

From: Paul [REDACTED]
To: Kevin McDonnell; Janice Cader-Thompson; Barnacle, Brian; Mike Healy; Karen Nau; Pocekay, Dennis; John Shribbs; -- City Clerk
Subject: Sept 11, 2023 Public Comment re: Letter Opposing Federal Bill HR-3557 and other 2023 Federal Wireless Telecommunications Bills
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September 11, 2023

To: Petaluma Mayor

Kevin McDonnell <kmcdonnell@cityofpetaluma.org>

To: Petaluma City Council Members

Janice Cader Thompson <jcaderthompson@cityofpetaluma.org>, Vice Mayor

Brian Barnacle <bbarnacle@cityofpetaluma.org>

Mike Healy <mhealy@cityofpetaluma.org>

Karen Nau <knau@cityofpetaluma.org>

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cc: cityclerk@cityofpetaluma.org

Re: Sept 11, 2023 Public Comment re: Letter Opposing Federal Bill HR-3557 and other 2023 Federal Wireless Telecommunications Bills

Dear Mayor McDonnell and City Council Members,

I am requesting that the City Council send a letter to our federal Senators and Housemembers to oppose HR-3557: ~~American Broadband Deployment~~ [Digital Prison] Act of 2023, its companion bill HR-4141, the Broadband for Americans through Responsible Streamlining Act (BARS Act) and some additional Federal Wireless Telecommunications bills, listed below.

I am a Petaluma resident, the founder of Wire America and a public interest lobbyist. I have lobbied at the Federal level from 2017 to 2019, opposing Senate Bill 19 and other bills, which did not pass. Recall, that I first made a public comment about HR-3557 at the July 17, 2023 Petaluma City Council meeting --> <https://youtu.be/KwrUWZkiZ7o?t=6262>

At the following links, one can read the bills and learn about the national groups opposing HR-3557 and HR-4141 (National League of Cities, National Association of Counties, and US Conference of Mayors, NATOA and others). We are requesting opposition from the City of Petaluma, as well.

- <https://wireamerica.org/hr3557/>
- <https://wireamerica.org/hr3557/opposition/>
- <https://wireamerica.org/hr4141/>

HR-3557 is a wholesale rewriting of the 1996 Telecommunications Act by wireless telecommunications industry lawyers and lobbyists. HR-3557 eviscerates local zoning laws regarding the placement,

construction, modification and operation of Wireless Telecommunications Facilities (WTFs). It is the worst proposed telecommunications bill I have ever read.

American Broadband Deployment **[Digital Prison] Act of 2023** is a more accurate branding of HR-3557 because it allows the building of a 24/7 wireless surveillance grid to lock down the population and force a CCP-style social credit score system on Americans. It doesn't matter that totalitarianism hides behind the phrase Environment, Social Governance, or ESG. We the people of America reject this agenda and need our elected representative to work hard to defeat it.

HR-3557 eliminates the cooperative federalism/dual regulatory authority set up by the 1996 Telecommunications Act (1996-TCA). Under the 1996-TCA, counties and towns are free to set up local laws for all aspects of the placement, construction, modification and operation of infrastructure for wireless phone calls (Title II regulated telecommunications service) and for broadband internet (Title I, unregulated information service).

At present, local authority is subject to specific and narrow preemption only for "personal wireless service" – i.e. only when radio signal strength is not sufficient to make outdoor wireless phone calls along major roadways, most of the time (between -115 and -85 dBm). Importantly, **there is no preemption of local laws for wireless broadband service or for in-building coverage, capacity or improvement of wireless telecommunications service.**

HR-3557 would change all of that. HR-3557 adds new expansive definitions of “Antenna”, “Communications Service”, “Personal Wireless Service”, and “Effective Prohibition” of Personal Wireless Service. See the text **highlighted in red** at this link: <https://wireamerica.org/hr3557/#compare>.

The following HR-3557 language streamrolls local zoning authority:

"request is for authorization to place, construct, or modify such [Wireless Telecommunications] facility **using an existing structure, including with respect to an area that has not previously been zoned for personal wireless service facilities**".

