REFERENCE TITLE: wireless facilities; collocation; rights-of-way

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

HB 2365

Introduced by
Representative Weninger: Senator Smith

AN ACT

AMENDING TITLE 11, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 13; RELATING TO WIRELESS SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:
Section 1. Title 11, Arizona Revised Statutes, is amended by adding chapter 13, to read:

CHAPTER 13
WIRELESS FACILITIES
ARTICLE 1. GENERAL PROVISIONS

11-1801. Definitions
IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:
1. "ANTENNA" MEANS COMMUNICATIONS EQUIPMENT THAT TRANSMITS OR RECEIVES ELECTROMAGNETIC RADIO FREQUENCY SIGNALS AND THAT IS USED IN PROVIDING WIRELESS SERVICES.
2. "APPLICABLE CODES" MEANS UNIFORM BUILDING, FIRE, ELECTRICAL, PLUMBING OR MECHANICAL CODES THAT ARE ADOPTED BY A RECOGNIZED NATIONAL CODE ORGANIZATION OR LOCAL AMENDMENTS TO THOSE CODES THAT ARE ENACTED SOLELY TO ADDRESS IMMINENT THREATS OF DESTRUCTION OF PROPERTY OR INJURY TO PERSONS AND TO AN EXTENT THAT IS NOT INCONSISTENT WITH THIS ARTICLE.
3. "APPLICANT" MEANS ANY PERSON THAT SUBMITS AN APPLICATION AND IS A WIRELESS PROVIDER.
4. "APPLICATION" MEANS A REQUEST THAT IS SUBMITTED BY AN APPLICANT TO AN AUTHORITY FOR A PERMIT TO A COLLOCATE SMALL WIRELESS FACILITIES OR TO APPROVE THE INSTALLATION OR MODIFICATION OF A UTILITY POLE OR WIRELESS SUPPORT STRUCTURE.
5. "AUTHORITY" MEANS ANY CITY, TOWN, COUNTY, SPECIAL DISTRICT OR POLITICAL SUBDIVISION OF THIS STATE OR ANY CITY, TOWN OR COUNTY THAT IS AUTHORIZED TO MAKE LEGISLATIVE, QUASI-JUDICIAL OR ADMINISTRATIVE DECISIONS CONCERNING AN APPLICATION. AUTHORITY DOES NOT INCLUDE ANY STATE COURT THAT HAS JURISDICTION OVER AN AUTHORITY.
6. "AUTHORITY POLE" MEANS:
(a) A UTILITY POLE, OTHER THAN A UTILITY POLE FOR DESIGNATED SERVICES, THAT IS OWNED OR OPERATED BY AN AUTHORITY AND THAT IS IN A RIGHT-OF-WAY, INCLUDING A UTILITY POLE THAT PROVIDES LIGHTING OR TRAFFIC CONTROL FUNCTIONS SUCH AS LIGHT POLES, TRAFFIC SIGNALS AND STRUCTURES FOR SIGNAGE.
(b) A POLE OR SIMILAR STRUCTURE THAT IS OWNED OR OPERATED BY AN AUTHORITY, THAT IS IN A RIGHT-OF-WAY AND THAT SUPPORTS ONLY WIRELESS FACILITIES.
7. "BASE STATION" MEANS WIRELESS FACILITIES OR A WIRELESS SUPPORT STRUCTURE OR UTILITY POLE THAT CURRENTLY SUPPORTS WIRELESS FACILITIES. BASE STATION DOES NOT INCLUDE A TOWER AS DEFINED IN 47 CODE OF FEDERAL REGULATIONS SECTION 1.40001(b)(9) OR ASSOCIATED WIRELESS FACILITIES.
8. "COLLOCATE" OR "COLLOCATION" MEANS TO INSTALL, MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE WIRELESS FACILITIES ON OR ADJACENT TO A WIRELESS SUPPORT STRUCTURE OR UTILITY POLE.
9. "COMMUNICATIONS SERVICE PROVIDER" MEANS A CABLE OPERATOR AS DEFINED IN 47 UNITED STATES CODE SECTION 522(5), A PROVIDER OF INFORMATION SERVICE AS DEFINED IN 47 UNITED STATES CODE SECTION 153(24), A
TELECOMMUNICATIONS CARRIER AS DEFINED IN 47 UNITED STATES CODE
SECTION 153(51) OR A WIRELESS PROVIDER.

10. "FEE" MEANS A ONE-TIME CHARGE.

11. "LAW" MEANS ANY FEDERAL, STATE OR LOCAL LAW, STATUTE, COMMON
    LAW, CODE, RULE, REGULATION, ORDER OR ORDINANCE.

12. "PERMIT" MEANS A WRITTEN AUTHORIZATION REQUIRED BY AN AUTHORITY
    TO PERFORM AN ACTION OR INITIATE, CONTINUE OR COMPLETE A PROJECT.

13. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED LIABILITY

14. "RATE" MEANS A RECURRING CHARGE.

15. "RIGHT-OF-WAY" MEANS THE AREA ON, BELOW OR ABOVE A PUBLIC

16. "SMALL WIRELESS FACILITY" MEANS A WIRELESS FACILITY THAT MEETS
    BOTH OF THE FOLLOWING QUALIFICATIONS:
    (a) EACH ANTENNA IS LOCATED INSIDE AN ENCLOSURE OF NOT MORE THAN

17. "SUBSTANTIAL MODIFICATION" MEANS A PROPOSED MODIFICATION TO AN
    EXISTING WIRELESS SUPPORT STRUCTURE OR BASE STATION THAT WILL

18. "UTILITY POLE" MEANS A POLE OR SIMILAR STRUCTURE THAT IS USED
    IN WHOLE OR IN PART BY A COMMUNICATIONS SERVICE PROVIDER OR FOR ELECTRIC

19. "UTILITY POLE FOR DESIGNATED SERVICES" MEANS A UTILITY POLE IN
    A RIGHT-OF-WAY THAT IS OWNED OR OPERATED BY AN AUTHORITY, PUBLIC UTILITY
DISTRICT, ELECTRIC MEMBERSHIP CORPORATION OR RURAL ELECTRIC COOPERATIVE
AND THAT IS DESIGNED TO CARRY, OR USED IN WHOLE OR IN PART FOR THE PURPOSE
OF CARRYING, ELECTRIC DISTRIBUTION LINES OR CABLES OR WIRES FOR
TELECOMMUNICATIONS, CABLE OR ELECTRIC SERVICE.

20. "WIRELESS FACILITY":
(a) MEANS EQUIPMENT AT A FIXED LOCATION THAT ENABLES WIRELESS
COMMUNICATIONS BETWEEN USER EQUIPMENT AND A COMMUNICATIONS NETWORK,
INCLUDING BOTH OF THE FOLLOWING:
(i) EQUIPMENT ASSOCIATED WITH WIRELESS COMMUNICATIONS.
(ii) RADIO TRANSCIEVERS, ANTENNAS, COAXIAL OR FIBER-OPTIC CABLES,
REGULAR AND BACKUP POWER SUPPLIES AND COMPARABLE EQUIPMENT, REGARDLESS OF
TECHNOLOGICAL CONFIGURATION.
(b) INCLUDES SMALL WIRELESS FACILITIES.
(c) DOES NOT INCLUDE THE STRUCTURE OR IMPROVEMENTS ON, UNDER OR
WITHIN WHICH THE EQUIPMENT IS COLLOCATED.

21. "WIRELESS INFRASTRUCTURE PROVIDER" MEANS ANY PERSON, INCLUDING
A PERSON THAT IS AUTHORIZED TO PROVIDE TELECOMMUNICATIONS SERVICE IN THIS
STATE, THAT BUILDS OR INSTALLS WIRELESS COMMUNICATIONS TRANSMISSION
EQUIPMENT, WIRELESS FACILITIES OR WIRELESS SUPPORT STRUCTURES BUT THAT IS
NOT A WIRELESS SERVICES PROVIDER.

22. "WIRELESS PROVIDER" MEANS A WIRELESS INFRASTRUCTURE PROVIDER OR
A WIRELESS SERVICES PROVIDER.

23. "WIRELESS SERVICES" MEANS ANY SERVICES, WHETHER AT A FIXED
LOCATION OR MOBILE, THAT ARE PROVIDED USING WIRELESS FACILITIES.

24. "WIRELESS SERVICES PROVIDER" MEANS A PERSON THAT PROVIDES
WIRELESS SERVICES.

25. "WIRELESS SUPPORT STRUCTURE":
(a) MEANS:
(i) A FREESTANDING STRUCTURE, SUCH AS A MONOPOLE.
(ii) A TOWER, EITHER GUYED OR SELF-SUPPORTING.
(iii) A BILLBOARD.
(iv) ANY OTHER EXISTING OR PROPOSED STRUCTURE DESIGNED TO SUPPORT
OR CAPABLE OF SUPPORTING WIRELESS FACILITIES.
(b) DOES NOT INCLUDE A UTILITY POLE.

