Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
AB 965 (Juan Carrillo) – As Amended April 24, 2023

SUBJECT: Local government: broadband permit applications.

SUMMARY: Requires a local agency to undertake batch broadband permit processing and to complete batch broadband permit processing within a presumptively reasonable time. Specifically, **this bill**:

1) Enacts the Broadband Permit Efficiency and Local Government Staff Solution Best Practices Act of 2023.

2) Provides the following definitions for the purpose of this bill:

    a) "Batch broadband permit processing" means the simultaneous processing of multiple broadband permit applications for substantially similar broadband project sites under a single permit.

    b) "Broadband permit application" means an application or other documents submitted for review by a local agency to permit the construction of a broadband project. Provides that a broadband permit application may fall into four subtypes:

        i) Aerial construction.

        ii) Trenched construction.

        iii) Wireless construction.

        iv) Other.

    c) "Broadband project" means the proposed facility, including the support structure and any supporting equipment necessary for operation of the proposed facility. A broadband project may be comprised of one or more components, including, but not limited to, a wireless facility, a fiber optic connection, and other supporting equipment, each of which may require separate permits or authorizations by a local agency.

    d) "Local agency" means a city, county, city and county, charter city, special district, or publicly owned utility (POU).

    e) "Presumptively reasonable time" means the timeframe that a local agency must review and resolve an application pursuant to applicable law, or to the extent the time period is not preempted or otherwise governed by applicable law, the applicable time period listed below, following submission of a complete broadband permit application. The following presumptively reasonable time periods may be modified by mutual, written agreement between the local agency and the applicant. The following time periods shall be

administered in accordance with Section 1.6003 of Title 47 of the Code of Federal Regulations (CFR):

i) The presumptively reasonable timeframe for aerial construction is no more than 60 days.

ii) The presumptively reasonable timeframe for trenched construction is no more than 90 days.

iii) The presumptively reasonable timeframe for wireless construction are the periods and procedures established by applicable FCC rules.

iv) The presumptively reasonable timeframe for other subtypes of permit applications is no more than 90 days.

f) "Substantially similar broadband project sites" means broadband project sites that are nearly identical in terms of equipment and general design, but not location.

3) Requires a local agency to undertake batch broadband permit processing upon receiving two or more broadband permit applications for substantially similar broadband project sites submitted at the same time by the same applicant.

4) Requires batch broadband permit processing to be completed within a presumptively reasonable time, unless a longer period of time is permitted under the circumstances pursuant to applicable law, including Section 1.6003 of title 47 of the CFR.

5) Requires, if a local agency does not approve broadband permit applications for substantially similar broadband project sites submitted for batch broadband permit processing pursuant to this bill and issue permits, or reject the applications and notify the applicants, within the presumptively reasonable time, all of the permits to be deemed approved.

6) Allows a local agency to place reasonable limits on the number of broadband project sites that are grouped into a single permit while undertaking batch broadband permit processing. A local agency may only remove a broadband project site from grouping under a single permit under mutual agreement with the application or to expedite the approval of other substantially similar broadband project sites.

7) Provides that the requirements of this bill shall not apply to eligible facility requests, as defined and governed by Section 1455 of Title 47 of the United States Code.

8) Provides that this bill does not preclude a local agency from requiring compliance with generally acceptable health and safety requirements. Enforcement of applicable health and safety requirements by a local agency shall be initiated by issuance of a written finding that the facility proposed in a broadband permit application would have a specific, adverse impact on the public health or safety.

9) Provides that nothing in this bill shall supersede, nullify, or otherwise alter the requirements to comply with safety standards, including, but not limited to, both of the following:

a) Provisions of law governing the Regional Notification Center System, as specified.

b) The Public Utilities Commission's General Order No. 128, Rules for Construction of Underground Electric Supply and Communications Systems, or successor rules adopted by the commission.

10) Contains a number of findings and declarations regarding the purposes of this bill.

11) States that the Legislature finds and declares that the efficient approval of broadband permit applications is critical to the deployment of broadband services, is a matter of statewide concern, and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this bill applies to all cities, including charter cities.