Also, HR-3557's **Deemed Granted ratchets** for individual and batched WTF applications and the replacement of the FCC's "presumptive" shot clocks with **shot clocks written into federal law** would force cities to approve WTF applications without sufficient review, which violates the legislative intent of the 1996-TCA. The U.S. Supreme Court ruling in 2005 in Palos Verdes vs. Abrams upheld "cooperative federalism" and recognized the 1996-TCA [Conference report](#) as a definitive source of legislative intent of the 1996-TCA:

"It is not the intent of this provision to give preferential treatment to the personal wireless service industry in the processing of requests, or to subject their requests to any but the generally applicable time frames for zoning decision."

Finally, note HR-3557's **sneaky addition of "operation" to (vi) Environmental Effects of Radio Frequency Emissions**: — a move which disregards the U.S. Courts of Appeals. (DC Cir.) ruling in [Case No. 20-1025](#): Environmental Health Trust v FCC

"(vi) Environmental Effects of Radio Frequency Emissions:—No State or local government or instrumentality thereof may regulate the **operation**, placement, construction, or modification of personal wireless service facilities on the basis of the environmental effects

of radio frequency emissions to the extent that such facilities or structures comply with the Commission's regulations concerning such emissions."

While we have been successfully opposing harmful telecom legislation in the California Legislature, Big Telecom money has "encouraged" members of the U.S. Congress to introduce bills that would massively expand federal authority and effectively eliminate local authority over Wireless Telecommunications Facilities (WTFs).

HR-3557 In a Nutshell

[HR 3557](#) would massively expand federal authority in Washington DC while removing states' rights and local control.

Near-total elimination of local zoning authority over wireless telecommunications and information service infrastructure.

Local zoning preemption:

- Forces local governments to rubber-stamp virtually all wireless or telecommunications facility applications and, if they don't rubber-stamp, the facilities would be built without a permit.
- Forces local governments to allow antennas on **any structure** that **could** support an antenna in a massive expansion of "6409 preemption".
- Gives FCC authority to invalidate local government legislation and regulation.

Cable preemption:

- Preempts local authority in granting permission to build cable networks.
- Once an application is granted, it remains in perpetuity and almost never expires.

Environmental and historic reviews:

- Exempts a wide range of communications infrastructure from environmental and historic preservation reviews and limits Indian tribal review.

Antennas anywhere". Currently, what is known as Section 6409 (47 USC 1455) requires localities to allow expansion of an existing cell tower. This bill would broaden the scope of 6409 to include structures that "**could** support transmission equipment" (page 46 line 21), including new equipment. In other words, localities would have almost no control for almost any antenna attachment to **any structure** – for example, utility poles, light poles, buildings, overhead wires, apartments, houses, schools, buildings, easement areas in private yards and more.

FCC annulment authority: FCC would be obligated to cancel within 120 days any local law or regulation that it deems inconsistent with HR 3557 (page 33 lines 14-22).

Effective prohibition. Under the 1996 Telecom Act, local governments may not prohibit or "have the effect of prohibiting" certain services. In a number of federal appeals courts, this federal preemption protects the ability to make a voice call over a cell phone network. HR-3557 would expand the scope of effective prohibition to include any wireless service, including data (not just voice) (page 21 lines 1-16).

In addition, some appeals courts have ruled that effective prohibition protects only the provision of a baseline level of service, not the improvement or enhancement of existing service. HR-3557 would

expand preemption to the “provision, improvement, or enhancement” (page 3 lines 17-20). Finally, in the rare case where a local government attempts to deny a permit under this bill, it must include a detailed explanation to be publicly released in writing **on the same day of the decision**, an extremely difficult hurdle for local governments after holding a public meeting (page 29 line 15).

Shot clocks. The FCC previously issued time frames for local governments to process wireless facility applications, which range from 60 up to 150 day, depending on the type of application. The Ninth Circuit upheld these shot clocks, but with the proviso that they are presumptive guidelines only, and local governments can take longer if reasonably needed. This bill converts the shot clocks from guidelines into deadlines. It also starts the clock when an applicant “takes the first procedural step” for an application (page 18, line 15), essentially putting the burden on the local government to find all deficiencies in an application within the first 10 days for a small cell or 30 days for a macro tower; thereafter, any deficiencies will be ignored (page 12 line 13).

