



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: May 15, 2018

Title: P17TA00007 COMMUNICATION TOWERS - UTILITY POLE TEXT AMENDMENT

Introduction/Background:

In 2017 the State Legislature approved a new law (House Bill 2365) to allow certain types of small cell communication towers and utility poles to be permitted in rights of way. The Pima County Zoning Code is proposed to be amended to align with state law.

Discussion:

The proposed changes to the zoning code align with the recent changes to state law. In addition, the changes build in protections to maintain the scenic quality of Pima County Scenic Routes. In addition, changes are proposed to promote lower height towers. A new notice process for towers 30 feet in height or less is proposed that will permit notice, similar to other processes, and allow property owners to object to proposed towers

Conclusion:

The zoning code text amendment will allow towers and utility poles that are exempt per state law, while still maintaining scenic routes in Pima County. The new notice process for towers less than 30 feet provide an option to further encourage small height towers which usually generate the least concern from citizens.

Recommendation:

Staff and Planning and Zoning Commission recommend approval of the zoning code text amendment by ordinance.

Fiscal Impact:

n/a

Board of Supervisor District:

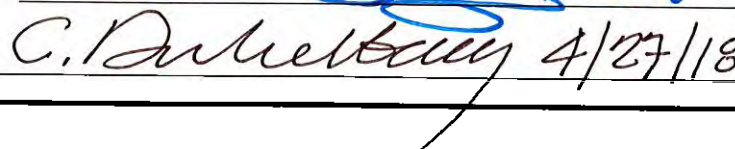
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Department: Development Services, Planning Division Telephone: 724-6675

Contact: Tom Drzazgowski Telephone: 724-6675

Department Director Signature/Date:  4/24/18

Deputy County Administrator Signature/Date:  4/27/18

County Administrator Signature/Date:  4/27/18



PIMA COUNTY
DEVELOPMENT SERVICES

TO: Honorable Board of Supervisors

FROM: Chris Poirier, Planning Official
Public Works-Development Services Department-Planning Division

CP *Tom Drzazgowski*

DATE: April 23, 2018

SUBJECT: P17TA00007 COMMUNICATION TOWER – UTILITY POLE

The above referenced Zoning Code Text Amendment is scheduled for the Board of Supervisors' **TUESDAY, MAY 15, 2018** hearing.

REQUEST: Proposal for a **text amendment of the Pima County Zoning Code**. Chapter 18.07 and 18.77 regulate communication towers and utility poles. The proposed changes align the zoning code with recent changes to state law. In addition, a new notice process is proposed for small communication towers 30 feet in height or less.

OWNER: N/A

APPLICANT: Pima County Development Services Department

DISTRICTS: ALL

STAFF CONTACT: Tom Drzazgowski

PUBLIC COMMENT TO DATE: As of April 23, 2018, staff has received no public comments.

PLANNING AND ZONING COMMISSION RECOMMENDATION: **APPROVAL** (7 – 0, Commissioners Bain and Tronsdal were absent).

STAFF RECOMMENDATION: **APPROVAL.**

TD/CP/ar
Attachments



PIMA COUNTY

DEVELOPMENT SERVICES

BOARD OF SUPERVISORS MEMORANDUM

Subject: P17TA00007

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FOR MAY 15, 2018 MEETING OF THE BOARD OF SUPERVISORS

TO: HONORABLE BOARD OF SUPERVISORS

FROM: Chris Poirier, Planning Official
Public Works-Development Services Department-Planning Division

DATE: April 23, 2018

ADVERTISED ITEM FOR PUBLIC HEARING

ZONING CODE TEXT AMENDMENT

P17TA00007 COMMUNICATION TOWER – UTILITY POLES

Proposal to amend by ordinance the Pima County Zoning Code Chapter 18.07.030(H) (Communication Towers), to amend the regulations to align with state law, including providing an administrative waiver process for sites per state law; Chapter 18.07.030(H) (Communication Towers), to add a neighbor notice process to permit certain types of towers without a conditional use permit; Chapter 18.77.040 (Scenic Routes), to provide regulations for new utility poles along scenic routes. On motion, the Planning and Zoning Commission voted 7-0 to recommend **APPROVAL** (Commissioners Bain and Tronsdal were absent). Staff recommends **APPROVAL**. (ALL DISTRICTS)

Planning and Zoning Commission Public Hearing Summary (January 31, 2018)

Staff presented information from the text amendment to the commission. Information included the basis for the change which is the result of a new law passed by the State of Arizona for communication towers and utility poles (House Bill 2365). The commission was informed that the changes in state law restrict local regulation of small cell communication towers and utility poles in the right of way. State law requires that communication towers that meet the size and height requirements outlined in the state law be allowed by right. Staff also discussed the protections proposed by the text amendment which regulates where these new poles are allowed on a scenic route. In addition, an administrative waiver process is proposed to be added which is required per House Bill 2365. Lastly staff discussed the Communication Tower Notice Permitting Process. This process was developed to further promote smaller communication towers 30 feet or less in height.

A commissioner asked about the fewer taller towers vs. more shorter towers. Staff responded with how communication towers function and the limits of taller towers. Staff discussed that topography and line of sight technology limit taller towers from covering all areas of the county and that shorter towers need to be located in areas where gaps exist. A commissioner asked if this ordinance applies to only new freestanding communication towers or does it also apply where antenna are being located on an existing pole. Staff discussed the existing exemptions that are in the zoning code when companies co-locate on existing poles and that this ordinance would not have any change on those exemptions. Staff also discussed stealthing of poles and at smaller heights the main forms of stealthing such as a saguaro and palm tree look more realistic. A commissioner asked about the impact of 5G technology and how it will impact existing communication sites. Staff discussed that changes to implement 5G technology with most likely impact the types of cabinets and infrastructure in the compound and will require a change out of the antenna on the existing towers. No other major changes should be required.

Commissioner Becker made a motion to **APPROVE** the text amendment. Commissioner Mangold gave the second to the motion.

The commission voted to **APPROVE** the text amendment (7 – 0, Commissioners Bain and Tronsdal were absent).

TD/CP/ar
Attachments

cc: P17TA00007 File

PLANNING AND ZONING COMMISSION FINDINGS
January 31, 2018

Case: **P17TA00007 COMMUNICATION TOWER – UTILITY POLE ZONING CODE**
TEXT AMENDMENT

Staff recommends: **APPROVAL**

P&Z recommends: **APPROVAL** (7 – 0; Commissioners Bain and Tronsdal were absent)

Owner: n/a

Agents: n/a

Public Comments:

Staff has received no public comments on this proposed text amendment.

Public Hearing Summary (January 31, 2018)

Staff presented information from the text amendment to the commission. Information included the basis for the change which is the result of a new law passed by the State of Arizona for communication towers and utility poles (House Bill 2365). The commission was informed that the changes in state law restrict local regulation of small cell communication towers and utility poles in the right of way. State law requires that communication towers that meet the size and height requirements outlined in the state law be allowed by right. Staff also discussed the protections proposed by the text amendment which regulates where these new poles are allowed on a scenic route. In addition, an administrative waiver process is proposed to be added which is required per House Bill 2365. Lastly staff discussed the Communication Tower Notice Permitting Process. This process was developed to further promote smaller communication towers 30 feet or less in height.

A commissioner asked about the fewer taller towers vs. more shorter towers. Staff responded with how communication towers function and the limits of taller towers. Staff discussed that topography and line of sight technology limit taller towers from covering all areas of the county and that shorter towers need to be located in areas where gaps exist. A commissioner asked if this ordinance applies to only new freestanding communication towers or does it also apply where antenna are being located on an existing pole. Staff discussed the existing exemptions that are in the zoning code when companies co-locate on existing poles and that this ordinance would not have any change on those exemptions. Staff also discussed stealthing of poles and at smaller heights the main forms of stealthing such as a saguaro and palm tree look more realistic. A commissioner asked about the impact of 5G technology and how it will impact existing communication sites. Staff discussed that changes to implement 5G technology with most likely impact the types of cabinets and infrastructure in the compound and will require a change out of the

antenna on the existing towers. No other major changes should be required.

Commissioner Becker made a motion to recommend **APPROVAL** of the zoning code text amendment; Commissioner Mangold seconded.

The motion to recommend **APPROVAL** passed (7 – 0; Commissioners Bain and Tronsdal were absent).

***1/8 Page Advertisement**

P17TA00007 COMMUNICATION TOWER – UTILITY POLES

Proposal to amend by ordinance the Pima County Zoning Code Chapter 18.07.030(H) (Communication Towers), to amend the regulations to align with state law, including providing an administrative waiver process for sites per state law; Chapter 18.07.030(H) (Communication Towers), to add a neighbor notice process to permit certain types of towers without a conditional use permit; Chapter 18.77.040 (Scenic Routes), to provide regulations for new utility poles along scenic routes. (All Districts)

ORDINANCE 2018-_____

AN ORDINANCE OF THE PIMA COUNTY BOARD OF SUPERVISORS AMENDING THE PIMA COUNTY ZONING CODE CHAPTER 18.07.030(H) (COMMUNICATION TOWERS), TO AMEND THE REGULATIONS TO ALIGN WITH STATE LAW, INCLUDING PROVIDING AN ADMINISTRATIVE WAIVER PROCESS FOR SITES PER STATE LAW; CHAPTER 18.07.030(H) (COMMUNICATION TOWERS), TO ADD A NEIGHBOR NOTICE PROCESS TO PERMIT CERTAIN TYPES OF TOWERS WITHOUT A CONDITIONAL USE PERMIT; CHAPTER 18.77.040 (SCENIC ROUTES), TO PROVIDE REGULATIONS FOR NEW UTILITY POLES ALONG SCENIC ROUTES. (ALL DISTRICTS)

THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA FINDS THAT:

1. The Planning and Zoning Commission, at its October 25, 2017 hearing, initiated and authorized staff to amend the Pima County Zoning Code for communication towers and utility poles.
2. This ordinance updates the zoning code to align with recently-adopted state legislation for small wireless facilities (cellular communication towers), provides a new process for communication towers that are 30 feet in height or less, and amends the requirements for new utility poles within a designated scenic route by requiring new poles to be located near existing utility poles.
3. This ordinance does not create new restrictions on the use of property, and this ordinance is not intended to, nor should it be construed to reduce any existing rights to use, divide, sell or possess private real property.

IT IS ORDAINED BY THE BOARD OF SUPERVISORS OF PIMA COUNTY, ARIZONA AS FOLLOWS:

SECTION 1. Pima County Zoning Code Chapter 18.07 (General Regulations and Exceptions) is amended as follows:

Chapter 18.07
GENERAL REGULATIONS AND EXCEPTIONS

...

18.07.030 -- Land use regulations

...

H. Communication Towers:

...

2. Applicability:

...

- e. Communication towers in all zones require approval of a Type III conditional use permit, except for the following:

...

15) Communication tower structures and additions that are exempt under A.R.S. Title 11 Chapter 13, Article 1.

16) A new communication tower thirty feet or less may be approved through the communication tower notice permitting process.

...

6. Communication Tower Notice Permitting Process

a. Applicability. New communication towers thirty feet or less may be permitted by the zoning inspector in accordance with the provisions of this subsection.

b. Application. Applications for communication towers shall be made on forms provided by the development services department and shall include all information in section 18.07.030(H)(3) of the Pima County Zoning Code.

c. Notice to owners of affected properties.

1) The zoning inspector shall mail notice of the application, including a site plan and photo simulation, to property owners within one thousand feet for requests in RH, GR-1, SR and SR-2 zones. And property owners within three hundred feet for all other zones.

2) The zoning inspector may waive the sending of notice to any property owner that provides written consent to the request.

d. Action by the zoning inspector.

1) The zoning inspector shall review all submitted information and provide a written response to the applicant.

2) If no protest has been received, approval may be granted and building permits may be issued for the tower in accordance with Section 18.93.050 of the Pima County Zoning Code.

3) If a written protest is received from a property owner in the notice area within 15 days of the date of the mailing of notice the application shall be denied and the applicant shall be informed of the protest. The applicant may submit a conditional use application for the communication tower.

7. Administrative Waiver Process (A.R.S. § 11-1803(C))

- a. An applicant may apply for an administrative waiver for a small wireless facility as defined by A.R.S. § 11-1801(17). An administrative waiver may only be requested for items listed in A.R.S. § 11-1803(B) 5, 6, or 7.
- b. The zoning inspector will consider the purpose statement found in 18.07.030H1 of the Pima County Zoning Code when determining whether to grant an administrative waiver.
- c. For requests to waive an undergrounding requirement and allow a utility pole in the right of way on a scenic route under A.R.S. § 11-1803(C), the zoning inspector will permit the pole when the proposed utility pole is within 20 feet of an existing utility pole, street light or similar structure and the proposed utility pole is no higher than the existing structure that is within 20 feet.

SECTION 2. Pima County Zoning Code Chapter 18.77 is amended to allow for a waiver for new utility poles along a scenic route, as follows:

Chapter 18.77
ROADWAY FRONTAGE STANDARDS

...

18.77.040 – Scenic Routes

...

E. Development Standards.

...

5. Utilities

- a. All new utility lines along scenic routes shall be underground unless the line is a 46KV or greater transmission line. New utility poles are not permitted unless a waiver has been approved under Section 18.07.030(H)(7) or the poles are needed for a 46KV or greater transmission line.

SECTION 3. That this ordinance is effective 31 days after its adoption.

PASSED AND ADOPTED by the Board of Supervisors of Pima County, Arizona, on this _____ day of _____, 2018.

Chairman, Pima County Board of Supervisors

ATTEST:


Clerk, Board of Supervisors

Approved As To Form:



Civil Deputy County Attorney
Lesley M. Lukach

Approved:



Executive Secretary, Pima County
Planning and Zoning Commission

**PIMA COUNTY DEVELOPMENT SERVICES DEPARTMENT
PLANNING DIVISION
STAFF REPORT TO THE PLANNING AND ZONING COMMISSION**

**PUBLIC HEARING
JANUARY 31, 2017**

P17TA00007 COMMUNICATION TOWER – UTILITY POLES TEXT AMENDMENT

STATUS / AGENDA ITEMS **Planning and Zoning Commission Public Hearing
Zoning Code Amendment**

DESCRIPTION Proposal to amend by ordinance the Pima County Zoning Code Chapter 18.07.030(H) (Communication Towers), to amend the regulations to align with state law, including providing an administrative waiver process for sites per state law; Chapter 18.07.030(H) (Communication Towers), to add a neighbor notice process to permit certain types of towers without a conditional use permit; Chapter 18.77.040 (Scenic Routes), to provide regulations for new utility poles along scenic routes. (All Districts)

INITIATION Planning and Zoning Commission, November 29, 2017

PUBLIC COMMENT
Staff has received no comments on the proposed Zoning Code text amendment.

STAFF RECOMMENDATION
Staff recommends **APPROVAL** of the proposed Pima County Zoning Code text amendment.

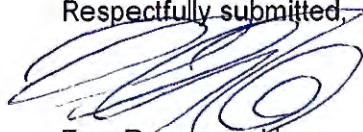
STAFF REPORT
Over the last 25 years, cellular phones and the required infrastructure consisting of antenna, poles and equipment areas surrounded by walls and fences have become a part of the landscape throughout Pima County and the United States. Pima County has been a leader in providing the latest technologies to residents while preserving view corridors and scenic vistas. This has been done by the continuous promotion of towers that are lower in height and co-locating on existing verticality.

During the 2017 legislative session, the state legislator passed a law that was signed by the governor (House Bill 2365) to highly restrict counties from regulating small cell communication sites in Pima County right of ways. Many exemptions have been provided to require counties and cities to approve these sites without public input or the ability for counties to deny these site or require moving them to less impactful areas. The main purpose of this text amendment is to align the Pima County Zoning Code with the recently enacted state legislation.

Two additional proposed changes to the PCZC are to restrict new small cell towers and utility poles on scenic routes to be allowed by right when they are within 20 feet of an existing utility poles, street light or other vertical structure within the right of way. This change will ensure that scenic qualities are maintained and that new utility poles cannot be added on scenic routes where there is no existing verticality or on the opposite side of the street from existing utility lines.

The second proposed change is to further encourage lower height communication towers. Staff believes that building processes that encourage lower tower heights and locating on or near existing verticality is the best solution to reduce impacts across Pima County and minimize taller towers that generate concerns and objections from neighboring property owners. Additionally, towers 30 feet or less are more realistically stealth (Saguaro, palm tree). Currently, the zoning code differentiates communication towers into three categories. One is for colocation sites where antenna are being added or changed on an existing tower, utility pole or other vertical structure. These are allowed through the permit process only, without public hearings. Type I conditional uses are permitted for a towers up to 50 feet and Type III conditional uses for towers over 50 feet in height. Staff is proposing a fourth category for new towers up to 30 feet in height. The proposed changes will allow towers 30 feet or less in height to go through a notice process. This process will notify property owners within 300 to 1000 feet depending on the zone, and the owners will be given 15 days to protest the proposed tower. If a no protest is received, the communication tower can be approved. If a protest is received by a property owner in the noticed area, the applicant can apply for a Type I conditional use permit. Staff believes that this type of process encourages applicants to engage neighboring owners in a collaborative way to select locations that minimize impacts. In addition, staff believes that overall lower height towers are less impactful to the scenic qualities of the community and are less likely to adversely impact neighboring property owners.

~~Respectfully submitted,~~

A handwritten signature in black ink, appearing to read 'Tom Drzazgowski', written over the crossed-out text.