11-1802. Applicability; wireless provider; use of
right-of-way; rates and fees; right to access;
damage and repair of the right-of-way
A. THIS SECTION APPLIES TO THE ACTIVITIES OF A WIRELESS PROVIDER
WITHIN A RIGHT-OF-WAY.
B. AN AUTHORITY MAY NOT ENTER INTO AN EXCLUSIVE ARRANGEMENT WITH
ANY PERSON FOR USE OF A RIGHT-OF-WAY FOR THE CONSTRUCTION, OPERATION,
MARKETING OR MAINTENANCE OF WIRELESS FACILITIES OR WIRELESS SUPPORT
STRUCTURES OR THE COLLOCATION OF SMALL WIRELESS FACILITIES.
C. AN AUTHORITY MAY CHARGE A WIRELESS PROVIDER A RATE OR FEE FOR
THE USE OF A RIGHT-OF-WAY FOR THE CONSTRUCTION, INSTALLATION, MOUNTING,
MAINTENANCE, MODIFICATION, OPERATION OR REPLACEMENT OF A WIRELESS FACILITY
OR WIRELESS SUPPORT STRUCTURE IN THE RIGHT-OF-WAY, INCLUDING COLLOCATION IN THE RIGHT-OF-WAY, ONLY IF THE AUTHORITY CHARGES OTHER COMMUNICATIONS SERVICE PROVIDERS OR PUBLICLY, COOPERATIVELY OR MUNICIPALLY OWNED UTILITIES FOR THE USE OF THE RIGHT-OF-WAY. IF AN AUTHORITY CHARGES A RATE OR FEE PURSUANT TO THIS SECTION, THE RATE OR FEE FOR A WIRELESS PROVIDER MUST BE:

1. LIMITED TO NOT MORE THAN THE DIRECT AND ACTUAL COST OF MANAGING THE RIGHT-OF-WAY.

2. COMPETITIVELY NEUTRAL IN REGARD TO OTHER USERS OF THE RIGHT-OF-WAY, INCLUDING INVESTOR, AUTHORITY OR COOPERATIVELY OWNED ENTITIES.

D. A RATE OR FEE CHARGED PURSUANT TO THIS SECTION MAY NOT DO ANY OF THE FOLLOWING:

1. RESULT IN A DOUBLE RECOVERY WHERE EXISTING RATES, FEES OR TAXES ALREADY RECOVER THE DIRECT AND ACTUAL COSTS OF MANAGING A RIGHT-OF-WAY.

2. BE IN THE FORM OF A FRANCHISE OR OTHER FEE BASED ON REVENUE OR CUSTOMER COUNTS.

3. BE UNREASONABLE OR DISCRIMINATORY.

4. VIOLATE ANY APPLICABLE LAW.

5. EXCEED AN ANNUAL AMOUNT EQUAL TO TWENTY DOLLARS TIMES THE NUMBER OF UTILITY POLES OR WIRELESS SUPPORT STRUCTURES IN THE AUTHORITY'S GEOGRAPHIC JURISDICTION ON WHICH THE WIRELESS PROVIDER HAS COLLOCATED A SMALL WIRELESS FACILITY ANTENNA.

E. IN RECOGNITION OF THE PUBLIC BENEFITS OF THE DEPLOYMENT OF WIRELESS SERVICES, AN AUTHORITY, ON A NONDISCRIMINATORY BASIS, MAY REFRAIN FROM CHARGING ANY RATE OR FEE TO A WIRELESS PROVIDER FOR THE USE OF THE RIGHT-OF-WAY.

F. IF AN AUTHORITY HAS AN EXISTING RATE OR FEE TO CONSTRUCT, INSTALL, MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE A WIRELESS FACILITY OR WIRELESS SUPPORT STRUCTURE IN A RIGHT-OF-WAY CONTROLLED BY THE AUTHORITY, INCLUDING COLLOCATION IN THE RIGHT-OF-WAY, AND THE RATE OR FEE DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS SECTION, NOT LATER THAN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE AUTHORITY SHALL RESET THE RATE OR FEE IN COMPLIANCE WITH THIS SECTION FOR ALL AFFECTED PERSONS.

G. SUBJECT TO THIS SECTION AND THE APPROVAL OF AN APPLICATION, IF REQUIRED, A WIRELESS PROVIDER SHALL HAVE THE RIGHT, AS A PERMITTED USE THAT IS NOT SUBJECT TO ZONING REVIEW OR APPROVAL, TO COLLOCATE WIRELESS FACILITIES AND CONSTRUCT, MODIFY, MAINTAIN AND OPERATE UTILITY POLES, WIRELESS SUPPORT STRUCTURES, CONDUIT, CABLE AND RELATED APPURTEINANCES AND FACILITIES ALONG, ACROSS, ON AND UNDER THE RIGHT-OF-WAY. SUCH STRUCTURES AND FACILITIES SHALL BE CONSTRUCTED AND MAINTAINED AS TO NOT OBSTRUCT OR HINDER THE USUAL TRAVEL OR PUBLIC SAFETY ON THE RIGHT-OF-WAY OR OBSTRUCT THE LEGAL USE OF THE RIGHT-OF-WAY BY OTHER UTILITIES. EACH NEW OR MODIFIED UTILITY POLE AND WIRELESS SUPPORT STRUCTURE INSTALLED IN THE RIGHT-OF-WAY MAY NOT EXCEED THE GREATER OF TEN FEET IN HEIGHT ABOVE THE TALLEST EXISTING UTILITY POLE THAT IS IN PLACE AS OF THE EFFECTIVE DATE OF
THIS SECTION, THAT IS LOCATED WITHIN FIVE HUNDRED FEET OF THE NEW UTILITY POLE AND THAT IS IN THE SAME RIGHT-OF-WAY OR FIFTY FEET ABOVE GROUND LEVEL. NEW WIRELESS FACILITIES IN THE RIGHT-OF-WAY MAY NOT EXTEND MORE THAN TEN FEET ABOVE AN EXISTING UTILITY POLE OR WIRELESS SUPPORT STRUCTURE IN PLACE AS OF THE EFFECTIVE DATE OF THIS SECTION OR ABOVE THE HEIGHT PERMITTED FOR A NEW UTILITY POLE OR WIRELESS SUPPORT STRUCTURE UNDER THIS SECTION.

