

## ***Opposition to HR 3557 The American Broadband Deployment***

by Dave Garb, Legislative Committee Chair

**A bill was recently passed out of the Congressional House Energy and Commerce Committee** titled the [American Broadband Deployment Act of 2023](#) (H.R. 3557). We at JAG, along with our national partners, believe this bill would be a serious detriment to every municipality in our state and everyone needs to be aware of it and why it must be stopped.

This bill imposes new restrictions on local authorities regarding their ability to regulate a variety of state and local land use and zoning issues that pertain to the deployment of telecommunications infrastructure, including wireless and wireline deployment, as well as new limits on requirements and renewals of cable franchise agreements.

H.R. 3557 consolidated a slew of bills approved along party lines in this committee at the Communications and Technology's April 19 hearing: "Breaking Barriers: Streamlining Permitting to Expedite Broadband Deployment". This unexpected hearing took up more than 30 bills aimed at what was described as 'Federal Barriers', 'State and Local Government Obstacles', and 'Pole Attachments' (access to poles) to broadband infrastructure deployment.

The night before this hearing, local government member associations - the National Association of Counties (NACo), the National League of Cities (NLC), the U.S. Conference of Mayors (USCM) and the National Association of Telecommunications Officers and Advisors (NATOA), wrote to Committee leadership to oppose the heavy-handed federal overreach into local land use, permitting, and franchise negotiation decisions on behalf of the nation's counties, cities, towns and villages.

### **See the letter to the Energy & Commerce Subcommittee on Communications and Technology.**

(Provided by NATOA) <https://www.natoa.org/news/joint-letter-on-breaking-barriers--streamlining-permitting-to-expedite-broadband-deployment->

**The United States Conference of Mayors (USCM)** adopted a policy resolution at their Annual Meeting opposing the bill, which will be shared to Congress and the Administration.

(Provided by Gerard Lavery Lederer of Best, Best & Krueger, Attorneys at Law)

– **Resolution Number 73: Resolution Opposing H.R. 3557, the American Broadband Act of 2023**, sponsored by Mayor Lucy K. Vinis (Eugene, OR); Mayor Frank C. Ortis (Pembroke Pines, FL); Mayor Brian C. Wahler (Piscataway, NJ); Mayor Bruce Harrell (Seattle, WA) [https://legacy.usmayors.org/resolutions/91st\\_Conference/proposed-review-list-full-print-committee-individual.asp?resid=a0F4N00000Sh7CsUAJ](https://legacy.usmayors.org/resolutions/91st_Conference/proposed-review-list-full-print-committee-individual.asp?resid=a0F4N00000Sh7CsUAJ)

During the proceedings, committee ranking member Frank Pallone (D NJ-6) valiantly offered an Amendment within both hearings to oppose HR 3557 and any action to approve it. He did a great job advocating for local government and PEG operations, not for just New Jersey, but the entire country.

### **Congressman Pallone made the following comment:**

- "To remove arbitrary deadlines and narrow timeframes in this bill that preempt local governments' authority and ability to make decisions that best meet the needs and best interest. That's why these 'deemed granted' provisions that Republicans are rushing through are, I think, a bad process and are troubling to me and to the local elected officials in the towns we represent.
- HR 3557 would enact narrow and arbitrary timeframes to approve or deny applications and then 'deem them granted' if a decision hasn't been made by that time. Now to be clear, if a local planning board or town council is reviewing a project and does not approve it by a deadline set by House Republicans, the applicant's proposal would automatically be considered approved w/o any further input from the community.
- I have serious concerns that this approach raises more Q's than answers..... especially when it comes to liability in the case of public safety and accidents. The reality is, no matter where you go in this country, local governments have an

important role to play in approving construction projects.