12) Provides that no reimbursement is required by this bill pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this bill, as specified.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

1) **Background**. The California Constitution allows a city to "make and enforce within its limits, all local, police, sanitary, and other ordinances and regulations not in conflict with general laws, known as the police power of cities." It is from this fundamental power that local governments derive their authority to regulate land through planning, zoning, and building ordinances, thereby protecting public health, safety and welfare.

   The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. Cities' and counties' major land use decisions – including development permitting – must be consistent with their general plans. The Planning and Zoning Law also requires public notice to be given at least 10 days in advance of hearings where most permitting decisions will be made. It also allows residents to appeal permitting decisions and other actions to either a board of appeals or the legislative body of the city or county. Cities and counties may adopt ordinances governing the appeals process.

   Providers of wireless telecommunications services must apply to cities and counties for permits to build structures or other wireless facilities that support wireless telecommunications equipment, like antennae and related devices.

   Modern broadband service, including wired and wireless service, requires the installation of fiber optic cables to convey data signals across a network. Companies that wish to install the fiber optic infrastructure required to serve new areas or expand capacity in existing areas must apply to cities and counties for permits to install fiber in the public right of way. Traditionally, telecommunications wires have been installed aerially through attachments to utility poles or through the digging of open trenches. As an alternative to traditional trenching or boring to install fiber underground, some fiber installation companies have turned to microtrenching. Microtrenching is a process whereby specialized machinery cuts a

narrow slice out of the roadway at a depth of approximately 1-2 feet. Conduit containing fiber optic cables is laid in the small trench, and material is backfilled over the trench to seal it. Microtrenching requires significantly less excavation and can be performed more quickly than open trenching, saving time and money for installers.

2) **Federal Law**. Two federal laws – the Telecommunications Act of 1996 and a portion of the Middle Class Tax Relief and Job Creation Act of 2012 known as the "Spectrum Act" – require local governments to act within a "reasonable period of time" on permits for siting wireless facilities. The FCC is responsible for administering these laws.

   In 2009 and 2014, the FCC issued two decisions to clarify the definition of a period of time that is presumed to be reasonable for various categories of wireless telecommunications facilities. The FCC established a shot clock by ruling that local governments should generally approve or disapprove applications for projects within the following time frames:

   a) 60 days for a project that is an "eligible facilities request," which is defined by the FCC as a collocation on an existing facility that does not substantially change its physical dimensions.

   b) 90 days for a project that is a collocation that substantially changes the dimensions of the facility, but does not substantially change its size.

   c) 150 days for projects that are new sites for wireless facilities.

   The FCC also identified remedies in cases where local governments do not act within these periods. For collocations that do not substantially change the physical dimensions of the existing facility (eligible facilities request), the application is "deemed approved" – meaning, the permit is automatically granted if a local government has not acted on the application.

   However, for all other types of applications, the FCC specifically declined to adopt a deemed-approved remedy because the circumstances of wireless facility applications can vary greatly. If a local government does not act within the reasonable time period for collocations that substantially change the physical dimensions of an existing facility, or for new sites, the FCC ruled that an applicant may bring an action in federal court within 30 days of the reasonable time period elapsing. The court then determines whether the delay was unreasonable under all circumstances of the case and, if necessary, identifies an appropriate remedy.

3) **State Law Governing Access to POU Infrastructure**. Recognizing the increasing need to deploy broadband infrastructure, AB 1027 (Buchanan), Chapter 580, Statutes of 2011, established a framework for POUs to make available appropriate space and capacity on and in their utility poles and support structures for use by a communications service provider. The measure established timelines by which a POU must respond to a request for use of a pole or support structure and provide a cost estimate for attachments, and for completion of make-ready work. It also allowed a POU to deny a request for use due to insufficient capacity or safety, reliability, or engineering concerns, and specified the fees POUs could impose for the use of their poles or support structures.

