of any type. The definition acknowledges that broadband infrastructure includes various types of infrastructure, including fiber and wireless facilities. However, the presumptively reasonable timeframe established by this bill does not contemplate that different types of infrastructure would have different public impact. For example, fiber-optic cable can be installed using various methods including trenching, micro-trenching, or even installed aerially from utility poles. Trenching is potentially the most disruptive to the public right of way, considering the potential traffic impacts, while aerially is potentially the least intrusive. Depending on the construction method, a local agency may need to take more or less time to consider a batch of applications. Nonetheless, this bill would apply the shot-clocks broadly regardless of the type of infrastructure.
- 5) *Double referral.* This bill will be referred to the Assembly Committee on Local Government should it pass this committee.
- 6) *Committee amendments.* The author may wish to consider the following amendments:
  - a. In the findings and declarations revise (c) to reflect that time is among the many factors that directly impact permit review time.
  - b. In the findings and declarations, strike (d), (f), (g), (h), and (l).
  - c. Redefine "batch broadband permit processing" to align with the Local Permitting Playbook.

- d. Revise the definition of “broadband permit application” to distinguish among different types of projects.
- e. Add a definition of “broadband project” that includes the proposed facility, including the supporting equipment and structures.
- f. Revise the definition of “substantially similar” to strike reference to construction method.
- g. Specify that broadband permit processing is applicable to permit applications by the same application.
- h. Revise the definition of “presumptively reasonable time” to account for different application types and the FCC Small Cell Order.
- i. Add language specifying that this Act does not preclude local agencies from requiring compliance with generally applicable health and safety requirements.
- j. Add language specifying that this Act does not supersede, nullify or otherwise alter existing safety standards.
- k. Authorize local agencies to place reasonable limits on the number of project sites that are grouped into a single permit.
- l. Authorize a local agency to remove a project site from grouping under a single permit under mutual agreement, or to expedite the approval of other sites.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Bay Area Council  
Calchamber  
California Broadband & Video Association  
California Building Industry Association (CBIA)  
California Business Properties Association  
California Chamber of Commerce  
Crown Castle and Its Affiliates  
CTIA  
San Francisco Chamber of Commerce  
Silicon Valley Leadership Group  
United States Telecom Association DbA Ustelecom - the Broadband Association  
Wireless Infrastructure Association

**Opposition**

California Municipal Utilities Association

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