

1 **SMALL WIRELESS FACILITIES DEPLOYMENT ACT**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill creates the Small Wireless Facilities Deployment Act.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ defines terms;
- 12 ▶ permits a wireless provider to deploy a small wireless facility and any associated
- 13 utility pole within a right-of-way under certain conditions;
- 14 ▶ permits an authority to establish a permitting process for the deployment of a small
- 15 wireless facility and any associated utility pole under certain conditions;
- 16 ▶ describes a wireless provider's access to an authority pole within a right-of-way;
- 17 ▶ sets rates and fees for the placement of:
 - 18 • a wireless facility;
 - 19 • a wireless support structure; and
 - 20 • a utility pole;
- 21 ▶ describes the implementation of requirements in relation to agreements and
- 22 ordinances; and
- 23 ▶ permits an authority to adopt indemnification, insurance, or bonding requirements
- 24 for a small wireless facility permit, under certain conditions.

25 **Money Appropriated in this Bill:**

26 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 ENACTS:

- 32 **54-21-101**, Utah Code Annotated 1953
- 33 **54-21-102**, Utah Code Annotated 1953
- 34 **54-21-103**, Utah Code Annotated 1953
- 35 **54-21-201**, Utah Code Annotated 1953
- 36 **54-21-202**, Utah Code Annotated 1953
- 37 **54-21-203**, Utah Code Annotated 1953
- 38 **54-21-204**, Utah Code Annotated 1953
- 39 **54-21-205**, Utah Code Annotated 1953
- 40 **54-21-206**, Utah Code Annotated 1953
- 41 **54-21-207**, Utah Code Annotated 1953
- 42 **54-21-208**, Utah Code Annotated 1953
- 43 **54-21-209**, Utah Code Annotated 1953
- 44 **54-21-210**, Utah Code Annotated 1953
- 45 **54-21-211**, Utah Code Annotated 1953
- 46 **54-21-301**, Utah Code Annotated 1953
- 47 **54-21-302**, Utah Code Annotated 1953
- 48 **54-21-303**, Utah Code Annotated 1953
- 49 **54-21-401**, Utah Code Annotated 1953
- 50 **54-21-402**, Utah Code Annotated 1953
- 51 **54-21-403**, Utah Code Annotated 1953
- 52 **54-21-404**, Utah Code Annotated 1953
- 53 **54-21-501**, Utah Code Annotated 1953
- 54 **54-21-502**, Utah Code Annotated 1953
- 55 **54-21-503**, Utah Code Annotated 1953
- 56 **54-21-504**, Utah Code Annotated 1953
- 57 **54-21-601**, Utah Code Annotated 1953
- 58 **54-21-602**, Utah Code Annotated 1953

- 59 [54-21-701](#), Utah Code Annotated 1953
- 60 [54-21-702](#), Utah Code Annotated 1953
- 61 [54-21-703](#), Utah Code Annotated 1953
- 62 [54-21-704](#), Utah Code Annotated 1953

63

64 *Be it enacted by the Legislature of the state of Utah:*

65 Section 1. Section **54-21-101** is enacted to read:

66 **CHAPTER 21. SMALL WIRELESS FACILITIES DEPLOYMENT ACT**

67 **Part 1. General Provisions**

68 **54-21-101. Definitions.**

69 As used in this chapter:

- 70 (1) "Antenna" means communications equipment that transmits or receives an
- 71 electromagnetic radio frequency signal used in the provision of a wireless service.
- 72 (2) "Applicable codes" means the International Building Code, the International Fire
- 73 Code, the National Electrical Code, the International Plumbing Code, and the International
- 74 Mechanical Code, as adopted and amended under Title 15A, State Construction and Fire Codes
- 75 Act.
- 76 (3) "Applicable standards" means the structural standards for antenna supporting
- 77 structures and antenna, known as ANSI/TIA-222, from the American National Standards
- 78 Institute and the Telecommunications Industry Association.
- 79 (4) "Applicant" means a wireless provider who submits an application.
- 80 (5) "Application" means a request submitted by a wireless provider to an authority for a
- 81 permit to:
 - 82 (a) collocate a small wireless facility; or
 - 83 (b) install, modify, or replace a utility pole or a wireless support structure.
- 84 (6) (a) "Authority" means:
 - 85 (i) the state;
 - 86 (ii) a state agency;
 - 87 (iii) a county;
 - 88 (iv) a municipality;
 - 89 (v) a town;