4) **AB 57**. Responding to concerns that wireless providers were facing significant challenges and delays while navigating local governments' permitting processes, AB 57 (Quirk), Chapter 685, Statutes of 2015, required an application for a collocation or siting of a wireless telecommunications facility to be deemed approved if specified requirements are met. Under AB 57, an application is deemed approved if:

   a) The city or county fails to approve or disapprove the application within the time periods established by applicable FCC decisions (the 2009 and 2014 FCC decisions referenced above).

   b) The applicant has provided all required public notices regarding the application.

   c) The applicant has provided notice to the city or county that the reasonable time period has lapsed and that the application is deemed approved.

   AB 57 allowed the reasonable time to be tolled to accommodate timely requests for information required to complete the application or by mutual agreement between the applicant and the local government. The bill also allowed a city or county to seek judicial review of the operation of the applicant's notice to the city or county that the reasonable time period has lapsed and the application is deemed approved.

5) **FCC 2018 Update**. In 2018, the FCC underwent a regulatory update and adopted new rules regarding small wireless shot clocks. The CFR specifies the types of wireless installations that are considered "small wireless facilities" or small cells. Specifically, small cells:

   a) Can occupy up to 31 cubic feet, including antennas and all other wireless equipment.

   b) Are mounted on structures up to 50 feet tall or 10% taller than other adjacent structures.

   c) Are not located on Tribal lands.

   d) Meet other technical requirements.

   The 2018 FCC order broadened the application of the shot clocks to include all telecommunications permits, not just zoning permits, and it shortened the shot clocks. State and local governments now have 60 days to decide applications for installations on existing infrastructure, and 90 days for all other applications. The order did not add enforcement mechanisms. If a state or local government misses a permitting deadline, the applicant was still required to seek relief via federal court.

   In particular, the FCC again declined to adopt a deemed approved remedy for non-compliance with the new shot clock timelines. Instead, it adopted a new remedy whereby inaction within the shot clock timeframes constitutes a "presumptive prohibition" on the provision of wireless services pursuant to federal law. The FCC considered this remedy sufficient, as an applicant would "have a straightforward case for obtaining expedited relief in court."

   The FCC noted that this approach "effectively balances the interest of wireless service providers to have siting applications granted in a timely and streamlined manner and the

interest of localities to protect public safety and welfare and preserve their authority over the permitting process. The Commission's specialized deployment categories, in conjunction with the acknowledgement that in rare instances, it may legitimately take longer to act, recognize that the siting process is complex and handled in many different ways under various states' and localities' long-established codes.

"Further, the Commission's approach tempers localities' concerns about the inflexibility of a deemed granted proposal because the new remedy the Commission adopts here accounts for the breadth of potentially unforeseen circumstances that individual localities may face and the possibility that additional review time may be needed in truly exceptional circumstances. The Commission further finds that its interpretive framework will not be unduly burdensome on localities because a number of states have already adopted even more stringent deemed granted remedies."

6) **Court Challenge**. Multiple parties challenged the FCC's 2018 order and the 9th Circuit Court of Appeals in *City of Portland v. FCC* issued its opinion on August 12, 2020. Regarding challenges to the FCC's decision on deemed approved remedies, the Court noted, "For their part, Wireless Service Provider Petitioners contend that the FCC did not go far enough in modifying the shot clock requirements. Petitioners contend that the FCC should have adopted a deemed granted remedy for shot clock violations, and argue that the Small Cell Order's factual findings compel the adoption of such a remedy.

"This argument relies on a mischaracterization of the FCC's factual findings. It is true that the FCC found that delays under the old shot clock regime were so serious they would 'virtually bar providers from deploying wireless facilities.' But the FCC concluded that under its new shot clock rules, which shorten the time frames and expand the applicability of the rules, there will be no similar bar to wireless deployment. Because the FCC reasonably explained it has taken measures to reduce delays that would otherwise have occurred under its old regime, the factual findings here do not compel the adoption of a deemed granted remedy."

