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HOUSE BILL

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE WIRELESS CONSUMER  
ADVANCED INFRASTRUCTURE INVESTMENT ACT; ESTABLISHING PROVISIONS  
FOR THE DEPLOYMENT OF CELLULAR NETWORK NODES IN PUBLIC RIGHTS  
OF WAY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Wireless Consumer Advanced Infrastructure  
Investment Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Wireless Consumer Advanced Infrastructure Investment Act:

A. "antenna" means communications equipment that  
transmits or receives electromagnetic radio frequency signals  
and that is used to provide wireless services;

B. "applicable codes" means uniform building, fire,

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1 electrical, plumbing or mechanical codes adopted by a  
2 recognized national code organization and enacted by the  
3 authority, including the local amendments to those codes  
4 enacted by the authority solely to address imminent threats of  
5 destruction of property or injury to persons, to the extent  
6 that those amendments are consistent with the Wireless Consumer  
7 Advanced Infrastructure Investment Act;

8 C. "applicant" means a wireless provider that  
9 submits an application;

10 D. "application" means a request submitted by an  
11 applicant to an authority for a permit to collocate one or more  
12 small wireless facilities or to approve the installation,  
13 modification or replacement of a utility pole or wireless  
14 support structure;

15 E. "authority" means a municipality, county,  
16 special district or political subdivision authorized to make  
17 legislative, quasi-judicial or administrative decisions  
18 concerning an application;

19 F. "authority utility pole" means a utility pole  
20 owned or operated by an authority and in a right of way;

21 G. "collocate" means to install, mount, maintain,  
22 modify, operate or replace one or more wireless facilities on,  
23 in or adjacent to a wireless support structure or utility pole;

24 H. "communications service" means cable service as  
25 defined in 47 United States Code Section 522(6), information

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1 service as defined in 47 United States Code Section 153(24),  
2 mobile service as defined in 47 United States Code 153(33),  
3 telecommunications service as defined in 47 United States Code  
4 Section 153(53) or wireless service other than mobile service;

5 I. "fee" means a one-time charge;

6 J. "law" includes federal, state or local law;

7 K. "permit" means the written permission of an  
8 authority to install, mount, maintain, modify, operate or  
9 replace a utility pole or to collocate a small wireless  
10 facility on a utility pole or wireless support structure;

11 L. "person":

12 (1) means an individual, corporation, limited  
13 liability company, partnership, association, trust or other  
14 entity or organization; and

15 (2) includes an authority;

16 M. "private easement" means an easement or other  
17 real property right given for the sole benefit of the grantor  
18 and grantee of the easement and the grantor's or grantee's  
19 successors and assigns;

20 N. "rate" means a recurring charge;

21 O. "right of way":

22 (1) means the area on, below or above a public  
23 roadway, highway, street, sidewalk, alley or utility easement;  
24 and

25 (2) does not include the area on, below or

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1 above:

- 2 (a) a federal interstate highway;
- 3 (b) a state highway or route under the
- 4 jurisdiction of the department of transportation;
- 5 (c) a private easement; or
- 6 (d) property owned by a utility
- 7 easement;

8 P. "small wireless facility" means a wireless  
9 facility whose:

- 10 (1) antennas are, or could fit, inside an
- 11 enclosure with a volume of six or fewer cubic feet; and
- 12 (2) other ground- or pole-mounted wireless
- 13 equipment, not including the following, is twenty-eight or
- 14 fewer cubic feet in volume:

- 15 (a) electric meter;
- 16 (b) concealment elements;
- 17 (c) telecommunications demarcation box;
- 18 (d) grounding equipment;
- 19 (e) power transfer switch;
- 20 (f) cutoff switch; and
- 21 (g) vertical cable runs for the
- 22 connection of power and other services;

23 Q. "utility pole" means a pole or similar structure  
24 used in whole or in part for communications services,  
25 electricity distribution, lighting or traffic signals;

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1 R. "wireless facility":

2 (1) means equipment at a fixed location that  
3 enables wireless communications between user equipment and a  
4 communications network, including:

5 (a) equipment associated with wireless  
6 communications; and

7 (b) radio transceivers, antennas,  
8 coaxial or fiber-optic cables, regular and backup power  
9 supplies and comparable equipment, regardless of technological  
10 configuration;

11 (2) includes a small wireless facility; and

12 (3) does not include:

