

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 14-0951.01 Ed DeCecco x4216

HOUSE BILL 14-1327

HOUSE SPONSORSHIP

Williams and Murray,

SENATE SPONSORSHIP

Scheffel and Tochtrop,

House Committees

Business, Labor, Economic, & Workforce Development

Finance

Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO EXPAND THE DEPLOYMENT OF**
102 **COMMUNICATION NETWORKS, AND, IN CONNECTION**
103 **THEREWITH, ENACTING THE "BROADBAND DEPLOYMENT ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Section 3 of the bill requires a local government to process a complete application for the collocation of a wireless service facility within 90 days and to process a complete application that involves a new structure or a new wireless service facility other than a collocation within

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

150 days. There is an exception to these deadlines for the provider to respond to a request for additional information, and the parties may agree to waive the deadlines. **Section 3** also requires a local government to allow a permit applicant to consolidate applications and receive a single permit for a small cell network that is within the jurisdiction of a single local government and to consolidate documents and administrative proceedings if an applicant is collocating several wireless service facilities within a single local government.


Sections 4, 5, and 6 expand parts of the law relating to access to public rights-of-way for telecommunications providers to include broadband providers, which include cable operators. Specifically, **section 5** grants a broadband provider the right to construct, maintain, and operate facilities along any public highway. **Section 6** requires a political subdivision's tax, fee, or charge to be competitively neutral among telecommunications providers and broadband providers and prohibits a political subdivision from collecting taxes, fees, and charges from a broadband provider through in-kind services, or requiring in-kind services as a condition to use a highway.

Section 7 requires the state or a political subdivision to provide notice to a broadband provider of a utility trenching project that the state or political subdivision conducts and to allow joint trenching by broadband providers on a nonexclusive and nondiscriminatory basis. Notice of the trenching project will be given to any broadband provider that requests to be included on a public list maintained by the department of transportation.

Section 8 creates a state sales and use tax exemption for the sale or lease to a broadband provider of tangible personal property that is used directly in the provider's network for the provision of broadband service. **Section 2** of the bill permits a statutory county, city, or town to create a local sales and use tax exemption that is identical to the state exemption. It also repeals separate authority for local governments to create a similar sales and use tax exemption.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** This act shall be known and may be
3 cited as the "Broadband Deployment Act".

4 
5 **SECTION 2.** In Colorado Revised Statutes, **add** part 4 to article
6 27 of title 29 as follows:

7 PART 4

1 PERMIT APPROVAL - PROCESS AND DEADLINE

2 **29-27-401. Legislative declaration.** (1) THE GENERAL ASSEMBLY
3 FINDS AND DECLARES THAT:

4 (a) THE PERMITTING, CONSTRUCTION, MODIFICATION,
5 MAINTENANCE, AND OPERATION OF BROADBAND FACILITIES ARE CRITICAL
6 TO ENSURING THAT ALL CITIZENS IN THE STATE HAVE TRUE ACCESS TO
7 ADVANCED TECHNOLOGY AND INFORMATION;

8 (b) THESE FACILITIES ARE CRITICAL TO ENSURING THAT
9 BUSINESSES AND SCHOOLS THROUGHOUT THE STATE REMAIN COMPETITIVE
10 IN THE GLOBAL ECONOMY; AND

11 (c) THE PERMITTING, CONSTRUCTION, MODIFICATION,
12 MAINTENANCE, AND OPERATION OF THESE FACILITIES, TO THE EXTENT
13 SPECIFICALLY ADDRESSED IN THIS PART 4, ARE DECLARED TO BE MATTERS
14 OF STATEWIDE CONCERN AND INTEREST.

15 **29-27-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 (1) "BROADBAND FACILITY" MEANS ANY INFRASTRUCTURE USED
18 TO DELIVER BROADBAND SERVICE OR FOR THE PROVISION OF BROADBAND
19 SERVICE.