Tom Drzazgowski,
Chief Zoning Inspector

H. Communication towers:

1. Purpose:

- a. To regulate the placement, construction and modification of communications towers and related equipment areas in order to protect the health, safety and welfare of the public in accordance with the guidelines and intent of the Telecommunications Act of 1996 and other applicable federal, state and local ordinances;
- b. To minimize the total number of communication towers throughout unincorporated Pima County by maximizing the use of existing communication towers in order to reduce the number of new towers needed;
- c. To maintain and preserve the existing unique attributes of community character including, but not limited to, architecture, historic and cultural features, historic development patterns, landscape, hardscape and the size, scale and spacing of buildings and other structures that define the community identity of rural and residential neighborhoods, and to preserve property values in those neighborhoods;
- d. To encourage the location of communication towers in business and industrial zones and in areas of compatible uses;
- e. To minimize the adverse impacts of communications towers and related equipment areas on visually sensitive areas including, but not limited, to skylines, rock outcroppings, foothills, mountain backdrops, unique vegetation, streams and natural drainageways through the careful design, siting, landscape screening and innovative camouflaging techniques utilizing current and future technologies;
- f. To promote and encourage shared use or co-location of communication towers and antenna support structures;
- g. To protect the aesthetic quality of neighborhoods by encouraging the siting of communication towers to minimize negative aesthetic impacts and ensure to the extent possible that communications towers and related equipment areas are compatible with surrounding land uses;

h. To allow unincorporated Pima County access to the latest in wireless technologies by collaborating with the wireless industry in developing sound siting policy.

2. Applicability:

a. Communication towers are permitted in any zone subject to the requirements of the Pima County Zoning Code.

b. Lattice-type communication towers intended for commercial uses are not permitted within public rights-of-way.

c. Towers over two hundred fifty feet in height are permitted only in business or industrial zones and shall comply with FAA painting and lighting (over one hundred ninety-nine feet in height) standards to provide for aircraft safety.

d. New communication towers in rural and residential zones, in gateway overlay zones and within two hundred feet of a designated scenic route shall be stealth design so as to minimize or mitigate the adverse visual impact through proper design and aesthetics to ensure that the communication tower is compatible with the built environment in which it is located. Because of differing circumstances specific to each site, a communication tower that is considered to be stealth in one location may not be considered to be stealth in a different location. Methods of stealth design include, but are not limited to:

1) Design that mimics surrounding existing vegetation such as palm trees (monopalm), pine trees (monopines) and Saguaro cacti not to exceed forty feet in height. If monopalms are used in areas where palm trees are not naturally prevalent in the vicinity of the communication tower location, two palm trees shall be planted on the site. Each palm tree shall be equal to one-half of the height of the monopalm at planting but must be a species that will grow to a minimum height of thirty feet. Monopalms and monopines are not permitted in buffer overlay zones.

2) Mounting antennas on existing structures that blend with the architecture of the structure on which the antennas are located.

3) Using color schemes that make the communication tower less noticeable.

4) Using church steeples, clock towers, bell towers, roof features or other such vertical architectural elements to conceal antennas and equipment.

5) Placing antennas on new or existing street signs, outdoor lighting poles, flag poles, windmills (both functional and faux), chimneys, cupolas, silos, smokestacks and utility poles which are designed to match the context and color of the host structure.

e. Communication towers in all zones require approval of a Type III conditional use permit, except for the following:

1) A new communication tower in the CB-2, CI-1, CI-2 and CI-3 zones.

2) A new communication tower monopole in the CB-1 and CPI zones requires a Type I conditional use permit.

3) A new communication tower in the MU zone shall be permitted through the MU zone special use procedure as set forth in Section 18.37.020.

4) An antenna attached to an existing, non-residential building with a maximum height of sixteen feet (above roof line or highest point of the building), and a communication tower equipment area obscured from public view. The total height of the structure, including the antenna, shall not exceed two hundred feet.

5) A co-located, flush-mounted antenna attached to an existing utility pole, or attached to an existing, conforming structure within a public right-of-way, provided the co-located antenna does not increase the height of the existing structure more than sixteen feet. If a new communication tower equipment area is added or an existing communication tower equipment area is expanded, a Type I conditional use permit is required. Equipment placed inside a vault, or equipment placed inside an existing walled or existing screened compound (e.g. utility substation or existing, previously approved communication tower equipment area) or equipment placed in the right-of-way of a street with a designation of an arterial or collector street or higher is exempt from the conditional use permit requirement.

6) A co-located antenna attached to an existing permitted communication tower, provided the tower height is not increased and the co-located antenna does not increase the height of the tower by more ~~then~~ than two feet. And provided that the co-located antenna does not extend from the tower a distance that is greater than that of the existing antennas, or the co-located antenna is flush mounted. If a new communication tower equipment area is added or an existing communication tower equipment area is expanded, a Type I conditional use permit is required. Equipment placed inside a vault, or equipment placed inside an existing walled or existing screened compound (e.g. utility substation or existing, previously approved communication tower equipment area) or equipment placed in the right-of-way of a street with a designation of an arterial or collector street or higher is exempt from the conditional use permit requirement.

7) A new communication tower replacing an existing communication tower or utility pole provided the new tower meets all the following conditions:

a) Replaces the existing tower or pole;

b) Is located not more than six feet from the existing tower or pole foundation, and is within the same alignment relative to property boundaries and adjacent poles;

c) Is no higher than the existing tower or is no more than sixteen feet beyond the height of the existing utility pole, not to exceed a maximum total height of two hundred feet;

d) Antenna(s) are flush-mounted or does not extend from the communication tower a distance that is greater than that of the existing antennas.

e) If a communication tower equipment area is added or expanded, a Type I conditional use permit is required. Equipment placed inside a vault, or equipment placed inside an existing walled or existing screened compound (e.g. utility substation or existing, previously approved communication tower equipment area) or equipment placed in the right-of-way of a street with a designation of an arterial or collector street or higher is exempt from the conditional use permit requirement.

8) A communication tower together with any antenna and associated communication tower equipment area used solely for internal communication purposes at a utility substation as long as the height of the communication tower was specified in the legal advertisement and public notice for any required utility substation permit hearing. The structure and its height shall be shown on the substation site plan.

9) New antennas replacing existing antennas located on a permitted communication tower or utility pole as long as no changes are being made to the existing tower or pole, the communication tower equipment area is not being expanded or added, and the replacement antennas are of the same type as the existing antennas.

10) A new communication tower fifty feet or less in height with flushed mounted antennas requires a Type I conditional use permit.

11) A new communication tower that places communication tower equipment inside a vault requires a Type I conditional use permit.

12) New antenna added to a communication tower that are not flush mounted or extend from the communication tower a distance that is greater than that of the existing antennas requires a Type I conditional use permit.

13) Any communication tower that does not qualify for exemption from the Type III conditional use permit requirement under subparagraphs 1 through 12 above and that is increased in height by less than five feet requires a Type I conditional use permit.

14) Speculative communication towers are not permitted.

15) Communication tower structures and additions that are exempt under A.R.S. Title 11 Chapter 13, Article 1.

16) A new communication tower thirty feet or less may be approved through the communication tower notice permitting process.

3. Application procedures:

- a. A site plan is required for a communication tower and appurtenances and a communication tower equipment area.
- b. The applicant shall submit documentation detailing that applicable Federal Communications Commission and Federal Aviation Administration regulations have been reviewed and that the regulations are being complied with or that the communication tower is exempt from regulation prior to the issuance of the building permit.
- c. The applicant shall submit with the site plan before and after photo simulations showing the tower and surrounding area.
- d. Prior to the issuance of a building permit, the applicant shall submit a license agreement to use the public right-of-way and approval from the department of transportation as conditions of site plan approval for any communication tower or co-located antenna and associated communication tower equipment area to be located in a public right-of-way.
- e. The minimum notification area for communication towers requiring a conditional use permit hearing is one thousand feet in the IR zone.
- f. For new towers the applicant shall submit a narrative explanation describing the community necessity for the new tower and resulting increase in coverage. The narrative shall list, and include a discussion of, the pros and cons of each prospective new tower site and co-location opportunity considered (along with maps showing the locations of each site) and shall state the reasons why each of the alternative sites and co-locations was not considered to be feasible. The narrative report shall be accompanied by before and after propagation maps prepared and signed by a radio frequency engineer evidencing that a gap in coverage exists and demonstrating how the proposed tower will eliminate the existing gap.
- g. Applicants for a communication tower for cellular phone antennas must provide evidence in writing that at least one cellular phone provider is committed to locate on the tower.
- h. Upon completion of the construction of any communication tower activity requiring a permit or right-of-way license, the applicant shall submit two sets of as-built photographs of the

completed project as evidence of compliance with the provisions of the permit or right-of-way license.

4. Development standards:

a. Lattice-type communication tower and associated equipment area not within the public right-of-way:

1) Minimum site area: None.

2) Minimum lot setbacks: A distance equal to the height of the tower.

b. Monopole communication tower and associated communication tower equipment area within the public right-of-way:

1) Minimum site area: None.

2) Minimum setbacks - tower: A distance equal to the height of the tower from a residence.

c. Monopole communication tower and associated communication tower equipment area not within the public right-of-way:

1) Minimum site area: None.

2) Minimum lot setbacks - tower:

a) Adjacent to a residential zone or use, or within the IR zone: A distance equal to the height of the tower.

b) Adjacent to a non-residential zone: A minimum of fifty feet to all lot lines except internal lot lines within the boundaries of an approved development

plan. Exceptions to this requirement for side and rear setbacks may be obtained through an approved modification of setback requirements request. Monopole communication towers adjacent to an industrial zone shall meet the setback requirements of the zone in which the tower is located.

3) Minimum lot setbacks - communication tower equipment area: The communication tower equipment area shall meet the setback requirements for accessory structures in the zone in which the tower is located.

d. Co-located antenna(s) attached to an existing, conforming structure including replacement poles and associated communication tower equipment area within the public right-of-way:

1) Minimum site area: None.

2) Minimum site setbacks: None.

e. An antenna(s) attached to an existing, permitted structure, including replacement poles, and associated communication tower equipment area not located within the public right-of-way:

1) Minimum site area: None.

2) Minimum lot setbacks: None.

f. Communication monopoles and lattice towers located within two hundred feet of a designated scenic route shall be stealth design, so long as this is not in conflict with FAA standards. If a new utility pole is used for the communication tower and the new utility pole replaces an existing utility pole which is one of a line of utility poles, then the color of the replacement utility pole and the new antennas shall match the color of the adjacent utility poles.

g. Towers shall be located with access to a publicly maintained road.

h. Landscaping shall be in accordance with Chapter 18.73 and shall screen the communication tower equipment area from adjacent residential uses and public streets. This requirement is not applicable within public rights-of-way.

i. Barbed wire may be used on fences and walls for security purposes in nonresidential zones if the wire is a minimum of six feet above ground level.

j. The light source of any outdoor security lighting shall not be visible from adjoining residential properties and shall be arranged to eliminate glare towards adjoining residential properties.

k. A minimum of one parking space shall be provided for each tower either within the site area or off-site if demonstrated to be safe and reliable.

5. Termination of Use. Any tower, structure or antenna that ceases operation for a period of twelve consecutive months shall be deemed to have terminated use and shall be removed within ninety days at the property owner's expense.

6. Communication Tower Notice Permitting Process

a) Applicability. New communication towers thirty feet or less may be permitted by the zoning inspector in accordance with the provisions of this subsection.

b) Application. Applications for communication towers shall be made on forms provided by the development services department and shall include all information in section 18.07.030H3 of the Pima County Zoning Code.

c) Notice to owners of affected properties.

1) The zoning inspector shall mail notice of the application, including a site plan and photo simulation, to property owners within one thousand feet for requests in RH, GR-1, SR and SR-2 zones. And property owners within three hundred feet for all other zones.

2) The zoning inspector may waive the sending of notice to any property owner that provides written consent to the request.

d) Action by the zoning inspector.

1) The zoning inspector shall review all submitted information and provide a written response to the applicant.

2) If no protest has been received, approval may be granted and building permits may be issued for the tower in accordance with section 18.93.050 of the Pima County Zoning Code.

3) If a written protest is received from a property owner in the notice area within 15 days of the date of the mailing of notice the application shall be denied and the applicant shall be informed of the protest. The applicant may submit a conditional use application for the communication tower.

7. Administrative Waiver Process (A.R.S. § 11-1803(C))

a) An applicant may apply for an administrative waiver for a small wireless facility as defined by A.R.S. § 11-1801(17). An administrative waiver may only be requested for items listed in A.R.S. § 11-1803(B)5, 6, or 7.

b) The zoning inspector will consider the purpose statement found in 18.07.030H1 of the Pima County Zoning Code when determining whether to grant an administrative waiver.

c) For requests to waive an undergrounding requirement and allow a utility pole in the right of way on a scenic route under A.R.S. § 11-1803(C), the zoning inspector will permit the pole when the proposed utility pole is within 20 feet of an existing utility pole, street light or similar structure and the proposed utility pole is no higher than the existing structure that is within 20 feet.

5. Utilities.

a. All new utility lines along scenic routes shall be underground unless the line is a 46KV or greater transmission line. New utility poles are not permitted unless a waiver has been approved under Section 18.07.030H7 or the poles are needed for a 46KV or greater transmission line.

18.77.040 - Scenic routes.

- A. Purpose. The intent of this section is to preserve and enhance the visual resources of the natural and built environment from and along scenic routes in order to:
 - 1. Protect property values and the character of neighborhoods;
 - 2. Protect and enhance the unique character of a community, including vegetation, architecture and geology;
 - 3. Protect and enhance the economic value of tourism; and
 - 4. Protect natural resources.
- B. Definitions. Certain terms used in this section shall be defined as follows:
 - 1. "Highly reflective" means a light reflecting value (LRV) greater than eighty percent (reference: Munsell Book of Color).
 - 2. "Monument type freestanding identification sign" means a sign in which the architectural structure supporting the background panel of the sign is at least fifty percent as wide as the background panel.
 - 3. "View corridor" means the view from the scenic route at four feet above existing grade at the future right-of-way line along the parcel is not obstructed by buildings or structures. The view corridor will permit an unobstructed view from at least one point into and through a portion of a development site towards the scenic resource(s).
 - 4. "Viewshed analysis" means describe, map, and provide photos of the predevelopment viewsheds from representative locations on the scenic route (at approximately four feet above existing grade) looking at and through the development site. From the same perspectives, illustrate the post-development viewsheds.
- C. The roadways and roadway segments designated as Scenic Routes on the Major Streets and Scenic Routes Plan are subject to the requirements of this section.
- D. Applicability. This section applies to all new development requiring a building permit, including expansions of existing development, on any land within two hundred feet of a designated Scenic Route as designated on the Major Streets and Scenic Routes Plan. The two-hundred-foot area of applicability is measured as follows:
 - 1.

Where a Scenic Route is designated as a "Major Route" on the Major Streets and Scenic Routes Plan, this section applies to all land within two hundred feet of the future right-of-way line of the designated Scenic Route.

2. Where a Scenic Route is not designated as a "Major Route" on the Major Streets and Scenic Routes Plan, this section applies to all land within two hundred feet of the existing right-of-way line of the designated Scenic Route.

E. Development Standards.

1. Building heights:

- a. The height of residential buildings shall not exceed twenty-four feet.
- b. The height of commercial, office or industrial buildings may exceed twenty-four feet if:
 - 1) The maximum height permitted in the zone is not exceeded, and
 - 2) A view corridor(s) with a combined width of at least twenty percent of the street frontage of the development site is provided. A viewshed analysis of the development site shall be submitted with the development plan or subdivision plat.

2. Setback:

- a. All buildings or structures or any part of such buildings or structures shall have setback requirements of half of the required future right-of-way width according to the Major Streets and Scenic Routes Plan, as it may be amended and supplemented.
- b. Setback exception for signs, walls, fences and private swimming pools:
 - 1) Setback requirements for signs shall be as specified in Section 18.79.030 (Sign Standards);
 - 2) Walls and fences shall be permitted within required setback areas as specified in Section 18.07.050(B) (Exception for Walls and Fences) and Chapter 18.73 (Landscaping, Screening and Buffering Standards);
 - 3) Private swimming pools shall be permitted within required setback areas as specified in Section 18.07.030(D)(1) (Land Use Regulations — Swimming Pools — Private).

- 3.

Landscaping Standards. The scenic route setback area shall be landscaped in compliance with Chapter 18.73 (Landscaping, Buffering and Screening Standards). Existing natural vegetation in the scenic route setback area shall be preserved and maintained, where possible. Emphasis will be placed on satisfying the landscaping requirements by retaining and augmenting the existing, natural, vegetative communities.

4. Building and Wall Surfaces.

- a. Highly reflective finishes, colors or materials are prohibited on building and wall surfaces which are visible from a designated scenic route.
- b. Building and wall surfaces which are visible from a designated scenic route shall have colors which are compatible with surrounding natural landscape (desert/earth tones). Allowable colors include: brown — including rusts, sepias, sands, tans and buffs, olive and grey.

5. Utilities.

- a. All new utility lines along scenic routes shall be underground unless the line is a 46KV or greater transmission line.
- b. Utility facilities constructed or installed pursuant to a certificate of environmental compatibility issued prior to the adoption of this section under the authority of A.R.S. Title 40, Chapter 2, Article 6.2, are exempt from the provisions of this section.
- c. Where possible, existing poles shall be used to provide the required transition to underground service to new developments adjacent to scenic routes. However, a new pole set in line with the existing overhead system, when necessary to serve approved new developments, is not deemed to be a new utility. Upgrades and reinforcements of existing overhead transmission utilities are allowed to the extent that the total number of cables is not increased.
- d. Location of underground utility lines shall be planned and joint-trenched where possible to minimize the disturbance of vegetation.
- e. Exceptions:
 - 1) Section 18.77.040(E)(5)(a) does not apply to individual residential lots not part of a subdivision plat.
 - 2)

The planning official may grant an exemption from Section 18.77.040(E)(5)(a) upon a finding that it would impose an unreasonable economic hardship or that the site lacks scenic quality. The petitioner may appeal the planning official's decision to the board of supervisors.