- 90 (vi) a metrotownship;
- 91 (vii) a subdivision of an entity described in Subsections (6)(a)(i) through (vi); or
- 92 (viii) a special district or entity established to provide a single public service within a
- 93 specific geographic area, including:
- 94 (A) a public utility district;
- 95 (B) an irrigation district; or
- 96 (C) a municipal electric utility.
- 97 (b) "Authority" does not include a state court having jurisdiction over an authority.
- 98 (7) "Authority pole" means a utility pole owned, managed, or operated by, or on behalf
- 99 of, an authority.
- 100 (8) "Authority wireless support structure" means a wireless support structure owned,
- 101 managed, or operated by, or on behalf of, an authority.
- 102 (9) (a) "Base station" means a wireless facility or a wireless support structure or utility
- 103 pole that supports a wireless facility.
- 104 (b) "Base station" does not include a tower, as defined in 47 C.F.R. Sec. 1.40001(b)(9),
- 105 or a tower's associated wireless facility.
- 106 (10) "Collocate" means to install, mount, maintain, modify, operate, or replace a
- 107 wireless facility on or adjacent to a wireless support structure or utility pole.
- 108 (11) "Communications service provider" means:
- 109 (a) a cable operator, as defined in 47 U.S.C. Sec. 522(5);
- 110 (b) a provider of information service, as information service is defined in 47 U.S.C.
- 111 Sec. 153(24);
- 112 (c) a telecommunications carrier, as defined in 47 U.S.C. Sec. 153(51); or
- 113 (d) a wireless provider.
- 114 (12) "Decorative pole" means an authority pole:
- 115 (a) that is specially designed and placed for an aesthetic purpose; and
- 116 (b) (i) on which a nondiscriminatory rule or code prohibits an appurtenance or
- 117 attachment, other than:
- 118 (A) a small wireless facility;
- 119 (B) a specialty designed informational or directional sign; or
- 120 (C) a temporary holiday or special event attachment; or

- 121 (ii) on which no appurtenance or attachment has been placed, other than:
- 122 (A) a small wireless facility;
- 123 (B) a specialty designed informational or directional sign; or
- 124 (C) a temporary holiday or special event attachment.
- 125 (13) "FCC" means the Federal Communications Commission of the United States.
- 126 (14) "Fee" means a one-time, nonrecurring charge.
- 127 (15) "Historic district" means a group of buildings, properties, or sites that are, in
- 128 accordance with 47 C.F.R. Part 1, Appendix C:
- 129 (a) listed in the National Register of Historic Places; or
- 130 (b) formally determined eligible for listing in the National Register of Historic Places
- 131 by the Keeper of the National Register.
- 132 (16) "Law" means federal, state, or local:
- 133 (a) law;
- 134 (b) statute;
- 135 (c) common law;
- 136 (d) code;
- 137 (e) rule;
- 138 (f) regulation;
- 139 (g) order; or
- 140 (h) ordinance.
- 141 (17) "Micro wireless facility" means a small wireless facility:
- 142 (a) that, not including any antenna, is no larger in dimension than 24 inches in length,
- 143 15 inches in width, and 12 inches in height; and
- 144 (b) on which any exterior antenna is no longer than 11 inches.
- 145 (18) "Permit" means a written authorization an authority requires for a wireless
- 146 provider to perform an action or initiate, continue, or complete a project.
- 147 (19) "Rate" means a recurring charge.
- 148 (20) (a) "Right-of-way" means the area on, below, or above a:
- 149 (i) public roadway;
- 150 (ii) highway;
- 151 (iii) street;

152 (iv) sidewalk;
153 (v) alley;
154 (vi) utility easement; or
155 (vii) property similar to property listed in Subsections (20)(a)(i) through (vi).
156 (b) "Right-of-way" does not include the area on, below, or above a federal interstate
157 highway.

158 (21) "Small wireless facility" means a wireless facility:
159 (a) on which each wireless provider's antenna could fit within an enclosure of no more
160 than six cubic feet in volume; and
161 (b) for which all wireless equipment associated with the wireless facility, whether
162 ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume, not
163 including any:

- 164 (i) electric meter;
- 165 (ii) concealment element;
- 166 (iii) telecommunications demarcation box;
- 167 (iv) grounding equipment;
- 168 (v) power transfer switch;
- 169 (vi) cut-off switch;
- 170 (vii) vertical cable run for the connection of power or other service; or
- 171 (viii) wireless provider antenna.

172 (22) "Substantial modification" means:
173 (a) a proposed modification or replacement to an existing wireless support structure or
174 base station that will substantially change the physical dimensions of the wireless support
175 structure or base station under the substantial change standard established in 47 C.F.R. Sec.
176 1.40001(7); or

177 (b) a proposed modification of the equipment compound boundaries in excess of the
178 site dimensions specified in 47 C.F.R. Part 1, Appendix C, Sec. III.B.