20 (2) "BROADBAND SERVICE" HAS THE SAME MEANING AS SET FORTH
21 IN 7 U.S.C. SEC. 950bb (b) (1) AS OF THE EFFECTIVE DATE OF THIS
22 SECTION, AND FOR THE PURPOSES OF THIS SECTION INCLUDES:

23 (a) "CABLE SERVICE", AS DEFINED IN 47 U.S.C. SEC. 522 (6) AS OF
24 THE EFFECTIVE DATE OF THIS SECTION;

25 (b) "TELECOMMUNICATIONS SERVICE", AS DEFINED IN 47 U.S.C.
26 SEC. 153 AS OF THE EFFECTIVE DATE OF THIS SECTION; AND

27 (c) "WIRELESS SERVICE", WHICH MEANS DATA AND

1 TELECOMMUNICATIONS SERVICES, INCLUDING COMMERCIAL MOBILE
2 SERVICES, COMMERCIAL MOBILE DATA SERVICES, UNLICENSED WIRELESS
3 SERVICES, AND COMMON CARRIER WIRELESS EXCHANGE ACCESS SERVICES,
4 AS ALL OF THESE TERMS ARE DEFINED BY FEDERAL LAW AND
5 REGULATIONS.

6 (3) "COLLOCATION" MEANS THE MOUNTING OR INSTALLATION OF
7 BROADBAND SERVICE EQUIPMENT ON A TOWER, BUILDING, OR STRUCTURE
8 WITH EXISTING BROADBAND SERVICE EQUIPMENT FOR THE PURPOSE OF
9 TRANSMITTING OR RECEIVING RADIO FREQUENCY SIGNALS FOR
10 COMMUNICATIONS PURPOSES.

11 (4) "SMALL CELL FACILITY" MEANS EITHER:

12 (a) A PERSONAL WIRELESS SERVICE FACILITY AS DEFINED BY THE
13 FEDERAL "TELECOMMUNICATIONS ACT OF 1996", AS AMENDED AS OF THE
14 EFFECTIVE DATE OF THIS SECTION; OR

15 (b) A WIRELESS SERVICE FACILITY THAT MEETS BOTH OF THE
16 FOLLOWING QUALIFICATIONS:

17 (I) EACH ANTENNA IS LOCATED INSIDE AN ENCLOSURE OF NO MORE
18 THAN THREE CUBIC FEET IN VOLUME OR, IN THE CASE OF AN ANTENNA
19 THAT HAS EXPOSED ELEMENTS, THE ANTENNA AND ALL OF ITS EXPOSED
20 ELEMENTS COULD FIT WITHIN AN IMAGINARY ENCLOSURE OF NO MORE
21 THAN THREE CUBIC FEET; AND

22 (II) PRIMARY EQUIPMENT ENCLOSURES ARE NO LARGER THAN
23 SEVENTEEN CUBIC FEET IN VOLUME. THE FOLLOWING ASSOCIATED
24 EQUIPMENT MAY BE LOCATED OUTSIDE OF THE PRIMARY EQUIPMENT
25 ENCLOSURE AND, IF SO LOCATED, IS NOT INCLUDED IN THE CALCULATION
26 OF EQUIPMENT VOLUME: ELECTRIC METER, CONCEALMENT,
27 TELECOMMUNICATIONS DEMARCATION BOX, GROUND-BASED ENCLOSURES,

1 BACK-UP POWER SYSTEMS, GROUNDING EQUIPMENT, POWER TRANSFER
2 SWITCH, AND CUT-OFF SWITCH.

3 (5) "SMALL CELL NETWORK" MEANS A COLLECTION OF
4 INTERRELATED SMALL CELL FACILITIES DESIGNED TO DELIVER WIRELESS
5 SERVICE.

6 (6) "STRUCTURE" MEANS ANY FACILITY, TOWER, POLE, BUILDING,
7 OR OTHER STRUCTURE CONSTRUCTED FOR THE SOLE OR PRIMARY PURPOSE
8 OF SUPPORTING BROADBAND FACILITIES OR WIRELESS SERVICE FACILITIES.

