

II

115TH CONGRESS
2D SESSION

S. 3157

To streamline siting processes for small cell deployment.

IN THE SENATE OF THE UNITED STATES

JUNE 28, 2018

Mr. THUNE (for himself and Mr. SCHATZ) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To streamline siting processes for small cell deployment.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Streamlining The
5 Rapid Evolution And Modernization of Leading-edge In-
6 frastructure Necessary to Enhance Small Cell Deployment
7 Act” or the “STREAMLINE Small Cell Deployment
8 Act”.

1 **SEC. 2. PRESERVATION OF LOCAL ZONING AUTHORITY.**

2 Section 332(c) of the Communications Act of 1934
3 (47 U.S.C. 332(c)) is amended by striking paragraph (7)
4 and inserting the following:

5 “(7) PRESERVATION OF LOCAL ZONING AU-
6 THORITY.—

7 “(A) GENERAL AUTHORITY.—Except as
8 provided in this paragraph, nothing in this Act
9 shall limit or affect the authority of a State or
10 local government or instrumentality thereof over
11 decisions regarding the placement, construction,
12 and modification of personal wireless service fa-
13 cilities.

14 “(B) LIMITATIONS.—

15 “(i) IN GENERAL.—Except as pro-
16 vided in subparagraph (C), the regulation
17 of the placement, construction, or modi-
18 fication of a personal wireless service facil-
19 ity by any State or local government or in-
20 strumentality thereof—

21 “(I) shall not unreasonably dis-
22 criminate among providers of func-
23 tionally equivalent services; and

24 “(II) shall not prohibit or have
25 the effect of prohibiting the provision
26 of personal wireless service.

1 “(ii) TIMEFRAME.—A State or local
2 government or instrumentality thereof
3 shall act on any request for authorization
4 to place, construct, or modify a personal
5 wireless service facility within a reasonable
6 period of time after the request is duly
7 filed with the government or instrumen-
8 tality, taking into account the nature and
9 scope of the request.

10 “(iii) WRITTEN DECISION AND
11 RECORD.—Any decision by a State or local
12 government or instrumentality thereof to
13 deny a request to place, construct, or mod-
14 ify a personal wireless service facility shall
15 be—

16 “(I) in writing; and

17 “(II) supported by substantial
18 evidence contained in a written
19 record.

20 “(iv) ENVIRONMENTAL EFFECTS OF
21 RADIO FREQUENCY EMISSIONS.—No State
22 or local government or instrumentality
23 thereof may regulate the placement, con-
24 struction, or modification of personal wire-
25 less service facilities on the basis of the en-

1 vironmental effects of radio frequency
2 emissions to the extent that the facilities
3 comply with the Commission's regulations
4 concerning such emissions.

5 “(v) JUDICIAL AND ADMINISTRATIVE
6 REVIEW.—

7 “(I) JUDICIAL REVIEW.—Any
8 person adversely affected by any final
9 action or failure to act by a State or
10 local government or any instrumen-
11 tality thereof that is inconsistent with
12 this subparagraph may, within 30
13 days after the action or failure to act,
14 commence an action in any court of
15 competent jurisdiction, which shall
16 hear and decide the action on an ex-
17 pedited basis.

18 “(II) ADMINISTRATIVE RE-
19 VIEW.—Any person adversely affected
20 by an act or failure to act by a State
21 or local government or any instrumen-
22 tality thereof that is inconsistent with
23 clause (iv) may petition the Commis-
24 sion for relief.

1 “(C) PLACEMENT, CONSTRUCTION, AND
2 MODIFICATION OF SMALL PERSONAL WIRELESS
3 SERVICE FACILITIES.—

4 “(i) IN GENERAL.—In addition to,
5 and not in derogation of any of, the limita-
6 tions under subparagraph (B), the regula-
7 tion of the placement, construction, or
8 modification of small personal wireless
9 service facilities by any State or local gov-
10 ernment or instrumentality thereof—

11 “(I) shall not unreasonably dis-
12 criminate among providers of the
13 same service using comparable equip-
14 ment, including by providing exclusive
15 or preferential use of facilities to a
16 particular provider or class of pro-
17 viders of personal wireless service; and

18 “(II) shall only permit a State or
19 local government to approve or deny a
20 permit or other permission to deploy a
21 small personal wireless service facility,
22 including access to a right-of-way or a
23 facility in a right-of-way owned or
24 managed by the State or local govern-

1 ment, based on publicly available cri-
2 teria that are—

3 “(aa) reasonable;

4 “(bb) objective; and

5 “(cc) non-discriminatory.

