WIRE CALIFORNIA
Universal Access to Middle-Mile Fiber for Wired Broadband

Commentary on July 7, 2023 SGF Committee Staff Analysis of AB-965

Wire California Commentary on

Senate Committee on Governance and Finance
AB.965 Committee Staff Bill Analysis
Senator Anna M. Caballero, Chair

2023 – 2024 Regular

Local Government: Broadband Permit Applications

SGF Committee Analysis:

> *[AB-965] enacts the Broadband Permit Efficiency and Local Government Staff Solution Best Practices Act of 2023, which requires local agencies undertake batch broadband permit processing under specified circumstances.*

Wire California: AB-965 was ***gutted and amended*** on Mar 16, by bill sponsor Crown Castle and bill author Juan Carrillo ***changing it*** from a micro-trenching bill to a Wireless Telecommunications Facilities (WTFs) bill — a bill that refers to **presumptive FCC shot clocks** (shot clocks that **only** apply to WTFs, but which have **no deemed approved** remedies) and combines those FCC shot clocks with state-based "deemed approved" and "batching" requirements. All of this is just an ***unwarranted handout to the Wireless industry*** because there is no need to require batching of WTF applications in **100% of California** to bridge the Digital Divide in **10% of California.**

The fix is to revert AB-965 back to its original language from Feb, 2023:

SECTION 1. Section 65964.5 of the Government Code is amended to read:

65964.5.

(a) For purposes of this section, the following definitions apply:

- *(1) "**Fiber**" means fiber optic cables, and related ancillary equipment, including, but not limited to, conduit, ancillary cables, hand holes, vaults, and terminals.*
- *(2) "**Local agency**" means a city, county, city and county, charter city, special district, or publicly owned utility.*
- *(3) "**Microtrench**" means a narrow open excavation trench that is less than or equal to 4 inches in width and not less than 12 inches in depth and not more than 26 inches in depth and that is created for the purpose of installing a subsurface pipe or conduit.*
- *(4) "**Microtrenching**" means excavation of a microtrench.*

(b)

- *(1) The local agency with jurisdiction to approve excavations shall allow microtrenching for the installation of underground fiber if the installation in the microtrench is limited to fiber, unless the local agency makes a written finding that allowing microtrenching for a fiber installation would have a specific, adverse impact on the public health or safety.*
- *(2) Upon mutual agreement, a microtrench may be placed shallower than 12 inches in depth.*
- *(3) To the extent necessary, a local agency with jurisdiction to approve excavations shall adopt or amend existing policies, ordinances, codes, or construction rules to allow for microtrenching pursuant to this subdivision.*
- *(4) Nothing in this section shall supersede, nullify, or otherwise alter the requirements to comply with safety standards, including, but not limited to, the following:*
  – (A) Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1.
  – (B) Public Utilities Commission General Order No. 128, or a successor standard.

(c) A local agency may impose a fee on an application for a permit to install fiber consistent with Section 50030. The reasonable costs of providing the service for which the fee is charged, as that phrase is used in Section

> *50030, shall be limited to the reasonable costs of the local agency to process and issue the permit and inspect the installation that is the subject of the permit, including any costs incurred if the applicant elects to expedite processing and review.*
>
> *(d) The Legislature finds and declares that installation of fiber is critical to the deployment of broadband services and other utility services, is a matter of statewide concern, and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section applies to all cities, including charter cities.*

SGF Committee Analysis:

Background

Land Use Regulation. *The California Constitution allows a city to "make and enforce within its limits, all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, known as the police power of cities." It is from this fundamental power that local governments derive their authority to regulate land through planning, zoning, and building ordinances, thereby protecting public health, safety, and welfare.*

The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. Cities' and counties' major land use decisions — including development permitting — ***must be consistent with their general plans****. The Planning and Zoning Law also requires* ***public notice to be given at least 10 days in advance of hearings*** *where most permitting decisions will be made. It also* ***allows residents to appeal permitting decisions*** *and other actions to either a board of appeals or the legislative body of the city or county. Cities and counties may adopt ordinances governing the appeals process.*

*Providers of wireless telecommunications services ("carriers") must apply to cities and counties for permits to build structures or other wireless facilities that support wireless telecommunications equipment, like antennas and related [****~~devices~~ equipment]****. Similarly, wireless carriers must seek local approval to place additional telecommunications equipment on facilities where that equipment already exists, known as* ***[~~"collocations."~~ "co-locations."]***

