

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1388 By: Treat of the Senate
3 and
4 Thomsen of the House
5
6

7 [telecommunications - Oklahoma Small Wireless
8 Facilities Deployment Act - codification - effective
9 date]

10 AMENDMENT NO. 1. Replace the stricken title, enacting clause and
11 entire bill and insert
12

13 "An Act relating to telecommunications; creating the
14 Oklahoma Small Wireless Facilities Deployment Act;
15 defining terms; establishing procedures for the
16 deployment of small wireless facilities and utility
17 poles within a right-of-way; establishing the
18 permitting process for wireless providers utilizing
19 small wireless facilities in certain areas;
20 establishing permitting process for wireless
21 providers installing and maintaining utility poles
22 in certain areas; establishing exceptions to the
23 permitting process; establishing procedures for
24 wireless provider access to utility poles in certain
areas; establishing permissible rates and fees for
certain activities related to small wireless
facility deployment; exempting certain entities from
application of act; establishing procedures for
agreements and ordinances adopted by certain
entities for implementation of this act;
establishing jurisdiction for dispute resolutions
related to this act; authorizing certain entities to
adopt requirements related to indemnification
insurance and bonding in implementation of this act;
establishing procedures for requirements related to

1 indemnification, insurance and bonding in
2 implementation of this act; providing for
3 codification; and providing an effective date.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

5 SECTION 1. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 36-501 of Title 11, unless there
7 is created a duplication in numbering, reads as follows:

8 This act shall be known and may be cited as the "Oklahoma Small
9 Wireless Facilities Deployment Act".

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 36-502 of Title 11, unless there
12 is created a duplication in numbering, reads as follows:

13 As used in the Oklahoma Small Wireless Facilities Deployment
14 Act:

15 1. "Antenna" means communications equipment that transmits or
16 receives electromagnetic radio frequency signals used in the
17 provision of wireless services;

18 2. "Applicable codes" means uniform building, fire, electrical,
19 plumbing or mechanical codes adopted by a recognized national code
20 organization or local amendments to those codes enacted solely to
21 address imminent threats of destruction of property or injury to
22 persons to the extent not inconsistent with this act;

23 3. "Applicant" means any person who submits an application and
24 is a wireless provider;

1 4. "Application" means a request submitted by an applicant to
2 an authority:

- 3 a. for a permit to collocate small wireless facilities,
4 or
- 5 b. to approve the installation, modification or
6 replacement of a utility pole;

7 5. "Authority" means a municipality or a municipal electric
8 utility;

9 6. "Authority pole" means a utility pole owned, managed or
10 operated by or on behalf of an authority;

11 7. "Collocate" means to install, mount, maintain, modify,
12 operate or replace small wireless facilities on or adjacent to a
13 wireless support structure or utility pole. "Collocation" has a
14 corresponding meaning;

15 8. "Communications service provider" means a cable operator as
16 defined in 47 U.S.C., Section 522(5), a provider of information
17 service as defined in 47 U.S.C., Section 153(24), a
18 telecommunications carrier as defined in 47 U.S.C., Chapter 153(51),
19 or a wireless provider;

20 9. "Decorative pole" means an authority pole that is specially
21 designed and placed for aesthetic purposes and on which no
22 appurtenances or attachments, other than a small wireless facility,
23 light fixtures or specially designed informational or directional
24 signage or temporary holiday or special event attachments, have been

1 placed or are permitted to be placed according to nondiscriminatory
2 municipal rules or codes;

3 10. "Electric distribution pole" means an authority pole used
4 to support an electric distribution system;

5 11. "FCC" means the Federal Communications Commission of the
6 United States;

7 12. "Fee" means a one-time, nonrecurring charge;

8 13. "Historic district" means a group of buildings, properties
9 or sites that are zoned by the authority as a historic district on
10 or before March 31, 2018; included in the State Register of Historic
11 Places in accordance with Section 355 of Title 53 of the Oklahoma
12 Statutes; or are either listed in the National Register of Historic
13 Places or formally determined eligible for listing by the Keeper of
14 the National Register, the individual who has been delegated the
15 authority by the federal agency to list properties and determine
16 their eligibility for the National Register, in accordance with
17 Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement
18 codified at 47 C.F.R. Part 1, Appendix C;