6. Signs. Refer to Chapter 18.79 (Sign Standards) for provisions for signs along scenic routes.

F. Designation.

1. Public Notice and Hearing Requirements.

- a. Public notice of the hearing before the planning and zoning commission and the board of supervisors shall be given as required in Section 18.01.070.
- b. No designated scenic routes shall be amended without written notice to the owner(s) of the lot(s) adjacent to the recommended route.

2. Criteria for Scenic Route Designation.

- a. The determination of scenic route status shall be based on exceptional scenic quality that helps define the community's character. The scenic resources may be unique and significant views of mountains, vegetation, architecture, site design, or geologic formations.
- b. Refer to the Major Streets and scenic routes Plan for reference to roads designated as scenic routes.

(Ord. 2016-2, § 1 (part), 2016; Ord. 1996-58 § 2, 1996; Ord. 1995-42 § 5 (part), 1995; Ord. 1985-82 (part), 1985)

Table 18.77.030

a.	Street:	b.	Terminals:	c.	Distance from Approved Centerline:
1)	Oracle Rd/ Tucson-Florence Highway		From Rudasil Road to Pinal-Pima County line		150 feet

2)	Old Spanish Trail	From the city limits to southeast corner of Sec. 30, T14S, R16E	100 feet
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State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

CHAPTER 124
HOUSE BILL 2365

AN ACT

AMENDING TITLE 9, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING TITLE 11, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 13; RELATING TO WIRELESS SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 9, chapter 5, Arizona Revised Statutes, is amended
3 by adding article 8, to read:

4 ARTICLE 8. USE OF PUBLIC HIGHWAYS BY WIRELESS PROVIDERS

5 9-591. Definitions

6 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 1. "ANTENNA" MEANS COMMUNICATIONS EQUIPMENT THAT TRANSMITS OR
8 RECEIVES ELECTROMAGNETIC RADIO FREQUENCY SIGNALS AND THAT IS USED IN
9 PROVIDING WIRELESS SERVICES.

10 2. "APPLICABLE CODES" MEANS UNIFORM BUILDING, FIRE, ELECTRICAL,
11 PLUMBING OR MECHANICAL CODES THAT ARE ADOPTED BY A RECOGNIZED NATIONAL
12 CODE ORGANIZATION OR LOCAL AMENDMENTS TO THOSE CODES THAT ARE ENACTED TO
13 ADDRESS THREATS OF DESTRUCTION OF PROPERTY OR INJURY TO PERSONS AND TO AN
14 EXTENT THAT IS NOT INCONSISTENT WITH THIS ARTICLE.

15 3. "APPLICANT" MEANS ANY PERSON THAT SUBMITS AN APPLICATION AND
16 THAT IS A WIRELESS PROVIDER.

17 4. "APPLICATION" MEANS A REQUEST THAT IS SUBMITTED BY AN APPLICANT
18 TO AN AUTHORITY FOR A PERMIT TO COLLOCATE SMALL WIRELESS FACILITIES OR TO
19 APPROVE THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR
20 WIRELESS SUPPORT STRUCTURE.

21 5. "AUTHORITY" MEANS ANY CITY, TOWN, SPECIAL DISTRICT OR POLITICAL
22 SUBDIVISION OF THIS STATE THAT IS AUTHORIZED TO MAKE LEGISLATIVE,
23 QUASI-JUDICIAL OR ADMINISTRATIVE DECISIONS CONCERNING AN APPLICATION.
24 AUTHORITY DOES NOT INCLUDE ANY STATE COURT THAT HAS JURISDICTION OVER AN
25 AUTHORITY AND DOES NOT INCLUDE A COUNTY, SPECIAL TAXING DISTRICT, OR
26 ELECTRIC COOPERATIVE.

27 6. "AUTHORITY UTILITY POLE" MEANS A UTILITY POLE THAT IS OWNED OR
28 OPERATED BY AN AUTHORITY AND THAT IS IN A RIGHT-OF-WAY. AUTHORITY UTILITY
29 POLE DOES NOT INCLUDE A UTILITY POLE FOR ELECTRIC DISTRIBUTION.

30 7. "CABLE OPERATOR" HAS THE SAME MEANING PRESCRIBED IN SECTION
31 9-505. CABLE OPERATOR DOES NOT INCLUDE A SPECIAL TAXING DISTRICT.

32 8. "COLLOCATE" OR "COLLOCATION" MEANS TO INSTALL, MOUNT, MAINTAIN,
33 MODIFY, OPERATE OR REPLACE WIRELESS FACILITIES ON, WITHIN OR ADJACENT TO A
34 WIRELESS SUPPORT STRUCTURE OR UTILITY POLE.

35 9. "COMMUNICATIONS SERVICE" MEANS CABLE SERVICE AS DEFINED IN
36 47 UNITED STATES CODE SECTION 522(6), INFORMATION SERVICE AS DEFINED IN
37 47 UNITED STATES CODE SECTION 153(24), TELECOMMUNICATIONS SERVICE AS
38 DEFINED IN 47 UNITED STATES CODE SECTION 153(53) OR WIRELESS SERVICE.

39 10. "COMMUNICATIONS SERVICE PROVIDER" MEANS A CABLE OPERATOR, A
40 PROVIDER OF INFORMATION SERVICE AS DEFINED IN 47 UNITED STATES CODE
41 SECTION 153(24), A TELECOMMUNICATIONS CARRIER AS DEFINED IN 47 UNITED
42 STATES CODE SECTION 153(51) OR A WIRELESS SERVICES PROVIDER.

43 11. "FEE" MEANS A ONE-TIME CHARGE.

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

1 13. "MONOPOLE" MEANS A WIRELESS SUPPORT STRUCTURE THAT IS NOT MORE
2 THAN FORTY INCHES IN DIAMETER AT THE GROUND LEVEL AND THAT HAS ALL OF THE
3 WIRELESS FACILITIES MOUNTED ON THE POLE OR CONTAINED INSIDE OF THE POLE.

4 14. "PERMIT" MEANS WRITTEN PERMISSION REQUIRED BY AN AUTHORITY TO
5 INSTALL, MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE A UTILITY POLE OR
6 MONOPOLE, TO COLLOCATE A SMALL WIRELESS FACILITY ON A UTILITY POLE OR
7 WIRELESS SUPPORT STRUCTURE OR TO COLLOCATE WIRELESS FACILITIES ON A
8 MONOPOLE.

9 15. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED LIABILITY
10 COMPANY, PARTNERSHIP, ASSOCIATION, TRUST OR OTHER ENTITY OR ORGANIZATION,
11 INCLUDING AN AUTHORITY.

12 16. "PRIVATE EASEMENT" MEANS AN EASEMENT OR OTHER REAL PROPERTY
13 RIGHT THAT IS ONLY FOR THE BENEFIT OF THE GRANTOR AND GRANTEE AND THE
14 GRANTOR'S OR GRANTEE'S SUCCESSORS AND ASSIGNS.

15 17. "RATE" MEANS A RECURRING CHARGE.

16 18. "RIGHT-OF-WAY" MEANS THE AREA ON, BELOW OR ABOVE A PUBLIC
17 ROADWAY, HIGHWAY, STREET, SIDEWALK, ALLEY OR UTILITY EASEMENT.
18 RIGHT-OF-WAY DOES NOT INCLUDE A FEDERAL INTERSTATE HIGHWAY, A STATE
19 HIGHWAY OR STATE ROUTE UNDER THE JURISDICTION OF THE DEPARTMENT OF
20 TRANSPORTATION, A PRIVATE EASEMENT, PROPERTY THAT IS OWNED BY A SPECIAL
21 TAXING DISTRICT, OR A UTILITY EASEMENT THAT DOES NOT AUTHORIZE THE
22 DEPLOYMENT SOUGHT BY THE WIRELESS PROVIDER.

23 19. "SMALL WIRELESS FACILITY" MEANS A WIRELESS FACILITY THAT MEETS
24 BOTH OF THE FOLLOWING QUALIFICATIONS:

25 (a) ALL ANTENNAS ARE LOCATED INSIDE AN ENCLOSURE OF NOT MORE THAN
26 SIX CUBIC FEET IN VOLUME OR, IN THE CASE OF AN ANTENNA THAT HAS EXPOSED
27 ELEMENTS, THE ANTENNA AND ALL OF THE ANTENNA'S EXPOSED ELEMENTS COULD FIT
28 WITHIN AN IMAGINARY ENCLOSURE OF NOT MORE THAN SIX CUBIC FEET IN VOLUME.

29 (b) ALL OTHER WIRELESS EQUIPMENT ASSOCIATED WITH THE FACILITY IS
30 CUMULATIVELY NOT MORE THAN TWENTY-EIGHT CUBIC FEET IN VOLUME, OR FIFTY
31 CUBIC FEET IN VOLUME IF THE EQUIPMENT WAS GROUND MOUNTED BEFORE THE
32 EFFECTIVE DATE OF THIS SECTION. THE FOLLOWING TYPES OF ASSOCIATED
33 ANCILLARY EQUIPMENT ARE NOT INCLUDED IN THE CALCULATION OF EQUIPMENT
34 VOLUME PURSUANT TO THIS SUBDIVISION:

35 (i) AN ELECTRIC METER.

36 (ii) CONCEALMENT ELEMENTS.

37 (iii) A TELECOMMUNICATIONS DEMARCATION BOX.

38 (iv) GROUNDING EQUIPMENT.

39 (v) A POWER TRANSFER SWITCH.

40 (vi) A CUTOFF SWITCH.

41 (vii) VERTICAL CABLE RUNS FOR THE CONNECTION OF POWER AND OTHER
42 SERVICES.

43 20. "SPECIAL TAXING DISTRICT" MEANS A SPECIAL DISTRICT FORMED
44 PURSUANT TO TITLE 48, CHAPTER 11, 12, 17, 18, 19, 20 OR 22.

1 21. "UTILITY POLE" MEANS A POLE OR SIMILAR STRUCTURE THAT IS USED
2 IN WHOLE OR IN PART FOR COMMUNICATIONS SERVICES, ELECTRIC DISTRIBUTION,
3 LIGHTING OR TRAFFIC SIGNALS. UTILITY POLE DOES NOT INCLUDE A MONOPOLE.

4 22. "WIRELESS FACILITY":

5 (a) MEANS EQUIPMENT AT A FIXED LOCATION THAT ENABLES WIRELESS
6 COMMUNICATIONS BETWEEN USER EQUIPMENT AND A COMMUNICATIONS NETWORK,
7 INCLUDING BOTH OF THE FOLLOWING:

8 (i) EQUIPMENT ASSOCIATED WITH WIRELESS COMMUNICATIONS.

9 (ii) RADIO TRANSCEIVERS, ANTENNAS, COAXIAL OR FIBER-OPTIC CABLES,
10 REGULAR AND BACKUP POWER SUPPLIES AND COMPARABLE EQUIPMENT, REGARDLESS OF
11 TECHNOLOGICAL CONFIGURATION.

12 (b) INCLUDES SMALL WIRELESS FACILITIES.

13 (c) DOES NOT INCLUDE THE STRUCTURE OR IMPROVEMENTS ON, UNDER OR
14 WITHIN WHICH THE EQUIPMENT IS COLLOCATED, WIRELINE BACKHAUL FACILITIES,
15 COAXIAL OR FIBER-OPTIC CABLE THAT IS BETWEEN WIRELESS SUPPORT STRUCTURES
16 OR UTILITY POLES OR COAXIAL OR FIBER-OPTIC CABLE THAT IS OTHERWISE NOT
17 IMMEDIATELY ADJACENT TO, OR DIRECTLY ASSOCIATED WITH, AN ANTENNA.

18 (d) DOES NOT INCLUDE WI-FI RADIO EQUIPMENT DESCRIBED IN SECTION
19 9-506, SUBSECTION I OR MICROCELL EQUIPMENT DESCRIBED IN SECTION 9-584,
20 SUBSECTION E.

21 23. "WIRELESS INFRASTRUCTURE PROVIDER" MEANS ANY PERSON THAT IS
22 AUTHORIZED TO PROVIDE TELECOMMUNICATIONS SERVICE IN THIS STATE AND THAT
23 BUILDS OR INSTALLS WIRELESS COMMUNICATIONS TRANSMISSION EQUIPMENT,
24 WIRELESS FACILITIES, UTILITY POLES OR MONOPOLES BUT THAT IS NOT A WIRELESS
25 SERVICES PROVIDER. WIRELESS INFRASTRUCTURE PROVIDER DOES NOT INCLUDE A
26 SPECIAL TAXING DISTRICT.

27 24. "WIRELESS PROVIDER" MEANS A CABLE OPERATOR, WIRELESS
28 INFRASTRUCTURE PROVIDER OR WIRELESS SERVICES PROVIDER.

29 25. "WIRELESS SERVICES" MEANS ANY SERVICES THAT ARE PROVIDED TO THE
30 PUBLIC AND THAT USE LICENSED OR UNLICENSED SPECTRUM, WHETHER AT A FIXED
31 LOCATION OR MOBILE, USING WIRELESS FACILITIES.

32 26. "WIRELESS SERVICES PROVIDER" MEANS A PERSON THAT PROVIDES
33 WIRELESS SERVICES. WIRELESS SERVICES PROVIDER DOES NOT INCLUDE A SPECIAL
34 TAXING DISTRICT.

35 27. "WIRELESS SUPPORT STRUCTURE":

36 (a) MEANS:

37 (i) A FREESTANDING STRUCTURE, SUCH AS A MONOPOLE.

38 (ii) A TOWER, EITHER GUYED OR SELF-SUPPORTING.

39 (iii) A SIGN OR BILLBOARD.

40 (iv) ANY OTHER EXISTING OR PROPOSED STRUCTURE DESIGNED TO SUPPORT
41 OR CAPABLE OF SUPPORTING SMALL WIRELESS FACILITIES.

42 (b) DOES NOT INCLUDE A UTILITY POLE.

1 9-592. Applicability; wireless provider; use of right-of-way;
2 rates, fees and terms; right to access; damage and
3 repair .

4 A. THIS SECTION APPLIES TO THE ACTIVITIES OF A WIRELESS PROVIDER
5 WITHIN A RIGHT-OF-WAY.

6 B. AN AUTHORITY MAY NOT ENTER INTO AN EXCLUSIVE ARRANGEMENT WITH A
7 WIRELESS PROVIDER FOR USE OF A RIGHT-OF-WAY FOR ANY OF THE FOLLOWING:

8 1. THE CONSTRUCTION, INSTALLATION, MAINTENANCE, MODIFICATION,
9 OPERATION OR REPLACEMENT OF UTILITY POLES OR MONOPOLES.

10 2. THE COLLOCATION OF SMALL WIRELESS FACILITIES ON UTILITY POLES OR
11 WIRELESS SUPPORT STRUCTURES.

12 3. THE COLLOCATION OF WIRELESS FACILITIES ON MONOPOLES.

13 C. AN AUTHORITY MAY CHARGE A WIRELESS PROVIDER A RATE OR FEE FOR
14 THE USE OF A RIGHT-OF-WAY FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE,
15 MODIFICATION, OPERATION OR REPLACEMENT OF A UTILITY POLE IN THE
16 RIGHT-OF-WAY OR THE COLLOCATION OF A SMALL WIRELESS FACILITY IN THE
17 RIGHT-OF-WAY, ONLY IF THE AUTHORITY CHARGES OTHER COMMUNICATIONS SERVICE
18 PROVIDERS OR PUBLICLY, COOPERATIVELY OR MUNICIPALLY OWNED UTILITIES FOR
19 THE USE OF THE RIGHT-OF-WAY AND THE AUTHORITY HAS THE LEGAL AUTHORITY TO
20 DO SO. IF AN AUTHORITY CHARGES A RATE OR FEE PURSUANT TO THIS SECTION, THE
21 RATE OR FEE FOR A WIRELESS PROVIDER MUST BE:

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

24 2. COMPETITIVELY NEUTRAL IN REGARD TO OTHER USERS OF THE
25 RIGHT-OF-WAY, INCLUDING INVESTOR-OWNED, AUTHORITY-OWNED OR COOPERATIVELY
26 OWNED ENTITIES, UNLESS OTHER USERS ARE EXEMPT FROM SUCH RATES OR FEES
27 UNDER APPLICABLE LAW.

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

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

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

34 3. BE UNREASONABLE OR DISCRIMINATORY.

35 4. EXCEED AN ANNUAL AMOUNT EQUAL TO FIFTY DOLLARS MULTIPLIED BY THE
36 NUMBER OF SMALL WIRELESS FACILITIES THAT ARE IN THE AUTHORITY'S GEOGRAPHIC
37 JURISDICTION AND THAT ARE PLACED BY THE WIRELESS PROVIDER IN THE
38 RIGHT-OF-WAY.

39 E. AN AUTHORITY SHALL ESTABLISH AND MAKE AVAILABLE RATES, FEES AND
40 TERMS FOR ALL OF THE FOLLOWING, WITHIN SIX MONTHS AFTER THE EFFECTIVE DATE
41 OF THIS SECTION OR THREE MONTHS AFTER RECEIVING THE FIRST REQUEST BY A
42 WIRELESS PROVIDER, WHICHEVER IS LATER:

43 1. THE CONSTRUCTION, INSTALLATION, MOUNTING, MAINTENANCE,
44 MODIFICATION, OPERATION OR REPLACEMENT OF A UTILITY POLE OR MONOPOLE BY A
45 WIRELESS PROVIDER IN A RIGHT-OF-WAY.

1 2. THE COLLOCATION OF A SMALL WIRELESS FACILITY BY A WIRELESS
2 PROVIDER IN A RIGHT-OF-WAY.

3 3. THE COLLOCATION OF A WIRELESS FACILITY ON OR WITHIN A MONOPOLE
4 BY A WIRELESS PROVIDER IN A RIGHT-OF-WAY.