13 (a) the structure or improvements on,  
14 under or within which the equipment is collocated;

15 (b) a wireline backhaul facility,  
16 coaxial cable or fiber-optic cable between wireless support  
17 structures or utility poles; or

18 (c) coaxial or fiber-optic cable  
19 otherwise not immediately adjacent to, or directly associated  
20 with, an antenna;

21 S. "wireless infrastructure provider" means a  
22 person, other than a wireless services provider, that may  
23 provide telecommunications service in New Mexico and that  
24 builds or installs wireless communications transmission  
25 equipment, wireless facilities or utility poles;

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1 T. "wireless provider" means a cable operator,  
2 wireless infrastructure provider or wireless services provider;

3 U. "wireless services" means services provided to  
4 the public that use licensed or unlicensed spectrum, either  
5 mobile or at a fixed location, through wireless facilities;

6 V. "wireless services provider" means a person that  
7 provides wireless services; and

8 W. "wireless support structure" means a  
9 freestanding structure, including a monopole, guyed or  
10 self-supporting tower, sign or billboard, but not including a  
11 utility pole designed to support, or capable of supporting, a  
12 small wireless facility.

13 SECTION 3. [NEW MATERIAL] WIRELESS PROVIDER--USE OF RIGHT  
14 OF WAY--RATES, FEES AND TERMS--RIGHT TO ACCESS--DAMAGE AND  
15 REPAIR.--

16 A. This section applies to the activities of a  
17 wireless provider within a right of way.

18 B. An authority shall not enter into an exclusive  
19 agreement with a wireless provider for the use of a right of  
20 way in:

21 (1) constructing, installing, maintaining,  
22 modifying, operating or replacing a utility pole; or

23 (2) collocating a small wireless facility on a  
24 utility pole or wireless support structure.

25 C. An authority may charge a wireless provider a

1 rate or fee for the provider's use of a right of way in  
2 constructing, installing, maintaining, modifying, operating or  
3 replacing a utility pole, or in collocating a small wireless  
4 facility, in the right of way only if:

5 (1) the authority otherwise may, under law,  
6 charge the rate or fee;

7 (2) the authority charges other communications  
8 service providers or publicly, cooperatively or municipally  
9 owned utilities for their use, if any, of the right of way; and

10 (3) the rate or fee:

11 (a) does not exceed the direct and  
12 actual cost of managing the right of way for the wireless  
13 provider's use;

14 (b) is competitively neutral as compared  
15 to other users, including investor-owned, authority-owned or  
16 cooperatively owned entities, if any, of the right of way,  
17 unless the other users are exempt under law from paying a rate  
18 or fee for their use of the right of way;

19 (c) does not result in a double  
20 recovery, whereby preexisting rates, fees or taxes recover the  
21 direct and actual costs of managing the right of way;

22 (d) is not in the form of a franchise or  
23 other fee based on revenue or customer counts;

24 (e) is reasonable and nondiscriminatory;

25 and

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1 (f) annually, does not exceed an amount  
2 equal to fifty dollars (\$50.00) multiplied by the number of  
3 small wireless facilities placed by the wireless provider in  
4 the right of way and in the authority's jurisdiction.

5 D. Except as otherwise provided in the Wireless  
6 Consumer Advanced Infrastructure Investment Act, and if such an  
7 application is required, a wireless provider whose application  
8 is approved may collocate small wireless facilities and  
9 construct, install, modify, mount, maintain, operate and  
10 replace utility poles associated with the collocation of a  
11 small wireless facility along, across, on or under the right of  
12 way.

13 E. If a wireless provider or the provider's  
14 contractor causes damage to the authority's property or right  
15 of way while the provider or contractor occupies, installs,  
16 repairs or maintains a small wireless facility, wireless  
17 support structure or utility pole in the right of way, the  
18 authority may require the provider to return the property to  
19 its pre-damage condition according to the authority's  
20 requirements and specifications if the requirements and  
21 specifications are competitively neutral and reasonable and  
22 upon written notice of the requirement to the provider. If the  
23 provider does not, within a reasonable period after receiving  
24 the notice, repair the property as required by the authority,  
25 the authority may make the repairs and charge the provider the

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1 reasonable, documented cost of the repairs.