H. NOTWITHSTANDING SUBSECTION G OF THIS SECTION:
   1. A WIRELESS PROVIDER HAS THE RIGHT TO CONSTRUCT, MODIFY AND MAINTAIN A UTILITY POLE, WIRELESS SUPPORT STRUCTURE OR WIRELESS FACILITY THAT EXCEEDS THE SIZE LIMITS PROVIDED IN SUBSECTION G OF THIS SECTION ALONG, ACROSS, ON AND UNDER A RIGHT-OF-WAY, SUBJECT TO APPLICABLE ZONING REGULATIONS.
   2. APPLICANTS SHALL COMPLY WITH NONDISCRIMINATORY UNDERGROUNDING REQUIREMENTS THAT PROHIBIT COMMUNICATIONS SERVICE PROVIDERS FROM INSTALLING STRUCTURES IN A RIGHT-OF-WAY WITHOUT PRIOR ZONING APPROVAL IN AREAS THAT ARE ZONED FOR SINGLE-FAMILY RESIDENTIAL USE, IF THE REQUIREMENTS DO NOT PROHIBIT THE REPLACEMENT OF EXISTING STRUCTURES.
   J. AN AUTHORITY MUST BE COMPETITIVELY NEUTRAL IN REGARD TO OTHER USERS OF A RIGHT-OF-WAY IN THE ADMINISTRATION AND REGULATION RELATED TO THE MANAGEMENT OF THE RIGHT-OF-WAY, INCLUDING THAT TERMS MAY NOT BE UNREASONABLE OR DISCRIMINATORY AND MAY NOT VIOLATE ANY APPLICABLE LAW.

11-1803. Applicability; collocation of small wireless facilities; permits; application; fee; application fee limitations
   A. THIS SECTION APPLIES TO THE ACTIVITIES OF A WIRELESS PROVIDER WITHIN OR OUTSIDE OF A RIGHT-OF-WAY.
   B. EXCEPT AS PROVIDED IN THIS SECTION AND SECTIONS 11-1802, 11-1804 AND 11-1805, AN AUTHORITY MAY NOT PROHIBIT, REGULATE OR CHARGE FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES.
   C. A SMALL WIRELESS FACILITY IS CLASSIFIED AS A PERMITTED USE AND IS NOT SUBJECT TO ZONING REVIEW OR APPROVAL IF THE SMALL WIRELESS FACILITY IS COLLOCATED IN A RIGHT-OF-WAY IN ANY ZONE OR OUTSIDE OF A RIGHT-OF-WAY IN PROPERTY THAT IS NOT ZONED EXCLUSIVELY FOR SINGLE-FAMILY RESIDENTIAL USE.
D. An Authority may require an applicant to obtain one or more permits to collocate a small wireless facility if the permit requirement is of general applicability and does not apply exclusively to wireless facilities. An applicant seeking to collocate multiple small wireless facilities within the jurisdiction of a single authority may file a consolidated application and receive a single permit for the collocation of multiple small wireless facilities.

E. An Authority shall:
   1. Accept applications for, process and issue permits to collocate a small wireless facility.
   2. Within ten days after receiving an application, determine and notify the applicant whether the application is complete. If an application is incomplete, the Authority must specifically identify the information missing from the application.
   3. Process each application on a nondiscriminatory basis. An application is deemed approved if the Authority fails to approve or deny the application within sixty days after receiving the application.
   4. Approve an application unless the application does not meet the applicable codes.
   5. If an application is denied, document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant on or before the date that the application is denied. The applicant may cure the deficiencies identified by the Authority and resubmit the application within thirty days after the denial without paying an additional application fee. The Authority shall approve or deny the revised application within thirty days after receiving the revised application. Any subsequent review is limited to the deficiencies cited in the denial.