9 (7) "WIRELESS SERVICE FACILITY" MEANS A FACILITY FOR THE
10 PROVISION OF WIRELESS SERVICES.

11 **29-27-403. Permit - approval - deadline - exception.** (1) A
12 LOCAL GOVERNMENT MAY TAKE UP TO:

13 (a) NINETY DAYS TO PROCESS A COMPLETE APPLICATION THAT
14 INVOLVES A COLLOCATION OF A TOWER, BUILDING, STRUCTURE, OR
15 REPLACEMENT STRUCTURE; OR

16 (b) ONE HUNDRED FIFTY DAYS TO PROCESS A COMPLETE
17 APPLICATION THAT INVOLVES A NEW STRUCTURE OR A NEW WIRELESS
18 SERVICE FACILITY OTHER THAN A COLLOCATION.

19 (2) THE TIME IT TAKES FOR AN APPLICANT TO RESPOND TO THE
20 FIRST REQUEST FOR ADDITIONAL INFORMATION WILL NOT COUNT TOWARD
21 THE APPLICABLE DEADLINE SET FORTH IN SUBSECTION (1) OF THIS SECTION
22 ONLY IF THE LOCAL GOVERNMENT NOTIFIES THE APPLICANT WITHIN
23 THIRTY DAYS AFTER THE INITIAL FILING THAT THE APPLICATION IS
24 INCOMPLETE. ALL OTHER REQUESTS FOR ADDITIONAL INFORMATION
25 COUNT TOWARD SUCH DEADLINES.

26 (3) AN APPLICANT AND A LOCAL GOVERNMENT MAY MUTUALLY
27 AGREE THAT AN APPLICATION MAY BE PROCESSED IN A LONGER PERIOD

1 THAN SET FORTH IN SUBSECTION (1) OF THIS SECTION.

2 **29-27-404. Permit process.** (1) FOR SMALL CELL NETWORKS
3 INVOLVING MULTIPLE INDIVIDUAL SMALL CELL FACILITIES WITHIN THE
4 JURISDICTION OF A SINGLE LOCAL GOVERNMENT, THE LOCAL GOVERNMENT
5 SHALL ALLOW THE APPLICANT, AT THE APPLICANT'S DISCRETION, TO FILE
6 A CONSOLIDATED APPLICATION AND RECEIVE A SINGLE PERMIT FOR THE
7 SMALL CELL NETWORK INSTEAD OF FILING SEPARATE APPLICATIONS FOR
8 EACH INDIVIDUAL SMALL CELL FACILITY.

9 (2) IF A WIRELESS SERVICE PROVIDER APPLIES TO COLLOCATE
10 SEVERAL WIRELESS SERVICE FACILITIES WITHIN THE JURISDICTION OF A
11 SINGLE LOCAL GOVERNMENT, THE LOCAL GOVERNMENT SHALL:

12 (a) ALLOW THE APPLICANT, AT THE APPLICANT'S DISCRETION, TO
13 FILE A SINGLE SET OF DOCUMENTS THAT WILL APPLY TO ALL THE WIRELESS
14 SERVICE FACILITIES TO BE SITED; AND

15 (b) RENDER A DECISION REGARDING ALL THE WIRELESS SERVICE
16 FACILITIES IN A SINGLE ADMINISTRATIVE PROCEEDING, UNLESS LOCAL
17 REQUIREMENTS CALL FOR AN ELECTED OR APPOINTED BODY TO RENDER
18 SUCH DECISION.

19 **SECTION 3.** In Colorado Revised Statutes, 38-5.5-102, **amend**
20 (1); and **add** (1.3) and (1.7) as follows:

21 **38-5.5-102. Definitions.** As used in this article, unless the context
22 otherwise requires:

23 (1) ~~"Political subdivision" means a county, city and county, city,~~
24 ~~town, service authority, school district, local improvement district, law~~
25 ~~enforcement authority, water, sanitation, fire protection, metropolitan,~~
26 ~~irrigation, drainage, or other special district, or any other kind of~~
27 ~~municipal, quasi-municipal, or public corporation organized pursuant to~~

1 law "BROADBAND" OR "BROADBAND SERVICE" HAS THE SAME MEANING
2 AS SET FORTH IN 7 U.S.C. SEC. 950bb (b) (1) AS OF THE EFFECTIVE DATE
3 OF THIS SUBSECTION (1), AS AMENDED, AND INCLUDES "CABLE SERVICE",
4 AS DEFINED IN 47 U.S.C. SEC. 522 (6) AS OF THE EFFECTIVE DATE OF THIS
5 SUBSECTION (1), AS AMENDED.