5 F. THE RATES, FEES AND TERMS ESTABLISHED PURSUANT TO SUBSECTION E
6 OF THIS SECTION MUST BE MADE AVAILABLE FOR ACCEPTANCE BY A WIRELESS
7 PROVIDER. AT THE WIRELESS PROVIDER'S OPTION, A WIRELESS PROVIDER MAY
8 REQUEST DIFFERENT OR ADDITIONAL TERMS THAT THE PARTIES SHALL NEGOTIATE IN
9 GOOD FAITH. DOCUMENTS THAT REFLECT RATES, FEES AND TERMS WITH EACH
10 WIRELESS PROVIDER ARE PUBLIC RECORDS. RATES, FEES AND TERMS MUST COMPLY
11 WITH THIS ARTICLE, AND THE TERMS:

12 1. MAY NOT BE UNREASONABLE OR DISCRIMINATORY.

13 2. MAY INCLUDE REQUIREMENTS APPLICABLE TO OTHER USERS OF THE
14 RIGHT-OF-WAY.

15 3. MAY REQUIRE THAT THE WIRELESS PROVIDER'S OPERATION OF THE SMALL
16 WIRELESS FACILITIES IN THE RIGHT-OF-WAY DOES NOT INTERFERE WITH THE
17 AUTHORITY'S PUBLIC SAFETY COMMUNICATIONS.

18 4. SUBJECT TO SUBSECTION K OF THIS SECTION AND SECTION 9-593,
19 SUBSECTION F, MAY NOT REQUIRE THE PLACEMENT OF SMALL WIRELESS FACILITIES
20 ON ANY SPECIFIC UTILITY POLE OR CATEGORY OF POLES OR REQUIRE MULTIPLE
21 ANTENNA SYSTEMS ON A SINGLE UTILITY POLE.

22 5. SUBJECT TO SUBSECTION K OF THIS SECTION AND SECTION 9-593,
23 SUBSECTION F, MAY NOT LIMIT THE PLACEMENT OF SMALL WIRELESS FACILITIES BY
24 MINIMUM SEPARATION DISTANCES.

25 G. AGREEMENTS BETWEEN AUTHORITIES AND WIRELESS PROVIDERS THAT ARE
26 IN EFFECT ON THE EFFECTIVE DATE OF THIS SECTION AND THAT RELATE TO THE
27 COLLOCATION OF SMALL WIRELESS FACILITIES IN THE RIGHT-OF-WAY, INCLUDING
28 THE COLLOCATION OF SMALL WIRELESS FACILITIES ON AUTHORITY UTILITY POLES,
29 REMAIN IN EFFECT, SUBJECT TO APPLICABLE TERMINATION PROVISIONS. THE
30 WIRELESS PROVIDER MAY ACCEPT THE RATES, FEES AND TERMS ESTABLISHED UNDER
31 SUBSECTIONS E AND F OF THIS SECTION FOR SMALL WIRELESS FACILITIES AND
32 UTILITY POLES THAT ARE THE SUBJECT OF AN APPLICATION SUBMITTED AFTER THE
33 RATES, FEES AND TERMS BECOME EFFECTIVE.

34 H. SUBJECT TO THIS SECTION AND THE APPROVAL OF AN APPLICATION, IF
35 REQUIRED, A WIRELESS PROVIDER MAY DO ANY OF THE FOLLOWING:

36 1. COLLOCATE SMALL WIRELESS FACILITIES.

37 2. CONSTRUCT, INSTALL, MODIFY, MOUNT, MAINTAIN, OPERATE AND REPLACE
38 UTILITY POLES THAT ARE ASSOCIATED WITH THE COLLOCATION OF SMALL WIRELESS
39 FACILITIES ALONG, ACROSS, ON AND UNDER THE RIGHT-OF-WAY.

40 3. CONSTRUCT, INSTALL, MODIFY, MOUNT, MAINTAIN, OPERATE AND REPLACE
41 MONOPOLES THAT ARE ASSOCIATED WITH THE COLLOCATION OF WIRELESS FACILITIES
42 ALONG, ACROSS, ON AND UNDER THE RIGHT-OF-WAY. THE INSTALLATION,
43 MODIFICATION AND REPLACEMENT OF MONOPOLES ARE SUBJECT TO REVIEW UNDER
44 SECTION 9-594 REGARDLESS OF THE HEIGHT OF THE MONOPOLE.

1 I. SUBJECT TO SUBSECTION K, PARAGRAPH 2, SUBDIVISION (c) OF THIS
2 SECTION, A NEW, REPLACEMENT OR MODIFIED UTILITY POLE THAT IS ASSOCIATED
3 WITH THE COLLOCATION OF SMALL WIRELESS FACILITIES AND THAT IS INSTALLED IN
4 THE RIGHT-OF-WAY IS NOT SUBJECT TO ZONING REVIEW AND APPROVAL UNDER
5 SECTION 9-594 IF THE UTILITY POLE DOES NOT EXCEED THE GREATER OF EITHER:

6 1. TEN FEET IN HEIGHT ABOVE THE TALLEST EXISTING UTILITY POLE,
7 OTHER THAN A UTILITY POLE SUPPORTING ONLY WIRELESS FACILITIES, THAT IS IN
8 PLACE ON THE EFFECTIVE DATE OF THIS SECTION, THAT IS LOCATED WITHIN FIVE
9 HUNDRED FEET OF THE NEW, REPLACEMENT OR MODIFIED UTILITY POLE AND THAT IS
10 IN THE SAME RIGHT-OF-WAY WITHIN THE JURISDICTIONAL BOUNDARY OF THE
11 AUTHORITY, BUT NOT MORE THAN FIFTY FEET ABOVE GROUND LEVEL.

12 2. FORTY FEET ABOVE GROUND LEVEL.

13 J. NEW SMALL WIRELESS FACILITIES COLLOCATED ON A UTILITY POLE OR
14 WIRELESS SUPPORT STRUCTURE IN THE RIGHT-OF-WAY ARE NOT SUBJECT TO ZONING
15 REVIEW AND APPROVAL IF THEY DO NOT EXTEND MORE THAN TEN FEET ABOVE THE
16 UTILITY POLE OR WIRELESS SUPPORT STRUCTURE AND DO NOT EXCEED FIFTY FEET
17 ABOVE GROUND LEVEL.

18 K. AN AUTHORITY MAY REQUIRE AN APPLICATION UNDER THIS SECTION FOR
19 THE INSTALLATION OF NEW, REPLACEMENT OR MODIFIED UTILITY POLES ASSOCIATED
20 WITH THE COLLOCATION OF SMALL WIRELESS FACILITIES. AN AUTHORITY SHALL
21 APPROVE AN APPLICATION UNLESS THE AUTHORITY FINDS THAT THE UTILITY POLE
22 FAILS TO COMPLY WITH ANY OF THE FOLLOWING:

23 1. APPLICABLE CODES.

24 2. LOCAL CODE PROVISIONS OR REGULATIONS THAT CONCERN ANY OF THE
25 FOLLOWING:

26 (a) PUBLIC SAFETY.

27 (b) OBJECTIVE DESIGN STANDARDS AND REASONABLE STEALTH AND
28 CONCEALMENT REQUIREMENTS.

29 (c) UNDERGROUNDING REQUIREMENTS THAT PROHIBIT THE INSTALLATION OF
30 NEW OR THE MODIFICATION OF EXISTING UTILITY POLES OR MONOPOLES IN A
31 RIGHT-OF-WAY WITHOUT PRIOR APPROVAL, IF SUCH REQUIREMENTS INCLUDE A
32 WAIVER, ZONING OR ANOTHER PROCESS THAT ADDRESSES REQUESTS TO INSTALL SUCH
33 NEW UTILITY POLES OR MONOPOLES OR MODIFY SUCH EXISTING UTILITY POLES OR
34 MONOPOLES AND DO NOT PROHIBIT THE REPLACEMENT OF UTILITY POLES OR
35 MONOPOLES.

36 3. REQUIREMENTS THAT ARE IMPOSED BY A CONTRACT BETWEEN AN AUTHORITY
37 AND A PRIVATE PROPERTY OWNER AND THAT CONCERN DESIGN STANDARDS APPLICABLE
38 TO UTILITY POLES IN THE RIGHT-OF-WAY.

39 4. THE AUTHORITY'S PUBLIC SAFETY AND REASONABLE SPACING
40 REQUIREMENTS THAT CONCERN THE LOCATION OF NEW UTILITY POLES IN A
41 RIGHT-OF-WAY.

42 L. AN AUTHORITY SHALL PROCESS APPLICATIONS UNDER SUBSECTION K OF
43 THIS SECTION IN COMPLIANCE WITH APPLICABLE LAW. IF AN AUTHORITY FAILS TO
44 APPROVE OR DENY AN APPLICATION WITHIN THE TIME FRAME SPECIFIED BY
45 APPLICABLE LAW, THE APPLICATION SHALL BE DEEMED APPROVED. ANY APPLICATION

1 FEE IS SUBJECT TO THE REQUIREMENTS PROVIDED IN SECTION 9-593, SUBSECTION
2 I. THE TOTAL APPLICATION FEE, IF ALLOWED, MAY NOT EXCEED SEVEN HUNDRED
3 FIFTY DOLLARS.

4 M. THE CONSTRUCTION, INSTALLATION, MOUNTING, MAINTENANCE,
5 MODIFICATION, OPERATION OR REPLACEMENT FOR WHICH A PERMIT IS GRANTED SHALL
6 BE COMPLETED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE PERMIT ISSUANCE
7 DATE, UNLESS THE AUTHORITY AND WIRELESS PROVIDER AGREE TO EXTEND THIS
8 PERIOD OR A DELAY IS CAUSED BY A LACK OF COMMERCIAL POWER AT THE
9 SITE. APPROVAL OF AN APPLICATION BY AN AUTHORITY AUTHORIZES THE APPLICANT
10 TO DO BOTH OF THE FOLLOWING:

11 1. UNDERTAKE THE REQUESTED DEPLOYMENT.

12 2. SUBJECT TO APPLICABLE RELOCATION REQUIREMENTS, THE AUTHORITY'S
13 TERMS AS DESCRIBED IN THIS SECTION AND THE WIRELESS PROVIDER'S RIGHT TO
14 TERMINATE AT ANY TIME, OPERATE AND MAINTAIN THE WIRELESS PROVIDER'S NEW,
15 MODIFIED OR REPLACEMENT UTILITY POLE FOR A PERIOD OF NOT LESS THAN TEN
16 YEARS, WHICH MUST BE RENEWED FOR EQUIVALENT DURATIONS UNLESS THE AUTHORITY
17 MAKES A FINDING THAT THE NEW OR MODIFIED UTILITY POLE DOES NOT COMPLY WITH
18 THE REQUIREMENTS DESCRIBED IN SUBSECTION K OF THIS SECTION.

19 N. AN AUTHORITY MAY REQUIRE A WIRELESS PROVIDER TO REPAIR ALL
20 DAMAGE TO THE AUTHORITY'S PROPERTY AND THE RIGHT-OF-WAY THAT IS CAUSED BY
21 THE ACTIVITIES OF THE WIRELESS PROVIDER OR THE WIRELESS PROVIDER'S
22 CONTRACTOR WHILE OCCUPYING, INSTALLING, REPAIRING OR MAINTAINING SMALL
23 WIRELESS FACILITIES, WIRELESS SUPPORT STRUCTURES OR UTILITY POLES IN THE
24 RIGHT-OF-WAY AND TO RETURN THE DAMAGED PROPERTY TO THE SAME CONDITION AS
25 BEFORE THE DAMAGE PURSUANT TO THE COMPETITIVELY NEUTRAL, REASONABLE
26 REQUIREMENTS AND SPECIFICATIONS OF THE AUTHORITY. IF THE WIRELESS
27 PROVIDER FAILS TO MAKE THE REPAIRS REQUIRED BY THE AUTHORITY WITHIN A
28 REASONABLE TIME AFTER THE AUTHORITY PROVIDES WRITTEN NOTICE TO THE
29 WIRELESS PROVIDER, THE AUTHORITY MAY MAKE THE REPAIRS AND CHARGE THE
30 APPLICABLE PARTY THE REASONABLE, DOCUMENTED COST OF THE REPAIRS.

31 O. THIS ARTICLE DOES NOT RELIEVE A WIRELESS PROVIDER FROM ANY
32 APPLICABLE REQUIREMENT TO OBTAIN A FRANCHISE, LICENSE OR OTHER PERMISSION
33 TO PROVIDE COMMUNICATIONS SERVICE OR TO INSTALL, PLACE, MAINTAIN OR
34 OPERATE FACILITIES OR STRUCTURES THAT ARE NOT AUTHORIZED BY THIS ARTICLE
35 IN THE RIGHT-OF-WAY TO PROVIDE A COMMUNICATIONS SERVICE.

36 9-593. Applicability; collocation of small wireless
37 facilities; permits; application; fee

38 A. THIS SECTION APPLIES TO THE ACTIVITIES OF A WIRELESS PROVIDER
39 WITHIN A RIGHT-OF-WAY.

40 B. EXCEPT AS PROVIDED IN THIS SECTION AND SECTIONS 9-592, 9-594,
41 9-595, 9-597, 9-598 AND 9-599, AS APPLICABLE, AN AUTHORITY MAY NOT
42 PROHIBIT, REGULATE OR CHARGE FOR THE COLLOCATION OF SMALL WIRELESS
43 FACILITIES.

44 C. SUBJECT TO THIS SECTION AND SECTION 9-592, SUBSECTION J, A SMALL
45 WIRELESS FACILITY IS CLASSIFIED AS A PERMITTED USE AND IS NOT SUBJECT TO

1 ZONING REVIEW OR APPROVAL IF THE SMALL WIRELESS FACILITY IS COLLOCATED IN
2 A RIGHT-OF-WAY IN ANY ZONE.

3 D. AN AUTHORITY MAY REQUIRE AN APPLICANT TO OBTAIN ONE OR MORE
4 PERMITS TO COLLOCATE A SMALL WIRELESS FACILITY IF THE PERMIT REQUIREMENT
5 IS OF GENERAL APPLICABILITY AND DOES NOT APPLY EXCLUSIVELY TO WIRELESS
6 FACILITIES. AN APPLICANT SEEKING TO COLLOCATE MULTIPLE SMALL WIRELESS
7 FACILITIES WITHIN THE JURISDICTION OF A SINGLE AUTHORITY MAY FILE A
8 CONSOLIDATED APPLICATION FOR THE COLLOCATION OF UP TO TWENTY-FIVE SMALL
9 WIRELESS FACILITIES IF THE COLLOCATIONS EACH INVOLVE SUBSTANTIALLY THE
10 SAME TYPE OF SMALL WIRELESS FACILITIES AND SUBSTANTIALLY THE SAME TYPE OF
11 STRUCTURE.

12 E. AN APPLICATION MUST INCLUDE AN ATTESTATION THAT THE SMALL
13 WIRELESS FACILITIES WILL BE COLLOCATED ON THE UTILITY POLE OR WIRELESS
14 SUPPORT STRUCTURE AND THAT THE SMALL WIRELESS FACILITIES WILL BE
15 OPERATIONAL FOR USE BY A WIRELESS SERVICES PROVIDER TO PROVIDE SERVICE
16 WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE PERMIT ISSUANCE DATE, UNLESS THE
17 AUTHORITY AND THE WIRELESS PROVIDER AGREE TO EXTEND THIS PERIOD OR A DELAY
18 IS CAUSED BY A LACK OF COMMERCIAL POWER AT THE SITE.

19 F. AN AUTHORITY:

20 1. SHALL ACCEPT APPLICATIONS FOR, PROCESS AND ISSUE PERMITS TO
21 COLLOCATE SMALL WIRELESS FACILITIES.

22 2. WITHIN TWENTY DAYS AFTER RECEIVING AN APPLICATION, SHALL
23 DETERMINE AND NOTIFY THE APPLICANT WHETHER THE APPLICATION IS COMPLETE.
24 IF AN APPLICANT IS NOT NOTIFIED WITHIN THE TWENTY-DAY PERIOD, THE
25 APPLICATION IS DEEMED COMPLETE. IF AN APPLICATION IS INCOMPLETE, THE
26 AUTHORITY MUST SPECIFICALLY IDENTIFY THE INFORMATION MISSING FROM THE
27 APPLICATION.

28 3. SHALL PROCESS EACH APPLICATION ON A NONDISCRIMINATORY BASIS. A
29 COMPLETE APPLICATION IS DEEMED APPROVED IF THE AUTHORITY FAILS TO APPROVE
30 OR DENY THE APPLICATION WITHIN SEVENTY-FIVE DAYS AFTER RECEIVING A
31 COMPLETE APPLICATION.

32 4. SHALL APPROVE AN APPLICATION UNLESS THE APPLICATION DOES NOT
33 MEET THE APPLICABLE CODES, LOCAL CODE PROVISIONS OR REGULATIONS THAT
34 CONCERN PUBLIC SAFETY, OBJECTIVE DESIGN STANDARDS FOR DECORATIVE UTILITY
35 POLES OR REASONABLE STEALTH AND CONCEALMENT REQUIREMENTS OR PUBLIC SAFETY
36 AND REASONABLE SPACING REQUIREMENTS CONCERNING THE LOCATION OF
37 GROUND-MOUNTED EQUIPMENT IN A RIGHT-OF-WAY. IF AN AUTHORITY DETERMINES
38 THAT APPLICABLE CODES OR LOCAL CODE PROVISIONS OR REGULATIONS REQUIRE THAT
39 THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE BE REPLACED BEFORE THE
40 REQUESTED COLLOCATION, APPROVAL MAY BE CONDITIONED ON SUCH REPLACEMENT OF
41 THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE. THE WIRELESS PROVIDER'S
42 REQUEST FOR A REPLACEMENT UTILITY POLE OR WIRELESS SUPPORT STRUCTURE WILL
43 BE PROCESSED PURSUANT TO SECTION 9-592.