F. An Authority may not:
   1. Directly or indirectly require an applicant to perform services that are unrelated to the collocation for which approval is sought, such as in-kind contributions to the Authority, including reserving fiber, conduit or pole space for the Authority.
   2. Require an applicant to provide more information to obtain a permit than the Authority requires of a communications service provider that is not a wireless provider.
   3. Institute, either expressly or de facto, a moratorium on filing, receiving or processing applications or issuing permits or other approvals, if any, for the collocation of a small wireless facility.
   4. Require an application for routine maintenance or the replacement of wireless facilities with wireless facilities that are substantially similar or the same size or smaller. An Authority may require a permit to work within a right-of-way for such activities, if applicable. A permit issued pursuant to this paragraph is subject to the requirements of this section.
G. Collocation for which a permit is granted shall begin within one year after the approval date and be pursued to completion. Any time limitation placed on a permit is void unless the applicant subsequently and voluntarily requests that the permit be terminated.

H. An authority may charge an application fee only if an application fee is required for similar types of commercial development within the authority. An application fee is limited to the actual, direct and reasonable costs that are incurred by the authority and that relate to the granting or processing of an application. An application fee shall be reasonably related in time to the incurring of such costs. If such costs are already recovered by existing fees, rates or taxes that are paid by a wireless provider, an authority may not charge an application fee to recover such costs. An application fee may not include:

1. Third-party travel expenses that are incurred to review an application.

2. The direct payment or reimbursement of third-party rates or fees that are charged on a contingency basis or pursuant to a result-based arrangement.

I. The total application fee, if allowed, may not exceed the lesser of the amount charged by the authority for a building permit for any similar commercial construction, activity or land use development or one hundred dollars each for up to five small wireless facilities addressed in an application and fifty dollars for each additional small wireless facility addressed in the application.

J. In any controversy concerning the appropriateness of an application fee, the authority has the burden of proof that the application fee is reasonably related to the actual, direct and reasonable costs incurred by the authority.

11-1804. Applicability; structures subject to zoning; time frames; application; fees

A. This section applies to the following:

1. Zoning reviews for:
   (a) A substantial modification outside of a right-of-way.
   (b) The modification of existing or the installation of new wireless support structures, utility poles and wireless facilities that are subject to zoning review and approval and not a permitted use under section 11-1802, subsections G and H or section 11-1803, subsection C.

2. Activities of the wireless provider within or outside of a right-of-way.

B. An authority shall:

1. Accept and process applications for a substantial modification outside of a right-of-way or the modification of existing or the installation of new wireless support structures, utility poles or wireless facilities.

2. Within thirty days after receiving an application, notify the applicant whether the application is complete. If an application is
INCOMPLETE, THE AUTHORITY MUST SPECIFICALLY IDENTIFY THE INFORMATION  
MISSING FROM THE APPLICATION.

3. PROCESS EACH APPLICATION ON A NONDISCRIMINATORY BASIS. AN  
APPLICATION IS DEEMED APPROVED IF THE AUTHORITY FAILS TO APPROVE OR DENY  
THE APPLICATION WITHIN ONE HUNDRED FIFTY CALENDAR DAYS AFTER RECEIPT OF AN  
APPLICATION FOR THE MODIFICATION OF EXISTING OR THE INSTALLATION OF NEW  
WIRELESS SUPPORT STRUCTURES, UTILITY POLES OR WIRELESS FACILITIES OR  
WITHIN NINETY CALENDAR DAYS AFTER RECEIPT OF AN APPLICATION FOR A  
SUBSTANTIAL MODIFICATION. THE TIME PERIOD FOR APPROVAL 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 AUTHORITY.

4. IF AN APPLICATION IS DENIED, NOTIFY THE APPLICANT IN WRITING AND  
PROVIDE SUBSTANTIAL SUPPORTING EVIDENCE IN THE WRITTEN RECORD. THE  
WRITTEN NOTIFICATION OF THE DENIAL AND THE SUPPORTING EVIDENCE SHALL BE  
PUBLICLY RELEASED CONTEMPORANEOUSLY. IF AN APPLICATION IS DENIED, THERE  
MUST BE A REASONABLE BASIS FOR THE DENIAL. AN AUTHORITY MAY NOT DENY AN  
APPLICATION IF THE DENIAL IS DISCRIMINATORY AGAINST THE APPLICANT WITH  
RESPECT TO THE PLACEMENT OF THE FACILITIES OF OTHER WIRELESS PROVIDERS.

C. AN AUTHORITY MAY NOT:

1. REQUIRE AN APPLICANT TO SUBMIT INFORMATION ABOUT THE APPLICANT'S  
BUSINESS DECISIONS REGARDING THE NEED FOR THE WIRELESS SUPPORT STRUCTURE,  
UTILITY POLE OR WIRELESS FACILITIES.

2. REQUIRE AN APPLICANT TO SUBMIT INFORMATION ABOUT, OR EVALUATE AN  
APPLICANT'S BUSINESS DECISIONS REGARDING THE APPLICANT'S SERVICE, CUSTOMER  
DEMAND FOR SERVICE OR QUALITY OF SERVICE.

3. INSTITUTE, EITHER EXPRESSLY OR DE FACTO, A MORATORIUM ON FILING,  
RECEIVING OR PROCESSING APPLICATIONS OR ISSUING APPROVALS FOR SUBSTANTIAL  
MODIFICATIONS OR INSTALLATIONS THAT ARE NOT A PERMITTED USE.