6 (1.2) "BROADBAND FACILITY" MEANS ANY INFRASTRUCTURE USED
7 TO DELIVER BROADBAND SERVICE OR FOR THE PROVISION OF BROADBAND
8 SERVICE.

9 (1.3) "BROADBAND PROVIDER" MEANS A PERSON THAT PROVIDES
10 BROADBAND SERVICE, AND INCLUDES A "CABLE OPERATOR", AS DEFINED
11 IN 47 U.S.C. SEC. 522 (5) AS OF THE EFFECTIVE DATE OF THIS SUBSECTION
12 (1.3).

13 (1.7) "POLITICAL SUBDIVISION" MEANS A COUNTY, CITY AND
14 COUNTY, CITY, TOWN, SERVICE AUTHORITY, SCHOOL DISTRICT, LOCAL
15 IMPROVEMENT DISTRICT, LAW ENFORCEMENT AUTHORITY, WATER,
16 SANITATION, FIRE PROTECTION, METROPOLITAN, IRRIGATION, DRAINAGE,
17 OR OTHER SPECIAL DISTRICT, OR ANY OTHER KIND OF MUNICIPAL,
18 QUASI-MUNICIPAL, OR PUBLIC CORPORATION ORGANIZED PURSUANT TO
19 LAW.

20 **SECTION 4.** In Colorado Revised Statutes, 38-5.5-103, **amend**
21 (1) as follows:

22 **38-5.5-103. Use of public highways - discrimination prohibited**
23 **- content regulation prohibited.** (1) Any domestic or foreign
24 telecommunications provider OR BROADBAND PROVIDER authorized to do
25 business under the laws of this state shall have the right to construct,
26 maintain, and operate conduit, cable, switches, and related appurtenances
27 and facilities along, across, upon, and under any public highway in this

1 state, subject to the provisions of this article and of article 1.5 of title 9,
2 C.R.S.; and the construction, maintenance, operation, and regulation of
3 such facilities, including the right to occupy and utilize the public
4 rights-of-way, by telecommunications providers AND BROADBAND
5 PROVIDERS are hereby declared to be matters of statewide concern. Such
6 facilities shall be so constructed and maintained as not to obstruct or
7 hinder the usual travel on such highway.

8 **SECTION 5.** In Colorado Revised Statutes, 38-5.5-107, **amend**
9 (1) (b), (2), (3), and (4); and **add** (5) and (6) as follows:

10 **38-5.5-107. Permissible taxes, fees, and charges.** (1) (b) All
11 fees and charges levied by a political subdivision shall be reasonably
12 related to the costs directly incurred by the political subdivision in
13 providing services relating to the granting or administration of permits.
14 Such fees and charges also shall be reasonably related in time to the
15 occurrence of such costs. In any controversy concerning the
16 appropriateness of a fee or charge, the political subdivision shall have the
17 burden of proving that the fee or charge is reasonably related to the direct
18 costs incurred by the political subdivision. All costs of construction shall
19 be borne by the TELECOMMUNICATIONS provider OR BROADBAND
20 PROVIDER.

21 (2) (a) Any tax, fee, or charge imposed by a political subdivision
22 shall be competitively neutral among telecommunications providers AND
23 BROADBAND PROVIDERS.

24 (b) Nothing in this article or in article 32 of title 31, C.R.S., shall
25 invalidate a tax or fee imposed if such tax or fee cannot legally be
26 imposed upon another TELECOMMUNICATIONS provider, BROADBAND
27 PROVIDER, or service because of the requirements of state or federal law

1 or because such other provider is exempt from taxation or lacks a taxable
2 nexus with the political subdivision imposing the tax or fee.