2 F. A wireless provider that deploys a utility pole  
3 or small wireless facility in a right of way shall construct,  
4 maintain and locate it so as not to obstruct or hinder the  
5 usual travel on, or endanger the public in, the right of way,  
6 damage or interfere with another utility facility in the right  
7 of way or interfere with another utility's use of its facility  
8 in the right of way. In constructing and maintaining its  
9 utility pole or facility, the wireless provider shall comply  
10 with the national electrical safety code and all applicable  
11 laws for the protection of underground and overhead utility  
12 facilities. An authority shall treat a wireless provider's  
13 facility in a right of way as it does the facilities, if any,  
14 of other utilities in the right of way; however, the authority  
15 may adopt reasonable regulations concerning the separation of  
16 the wireless provider's facilities from other utility  
17 facilities in the right of way to prevent damage to, or  
18 interference with, the facilities or to prevent interference  
19 with a utility's use of its facility or facilities in, or to be  
20 placed in, the right of way.

21 SECTION 4. [NEW MATERIAL] COLLOCATION OF A SMALL WIRELESS  
22 FACILITY--PERMITS--APPLICATION--FEE.--

23 A. This section applies to a wireless provider's  
24 collocation activities within a right of way.

25 B. An authority may prohibit, regulate or charge

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1 for the collocation of a small wireless facility only as  
2 provided in this section and Sections 3, 6 and 7 of the  
3 Wireless Consumer Advanced Infrastructure Investment Act.

4 C. A small wireless facility collocated on a  
5 utility pole or wireless support structure that extends ten or  
6 fewer feet above the pole or structure in a right of way in any  
7 zone is classified as a permitted use and is not subject to  
8 zoning review or approval.

9 D. An authority may require an applicant to obtain  
10 one or more permits to collocate a small wireless facility in a  
11 right of way if the requirement is of general applicability to  
12 users of the right of way. An applicant seeking to collocate,  
13 within an authority's jurisdiction, up to twenty-five small  
14 wireless facilities, all of which are substantially the same  
15 type, on substantially the same types of structures may file a  
16 consolidated application for the collocation of the facilities.  
17 The applicant shall include in that application an attestation  
18 that, unless a delay in collocation is caused by the lack of  
19 commercial power or fiber at the site, the collocation will  
20 begin within one hundred eighty days after the permit issuance  
21 date. The authority and the provider may subsequently agree to  
22 extend that period.

23 E. An authority shall:

24 (1) without bias, accept and process  
25 applications and issue permits to collocate small wireless

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1 facilities;

2 (2) within twenty days after receiving an  
3 application, determine and notify the applicant of whether the  
4 application is complete and:

5 (a) for an incomplete application,  
6 specifically identify the information missing from it; and

7 (b) deem the application complete if the  
8 applicant is not notified within the twenty-day period;

9 (3) within sixty days after receiving a  
10 completed application, approve or deny it and deem the  
11 application approved if that approval or denial is not given  
12 with the sixty-day period;

13 (4) approve a completed application unless the  
14 application does not conform with applicable codes or local  
15 laws concerning:

16 (a) public safety;

17 (b) design for utility poles, but only  
18 to the extent that the standards the codes or laws impose are  
19 objective;

20 (c) stealth and concealment, but only to  
21 the extent that the restrictions the codes or laws impose are  
22 reasonable; and

23 (d) the spacing of ground-mounted  
24 equipment in a right of way; and

25 (5) if it denies an application, document the

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1 basis for the denial, including the specific code or law on  
2 which the denial was based, and send that documentation to the  
3 applicant on or before the date the application is denied.

4 F. If an authority determines that applicable codes  
5 or laws require that a utility pole or wireless support  
6 structure be replaced before an application for collocation is  
7 approved, the authority may condition approval of the  
8 application on that replacement. That replacement is subject  
9 to Section 3 of the Wireless Consumer Advanced Infrastructure  
10 Investment Act.

11 G. An applicant whose application is denied may  
12 cure the deficiencies identified by the authority and submit a  
13 revised application within thirty days after the denial for no  
14 additional fee. The authority shall base its review of the  
15 revised application only on the deficiencies cited in the  
16 denial and shall approve or deny the revised application within  
17 thirty days after receiving it.

18 H. If an application is for the collocation of  
19 multiple small wireless facilities, the authority may:

20 (1) treat as separate those for which  
21 incomplete information has been provided, that do not qualify  
22 for consolidated treatment or that are denied; and

23 (2) issue separate permits for the  
24 collocations that it approves.