D. AN AUTHORITY MAY:

1. ADOPT REASONABLE REQUIREMENTS REGARDING THE APPEARANCE OF  
FACILITIES, INCLUDING THOSE RELATING TO MATERIALS USED OR ARRANGING,  
SCREENING OR LANDSCAPING.

2. ADOPT SETBACK OR FALL ZONE REQUIREMENTS THAT ARE SUBSTANTIALLY  
SIMILAR TO A SETBACK OR FALL ZONE REQUIREMENT THAT IS IMPOSED ON OTHER  
TYPES OF COMMERCIAL STRUCTURES OF A SIMILAR HEIGHT.

3. CHARGE AN APPLICATION FEE. ANY APPLICATION FEE IS SUBJECT TO  
THE REQUIREMENTS PROVIDED IN SECTION 11-1803, SUBSECTIONS H AND J. THE  
TOTAL APPLICATION FEE, IF ALLOWED, MAY NOT EXCEED THE LESSER OF THE AMOUNT  
CHARGED BY THE AUTHORITY FOR A BUILDING PERMIT FOR ANY SIMILAR COMMERCIAL  
CONSTRUCTION, ACTIVITY OR LAND USE DEVELOPMENT OR ONE THOUSAND DOLLARS FOR  
THE MODIFICATION OF EXISTING OR THE INSTALLATION OF NEW WIRELESS SUPPORT  
STRUCTURES, UTILITY POLES OR WIRELESS FACILITIES OR A SUBSTANTIAL  
MODIFICATION OF A WIRELESS SUPPORT STRUCTURE.

E. AN APPLICANT'S BUSINESS DECISIONS REGARDING THE TYPE AND  
LOCATION OF WIRELESS FACILITIES, WIRELESS SUPPORT STRUCTURES OR UTILITY
POLES OR THE TECHNOLOGY TO BE USED ARE PRESUMED TO BE REASONABLE. THIS
PRESUMPTION DOES NOT APPLY TO THE HEIGHT OF WIRELESS FACILITIES, WIRELESS
SUPPORT STRUCTURES OR UTILITY POLES. AN AUTHORITY MAY CONSIDER THE HEIGHT
OF SUCH STRUCTURES IN THE ZONING REVIEW, PROVIDED THAT IT DOES NOT
UNREASONABLY DISCRIMINATE BETWEEN THE APPLICANT AND OTHER COMMUNICATIONS
SERVICE PROVIDERS.

F. THE APPROVAL TERM OF AN APPLICATION DOES NOT EXPIRE, EXCEPT THAT
CONSTRUCTION OF THE APPROVED STRUCTURE OR FACILITIES SHALL BEGIN WITHIN
TWO YEARS AFTER FINAL APPROVAL AND BE DILIGENTLY PURSUED TO COMPLETION.

11-1805. Access to authority poles or utility poles for
designated services; rates and fees; collocations
for other commercial projects or uses

A. A PERSON THAT OWNS OR CONTROLS AUTHORITY POLES OR UTILITY POLES
FOR DESIGNATED SERVICES MAY NOT ENTER INTO AN EXCLUSIVE ARRANGEMENT WITH
ANY PERSON FOR THE RIGHT TO ATTACH TO SUCH POLES.

B. THE RATES AND FEES FOR COLLOCATION ON AUTHORITY POLES OR UTILITY
POLES FOR DESIGNATED SERVICES SHALL BE NONDISCRIMINATORY REGARDLESS OF THE
SERVICES PROVIDED BY THE COLLOCATING PERSON.

C. THE RATE TO COLLOCATE ON UTILITY POLES FOR DESIGNATED SERVICES
MAY NOT EXCEED THE ANNUAL RECURRING RATE THAT WOULD BE PERMITTED UNDER
RULES ADOPTED BY THE FEDERAL COMMUNICATIONS COMMISSION UNDER 47 UNITED
STATES CODE SECTION 224(e) IF THE RATES WERE REGULATED BY THE FEDERAL
COMMUNICATIONS COMMISSION OR TWENTY DOLLARS PER YEAR PER UTILITY POLE FOR
DESIGNATED SERVICES, WHICHEREVER IS LESS.

D. THE RATE TO COLLOCATE ON AUTHORITY POLES SHALL RECOVER THE
ACTUAL, DIRECT AND REASONABLE COSTS RELATED TO THE APPLICANT'S APPLICATION
FOR AND USE OF SPACE ON THE AUTHORITY POLE. THE TOTAL ANNUAL RATE FOR
COLLOCATIONS AND ANY ACTIVITIES RELATED TO SUCH COLLOCATIONS MAY NOT
EXCEED THE LESSER OF THE ACTUAL, DIRECT AND REASONABLE COSTS RELATED TO
THE COLLOCATION ON THE AUTHORITY POLE OR TWENTY DOLLARS PER YEAR PER
AUTHORITY POLE. IN ANY CONTROVERSY CONCERNING THE APPROPRIATENESS OF A
RATE FOR AN AUTHORITY POLE, THE AUTHORITY HAS THE BURDEN OF PROVING THAT
THE RATES ARE REASONABLY RELATED TO THE ACTUAL, DIRECT AND REASONABLE
COSTS THAT ARE INCURRED FOR THE USE OF SPACE ON THE AUTHORITY POLE FOR THE
PERIOD.