179 (23) "Technically feasible" means that by virtue of engineering or spectrum usage, the
180 proposed placement for a small wireless facility, or the small wireless facility's design or site
181 location, can be implemented without a reduction to the functionality of the small wireless
182 facility.

183 (24) (a) "Utility pole" means a pole or similar structure that is or may be used, in whole
184 or in part, for:

185 (i) wireline communications;

186 (ii) electric distribution;

187 (iii) lighting;

188 (iv) traffic control;

189 (v) signage;

190 (vi) a similar function to a function described in Subsections (24)(a)(i) through (v); or

191 (vii) the collocation of a small wireless facility.

192 (b) "Utility pole" does not include:

193 (i) a wireless support structure; or

194 (ii) an electric transmission structure.

195 (25) (a) "Wireless facility" means equipment at a fixed location that enables wireless
196 communication between user equipment and a communications network, including:

197 (i) equipment associated with wireless communications; and

198 (ii) regardless of the technological configuration, a radio transceiver, an antenna, a
199 coaxial or fiber-optic cable, a regular or backup power supply, or comparable equipment.

200 (b) "Wireless facility" does not include:

201 (i) the structure or an improvement on, under, or within which the equipment is
202 collocated; or

203 (ii) a coaxial or fiber-optic cable that is:

204 (A) between wireless structures or utility poles; or

205 (B) not immediately adjacent to or directly associated with a particular antenna.

206 (26) (a) "Wireless infrastructure provider" means a person that builds or installs
207 wireless communication transmission equipment, a wireless facility, or a wireless support
208 structure.

209 (b) "Wireless infrastructure provider" includes a person authorized to provide a
210 telecommunications service in the state.

211 (c) "Wireless infrastructure provider" does not include a wireless service provider.

212 (27) "Wireless provider" means a wireless infrastructure provider or a wireless service
213 provider.

214 (28) "Wireless service" means any service, whether at a fixed location or mobile,
215 provided to the public using a wireless facility.

216 (29) "Wireless service provider" means a person who provides a wireless service.

217 (30) (a) "Wireless support structure" means an existing or proposed structure designed
218 to support or capable of supporting a wireless facility, including a:

219 (i) monopole;

220 (ii) tower, either guyed or self-supporting;

221 (iii) billboard; or

222 (iv) building.

223 (b) "Wireless support structure" does not include a:

224 (i) structure designed solely for the collocation of a small wireless facility; or

225 (ii) utility pole.

226 Section 2. Section **54-21-102** is enacted to read:

227 **54-21-102. Scope.**

228 Nothing in this chapter:

229 (1) permits an entity to provide a service regulated under 47 U.S.C. Secs. 521 through
230 573, in a right-of-way without compliance with all applicable laws; or

231 (2) imposes a new requirement on the activity of a cable provider in a right-of-way for
232 a service provided in this state.

233 Section 3. Section **54-21-103** is enacted to read:

234 **54-21-103. Local authority jurisdiction.**

235 (1) Subject to Subsection (2), the provisions of this chapter, and applicable federal law,
236 an authority may continue to exercise zoning, land use, planning, and permitting authority
237 within the authority's territorial boundaries, including with respect to wireless support
238 structures and utility poles.

239 (2) An authority:

240 (a) may not have or exercise any jurisdiction or authority over the design, engineering,
241 construction, installation, or operation of a small wireless facility located in an interior
242 structure or upon the site of any campus, stadium, or athletic facility not owned or controlled
243 by the authority, other than to comply with applicable codes; and

244 (b) shall evaluate the structure classification for a wireless support structure under the

245 latest applicable standards.

246 (3) Nothing in this chapter authorizes the state or any political subdivision, including
247 an authority, to:

248 (a) require the deployment of a wireless facility; or

249 (b) regulate a wireless service.

250 Section 4. Section **54-21-201** is enacted to read:

251 **Part 2. Use of Right-of-Way for Small Wireless Facilities and Utility Poles**

252 **54-21-201. Applicability.**

253 This part only applies to a wireless provider deploying, within a right-of-way:

254 (1) a small wireless facility; or

255 (2) a utility pole associated with a small wireless facility.

256 Section 5. Section **54-21-202** is enacted to read:

257 **54-21-202. Prohibition on exclusive use.**

258 An authority may not enter into an exclusive arrangement with any person for:

259 (1) use of a right-of-way for the collocation of a small wireless facility; or

260 (2) the installation, operation, marketing, modification, maintenance, or replacement of
261 a utility pole.