Wire California: Colocation, co-location and collocation are terms that have been distorted and weaponized by the FCC and the wireless industry in the last 20 years. It is

important to understand the difference between these different terms and be clear about which will be used in AB-965:

- Colocation :: the act of or result of placing in **the same location**
- Co-location :: variant of colocation, see above;
- Collocation :: the act or result of placing **next to** one another

For decades, in the wireless industry, **co-location** has meant adding another set of antennas onto an exiting Wireless Telecommunications Facility (WTF) that has one or more antennas already on it.

Let's see what wireless industry lawyers accomplished in the federal 2012 Spectrum Act (about 150 words) that was voted through by our elected representatives as an addition of "pork" (a govenment favor distributed by politicians to gain political advantage) to H.R.3630 – The Middle Class Tax Relief and Job Creation Act of 2012:

> ***Sec. 6409. Wireless facilities deployment***
> *(a) Facility Modifications.–*
> *– (1) **In general.**–Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and **shall approve**, any eligible facilities request for a **modification of an existing wireless tower** or base station that does not substantially change the physical dimensions of such tower or base station.*
>
> - *(2) **Eligible facilities request.** — For purposes of this subsection, the term "**eligible facilities request**" means any request for modification of an **existing wireless tower or base station** that involves–*
>   - *(A) **collocation** of new transmission equipment;*
>   - *(B) removal of transmission equipment; or*
>   - *(C) replacement of transmission equipment.*
> - *(3) Applicability of environmental laws.–**Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act or the National Environmental Policy Act of 1969**.*

Five key points about §6409(a) :

1. There is NO "**deemed approved**" in §6409(a)
2. The law is clear that "**collocation**" of new transmission equipment must be on an "**existing wireless tower or base station**"
3. All FCC orders that implement the 1996 Telecommunications Act and/or the 2012 Spectrum Act (§6409(a)) **must be consistent with the underlying statute** or they can

be struck down in court.

4. Nothing relieves the Wireless industry from being **subject to case-by-case NEPA and NHPA review** for every single eligible facilities requests, **one at a time**.
5. The March 16, 2001 *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* also clarifies that "collocation" means the mounting or installation of an antenna on an **existing tower** . . . [already constructed] for the purpose of transmitting and/or receiving radio frequency signals for communications purposes." and **tower**" is any structure built for the **sole or primary purpose** of supporting FCC-licensed antennas and their associated facilities.**

In 2018, the FCC attempted to distort the term "collocation" in FCC Order 18-133 — a distortion that has **not been upheld in the U.S Courts of Appeals**, so it is not treated as having the force of federal law. Note: the terms "colocation and co-location" do not appear once in FCC Order 18-133, but the term "collocation" appears 68 times, including in ¶19

> *In the 2009 Declaratory Ruling, the Commission acted to speed the deployment of the new 4G services and concluded that, "[g]iven the evidence of unreasonable delays [in siting decisions] and the public interest in avoiding such delays," it should offer **guidance** regarding the meaning of the statutory phrases "reasonable period of time" and "failure to act" "in order to clarify when an adversely affected service provider may take a dilatory State or local government to court." The Commission **interpreted** "reasonable period of time" under Section 332(c)(7)(B)(ii) to be 90 days for processing **collocation** applications and 150 days for processing applications other than **collocations** . . . the **locality may** attempt to "**rebut** the presumption that the established timeframes are reasonable.".*

Note: "guidance" and "interpretation" **does not have the force** of federal law. And the US Supreme Court clarified in the 2013 ruling in Arlington v FCC:

> *"In November 2009, the [FCC], relying on its broad statutory authority to implement the provisions of the Communications Act, issued a declaratory ruling responding to CTIA's petition. In the Declaratory Ruling, 24 FCC Rcd. 13994, 14001 . . . A "reasonable period of time" under §332(c)(7)(B)(ii), the Commission determined, is **presumptively (but rebuttably)** 90 days to process a collocation application (that is, an application to place a new antenna on an existing tower) and 150 days to process all other applications. Id., at 14005."*

FCC Order 18-133 goes off the reservation in ¶105 when the order ***attempts to redefine*** "collocation:"

