

# Repealing Colorado HB 17-1193

## Reclaiming Local Control over Cellular Wireless Facilities

**HB 17-1193 Undermines Local Control:** This bill cedes local control of small cell installations to the telecom companies, with negative consequences for our communities. Since being passed in 2017, HB 17-1193 has preempted local codes in order to fast-track the permitting process. It has given the telecoms the right to install small cells on our public rights-of-way with limited input from the public or local government, bypassing community objections. It has capped the fees paid to our communities, so that local taxpayers are essentially subsidizing the telecom industry.

### Background:

- HB 17-1193 was patterned after model legislation from the American Legislative Exchange Council (ALEC) with the support of the telecoms.
- It was represented as “enhancing wired and wireless telecom services” and passed quietly without full understanding by legislators of its actual purpose or consequences.
- Other states have pushed back against preemptive small cell laws. California Governor Brown vetoed Senate Bill 649 in 2017, and as of July 2019, 22 states had no small cell legislation.
- The Federal Communications Commission (FCC) Small Cell Order #18-133 (2018) also overrides local control over small cell installations, and aligns with HB 17-1193.

### Provisions of HB 17-1193:

- States “THE SITING, MOUNTING, PLACEMENT, CONSTRUCTION, AND OPERATION OF A SMALL CELL FACILITY OR A SMALL CELL NETWORK IS A PERMITTED USE BY RIGHT IN ANY ZONE” Pg. 4, Section 4 (3).
- Gives telecom providers the right to locate wireless facilities on public streets, light poles, traffic signals, and in public rights-of-way including in front of homes.
- Limits public hearings and full administrative review or approval by local government planning commissions, city councils and county governments.
- Limits taxes, fees, and charges local governments can impose to only those “reasonably related to the costs directly incurred” for the granting and administration of small cell permits.
- Disallows communities from charging market rates for leasing public rights-of-way.
- Establishes “shot clocks” for limiting the time to process applications: 150 days for new facilities and 90 days for modifications on existing facilities.

**Concerns about Small Cell Installations, Including 5G:** The telecom industry heavily promotes 5G as a means to provide faster wireless internet service, autonomous vehicles, Internet-of-Things (IoT), virtual reality, and Artificial Intelligence (AI). However, there are serious concerns about the deployment of 5G technology and small cells, as follows:

#### 1) Privacy and Security

- The primary motivating force behind the push for 5G is advertising and data collection. Pioneered by Google, Facebook, Amazon, Microsoft and others, the economy of “surveillance capitalism” now exists to monetize our personal information and predict and shape our behavior.
- Wireless networks, smartphones, and other wireless devices are proprietary and complex, and can gather surveillance data to a far greater extent than can be done on wired networks, which are open, simple and thus more secure.

#### 2) 5G and Antenna Densification

- 5G technology is still being developed and defined. Some 5G facilities use millimeter waves with a limited range, requiring antennas every few hundred feet. Since 5G only carries data, it must be used in conjunction with 4G, which provides voice.
- Under the guise of needing to place their antennas close together for 5G, telecoms are installing networks of 4G small cell antennas in many cities and neighborhoods. These facilities can later be upgraded to include 5G.
- In addition to large cell towers in industrial and commercial zones, telecoms are placing small cells antennas closer to people’s homes and businesses, greatly increasing the public’s exposure to RF.
- Small cell densification will have a significant impact on the aesthetics of our communities.
- Property values of homes decrease by an average of 20% when cell towers are installed nearby.

### **3) Health and Safety**

- A mounting body of evidence shows human health risks from non-ionizing radiation. Significantly, a 2018 study by the National Toxicology Program linked cancer in male rats to radio frequency radiation (RF) from 2G and 3G networks.
- The consensus view of scientists who have studied the issue is that RF causes cancer and has other harmful biological effects including genetic, reproductive, and brain damage.
- “High band” (millimeter) waves and beam-forming technology associated with 5G have never been proven safe, and can potentially have unknown negative health impacts. Scientists and doctors world-wide are calling for a moratorium on 5G until potential hazards have been fully investigated by independent researchers.
- There are well-documented environmental effects from RF, including damage to plants, animals, insects and pollinators.
- FCC guidelines for RF exposure have not been updated since 1996, and only address thermal effects of RF.
- NASA and NOAA are concerned that 5G frequencies may interfere with meteorological water vapor data collection on an adjacent frequency band. This could risk public safety by impeding the ability to predict and monitor tornadoes, storms, floods, and fires.
- Military flight safety, navigation, and tactical capabilities could also be affected by adjacent frequency interference.

### **Social Equity Access to the Internet:**

- Internet service has become so essential that all municipalities should establish fiber optic networks operated as public utilities, comparable to water and sewer services. The best way to provide affordable, fast, safe internet is through a fiber network such as NextLight™, run by a public utility in Longmont, CO.
- The closing of schools during the pandemic has exposed considerable gaps in accessibility to the internet for low income students, English language learners, people of color and people living outside of urban areas.
- Lack of access to the internet is a social equity issue and must be addressed by the state legislature.
- Reversing HB 17-1193 would empower local communities to improve and ensure internet access to all.

### **Legal Challenges against the FCC:**

- U.S. Congressional bills SB 2012, sponsored by U.S. Senator Blumenthal, and HR 530, sponsored by Congresswoman Eshoo, seek to overturn the 2018 FCC Order.
- On August 9, 2019 the D.C. Circuit Court of Appeals ruled against the FCC in favor of the National Resources Defense Council (NRDC) in Case 18-1129, regarding requiring environmental impact studies for small cells in compliance with the National Environmental Policy Act (NEPA).
- The Environmental Health Trust, Children’s Health Defense and others have filed jointly against the FCC over its outdated guidelines for RF exposure.
- In 2019 the Irregularators challenged the FCC in the D.C. Circuit Court of Appeals over the FCC’s cost accounting rules ([www.irregularators.org](http://www.irregularators.org)). On March 1, 2020 the Court ruled that cities and states can now seek to recoup hundreds of millions of dollars from the companies that control America’s critical public wired state-based telecommunications utilities: AT&T, Verizon and CenturyLink and the other phone, cable, ISPs, and broadband providers. These companies improperly diverted funds away from the development of wired networks to subsidize their wireless networks.

### **Conclusion:**

HB 17-1193 must be repealed to eliminate the State’s preemption of local land use codes in the siting of wireless facilities on public rights-of-way. If HB 17-1193 is repealed and the 2018 FCC Order is invalidated, Colorado will be in a position to restructure statewide telecommunications regulatory policy to return control to local governments. Small cell wireless antenna densification, including 5G, creates serious problems for our communities. The focus of Colorado law should be to promote the establishment of fast, safe, secure, reliable, energy-saving, locally owned fiber networks.

***About us:** We are Coloradans for Safe Technology, a citizen group advocating for safe state-of-the-art technology including fiber optic networks. For more information, go to <https://CO4safetech.com>.*