44 5. IF AN APPLICATION IS DENIED, SHALL DOCUMENT THE BASIS FOR THE
45 DENIAL, INCLUDING THE SPECIFIC CODE PROVISIONS, REGULATIONS OR

1 REQUIREMENTS ON WHICH THE DENIAL WAS BASED, AND SEND THE DOCUMENTATION TO
2 THE APPLICANT ON OR BEFORE THE DATE THAT THE APPLICATION IS DENIED. THE
3 APPLICANT MAY CURE THE DEFICIENCIES IDENTIFIED BY THE AUTHORITY AND
4 RESUBMIT THE APPLICATION WITHIN THIRTY DAYS AFTER THE DENIAL WITHOUT
5 PAYING AN ADDITIONAL APPLICATION FEE. THE AUTHORITY SHALL APPROVE OR DENY
6 THE REVISED APPLICATION WITHIN THIRTY DAYS AFTER RECEIVING THE REVISED
7 APPLICATION. ANY SUBSEQUENT REVIEW IS LIMITED TO THE DEFICIENCIES CITED
8 IN THE DENIAL.

9 6. IF AN APPLICATION INCLUDES MULTIPLE SMALL WIRELESS FACILITIES,
10 MAY REMOVE SMALL WIRELESS FACILITY COLLOCATIONS FROM THE APPLICATION AND
11 TREAT SEPARATELY SMALL WIRELESS FACILITY COLLOCATIONS FOR WHICH INCOMPLETE
12 INFORMATION HAS BEEN PROVIDED OR THAT DO NOT QUALIFY FOR CONSOLIDATED
13 TREATMENT OR THAT ARE DENIED. THE AUTHORITY MAY ISSUE SEPARATE PERMITS
14 FOR EACH COLLOCATION THAT IS APPROVED IN A CONSOLIDATED APPLICATION.

15 G. AN AUTHORITY MAY NOT:

16 1. DIRECTLY OR INDIRECTLY REQUIRE AN APPLICANT TO PERFORM SERVICES
17 THAT ARE UNRELATED TO THE COLLOCATION FOR WHICH APPROVAL IS SOUGHT, SUCH
18 AS IN-KIND CONTRIBUTIONS TO THE AUTHORITY, INCLUDING RESERVING FIBER,
19 CONDUIT OR POLE SPACE ON THE WIRELESS PROVIDER'S MONOPOLE OR UTILITY POLE
20 FOR THE AUTHORITY.

21 2. REQUIRE AN APPLICANT TO PROVIDE MORE INFORMATION TO OBTAIN A
22 PERMIT THAN THE AUTHORITY REQUIRES OF A COMMUNICATIONS SERVICE PROVIDER
23 THAT IS NOT A WIRELESS PROVIDER AND THAT REQUESTS TO ATTACH FACILITIES TO
24 A STRUCTURE. AN AUTHORITY MAY REQUIRE THE APPLICANT TO CERTIFY THAT THE
25 SMALL WIRELESS FACILITIES TO BE COLLOCATED COMPLY WITH THE FEDERAL
26 COMMUNICATIONS COMMISSION'S REGULATIONS CONCERNING RADIO FREQUENCY
27 EMISSIONS REFERENCED IN 47 UNITED STATES CODE SECTION 332(c)(7)(B)(iv).

28 3. INSTITUTE, EITHER EXPRESSLY OR DE FACTO, A MORATORIUM ON FILING,
29 RECEIVING OR PROCESSING APPLICATIONS OR ISSUING PERMITS OR OTHER
30 APPROVALS, IF ANY, FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY.

31 4. REQUIRE AN APPLICATION FOR ROUTINE MAINTENANCE OR THE
32 REPLACEMENT OF SMALL WIRELESS FACILITIES WITH SMALL WIRELESS FACILITIES
33 THAT ARE SUBSTANTIALLY SIMILAR OR THE SAME SIZE OR SMALLER. AN AUTHORITY
34 MAY REQUIRE A PERMIT TO WORK WITHIN A RIGHT-OF-WAY FOR SUCH ACTIVITIES, IF
35 APPLICABLE. A PERMIT ISSUED PURSUANT TO THIS PARAGRAPH IS SUBJECT TO THE
36 REQUIREMENTS OF THIS SECTION.

37 H. COLLOCATION FOR WHICH A PERMIT IS GRANTED SHALL BE COMPLETED
38 WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE PERMIT ISSUANCE DATE, UNLESS THE
39 AUTHORITY AND THE WIRELESS PROVIDER AGREE TO EXTEND THIS PERIOD OR A DELAY
40 IS CAUSED BY THE LACK OF COMMERCIAL POWER AT THE SITE. APPROVAL OF AN
41 APPLICATION BY AN AUTHORITY ALLOWS THE APPLICANT TO DO BOTH OF THE
42 FOLLOWING:

43 1. COLLOCATE THE SMALL WIRELESS FACILITIES.

44 2. SUBJECT TO APPLICABLE RELOCATION REQUIREMENTS, THE WIRELESS
45 PROVIDER'S RIGHT TO TERMINATE AT ANY TIME AND THE AUTHORITY'S TERMS

1 DESCRIBED IN SECTION 9-592, OPERATE AND MAINTAIN THE SMALL WIRELESS
2 FACILITIES FOR A PERIOD OF NOT LESS THAN TEN YEARS, WHICH MUST BE RENEWED
3 FOR EQUIVALENT DURATIONS UNLESS THE AUTHORITY MAKES A FINDING THAT THE
4 SMALL WIRELESS FACILITIES DO NOT COMPLY WITH THE APPLICABLE CODES OR LOCAL
5 CODE PROVISIONS OR REGULATIONS DESCRIBED IN SUBSECTION F, PARAGRAPH 4 OF
6 THIS SECTION.

7 I. AN AUTHORITY MAY CHARGE AN APPLICATION FEE THAT IS LIMITED TO
8 THE ACTUAL, DIRECT AND REASONABLE COSTS THAT ARE INCURRED BY THE AUTHORITY
9 AND THAT RELATE TO THE GRANTING OR PROCESSING OF AN APPLICATION. AN
10 APPLICATION FEE SHALL BE REASONABLY RELATED IN TIME TO THE INCURRING OF
11 SUCH COSTS. IF SUCH COSTS ARE ALREADY RECOVERED BY EXISTING FEES, RATES
12 OR TAXES THAT ARE PAID BY A WIRELESS PROVIDER, AN AUTHORITY MAY NOT CHARGE
13 AN APPLICATION FEE TO RECOVER SUCH COSTS. AN APPLICATION FEE MAY NOT
14 INCLUDE:

15 1. THIRD-PARTY TRAVEL EXPENSES THAT ARE INCURRED TO REVIEW AN
16 APPLICATION.

17 2. THE DIRECT PAYMENT OR REIMBURSEMENT OF THIRD-PARTY RATES OR FEES
18 THAT ARE CHARGED ON A CONTINGENCY BASIS OR PURSUANT TO A RESULT-BASED
19 ARRANGEMENT.

20 J. THE TOTAL APPLICATION FEE, IF ALLOWED, MAY NOT EXCEED ONE
21 HUNDRED DOLLARS EACH FOR UP TO FIVE SMALL WIRELESS FACILITIES ADDRESSED IN
22 AN APPLICATION AND FIFTY DOLLARS FOR EACH ADDITIONAL SMALL WIRELESS
23 FACILITY ADDRESSED IN THE APPLICATION.

24 K. THIS ARTICLE DOES NOT ALLOW A PERSON TO COLLOCATE SMALL WIRELESS
25 FACILITIES ON A PRIVATELY OWNED UTILITY POLE, A PRIVATELY OWNED WIRELESS
26 SUPPORT STRUCTURE OR PRIVATE PROPERTY WITHOUT THE CONSENT OF THE PROPERTY
27 OWNER.

28 9-594. Structures subject to zoning; time frames;
29 application; fees

30 A. THE FOLLOWING ACTIVITIES THAT TAKE PLACE INSIDE OF A
31 RIGHT-OF-WAY ARE SUBJECT TO THIS SECTION AND ALL OF THE AUTHORITY'S CODES
32 AND REGULATIONS, INCLUDING THE AUTHORITY'S ZONING CODES AND OTHER
33 REGULATORY PROCESSES GOVERNING USE OF THE RIGHTS-OF-WAY, UNLESS THE
34 ACTIVITIES ARE EXEMPT FROM ZONING REVIEW AND APPROVAL UNDER SECTION 9-592,
35 SUBSECTION I OR J OR SECTION 9-593, SUBSECTION C:

36 1. THE INSTALLATION OF NEW MONOPOLES, UTILITY POLES OR WIRELESS
37 FACILITIES.

38 2. THE COLLOCATION OF WIRELESS FACILITIES.

39 B. NOTWITHSTANDING ANY PROVISION IN THIS ARTICLE TO THE CONTRARY,
40 THE CONSTRUCTION, INSTALLATION, MAINTENANCE, MODIFICATION, OPERATION OR
41 REPLACEMENT OF A MONOPOLE OR ASSOCIATED WIRELESS FACILITY IN A RIGHT-
42 OF-WAY IS SUBJECT TO ALL OF THE AUTHORITY'S CODES AND REGULATIONS,
43 INCLUDING THE AUTHORITY'S ZONING CODES AND OTHER REGULATORY PROCESSES
44 GOVERNING USE OF THE RIGHTS-OF-WAY.

45 C. AN AUTHORITY SHALL:

1 1. ACCEPT AND PROCESS APPLICATIONS FOR THE MODIFICATION OF EXISTING
2 OR THE INSTALLATION OF NEW MONOPOLES, UTILITY POLES OR WIRELESS FACILITIES
3 AND THE COLLOCATION OF WIRELESS FACILITIES.

4 2. WITHIN THIRTY DAYS AFTER RECEIVING AN APPLICATION, NOTIFY THE
5 APPLICANT WHETHER THE APPLICATION IS COMPLETE. IF AN APPLICATION IS
6 INCOMPLETE, THE AUTHORITY MUST SPECIFICALLY IDENTIFY THE INFORMATION
7 MISSING FROM THE APPLICATION.

8 3. PROCESS EACH COMPLETE APPLICATION ON A NONDISCRIMINATORY BASIS.
9 A COMPLETE APPLICATION IS DEEMED APPROVED IF THE AUTHORITY FAILS TO
10 APPROVE OR DENY THE APPLICATION WITHIN ONE HUNDRED FIFTY DAYS AFTER
11 RECEIPT OF AN APPLICATION FOR THE MODIFICATION OF EXISTING OR THE
12 INSTALLATION OF NEW MONOPOLES, UTILITY POLES OR WIRELESS FACILITIES OR
13 WITHIN NINETY DAYS AFTER RECEIPT OF A COMPLETE APPLICATION FOR THE
14 COLLOCATION OF WIRELESS FACILITIES. THE TIME PERIOD FOR APPROVAL MAY BE
15 TOLLED TO ACCOMMODATE TIMELY REQUESTS FOR INFORMATION REQUIRED TO COMPLETE
16 THE APPLICATION OR MAY BE EXTENDED BY MUTUAL AGREEMENT BETWEEN THE
17 APPLICANT AND AUTHORITY.

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

26 D. AN AUTHORITY MAY NOT:

27 1. REQUIRE AN APPLICANT TO SUBMIT INFORMATION ABOUT THE APPLICANT'S
28 BUSINESS DECISIONS REGARDING THE NEED FOR THE MONOPOLE, UTILITY POLE OR
29 WIRELESS FACILITIES.

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

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

36 E. AN AUTHORITY, IN ADDITION TO OTHER RIGHTS THE AUTHORITY HAS
37 UNDER FEDERAL, STATE OR LOCAL LAW, MAY:

38 1. ADOPT REASONABLE REQUIREMENTS REGARDING THE APPEARANCE AND
39 CONCEALMENT OF FACILITIES, INCLUDING THOSE RELATING TO MATERIALS USED FOR
40 ARRANGING, SCREENING OR LANDSCAPING.

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

44 3. CHARGE AN APPLICATION FEE. ANY APPLICATION FEE IS SUBJECT TO
45 THE REQUIREMENTS PROVIDED IN SECTION 9-593, SUBSECTION I. THE TOTAL

1 APPLICATION FEE, IF ALLOWED, MAY NOT EXCEED ONE THOUSAND DOLLARS FOR THE
2 MODIFICATION OF EXISTING OR THE INSTALLATION OF NEW MONOPOLES OR UTILITY
3 POLES OR FOR THE COLLOCATION OF WIRELESS FACILITIES.

4 4. CHARGE A RATE OR FEE FOR THE USE OF THE RIGHT-OF-WAY FOR THE
5 INSTALLATION OF A MONOPOLE AND ASSOCIATED WIRELESS FACILITY THAT IS
6 LIMITED TO NOT MORE THAN THE DIRECT AND ACTUAL COSTS OF MANAGING THE
7 RIGHT-OF-WAY AND THAT IS NOT IN THE FORM OF A FRANCHISE OR OTHER FEE BASED
8 ON REVENUE OR CUSTOMER COUNTS.

9 F. AN APPLICANT'S BUSINESS DECISIONS REGARDING THE TYPE AND
10 LOCATION OF WIRELESS FACILITIES, MONOPOLES OR UTILITY POLES OR THE
11 TECHNOLOGY TO BE USED ARE PRESUMED TO BE REASONABLE. THIS PRESUMPTION
12 DOES NOT APPLY TO THE HEIGHT OR APPEARANCE OF WIRELESS FACILITIES,
13 MONOPOLES OR UTILITY POLES. AN AUTHORITY MAY CONSIDER THE HEIGHT OF SUCH
14 STRUCTURES IN THE ZONING OR OTHER REGULATORY REVIEW, PROVIDED THAT THE
15 AUTHORITY DOES NOT UNREASONABLY DISCRIMINATE BETWEEN THE APPLICANT AND
16 OTHER COMMUNICATIONS SERVICE PROVIDERS THAT INSTALL WIRELESS FACILITIES.

17 G. SUBJECT TO APPLICABLE RELOCATION REQUIREMENTS, THE AUTHORITY'S
18 TERMS DESCRIBED IN SECTION 9-592 AND THE WIRELESS PROVIDER'S RIGHT TO
19 TERMINATE AT ANY TIME, THE APPROVAL TERM OF AN APPLICATION SHALL BE FOR A
20 PERIOD OF NOT LESS THAN TEN YEARS, WHICH MUST BE RENEWED FOR EQUIVALENT
21 DURATIONS UNLESS THE AUTHORITY MAKES A FINDING THAT THE STRUCTURE OR
22 FACILITIES DO NOT COMPLY WITH THE APPLICABLE CODES OR TERMS OF THE ZONING
23 OR OTHER REGULATORY PROCESS APPROVAL. CONSTRUCTION OF THE APPROVED
24 STRUCTURE OR FACILITIES SHALL BE COMPLETED WITHIN ONE HUNDRED EIGHTY DAYS
25 AFTER THE PERMIT ISSUANCE DATE, UNLESS THE AUTHORITY AND THE WIRELESS
26 PROVIDER AGREE TO EXTEND THIS PERIOD OR A DELAY IS CAUSED BY THE LACK OF
27 COMMERCIAL POWER AT THE SITE.

28 9-595. Access to authority utility poles; rates and fees;
29 collocation for other commercial projects or uses

30 A. AN AUTHORITY MAY NOT ENTER INTO AN EXCLUSIVE ARRANGEMENT WITH
31 ANY PERSON FOR THE RIGHT TO ATTACH TO AUTHORITY UTILITY POLES.

32 B. THE RATES AND FEES FOR THE COLLOCATION OF SMALL WIRELESS
33 FACILITIES ON AUTHORITY UTILITY POLES SHALL BE NONDISCRIMINATORY
34 REGARDLESS OF THE SERVICES PROVIDED BY THE COLLOCATING PERSON.

35 C. THE RATE TO COLLOCATE SMALL WIRELESS FACILITIES ON AUTHORITY
36 UTILITY POLES MAY NOT EXCEED FIFTY DOLLARS PER AUTHORITY UTILITY POLE, PER
37 YEAR.

38 D. AN AUTHORITY SHALL ESTABLISH AND MAKE AVAILABLE RATES, FEES AND
39 TERMS FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES ON AUTHORITY
40 UTILITY POLES WITHIN SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS SECTION
41 OR THREE MONTHS AFTER RECEIVING A REQUEST TO COLLOCATE THE FIRST SMALL
42 WIRELESS FACILITY ON SUCH POLES, WHICHEVER IS LATER. THE RATES, FEES AND
43 TERMS SHALL BE MADE AVAILABLE FOR ACCEPTANCE BY A WIRELESS PROVIDER. AT
44 THE WIRELESS PROVIDER'S OPTION, A WIRELESS PROVIDER MAY REQUEST DIFFERENT
45 OR ADDITIONAL TERMS THAT THE PARTIES SHALL NEGOTIATE IN GOOD

1 FAITH. DOCUMENTS REFLECTING RATES, FEES AND TERMS WITH EACH WIRELESS
2 PROVIDER SHALL BE MADE PUBLICLY AVAILABLE. THE RATES, FEES AND TERMS
3 SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

4 1. THE RATES, FEES AND TERMS MUST BE NONDISCRIMINATORY,
5 COMPETITIVELY NEUTRAL AND COMMERCIALY REASONABLE AND COMPLY WITH THIS
6 SECTION AND SECTION 9-592, SUBSECTIONS E AND F. REQUESTS FOR COLLOCATING
7 A SMALL WIRELESS FACILITY ON AN AUTHORITY UTILITY POLE WILL BE PROCESSED
8 PURSUANT TO SECTION 9-593. THE AUTHORITY MAY REQUIRE A WIRELESS PROVIDER
9 TO REPLACE THE AUTHORITY UTILITY POLE IF THE AUTHORITY DETERMINES THAT
10 APPLICABLE CODES OR LOCAL CODE OR REGULATORY PROVISIONS THAT CONCERN
11 PUBLIC SAFETY REQUIRE REPLACEMENT OF THE AUTHORITY UTILITY POLE. THE
12 WIRELESS PROVIDER'S REQUEST TO INSTALL A REPLACEMENT UTILITY POLE WILL BE
13 PROCESSED PURSUANT TO SECTION 9-592. THE AUTHORITY SHALL RETAIN OWNERSHIP
14 OF THE UTILITY POLE.