> *"we take this opportunity to update our approach to speed the deployment of **Small Wireless Facilities** . . . In this section, using authority confirmed in City of Arlington, we adopt two new Section 332 shot clocks for Small Wireless Facilities — **60 days** for review of an application for **collocation of Small Wireless Facilities using a preexisting structure** and 90 days for review of an application for attachment of Small Wireless Facilities using a new structure.*

The FCC's attempt to redefine collocation fails, as proven by the following facts:

1. The language of §6409(a) is clear and not ambiguous: "**collocation**" of new transmission equipment must be on an "**existing wireless tower or base station**"
2. The US Supreme Court states in the 2013 ruling in Arlington v FCC: "If the intent of Congress is clear, that is the end of the matter"
3. The definition of "Small Wireless Facility" first appeared in FCC Order 18-30 and that definition was in force in Sept 2018 when the FCC released Order 18-133, which states in APPENDIX A – Final Rules:

> *"Small Wireless Facilities," as used herein and **consistent with section 1.1312(e)(2)**, encompasses facilities that meet the following conditions . . .*

4. All of section 1.1312(e)(2) and the foundational definition of "Small Wireless Facilities" were **vacated by the August 2019 U.S. Court of Appeals** DC Cir. ruling in Keetoowah et al v. FCC
5. The FCC never subsequently legally re-established the definition of "Small Wireless Facilities" as a separate class of wireless facilities, so all benefits assigned to so-called "Small Wireless Facilities" in FCC Orders written from March 2018 forward **are without foundation**, including any attempted redefinition of presumptive shot clocks or collocation.

The US Supreme Court further clarifies in the 2013 ruling in Arlington v FCC:

> *As this case turns on the scope of the doctrine enshrined in Chevron, we begin with a description of that case's now-canonical formulation. "When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions." 467 U. S., at 842. First, applying the ordinary tools of statutory construction, the court must determine "whether Congress has directly spoken to the precise question at issue. **If the intent of Congress is clear, that is the end of the matter**; for the court, as well as the agency, **must give effect to the unambiguously expressed intent of Congress**." Id., at 842–843. But "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the*

> *agency's answer is based on a permissible construction of the statute." Id., at 843.*
>
> ***Chevron is rooted in a background presumption of congressional intent** . . . Congress **knows to speak in plain terms when it wishes to circumscribe** , and in capacious terms when it wishes to enlarge, agency discretion.*
>
> *. . . Where **Congress has established a clear line, the agency cannot go beyond it;** and where Congress has established an ambiguous line, the **agency can go no further than the ambiguity will fairly allow.**"*

The legislative intent of the 1996 Telecommunications Act is stated in **plain terms** and **establishes a clear line** in the 1996-TCA Conference Report:

> - *"It is **not the intent** of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decisions."*
> - *It **is the intent** of this section that . . .decisions be made on a case-by-case basis.*
> - *The conferees **do not intend** that if a State or local government grants a permit in a commercial district, it must also grant a permit for a competitor's **50-foot tower in a residential district**.*

One can see that the July 7, 2023 SGF Committee Analysis of AB-965 is **neither accurate enough nor thorough enough**, resulting in a bill analysis upon which our California Senators cannot rely.

SGF Committee Analysis:

> ***Federal Requirements for Local Decisions on Wireless Facilities.** Carriers and local governments have clashed over the extent of local authority to condition or deny wireless facilities. Accordingly, several state and federal laws prescribe aspects of permitting. Two federal laws, the Telecommunications Act of 1996 and the Spectrum Act, prohibit states and local agencies from regulating personal wireless services in a manner that prohibits or has the effect of prohibiting them.*

Wire California: The statement above is also misleading, because it leaves out the disctinction between personal wireless services (telecommunications service) and

wireless broadband (information service). The analysis not drawing this clear distinction in federal law leads to unnecessary confusion for the reader.

The distinctions are clear in the federal definitions that were uploaded into the public legislative record of AB-965 by Wire California, **but ignored by the SGF staff**. Here are the relevant definitions again:

1996 Telecommunications Act, Key Definitions (source)

Title 47 § 332 (C) Definitions.

> *(i) the term '**personal wireless services**' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;*
>
> *(ii) the term '**personal wireless service facilities**' means facilities for the provision of personal wireless services; and*
>
> *(iii) the term '**unlicensed wireless service**' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v)).*

Title 47 U.S. Code §153 Definitions.