6 “(ii) ENGINEERING STANDARDS; AES-
7 THETIC REQUIREMENTS.—A State or local
8 government or instrumentality thereof may
9 regulate the placement, construction, and
10 modification of small personal wireless
11 service facilities for reasons of objective
12 and reasonable—

13 “(I) structural engineering stand-
14 ards based on generally applicable
15 codes;

16 “(II) safety requirements; or

17 “(III) aesthetic or concealment
18 requirements.

19 “(iii) TIMEFRAMES.—

20 “(I) IN GENERAL.—A State or
21 local government or instrumentality
22 thereof shall act on a complete re-
23 quest for authorization to place, con-
24 struct, or modify a small personal

1 wireless service facility not later
2 than—

3 “(aa)(AA) for collocation of
4 a small personal wireless service
5 facility, 60 days after the date on
6 which the complete request is
7 filed, except as provided in item
8 (bb); or

9 “(BB) for any other action
10 relating to a small personal wire-
11 less service facility, 90 days after
12 the date on which the complete
13 request is filed, except as pro-
14 vided in item (cc);

15 “(bb) for collocation of a
16 small personal wireless service fa-
17 cility, if the State or the area
18 under the jurisdiction of the local
19 government has a population of
20 fewer than 50,000 people—

21 “(AA) 90 days after the
22 date on which the complete
23 request is filed, if during the
24 30-day period ending on
25 that date of filing, the appli-

1 cable wireless service pro-
2 vider filed fewer than 50 re-
3 quests for collocation of a
4 small personal wireless serv-
5 ice facility with the State or
6 local government or instru-
7 mentality thereof; or

8 “(BB) 120 days after
9 the date on which the com-
10 plete request is filed, if dur-
11 ing the 30-day period ending
12 on that date of filing, the
13 applicable wireless service
14 provider filed not fewer than
15 50 requests for collocation of
16 a small personal wireless
17 service facility with the
18 State or local government or
19 instrumentality thereof; or

20 “(cc) for any other action
21 relating to a small personal wire-
22 less service facility, if the State
23 or the area under the jurisdiction
24 of the local government has a

1 population of fewer than 50,000
2 people—

3 “(AA) 120 days after
4 the date on which the com-
5 plete request is filed, if dur-
6 ing the 30-day period ending
7 on that date of filing, the
8 applicable wireless service
9 provider filed fewer than 50
10 requests for any other action
11 relating to a small personal
12 wireless service facility with
13 the State or local govern-
14 ment or instrumentality
15 thereof; or

16 “(BB) 150 days after
17 the date on which the com-
18 plete request is filed, if dur-
19 ing the 30-day period ending
20 on that date of filing, the
21 applicable wireless service
22 provider filed not fewer than
23 50 requests for any other
24 action relating to a small
25 personal wireless service fa-

1 cility with the State or local
2 government or instrumen-
3 tality thereof.

4 “(II) APPLICABILITY.—The ap-
5 plicable timeframe under subclause (I)
6 shall apply collectively to all pro-
7 ceedings required by a State or local
8 government or instrumentality thereof
9 for the approval of the request.

10 “(III) NO TOLLING.—A time-
11 frame under subclause (I) may not be
12 tolled by any moratorium, whether ex-
13 press or de facto, imposed by a State
14 or local government on the consider-
15 ation of any request for authorization
16 to place, construct, or modify a small
17 personal wireless service facility.

18 “(IV) TEMPORARY WAIVER.—
19 The Commission may temporarily
20 waive the applicability of subclause (I)
21 for not longer than a single 30-day
22 period for any complete request upon
23 a demonstration by a State or local
24 government that the waiver would be

1 consistent with the public interest,
2 convenience, and necessity.

3 “(iv) DEEMED GRANTED.—If a State
4 or local government or instrumentality
5 thereof has neither granted nor denied a
6 request within the applicable timeframe
7 under subclause (I) of clause (iii), includ-
8 ing any temporary waiver granted under
9 subclause (IV) of that clause, the request
10 shall be deemed granted on the date that
11 is 31 days after the date on which the gov-
12 ernment instrumentality receives a written
13 notice of the failure from the applicant.

14 “(v) FEES.—Notwithstanding any
15 other provision of law, a State or local gov-
16 ernment may charge a fee to consider an
17 application for the placement, construction,
18 or modification of a small personal wireless
19 facility, or to use a right-of-way or a facil-
20 ity in a right-of-way owned or managed by
21 the State or local government for the
22 placement, construction, or modification of
23 a small personal wireless facility, if the fee
24 is—

12

1 “(I) competitively neutral, tech-
2 nology neutral, and nondiscrim-
3 inatory;

4 “(II) publicly disclosed; and

5 “(III)(aa) except as provided in
6 item (bb), based on actual and direct
7 costs, such as costs for—

8 “(AA) review and processing
9 of applications;

10 “(BB) maintenance;

11 “(CC) emergency responses;

12 “(DD) repairs and replace-
13 ment of components and mate-
14 rials resulting from and affected
15 by the installation of small per-
16 sonal wireless facilities, improve-
17 ments, and equipment that facili-
18 tates the deployment and instal-
19 lation of such facilities; or

20 “(EE) inspections; or

21 “(bb) calculated in accordance
22 with section 224, in the case of a fee
23 charged for the placement, construc-
24 tion, or modification of a small per-
25 sonal wireless facility on a pole, in a

1 right-of-way, or on any other facility
2 that may be established under that
3 section.