15 2. TERMS MUST REASONABLY ACCOMMODATE POWER SUPPLY AND ELECTRIC
16 METERING FOR THE SMALL WIRELESS FACILITY.

17 E. AN AUTHORITY MAY PROHIBIT, REGULATE AND CHARGE FOR THE
18 COLLOCATION OF A WIRELESS FACILITY ON A WIRELESS SUPPORT STRUCTURE OWNED
19 BY THE AUTHORITY.

20 9-596. Scope of local authority

21 A. SUBJECT TO THIS ARTICLE AND APPLICABLE FEDERAL LAW, AN AUTHORITY
22 MAY EXERCISE ZONING, LAND USE, PLANNING AND PERMITTING AUTHORITY AND THE
23 AUTHORITY'S POLICE POWER WITHIN THE AUTHORITY'S TERRITORIAL BOUNDARIES,
24 INCLUDING FOR THE INSTALLATION, MODIFICATION AND REPLACEMENT OF WIRELESS
25 SUPPORT STRUCTURES AND UTILITY POLES.

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

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

34 D. IF AN AUTHORITY DETERMINES THAT A UTILITY POLE, MONOPOLE OR
35 WIRELESS SUPPORT STRUCTURE OF A WIRELESS PROVIDER WILL BE RELOCATED TO
36 ACCOMMODATE A PUBLIC PROJECT, ALL WIRELESS FACILITIES DEPLOYED ON SUCH
37 UTILITY POLE, MONOPOLE OR WIRELESS SUPPORT STRUCTURE SHALL BE RELOCATED AT
38 NO COST TO THE AUTHORITY.

39 9-597. Dispute resolution

40 A COURT OF COMPETENT JURISDICTION IN THIS STATE SHALL DETERMINE ALL
41 DISPUTES ARISING UNDER THIS ARTICLE.

42 9-598. General requirements for use of the right-of-way

43 STRUCTURES AND FACILITIES DEPLOYED BY WIRELESS PROVIDERS PURSUANT TO
44 THIS ARTICLE SHALL BE CONSTRUCTED, MAINTAINED AND LOCATED AS TO NOT
45 OBSTRUCT, ENDANGER OR HINDER THE USUAL TRAVEL OR PUBLIC SAFETY ON THE

1 RIGHT-OF-WAY, DAMAGE OR INTERFERE WITH ANY OTHER UTILITY FACILITIES IN THE
2 RIGHT-OF-WAY OR INTERFERE WITH A UTILITY'S USE OF THE UTILITY'S FACILITIES
3 IN THE RIGHT-OF-WAY. CONSTRUCTION AND MAINTENANCE BY THE WIRELESS
4 PROVIDER SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AND ALL
5 APPLICABLE LAWS AND REGULATIONS FOR THE PROTECTION OF UNDERGROUND AND
6 OVERHEAD UTILITY FACILITIES. AN AUTHORITY SHALL TREAT A WIRELESS
7 PROVIDER'S FACILITIES LOCATED WITHIN A RIGHT-OF-WAY ON AN EQUAL BASIS WITH
8 OTHER UTILITY FACILITIES, EXCEPT THAT AN AUTHORITY MAY ADOPT REASONABLE
9 REGULATIONS TO ADDRESS THE SEPARATION OF THE WIRELESS PROVIDER'S
10 FACILITIES FROM THE OTHER UTILITY FACILITIES WITHIN THE RIGHT-OF-WAY TO
11 PREVENT ANY DAMAGE TO OR INTERFERENCE WITH SUCH OTHER UTILITY FACILITIES
12 OR INTERFERENCE WITH A UTILITY'S USE OF THE UTILITY'S FACILITIES LOCATED
13 OR TO BE LOCATED WITHIN THE RIGHT-OF-WAY.

14 9-599. Applicability

15 THIS ARTICLE DOES NOT:

16 1. AFFECT THE AUTHORITY OF A SPECIAL TAXING DISTRICT,
17 INVESTOR-OWNED ELECTRIC UTILITY OR ELECTRIC COOPERATIVE THAT OWNS,
18 CONTROLS OR OPERATES UTILITY POLES OR WIRELESS SUPPORT STRUCTURES TO DENY,
19 LIMIT, RESTRICT OR DETERMINE THE RATES, FEES, TERMS AND CONDITIONS FOR THE
20 USE OF OR ATTACHMENT TO ITS UTILITY POLES OR WIRELESS SUPPORT STRUCTURES
21 BY A WIRELESS PROVIDER.

22 2. CONFER ON ANY AUTHORITY ANY ZONING, LAND USE, PLANNING,
23 PERMITTING OR OTHER REGULATORY AUTHORITY OVER THE UTILITY POLES, WIRELESS
24 SUPPORT STRUCTURES OR SMALL WIRELESS FACILITIES OWNED, CONTROLLED OR
25 OPERATED BY A SPECIAL TAXING DISTRICT, INVESTOR-OWNED ELECTRIC UTILITY OR
26 ELECTRIC COOPERATIVE OR THE INSTALLATION OF SUCH UTILITY POLES, WIRELESS
27 SUPPORT STRUCTURES OR SMALL WIRELESS FACILITIES BY A SPECIAL TAXING
28 DISTRICT, INVESTOR-OWNED ELECTRIC UTILITY OR ELECTRIC COOPERATIVE.

29 3. AMEND, MODIFY OR OTHERWISE AFFECT ANY PRIVATE EASEMENT. ANY AND
30 ALL RIGHTS FOR THE USE OF A RIGHT-OF-WAY ARE SUBJECT TO THE RIGHTS GRANTED
31 PURSUANT TO ANY PRIVATE EASEMENT.

32 4. APPLY TO ANY AUTHORITY WITHIN TEN MILES OF THE BORDER OF MEXICO
33 THAT IS NEGOTIATING A CONTRACT OR HAS A CONTRACT IN PLACE ON OR BEFORE
34 JULY 1, 2018 AND THAT CONTRACT ASSISTS AND SUPPORTS NATIONAL SECURITY
35 OBJECTIVES ALONG THE BORDER OF THE UNITED STATES AND MEXICO.

36 Sec. 2. Title 11, Arizona Revised Statutes, is amended by adding
37 chapter 13, to read:

38 CHAPTER 13

39 WIRELESS STRUCTURES AND FACILITIES

40 ARTICLE 1. GENERAL PROVISIONS

41 11-1801. Definitions

42 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

43 1. "ANTENNA" MEANS COMMUNICATIONS EQUIPMENT THAT TRANSMITS OR
44 RECEIVES ELECTROMAGNETIC RADIO FREQUENCY SIGNALS AND THAT IS USED IN
45 PROVIDING WIRELESS SERVICES.

1 2. "APPLICABLE CODES" MEANS UNIFORM BUILDING, FIRE, ELECTRICAL,
2 PLUMBING OR MECHANICAL CODES THAT ARE ADOPTED BY A RECOGNIZED NATIONAL
3 CODE ORGANIZATION OR LOCAL AMENDMENTS TO THOSE CODES THAT ARE ENACTED TO
4 ADDRESS THREATS OF DESTRUCTION OF PROPERTY OR INJURY TO PERSONS AND TO AN
5 EXTENT THAT IS NOT INCONSISTENT WITH THIS ARTICLE.

6 3. "APPLICANT" MEANS ANY PERSON THAT SUBMITS AN APPLICATION AND
7 THAT IS A WIRELESS PROVIDER.

8 4. "APPLICATION" MEANS A REQUEST THAT IS SUBMITTED BY AN APPLICANT
9 TO A COUNTY ON A FORM PROVIDED BY THE COUNTY FOR A PERMIT TO COLLOCATE
10 SMALL WIRELESS FACILITIES OR TO APPROVE THE INSTALLATION, MODIFICATION OR
11 REPLACEMENT OF A UTILITY POLE.

12 5. "CABLE OPERATOR" HAS THE SAME MEANING PRESCRIBED IN SECTION
13 9-505. CABLE OPERATOR DOES NOT INCLUDE A SPECIAL TAXING DISTRICT.

14 6. "COLLOCATE" OR "COLLOCATION" MEANS TO INSTALL, MOUNT, MAINTAIN,
15 MODIFY, OPERATE OR REPLACE WIRELESS FACILITIES ON, WITHIN OR ADJACENT TO A
16 WIRELESS SUPPORT STRUCTURE OR UTILITY POLE.

17 7. "COMMUNICATIONS SERVICE" MEANS CABLE SERVICE AS DEFINED IN
18 47 UNITED STATES CODE SECTION 522(6), INFORMATION SERVICE AS DEFINED IN
19 47 UNITED STATES CODE SECTION 153(24), TELECOMMUNICATIONS SERVICE AS
20 DEFINED IN 47 UNITED STATES CODE SECTION 153(53) OR WIRELESS SERVICE.

21 8. "COMMUNICATIONS SERVICE PROVIDER" MEANS A CABLE OPERATOR, A
22 PROVIDER OF INFORMATION SERVICE AS DEFINED IN 47 UNITED STATES CODE
23 SECTION 153(24), A TELECOMMUNICATIONS CARRIER AS DEFINED IN 47 UNITED
24 STATES CODE SECTION 153(51) OR A WIRELESS SERVICES PROVIDER.

25 9. "COUNTY UTILITY POLE" MEANS A UTILITY POLE THAT IS OWNED OR
26 OPERATED BY A COUNTY AND THAT IS IN A RIGHT-OF-WAY.

27 10. "FEE" MEANS A ONE-TIME CHARGE TO PROCESS AN APPLICATION AND
28 INSPECT ANY WORK PERFORMED BY AN APPLICANT PURSUANT TO A PERMIT ISSUED BY
29 THE COUNTY.

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

32 12. "PERMIT" MEANS WRITTEN PERMISSION ISSUED BY A COUNTY TO
33 INSTALL, MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE A UTILITY POLE OR TO
34 COLLOCATE A SMALL WIRELESS FACILITY ON A UTILITY POLE OR WIRELESS SUPPORT
35 STRUCTURE.

36 13. "PERSON" MEANS AN INDIVIDUAL, CORPORATION, LIMITED LIABILITY
37 COMPANY, PARTNERSHIP, ASSOCIATION, TRUST OR OTHER ENTITY OR ORGANIZATION,
38 INCLUDING A COUNTY.

39 14. "PRIVATE EASEMENT" MEANS AN EASEMENT OR OTHER REAL PROPERTY
40 RIGHT THAT IS ONLY FOR THE BENEFIT OF THE GRANTOR AND GRANTEE AND THE
41 GRANTOR'S OR GRANTEE'S SUCCESSORS AND ASSIGNS.

42 15. "RATE" MEANS A ONE-TIME CHARGE FOR THE GRANTING OF A RIGHT TO
43 USE A PORTION OF A RIGHT-OF-WAY AS SPECIFIED IN A PERMIT OR TO COLLOCATE A
44 SMALL WIRELESS FACILITY ON OR ADJACENT TO A UTILITY POLE OR TO INSTALL,
45 MODIFY OR REPLACE A UTILITY POLE AS SPECIFIED IN A PERMIT.

1 16. "RIGHT-OF-WAY" MEANS THE AREA ON, BELOW OR ABOVE A COUNTY
2 ROADWAY, HIGHWAY, STREET, SIDEWALK, ALLEY OR UTILITY EASEMENT.
3 RIGHT-OF-WAY DOES NOT INCLUDE A FEDERAL INTERSTATE HIGHWAY, A STATE
4 HIGHWAY OR STATE ROUTE UNDER THE JURISDICTION OF THE DEPARTMENT OF
5 TRANSPORTATION, A PRIVATE EASEMENT, PROPERTY THAT IS OWNED BY A SPECIAL
6 TAXING DISTRICT, OR A UTILITY EASEMENT THAT DOES NOT AUTHORIZE THE
7 DEPLOYMENT SOUGHT BY THE WIRELESS PROVIDER.

8 17. "SMALL WIRELESS FACILITY" MEANS A WIRELESS FACILITY THAT MEETS
9 BOTH OF THE FOLLOWING QUALIFICATIONS:

10 (a) ALL ANTENNAS ARE LOCATED INSIDE AN ENCLDSURE OF NOT MORE THAN
11 SIX CUBIC FEET IN VOLUME OR, IN THE CASE OF AN ANTENNA THAT HAS EXPOSED
12 ELEMENTS, THE ANTENNA AND ALL OF THE ANTENNA'S EXPOSED ELEMENTS COULD FIT
13 WITHIN AN IMAGINARY ENCLOSURE OF NOT MORE THAN SIX CUBIC FEET IN VOLUME.

14 (b) ALL OTHER WIRELESS EQUIPMENT ASSOCIATED WITH THE FACILITY IS
15 CUMULATIVELY NOT MORE THAN TWENTY-EIGHT CUBIC FEET IN VOLUME, OR FIFTY
16 CUBIC FEET IN VOLUME IF THE EQUIPMENT WAS GROUND MOUNTED BEFORE THE
17 EFFECTIVE DATE OF THIS SECTION. THE FOLLOWING TYPES OF ASSOCIATED
18 ANCILLARY EQUIPMENT ARE NOT INCLUDED IN THE CALCULATION OF EQUIPMENT
19 VOLUME PURSUANT TO THIS SUBDIVISION:

20 (i) AN ELECTRIC METER.

21 (ii) CONCEALMENT ELEMENTS.

22 (iii) A TELECOMMUNICATIONS DEMARCATION BOX.

23 (iv) GROUNDING EQUIPMENT.

24 (v) A POWER TRANSFER SWITCH.

25 (vi) A CUTOFF SWITCH.

26 (vii) VERTICAL CABLE RUNS FOR THE CONNECTION OF POWER AND OTHER
27 SERVICES.

28 18. "SPECIAL TAXING DISTRICT" MEANS A SPECIAL DISTRICT FORMED
29 PURSUANT TO TITLE 48, CHAPTER 11, 12, 17, 18, 19, 20 OR 22.

30 19. "UTILITY POLE" MEANS A POLE OR SIMILAR STRUCTURE THAT IS USED
31 IN WHOLE OR IN PART FOR COMMUNICATIONS SERVICES, ELECTRIC DISTRIBUTION,
32 LIGHTING OR TRAFFIC SIGNALS OR A SIMILAR FUNCTION.

33 20. "WIRELESS FACILITY":

34 (a) MEANS EQUIPMENT AT A FIXED LOCATION THAT ENABLES WIRELESS
35 COMMUNICATIONS BETWEEN USER EQUIPMENT AND A COMMUNICATIONS NETWORK,
36 INCLUDING BOTH OF THE FOLLOWING:

37 (i) EQUIPMENT ASSOCIATED WITH WIRELESS COMMUNICATIONS.

38 (ii) RADIO TRANSCEIVERS, ANTENNAS, COAXIAL OR FIBER-OPTIC CABLES,
39 REGULAR AND BACKUP POWER SUPPLIES AND COMPARABLE EQUIPMENT, REGARDLESS OF
40 TECHNOLOGICAL CONFIGURATION.

41 (b) INCLUDES SMALL WIRELESS FACILITIES.

42 (c) DOES NOT INCLUDE THE STRUCTURE OR IMPROVEMENTS ON, UNDER OR
43 WITHIN WHICH THE EQUIPMENT IS COLLOCATED, WIRELINE BACKHAUL FACILITIES,
44 COAXIAL OR FIBER-OPTIC CABLE THAT IS BETWEEN WIRELESS SUPPORT STRUCTURES

1 OR UTILITY POLES OR COAXIAL OR FIBER-OPTIC CABLE THAT IS OTHERWISE NOT
2 IMMEDIATELY ADJACENT TO, OR DIRECTLY ASSOCIATED WITH, AN ANTENNA.

3 (d) DOES NOT INCLUDE WI-FI RADIO EQUIPMENT DESCRIBED IN SECTION
4 9-506, SUBSECTION I OR MICROCELL EQUIPMENT DESCRIBED IN SECTION 9-584,
5 SUBSECTION E.

6 21. "WIRELESS INFRASTRUCTURE PROVIDER" MEANS ANY PERSON THAT IS
7 AUTHORIZED TO PROVIDE TELECOMMUNICATIONS SERVICE IN THIS STATE AND THAT
8 BUILDS OR INSTALLS WIRELESS COMMUNICATIONS TRANSMISSION EQUIPMENT,
9 WIRELESS FACILITIES OR UTILITY POLES BUT THAT IS NOT A WIRELESS SERVICES
10 PROVIDER. WIRELESS INFRASTRUCTURE PROVIDER DOES NOT INCLUDE A SPECIAL
11 TAXING DISTRICT.

12 22. "WIRELESS PROVIDER" MEANS A CABLE OPERATOR, WIRELESS
13 INFRASTRUCTURE PROVIDER OR WIRELESS SERVICES PROVIDER.

14 23. "WIRELESS SERVICES" MEANS ANY SERVICES THAT ARE PROVIDED TO THE
15 PUBLIC AND THAT USE LICENSED OR UNLICENSED SPECTRUM, WHETHER AT A FIXED
16 LOCATION OR MOBILE, USING WIRELESS FACILITIES.

17 24. "WIRELESS SERVICES PROVIDER" MEANS A PERSON THAT PROVIDES
18 WIRELESS SERVICES. WIRELESS SERVICES PROVIDER DOES NOT INCLUDE A SPECIAL
19 TAXING DISTRICT.