E. IF AN AUTHORITY, MUNICIPALLY OWNED OR OPERATED PERSON, PUBLIC
UTILITY DISTRICT OR COOPERATIVE HAS AN EXISTING POLE ATTACHMENT RATE, FEE
OR OTHER TERM THAT DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS SECTION,
THE AUTHORITY, MUNICIPALLY OWNED OR OPERATED PERSON, PUBLIC UTILITY
DISTRICT OR COOPERATIVE SHALL CHANGE THE RATE, FEE OR TERM IN COMPLIANCE
WITH THIS SECTION NOT LATER THAN SIX MONTHS AFTER THE EFFECTIVE DATE OF
THIS SECTION.

F. A PERSON THAT OWNS OR CONTROLS AUTHORITY POLES AND UTILITY POLES
FOR DESIGNATED SERVICES THAT ARE OWNED OR CONTROLLED BY AN AUTHORITY SHALL
ESTABLISH AND MAKE AVAILABLE RATES, FEES AND TERMS FOR THE COLLOCATION OF
SMALL WIRELESS FACILITIES ON SUCH POLES WITHIN THE LATER OF SIX MONTHS
AFTER THE EFFECTIVE DATE OF THIS SECTION OR THREE MONTHS AFTER RECEIVING A REQUEST TO COLLOCATE THE FIRST SMALL WIRELESS FACILITY ON SUCH POLES. THE RATES, FEES AND TERMS SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

1. THE RATES, FEES AND TERMS MUST BE NONDISCRIMINATORY, COMPETITIVELY NEUTRAL AND COMMERCIAL REASONABLE AND COMPLY WITH THIS SECTION.

2. FOR AUTHORITY POLES THAT SUPPORT AERIAL CABLES USED FOR VIDEO, COMMUNICATIONS OR ELECTRIC SERVICE AND FOR UTILITY POLES FOR DESIGNATED SERVICES, THE PARTIES SHALL COMPLY WITH THE PROCESS FOR MAKE-READY WORK UNDER 47 UNITED STATES CODE SECTION 224 AND THE IMPLEMENTING REGULATIONS. THE GOOD FAITH ESTIMATE OF THE PERSON THAT OWNS OR CONTROLS THE POLE FOR ANY MAKE-READY WORK NECESSARY TO ENABLE THE POLE TO SUPPORT THE REQUESTED COLLOCATION SHALL INCLUDE POLE REPLACEMENT, IF NEEDED.

3. FOR AUTHORITY POLES THAT DO NOT SUPPORT AERIAL CABLES USED FOR VIDEO, COMMUNICATIONS OR ELECTRIC SERVICE, THE AUTHORITY SHALL PROVIDE A GOOD FAITH ESTIMATE FOR ANY MAKE-READY WORK NECESSARY TO ENABLE THE POLE TO SUPPORT THE REQUESTED COLLOCATION, INCLUDING POLE REPLACEMENT, IF NEEDED, WITHIN SIXTY DAYS AFTER RECEIVING A COMPLETE APPLICATION. MAKE-READY WORK, INCLUDING ANY POLE REPLACEMENT, SHALL BE COMPLETED WITHIN SIXTY DAYS AFTER THE WRITTEN ACCEPTANCE OF THE GOOD FAITH ESTIMATE BY THE APPLICANT.

4. THE PERSON THAT OWNS OR CONTROLS THE AUTHORITY POLE OR UTILITY POLE FOR DESIGNATED SERVICES MAY NOT REQUIRE MORE MAKE-READY WORK THAN IS REQUIRED TO MEET THE REQUIREMENTS OF APPLICABLE CODES OR INDUSTRY STANDARDS. FEES FOR MAKE-READY WORK MAY NOT INCLUDE COSTS RELATED TO PREEXISTING OR PRIOR DAMAGE OR NONCOMPLIANCE. FEES FOR MAKE-READY WORK, INCLUDING ANY POLE REPLACEMENT, MAY NOT EXCEED ACTUAL COSTS OR THE AMOUNT CHARGED TO OTHER COMMUNICATIONS SERVICE PROVIDERS FOR SIMILAR WORK AND MAY NOT INCLUDE ANY CONSULTANT FEES OR EXPENSES.