3 (c) If a political subdivision imposes a tax on a
4 TELECOMMUNICATIONS provider OR BROADBAND PROVIDER and such tax
5 does not apply to other providers of comparable telecommunications
6 services OR BROADBAND SERVICES due to the language of the ordinance
7 or resolution that imposes the tax, then the governing body of the political
8 subdivision shall take one of the following two courses of action:

9 (I) If it can do so without violating the election requirements of
10 section 20 of article X of the state constitution, the governing body shall
11 amend the ordinance or resolution that imposes the tax so as to extend the
12 tax to providers of comparable telecommunications services OR
13 BROADBAND SERVICES; or

14 (II) If an election is required under section 20 of article X of the
15 state constitution, the governing body shall cause an election to be held
16 in accordance with said section 20 to authorize the extension of the tax to
17 providers of comparable telecommunications services OR BROADBAND
18 SERVICES. If the extension of the tax is not approved by the voters at such
19 election, then the existing tax shall no longer apply to the providers that
20 had been subject to the tax immediately before the election.

21 (3) Taxes, fees, and charges imposed shall not be collected
22 through the provision of in-kind services by telecommunications
23 providers OR BROADBAND PROVIDERS, nor shall any political subdivision
24 require the provision of in-kind services as a condition of consent to use
25 a highway.

26 (4) The terms of all agreements between political subdivisions and
27 telecommunications providers OR BROADBAND PROVIDERS regarding use

1 of highways shall be matters of public record and shall be made available
2 upon request pursuant to article 72 of title 24, C.R.S.

3 (5) NOTHING IN THIS ARTICLE AFFECTS THE ABILITY OF A
4 POLITICAL SUBDIVISION TO REQUIRE AND GRANT A CABLE FRANCHISE TO
5 A CABLE OPERATOR SEEKING TO PROVIDE CABLE TELEVISION SERVICE
6 WITHIN THE POLITICAL SUBDIVISION AND TO OBTAIN ANY CONSIDERATION
7 OR IMPOSE ANY CONDITIONS IN A CABLE FRANCHISE, UNLESS OTHERWISE
8 PROHIBITED BY FEDERAL LAW.

9 (6) AS USED IN THIS SECTION, "PUBLIC HIGHWAY" OR "HIGHWAY"
10 AS OTHERWISE DEFINED IN SECTION 38-5.5-102 (2), DOES NOT INCLUDE
11 EXCESS AND REMAINDER RIGHTS-OF-WAY UNDER THE DEPARTMENT OF
12 TRANSPORTATION'S JURISDICTION.

13 **SECTION 6.** In Colorado Revised Statutes, **add** 38-5.5-109 as
14 follows:

15 **38-5.5-109. Notice of trenching - permitted access.** (1) (a) THE
16 STATE OR A POLITICAL SUBDIVISION SHALL PROVIDE NOTICE ON A
17 COMPETITIVELY NEUTRAL BASIS TO BROADBAND PROVIDERS OF ANY
18 UTILITY TRENCHING PROJECT THAT IT CONDUCTS, BUT NOTICE IS NOT
19 REQUIRED FOR EMERGENCY REPAIR PROJECTS. THE STATE OR POLITICAL
20 SUBDIVISION SHALL PROVIDE THE NOTICE A MINIMUM OF TEN BUSINESS
21 DAYS PRIOR TO THE START OF THE PROJECT INVOLVING TRENCHING.