Because the updated shot clock rules did not carry a deemed approved remedy in the FCC's 2018 order, upheld by the court, AB 537 (Quirk) Chapter 467, Statutes of 2021, re-instated this remedy in California.

7) **Presumptively Reasonable Time Periods**. The CFR provides review periods for ***individual*** applications for personal wireless service facilities. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments in the following categories:

   a) Review of an application to collocate a small wireless facility using an existing structure: 60 days.

   b) Review of an application to collocate a facility other than a small wireless facility using an existing structure: 90 days.

   c) Review of an application to deploy a small wireless facility using a new structure: 90 days.

d) Review of an application to deploy a facility other than a small wireless facility using a new structure: 150 days. [47 CFR 1.6003(c)(1)]

The CFR also provides requirements for ***batching***, as follows:

a) If a single application seeks authorization for multiple deployments, all of which fall within the "small wireless facility" categories, then the presumptively reasonable period of time for the application as a whole is equal to that for a single deployment within that category.

b) If a single application seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within the "small wireless facility" categories (both collocated on an existing structure and deploying using a new structure), then the presumptively reasonable period of time for the application as a whole is 90 days.

The CFR provides that siting authorities may not refuse to accept batched applications for small wireless facilities. [47 CFR 1.6003(c)(2)]

8) **Local Permitting Playbook**. The State of California's Local Permitting Playbook, released in August of 2022, was created by the California Governor's Office of Business and Economic Development, the California Department of Technology, the California Public Utilities Commission, and the California Emerging Technology Fund. It states, "The California Local Permitting Playbook offers strategies designed to enable communities to prepare for broadband investment – recognizing that an unprecedented amount of state and federal funding has been allocated to expanding broadband infrastructure in California, and that local government permitting and planning staffs have varying degrees of experience with and knowledge of broadband deployment. *(citation omitted)*

The playbook also notes, "These approaches are not all appropriate for all communities – nor would any given community be likely to adopt every practice described here. Rather, the playbook presents a set of options a local government can evaluate in light of its public policy priorities, its community's unique circumstances, and its residents' needs…The strategies and smart practices presented in this playbook are intended to enable localities to receive value in return for the efforts they make to enable a broadband deployer's efforts. That value may be financial (such as a lease payment in return for access to a city's fiber network) or it may be less tangible (such as a commitment by the partner to deliver broadband service to low-income residents in return for access to a city's excess conduit). Either way, the locality will facilitate broadband deployment in partnership with the deployer; the relationship should not favor the deployer over the public interest."

Among many "smart practices" outlined in the Playbook is "developing a batch permitting process." The Playbook notes, "For localities anticipating large broadband-related projects that will require extensive but potentially repetitive permit applications, batch permitting might allow applicants to request a single permit that would cover a project typically subject to multiple permit applications. As with some of the other strategies presented here, a batch permitting process might reduce the permit application caseload, decrease the permit processing timeline, and improve a broadband deployer's timeline.

"The City of Long Beach, for example, developed a bulk permitting process in 2020 for small cell wireless facilities that allows up to 10 sites to be grouped under a single permit. Applicants must negotiate specifications before submitting the application, and sites must all be either Tier A (commercial arterial) or Tier B (residential roads). This enhanced permitting process has improved the City's timeline while still protecting local interests (e.g., distinguishing between siting locations proposed on commercial arteries and residential roads)."

9) **Author's Statement**. According to the author, "AB 965 will accelerate broadband deployment and help close our state's digital divide. Broadband permit batching, term permits, and master permits are an industry best practice used by local jurisdictions, state government and the private sector to streamline and expedite the deployment of broad-band infrastructure so local communities can more quickly get connected to high-speed internet and telecommunications services. When a broadband project in a community involves tens or hundreds of nearly identical permits for a variety of locations, the permits are submitted and processed at the same time as one large group concurrently through various city departments instead of individually. The state of California is currently pursuing this technique in its deployment of the Middle Mile Broadband Initiative.