19 14. "Law" means federal, state or local law, statute, common
20 law, code, rule, regulation, order or ordinance;

21 15. "Micro wireless facility" means a small wireless facility
22 that meets the following qualifications:
23
24

1 a. is not larger in dimension than twenty-four (24)
2 inches in length, fifteen (15) inches in width, and
3 twelve (12) inches in height, and

4 b. any exterior antenna is no longer than eleven (11)
5 inches;

6 16. "Permit" means a written authorization required by an
7 authority to perform an action or initiate, continue or complete a
8 project;

9 17. "Person" means an individual, corporation, limited
10 liability company, partnership, association, trust or other entity
11 or organization, including an authority;

12 18. "Rate" means a recurring charge;

13 19. "Right-of-way" means the area within the jurisdiction of
14 the authority that is on, below or above a public roadway, highway,
15 street, sidewalk, alley or similar property or a public easement
16 that authorizes the deployment sought by the wireless provider, but
17 does not include a federal interstate highway;

18 20. "Small wireless facility" means a wireless facility that
19 meets both of the following qualifications:

20 a. each antenna of the wireless provider could fit within
21 an enclosure of no more than six (6) cubic feet in
22 volume, and

23 b. all other wireless equipment associated with the
24 wireless facility, whether ground- or pole-mounted, is

1 cumulatively no more than twenty-eight (28) cubic feet
2 in volume. The following types of associated
3 ancillary equipment are not included in the
4 calculation of equipment volume: electric meter,
5 concealment elements, telecommunications demarcation
6 box, grounding equipment, power transfer switch, cut-
7 off switch and vertical cable runs for the connection
8 of power and other services;

9 21. "Technically feasible" means that by virtue of engineering
10 or spectrum usage, the proposed placement for a small wireless
11 facility, or its design or site location can be implemented without
12 a reduction in the functionality of the small wireless facility;

13 22. "Utility pole" means a pole or similar structure that is or
14 may be used in whole or in part by or for wireline communications,
15 electric distribution, lighting, traffic control, signage or a
16 similar function, or for the collocation of small wireless
17 facilities; provided, however, such term shall not include wireless
18 support structures or electric transmission structures. Utility
19 poles controlled by an investor-owned electric utility or electric
20 cooperative are subject to Section 7 of this act;

21 23. "Wireless facility" means equipment at a fixed location
22 that enables wireless communications between user equipment and a
23 communications network, including: (a) equipment associated with
24 wireless communications; and (b) radio transceivers, antennas,

1 coaxial or fiber-optic cable, regular and backup power supplies and
2 comparable equipment regardless of technological configuration. The
3 term includes small wireless facilities. The term does not include:

- 4 a. the structure or improvements on, under or within
5 which the equipment is collocated, or
- 6 b. coaxial or fiber-optic cable that is between wireless
7 support structures or utility poles or that is
8 otherwise not immediately adjacent to or directly
9 associated with a particular antenna;

10 24. "Wireless infrastructure provider" means any person
11 authorized to provide telecommunications service in the state that
12 builds or installs wireless communication transmission equipment,
13 wireless facilities or wireless support structures but that is not a
14 wireless services provider;

15 25. "Wireless provider" means a wireless infrastructure
16 provider or a wireless services provider;

17 26. "Wireless services" means any services, whether at a fixed
18 location or mobile, provided to the public using wireless
19 facilities;

20 27. "Wireless services provider" means a person who provides
21 wireless services; and

22 28. "Wireless support structure" means a structure such as a
23 monopole; tower, either guyed or self-supporting; billboard;
24 building; or other existing or proposed structure designed to

1 support or capable of supporting wireless facilities other than a
2 structure designed solely for the collocation of small wireless
3 facilities. Such term shall not include a utility pole.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 36-503 of Title 11, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The provisions of this section shall only apply to the
8 collocation of small wireless facilities by a wireless provider in
9 the right-of-way and the deployment of utility poles to support
10 small wireless facilities by a wireless provider in the right-of-
11 way.

12 B. An authority may not enter into an exclusive arrangement
13 with any person for use of the right-of-way for the collocation of
14 small wireless facilities or the installation, operation, marketing,
15 modification, maintenance or replacement of utility poles.