262 Section 6. Section **54-21-203** is enacted to read:

263 **54-21-203. Right-of-way rates and fees.**

264 (1) An authority may not charge a wireless provider a rate or fee for the use of a
265 right-of-way to collocate a small wireless facility, or to install, operate, modify, maintain, or
266 replace a utility pole associated with the wireless provider's collocation of a small wireless
267 facility, unless the authority:

268 (a) also charges other entities for use of the right-of-way; and

269 (b) charges the rate or fee in accordance with Part 5, Rates and Fees.

270 (2) An authority may, on a nondiscriminatory basis, refrain from charging a rate or fee
271 to a wireless provider for the use of a right-of-way.

272 Section 7. Section **54-21-204** is enacted to read:

273 **54-21-204. Wireless provider right of access.**

274 (1) Subject to the provisions of this part, along, across, upon, or under the right-of-way,
275 a wireless provider may, as a permitted use not subject to zoning review or approval:

276 (a) collocate a small wireless facility; or
 277 (b) install, operate, modify, maintain, or replace a utility pole associated with the
 278 wireless provider's collocation of a small wireless facility.

279 (2) A small wireless facility or utility pole under Subsection (1) may not:

280 (a) obstruct or hinder the usual travel or public safety on a right-of-way; or
 281 (b) obstruct a utility's legal use of a right-of-way.

282 Section 8. Section **54-21-205** is enacted to read:

283 **54-21-205. Height limitations in a right-of-way.**

284 (1) Except as provided in Subsection (3), each new or modified utility pole installed in
 285 a right-of-way may not exceed the greater of:

286 (a) 10 feet in height above the tallest existing utility pole:

- 287 (i) in place on or before May 11, 2018;
- 288 (ii) located within 500 feet of the new or modified pole; and
- 289 (iii) in the same right-of-way as the new or modified pole; or

290 (b) 50 feet above ground level.

291 (2) Except as provided in Subsection (3), a new small wireless facility in a right-of-way
 292 may not extend:

293 (a) more than 10 feet above an existing utility pole in place on or before May 11, 2018;

294 or

295 (b) on a new utility pole, above the height permitted for a new utility pole under
 296 Subsection (1).

297 (3) A wireless provider may collocate a small wireless facility or install, operate,
 298 modify, maintain, or replace a utility pole associated with the wireless provider's collocation of
 299 a small wireless facility that exceeds the height limitations in this section along, across, upon,
 300 or under a right-of-way, subject to:

- 301 (a) the other provisions of this part;
- 302 (b) Part 4, Access to Authority Poles Within the Right-of-Way; and
- 303 (c) applicable zoning regulations.

304 Section 9. Section **54-21-206** is enacted to read:

305 **54-21-206. Decorative poles.**

306 If necessary to collocate a small wireless facility, a wireless provider may replace a

307 decorative pole, if the replacement pole reasonably conforms to the design aesthetic of the
308 displaced decorative pole.

309 Section 10. Section **54-21-207** is enacted to read:

310 **54-21-207. Underground district.**

311 A wireless provider shall comply with an authority's prohibition on a communications
312 service provider stalling a structure in the right-of-way in an area designated solely for
313 underground or buried cable and utility facilities, if:

314 (1) the prohibition is reasonable and nondiscriminatory; and

315 (2) the authority:

316 (a) (i) requires that all cable and utility facilities, other than an authority pole and
317 attachment, be placed underground; and

318 (ii) establishes the requirement in Subsection (2)(a)(i) more than 90 days before the day
319 on which the applicant submits the application;

320 (b) does not prohibit the replacement of an authority pole in the designated area; and

321 (c) permits a wireless provider to seek a waiver, that is administered in a
322 nondiscriminatory manner, of the undergrounding requirement for the placement of a new
323 utility pole to support a small wireless facility.

324 Section 11. Section **54-21-208** is enacted to read:

325 **54-21-208. Historic districts.**

326 (1) Subject to the permit process described in Section [54-21-302](#), an authority may
327 require a reasonable, technically feasible, nondiscriminatory, or technologically neutral design
328 or concealment measure in a historic district, unless the facility is excluded from evaluation for
329 effects on historic properties under 47 C.F.R. Sec. 1.1307(a)(4).

330 (2) A design or concealment measure described in Subsection (1) may not:

331 (a) have the effect of prohibiting a provider's technology; or

332 (b) be considered a part of the small wireless facility for purposes of the size restriction
333 in the definition of a small wireless facility.

