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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R. _____

To amend the Communications Act of 1934 to streamline siting processes for telecommunications service facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Communications Act of 1934 to streamline siting processes for telecommunications service facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Barriers and Regu-
5 latory Obstacles Avoids Deployment of Broadband Access
6 and Needs Deregulatory Leadership Act” or the
7 “BROADBAND Leadership Act”.

1 **SEC. 2. REMOVAL OF BARRIERS TO ENTRY.**

2 Section 253 of the Communications Act of 1934 (47
3 U.S.C. 253) is amended to read as follows:

4 **“SEC. 253. REMOVAL OF BARRIERS TO ENTRY.**

5 “(a) IN GENERAL.—No State or local statute or reg-
6 ulation, or other State or local legal requirement, may pro-
7 hibit or have the effect of prohibiting the ability of any
8 entity to provide or enhance the provision of any interstate
9 or intrastate telecommunications service.

10 “(b) PLACEMENT, CONSTRUCTION, OR MODIFICA-
11 TION OF TELECOMMUNICATIONS SERVICE FACILITIES.—

12 “(1) PROHIBITION ON UNREASONABLE DIS-
13 CRIMINATION.—The regulation of the placement,
14 construction, or modification of a telecommuni-
15 cations service facility by a State or local govern-
16 ment or instrumentality thereof may not unreason-
17 ably discriminate—

18 “(A) among telecommunications service fa-
19 cilities—

20 “(i) based on the technology used to
21 provide services; or

22 “(ii) based on the services provided;
23 or

24 “(B) against telecommunications service
25 facilities, as compared to the regulation of the

1 placement, construction, or modification of
2 other facilities.

3 “(2) TIMEFRAME TO GRANT OR DENY RE-
4 QUESTS.—

5 “(A) IN GENERAL.—A State or local gov-
6 ernment or instrumentality thereof shall grant
7 or deny a complete request for authorization to
8 place, construct, or modify a telecommuni-
9 cations service facility not later than—

10 “(i) if the request is for authorization
11 to place, construct, or modify such facility
12 in or on eligible support infrastructure, 90
13 days after the date on which the complete
14 request is received by the government or
15 instrumentality; or

16 “(ii) for any other action relating to
17 such facility, 150 days after the date on
18 which the complete request is received by
19 the government or instrumentality.

20 “(B) APPLICABILITY.—The applicable
21 timeframe under subparagraph (A) shall apply
22 collectively to all proceedings, including permits
23 and authorizations, required by a State or local
24 government or instrumentality thereof for the
25 approval of the request.

1 “(C) NO TOLLING.—A timeframe under
2 subparagraph (A) may not be tolled by any
3 moratorium, whether express or de facto, im-
4 posed by a State or local government or instru-
5 mentality thereof on the submission, accept-
6 ance, or consideration of requests for authoriza-
7 tion to place, construct, or modify a tele-
8 communications service facility.

9 “(3) DEEMED GRANTED.—

10 “(A) IN GENERAL.—If a State or local
11 government or instrumentality thereof has nei-
12 ther granted nor denied a complete request
13 within the applicable timeframe under para-
14 graph (2), the request shall be deemed granted
15 on the date on which the government or instru-
16 mentality receives a written notice of the failure
17 to grant or deny from the requesting party.

18 “(B) RULE OF CONSTRUCTION.—In the
19 case of a request that is deemed granted under
20 subparagraph (A), the placement, construction,
21 or modification requested in such request shall
22 be considered to be authorized, without any fur-
23 ther action by the government or instrumen-
24 tality, beginning on the date on which such re-

1 quest is deemed granted under such subpara-
2 graph.

3 “(4) WRITTEN DECISION AND RECORD.—A de-
4 cision by a State or local government or instrumen-
5 tality thereof to deny a request to place, construct,
6 or modify a telecommunications service facility shall
7 be—

8 “(A) in writing;

9 “(B) supported by substantial evidence
10 contained in a written record; and

11 “(C) published or otherwise made publicly
12 available in a location accessible to the request-
13 ing party.