16 C. An authority may only charge a wireless provider a rate or
17 fee for the use of the right-of-way with respect to the collocation
18 of small wireless facilities or the installation, maintenance,
19 modification, operation or replacement of a utility pole in the
20 right-of-way, if the authority charges nonpublic entities for use of
21 the right-of-way. Notwithstanding the foregoing, an authority is
22 permitted, on a nondiscriminatory basis, to refrain from charging
23 any rate to a wireless provider for the use of the right-of-way.

1 The rate for use of the right-of-way is provided in Section 6 of
2 this act.

3 D. Subject to the provisions of this section and approval of an
4 application pursuant to Section 4 of this act, a wireless provider
5 shall have the right, as a permitted use not subject to zoning
6 review or approval, to collocate small wireless facilities and
7 install, maintain, modify, operate and replace utility poles along,
8 across, upon and under the right-of-way. Such structures and
9 facilities shall be so installed and maintained as not to obstruct
10 or hinder the usual travel or public safety on such right-of-way or
11 obstruct the legal use of such right-of-way by other occupants of
12 the right-of-way, including public utilities, or violate right-of-
13 way regulations of general application that are consistent with this
14 act.

15 E. Each new or modified utility pole installed in the right-of-
16 way shall not exceed the greater of:

17 1. Ten (10) feet in height above the tallest existing utility
18 pole in place as of the effective date of this act located within
19 five hundred (500) feet of the new pole in the same right-of-way; or

20 2. Fifty (50) feet above ground level.

21 New small wireless facilities in the right-of-way may not extend
22 more than ten (10) feet above an existing utility pole in place as
23 of the effective date of this act or, for small wireless facilities

24

1 on a new utility pole, above the height permitted for a new utility
2 pole under this section.

3 F. A wireless provider shall have the right to collocate a
4 small wireless facility and install, maintain, modify, operate and
5 replace a utility pole that exceeds the height limits in subsection
6 E of this section along, across, upon and under the right-of-way,
7 subject to applicable zoning or other land-use regulations.

8 G. An authority may adopt written guidelines establishing
9 reasonable and objective stealth or concealment criteria for small
10 wireless facilities in designated areas, reasonable and objective
11 design criteria for small wireless facilities to be collocated on
12 decorative poles and reasonable and objective design criteria for
13 utility poles deployed in areas with decorative poles. Such
14 guidelines may be adopted by any appropriate means, including
15 without limitation by inclusion in the authority's zoning code, but
16 such inclusion shall not subject small wireless facilities and
17 utility poles classified as permitted uses in subsection D of this
18 section to zoning review. Such guidelines may be adopted only if
19 they apply on a nondiscriminatory basis to all other occupants of
20 the right-of-way, including the authority. A wireless provider that
21 seeks to collocate small wireless facilities on a decorative pole
22 shall comply with Section 4 of this act. A wireless provider that
23 is required to replace a decorative pole at its expense in
24 compliance with Section 5 of this act shall conform the new

1 decorative pole to the design aesthetics and material of the
2 decorative pole(s) being replaced.

3 H. Wireless providers shall comply with reasonable and
4 nondiscriminatory requirements that prohibit communications service
5 providers from installing utility poles or other structures in the
6 right-of-way in an area designated solely for underground or buried
7 cable and utility facilities where:

8 1. The authority has required all cable and utility facilities
9 other than authority poles and attachments to be placed underground
10 (i) by a date certain before the application is submitted or (ii) by
11 a date certain within two (2) years after the application is
12 submitted, if relocation of facilities has commenced;

13 2. The authority does not prohibit the replacement of authority
14 poles in the designated area; and

15 3. The authority permits wireless providers to seek a waiver of
16 the undergrounding requirements for the placement of a new utility
17 pole to support small wireless facilities, which waivers shall be
18 addressed in a nondiscriminatory manner.

19 I. Subject to Section 4 of this act and subsection D of this
20 section, and except for facilities excluded from evaluation for
21 effects on historic properties under 47 C.F.R., Section 1.1307(a)(4)
22 of the FCC rules, an authority may require reasonable, technically
23 feasible, nondiscriminatory and technologically neutral design or
24 concealment measures in a historic district. Any such design or

1 concealment measures may not have the effect of prohibiting any
2 provider's technology, nor may any such measures be considered a
3 part of the small wireless facility for purposes of the size
4 restrictions in the definition of small wireless facility.