> *(50) The term '**telecommunications**' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.*
>
> *(53) The term '**telecommunications service**' means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."*
>
> *(24) The term '**information service**' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available **information via telecommunications**, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.*

1996-TCA Conference Report Definitions

> - *When utilizing the term "**functionally equivalent services**" the conferees are referring only to personal wireless services as defined in this section that directly compete against one another. The intent of the conferees is to ensure that a State or local government does not in making a decision regarding the placement, construction and modification of facilities of personal wireless services described in this section unreasonably favor one competitor over another.*
> - *The **conferees also intend** that the phrase "unreasonably discriminate among providers of **functionally equivalent services**" will provide localities with the **flexibility** to treat facilities that create different visual, aesthetic, or safety concerns differently to the extent permitted under generally applicable zoning requirements even if those facilities provide functionally equivalent services.*

In short, this can be summarized as follows:

- A. Wireless **Telecommunications service** = Title II regulated service = functionally equivalent service = personal wireless service = the ability to place outdoor wireless phone calls in most places along major roadways; please note that there is no inclusion of "in-building coverage", "in-vehicle coverage" or any other type of coverage in these federal definitions.
- B. Wireless **Information service** = Title I unregulated service = broadband, audio/video streaming, Internet, gaming, use of internet-connected apps and more

Of critical importance, is that on of Oct 1, 2019, in Case No. 18-1051: Mozilla v FCC., the U.S. Courts of Appeals (DC Cir.) upheld the FCC's decision to re-classify broadband Internet as an "information service," and mobile broadband as a "private mobile service," **making neither subject to common carrier status or Title II regulation**. The Court also concluded that the FCC did not show legal authority to issue its Preemption Directive, which would have barred states from imposing any rule or requirement to regulate broadband internet. The court vacated that portion of the order, **freeing the states to regulate broadband as they wish**. This ruling means the following:

- **Only [A] Wireless Telecommunications service**, above qualifies for federal preemption of local authority in Title U.S. Code §332(B) under the Ninth Circuit tests of a "carrier-specific signficant gap in wireless telecommunications service" and the "least intrusive means" to address any proven significant wireless telecommunications service gap.
- **[B] Wireless Information service is not regulated** by the FCC and qualifies for **NO federal preemption** of local authority in Title U.S. Code §332(B)

Inexplicably, the SFG Committee staff's AB-965 bill analysis ignores these critically important facts that were in the public legislative record for AB-965 at the time the bill

analysis was written. “Good enough for government work” should not be tolerated in CA legislative bill analyses.

SGF Committee Analysis:

> *The Federal Communications Commission (FCC) is responsible for administering these laws and implementing this requirement, which includes requirements that local governments act within a “reasonable period of time” on permits for siting wireless facilities.*
>
> *Over the years, FCC has established 60-, 90-, and 150-day shot clocks based on the type of project.*
>
> *In 2018, the FCC issued its Small Cell Order that set specific shot clocks for small wireless facilities at:*
>
> - *60 days for applications for installations on existing infrastructure; and*
> - *90 days for all other applications.*

Wire California: As there is no foundation for the “Small Wireless Facility” shot clocks from FCC Order 18-133, then ***one must treat the two lines immediately above as uninformed mistakes***. The federal Wireless Telecommunications Facilities (WTFs) shot clocks with foundation are the following **presumptive, but rebuttable shot clocks:**

- **150 days for new** construction of WTFs of any size or Generation (“G”)
- **90 days for co-location** of additional WTF antennas on other WTF facilities that are already operating wireless antennas and that follow the FCC rules implementing §6409(a)’s language: the co-location “does not substantially change the physical dimensions of such tower or base station”

The FCC admitted in Oct 2020 that after the Aug 2019 ruling in Case 18-1129 (Keetoowah et. al v FCC) the agency has been **mandated to treat all Wireless Telecommunications Facilities (WTFs) of any size or any Generation (“G”) identically**, as evidenced in this Oct 19, 2020 comment by Ms. Garnet Hanly, Division Chief of the Competition & Infrastructure Policy Division, FCC Wireless Telecommunications Bureau:

> *“The FCC when it modified its rules [Title 47, C.F.R. § 1.1312(e) by its October 2019 Order that became effective on Dec 5, 2019], after the DC Circuit issued its mandate [in its Ruling of Case No. 18-1129 Keetoowah v FCC] we **[the FCC] took the position that we were reviewing Small Wireless Facilities as [Federal] undertakings and major Federal actions**, pursuant to the DC Circuit decision and that is what we’ve been doing.”*

SGF Committee Analysis:

> *For collocations that do not substantially change the physical dimensions of the existing facility , also known as an **eligible facilities request**, the application is "**deemed approved**" – meaning, the permit is automatically granted if a local government has not acted on the application within 60 days.*

Wire California: ***The statements, immediately above, are simply wrong***. There is **no mention of "deemed approved" in §6409(a)**. Any allegation that FCC overreached in their rules implementing 6049(a) by introducing "deemed approved" requirements is **contradicted by the 2018 FCC Order 18-133**, when it says in ¶128.

> *"There may be merit in the argument made by some commenters that the FCC has the authority to adopt a **deemed granted remedy**. Nonetheless, **we do not find it necessary to decide that issue today**, as we are confident that the rules and interpretations adopted here will provide substantial relief, effectively avert unnecessary litigation, allow for expeditious resolution of siting applications, and strike the appropriate balance between relevant policy considerations and statutory objectives."*

Does the SGF Committee staff have a citation to FCC regulations that back up their statements? If not, the SGF Committee staff's statements must be disregarded.

SGF Committee Analysis:

> *However, for other projects, the shot clock periods are "presumptively reasonable," meaning local governments can exceed them if they have a good reason.*

Wire California: ***The statement immediately above is wrong, as well.*** **Both** of the following federal shot clocks are **presumptive, but rebuttable**:

- 150 days for new construction of WTFs of any size of Generation ("G")
- 90 days for co-location of additional WTF antennas on other WTF facilities that are already operating, that follow the FCC rules implementing §6409(a)'s language: "that does not substantially change the physical dimensions of such tower or base station"

SGF Committee Analysis:

> *The order also provided that exceeding a reasonable period of time would be considered the same as prohibiting deployment, which opens up options for expedited relief in court.*

Wire California: The SGF Committee staff is quoting language from FCC Order 18-133, an FCC Order which is **not consistent** with the underlying statute (the 1996-TCA) or the legislative intent of that statute (the 1996-TCA Conference Report). Therefore, any language in that order can only be treated as **presumptive guidance, subject to case-by-case adjudication**, as admitted by FCC attorney Scott Noveck before a three-judge panel in the U.S. Courts of Appeals (Ninth Cir.) in his oral argument on Feb 10, 2020:

Scott Noveck, FCC Attorney on Feb 10, 2020 → https://youtu.be/zoZHNSOibmo?t=35m05s

> *"The Order doesn't purport to prevent localities from addressing reasonable aesthetic requirements. In fact we say in the small cell order that aesthetic requirements are permitted . . . a locality could say if a 50-foot pole would be out of character with the surrounding neighborhood, you can't put up a 50 foot pole."*

Scott Noveck, FCC Attorney on Feb 10, 2020 → https://youtu.be/zoZHNSOibmo?t=37m47s

> *"Localities are still free to craft their own substantive aesthetic requirements"*

Scott Noveck, FCC Attorney on Feb 10, 2020 → https://youtu.be/zoZHNSOibmo?t=38m28s

> *"These Orders [FCC 18-111 and FCC 18-133] **are not self-enforcing**. They contemplate the need, in many circumstances, for further **case-by-case adjudication** and in those instances either someone would have to come back to the Commission or go into court."*

Scott Noveck, FCC Attorney on Feb 10, 2020 → https://youtu.be/zoZHNSOibmo?t=40m21s

> *"**Nothing** in this order is **self-enforcing**."*

Scott Noveck, FCC Attorney on Feb 10, 2020 → https://youtu.be/zoZHNSOibmo?t=40m52s

> *"Anyone of these specific factual disputes that arise, this Order is designed to provide some clarity and narrow the scope of disputes . . . when there are remaining disputes,* ***nothing about this Order is self-enforcing****."*

SGF Committee Analysis:

> *Finally, prior shot clocks only applied to zoning permits, but the Small Cell Order applied the shot clocks to all other permits required for small cell deployment, including license or franchise agreements to access the right-of-way, building permits, public notices and meetings, lease negotiations, electric permits, road closure permits, and aesthetic approvals.*
>
> *Local agencies have two ways to toll or stop the running of a FCC shot clock: they can either provide a timely notice of incompleteness (NOI), or "toll" the shot clock by mutual agreement with the applicant.*
>
> *Local agencies must issue NOIs within the first 30 days after the submission of an application to toll the running of the shot clock, and specify the missing information and the code provision, ordinance, application instruction, or other publicly-stated procedure requiring that information.*
>
> *Tolling agreements may be reached at any time during the process, so long as they're in writing and signed by both parties.*
>
> ***State Law Governing Wireless Facilities.*** *State law also specifies timelines for approving wireless facilities. Specifically, the 1977 Permit Streamlining Act (PSA) requires public agencies to act fairly and promptly on applications for development permits,* ***including wireless facilities****.*

Wire California: Well, I found this PSA Analysis and the law itself: **§65920 et seq. Permit Streamlining Act (PSA)**, but I don't see anywhere in this 1977 law where it mentions Wireless Telecommunications Facilities (WTFs). ***Will the SGF Committee provide a citation showing where the law says that the PSA applies to wireless facilities?***

The Permit Streamlining Act applies only to "development projects" as that term is defined in Government Code §65928.

CA Govt. Code §65928

> *"Development project" means any project undertaken for the purpose of development. "Development project" includes a project involving the issuance of a permit for construction or reconstruction but* ***not a permit to operate****. "Development project" does not include any ministerial projects proposed to be carried out or approved by public agencies.*

SGF Committee Analysis:

> ***Batching applications.*** *For some service providers, submitting applications for approval to a local agency in a batch instead of as individual applications makes sense, where the specific equipment and design is the same, but the individual locations vary. In August 2022, the Governor's Office of Business and Economic Development (GO-Biz) released a guidance document, the State of California Local Permitting Playbook, to help communities plan for broadband investments. This document recognizes batched permitting as a strategy that local governments* ***can*** *use to streamline permit approvals for broadband projects with multiple sites that have repetitive permit characteristics.*

Wire California: Here is the link to the State of California Local Permitting Playbook. "Batch" is mentioned just three times in this 66-page set of recommendations

> *"The California Local Permitting Playbook offers strategies designed to enable communities to prepare for broadband investment — recognizing that an unprecedented amount of state and federal funding has been allocated to expanding broadband infrastructure in California, and that local government permitting and planning staffs have varying degrees of experience with and knowledge of broadband deployment.*
>
> *This playbook reflects a commitment by the State of California to advance the California Broadband for All Action Plan, which identified the support of enhanced permitting processes at the local level as a way the State can help "ensure all Californians have high-performance broadband available at home, schools, libraries, and businesses. It presents a menu of options that are considered smart practices for permitting and related processes under certain circumstances. These approaches are* ***not all appropriate for all communities****—nor would any given community be likely to adopt every practice described here. Rather, the playbook presents a set of options a local government can evaluate in light of its public policy priorities, its community's unique circumstances, and its residents' needs."*

> *. . . For localities anticipating large broadband-related projects that will require extensive but potentially repetitive permit applications, batch permitting might allow applicants to request a single permit that would cover a project typically subject to multiple permit applications. As with some of the other strategies presented here, a batch permitting process **might** reduce the permit application caseload, decrease the permit processing timeline, and improve a broadband deployer's timeline.*
>
> *The City of Long Beach, for example, developed a bulk permitting process in 2020 for small cell wireless facilities that allows up to 10 sites to be grouped under a single permit. Applicants must negotiate specifications before submitting the application, and sites must all be either Tier A (commercial arterial) or Tier B (residential roads). This enhanced permitting process has improved the City's timeline while still protecting local interests (e.g., distinguishing between siting locations proposed on commercial arteries and residential roads)."*

This is a merely a bunch of recommendations, stemming from one city's experience (Long Beach)? This is hardly representative of all California localities. Nothing in this playbook sets any laws or requirements. This playbook **cannot** be cited as justification for requiring WTF batching for 100% of localities in California.

