July 13, 2015

Senate Governance and Finance Committee
State Capitol, Room 408
Sacramento, California 95814

RE: AB 57 (Quirk) "Telecommunications: wireless telecommunications"
As amended on July 8, 2015 – OPPOSE

Dear Committee Member:

The League of California Cities, the California State Association of Counties, the American Planning Association California Chapter, SCAN NATOA and the City of Thousand Oaks strongly oppose Assembly Bill 57 authored by Assembly Member Bill Quirk. This bill purports to solve an "unreasonable delay" problem that simply does not exist in California. Moreover, the bill employs unclear and Constitutionally-suspect provisions that facially conflict with existing law. As such, AB 57 is likely to cause more delay and confusion than it could ever prevent.

AB 57 also extends an increasingly common legislative preference for development projects that could create multiple liabilities for local governments. The legislature recently approved AB 2188 (Muratsuchi) and AB 2565 (Muratsuchi) which prioritized residential solar panels and electric vehicle charging stations over other development projects. How should local governments decide which project to add to a crowded public meeting agenda when all three applicants with special privileges vie for the same spot?

Although we cannot support this bill, we can work to amend the most potentially harmful provisions into a workable framework. Attachment 1 to this letter summarizes the critical issues and offers recommended amendments to AB 57. Attachment 2 contains a redlined revision to the proposed text which incorporates the recommended amendments. These recommended changes would align AB 57 with the current law, include procedural safeguards and reform overbroad language to avoid unintended and unforeseeable consequences.

We strongly urge the Senate Governance and Finance Committee to vote against AB 57. To the extent the committee intends to approve the bill, it should approve it with the recommended amendments described below.

Respectfully submitted,

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ATTACHMENT 1

Summarized Issues and Recommended Amendments

DEEMED-APPROVAL SCOPE

- **Issue: AB 57 does not delineate what "application" the law would deem approved.** Does the law deem approved the initially received application? Would the deemed approval authorize developments that would otherwise require a variance? Does the deemed approval include all permits necessary to construct the proposed facility, such as building and fire department approvals?
- **Recommendation: Explicitly limit the deemed-approval to only the development permit.** This approach mirrors existing California law, ensures that the deemed-approval does not exceed the applicant's actual proposal and prevents unnecessary time pressure on ministerial reviews for building and safety.

ENVIRONMENTAL REVIEW

- **Issue: AB 57 contains no provision to accommodate additional time reasonably necessary to conduct CEQA review.** Despite concerns raised in the Senate Energy, Utilities and Communications Committee, both subsequent amendments continued to omit any provisions to toll the time for review when required for compliance with CEQA.
- **Recommendation 1: Explicitly limit the deemed-approval to only applications that are categorically exempted from review under CEQA regulations.** Most wireless facilities qualify for a categorical exemption, so this revision would impact only the rare proposal to build in an environmentally sensitive, historic or culturally protected area. This revision is consistent with deemed-approval provision in the California Permit Streamlining Act, and critically important to preserve precious resources in the few cases where CEQA applies.
- **Alternative Recommendation 2: Explicitly provide additional time required to complete CEQA review as a rebuttal to the presumption of unreasonable delay.** Although not as efficient as Recommendation 1, this approach would at least offer a safe harbor when a proposed wireless deployment triggers a higher-level CEQA review that requires more than the presumptively reasonable time for categorically exempted sites.

CONSTITUTIONALLY REQUIRED DUE PROCESS

- **Issue: Subdivision (a)(2) would authorize a deemed-approval based on simple notice in circumstances where the California Constitution requires a reasonable opportunity to be heard at a publicly-noticed meeting.** AB 57 requires only the "public notice require[d] for the application." Not all applications require approval at a publicly-noticed meeting, but some wireless deployments (including permit renewals for major facilities) trigger constitutional due process procedures that may require more time than AB 57 allows.
- **Recommendation: Delete subdivision (a)(2) and replace with "The public notice required by law has occurred."** This exact language appears in the current deemed-

approved provision under the California Permit Streamlining Act. *See* Cal. Gov't Code § 65956(b). Courts recognize that the word "law" encompasses both the notice required in the application and, when applicable, the notice required under the California Constitution. This change also obviates the need for localities to inefficiently require a publicly-noticed meeting for any wireless permit to ward off potential due process violations.

