1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500
Facsimile
916.441.5507

September 16, 2015

The Honorable Edmund G. Brown, Jr.
Governor of the State of California
State Capitol
Sacramento, CA 95814

RE: AB 57 (Quirk): Telecommunications: wireless telecommunication facilities – REQUEST FOR VETO

Dear Governor Brown:

The California State Association of Counties (CSAC) respectfully requests your veto of AB 57, by Assembly Member Bill Quirk. This bill would continue an unsettling precedent of the Legislature prioritizing the review and approval of development permits for specific industries at the expense of all other types of applications. Moreover, AB 57 would go beyond the already stringent requirements for expedient review of wireless facilities under 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.

CSAC finds that existing federal law and regulations are sufficiently stringent to promote the timely review and approval of wireless facility applications. The state should not enact a statute that expands the rights of wireless carriers beyond what is currently provided. Many specific provisions of the bill, including "deemed approved" rules, lack of clarity on the interaction between the bill and CEQA review requirements, and the appropriateness of encouraging local agencies to deny applications as a remedy if the shot-clock timeframe cannot be met, are also cause for serious concern for local governments.

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, 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 issued the following timelines: 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 twice refused to adopt the industry's request to issue a deemed approved rule.

Regarding the FCC's decisions not to apply a deemed approved remedy, they have stated a number of times that there is a role for the courts in determining the final outcome of some applications. In many instances, local agencies and applicants agree to toll the shot clock and/or use the courts when necessary to compel a final decision. The following citations come directly from FCC rulings and federal law in support of this existing balance:

- Federal wireless infrastructure deployment policies *balance* the broader interest in wireless services with the legitimate local interest land-use control over how carriers deploy cell site facilities.[1] Rather than impose rigid procedural deadlines, Congress directed State and local

[1] *See* 47 U.S.C. § 332(c)(7)(A).

governments to act on a wireless permit application within a "reasonable" time "taking into account the nature and scope of such request."[2]

- The FCC specifically rejected the notion that a failure to act within a reasonable time should automatically deem a permit granted because:

  The case law does not establish that an injunction granting the application is always or presumptively appropriate when a "failure to act" occurs. To the contrary, in those cases where courts have issued such injunctions upon finding a failure to act within a reasonable time, they have done so only after examining all the facts in the case.[3]

- In January of this year, the FCC reiterated that applications that take longer than the FCC's presumptively reasonable deadlines "should be a matter for the courts to decide in light of the specific facts of individual applications."[4] Flexible timeframes balance the national interest in rapid infrastructure development with the local interest in carefully planned development in accordance with community values. The FCC recognizes that there will be cases where delays are justified, and judges are best equipped to determine whether a jurisdiction has acted reasonably after a fair hearing.

AB 57 is also silent on whether review must be completed during the CEQA shot-clock period. CSAC and other organizations opposed to AB 57 requested many times that the author add language clarifying that an application is not complete until CEQA review has been finalized. While the author agreed to take an amendment to clarify this, the amendments were never included in the bill.

Amendments were made to allow the ability to pause the shot-clock (toll the clock). The author noted that if CEQA review is required and will not be completed within the shot-clock timeline, the remedy would be to toll. However, both parties must agree to do so. A jurisdiction needing to toll to meet statutory requirements for CEQA review or public noticing would have to hope that a carrier would voluntarily agree to the tolling period. If not, the shot-clock could run out and an application could be deemed approved.

The author also stated that nothing stops the jurisdiction from just denying the application within the shot-clock timeline. While this is true, this bill shifts the burden of proof onto the jurisdiction, which would have to be prepared to go to court to prove reason for denial under the provisions of the Permit Streamlining Act.[5] This can be costly and provide for more delays. Jurisdictions would prefer to work with carriers to ensure that community members have adequate access to broadband, while also ensuring that infrastructure going into their communities is safe and esthetically appropriate.

CSAC fully supports greater access to broadband services. 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, tie the hands of county planning departments, and continue along a troubling precedent of the state eroding local governments' power to make land use decisions.

---

[2] *See id.* § 332(c)(7)(B)(ii).
[3] *2009 Declaratory Ruling*, 24 FCC Rcd. 13994, 14009, ¶ 39 (internal citations omitted).
[4] *See 2015 Infrastructure Order* at ¶ 284 (quoting *2009 Declaratory Ruling*, 24 FCC Rcd. at 14009, ¶ 39) (internal quotations omitted).
[5] *Government Code § 65940.5(b)*

For these reasons, we must respectfully request your veto of AB 57. Thank you for your consideration of our position. Should you have any questions, please do not hesitate to contact me, or Kiana Buss of my staff at 916.327.7500 or kbuss@counties.org.

Sincerely,

Matthew L. Cate
Executive Director

CC: The Honorable Bill Quirk, California State Assembly
Tom Dyer, Deputy Legislative Secretary