SGF Committee Analysis:

> *The GO-Biz Playbook states:*
>
> > *"As with some of the other strategies presented here, a batch permitting process might reduce the permit application caseload, decrease the permit processing timeline, and improve a broadband deployer's timeline."*

Wire California: So what? There are many sentences that are more relevant than this one. How about the definitive legislative intent of the 1996 Telecommunications Act, which says:

> *"It is **not the intent** of this provision to give **preferential treatment to the personal wireless service industry** in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decisions."*

I find this statement much more relevant **and it is actually federal law that binds the state of California**.

SGF Committee Analysis:

> *The playbook **suggests** that when considering a batching process, local governments should consider available staff resources, geographic boundaries for batching, and caps on the number of permits that can be batched. The playbook recognizes **not all permit streamlining strategies are appropriate for all local governments**; however, it suggests that where appropriate, batching can lower permit processing timelines for larger multi-site broadband deployment projects within a single jurisdiction.*
>
> *State law does not currently contain specific provisions guiding local agency approval of batched applications, although **some cities have adopted procedures to facilitate batching**.*

Wire California: Take a look. Whether or not to batch process WTF applications is a local decision, which would **preserve local control**. Let's fix AB-965 to give each locality the freedom they deserve by **changing all batching requirements to batching recommendations** — just like this Go-Biz Playbook does — and then **remove all deemed approved ratchets**. ***That is a real solution for AB-965***.

SGF Committee Analysis:

> *However, under FCC's, Small Cell Order, if an applicant files either a batched application to collocate small wireless facilities or a batched application to deploy new small wireless facilities, the shot clock that applies to the batch is the same one that would apply had the applicant submitted an individual application.*

Wire California: Not exactly. FCC Order 18-133 lists some presumptive guidance about batching; it actually says this in ¶115:

> *"We [the FCC Commissioners] recognize the concerns raised by parties arguing for a longer time period for at least some batched applications, but conclude that a **separate rule is not necessary** to address these concerns. Under our approach, in extraordinary cases, **a siting authority**, as discussed below, **can rebut the presumption of reasonableness of the applicable***

> ***shot clock period where a batch application causes legitimate overload*** *on the siting authority's resources.*

This is **much more reasonable** than AB-965's batching requirements and deemed approved ratchets for **100% of California localities** to address the Digital Divide in **10% of California localities.** . . . Think this through, please.

SGF Committee Analysis:

> ***Fees.*** *State law allows local agencies to impose permit fees on applications for the placement, installation, repair, or upgrading of telecommunications facilities such as lines, poles, or antennas. However, the fees can neither exceed the reasonable costs of providing the service for which the fee is charged nor be levied for general revenue purposes.*
>
> *Seeking a more consistent framework to reduce delays, the author wants to apply deemed approved requirements from AB-57 and* ***~~571~~ AB-537*** *to batched applications under specified circumstances.*

Proposed Law

Assembly Bill 965 enacts the Broadband Permit Efficiency and Local Government Staff Solution Best Practices Act of 2023, which ***requires*** *local agencies undertake batch broadband permit processing, as defined, upon receiving two or more broadband permit applications for substantially similar broadband project sites submitted at the same time by the same applicant. However, local agencies may place* ***reasonable limits*** *on the number of broadband project sites based on its population, specifically:*

- ***25 project sites*** *for a city with a population of fewer than 50,000 or a county with a population of fewer than 150,000, or*
- ***50 projects sites*** *for all other local agencies.*

Local agencies ***must complete*** *batch broadband permit processing for wireless broadband projects within a presumptively reasonable time, as defined, unless a longer period of time is permitted elsewhere in law, including under the FCC shot clock. If a local agency does not approve applications subject to batch broadband permit processing and issue permits, or reject the applications and notify the applicants, within the presumptively reasonable time or a longer period, the* ***bill deems all of the permits approved under the process set by ABs 57 and ~~571~~ 537.*** *If a broadband permit application is denied, the local agency must notify the*

applicant in writing of the reasons for the denial. The measure does not apply to a project that is an "eligible facilities request."

The bill does not preclude a local agency from requiring compliance with any requirements relating to the design, construction, or location of broadband projects that the local agency is otherwise authorized to impose or enforce, including health and safety requirements. AB-965 states ***its provisions do not supersede, nullify, or otherwise alter the requirements necessary to comply with any safety standards****.*

AB 965 provides a local agency may only remove a broadband project site from grouping under a single permit ***under mutual agreement with the applicant*** *or to expedite the approval of other substantially similar broadband project sites. Local agencies can impose fees on batch broadband permitting processing, which cannot exceed the reasonable cost of processing the applications. The bill also states that where limited resources affect a local agency's ability to process applications, including batched applications, a local agency must work with the applicant in good faith to resolve those resource limitations, which can include the applicant providing supplemental resources.*

The measure defines several terms, and makes legislative findings and declarations supporting its purposes.