4 “(vi) RULE OF CONSTRUCTION.—
5 Nothing in this subparagraph shall be con-
6 strued to prevent any State or local gov-
7 ernment from imposing any additional lim-
8 itation or requirement relating to consider-
9 ation by the State or local government of
10 an application for the placement, construc-
11 tion, or modification of a small personal
12 wireless service facility.

13 “(D) DEFINITIONS.—For purposes of this
14 paragraph—

15 “(i) the term ‘antenna’ means an ap-
16 paratus designed for the purpose of emit-
17 ting radiofrequency radiation, to be oper-
18 ated or operating from a fixed location for
19 the transmission of writing, signs, signals,
20 data, images, pictures, and sounds of all
21 kinds;

22 “(ii) the term ‘communications net-
23 work’ means a network used to provide a
24 communications service;

14

1 “(iii) the term ‘communications serv-
2 ice’ means—

3 “(I) cable service, as defined in
4 section 602;

5 “(II) information service;

6 “(III) telecommunications serv-
7 ice; or

8 “(IV) personal wireless service;

9 “(iv) the term ‘complete request’
10 means a request for which the applicant
11 has not received written notice from the
12 State or local government within 10 busi-
13 ness days of submission—

14 “(I) stating in writing that the
15 request is incomplete; and

16 “(II) identifying the information
17 causing the request to be incomplete;

18 “(v) the term ‘generally applicable
19 code’ includes a uniform building, fire,
20 electrical, plumbing, or mechanical code
21 adopted by a national code organization, or
22 a local amendment to such a code, to the
23 extent not inconsistent with this Act;

1 “(vi) the term ‘network interface de-
2 vice’ means a telecommunications demarca-
3 tion device and cross-connect point that—

4 “(I) is adjacent or proximate
5 to—

6 “(aa) a small personal wire-
7 less service facility; or

8 “(bb) a structure supporting
9 a small personal wireless service
10 facility; and

11 “(II) demarcates the boundary
12 with any wireline backhaul facility;

13 “(vii) the term ‘personal wireless serv-
14 ice’ means—

15 “(I) commercial mobile service;

16 “(II) commercial mobile data
17 service (as that term is defined in sec-
18 tion 6001 of the Middle Class Tax Re-
19 lief and Job Creation Act of 2012 (47
20 U.S.C. 1401));

21 “(III) unlicensed wireless service;
22 and

23 “(IV) common carrier wireless
24 exchange access service;

1 “(viii) the term ‘personal wireless
2 service facility’ means a facility for the
3 provision of personal wireless service;

4 “(ix) the term ‘small personal wireless
5 service facility’—

6 “(I) means a personal wireless
7 service facility in which each antenna
8 is not more than 3 cubic feet in vol-
9 ume; and

10 “(II) does not include a wireline
11 backhaul facility;

12 “(x) the term ‘unlicensed wireless
13 service’—

14 “(I) means the offering of tele-
15 communications service using a duly
16 authorized device that does not re-
17 quire an individual license; and

18 “(II) does not include the provi-
19 sion of direct-to-home satellite service,
20 as defined in section 303(v); and

21 “(xi) the term ‘wireline backhaul facil-
22 ity’ means an above-ground or under-
23 ground wireline facility used to transport
24 communications service or other electronic
25 communications from a small personal

1 wireless service facility or its adjacent net-
2 work interface device to a communications
3 network.”.

4 **SEC. 3. GAO STUDY OF BROADBAND DEPLOYMENT ON**
5 **TRIBAL LAND AND ON OR NEAR TRUST LAND.**

6 Not later than 1 year after the date of enactment
7 of this Act, the Comptroller General of the United States
8 shall—

9 (1) in consultation with the Secretary of Agri-
10 culture, the Director of the Bureau of Indian Af-
11 fairs, and the Federal Communications Commission,
12 study the process for obtaining a grant of a right-
13 of-way to deploy broadband infrastructure on tribal
14 land or on or near trust land, as defined in section
15 3765 of title 38, United States Code;

16 (2) in conducting the study under paragraph
17 (1), consider the unique challenges involved in
18 broadband deployment on tribal land and on or near
19 trust land; and

20 (3) submit to Congress a report on the study
21 conducted under paragraph (1).

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