5 J. The authority, in the exercise of its administration and
6 regulation related to the management of the right-of-way, must be
7 competitively neutral with regard to other users of the right-of-
8 way, including that terms may not be unreasonable or discriminatory
9 and may not violate any applicable law.

10 K. The authority may require a wireless provider to repair all
11 damage to the right-of-way directly caused by the activities of the
12 wireless provider in the right-of-way and to return the right-of-way
13 to its functional equivalence before the damage pursuant to the
14 competitively neutral, reasonable requirements and specifications of
15 the authority. If the wireless provider fails to make the repairs
16 required by the authority within a reasonable time after written
17 notice, the authority may effect those repairs and charge the
18 applicable party the reasonable, documented cost of such repairs. A
19 wireless provider shall be required to comply with right-of-way and
20 vegetation management practices adopted by the authority that apply
21 to all occupants of the right-of-way.

22 L. Nothing in this act precludes an authority from adopting
23 reasonable and nondiscriminatory requirements with respect to the
24 removal of abandoned small wireless facilities. A small wireless

1 facility that is not operated for a continuous period of twelve (12)
2 months shall be considered abandoned, and the owner of the facility
3 must remove the small wireless facility within ninety (90) days
4 after receipt of written notice from the authority notifying the
5 owner of the abandonment. The notice shall be sent by certified or
6 registered mail, return receipt requested, by the authority to the
7 owner at the last-known address of the owner. If the owner neither
8 provides the authority written notice that the small wireless
9 facility has not been out of operation for a continuous period of
10 twelve (12) months nor removes the small wireless facility within
11 the ninety-day period, the authority may remove the small wireless
12 facility, take ownership of the small wireless facility and assess
13 the cost of removal to the owner.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 36-504 of Title 11, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The provisions of this section shall apply to the permitting
18 of small wireless facilities by a wireless provider in or outside
19 the right-of-way as specified in subsection C of this section and to
20 the permitting of the installation, modification and replacement of
21 utility poles by a wireless provider inside the right-of-way.

22 B. Except as provided in this act, an authority may not
23 prohibit, regulate or charge for the collocation of small wireless
24

1 facilities classified as permitted uses in subsection C of this
2 section.

3 C. Small wireless facilities shall be classified as permitted
4 uses and not subject to zoning review or approval if they comply
5 with the height requirements in subsection E of Section 3 of this
6 act and are collocated in the right-of-way in any zone or outside
7 the right-of-way in property not zoned exclusively for residential
8 single-family or duplex use. Utility poles installed to support
9 small wireless facilities shall be classified as permitted uses and
10 not subject to zoning review or approval if they comply with the
11 height requirements in subsection E of Section 3 of this act and are
12 collocated in the right-of-way in any zone.

13 D. An authority may require an applicant to obtain one or more
14 permits to collocate a small wireless facility or install a new,
15 modified or replacement utility pole associated with a small
16 wireless facility as provided in Section 3 of this act, provided
17 such permits are of general applicability for nongovernmental users
18 of the right-of-way and do not apply exclusively to wireless
19 facilities. An authority shall receive applications for, process
20 and issue such permits subject to the following requirements:

21 1. An authority may not directly or indirectly require an
22 applicant to perform services or provide goods unrelated to the
23 permit, such as in-kind contributions to the authority including
24 reserving fiber, conduit or pole space for the authority;

1 2. An applicant shall not be required to provide more
2 information to obtain a permit than communications service providers
3 that are not wireless providers, provided that an applicant may be
4 required to include construction and engineering drawings and
5 information demonstrating compliance with the criteria in paragraph
6 8 of this subsection and, for an application to collocate on an
7 authority pole, a wireless provider may be required to provide at
8 its expense engineering analysis demonstrating compliance with
9 applicable standards and codes, construction drawings stamped by a
10 professional engineer registered in Oklahoma and a description of
11 any recommended make-ready work, including any modification or
12 replacement of the authority pole;