"This bill will ensure Californians will quickly benefit from high-speed internet projects by allowing broadband installers to submit their nearly identical broadband project applications at the same time and local governments to process this batch of permits together within 60 days. Processing several substantially similar broadband permit applications at the same time will allow local governments to still receive permit fees, but staff can more easily process routine, high-volume broadband permits as a group instead of individually to help bridge the digital divide and more quickly connect communities to high-speed internet. This will allow the state to meet the federal broadband funding deadline of December 31, 2024 while creating greater broadband equity amongst communities so more individuals can have access to high-speed internet access for emergency response, remote work, telehealth, education and commerce."

10) **Bill Summary**. This bill requires a local agency to undertake batch broadband permit processing if it receives two or more broadband permit applications for substantially similar broadband project sites submitted at the same time by the same applicant. A local agency must complete such processing within a presumptively reasonable time. If a local agency does not approve a batched permit application and issue permits or reject the applications and notify the applicants within the presumptively reasonable time, all of the permits will be deemed approved.

This bill provides that a broadband permit application may fall into four subtypes, and specifies the presumptively reasonable time for each, as follows:

c) Aerial construction: no more than 60 days.

d) Trenched construction: no more than 90 days.

e) Wireless construction: the periods and procedures established by applicable FCC rules.

f) Other subtypes of permit applications: no more than 90 days.

The bill provides that these time periods shall be administered in accordance with Section 1.6003 of Title 47 of the CFR.

A local agency may place reasonable limits on the number of broadband project sites that are grouped into a single permit while undertaking batch broadband permit processing. A local agency may only remove a broadband project site from grouping under a single permit under mutual agreement with the application or to expedite the approval of other substantially similar broadband project sites.

The bill defines a "broadband project" to mean the proposed facility, including the support structure and any supporting equipment necessary for operation of the proposed facility. A broadband project may be comprised of one or more components, including, but not limited to, a wireless facility, a fiber optic connection, and other supporting equipment, each of which may require separate permits or authorizations by a local agency. The bill defines "substantially similar broadband project sites" to mean broadband project sites that are nearly identical in terms of equipment and general design, but not location.

This bill provides that it does not preclude a local agency from requiring compliance with generally acceptable health and safety requirements. However, enforcement of these requirements must be initiated by issuance of a written finding that the facility proposed in a broadband permit application would have a specific, adverse impact on the public health or safety. This bill applies to a city, county, city and county, charter city, special district, or POU.

This bill is sponsored by the author.

11) **Policy Considerations**. Under existing federal law, batching is required for only two types of broadband facilities: small cells that are co-located on an existing structure, and small cells that will be deployed using a new structure. Batching is not required for any other type of facility. The shot-clocks for these applications are 60 days for collocated small cells, 90 days for small cells using a new structure, and 90 days if a combination of the two is submitted in the same batch.

This bill expands existing law in two ways. It requires batched processing for additional types of broadband infrastructure (anything other than small cells), which are not presently subject to batching requirements. It also applies shot-clocks to these batched applications.

As noted in the Communications and Conveyance Committee's analysis of this bill, "…broadband infrastructure includes various types of infrastructure, including fiber and wireless facilities. However, the presumptively reasonable timeframe established by this bill does not contemplate that different types of infrastructure would have different public impact. For example, fiber-optic cable can be installed using various methods including trenching, micro-trenching, or even installed aerially from utility poles. Trenching is potentially the most disruptive to the public right way of way, considering the potential traffic impacts, while aerially is potentially the least intrusive. Depending on the construction method, a local agency may need to take more or less time to consider a batch of applications."

The current version of this bill categorizes broadband applications not by the type of ***infrastructure*** (fiber, small cell, etc.), but by the type of ***construction method***: aerial, trenched, wireless and "other" subtypes. It applies a 60-day shot-clock to aerial construction and a 90-day shot-clock to trenched and "other" subtypes (and refers to federal law for shot-clocks for wireless construction). It does not define any of these terms. Federal law uses definitions based on the type of facility, and defines these types of facilities very specifically.