MATTERS OF STATEWIDE CONCERN

- **Issue: Subdivision (c) would declare each *individual* wireless site a "matter of statewide concern" and not a "municipal affair."** The sponsor intends this broad language to extend the deemed-approval to all cities (charter or general law) and counties. However, the sponsor misunderstands the difference between a "municipal affair" and local police powers. Moreover, wireless carriers could argue that the legislature intended this language to preempt local land-use authority over wireless facility siting. AB 57 could achieve the sponsor's intent with more precise and less controversial language.
- **Recommendation: Delete subdivision (c) and replace it with language that explicitly extends AB 57 to all charter cities, general law cities, counties and city and counties.** Local land-use authority flows from delegated police powers, and all the legislature requires for preemption is an express statement of intent.

JUDICIAL REVIEW

- **Issue: AB 57 would require local governments to expend scarce public resources to challenge a deemed-approved permit in court.** AB 57 does not explain how an applicant obtains a deemed-approved permit, and this provision seemingly means that an applicant could commence construction as soon as the time for review expires without any building and safety approval. Whereas existing law requires localities to issue permits and allows aggrieved applicants to sue, AB 57 would allow applicants to issue their own permits and require aggrieved localities to sue. In other words, AB 57 turns the development process on its head and shifts enforcement costs from multi-billion-dollar corporations to local governments.
- **Recommendation: Under state law, an aggrieved applicant would need to seek judicial relief under California Code of Civil Procedure § 1085.** State law would still require local governments to issue deemed-approved permits. In disputed cases, where either complex circumstances or tolling issues arise, a court would determine whether to order the local government to issue withheld permits. This approach also ensures that applicants do not commence construction without proper building and safety review and approval.

REFERENCE TO FUTURE FCC DECISIONS

- **Issue: Subdivision (d)(1) defines "applicable FCC decisions" to include federal regulations that the FCC might adopt in the future.** The legislature should not adopt a law with unknown and uncertain requirements.
- **Recommendation: Delete references to subsequent FCC decisions.** Not all FCC decisions come about through the public notice and comment procedures, and not all

federal administrative "decisions" carry the force of law. AB 57 would unfairly require local governments to not only know that such regulations or modifications exist, but to find and correctly interpret them.

SUNSET PROVISION

- **Issue: AB 57 should not indefinitely remain in force given the confusion and controversies it will likely engender.**
- **Recommendation: AB 57 should automatically sunset three (3) years after enrollment.** A sunset provision would permit the legislature to reauthorize the law or allow it to expire if it does not serve its intended purposes.

ATTACHMENT 2

Proposed Text Amendments to AB 57 (Quirk) as amended July 8, 2015

SECTION 1.
Section 65964.1 is added to the Government Code, to read:

65964.1.
(a) A collocation or siting application for a wireless telecommunications facility, as defined in Section 65850.6 shall be deemed approved if all of the following occur:

(1) The city or county fails to approve or disapprove the zoning permit application (or building permit application when no zoning permit is required) within a reasonable period of time in accordance with the time periods and procedures established by applicable FCC decisions. The reasonable period time may be tolled to accommodate timely requests for information required to complete the application or may be extended by mutual agreement between the applicant and the local government, consistent with applicable FCC decisions.

(2) ~~The applicant has provided all public notices regarding the application that the applicant is required to provide under applicable laws consistent with the public notice requirements for the application.~~ The public notice required by law has occurred.

(3) The city or county has determined that the project is exempt from the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(~~3~~4) (A) The applicant has provided notice to the city or county that the reasonable time period has lapsed and that the application is deemed approved pursuant to this section.

(B) Within 30 days of the notice provided pursuant to subparagraph (A), the ~~city or county may seek~~applicant has sought judicial review of the operation of this section ~~on~~to the application should the city or county refuse to issue the permit.

(C) Upon judicial review, the city or county is unable to rebut the presumption that it failed to act within a reasonable period of time as established by the applicable FCC decisions.

(D) A court of competent jurisdiction has issue a writ directing the city or county to issue the permit.

(b) This section does not apply to eligible facilities requests.

(c) ~~The Legislature finds and declares that a wireless telecommunications facility has a significant economic impact in California and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution, but is a matter of statewide concern.~~ The requirements of this section shall apply to every city, whether general law or chartered, and every county, and every city and county.

(d) As used in this section, the following terms have the following meaning:

(1) "Applicable FCC decisions" means In re Petition for Declaratory Ruling, 24 FCC Rcd. 13994 (2009) and In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, Report and Order, 29 FCC Rcd. 12865 (2014)~~, as they may be modified or superseded by subsequent decisions of the Federal Communications Commission~~.

(2) "Eligible facilities request" has the same meaning as in Section 1455 of Title 47 of the United States Code and the applicable FCC decisions.

(e) This section shall remain in effect only until January 1, 2019, unless earlier repealed.