13 3. An authority may not require the placement of small wireless
14 facilities on any specific utility pole or category of poles or
15 require multiple antenna systems on a single utility pole;

16 4. Subject to subparagraphs e and f of paragraph 8 of this
17 subsection, an authority may not limit the placement of small
18 wireless facilities by minimum separation distances;

19 5. The authority may require an applicant to include an
20 attestation that the small wireless facilities will be operational
21 for use by a wireless services provider within one (1) year after
22 the permit issuance date, unless the authority and the applicant
23 agree to extend this period or delay is caused by lack of commercial
24 power or communications transport facilities to the site;

1 6. Within twenty (20) days of receiving an application, an
2 authority must determine and notify the applicant in writing whether
3 the application is complete. If an application is incomplete, an
4 authority must specifically identify the missing information in
5 writing. The processing deadline in paragraph 7 of this subsection
6 is tolled from the time the authority sends the notice of
7 incompleteness to the time the applicant provides the missing
8 information. That processing deadline also may be tolled by
9 agreement of the applicant and the authority;

10 7. An application shall be processed on a nondiscriminatory
11 basis and deemed approved if the authority fails to approve or deny
12 the application within seventy-five (75) days of receipt of the
13 application;

14 8. An authority may deny a proposed collocation of a small
15 wireless facility or installation, modification or replacement of a
16 utility pole that meets the height requirements in subsection E of
17 Section 3 of this act only if the proposed application:

- 18 a. materially interferes with the safe operation of
19 traffic control equipment or emergency management
20 systems or devices,
- 21 b. materially interferes with sight lines or clear zones
22 for transportation or pedestrians,
- 23 c. materially interferes with compliance with the
24 Americans with Disabilities Act or similar federal or

1 state standards regarding pedestrian access or
2 movement,

3 d. materially interferes with Federal Aviation
4 Administration requirements or the operation of an
5 airport or air traffic,

6 e. fails to comply with reasonable and nondiscriminatory
7 spacing requirements of general application adopted by
8 ordinance that concern the location of new utility
9 poles. Such spacing requirements shall not prevent a
10 wireless provider from serving any location,

11 f. with respect to ground-mounted equipment, fails to
12 comply with reasonable and nondiscriminatory
13 requirements of general application adopted by
14 ordinance that concern spacing of the ground-mounted
15 equipment; interference with sight lines, clear zones
16 or pedestrian access or movement; unhindered use of
17 the right-of-way by other right-of-way occupants,
18 including the authority; or design or concealment
19 measures in a historic district required under
20 subsection I of Section 3 of this act,

21 g. fails to comply with applicable codes, including
22 without limitation the most recent version of the
23 National Electrical Safety Code,
24

- 1 h. fails to comply with subsections D, G, H and I of
2 Section 3 of this act,
- 3 i. causes the utility pole or wireless support structure
4 to become structurally unsound, unless the applicant
5 demonstrates that it will address the problem
6 adequately, such as by modifying or replacing the
7 structure, or
- 8 j. materially interferes with the intended use of an
9 authority pole;

10 9. The authority shall document the basis for a denial,
11 including the specific code provisions on which the denial was
12 based, and send the documentation to the applicant on or before the
13 day the authority denies an application. The applicant may cure the
14 deficiencies identified by the authority and resubmit the
15 application within thirty (30) days of the denial without paying an
16 additional application fee. The authority shall approve or deny the
17 revised application within thirty (30) days. Any subsequent review
18 shall be limited to the deficiencies cited in the denial;

19 10. An applicant seeking to collocate small wireless facilities
20 within the jurisdiction of a single authority shall be allowed at
21 the applicant's discretion to file a consolidated application for
22 the collocation of up to twenty-five small wireless facilities and
23 receive a single permit; provided, however, the denial of one or
24 more small wireless facilities in a consolidated application shall

1 not delay processing of any other small wireless facilities in the
2 same batch;

3 11. Installation or collocation for which a permit is granted
4 pursuant to this section shall be completed within one (1) year
5 after the permit issuance date, unless the authority and the
6 applicant agree to extend this period, or a delay is caused by the
7 lack of commercial power or communications facilities at the site.