14 “(5) FEES.—

15 “(A) IN GENERAL.—Notwithstanding any
16 other provision of law, a State or local govern-
17 ment or instrumentality thereof may charge a
18 fee that meets the requirements under subpara-
19 graph (B)—

20 “(i) to consider a request for author-
21 ization to place, construct, or modify a
22 telecommunications service facility; or

23 “(ii) for use of a right-of-way or a fa-
24 cility in a right-of-way owned or managed
25 by the government or instrumentality for

1 the placement, construction, or modifica-
2 tion of a telecommunications service facil-
3 ity.

4 “(B) REQUIREMENTS.—A fee charged
5 under subparagraph (A) shall be—

6 “(i) competitively neutral, technology
7 neutral, and nondiscriminatory;

8 “(ii) publicly disclosed;

9 “(iii) calculated—

10 “(I) based on actual and direct
11 costs, such as costs for—

12 “(aa) review and processing
13 of requests; and

14 “(bb) repairs and replace-
15 ment of—

16 “(AA) components and
17 materials resulting from and
18 affected by the placement,
19 construction, or modification
20 (including the installation or
21 improvement) of tele-
22 communications service fa-
23 cilities; or

24 “(BB) equipment that
25 facilitates the placement,

1 construction, or modification
2 (including the installation or
3 improvement) of such facili-
4 ties; and

5 “(II) using, for purposes of sub-
6 clause (I), only costs that are objec-
7 tively reasonable; and

8 “(iv) described to a requesting party
9 in a manner that distinguishes between—
10 “(I) nonrecurring fees and recur-
11 ring fees; and

12 “(II) the use of facilities on
13 which telecommunications service fa-
14 cilities are already located and those
15 on which there are no telecommuni-
16 cations service facilities as of the date
17 on which the complete request is re-
18 ceived by the government or instru-
19 mentality.

20 “(c) JUDICIAL REVIEW.—

21 “(1) IN GENERAL.—A person adversely affected
22 by a State or local statute, regulation, or other legal
23 requirement, or by a final action or failure to act by
24 a State or local government or instrumentality there-
25 of, that is inconsistent with this section may com-

1 mence an action in any court of competent jurisdic-
2 tion.

3 “(2) TIMING.—

4 “(A) EXPEDITED BASIS.—A court shall
5 hear and decide an action commenced under
6 paragraph (1) on an expedited basis.

7 “(B) FINAL ACTION OR FAILURE TO
8 ACT.—An action may only be commenced under
9 paragraph (1) on the basis of a final action or
10 failure to act by a State or local government or
11 instrumentality thereof, if commenced not later
12 than 30 days after such action or failure to act.

13 “(d) PRESERVATION OF STATE REGULATORY AU-
14 THORITY.—Nothing in this section shall affect the ability
15 of a State to impose, on a competitively neutral and non-
16 discriminatory basis and consistent with section 254, re-
17 quirements necessary to preserve and advance universal
18 service, protect the public safety and welfare, ensure the
19 continued quality of telecommunications services, and
20 safeguard the rights of consumers.

21 “(e) PRESERVATION OF STATE AND LOCAL GOVERN-
22 MENT AUTHORITY.—Nothing in this section affects the
23 authority of a State or local government or instrumen-
24 tality thereof to manage, on a competitively neutral and
25 nondiscriminatory basis, the public rights-of-way or to re-

1 quire, on a competitively neutral and nondiscriminatory
2 basis, fair and reasonable compensation from tele-
3 communications providers for use of public rights-of-way,
4 if the compensation required meets the requirements of
5 subsection (b)(5).

6 “(f) PREEMPTION.—

7 “(1) IN GENERAL.—If, after notice and an op-
8 portunity for public comment, the Commission deter-
9 mines that a State or local government or instru-
10 mentality thereof has permitted or imposed a stat-
11 ute, regulation, or legal requirement that violates or
12 is inconsistent with this section, the Commission
13 shall preempt the enforcement of such statute, regu-
14 lation, or legal requirement to the extent necessary
15 to correct such violation or inconsistency.

16 “(2) TIMING.—Not later than 120 days after
17 receiving a petition for preemption of the enforce-
18 ment of a statute, regulation, or legal requirement
19 as described in paragraph (1), the Commission shall
20 grant or deny the petition.

21 “(g) COMMERCIAL MOBILE SERVICE PROVIDERS.—
22 Nothing in this section shall affect the application of sec-
23 tion 332(c)(3) to commercial mobile service providers.