Deemed granted. If a local government does not comply with the shot clock, an application would be automatically, or “deemed,” granted (page 13 lines 12-22). When combined with the shot clocks, this creates a potential to submit large batches of incomplete applications, which could overwhelm a local government’s ability to process them and result in the applications being “deemed granted.”

No moratoria. HR 3557 would prohibit local governments from issuing moratoria or pausing applications for wireless, telecommunications, or cable facilities or cable franchises (pages 7, 25, 49, 55).

Fees. Existing FCC regulations limit fees to a local government’s costs (i.e., they cannot charge rent for wireless facility permits, even on public land). HR 3557 would further limit fees to “actual and direct costs” incurred prior to deploying a facility. This appears to eliminate local governments’ ability to recover costs for ongoing monitoring or inspections of wireless facilities to ensure ongoing compliance with applicable laws (page 15 line 11).

Cable broadband. Localities would generally be forced to accept any applicant that wants to build a cable network and would be prohibited in perpetuity from letting any contract expire or terminate. Contractual terms previously agreed upon between a locality and a cable company could generally be canceled or modified unilaterally by the cable operator, including the scope of services provided by the cable operator. Cable operators may sell or transfer their franchise to operate a network to other parties, without the locality having a say in the matter. Local governments would be unable to ensure that the transferee has the financial strength and ability to fulfill its contract.

Environmental, historic, and tribal reviews. The FCC would be granted broad authority to exempt a range of communications deployments from review under the National Environmental Policy Act (NEPA) and the National Historic preservation Act (NHPA) (page 76 lines 14-22) including almost all antennas attached to existing structures. Native American tribes that do not act on telecom facilities requests within 45 days will be presumed to have approved the request (page 80 line 3).

Broadband grants. Prohibits Department of Commerce from disbursing a broadband grant to any local government that does not implement permitting fees in compliance with the limits set out in this bill (page 96 line 11).

Seven Other Telecom Bills Pending

The following seven bills had **unanimous bipartisan support** in the House Energy & Commerce

Committee and were referred to the full House.

Generally speaking, they would have the following effects:

- Encourage federal broadband grants to be used on wireless networks.
- Authorize additional spectrum to be auctioned for wireless networks.
- Encourage wireless network deployment on federal land and property, including national forests.

We encourage the City to also oppose each of these bills.

- [HR-4141](#): removes NEPA and NHPA requirement for Wireless Telecommunications Facilities (WTFs) on Federal lands
- [HR 3565](#): authorizes the FCC to resume wireless spectrum auctions; paves the way to make additional spectrum available in 2025 (around 4.5 GHz and 8 GHz); creates a slower federal definition of broadband of 100 Mb downstream/20 Mb upstream (see section 901). The bill would allow broadband funding to be used for **slower** networks, overriding the [existing regulation](#) that defines broadband as a faster 100 Mb downstream and 100 Mb upstream. Fiber-optic networks easily meet the faster standard. The slower standard would make it easier for federal broadband grants to be used for wireless networks (instead of fiber). E&C Committee approved 50-0.
- [HR 3309](#): Establishes uniform fees for wireless applications on government land and buildings. E&C Committee approved 50-0.
- [HR 3293](#): Establish a “strikeforce” to ensure that communications facilities authorizations are expedited on federal land and in national forests, for wireline and wireless (both licensed and unlicensed). E&C Committee approved 51-0.
- [HR 3299](#): Requires the Department of Interior and the Department of Agriculture to establish online portals to accept, process, and dispose of certain forms to deploy facilities on federal property. E&C Committee approved 51-0.
- [HR 3283](#): requires Department of Commerce to report to Congress on the barriers to processing online forms for deployment on federal property. E&C Committee approved 51-0.
- [HR 3343](#): requires Department of Commerce to create a plan for accepting, processing, and disposing of certain forms. E&C Committee approved 51-0.

Thank you for your help on this important matter.

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Regards,

Paul McGavin

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