8 Approval of an application authorizes the applicant to:

9 a. undertake the installation or collocation, and

10 b. subject to applicable relocation requirements and the
11 applicant's right to terminate at any time, operate
12 and maintain the small wireless facilities and any
13 associated utility pole covered by the permit for a
14 period of not less than ten (10) years, which must be
15 renewed for equivalent durations so long as they are
16 in compliance with the criteria set forth in paragraph
17 8 of this subsection;

18 12. Wireless providers shall comply with relocation
19 requirements that apply to similarly situated occupants of the
20 right-of-way; and

21 13. An authority may not institute, either expressly or de
22 facto, a moratorium on:

23 a. filing, receiving or processing applications, or
24

1 b. issuing permits or other approvals, if any, for the
2 collocation of small wireless facilities or the
3 installation, modification or replacement of utility
4 poles to support small wireless facilities.

5 E. An authority shall not require an application for the
6 following:

7 1. Routine maintenance;

8 2. The replacement of small wireless facilities with small
9 wireless facilities that are substantially similar or the same size
10 or smaller; or

11 3. For the installation, placement, maintenance, operation or
12 replacement of micro wireless facilities that are strung on cables
13 between existing utility poles, in compliance with the National
14 Electrical Safety Code.

15 An authority may, however, require a permit to work within the
16 right-of-way for such activities, if applicable. Any such permits
17 shall not be subject to the requirements provided in subsections C
18 and D of this section.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 36-505 of Title 11, unless there
21 is created a duplication in numbering, reads as follows:

22 A. The provisions of this section shall apply to activities of
23 the wireless provider within the right-of-way.

1 B. A person owning, managing or controlling authority poles in
2 the right-of-way may not enter into an exclusive arrangement with
3 any person for the right to attach to such poles. A person who
4 purchases or otherwise acquires an authority pole is subject to the
5 requirements of this section.

6 C. An authority shall allow the collocation of small wireless
7 facilities on authority poles subject to the application process in
8 Section 4 of this act and the make-ready process in this section.
9 The rates, fees and terms for such collocations shall be
10 nondiscriminatory regardless of the services provided by the
11 collocating person, comply with this act and be made available to
12 wireless providers under Section 10 of this act.

13 D. The rates, fees and terms and conditions for the make-ready
14 work to collocate on an authority pole described in the application
15 shall be nondiscriminatory, competitively neutral and commercially
16 reasonable and must comply with this act. The authority may perform
17 the make-ready work necessary to enable the pole to support the
18 requested collocation by a wireless provider or require the wireless
19 provider to perform the make-ready work. If the authority elects to
20 perform the make-ready work, it shall provide a good-faith estimate
21 for the work, including pole replacement if necessary, within sixty
22 (60) days after receipt of a complete application. The authority
23 shall complete any make-ready work it elects to perform, including
24 any pole replacement, within sixty (60) days of written acceptance

1 of the good-faith estimate by the applicant. An authority may
2 require replacement of the authority pole only if it demonstrates
3 that the collocation would make the authority pole structurally
4 unsound. The authority may require that the replaced authority pole
5 have the same functionality as the pole being replaced. If the
6 authority pole is replaced, the authority shall take ownership of
7 the new pole and operate authority fixtures on the pole.

8 The person owning, managing or controlling the authority pole
9 shall not require more make-ready work than required to meet
10 applicable codes or industry standards. Fees for make-ready work
11 shall not include costs related to preexisting or prior damage or
12 noncompliance. Fees for make-ready work including any pole
13 replacement shall be reasonable and nondiscriminatory and shall not
14 exceed actual costs, which may include the amount the authority pays
15 a professional engineer registered in Oklahoma to review the
16 wireless provider's make-ready work plans.

17 E. A wireless provider shall comply with the following
18 requirements and specifications:

19 1. Requirements and specifications of the National Electrical
20 Safety Code, the National Electrical Code and the Occupational
21 Safety and Health Act, including amendments or revisions to such
22 requirements or specifications, and in the event of conflict, the
23 most stringent of such requirements and specifications;

24

1 2. Requirements and specifications of general application
2 adopted by the authority that do not conflict with this act,
3 including requirements and specifications that concern how equipment
4 shall be attached to electric distribution poles so they may be
5 climbed safely; and

6 3. Notwithstanding subsection D of this section, requirements
7 and specifications of general application adopted by the authority
8 concerning make-ready work for authority electric distribution
9 poles.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 36-506 of Title 11, unless there
12 is created a duplication in numbering, reads as follows:

13 A. This section shall govern an authority's rates and fees for
14 the placement of a wireless facility, wireless support structure or
15 utility pole.