334 Section 12. Section **54-21-209** is enacted to read:

335 **54-21-209. Manner of regulation.**

336 (1) In regulating a right-of-way, an authority shall be competitively neutral with regard
337 to any other user of the right-of-way.

338 (2) Any term or condition an authority imposes on a right-of-way user may not:

339 (a) be unreasonable or discriminatory; or

340 (b) violate an applicable law.

341 Section 13. Section **54-21-210** is enacted to read:

342 **54-21-210. Damage and repair.**

343 (1) If a wireless provider's activity directly causes damage to a right-of-way, the
344 authority may, pursuant to competitively neutral and reasonable requirements and
345 specifications of the authority, require the wireless provider to:

346 (a) repair the damage in the right-of-way; or

347 (b) return the right-of-way to the right-of-way's functional equivalence before the
348 damage.

349 (2) If a wireless provider fails to make a repair required by an authority under
350 Subsection (1) within a reasonable time after written notice, the authority may:

351 (a) make the required repair; and

352 (b) charge the wireless provider the reasonable, documented cost for the repair.

353 Section 14. Section **54-21-211** is enacted to read:

354 **54-21-211. Permitted use.**

355 Subject to the permit process in Section [54-21-302](#), a new, modified, or replacement
356 utility pole associated with a small wireless facility that meets the requirements of this part is a
357 permitted use.

358 Section 15. Section **54-21-301** is enacted to read:

359 **Part 3. Permitting Process for Small Wireless Facilities**

360 **54-21-301. Applicability -- General -- Zoning.**

361 (1) This part applies to:

362 (a) the collocation of a small wireless facility in or out of a right-of-way, as specified in
363 Subsection (3); and

364 (b) the installation, modification, or replacement of a utility pole associated with a
365 small wireless facility in a right-of-way.

366 (2) Except as provided in this chapter, an authority may not prohibit, regulate, or
367 charge for the collocation of a small wireless facility.

368 (3) A small wireless facility shall be classified as a permitted use and not subject to

369 zoning review or approval if the small wireless facility is collocated:

370 (a) in a right-of-way in any zone; or

371 (b) out of a right-of-way on property other than property zoned exclusively for
372 single-family residential use.

373 Section 16. Section **54-21-302** is enacted to read:

374 **54-21-302. Permitting process, requirements, and limitations.**

375 (1) An authority may require an applicant to obtain one or more permits to:

376 (a) collocate a small wireless facility; or

377 (b) install a new, modified, or replacement utility pole associated with a small wireless
378 facility, as provided in Section 54-21-204.

379 (2) If an authority establishes a permitting process under Subsection (1), the authority:

380 (a) shall ensure that all required permits:

381 (i) are of general applicability; and

382 (ii) do not apply exclusively to wireless facilities;

383 (b) may not require:

384 (i) directly or indirectly, that an applicant perform a service or provide a good unrelated
385 to the permit, including reserving fiber, conduit, or pole space for the authority;

386 (ii) an applicant to provide more information to obtain a permit than a communications
387 service provider that is not a wireless provider, except to the extent the applicant is required to
388 include construction or engineering drawings or other information to demonstrate the
389 applicant's application should be not denied under Subsection (6);

390 (iii) the placement of a small wireless facility on a specific utility pole or category of
391 poles;

392 (iv) multiple antenna systems on a single utility pole; or

393 (v) a minimum separation distance, limiting the placement of a small wireless facility;

394 and

395 (c) may require an applicant to attest that the small wireless facility will be operational
396 for use by a wireless service provider within one year after the day on which the authority
397 issues the permit, except in the case that:

398 (i) the authority and the applicant agree to extend the one-year period; or

399 (ii) lack of commercial power or communications transport infrastructure to the site

400 delays completion.

401 (3) Within 10 days after the day on which an authority receives an application, the
402 authority shall:

403 (a) determine whether the application is complete; and

404 (b) notify the applicant in writing of the authority's determination of whether the
405 application is complete.

406 (4) If an authority determines that an application is incomplete:

407 (a) the authority shall specifically identify the missing information in the written
408 notification sent to the applicant under Subsection (3)(b); and

409 (b) the processing deadline in Subsection (5) is tolled:

410 (i) from the day on which the authority sends the applicant the written notice to the day
411 on which the authority receives the applicant's missing information; or

412 (ii) as the applicant and the authority agree.

413 (5) (a) An authority shall:

414 (i) process an application on a nondiscriminatory basis; and

415 (ii) approve or deny an application within 60 days after the day on which the authority
416 receives the application.

417 (b) If an authority fails to approve or deny an application within 60 days after the day
418 on which the authority receives the application, the application is approved.