25 I. An authority shall not:

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1 (1) directly or indirectly require an  
2 applicant to perform services unrelated to the collocation for  
3 which approval is sought, such as the making of in-kind  
4 contributions to the authority of reserving fiber, conduit or  
5 pole space on the wireless provider's utility pole;

6 (2) require an applicant to provide more  
7 information to obtain a permit than the authority requires of a  
8 communications service provider that is not a wireless provider  
9 and that requests to attach facilities to a structure; however,  
10 the authority may require the applicant to certify that the  
11 small wireless facilities to be collocated conform with the  
12 federal communications commission's regulations concerning  
13 radio frequency emissions;

14 (3) institute, either expressly or de facto, a  
15 moratorium on the acceptance or processing of applications or  
16 on the issuance of permits or other approvals, if any, for the  
17 collocation of small wireless facilities; or

18 (4) require an application for the routine  
19 maintenance of a small wireless facility or for the replacement  
20 of a small wireless facility with one that is substantially  
21 similar in size to, the same size as or smaller than it;  
22 however, an authority may require a permit, which is subject to  
23 the requirements of this section, for that maintenance or  
24 replacement.

25 J. The collocation for which a permit is issued

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1 shall begin within one hundred eighty days after the permit  
2 issuance date, unless the authority and the wireless provider  
3 agree to extend that period or a delay in collocation is caused  
4 by the lack of commercial power or fiber at the site. The  
5 permit gives the wireless provider the right to:

6 (1) collocate the small wireless facility; and  
7 (2) subject to applicable relocation  
8 requirements, to the requirements imposed on the authority by  
9 Section 3 of the Wireless Consumer Advanced Infrastructure  
10 Investment Act and to the wireless provider's right to  
11 terminate collocation at any time:

12 (a) operate and maintain the small  
13 wireless facility for at least ten years; and

14 (b) renew the permit for the same  
15 period, unless the authority finds that the small wireless  
16 facility does not conform with the applicable codes and local  
17 laws as set forth in Subparagraphs (a) through (d) of Paragraph  
18 (4) of Subsection E of this section.

19 K. An authority may charge an applicant an  
20 application fee:

21 (1) that does not exceed the actual, direct  
22 and reasonable costs, which do not include third-party travel  
23 expenses related to application review and do not include the  
24 direct payment or reimbursement of third-party rates or fees  
25 charged on a contingency or result-oriented basis, incurred by

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1 the authority for granting and processing the application and  
2 issuing a permit for the collocation of one or more small  
3 wireless facilities;

4 (2) if those costs are not otherwise recovered  
5 by the fees, rates or taxes otherwise paid by the applicant to  
6 the authority;

7 (3) if the charge is made reasonably soon  
8 before or after the incurring of those costs; and

9 (4) in the amount of one hundred dollars  
10 (\$100) or less for each of up to five small wireless facilities  
11 and fifty dollars (\$50.00) or less for each additional small  
12 wireless facility, whose collocation is requested in a single  
13 application.

14 L. The Wireless Consumer Advanced Infrastructure  
15 Investment Act shall not be deemed to allow a person, without  
16 the consent of the property owner, to collocate a small  
17 wireless facility on a privately owned utility pole, a  
18 privately owned wireless support structure or private property.

19 SECTION 5. [NEW MATERIAL] INSTALLATION, REPLACEMENT OR  
20 MODIFICATION OF A UTILITY POLE--PERMITS--APPLICATION--FEE.--

21 A. This section applies to the activities of a  
22 wireless provider in installing a new, replacement or modified  
23 utility pole associated with the collocation of a small  
24 wireless facility in a right of way.

25 B. A new, replacement or modified utility pole

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1 associated with the collocation of a small wireless facility  
2 and installed in a right of way is not subject to zoning review  
3 and approval, except for that which pertains to the under-  
4 grounding prohibitions described in Subparagraph (d) of  
5 Paragraph (1) of Subsection C of this section, unless the  
6 utility pole, as measured from the ground level, is higher than  
7 whichever of the following is greater:

8 (1) ten feet plus the height in feet of the  
9 tallest existing utility pole, other than a utility pole  
10 supporting only one or more wireless facilities, that is:

11 (a) in place on the effective date of  
12 the Wireless Consumer Advanced Infrastructure Investment Act;

13 (b) located within five hundred feet of  
14 the new, replacement or modified utility pole;

15 (c) in the same right of way and within  
16 the jurisdictional boundary of the authority; and

17 (d) fifty or fewer feet above ground  
18 level; or

19 (2) fifty feet.

