



April 24, 2023

The Honorable Cecilia Aguiar-Curry
Chair, Assembly Committee on Local Government
1020 N Street, Room 157
Sacramento, CA 95814

**RE: Assembly Bill 965 (Carrillo) Local government: broadband permit applications – OPPOSE
As Amended April 24, 2023**

Dear Assemblymember Aguiar-Curry:

On behalf of the California State Association of Counties (CSAC), the Rural County Representatives of California (RCRC), the Urban Counties of California (UCC), and the League of California Cities (CalCities), we regret opposing to Assembly Bill 965 (Carrillo). This measure would require local agencies to batch and process broadband permits within 60 to 90 days or have the applications deemed approved, without compliance with general health and safety requirements, unless a written finding of specific adverse impact to public health can be made.

AB 965 is described as a simple permit batching bill, necessary to deploy broadband infrastructure within the spending deadlines tied to source federal funding. However, this bill makes radical changes to California telecommunications law and local government permitting obligations, including:

Creating unreasonable permitting “shot clocks” for local governments.

The Federal Communications Commission's (FCC) 60-day shot clock, and the state law granting deemed approval (Government Code 65964.1) only applies to collocation of "small wireless facilities" currently. There are longer shot clocks for new installations of small wireless facilities (e.g., 90 days), collocation of non-small wireless facilities (e.g., 90 days), and for new installation of non-small wireless facilities (e.g., 150 days). All of these provisions apply only to wireless facilities, as they are usually minimally disruptive to construct. AB 965 would massively expand application of the 60-day shot clock (and deemed approved remedy) to all aerial constructed broadband permit applications and provides for a 90-day shot clock for trenched or wireless constructed projects, without regard to size or type (new build or collocated on existing infrastructure). These different types of facilities represent varying construction factors and differing considerations by the permitting jurisdiction, depending on location and size of project.

Additionally, prioritizing the processing of broadband permit applications above all other applications, while laudable, may not always be appropriate. For instance, in El Dorado County, some permit applications are taking months to process due to the need to expedite the glut of building permits for victims of the Caldor fire trying to rebuild their homes. AB 965 would require city and county officials to put Internet Service Providers (ISPs) in the front of all other applicants, or risk having projects approved without proper review. Modification of the shot clock can only be

done through a mutual written agreement between the local agency and the applicant. However, it is unclear why an applicant would ever agree to modifying the approval timeframe if the application will automatically be approved within 90 days.

Implementation of a “no limit” batching process.

The FCC batching requirements, while not limited in number, are limited to "small wireless facilities." AB 965 would apply more broadly to "broadband permit applications," which is a vastly expanded universe of projects.

Additionally, the FCC shot clocks for individual or batched applications include tolling provisions and they are not "mandatory," as the bill language states, but are only "presumptively reasonable." A local agency may demonstrate that more time is needed to process the application, as outlined in the deemed approved statute found in Government Code 65964.1. This section of law shifts the onus onto local agencies to seek judicial review and affirmatively demonstrates the need for more time, but does preserve a local government's ability to do so. AB 965 removes these protections.

Removes a local government's ability to protect the public health and safety.

Language included in Section 65964.3(f) of the bill states that AB 965 does not preclude a local agency from requiring compliance with "generally applicable health and safety requirements." Yet, the same subdivision then requires a local agency to issue a written finding that the facility proposed in the broadband permit application would have a *specific* adverse impact on public health and safety in order to enforce applicable health and safety requirements. This provision applies to all applications, including for facilities in the public right-of-way, creating potentially hazardous conditions on roadways, pedestrian walkways, surrounding buildings and to the general public.

Deems all permits approved in a batch if local government doesn't act in less than 90 days.

AB 965 provides that a batch of permit applications not acted upon in the respective shot clock time period shall be deemed approved, irrespective of concerns or issues with any or all the proposed facilities. As discussed previously, prioritizing broadband applications above all other applications notwithstanding other community circumstances, is short sighted. Even the FCC, which first established shot clocks for the siting of wireless facilities in 2008, declined to provide a deemed approved remedy to industry, stating that it is important for courts (in a lawsuit related to rebutting the presumed reasonable time period to act) to consider the specific facts of individual applications and adopt remedies based on those facts.

Through the unprecedented funding allocated for broadband infrastructure in the last two years, the state and federal government have made it clear that closing the digital divide and ensuring equitable deployment of high quality and reliable broadband is a priority. Local governments, special districts and community-based organizations are stepping-up to fill the void and correct decades of digital redlining. AB 965 proposes to codify a statement in law that batching permits pursuant to this bill will help bridge the digital divide, as well as help the state meet federal funding deadlines, "while creating greater broadband equity amongst communities so more individuals can have access to high-speed internet" However, local jurisdictions currently have the ability, absent this legislation, to batch permits, expediate applications, and generally work to streamline the process of broadband deployment. Moreover, those jurisdictions that remain unserved and underserved, despite well over a decade of industry subsidization for

deployment, are not the jurisdictions that lack willingness to work with ISPs to streamline placement of telecommunication facilities. In actuality, unserved/underserved areas remain without reliable internet access because they are deemed by the ISPs to have inadequate Return on Investment (ROI). Creating a process to expedite permitting in a jurisdiction that does not offer an adequate ROI will not incentivize deployment in those areas, but will, instead, make building in areas that possess greater potential ROI, like those with existing infrastructure, more lucrative. This bill will not aid bridging the digital divide but will just make it more profitable to build in dense, higher cost markets.

Local governments are committed to providing robust internet access to our communities and have worked collaboratively in the past with industry partners to improve our processes while maintaining important local safeguards, including negotiating in 2021 several additional protections into Government Code 65964.1 that contained specific language to address work in the public right-of-way, which would be abrogate by the provisions of AB 965.

Unfortunately, AB 965 does not represent a collaborative approach, and for all the reasons outlined in this letter, we respectfully urge your “No” vote. If you have any questions, please contact us at the email addresses below.

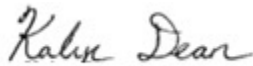
Sincerely,



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