G. AN AUTHORITY SHALL AUTHORIZE THE COLLOCATION OF SMALL WIRELESS FACILITIES ON WIRELESS SUPPORT STRUCTURES AND UTILITY POLES THAT ARE OWNED OR CONTROLLED BY AN AUTHORITY AND THAT ARE NOT LOCATED WITHIN A RIGHT-OF-WAY TO THE SAME EXTENT THE AUTHORITY PERMITS ACCESS TO SUCH STRUCTURES FOR OTHER COMMERCIAL PROJECTS OR USES. COLLOCATIONS FOR OTHER COMMERCIAL PROJECTS OR USES ARE SUBJECT TO REASONABLE AND NONDISCRIMINATORY RATES, FEES AND TERMS AS PROVIDED IN AN AGREEMENT BETWEEN THE AUTHORITY AND THE WIRELESS PROVIDER.

11-1806. Scope of local authority

A. SUBJECT TO THIS ARTICLE AND APPLICABLE FEDERAL LAW, AN AUTHORITY MAY EXERCISE ZONING, LAND USE, PLANNING AND PERMITTING AUTHORITY WITHIN THE AUTHORITY’S TERRITORIAL BOUNDARIES, INCLUDING FOR WIRELESS SUPPORT STRUCTURES AND UTILITY POLES.

B. AN AUTHORITY DOES NOT HAVE ANY JURISDICTION OR AUTHORITY OVER THE DESIGN, ENGINEERING, CONSTRUCTION, INSTALLATION OR OPERATION OF ANY SMALL WIRELESS FACILITY LOCATED IN AN INTERIOR STRUCTURE OR ON THE SITE OF
ANY CAMPUS, STADIUM OR ATHLETIC FACILITY NOT OWNED OR CONTROLLED BY THE
AUTHORITY, OTHER THAN TO COMPLY WITH APPLICABLE CODES.

C. THIS ARTICLE DOES NOT AUTHORIZE THIS STATE OR ANY POLITICAL
SUBDIVISION, INCLUDING AN AUTHORITY, TO REQUIRE WIRELESS FACILITY
DEPLOYMENT OR TO REGULATE WIRELESS SERVICES.

11-1807. Dispute resolution
A. A COURT OF COMPETENT JURISDICTION SHALL DETERMINE ALL DISPUTES
ARISING UNDER THIS ARTICLE. COMPLAINTS SHALL BE RESOLVED NOT LATER THAN
ONE HUNDRED DAYS AFTER A COMPLAINT OR PETITION IS FILED.

B. UNLESS AGREED OTHERWISE AND PENDING RESOLUTION OF A RIGHT-OF-WAY
ACCESS RATE DISPUTE, THE AUTHORITY CONTROLLING ACCESS TO AND USE OF THE
RIGHT-OF-WAY SHALL ALLOW THE PLACEMENT OF A WIRELESS FACILITY OR WIRELESS
SUPPORT STRUCTURE AT A TEMPORARY RATE OF ONE-HALF OF THE
AUTHORITY-PROPOSED ANNUAL RATE OR TWENTY DOLLARS, WHICHEVER IS LESS, WITH
RATES TO BE TRUED UP ON FINAL RESOLUTION OF THE DISPUTE.

C. PENDING RESOLUTION OF A DISPUTE CONCERNING RATES FOR COLLOCATION
OF SMALL WIRELESS FACILITIES ON POLES OWNED BY THE AUTHORITY OR UTILITY
POLES FOR DESIGNATED SERVICES, THE PERSON OWNING OR CONTROLLING THE POLE
SHALL ALLOW THE COLLOCATION OF SMALL WIRELESS FACILITIES ON THE PERSON’S
POLES AT AN ANNUAL RATE OF NOT MORE THAN TWENTY DOLLARS PER YEAR PER
UTILITY POLE, WITH RATES TO BE TRUED UP ON FINAL RESOLUTION OF THE
DISPUTE.

11-1808. Indemnification
AN AUTHORITY MAY NOT REQUIRE A WIRELESS PROVIDER TO DO EITHER OF THE
FOLLOWING:

1. INDEMNIFY AND HOLD THE AUTHORITY AND THE AUTHORITY’S OFFICERS
AND EMPLOYEES HARMLESS AGAINST ANY CLAIMS, LAWSUITS, JUDGMENTS, COSTS,
LIENS, LOSSES, EXPENSES OR FEES EXCEPT WHEN A COURT OF COMPETENT
JURISDICTION HAS FOUND THAT THE NEGLIGENCE OF THE WIRELESS PROVIDER WHILE
INSTALLING, REPAIRING OR MAINTAINING CAUSED THE HARM THAT CREATED SUCH
CLAIMS, LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES OR FEES.

2. OBTAIN INSURANCE NAMING THE AUTHORITY OR THE AUTHORITY’S
OFFICERS AND EMPLOYEES AS AN ADDITIONAL INSURED AGAINST ANY CLAIMS,
LAWSUITS, JUDGMENTS, COSTS, LIENS, LOSSES, EXPENSES OR FEES.