State Revenue Impact

No estimate.

Wire California: ***No fiscal impacts??? . . . Think again . . .*** The lawsuit cost burdens **caused by AB-965's reckless WTF application batching requirements and deemed approved ratchets** could bankrupt many localities with lawsuits similar to this **active litigation against Crown Castle in Los Angeles county**

Crown Castle (with Bill Gates' recent $Billion investment) is recklessly attempting to grab cheap real estate in the public rights-of-way in areas already served with 100 to 200 Mbps symmetric broadband service, **without** permits, **without** respecting title deeds and **without** securing permission of the rightful landowners. If Crown Castle or any other provider compels a change of use for any structure that sets on the land in front of someone's home or business, Crown Castle and the counties or localities that are wrongfully "going along" with this would be subject to similar litigation. **The litigation burden and costs for California localities and residents could be massive.**

SGF Committee Analysis:

Comments

1. ***Purpose of the bill.*** *According to the author,*

> *"AB 965 will accelerate broadband deployment and* ***help close our state's digital divide*** *while retaining local control. The bill simply requires local jurisdictions to make a decision on a group of broadband permits in a reasonable amount of time (2-3 months) – they can approve, reject or extend the amount of time needed for review.*

Wire California: How, exactly will AB-965 help any currently redlined locality bridge the Digital Divide? There is no language in the bill forcing providers to serve the unserved or the underserved . . . heck there are not even definitions of "Digital Divide", which would allow the state to focus its efforts on the unserved or underserved communities. The SGF Committee, in its AB-965 analysis, **ignored Wire California's recommentation** to include precise, clarifying definitions in Appendix A of Wire California's Opposition letter:

> - *"**Digital Divide**" :: any locality in California which does not have both wireline broadband service with at least 100 Mbps symmetric download/upload speeds and wireless telecommunications service with radio signal strength measured as Received Signal Strength Indicator (RSSI) values between -115 dBm and -85 dBm for any licensed or unlicensed radio frequency in outdoor areas accessible to people, per Title 47 U.S. Code §324, Use of Minimum Power.)*
> - *"**Data-transmission speed**" :: a value data transmission speed, as measured in Megabits per second (Mbps).*
> - *"**Received Signal Strength Indicator" ("RSSI")** :: is a measurement of the power level being received by the receiving radio after the antenna and possible cable loss, as measured in deciBel-milliWatts (dBm). RSSI is the total received power measured over the entire bandwidth of occupied Resource Blocks and over all sub-carriers of the specified bandwidth including reference signals, co-channel serving cells, non-serving cells, adjacent channel interference and thermal noise.*

SGF Committee Analysis:

> *Asm. Juan Carrillo:*

> *"Broadband permit batching is a **best practice** used by local jurisdictions, state government and the private sector to streamline and expedite the deployment of broadband infrastructure so local communities can more quickly get connected to high-speed internet. It can make the difference between connecting communities in months instead of years."*

Wire California: The author of this bill has provided no evidence — other than the experience of one city, Long Beach, cited in one state report. That is hardly substantial evidence showing batching of WTF applications is a **best practice for 58 counties and over 400 localities of vastly different sizes, locations, climates, topography and income levels in California**. ***One-size-fits-all is a foolish fantasy for a state as large as California***.

Let's see . . . the actual data show that **90% of communities in CA are already connected** to high-speed wireline broadband (symmetric service at 100-200 Mbps), so any **streamlining would only be needed in 10% of communities** not yet connected to high-speed wireline broadband. There is also no evidence to support the author's statement regarding "months instead of years." ***It is painfully obvious to all that AB-965 is an unnecessary and hazardous GIFT to the Wireless industry designed to line their pockets at the expense of California's counties, localities and residents. It is a reverse-Robinhood bill: stealing from the needy and handing it over to the trillion dollar wireless industry. AB-965 is a horrible bill for California — deserving of a veto, just like SB-649 in 2017 and SB-556 in 2021.***