20 C. An authority may require an application for the  
21 installation of a new, replacement or modified utility pole  
22 associated with the collocation of a small wireless facility in  
23 a right of way. An authority shall approve such an application  
24 unless the authority finds that the installation of the utility  
25 pole does not conform with:

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1 (1) applicable codes or local laws concerning:

2 (a) public safety;

3 (b) design for utility poles, but only  
4 to the extent that the standards the codes or laws impose are  
5 objective;

6 (c) stealth and concealment, but only to  
7 the extent that the restrictions the codes or laws impose are  
8 reasonable; and

9 (d) under-grounding prohibitions on the  
10 installation of new, or the modification of existing, utility  
11 poles in a right of way without prior approval, if those  
12 regulations: 1) require that all cable and public utility  
13 facilities be placed underground by a date certain within one  
14 year after the application; 2) include a waiver, zoning or  
15 other process that addresses requests to install such new  
16 utility poles or modify such existing utility poles; and 3)  
17 allow the replacement of utility poles;

18 (2) requirements imposed by contract between  
19 an authority and a private property owner concerning the design  
20 of utility poles in the right of way; or

21 (3) the authority's laws concerning public  
22 safety and imposing minimum spacing requirements, if  
23 reasonable, for new utility poles in rights of way.

24 D. An authority shall process an application for a  
25 permit to install a new, replacement or modified utility pole

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1 associated with the collocation of a small wireless facility in  
2 accordance with applicable law. If the authority fails to  
3 approve or deny the application within the period required by  
4 law, the authority shall deem the application approved. The  
5 application fee, if any, imposed by the authority for such an  
6 application shall conform with the requirements of Subsection K  
7 of Section 4 of the Wireless Consumer Advanced Infrastructure  
8 Investment Act; however, the fee shall not exceed seven hundred  
9 fifty dollars (\$750).

10 E. The installation, modification or replacement  
11 for which a permit is issued under this section shall begin  
12 within one hundred eighty days after the permit issuance date,  
13 unless the authority and wireless provider agree to extend that  
14 period or a delay in the installation, modification or  
15 replacement is caused by the lack of commercial power or fiber  
16 at the site. The permit gives the wireless provider the right  
17 to:

18 (1) undertake the requested deployment; and

19 (2) subject to applicable relocation  
20 requirements, to the requirements imposed on the authority by  
21 this section and to the provider's right to terminate the  
22 installation at any time:

23 (a) operate and maintain the new,  
24 modified or replacement utility pole for a period of at least  
25 ten years; and

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1 (b) renew the permit for that same  
2 period, unless the authority finds that the new or modified  
3 utility pole does not conform with the restrictions set forth  
4 in Subsection C of this section.

5 SECTION 6. [NEW MATERIAL] ACCESS TO AUTHORITY UTILITY  
6 POLES--RATES AND FEES--COLLOCATIONS FOR OTHER COMMERCIAL  
7 PROJECTS OR USES.--

8 A. An authority shall not enter into an exclusive  
9 agreement with a person for the right to attach to an authority  
10 utility pole.

11 B. The rates and fees an authority imposes for the  
12 collocation of a small wireless facility on an authority  
13 utility pole shall not vary according to the services provided  
14 by the collocating person.

15 C. The rate to collocate a small wireless facility  
16 on an authority utility pole shall not exceed fifty dollars  
17 (\$50.00) per utility pole per year.

18 D. An authority shall process an application for a  
19 permit to collocate a small wireless facility on an authority  
20 utility pole in accordance with Section 4 of the Wireless  
21 Consumer Advanced Infrastructure Investment Act. The authority  
22 may condition the issuance of the permit on the wireless  
23 provider's replacement of the authority utility pole if the  
24 authority determines that applicable codes or local laws  
25 concerning public safety require that replacement. The

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1 authority shall process an application for a permit to install  
2 a replacement authority utility pole in accordance with Section  
3 5 of the Wireless Consumer Advanced Infrastructure Investment  
4 Act. The authority shall retain ownership of the replacement  
5 utility pole.

6 E. An authority may prohibit, regulate and charge  
7 for the collocation of a small wireless facility on a wireless  
8 support structure owned by the authority.