20 25. "WIRELESS SUPPORT STRUCTURE":

21 (a) MEANS:

22 (i) A FREESTANDING STRUCTURE.

23 (ii) A TOWER, EITHER GUYED OR SELF-SUPPORTING.

24 (iii) ANY OTHER EXISTING OR PROPOSED STRUCTURE DESIGNED TO SUPPORT
25 OR CAPABLE OF SUPPORTING SMALL WIRELESS FACILITIES.

26 (b) DOES NOT INCLUDE A UTILITY POLE.

27 11-1802. Exclusive arrangements prohibited; permit; rates,
28 fees and terms; access and use of county
29 structures

30 A. A COUNTY MAY NOT ENTER INTO AN EXCLUSIVE ARRANGEMENT WITH ANY
31 WIRELESS PROVIDER FOR USE OF A RIGHT-OF-WAY FOR THE CONSTRUCTION,
32 OPERATION OR MAINTENANCE OF UTILITY POLES OR THE COLLOCATION OF SMALL
33 WIRELESS FACILITIES ON UTILITY POLES OR WIRELESS SUPPORT STRUCTURES.

34 B. SUBJECT TO SUBSECTION C OF THIS SECTION, A COUNTY MAY REQUIRE A
35 PERMIT AND CHARGE A FEE FOR PROCESSING AN APPLICATION BY A WIRELESS
36 PROVIDER AND CONDUCTING ASSOCIATED INSPECTIONS FOR THE INSTALLATION,
37 MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR THE COLLOCATION OF A
38 SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE
39 IN A RIGHT-OF-WAY. ANY FEE CHARGED PURSUANT TO THIS SECTION MUST BE
40 REASONABLE AND CONFORM TO AUTHORIZED AND PUBLISHED FEES FOR SIMILAR
41 PERMITS ISSUED BY THE COUNTY AND MAY NOT EXCEED ONE HUNDRED DOLLARS PER
42 COLLOCATION OR INSTALLATION.

43 C. FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY
44 POLE OR WIRELESS SUPPORT STRUCTURE IN THE RIGHT-OF-WAY THAT IS NOT OWNED
45 BY THE COUNTY AND THAT DOES NOT INCLUDE GROUND-MOUNTED EQUIPMENT, THE

1 COUNTY MAY NOT CHARGE A WIRELESS PROVIDER A RATE OR FEE AND MAY NOT
2 REQUIRE A PERMIT.

3 D. A COUNTY MAY CHARGE A WIRELESS PROVIDER A RATE FOR THE WIRELESS
4 PROVIDER'S USE OF A RIGHT-OF-WAY IN ACCORDANCE WITH THIS SECTION. THE
5 COUNTY MAY:

6 1. FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY
7 POLE OR WIRELESS SUPPORT STRUCTURE THAT IS NOT OWNED BY THE COUNTY THAT
8 INCLUDES GROUND-MOUNTED EQUIPMENT, CHARGE A RATE FOR THE GROUND-MOUNTED
9 EQUIPMENT USING THE METHODOLOGY DESCRIBED IN PARAGRAPH 5 OF THIS
10 SUBSECTION, REQUIRE AN APPLICATION AND CHARGE A FEE. THE RATE FOR
11 GROUND-MOUNTED EQUIPMENT MAY NOT EXCEED ONE HUNDRED SEVENTY-FIVE DOLLARS.

12 2. FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A COUNTY
13 UTILITY POLE THAT DOES NOT INCLUDE GROUND-MOUNTED EQUIPMENT, CHARGE A RATE
14 USING THE METHODOLOGY DESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION THAT
15 DOES NOT EXCEED TWENTY DOLLARS. IF THE COLLOCATION INCLUDES
16 GROUND-MOUNTED EQUIPMENT, THE COUNTY MAY CHARGE AN ADDITIONAL RATE USING
17 THE METHODOLOGY DESCRIBED IN PARAGRAPH 5 OF THIS SUBSECTION. THE RATE FOR
18 GROUND-MOUNTED EQUIPMENT MAY NOT EXCEED ONE HUNDRED SEVENTY-FIVE DOLLARS.

19 3. FOR THE INSTALLATION OF A UTILITY POLE, TOGETHER WITH THE
20 COLLOCATION OF SMALL WIRELESS FACILITIES, THAT WILL NOT BE OWNED BY THE
21 COUNTY, CHARGE A WIRELESS PROVIDER A RATE USING THE METHODOLOGY DESCRIBED
22 IN PARAGRAPH 5 OF THIS SUBSECTION. THE RATE MAY NOT EXCEED ONE HUNDRED
23 SEVENTY-FIVE DOLLARS. AN ADDITIONAL RATE MAY NOT BE CHARGED FOR
24 COLLOCATED SMALL WIRELESS FACILITIES, INCLUDING GROUND-MOUNTED EQUIPMENT
25 THAT IS REQUESTED IN THE APPLICATION.

26 4. FOR THE REPLACEMENT OF A UTILITY POLE OWNED BY THE COUNTY,
27 REQUIRE THE APPLICANT TO COMPLY WITH THE COUNTY'S PROCESSES AND
28 REQUIREMENTS FOR INSTALLING SUCH STRUCTURES. THE COUNTY MAY NOT CHARGE A
29 RATE FOR THE REPLACED UTILITY POLE.

30 5. CHARGE A RATE THAT HAS BEEN LAWFULLY ADOPTED AND PUBLISHED. THE
31 RATE SHALL BE BASED ON THE AVERAGE FAIR MARKET VALUE OF THE COUNTY
32 RIGHT-OF-WAY THAT IS SUITABLE FOR THE DEPLOYMENT OF WIRELESS FACILITIES
33 AND UTILITY POLES. ALL MATERIALS USED TO DERIVE THESE VALUES SHALL BE
34 READILY AVAILABLE TO THE PUBLIC AT LEAST NINETY DAYS BEFORE THE ADOPTION
35 OF THE RATE. THE RATE ADOPTED SHALL BE BASED ON NINETY PERCENT OF THE
36 AVERAGE FAIR MARKET VALUES THAT HAVE BEEN DETERMINED AND ARE SUBJECT TO
37 THE APPLICABLE RATE CAPS IN PARAGRAPHS 1, 2 AND 3 OF THIS SUBSECTION.

38 E. A COUNTY SHALL:

39 1. ADOPT AN ORDINANCE ESTABLISHING RATES, FEES AND TERMS FOR THE
40 FOLLOWING:

41 (a) THE INSTALLATION, MODIFICATION OR REPLACEMENT BY A WIRELESS
42 PROVIDER OF A UTILITY POLE LOCATED IN A RIGHT-OF-WAY.

43 (b) THE COLLOCATION BY A WIRELESS PROVIDER OF A SMALL WIRELESS
44 FACILITY IN A RIGHT-OF-WAY.

1 (c) THE COLLOCATION BY A WIRELESS PROVIDER OF A SMALL WIRELESS
2 FACILITY ON A COUNTY UTILITY POLE.

3 2. ADOPT THE ORDINANCE DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION
4 WITHIN THE TIME PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION AND
5 ENDING AFTER THE TIME ALLOWED UNDER THE COUNTY'S PROCEDURES ADOPTED UNDER
6 SECTION 11-1605 FOR THE ADOPTION OF AN ORDINANCE, OR NINETY DAYS AFTER
7 RECEIVING THE FIRST REQUEST BY A WIRELESS PROVIDER, WHICHEVER IS LATER.

8 3. ESTABLISH RATES, FEES AND TERMS THAT COMPLY WITH THIS SECTION.
9 THE TERMS:

10 (a) MAY NOT BE UNREASONABLE OR DISCRIMINATORY.

11 (b) MAY INCLUDE REQUIREMENTS APPLICABLE TO OTHER USERS OF THE
12 RIGHT-OF-WAY.

13 (c) MAY REQUIRE THAT THE WIRELESS PROVIDER'S OPERATION OF THE SMALL
14 WIRELESS FACILITIES AND WIRELESS FACILITIES IN THE RIGHT-OF-WAY DOES NOT
15 INTERFERE WITH THE COUNTY'S PUBLIC SAFETY COMMUNICATIONS.

16 (d) MAY NOT REQUIRE THE PLACEMENT OF SMALL WIRELESS FACILITIES ON
17 ANY SPECIFIC UTILITY POLE OR CATEGORY OF UTILITY POLES OR REQUIRE MULTIPLE
18 ANTENNA SYSTEMS ON A SINGLE UTILITY POLE.

19 (e) MAY NOT LIMIT THE PLACEMENT OF POLE-MOUNTED SMALL WIRELESS
20 FACILITIES BY MINIMUM SEPARATION DISTANCES BUT MAY REQUIRE REASONABLE
21 SPACING REQUIREMENTS THAT CONCERN THE LOCATION OF GROUND-MOUNTED
22 EQUIPMENT.

23 F. AGREEMENTS THAT ARE IN EFFECT ON THE EFFECTIVE DATE OF THIS
24 SECTION BETWEEN COUNTIES AND WIRELESS PROVIDERS AND THAT RELATE TO THE
25 COLLOCATION OF SMALL WIRELESS FACILITIES IN THE RIGHT-OF-WAY, INCLUDING
26 THE COLLOCATION OF SMALL WIRELESS FACILITIES ON COUNTY UTILITY POLES,
27 REMAIN IN EFFECT, SUBJECT TO APPLICABLE TERMINATION PROVISIONS. THE
28 WIRELESS PROVIDER MAY ELECT TO PAY THE RATES AND FEES PROVIDED UNDER
29 SUBSECTION D OF THIS SECTION FOR SMALL WIRELESS FACILITIES AND UTILITY
30 POLES THAT ARE THE SUBJECT OF AN APPLICATION SUBMITTED AFTER THE RATES,
31 FEES AND TERMS BECOME EFFECTIVE, IF THE WIRELESS PROVIDER NOTIFIES THE
32 COUNTY OF THE WIRELESS PROVIDER'S ELECTION AND AGREEMENT TO COMPLY WITH
33 THE TERMS ADOPTED BY THE COUNTY UNDER SUBSECTION E OF THIS SECTION.

34 G. THIS CHAPTER DOES NOT RELIEVE A WIRELESS PROVIDER FROM ANY
35 APPLICABLE REQUIREMENT TO OBTAIN A FRANCHISE, LICENSE OR OTHER PERMISSION
36 TO PROVIDE COMMUNICATIONS SERVICE OR TO INSTALL, PLACE, MAINTAIN OR
37 OPERATE FACILITIES OR STRUCTURES THAT ARE NOT AUTHORIZED BY THIS CHAPTER
38 IN THE RIGHT-OF-WAY TO PROVIDE A COMMUNICATIONS SERVICE.

39 11-1803. Access to right-of-way by wireless providers

40 A. SUBJECT TO THIS SECTION AND SECTIONS 11-1802, 11-1804, 11-1806,
41 11-1807, 11-1809 AND 11-1810, A WIRELESS PROVIDER MAY CONSTRUCT, INSTALL,
42 MODIFY, MOUNT, MAINTAIN, OPERATE AND REPLACE UTILITY POLES ALONG, ACROSS,
43 ON AND UNDER THE RIGHT-OF-WAY AND COLLOCATE SMALL WIRELESS FACILITIES ON
44 UTILITY POLES AND WIRELESS SUPPORT STRUCTURES.

1 B. THE FOLLOWING REQUIREMENTS APPLY TO THE CONSTRUCTION,
2 INSTALLATION, MOUNTING, MAINTENANCE, MODIFICATION, OPERATION OR
3 REPLACEMENT OF UTILITY POLES BY A WIRELESS PROVIDER IN THE RIGHT-OF-WAY
4 AND THE COLLOCATION OF SMALL WIRELESS FACILITIES ON UTILITY POLES OR
5 WIRELESS SUPPORT STRUCTURES BY WIRELESS PROVIDERS IN THE RIGHT-OF-WAY:

6 1. A COUNTY SHALL ISSUE A PERMIT FOR THE COLLOCATION OF SMALL
7 WIRELESS FACILITIES ON OR ADJACENT TO A COUNTY UTILITY POLE OR THE
8 COLLOCATION OF SMALL WIRELESS FACILITIES WITH GROUND-MOUNTED EQUIPMENT
9 ADJACENT TO ANY OTHER PARTY'S UTILITY POLE OR WIRELESS SUPPORT STRUCTURE
10 IF BOTH OF THE FOLLOWING APPLY:

11 (a) THE APPLICANT PROVIDES THE SEALED STATEMENT OF A REGISTERED
12 ENGINEER DEMONSTRATING THAT THE UTILITY POLE OR WIRELESS SUPPORT STRUCTURE
13 IS STRUCTURALLY SOUND AND ABLE TO SUPPORT THE PROPOSED SMALL WIRELESS
14 FACILITY.

15 (b) THE COLLOCATION COMPLIES WITH APPLICABLE CODES AND THE TERMS
16 FOR COLLOCATION ADOPTED UNDER SECTION 11-1802, SUBSECTION E.

17 2. THE COLLOCATION OF SMALL WIRELESS FACILITIES PURSUANT TO
18 PARAGRAPH 1 OF THIS SUBSECTION IS A PERMITTED USE IN ALL ZONING DISTRICTS
19 AND ZONING REVIEW AND APPROVAL IS NOT REQUIRED. IF THE APPLICANT FAILS TO
20 DEMONSTRATE THAT A COUNTY UTILITY POLE IS STRUCTURALLY SOUND AND ABLE TO
21 SUPPORT THE PROPOSED SMALL WIRELESS FACILITY, THE COUNTY MAY CONDITION A
22 PERMIT ON REPLACEMENT OF THE COUNTY UTILITY POLE AT THE APPLICANT'S
23 EXPENSE. THE WIRELESS PROVIDER'S REQUEST TO INSTALL A REPLACEMENT UTILITY
24 POLE WILL BE PROCESSED UNDER SECTION 11-1802, SUBSECTION D, PARAGRAPH
25 4. THE COUNTY SHALL OWN THE REPLACEMENT UTILITY POLE.

26 3. A COUNTY SHALL ISSUE A PERMIT FOR THE INSTALLATION, MODIFICATION
27 OR REPLACEMENT OF A UTILITY POLE IF ALL OF THE FOLLOWING APPLY:

28 (a) THE APPLICANT PROVIDES THE SEALED STATEMENT OF A REGISTERED
29 ENGINEER DEMONSTRATING THAT THE UTILITY POLE IS STRUCTURALLY SOUND AND
30 ABLE TO SUPPORT THE PROPOSED SMALL WIRELESS FACILITY.

31 (b) THE PROPOSED LOCATION OF THE UTILITY POLE COMPLIES WITH
32 REASONABLE RESTRICTIONS ADOPTED BY THE COUNTY THAT REQUIRE DISTANCES OF
33 SEPARATION BETWEEN UTILITY POLES, GROUND-MOUNTED EQUIPMENT AND WIRELESS
34 SUPPORT STRUCTURES.

35 (c) THE INSTALLATION, MODIFICATION OR REPLACEMENT COMPLIES WITH THE
36 APPLICABLE CODES AND TERMS FOR INSTALLATION, MODIFICATION OR REPLACEMENT
37 ADOPTED UNDER SECTION 11-1802, SUBSECTION E.

38 4. THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE
39 APPROVED PURSUANT TO PARAGRAPH 3 OF THIS SUBSECTION IS A PERMITTED USE IN
40 ALL ZONING DISTRICTS AND SUBJECT TO ONLY ADMINISTRATIVE ZONING REVIEW AND
41 APPROVAL UNLESS THE INSTALLATION, MODIFICATION OR REPLACEMENT WOULD NOT
42 COMPLY WITH THE HEIGHT REQUIREMENTS OF PARAGRAPH 5 OF THIS SUBSECTION, AN
43 UNDERGROUNDING REQUIREMENT DESCRIBED IN PARAGRAPH 6 OF THIS SUBSECTION OR
44 A POLE SPACING REQUIREMENT DESCRIBED IN PARAGRAPH 7 OF THIS SUBSECTION.

1 5. A PROPOSED OR MODIFIED UTILITY POLE INSTALLED IN A COUNTY
2 RIGHT-OF-WAY MAY NOT EXCEED THE GREATER OF TEN FEET IN HEIGHT ABOVE THE
3 TALLEST UTILITY POLE, OTHER THAN A UTILITY POLE SUPPORTING ONLY WIRELESS
4 FACILITIES, THAT IS IN PLACE ON THE EFFECTIVE DATE OF THIS SECTION AND
5 THAT IS LOCATED WITHIN FIVE HUNDRED FEET OF THE PROPOSED UTILITY POLE IN
6 THE SAME RIGHT-OF-WAY OR FIFTY FEET ABOVE GROUND LEVEL. AN APPLICANT MAY
7 APPLY FOR AN ADMINISTRATIVE WAIVER TO EXCEED THESE HEIGHT LIMITATIONS.

8 6. WIRELESS PROVIDERS MUST COMPLY WITH UNDERGROUNDING REQUIREMENTS
9 THAT PROHIBIT THE INSTALLATION OF NEW STRUCTURES IN A RIGHT-OF-WAY WITHOUT
10 PRIOR APPROVAL IF SUCH REQUIREMENTS DO NOT PROHIBIT THE REPLACEMENT OF
11 EXISTING STRUCTURES AND FACILITIES. AN APPLICANT MAY APPLY FOR AN
12 ADMINISTRATIVE WAIVER TO INSTALL A UTILITY POLE IN A RIGHT-OF-WAY WHERE
13 SUCH UNDERGROUNDING REQUIREMENTS APPLY.

14 7. WIRELESS PROVIDERS SHALL COMPLY WITH REASONABLE REQUIREMENTS
15 CONCERNING SPACING BETWEEN UTILITY POLES AND GROUND-MOUNTED EQUIPMENT IN
16 THE RIGHT-OF-WAY. AN APPLICANT MAY APPLY FOR AN ADMINISTRATIVE WAIVER TO
17 INSTALL A UTILITY POLE IN CLOSER PROXIMITY TO ANOTHER POLE OR
18 GROUND-MOUNTED EQUIPMENT THAN THESE SPACING REQUIREMENTS WOULD PERMIT.

