

II

115TH CONGRESS  
2D SESSION

# S. 3157

To streamline siting processes for small cell deployment.

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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

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## 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).

○