9 SECTION 7. [NEW MATERIAL] ESTABLISHMENT OF RATES, FEES  
10 AND TERMS.--

11 A. On or before the effective date of the Wireless  
12 Consumer Advanced Infrastructure Investment Act, an authority  
13 shall establish and make known to wireless providers the rates,  
14 fees and terms for the use of a right of way as set forth in  
15 Section 3 of that act and for access to authority utility poles  
16 as set forth in Section 6 of that act. A wireless provider may  
17 request different or additional terms that, if requested, the  
18 parties shall negotiate in good faith. Documents showing the  
19 rates, fees and terms agreed to by an authority and a wireless  
20 provider are public records.

21 B. The rates, fees and terms for the use of a right  
22 of way as set forth in Section 3 of the Wireless Consumer  
23 Advanced Infrastructure Investment Act and for access to  
24 authority utility poles as set forth in Section 6 of the that  
25 act shall accord with that act, and the terms:

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1 (1) shall be reasonable and nondiscriminatory;

2 (2) may include requirements applicable to  
3 other users of the right of way;

4 (3) may require that the wireless provider's  
5 operation of a small wireless facility in the right of way not  
6 interfere with the authority's public safety communications;

7 (4) except as otherwise provided in Subsection  
8 C of Section 5 of that act, shall not:

9 (a) require the placement of a small  
10 wireless facility on a specific utility pole or category of  
11 poles or require multiple antenna systems on a single utility  
12 pole; or

13 (b) restrict the placement of small  
14 wireless facilities by imposing minimum spacing requirements;  
15 and

16 (5) shall, if reasonable, provide for a power  
17 supply to, and electric metering of, the small wireless  
18 facility.

19 C. An agreement between an authority and a wireless  
20 provider in effect on the effective date of the Wireless  
21 Consumer Advanced Infrastructure Investment Act and that  
22 concerns the collocation of one or more small wireless  
23 facilities in a right of way, including that collocation on  
24 authority utility poles, remains in effect subject to  
25 applicable termination provisions. A wireless provider in such

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1 an agreement may, after they become effective, accept the  
2 rates, fees and terms established in accordance with Subsection  
3 B of this section for the small wireless facilities and utility  
4 poles that are the subject of an application.

5 SECTION 8. [NEW MATERIAL] SCOPE OF LOCAL AUTHORITY.--

6 A. Except as otherwise provided in the Wireless  
7 Consumer Advanced Infrastructure Investment Act, an authority  
8 may exercise its zoning, land use, planning and permitting  
9 authority and its police power for the installation,  
10 modification and replacement of wireless support structures and  
11 utility poles.

12 B. An authority's power to control the design,  
13 engineering, construction, installation or operation of a small  
14 wireless facility in an interior structure or on the site of a  
15 campus, stadium or athletic facility not owned or controlled by  
16 the authority is limited to its authority to enforce compliance  
17 with applicable codes.

18 C. The Wireless Consumer Advanced Infrastructure  
19 Investment Act does not authorize the state or a political  
20 subdivision of the state to require small wireless facility  
21 deployment or to regulate wireless services.

22 D. If an authority determines that a utility pole  
23 or the wireless support structure of a wireless provider must  
24 be relocated to accommodate a public project, the provider  
25 shall assume the costs of relocating the wireless facilities

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1 deployed on the pole or structure.

2 SECTION 9. [NEW MATERIAL] APPLICABILITY.--The Wireless  
3 Consumer Advanced Infrastructure Investment Act does not:

4 A. affect the authority of an investor-owned  
5 electric utility or electric cooperative that owns, controls or  
6 operates utility poles or wireless support structures to deny,  
7 limit, restrict or determine the rates, fees, terms and  
8 conditions for the use of, or attachment to, those poles or  
9 structures by a wireless provider;

10 B. confer on an authority any zoning, land use,  
11 planning, permitting or other regulatory authority over the  
12 utility poles, wireless support structures or small wireless  
13 facilities owned, controlled or operated by an investor-owned  
14 electric utility or electric cooperative or the installation of  
15 those poles, structures or facilities by an investor-owned  
16 electric utility or electric cooperative; or

17 C. amend, modify or otherwise affect the provisions  
18 affecting a private easement; rather, all rights for the use of  
19 a right of way are subject to those provisions.