State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2108

Introduced by
Representative Weninger

AN ACT

AMENDING SECTION 9-583, ARIZONA REVISED STATUTES; RELATING TO USE OF PUBLIC HIGHWAYS BY TELECOMMUNICATIONS PROVIDERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 9-583, Arizona Revised Statutes, is amended to read:

9-583. Issuance of license or franchise; use of public highways; limitations

A. A political subdivision shall not adopt any ordinance that may prohibit or have the effect of prohibiting the ability of any telecommunications corporation to provide telecommunications service. Nothing in this section affects the authority of a political subdivision to manage the public highways within its jurisdiction or to exercise its police powers.

B. The governing board of a political subdivision may issue to a telecommunications corporation a license or franchise to use the public highways within the political subdivision to construct, install, operate and maintain telecommunications facilities. The political subdivision shall issue licenses or franchises on a competitively neutral and nondiscriminatory basis to persons subject to this section, within a reasonable period of time after application. As a condition of issuing a license or franchise to use the public highways to construct, install, operate and maintain telecommunications facilities, or a renewal thereof, a political subdivision may impose reasonable, competitively neutral and nondiscriminatory requirements on applicants which may include only:

1. Proof that the applicant has received a certificate of convenience and necessity from the Arizona corporation commission.
2. Public highway use requirements.
3. Mapping requirements.
4. Insurance, performance bonds, indemnification or similar requirements.
5. Enforcement and administrative provisions, consistent with this section.

C. A political subdivision may require a telecommunications corporation that will place underground facilities in the public highways, exclusive of facilities used by the local network and the portion of the interstate network that carries intrastate calls, for interstate telecommunications services to pay a fee as provided in this subsection and, subject to section 9-582, subsection A, paragraph 2, to obtain a license or franchise under this subsection to use the public highways to construct, install, operate and maintain facilities for these services. Subsections A, B, D and E of this section apply except:

1. The requirement provided in subsection B, paragraph 1 of this section does not apply to a telecommunications corporation that provides solely interstate telecommunications services within this state.
2. A political subdivision may require a telecommunications corporation operating under this subsection to pay an annual fee based on the number of linear feet of trench in the public highways in which the
telecommunications corporation has placed facilities that carry interstate traffic between and among the telecommunications corporation's interstate points of presence exclusive of facilities used by the local network and the portion of the interstate network that carries intrastate calls. A POLITICAL SUBDIVISION MAY NOT REQUIRE THIS ANNUAL FEE FOR ANY UNDERGROUND FACILITY THAT IS USED FOR A SMALL WIRELESS FACILITY AS DEFINED IN SECTION 9-591.

3. The rate per linear foot used in paragraph 2 of this subsection shall not exceed the highest rate per linear foot a political subdivision in this state charged any licensee or franchisee on or before December 31, 1999. The rate per linear foot shall not be increased in any calendar year by more than the increase in the average consumer price index as published by the United States department of labor, bureau of labor statistics.

D. A telecommunications licensee or franchisee may enter into contracts for use of the licensee's or franchisee's facilities within the public highways to provide telecommunications services. A political subdivision may require a telecommunications licensee or franchisee to disclose all persons with whom it contracts to use its facilities in the public highways within the political subdivision to provide telecommunications services. A political subdivision may require a person using a licensee's or franchisee's facilities in the public highways within the political subdivision to obtain from the political subdivision a telecommunications license or franchise if the person constructs, installs, operates or maintains telecommunications facilities within the public highways of the political subdivision.

E. The requirements imposed in a telecommunications license or franchise shall treat similarly situated telecommunications corporations similarly. The requirements may be changed over time and applied prospectively. Nothing in This subsection or AND subsection B of this section affects DO NOT AFFECT section 9-582, subsection D. A political subdivision may distinguish between a telecommunications corporation described in section 9-582, subsection E and other telecommunications corporations to a justifiable extent based on differences in legal rights.

F. Subsections B through E of this section do not apply to a telecommunications corporation described in section 9-582, subsection E.

G. The requirements of this section apply to applicants for licenses or franchises filed and acted on after December 1, 1998 or if earlier, the date after August 1, 1998 that a political subdivision adopts an ordinance implementing this article. Licenses or franchises issued pursuant to this section shall be for a term of five years and shall be renewed if:

1. The telecommunications corporation satisfies the conditions of the renewal license or franchise.

2. The renewal applicant has complied with the material terms of its prior license or franchise and applicable law. However, renewal shall
not be denied for failure to comply with license or franchise terms unless
the licensee or franchisee has had written notice and a reasonable
opportunity to cure the defect in past performance. A license or
franchise may be revoked for failure to comply with the material terms of
the license or franchise or applicable law. Revocation may occur only if
the telecommunications corporation is given written notice of the defect
in performance and the defect in performance is not cured within sixty
days of AFTER the notice, unless the political subdivision finds that the
defect in performance is due to intentional misconduct, is a violation of
criminal law or is part of a pattern of violations if the
telecommunications corporation has already had notice and an opportunity
to cure. A political subdivision shall hold a hearing before revoking or
refusing to renew a license or franchise if requested by the licensee or
franchisee.