The committee may wish to consider the following:

a) **Double Duty**. Is it reasonable to apply ***both*** new requirements for batching ***and*** shot-clocks for batching simultaneously? Would it be more manageable for local agencies to start with requirements for batching without the shot-clocks that this bill requires?

b) **Consistency**. Should the definitions for deployments in the bill be revised to conform more closely with definitions in existing law?

12) **Committee Amendments**. In order to address concerns raised above, the Committee may wish to amend this bill as follows:

65964.5. (a)(5) "Presumptively reasonable time" means the timeframe that a local agency must review and resolve an application pursuant to applicable law~~**, or to the extent the time period is not preempted or otherwise governed by applicable law, the applicable time period listed below,**~~ following submission of a complete broadband permit application. The ~~**following**~~ presumptively reasonable time ~~**periods**~~ **period** may be modified by mutual, written agreement between the local agency and the applicant. ~~**The following time periods shall be administered in accordance with Section 1.6003 of Title 47 of the Code of Federal Regulations.**~~

~~**(A) The presumptively reasonable timeframe for aerial construction is no more than 60 days.**~~

~~**(B) The presumptively reasonable timeframe for trenched construction is no more than 90 days.**~~

~~**(C) The presumptively reasonable timeframe for wireless construction are the periods and procedures established by applicable FCC rules.**~~

~~**(D) The presumptively reasonable timeframe for other subtypes of permit applications is no more than 90 days.**~~

65964.5. (b) Subject to subdivision (e), a local agency shall undertake batch broadband permit processing upon receiving two or more broadband permit applications for substantially similar broadband project sites submitted at the same time by the same applicant. Batch broadband permit processing shall be completed within a presumptively reasonable time **for wireless broadband projects subject to applicable law** unless a longer period of time is permitted under the circumstances pursuant to applicable law, including Section 1.6003 of Title 47 of the Code of Federal Regulations.

65964.5. (c) If a local agency does not approve broadband permit applications for substantially similar **wireless** broadband project sites submitted for batch broadband permit

processing pursuant to this section and issue permits, or reject the applications and notify the applicants, within the presumptively reasonable time, all of the permits shall be deemed approved.

13) **Author's Amendments**. The author's office has also offered the following amendments, which the Committee may wish to consider adopting with the Committee amendments outlined above:

65964.3. (a)(4) "Local agency" has the same meaning as the term is defined in Section. **This section does not apply to a publicly owned electric utility that is subject to Part 2 (commencing with Section 9510) of Division 4.8 of the Public Utilities Code provided that the utility processes broadband applications, including applications associated with power, consistent with the process established in Section 9511 of the Public Utilities Code.**

65964.3. (h) A local agency may place reasonable limits on the number of broadband project sites that are grouped into a single permit while undertaking batch broadband permit processing. **A reasonable limit shall be no less than 50 project sites**. A local agency may only remove a broadband project site from grouping under a single permit under mutual agreement with the ~~**application**~~ **applicant** or to expedite the approval of other substantially similar broadband project sites.

A local agency may impose a fee on batch broadband permitting processing consistent with Ca. Gov. Code Section 50030. The reasonable costs of providing the service for which the fee is charged, as that phrase is used in Section 50030, shall be limited to the reasonable costs of the local agency to process and issue the permit and inspect the installation that is the subject of the permit, including any costs incurred if the applicant elects to expedite processing and review. Where limited resources affect a Local Agency's ability to accept and review applications for a Broadband Project, including batched applications, the Local Agency shall work with the Applicant in good faith to resolve such resource limitations, including, but not limited to, acceptance of Applicant offers to supplement such resources.

14) **Arguments in Support**. Crown Castle, in support, writes, "There are currently thousands of broadband permits pending with local governments in California that will improve internet connectivity for millions of residents. AB 965 creates a framework where broadband installers can submit a batch of nearly identical broadband permits to the local jurisdiction at the same time in order for those permits to be reviewed and acted on in a reasonable amount of time. The bill is about certainty and consistency. Both public and private broadband projects are trying to be built as fast as possible since unobligated federal American Rescue Plan Act of 2021 funds expire on December 31, 2024.