419 (6) An authority may deny an application to collocate a small wireless facility or to
420 install, modify, or replace a utility pole that meets the height limitations under Section
421 54-21-205, only if the action requested in the application:

422 (a) materially interferes with the safe operation of traffic control equipment;

423 (b) materially interferes with a sight line or a clear zone for transportation or
424 pedestrians;

425 (c) materially interferes with compliance with the Americans with Disabilities Act of
426 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian
427 access or movement;

428 (d) fails to comply with a spacing requirement:

429 (i) that is reasonable and nondiscriminatory;

430 (ii) of general application;

431 (iii) adopted by ordinance that concerns the location of ground-mounted equipment and
432 new utility poles; and

433 (iv) that does not prevent a wireless provider from serving a location; or

434 (e) fails to comply with applicable codes.

435 (7) (a) If an authority denies an application under Subsection (6), the authority shall:

436 (i) document the basis for the denial, including any specific code provisions on which
437 the denial is based; and

438 (ii) send the documentation described in Subsection (7)(a)(i) to the applicant on or
439 before the day on which the authority denies the application.

440 (b) Within 30 days after the day on which an authority denies an application, the
441 applicant may, without paying an additional application fee:

442 (i) cure any deficiency the authority identifies in the applicant's application; and

443 (ii) resubmit the application.

444 (c) (i) An authority shall approve or deny an application revised in accordance with
445 Subsection (7)(b) within 30 days after the day on which the authority receives the revised
446 application.

447 (ii) A review of an application revised in accordance with Subsection (7)(b) is limited
448 to the deficiencies documented as the basis for denial.

449 (8) (a) If an applicant seeks to collocate multiple small wireless facilities within the
450 jurisdiction of a single authority, the authority shall allow the applicant, at the applicant's
451 discretion, to:

452 (i) file a consolidated application for the collocation of the small wireless facilities; and

453 (ii) receive a single permit for the collocation of the small wireless facilities.

454 (b) If an authority denies one or more small wireless facilities in a consolidated
455 application, the authority may not use the denial as a basis to delay the application process of
456 any other small wireless facility in the same consolidated application.

457 (9) A wireless provider shall complete the installation or collocation for which a permit
458 is granted under this part within one year after the day on which the authority issues the permit,
459 unless:

460 (a) the authority and the applicant agree to extend the one-year period; or

461 (b) lack of commercial power or communications facilities at the site delays

462 completion.

463 (10) Approval of an application authorizes the applicant to:

464 (a) collocate or install a small wireless facility or utility pole, as requested in the
465 application; and

466 (b) subject to applicable relocation requirements and the applicant's right to terminate
467 at any time, operate and maintain for a period of at least 10 years:

468 (i) any small wireless facility covered by the permit; and

469 (ii) any utility pole covered by the permit.

470 (11) If there is no basis for denial under Subsection (6), an authority shall grant the
471 renewal of an application under this section for an equivalent duration.

472 (12) An authority may not institute, either expressly or de facto, a moratorium on
473 filing, receiving, or processing an application, or issuing a permit or another approval, if any,
474 for:

475 (a) the collocation of a small wireless facility; or

476 (b) the installation, modification, or replacement of a utility pole to support a small
477 wireless facility.

478 Section 17. Section **54-21-303** is enacted to read:

479 **54-21-303. When a permit is not required.**

480 (1) Except as provided in Subsection (2), an authority may not require a permit for:

481 (a) routine maintenance;

482 (b) the replacement of a small wireless facility with a small wireless facility that is
483 substantially similar or smaller in size; or

484 (c) the installation, placement, maintenance, operation, or replacement of a micro
485 wireless facility that is strung on a cable between existing utility poles, in compliance with the
486 National Electrical Safety Code.

487 (2) An authority may require a permit for an activity described in Subsection (1), if:

488 (a) the activity is in a right-of-way; and

489 (b) the permit complies with the requirements of Sections [54-21-301](#) and [54-21-302](#).

490 Section 18. Section **54-21-401** is enacted to read:

491 **Part 4. Access to Authority Poles Within the Right-of-Way**

492 **54-21-401. Applicability.**

493 The provisions of this part apply to activities of a wireless provider within a
494 right-of-way.

495 Section 19. Section **54-21-402** is enacted to read:

496 **54-21-402. Prohibition on exclusive use.**

497 (1) A person owning, managing, or controlling an authority pole in a right-of-way may
498 not enter into an exclusive arrangement with a person for the right to collocate a small wireless
499 facility to the pole.

