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July 11, 2018

The Honorable Amy Klobuchar
United States Senate
302 Hart Senate Office Building
Washington, DC 20510

Dear Senator Klobuchar,

The League of Minnesota Cities (LMC) respectfully requests you to oppose S. 3157 (Thune & Schatz), a bill referred to as the “Streamlining The Rapid Evolution And Modernization of Leading-edge Infrastructure Necessary to Enhance” (STREAMLINE) Small Cell Deployment Act.

Simply stated, this bill is a direct attack on local decision-making authority. S. 3157 would give the Federal Communications Commission (FCC) unfair power over local officials and Minnesota communities and would not grandfather in Minnesota’s Right-of-Way Management (ROW) law that includes small cell wireless deployment provisions. Significant changes were enacted to Minnesota’s ROW law following the 2017 legislative session. This followed intense and lengthy negotiations between LMC, other local government associations, wireless carriers, and cable providers. Dozens of cities have implemented or updated their ROW ordinances in accordance with the new law. Wireless providers and local governments are collaboratively working to deploy small cell wireless technology within the confines of statute, which has been confirmed by wireless industry representatives during a hearing this past legislative session and through informal conversations. Minnesota cities would be stifled by additional layers of preemptive legislation that would give the FCC jurisdiction over all public facilities in public rights-of-way.

The bill, like recent rulemaking by the FCC, inhibits local decision-making by changing current federal requirements for small cell siting by carving out a new category with new requirements, separate from existing wireless siting law. While the FCC’s statutory authority to take these actions is debatable and could potentially be challenged in court, congressional action to limit local authority would be permanently damaging. New parameters in the bill eliminate the flexibility for cities to deny an application based on the general health, safety, and welfare of citizens. Protecting the health, safety, and welfare of the public is a core function of city government and the ability to do so must be preserved.

Attached to this letter is a table providing a comparison between the bill and Minn. Stat. § 237.162-163, Minnesota’s telecommunications ROW law. We anticipate that the Senate Commerce Committee will hear this legislation this month. On behalf of our 833 member cities, we ask you to oppose S. 3157. Please contact Laura Ziegler at lziegler@lmc.org or 651-281-1267 with any questions you may have.

Thank you for the work that you do on behalf of all Minnesotans.

Sincerely,

Heidi Omerza
President, League of Minnesota Cities

CC: Senator Tina Smith
Representative Timothy Walz
Representative Jason Lewis
Representative Erik Paulsen
Representative Betty McCollum
Representative Keith Ellison
Representative Tom Emmer
Representative Collin Peterson
Representative Rick Nolan

Comparison Between “STREAMLINE” Act and Minnesota State Right-of-Way Law

Issue	S. 3157	Effect on MN Law
Wireless siting in the public rights-of-way	It would limit local consideration of "small personal wireless facilities" to "objective and reasonable" "structural engineering standards based on generally applicable codes; safety requirements; or aesthetic or concealment requirements."	Eliminates the flexibility for cities to deny an application based on the general health, safety, and welfare of citizens.
“Shot clock”/Time for local government to issue a decision	Modification of the application shot clock to 60 days for collocations, and 90 days for new sites.	Shortens time frame for decisions on applications for collocations from 90 days to 60 days. No impact on request for new wireless support structure decision.
Notice of incomplete application	Cities are allowed ten days to notify applicants in writing if their application is incomplete.	Shortens time frame from 30 days to ten days.
Special shot clock carveouts for small cities, defined as fewer than 50,000 residents	<ul style="list-style-type: none"> o 90 days for collocations if the provider has filed 50 or fewer applications in a 30-day period, or 120 days if the provider has filed more than 50 applications in 30 days o 120 days for new sites if the provider has filed 50 or fewer applications in a 30-day period, or 150 days if the provider has filed more than 50 applications in 30 days 	This is new and would differ from state law, as described under the “shot clock” issue.
Moratoria prohibition	Prohibits moratoria/tolling to lengthen these shot clocks.	Same as state law.
One-time local government waiver	Allows local governments to request a one-time 30-day waiver from the FCC.	This is new. No comparable language in state law.
Automatic approval	Includes a deemed granted provision for applications not acted upon by the local government in the stated period.	Same as state law, but has a shorter time frame to act under federal regulations.
Fees – application, management, rent	Limits "fees," which the bill defines as "a fee to consider an application for the placement, construction, or modification of a small personal wireless facility, or to use a right-of-way or a facility in a right-of-way owned or managed by the State or local government for the placement, construction, or modification of a small personal wireless facility." This would include not only application fees, but also recurring rents for usage of public property.	<p>This would be a massive financial hit to cities to combine one fee for all, and could result in a subsidy for the wireless industry by cities.</p> <p>MN state law allows cities to require telecommunications ROW users to get a permit for use of the ROW; however, it creates a separate permitting structure for the siting of small wireless facilities. Cities can recover their ROW management costs and charge rent for attaching small cell facilities to city-owned structures in the public rights-of-way. Rent is capped for collocation of small wireless facilities.</p>

Issue	S. 3157	Effect on MN Law
Rent	Fees must be "competitively neutral, technology neutral, and nondiscriminatory; publicly disclosed; and based on actual and direct costs."	Conflicts with MN law as outlined above.
Definitions	The bill also defines "small personally wireless service facility," limits it to "a personal wireless service facility in which each antenna is not more than 3 cubic feet in volume; and does not include a wireline backhaul facility."	<p>This is new.</p> <p>A "small wireless facility" is defined as "each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all its exposed elements could fit within an enclosure of no more than six cubic feet; and all other wireless equipment associated with the small wireless facility, excluding electric meters, concealment elements, telecommunications demarcation boxes, battery backup power systems, grounding equipment, power transfer switches, cutoff switches, cable, conduit, vertical cable runs for the connection of power and other services, and any equipment concealed from public view within or behind an existing structure or concealment, is in aggregate no more than 28 cubic feet in volume."</p>
Tribal land	Orders a GAO study on broadband deployment on tribal land	This is also new, but it was an issue tabled by the Broadband Deployment Advisory Committee, referred to as BDAC, early on.