- My Republican colleagues like to demonize local governments for not approving projects in the amount of time they would like. But, this bill does nothing to address a major concern that was raised by all the witnesses at the legislative hearing on this topic. And that is the lack of qualified personnel to process these applications, particularly in smaller towns and counties. Instead, they would wave their wand and approve these applications without further process.
- Now, anyone who has served at the local level, and I have - (Long Branch, NJ city council, 1982-88) - there is a lot more to these decisions than simply yes or no. In many cases, there are negotiations between towns and counties with telecommunications providers for access to Rights of Way or other publicly owned areas. In other words, if a municipal planning board or zoning board is reviewing an application and does not issue an approval by a deadline set by House Republicans, the applicant's proposal would automatically be considered approved w/o any further input from the community.
- And, I'm most concerned that this approach raises more questions than answers, especially when it comes to liability in the case of accidents. And, my Republican colleagues like to demonize local governments who are not approving applications as quickly as they would like.
- This 'one size fits all' mandate to approve a project in 2 months weakens a town's ability to get the job done right while at the same time ignoring the reality of many local governments' calendars. People who serve in town and county government are public servants who are accountable to the people who live in those communities. They are responsible for acting in their best interests, especially as it pertains to utilities and service in a county or town.
- No one thinks about who's responsible for ensuring your safety – for example, police or fire or traffic duty– for ensuring the safety of the public and the workers during construction. Or, the complexity of scheduling certain construction projects to avoid road closures or other disruption or delays that often and do occur as a result. It's the Mayors, and councils and zoning boards who are responsible for these considerations. And, they're 'on the hook' if anything goes wrong or someone gets hurt. And, perhaps, that is why we received a letter today from the Georgia Municipal Association, which represents all 537 municipalities in the bill sponsor's home state.
- They strongly oppose this bill. And, I would ask you now for unanimous consent to submit this letter for the record.
- I have great respect for my friend from Georgia. He knows how much I love that state. But I'm struggling to understand how his constituents – and mine – are served well by these proposals because the 'deemed granted' proposals aren't the only areas where this legislation removes critical local authority. At best, these proposals remove local leverage to negotiate the specifics of these projects that can best serve the people of these communities. At worst, they can put people at risk. Those of us who work closely with our mayors and councils – and I think that's everyone on the dais here – we know that they are the first ones to step up when it comes to deploying communications infrastructure in their towns.
- What possible advantage would come from deliberately ignoring or delaying requests to improve work that would improve services for their constituents?
- So, last week, I challenged my Republican colleagues to tell their mayors that they voted for this bill the next time they went home and see what they say. When I went home this weekend and asked the mayors, I was glad not to be on the record supporting this bill. I would encourage my colleagues on the other side of the aisle to go back to the drawing board and work with some Democrats in a productive way to develop some bills that might actually get signed into law. It's not as though Democrats are not trying to look for ways to enact permitting reform bills that do not trample on these protections.
- But so far, the Republicans have said no. So, I urge all of my colleagues on both sides of the aisle to preserve local authority and vote "Yes" on the amendment."

**You'll find HR 3557 and the amendments discussed at:** <https://energycommerce.house.gov/events/full-committee-markup-of-19-bills-2>. H.R.3557 represents an unprecedented and dangerous infringement of local governments' authority to manage public rights-of-way and land use; it strips local governments of property rights and monetary compensation in favor of cable, wireless and telecommunications providers. The bill also waives historic preservation (NHPA) and environmental (NEPA) rules. Yet in return for these gifts, the bill imposes no obligations on these companies to provide broadband to "unserved" and "underserved" Americans.

#### **H.R. 3557 should be opposed, (From NATOA) as it:**

##### **1. Cable: Removes Ability of State and Local Franchise Authorities to Enforce Franchises**

- Eliminates cable franchise renewals, thereby removing the ability of state or local communities to enforce franchise obligations such as build-out, customer service, and local PEG Access channels.
- Grants a cable operator the unilateral right to terminate or modify a franchise but creates no obligation to remove a cable system from rights-of-way. This would eliminate cable franchise fees but allow operators to maintain other services, ultimately affecting local municipal budgets from the annual franchise fees paid to every municipality. It would also allow operators to unilaterally eliminate provisions of contracts they deem commercially unfeasible.

## 2. **Wireless/Telecom: Usurps State & Local Government Police Powers & Property Rights**

- Mandates that all wireless siting decisions be “deemed granted” if not acted upon by local governments within much shorter time periods than the federal government for similar projects government has 270 days to act, while locals must act in as few as 60 days.
- Provides no public safety protections for construction of “deemed granted” facilities. Sites will be constructed without any further action by the government, without notice to the government or obligation to comply with safety laws or traffic control.
- Empowers providers to install facilities where they choose regardless of local zoning, thus eliminating the ability of local government to balance providers’ and neighbors’ interests and jeopardizing the ability of local governments to impose stealth or concealment factors on installations.
- Limits all local fees to a locality’s objectively reasonable costs. Unlike current FCC rules and safe harbor pricing, localities must justify their fees using a complex, burdensome rate-making formula.
- Substitutes the FCC for local federal district court as a reviewing body for challenges to decisions, thus breaking promise made by Congress in 1996 that local governments would not be required to travel to Washington to defend local decisions.
- Imposes new and similarly flawed timelines and “deemed granted” remedies on applications for telecommunications facilities.

The opportunity to discuss this bill was never offered to state or local governments, as it moved swiftly through this subcommittee.

JAG wants every one of our New Jersey municipalities, along with our county, state and federal legislatures to be aware of this bill. If this proceeds as it currently is written, the public will get nothing in return from it but hardships, while the telecommunications companies alone will reap all of its benefits.

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