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June 4, 2015

The Honorable Bill Quirk
Member, California State Assembly
State Capitol, Room 2163
Sacramento, CA 95814

RE: AB 57 (Quirk): Wireless Telecommunications Facilities
As amended on April 6, 2015 – OPPOSE

Dear Assembly Member Quirk,

On behalf of the Marin County Board of Supervisors, I write to regretfully inform you that we must join the California State Association of Counties (CSAC) in opposition to your Assembly Bill 57 regarding the colocation or siting of wireless telecommunications facilities. AB 57 goes beyond the requirements of federal law and regulations by deeming approved any application for colocation or siting of a new wireless telecommunications facility if a city or county fails to approve or disapprove the application within time periods that the Federal Communications Commission (FCC) established for a different purpose. We join with CSAC and many other organizations in believing that federal law and regulations are sufficient on the matter, and moreover that the state should not enact statute that expands the rights of wireless carriers beyond what is provided by federal law.

Deemed Approved Rule

Wireless telecommunications companies are generally required to obtain various state and local zoning approvals before building a new wireless facility or collocating equipment at an existing wireless facility. In 2009, the FCC issued a declaratory ruling that is intended to promote the deployment of broadband and other wireless services by reducing "unnecessary review, thus reducing the costs and delays associated with facilities siting and construction". In its ruling, the FCC construed 47 U.S.C. § 332(c)(7)(B)(3) to require cities and counties to take action on colocation or new siting applications for wireless telecommunications within certain specific timelines. The FCC determined that "a reasonable period of time" under Section 332(c)(7)(B)(3) means different things depending on the type of application. For colocations, local agencies are required to respond in 90-days and for new siting applications, cities and counties have 150-days. The FCC's 90/150-day rule only provided wireless telecommunications carriers with a rebuttable presumption to be used in court if a local agency failed to act in a timely manner. The FCC refused to adopt the industry's request to issue a deemed approved rule.

In 2014, the FCC determined that under a new federal law (47 U.S.C. § 1455(a)), applications for modifications to wireless facilities would be "deemed approved" in 60-days provided those modifications would not substantially "change the physical dimensions" of the existing wireless facility. The FCC's "deemed approved" requirement doesn't apply to new wireless siting applications, which require more time for important environmental and esthetical review and permit processing, nor does it apply to colocations that involve substantial increases in the size of the permitted facility. In AB

57, however, the state would apply this remedy to both new applications and all colocation applications.

Local jurisdictions want to work with wireless carriers to promote broadband deployment, but must be allowed sufficient time and authority to work to ensure viable designs that are both beneficial and acceptable to the community. To be clear, adding a "deemed approved" rule to state law where none presently exists, as proposed under AB 57, could incentivize local jurisdictions to deny new siting or colocation applications in order to avoid allowing the shot clock to run out before the local agency has been able to effectively negotiate on environmental and aesthetic matters that are at the heart of community concerns. In this way, AB 57 could promote litigation rather than successful deployment of new or improved wireless infrastructure.

Matters of Municipal Concern

Additionally, we believe that the colocation and siting of wireless telecommunications facilities are matters best addressed by local governments, even if the development of robust wireless broadband communications networks is also a matter of statewide importance. We are concerned that the language found on page 3, line 15 could be interpreted in a variety of ways and will very likely be litigated for years to come. What is the intent of this language? Is the state legislating that local governments should have no input into the placement and physical characteristics of wireless telecommunications facilities? Is it the intent of language to preempt all local authority to require a conditional use permit for a wireless facility or to allow any carrier the right to site or colocate a facility anywhere in the local jurisdiction? The legislation does not make any of this clear.

Local Governments Support Access to Broadband Services

We fully support greater access to broadband services. We are "technology neutral" with respect to broadband deployment and wireless infrastructure is a good way to fill in service gaps. However, we are concerned that this measure would provide wireless telecommunications facilities a higher priority under state law than other broadband providers using different technologies. It also assumes priority over many other permitting areas where we are already asked to expedite, such as rooftop solar and potentially electric vehicle charging stations (AB 1236, Chiu).

Again, AB 57 is more stringent than federal law and it would unnecessarily place additional constraints on local planning departments that are already under significant pressure to prioritize wireless applications over all other approvals. This bill would impose timeframes that are difficult to meet, especially considering requirements for CEQA review and the necessary public participation process used with a discretionary permit. For these reasons, we must regretfully oppose AB 57. Should you have any questions on our position, please do not hesitate to contact us.

Respectfully Submitted,

Katie Rice, President
Marin County Board of Supervisors

Cc: Honorable Senator Mike McGuire
Honorable Assembly Member Marc Levine