22 (b) THE DEPARTMENT OF TRANSPORTATION SHALL MAINTAIN A
23 PUBLIC LIST OF ALL BROADBAND PROVIDERS THAT WOULD LIKE TO
24 RECEIVE NOTICE OF A UTILITY TRENCHING PROJECT AND THE PROVIDERS'
25 ADDRESSES ON THE WEB SITE IT MAINTAINS. TO BE ELIGIBLE TO RECEIVE
26 NOTICE UNDER PARAGRAPH (a) OF THIS SUBSECTION (1), A BROADBAND
27 PROVIDER MUST REQUEST THE DEPARTMENT OF TRANSPORTATION TO BE

1 INCLUDED IN THE DEPARTMENT LIST. A POLITICAL SUBDIVISION MAY RELY
2 ON THE DEPARTMENT LIST WHEN MAKING ITS NOTIFICATIONS, AND SUCH
3 NOTIFICATIONS MAY BE MADE BY ELECTRONIC MAIL.

4 (2) (a) FOR ANY TRENCHING PROJECT CONDUCTED BY THE STATE
5 OR A POLITICAL SUBDIVISION, THE STATE OR POLITICAL SUBDIVISION SHALL
6 ALLOW JOINT TRENCHING BY BROADBAND PROVIDERS ON A NONEXCLUSIVE
7 AND NONDISCRIMINATORY BASIS FOR THE PLACEMENT OF BROADBAND
8 FACILITIES, EXCEPT AS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION
9 (2). THIS SUBSECTION (2) DOES NOT LIMIT THE ABILITY OF THE STATE,
10 POLITICAL SUBDIVISION, OR ANY PRIVATE ENTITY TO SHARE THE COSTS OF
11 CONSTRUCTION RELATED TO THE TRENCHING PROJECT WITH THE
12 BROADBAND PROVIDER.

13 (b) THE STATE OR A POLITICAL SUBDIVISION MAY DENY JOINT
14 TRENCHING BY BROADBAND PROVIDERS IF THE JOINT TRENCHING WILL
15 HINDER OR OBSTRUCT HIGHWAY SAFETY OR THE CONSTRUCTION,
16 MAINTENANCE, OPERATIONS, OR RELATED REGULATION OF HIGHWAY
17 FACILITIES OR IF IT IS NOT FEASIBLE BECAUSE IT WILL DELAY THE REPAIR
18 OR CONSTRUCTION OF A WATER OR WASTEWATER LINE OR BECAUSE
19 COLLOCATION WITH A WATER OR WASTEWATER LINE WILL HINDER OR
20 OBSTRUCT THE MAINTENANCE OR OPERATIONS OF WATER OR
21 WASTEWATER FACILITIES.


22 (3) (a) NOTHING IN THIS SECTION IS INTENDED TO PREEMPT OR
23 OTHERWISE REPLACE REQUIREMENTS FOR JOINT TRENCHING THAT MAY BE
24 IMPOSED BY A POLITICAL SUBDIVISION.

25 (b) NOTHING IN THIS SECTION REQUIRES A PRIVATE ENTITY
26 UNDERTAKING A TRENCHING PROJECT TO ALLOW A BROADBAND PROVIDER
27 TO PARTICIPATE IN THE TRENCHING PROJECT.

1 (c) ANY PROVISION IN THIS SECTION THAT CONFLICTS WITH
2 FEDERAL LAW IS UNENFORCEABLE.

3 (d) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT
4 OR DELAY COMMENCEMENT OR PROGRESS OF A CONSTRUCTION,
5 MAINTENANCE, OR TRENCHING PROJECT.

6 (4) AS USED IN THIS SECTION, "TRENCHING" MEANS A
7 CONSTRUCTION PROJECT IN WHICH A HIGHWAY RIGHT-OF-WAY SURFACE
8 IS OPENED OR REMOVED FOR THE PURPOSE OF LAYING OR INSTALLING
9 CONDUIT, FIBER, OR SIMILAR INFRASTRUCTURE IN EXCESS OF ONE MILE IN
10 LENGTH. "TRENCHING" DOES NOT MEAN ANY OTHER ACTIVITY OR PROJECT
11 FOR THE CONSTRUCTION OR MAINTENANCE, INCLUDING DRAINAGE OR
12 CULVERT WORK, OF A HIGHWAY FACILITY.

13 
14 **SECTION 7. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part will not take effect
21 unless approved by the people at the general election to be held in
22 November 2014 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.