24 “(h) RURAL MARKETS.—It shall not be a violation
25 of this section for a State to require a telecommunications

1 carrier that seeks to provide telephone exchange service
2 or exchange access in a service area served by a rural tele-
3 phone company to meet the requirements in section
4 214(e)(1) for designation as an eligible telecommuni-
5 cations carrier for that area before being permitted to pro-
6 vide such service. This subsection shall not apply—

7 “(1) to a service area served by a rural tele-
8 phone company that has obtained an exemption, sus-
9 pension, or modification of section 251(c)(4) that ef-
10 fectively prevents a competitor from meeting the re-
11 quirements of section 214(e)(1); and

12 “(2) to a provider of commercial mobile serv-
13 ices.

14 “(i) WHEN REQUEST CONSIDERED COMPLETE; RE-
15 CEIVED.—

16 “(1) WHEN REQUEST CONSIDERED COM-
17 plete.—

18 “(A) IN GENERAL.—For the purposes of
19 this section, a request to a State or local gov-
20 ernment or instrumentality thereof shall be con-
21 sidered complete if the requesting party—

22 “(i) has taken the first procedural
23 step within the control of the requesting
24 party—

1 “(I) to submit such request in
2 accordance with the procedures estab-
3 lished by the government or instru-
4 mentality for the review and approval
5 of such request; or

6 “(II) in the case of a government
7 or instrumentality that has not estab-
8 lished specific procedures for the re-
9 view and approval of such request, to
10 submit to the government or instru-
11 mentality the type of filing that is
12 typically required to initiate a stand-
13 ard zoning or siting review for a simi-
14 lar facility or structure; and

15 “(ii) has not received a written notice
16 from the government or instrumentality
17 within 10 business days after the date on
18 which the request is received by the gov-
19 ernment or instrumentality—

20 “(I) stating that all the informa-
21 tion (including any form or other doc-
22 ument) required by the government or
23 instrumentality to be submitted for
24 the request to be considered complete
25 has not been submitted; and

1 “(II) identifying the information
2 required to be submitted that was not
3 submitted.

4 “(B) DEFINITION.—In this paragraph, the
5 term ‘the date on which the request is received
6 by the government or instrumentality’ means—

7 “(i) in the case of a request submitted
8 electronically, the date on which the re-
9 quest is transmitted;

10 “(ii) in the case of a request sub-
11 mitted in person, the date on which the re-
12 quest is delivered to the individual or at
13 the location specified by the government or
14 instrumentality for in-person submission;
15 and

16 “(iii) in the case of a request sub-
17 mitted in any other manner, the date de-
18 termined under regulations promulgated by
19 the Commission for the manner in which
20 the request is submitted.

21 “(2) WHEN COMPLETE REQUEST CONSIDERED
22 RECEIVED.—For the purposes of this section, a com-
23 plete request shall be considered received—

24 “(A) except as provided in subparagraph
25 (B), on the date on which the requesting party

1 submits to the government or instrumentality
2 all information (including any form or other
3 document) required by the government or in-
4 strumentality to be submitted for the request to
5 be considered complete; or

6 “(B) in the case of a request with respect
7 to which all such information is not submitted
8 and that is considered complete under para-
9 graph (1)(A) because the requesting party has
10 not received a written notice from the govern-
11 ment or instrumentality within the period de-
12 scribed in such paragraph, on the day after the
13 last day of such period.

14 “(j) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion may be construed to affect section 224.

16 “(k) DEFINITIONS.—In this section:

17 “(1) ELIGIBLE SUPPORT INFRASTRUCTURE.—
18 The term ‘eligible support infrastructure’ means in-
19 frastructure that supports or houses a telecommuni-
20 cations service facility (or that is designed for or ca-
21 pable of supporting or housing such a facility) at the
22 time when a complete request to a State or local
23 government or instrumentality thereof for authoriza-
24 tion to place, construct, or modify a telecommuni-

1 cations service facility in or on the infrastructure is
2 received by the government or instrumentality.

3 “(2) TELECOMMUNICATIONS SERVICE FACIL-
4 ITY.—The term ‘telecommunications service facil-
5 ity’—

6 “(A) means a facility that is designed or
7 used to provide or facilitate the provision of any
8 interstate or intrastate telecommunications
9 service; and

10 “(B) includes a facility described in sub-
11 paragraph (A) that is used to provide other
12 services.”.