"AB 965 is critically important because it will help communities get connected to high-speed internet in months instead of years. Californians overwhelming support this kind of government efficiency. In a recent report conducted by the Bay Area Council Economic Institute, they found that 75% of California voters support statewide streamlining of broadband projects, while 70% support requiring all local governments to follow a uniform state mandated approval process for broadband projects.

"AB 965 also strikes the right balance between efficiency for statewide broadband deployment and local control. The bill just requires the local jurisdiction to make a decision on a batch of substantially similar broadband permits within a reasonable amount of time. The local jurisdiction still maintains full control – they can either approve or reject the permit within the shotclock timeframe. They can also extend the shotclock if more time is needed or make a health and safety finding to provide more flexibility.

"The processing of substantially similar broadband permits by local jurisdictions at the same time will be more efficient on the workload of local government staff. Permit fees will still be received by local governments, but staff can more easily process routine, high-volume broadband permits as a group instead of individually to help bridge the digital divide. Given the public's increased reliance on high-speed internet access and the importance of broadband for public safety, public health, economic growth, education, job creation, housing affordability, and emissions reductions, it is in California's best interest for public and private broadband project permits to be processed as quickly and efficiently as possible while maintaining local control."

15) **Arguments in Opposition**. The California State Association of Counties, the Rural County Representatives of California, and the League of California Cities, write, "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…

"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…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(d) by the provisions of AB 965."

The California Municipal Utilities Association writes, "Current state and federal law already establish robust requirements for the timely attachment of communications equipment to POU power poles. AB 1027 (Buchannan), enacted in 2011, requires POUs to make appropriate space and capacity on their power poles and support structures available for use by communications providers. AB 1027 requires a POU to respond to an attachment request within 45 days, but allows for 60 days if the request is to attach to more than 300 poles. AB 1027 contains further requirements for completing 'make-ready' work in a timely manner. It also caps fees that POUs can charge for access to their poles.

"The 2018 Federal Communications Commission (FCC) 2018 Small Cell Order established a presumptively reasonable 60-day window for pole attachment requests for wireless facilities. Importantly, unlike AB 965, neither AB 1027 nor the FCC's Small Cell Order includes a 'deemed granted' remedy, which would force utilities to approve applications if they are

unable to review them within the allotted timeframes. Deemed granted remedies pose safety and reliability risks to utility infrastructure.

"AB 965 also contains language that could create confusion and detract from implementation of the aforementioned comprehensive state and federal laws. The bill includes POUs in the definition of local agencies required to comply with the batch process and approve 'broadband permit applications.' This language is in direct conflict with AB 1027, which uses the terminology 'request to use.' This is an important distinction because POUs do not issue permits. They approve a communication provider's request to attach communications equipment to their facilities after assessing feasibility and safety of the proposed attachments. Additionally, the bill's definition of batch permit processing is vague, open to interpretation, and potentially in conflict with AB 1027, which already draws a distinction between pole attachment requests of 300 or more…AB 965 would add new, conflicting obligations to POUs and their facilities, potentially require POUs to prioritize communications service providers' work over others' and impose harsh deemed-granted remedies if a POU is unable to respond to voluminous requests submitted in batch formats."

16) **Double-Referral**. This bill is double-referred to the Communications and Conveyance Committee, where it passed on a 13-0 vote on April 19, 2023.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Council
Calbroadband
Calchamber
California Apartment Association
California Broadband & Video Association
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Wireless Association
Consolidated Communications
Crown Castle
Crown Castle and Its Affiliates
CTIA
Frontier Communications Corporation
Pcia - the Wireless Infrastructure Association
San Francisco Chamber of Commerce
San Mateo County Economic Development Association
Silicon Valley Leadership Group
United States Telecom Association Dba Ustelecom - the Broadband Association
Wireless Infrastructure Association

Opposition

California Municipal Utilities Association
California State Association of Counties

League of California Cities
Rural County Representatives of California

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958