500 (2) A person who purchases or otherwise acquires an authority pole is subject to the
501 requirements of this part.

502 (3) An authority shall allow the collocation of a small wireless facility on an authority
503 pole, subject to the permitting process in Part 3, Permitting Process for Small Wireless
504 Facilities.

505 Section 20. Section **54-21-403** is enacted to read:

506 **54-21-403. Rates.**

507 The rate to collocate a small wireless facility on an authority pole:

508 (1) shall be nondiscriminatory, regardless of the service provided by the collocating
509 person; and

510 (2) is provided in Part 5, Rates and Fees.

511 Section 21. Section **54-21-404** is enacted to read:

512 **54-21-404. Implementation -- Make-ready work.**

513 (1) A rate, fee, term, or condition for the make-ready work to collocate on an authority
514 pole must:

515 (a) be nondiscriminatory;

516 (b) be competitively neutral;

517 (c) be commercially reasonable; and

518 (d) comply with this chapter.

519 (2) (a) An authority shall provide a good-faith estimate for any make-ready work
520 necessary to enable the authority pole to support the requested collocation by a wireless
521 provider, including pole replacement if necessary, within 60 days after the day on which the
522 authority receives the completed application.

523 (b) Make-ready work, including any pole replacement, shall be completed within 60

524 days after the day on which the applicant gives written acceptance of the authority's good-faith
525 estimate.

526 (c) An authority may require replacement of the authority pole only if the authority
527 demonstrates that the collocation would make the authority pole structurally unsound.

528 (3) (a) The person owning, managing, or controlling an authority pole may not require
529 more make-ready work than necessary to meet applicable codes or industry standards.

530 (b) A fee for make-ready work, including any pole replacement, may not:

531 (i) include any cost related to:

532 (A) pre-existing or prior damage;

533 (B) noncompliance; or

534 (C) a consultant fee or expense; or

535 (ii) exceed:

536 (A) the actual cost of the pole; or

537 (B) the amount charged to another communications service provider for similar work.

538 Section 22. Section **54-21-501** is enacted to read:

539 **Part 5. Rates and Fees**

540 **54-21-501. Applicability.**

541 This part governs an authority's rates and fees for the placement of:

542 (1) a wireless facility;

543 (2) a wireless support structure; or

544 (3) a utility pole.

545 Section 23. Section **54-21-502** is enacted to read:

546 **54-21-502. Permissible rates and fees.**

547 An authority may not require a wireless provider to pay any rate, fee, or compensation
548 to the authority, or to any other person, beyond what is expressly authorized in this chapter, for
549 the right to use or occupy a right-of-way:

550 (1) for the collocation of a small wireless facility on a utility pole in the right-of-way;

551 or

552 (2) for the installation, operation, modification, maintenance, or replacement of a
553 utility pole in the right-of-way.

554 Section 24. Section **54-21-503** is enacted to read:

555 **54-21-503. Application and permit fees.**556 (1) An authority may charge an application fee, if:557 (a) a similar fee is required for similar types of commercial development or
558 construction within the authority's jurisdiction;559 (b) the costs to be recovered by an application fee are not already recovered by existing
560 fees, rates, licenses, or taxes paid by the wireless provider; and561 (c) the fee does not include:562 (i) travel expenses incurred by a third party in review of an application; or563 (ii) payment or reimbursement of a third-party rate or fee charged on a contingency
564 basis or a result-based arrangement.565 (2) An application fee for a collocation is limited to the cost of granting a building
566 permit for similar types of commercial development or construction within the authority's
567 jurisdiction.568 (3) An application or permit fee for the collocation of a small wireless facility on an
569 existing or replacement authority pole may not exceed:570 (a) \$100 each for the first five small wireless facilities on the same application; and571 (b) \$50 each for the sixth or subsequent small wireless facility on the same application.572 (4) If the activity is a permitted use described in Section [54-21-204](#), an application or
573 permit fee may not exceed \$250 per pole for access to a right-of-way to:574 (a) collocate an associated small wireless facility; or575 (b) install, modify, or replace a utility pole associated with a small wireless facility.576 (5) If the activity is not a permitted use described in Section [54-21-204](#), an application
577 or permit fee may not exceed \$1,000 for access to a right-of-way to:578 (a) install, modify, or replace a new wireless support structure;579 (b) make a substantial modification; or580 (c) install, modify, or replace a new utility pole associated with a small wireless
581 facility.582 Section 25. Section **54-21-504** is enacted to read:583 **54-21-504. Rates.**584 (1) The rate for occupancy of the right-of-way may not exceed \$20 per year, per small
585 wireless facility.