19 C. A COUNTY SHALL ADOPT AN ADMINISTRATIVE WAIVER PROCESS FOR
20 SUBSECTION B, PARAGRAPHS 5, 6 AND 7 OF THIS SECTION THAT COMPLIES WITH
21 SECTION 11-1605. THE APPLICATION PROCESS AND TIME FRAMES SHALL BE ADOPTED
22 WITHIN THE TIME PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION AND
23 ENDING AFTER THE TIME ALLOWED UNDER THE COUNTY'S PROCEDURES ADOPTED
24 PURSUANT TO SECTION 11-1605 FOR THE ADOPTION OF AN ORDINANCE, OR NINETY
25 DAYS AFTER RECEIVING A REQUEST BY A WIRELESS PROVIDER, WHICHEVER IS LATER.
26 AN APPLICANT IS ENTITLED TO ALL OF THE RIGHTS GRANTED IN CHAPTER 11,
27 ARTICLE 1 OF THIS TITLE.

28 11-1804. Collocation of small wireless facilities; permits

29 A. EXCEPT AS PROVIDED IN THIS SECTION AND SECTIONS 11-1802,
30 11-1803, 11-1806, 11-1807, 11-1809 AND 11-1810, A COUNTY MAY NOT PROHIBIT,
31 REGULATE OR CHARGE FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES INSIDE
32 A RIGHT-OF-WAY.

33 B. FOR COLLOCATIONS FOR WHICH AN APPLICATION IS REQUIRED, AN
34 APPLICANT SEEKING TO COLLOCATE MULTIPLE SMALL WIRELESS FACILITIES WITHIN
35 THE JURISDICTION OF A SINGLE COUNTY MAY FILE A CONSOLIDATED APPLICATION
36 FOR THE COLLOCATION OF UP TO THIRTY-FIVE SMALL WIRELESS FACILITIES WITHIN
37 A RIGHT-OF-WAY IF THE COLLOCATIONS EACH INVOLVE SUBSTANTIALLY THE SAME
38 TYPE OF SMALL WIRELESS FACILITIES AND SUBSTANTIALLY THE SAME TYPE OF
39 UTILITY POLE OR WIRELESS SUPPORT STRUCTURE. THE COUNTY MAY REMOVE FROM THE
40 CONSOLIDATED APPLICATION AND TREAT SEPARATELY SMALL WIRELESS FACILITY
41 COLLOCATIONS FOR WHICH INCOMPLETE INFORMATION HAS BEEN PROVIDED, THAT DO
42 NOT QUALIFY FOR CONSOLIDATED TREATMENT OR THAT ARE DENIED. THE COUNTY MAY
43 ISSUE SEPARATE PERMITS FOR EACH COLLOCATION THAT IS APPROVED IN A
44 CONSOLIDATED APPLICATION. APPLICATION FEES, IF REQUIRED, SHALL BE CAPPED
45 AT ONE HUNDRED DOLLARS FOR EACH SMALL WIRELESS FACILITY FOR UP TO FIVE

1 SMALL WIRELESS FACILITIES ADDRESSED IN A SINGLE APPLICATION AND SIXTY-FIVE
2 DOLLARS FOR EACH ADDITIONAL SMALL WIRELESS FACILITY ADDRESSED IN THE
3 APPLICATION.

4 C. AN APPLICATION SHALL INCLUDE AN ATTESTATION THAT THE SMALL
5 WIRELESS FACILITIES WILL BE COLLOCATED ON THE UTILITY POLE OR WIRELESS
6 SUPPORT STRUCTURE AND THAT THE SMALL WIRELESS FACILITIES WILL BE
7 OPERATIONAL FOR USE BY A WIRELESS SERVICES PROVIDER TO PROVIDE SERVICE
8 WITHIN ONE YEAR AFTER THE DATE ON WHICH THE PERMIT IS ISSUED.

9 11-1805. Applicability; location outside of a county-owned
10 right-of-way

11 A. THIS SECTION APPLIES TO THE INSTALLATION, MODIFICATION OR
12 REPLACEMENT BY A WIRELESS PROVIDER OF A UTILITY POLE OR THE COLLOCATION BY
13 A WIRELESS PROVIDER OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A
14 WIRELESS SUPPORT STRUCTURE OUTSIDE OF THE RIGHT-OF-WAY.

15 B. THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE
16 OR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A
17 WIRELESS SUPPORT STRUCTURE IS A PERMITTED USE IN EVERY ZONING DISTRICT IN
18 THE COUNTY EXCEPT FOR SINGLE-FAMILY RESIDENTIAL ZONING DISTRICTS.

19 C. THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE
20 OR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A
21 WIRELESS SUPPORT STRUCTURE IS NOT A PROHIBITED USE IN ANY ZONING DISTRICT
22 IN THE COUNTY.

23 D. IN ANY ZONING DISTRICT IN WHICH THE INSTALLATION, MODIFICATION
24 OR REPLACEMENT OF A UTILITY POLE OR THE COLLOCATION OF A SMALL WIRELESS
25 FACILITY ON A UTILITY POLE OR A WIRELESS SUPPORT STRUCTURE IS NOT A
26 PERMITTED USE, THE COUNTY SHALL ESTABLISH A PROCEDURE BY WHICH AN
27 APPLICANT MAY SEEK TO INSTALL, MODIFY OR REPLACE A UTILITY POLE OR
28 COLLOCATE A SMALL WIRELESS FACILITY ON A UTILITY POLE OR A WIRELESS
29 SUPPORT STRUCTURE.

30 E. EXCEPT AS PROVIDED IN THIS SECTION, ALL ZONING REQUIREMENTS OF
31 THE ZONING DISTRICT IN WHICH THE APPLICANT SEEKS TO INSTALL, MODIFY OR
32 REPLACE A UTILITY POLE OR COLLOCATE A SMALL WIRELESS FACILITY ON A UTILITY
33 POLE OR A WIRELESS SUPPORT STRUCTURE OUTSIDE THE RIGHT-OF-WAY THAT ARE
34 GENERALLY APPLICABLE TO ALL APPLICANTS WITHIN THAT ZONING DISTRICT APPLY
35 TO THE APPLICANT.

36 F. THE COUNTY MAY ADOPT REASONABLE ZONING REQUIREMENTS THAT ARE
37 APPLICABLE ONLY TO THE INSTALLATION, MODIFICATION OR REPLACEMENT OF A
38 UTILITY POLE OR THE COLLOCATION OF A SMALL WIRELESS FACILITY ON A UTILITY
39 POLE OR A WIRELESS SUPPORT STRUCTURE AND THAT REFLECT SOUND ZONING AND
40 PLANNING.

41 G. A FEE FOR A ZONING APPLICATION AND APPROVAL REQUIRED UNDER THIS
42 SECTION SHALL CONFORM TO THE FEES APPLICABLE TO SIMILAR APPLICATIONS
43 WITHIN THE COUNTY.

44 H. FOR ZONING APPLICATIONS REQUIRED UNDER THIS SECTION, A COUNTY
45 SHALL EITHER:

1 1. INCORPORATE THE APPLICATION PROCESS AND TIME FRAMES FOR THE
2 INSTALLATION, MODIFICATION OR REPLACEMENT OF A UTILITY POLE OR WIRELESS
3 SUPPORT STRUCTURES, OR FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES,
4 INTO PROCESSES AND TIME FRAMES PREVIOUSLY ADOPTED BY THE COUNTY PURSUANT
5 TO SECTION 11-1605.

6 2. ADOPT AN APPLICATION PROCESS AND TIME FRAMES FOR THE
7 INSTALLATION, MODIFICATION OR REPLACEMENT OF UTILITY POLES OR WIRELESS
8 SUPPORT STRUCTURES, OR FOR THE COLLOCATION OF SMALL WIRELESS FACILITIES,
9 THAT COMPLY WITH SECTION 11-1605. THE APPLICATION PROCESS AND TIME FRAMES
10 SHALL BE ADOPTED WITHIN THE PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS
11 SECTION AND ENDING AFTER THE TIME ALLOWED UNDER THE COUNTY'S PROCEDURES
12 ADOPTED UNDER SECTION 11-1605 FOR THE ADOPTION OF AN ORDINANCE, OR NINETY
13 DAYS AFTER RECEIVING A REQUEST BY A WIRELESS PROVIDER, WHICHEVER IS LATER.

14 11-1806. Application processing

15 A. A COUNTY SHALL ADOPT AN APPLICATION PROCESS AND TIME FRAMES FOR
16 THE INSTALLATION, MODIFICATION OR REPLACEMENT OF UTILITY POLES OR WIRELESS
17 SUPPORT STRUCTURES INSIDE OF THE RIGHT-OF-WAY OR FOR THE COLLOCATION OF
18 SMALL WIRELESS FACILITIES INSIDE OF THE RIGHT-OF-WAY THAT COMPLY WITH
19 SECTION 11-1605. THE APPLICATION PROCESS AND TIME FRAMES SHALL BE ADOPTED
20 WITHIN THE TIME PERIOD BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION AND
21 ENDING AFTER THE TIME ALLOWED UNDER THE COUNTY'S PROCEDURES ADOPTED
22 PURSUANT TO SECTION 11-1605 FOR THE ADOPTION OF AN ORDINANCE, OR NINETY
23 DAYS AFTER RECEIVING THE FIRST REQUEST BY A WIRELESS PROVIDER, WHICHEVER
24 IS LATER.

25 B. AN APPLICANT IS ENTITLED TO ALL OF THE RIGHTS GRANTED IN CHAPTER
26 11, ARTICLE 1 OF THIS TITLE.

27 C. A COUNTY MAY NOT:

28 1. DIRECTLY OR INDIRECTLY REQUIRE AN APPLICANT TO PERFORM SERVICES
29 THAT ARE UNRELATED TO THE APPLICATION, SUCH AS IN-KIND CONTRIBUTIONS TO
30 THE COUNTY, INCLUDING RESERVING FIBER, CONDUIT OR POLE SPACE ON THE
31 WIRELESS PROVIDER'S POLE FOR THE COUNTY.

32 2. REQUIRE AN APPLICANT TO PROVIDE MORE INFORMATION TO OBTAIN A
33 PERMIT THAN THE COUNTY REQUIRES OF A COMMUNICATIONS SERVICE PROVIDER THAT
34 IS NOT A WIRELESS PROVIDER AND THAT REQUESTS TO ATTACH FACILITIES TO A
35 STRUCTURE.

36 3. INSTITUTE, EITHER EXPRESSLY OR DE FACTO, A MORATORIUM ON FILING,
37 RECEIVING OR PROCESSING APPLICATIONS OR ISSUING PERMITS OR OTHER
38 APPROVALS, IF ANY, FOR THE COLLOCATION OF A SMALL WIRELESS FACILITY.

39 4. REQUIRE AN APPLICATION FOR ROUTINE MAINTENANCE OR THE
40 REPLACEMENT OF SMALL WIRELESS FACILITIES WITH SMALL WIRELESS FACILITIES
41 THAT ARE SUBSTANTIALLY SIMILAR OR THE SAME SIZE OR SMALLER. A COUNTY MAY
42 REQUIRE A PERMIT TO WORK WITHIN A RIGHT-OF-WAY FOR SUCH ACTIVITIES, IF
43 APPLICABLE. A PERMIT ISSUED PURSUANT TO THIS PARAGRAPH IS SUBJECT TO THE
44 REQUIREMENTS OF THIS SECTION.

1 D. ISSUANCE OF A PERMIT BY A COUNTY SHALL ALLOW THE APPLICANT TO DO
2 BOTH OF THE FOLLOWING:

3 1. COLLOCATE THE SMALL WIRELESS FACILITIES OR CONSTRUCT, INSTALL,
4 MOUNT, MAINTAIN, MODIFY, OPERATE OR REPLACE THE UTILITY POLE OR WIRELESS
5 SUPPORT STRUCTURE, AS SPECIFIED IN THE PERMIT.

6 2. ON FINAL INSPECTION OF ALL WORK COMPLETED PURSUANT TO THE
7 PERMIT, SUBJECT TO APPLICABLE RELOCATION REQUIREMENTS AND THE WIRELESS
8 PROVIDER'S RIGHT TO TERMINATE AT ANY TIME, OPERATE AND MAINTAIN THE SMALL
9 WIRELESS FACILITIES. A PERMIT MAY NOT STATE A DURATION PERIOD FOR
10 OPERATION AND MAINTENANCE.

11 E. THIS ARTICLE DOES NOT ALLOW A PERSON TO COLLOCATE SMALL WIRELESS
12 FACILITIES ON A PRIVATELY OWNED UTILITY POLE, A PRIVATELY OWNED WIRELESS
13 SUPPORT STRUCTURE OR PRIVATE PROPERTY WITHOUT THE CONSENT OF THE PROPERTY
14 OWNER.

15 11-1807. General requirements concerning use of the
16 right-of-way by wireless providers

17 UTILITY POLES, WIRELESS SUPPORT STRUCTURES AND WIRELESS FACILITIES
18 DEPLOYED BY WIRELESS PROVIDERS PURSUANT TO THIS ARTICLE SHALL BE
19 CONSTRUCTED AND MAINTAINED AS TO NOT OBSTRUCT, ENDANGER OR HINDER THE
20 USUAL TRAVEL OR PUBLIC SAFETY ON THE RIGHT-OF-WAY, DAMAGE OR INTERFERE
21 WITH ANY OTHER UTILITY FACILITIES IN THE RIGHT-OF-WAY OR INTERFERE WITH A
22 UTILITY'S USE OF THE UTILITY'S FACILITIES IN THE RIGHT-OF-WAY.
23 CONSTRUCTION AND MAINTENANCE BY THE WIRELESS PROVIDER SHALL COMPLY WITH
24 THE NATIONAL ELECTRICAL SAFETY CODE AND ALL APPLICABLE LAWS AND
25 REGULATIONS FOR THE PROTECTION OF UNDERGROUND AND OVERHEAD UTILITY
26 FACILITIES. A COUNTY SHALL TREAT A WIRELESS PROVIDER'S UTILITY FACILITIES
27 LOCATED WITHIN A RIGHT-OF-WAY ON AN EQUAL BASIS WITH OTHER UTILITY
28 FACILITIES, EXCEPT THAT A COUNTY MAY ADOPT REASONABLE REGULATIONS TO
29 ADDRESS THE SEPARATION OF THE WIRELESS PROVIDER'S UTILITY FACILITIES FROM
30 THE OTHER UTILITY FACILITIES WITHIN THE RIGHT-OF-WAY TO PREVENT ANY DAMAGE
31 TO OR INTERFERENCE WITH OTHER UTILITY FACILITIES OR INTERFERENCE WITH A
32 UTILITY'S USE OF THE UTILITY'S FACILITIES LOCATED OR TO BE LOCATED WITHIN
33 THE RIGHT-OF-WAY.

34 11-1808. Scope of local authority

35 A. SUBJECT TO THIS ARTICLE AND APPLICABLE FEDERAL LAW, A COUNTY MAY
36 EXERCISE ZONING, LAND USE, PLANNING AND PERMITTING AUTHORITY AND THE
37 COUNTY'S POLICE POWER WITHIN THE COUNTY'S TERRITORIAL BOUNDARIES,
38 INCLUDING FOR THE INSTALLATION, MODIFICATION AND REPLACEMENT OF WIRELESS
39 SUPPORT STRUCTURES AND UTILITY POLES.

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

1 C. THIS ARTICLE DOES NOT AUTHORIZE THIS STATE OR ANY POLITICAL
2 SUBDIVISION OF THIS STATE, INCLUDING A COUNTY, TO REQUIRE SMALL WIRELESS
3 FACILITY DEPLOYMENT OR TO REGULATE WIRELESS SERVICES.

4 11-1809. Dispute resolution

5 A COURT OF COMPETENT JURISDICTION IN THIS STATE SHALL DETERMINE ALL
6 DISPUTES ARISING UNDER THIS ARTICLE.

7 11-1810. Applicability

8 THIS ARTICLE DOES NOT:

9 1. AFFECT THE AUTHORITY OF A SPECIAL TAXING DISTRICT,
10 INVESTOR-OWNED ELECTRIC UTILITY OR ELECTRIC COOPERATIVE THAT OWNS,
11 CONTROLS OR OPERATES UTILITY POLES OR WIRELESS SUPPORT STRUCTURES TO DENY,
12 LIMIT, RESTRICT OR DETERMINE THE RATES, FEES, TERMS AND CONDITIONS FOR THE
13 USE OF OR ATTACHMENT TO ITS UTILITY POLES OR WIRELESS SUPPORT STRUCTURES
14 BY A WIRELESS PROVIDER.

15 2. CONFER ON ANY COUNTY ANY ZONING, LAND USE, PLANNING, PERMITTING
16 OR OTHER REGULATORY AUTHORITY OVER THE UTILITY POLES, WIRELESS SUPPORT
17 STRUCTURES OR SMALL WIRELESS FACILITIES OWNED, CONTROLLED OR OPERATED BY A
18 SPECIAL TAXING DISTRICT OR THE INSTALLATION OF SUCH UTILITY POLES,
19 WIRELESS SUPPORT STRUCTURES OR SMALL WIRELESS FACILITIES BY A SPECIAL
20 TAXING DISTRICT.

21 3. AMEND, MODIFY OR OTHERWISE AFFECT ANY PRIVATE EASEMENT. ANY AND
22 ALL RIGHTS FOR THE USE OF A RIGHT-OF-WAY ARE SUBJECT TO THE RIGHTS GRANTED
23 PURSUANT TO ANY PRIVATE EASEMENT.

APPROVED BY THE GOVERNOR MARCH 31, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 2017.