586 (2) The right to collocate a small wireless facility to an authority pole is \$20 per year,
587 per authority pole.

588 Section 26. Section **54-21-601** is enacted to read:

589 **Part 6. Implementation**

590 **54-21-601. General.**

591 (1) An authority may, to the extent of its authority, adopt a law that makes available to
592 wireless providers rates, fees, and other terms that comply with this chapter.

593 (2) In the absence of an ordinance that fully complies with this chapter, a wireless
594 provider may install and operate a small wireless facility or a utility pole:

595 (a) subject to Section [54-21-602](#); and

596 (b) under the requirements of this chapter.

597 (3) An authority and a wireless provider may enter into an agreement implementing
598 this chapter, but an authority may not require a wireless provider to enter into an agreement
599 implementing this chapter.

600 Section 27. Section **54-21-602** is enacted to read:

601 **54-21-602. Noncompliant agreements and ordinances.**

602 (1) An agreement or ordinance that does not fully comply with this chapter and applies
603 to a small wireless facility or a utility pole that is operational or installed before May 11, 2018:

604 (a) may not be renewed or extended unless the agreement is modified to fully comply
605 with this chapter; and

606 (b) is invalid and unenforceable beginning November 8, 2018, unless the agreement or
607 ordinance is modified before November 8, 2018, to fully comply with this chapter.

608 (2) An agreement or ordinance entered into or passed before May 11, 2018, that does
609 not fully comply with this chapter and applies to a small wireless facility or a utility pole that
610 was not operational or installed before May 11, 2018, is invalid and unenforceable:

611 (a) beginning May 11, 2018; and

612 (b) until the agreement or ordinance is modified to fully comply with this chapter.

613 (3) If an agreement or ordinance is invalid in accordance with this section, until an
614 agreement or ordinance that fully complies with this chapter is entered or adopted:

615 (a) a small wireless facility or a utility pole that is operational or installed before May
616 11, 2018, may remain installed and operate under the requirements of this chapter; and

617 (b) a small wireless facility or utility pole may become operational or be installed in the
618 right-of-way on or after May 11, 2018, under the requirements of this chapter.

619 Section 28. Section **54-21-701** is enacted to read:

620 **Part 7. Indemnification, Insurance, and Bonding**

621 **54-21-701. General.**

622 Subject to the requirements of this part, an authority may adopt an indemnification,
623 insurance, or bonding requirement related to a small wireless facility permit.

624 Section 29. Section **54-21-702** is enacted to read:

625 **54-21-702. Indemnification.**

626 An authority may not require a wireless provider to indemnify or hold the authority, or
627 an authority's officer or employee, harmless against a claim, lawsuit, judgment, cost, lien, loss,
628 expense, or fee, except for harm caused by the negligence of a wireless provider while
629 installing, repairing, or maintaining a small wireless facility or a utility pole associated with a
630 small wireless facility.

631 Section 30. Section **54-21-703** is enacted to read:

632 **54-21-703. Insurance requirements.**

633 An authority may not require a wireless provider to:

634 (1) have insurance coverage unless:

635 (a) the authority imposes a similar requirement on other right-of-way users; and

636 (b) the requirement is reasonable and nondiscriminatory;

637 (2) furnish proof of insurance before the effective date of a permit issued for a small
638 wireless facility, unless insurance is required in accordance with Subsection (1)(a); or

639 (3) obtain insurance naming the authority or an authority's officer or employee as an
640 additional insured.

641 Section 31. Section **54-21-704** is enacted to read:

642 **54-21-704. Bonding requirements.**

643 An authority may not adopt a bonding requirement for a small wireless facility, unless:

644 (1) the authority imposes a similar requirement in connection with permits issued for
645 other right-of-way users;

646 (2) the purpose of the requirement is to:

647 (a) provide for the removal of an abandoned or improperly maintained small wireless

648 facility, including a small wireless facility that an authority determines needs to be removed to
649 protect public health, safety, or welfare;

650 (b) restore a right-of-way in connection with a removal under Subsection (2)(a); or

651 (c) collect a rate or fee that a wireless provider has not paid in over 12 months, if the
652 wireless provider has received:

653 (i) reasonable notice from the authority of any noncompliance; and

654 (ii) an opportunity to cure; and

655 (3) (a) the bonding requirement does not exceed \$200 per small wireless facility; or

656 (b) if the wireless provider has multiple small wireless facilities within the jurisdiction
657 of a single authority, the total bond amount across all facilities does not exceed \$10,000, which
658 amount may be combined into one bond instrument.

Legislative Review Note
Office of Legislative Research and General Counsel