16 B. An authority may not require a wireless provider to pay any
17 rates, fees or compensation to the authority or other person other
18 than what is expressly authorized by this act for the right to use
19 or occupy a right-of-way, for collocation of small wireless
20 facilities on utility poles in the right-of-way or for the
21 installation, maintenance, modification, operation and replacement
22 of utility poles in the right-of-way.

23 C. Application fees shall be subject to the following
24 requirements:

1 1. An authority may charge an application fee only if such fee
2 is required for similar types of commercial development or
3 construction within the authority's jurisdiction;

4 2. An application fee may not include:

5 a. travel expenses incurred by a third party in its
6 review of an application, or

7 b. direct payment or reimbursement of third-party rates
8 or fees charged on a contingency basis or a result-
9 based arrangement;

10 3. An application fee for a collocation shall be limited to the
11 cost of granting a permit for similar types of commercial
12 development or construction within the authority's jurisdiction.
13 The application and permit fees for collocation of small wireless
14 facilities on an existing or replacement authority pole shall not
15 exceed Two Hundred Dollars (\$200.00) each for the first five small
16 wireless facilities on the same application and One Hundred Dollars
17 (\$100.00) for each additional small wireless facility on the same
18 application; and

19 4. The application and permit fees for the installation,
20 modification or replacement of a utility pole and the collocation of
21 an associated small wireless facility that are permitted uses in
22 accordance with the specifications in subsection D of Section 3 of
23 this act shall not exceed Three Hundred Fifty Dollars (\$350.00) per
24 pole for access to the right-of-way.

1 D. The rate for occupancy of the right-of-way shall not exceed
2 Twenty Dollars (\$20.00) per year per small wireless facility.

3 E. The rates to collocate on authority poles in the right-of-
4 way shall not exceed Twenty Dollars (\$20.00) per authority pole per
5 year.

6 F. There shall be no rate charged for the installation,
7 placement, maintenance, operation or replacement of micro wireless
8 facilities that are strung on cables between existing utility poles,
9 in compliance with the National Electrical Safety Code.

10 G. Rates provided in this section do not include any applicable
11 charges for electric power. A wireless provider must pay separately
12 for such services.

13 H. An authority may adjust the fees and rates it adopts under
14 this section ten percent (10%) every five (5) years rounded to the
15 nearest dollar.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 36-507 of Title 11, unless there
18 is created a duplication in numbering, reads as follows:

19 This act does not impose or otherwise affect any tariff,
20 contractual obligation or right, or federal or state law regarding
21 utility poles, similar structures or equipment of any type owned or
22 controlled by an investor-owned electric utility or electric
23 cooperative.

24

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 36-508 of Title 11, unless there
3 is created a duplication in numbering, reads as follows:

4 This section applies to activities in the right-of-way only.
5 Nothing in this act shall be interpreted to allow any entity to
6 provide services regulated under 47 U.S.C., Sections 521 to 573,
7 without compliance with all laws applicable to such providers nor
8 shall this act be interpreted to impose any new requirements on
9 cable providers for the provision of such service in this state.

10 SECTION 9. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 36-509 of Title 11, unless there
12 is created a duplication in numbering, reads as follows:

13 Subject to the provisions of this act and applicable federal
14 law, an authority may continue to exercise zoning, land use,
15 planning and permitting authority within its territorial boundaries
16 with respect to wireless support structures and utility poles. No
17 authority shall have or exercise any jurisdiction or authority over
18 the design, engineering, construction, installation or operation of
19 any small wireless facility located in an interior structure or upon
20 the site of any campus, stadium or athletic facility not owned or
21 controlled by the authority, other than to comply with applicable
22 codes. An authority shall evaluate the structure classification for
23 wireless support structures under the latest version of ANSI/TIA-
24 222. Nothing in this act authorizes the state or any political

1 subdivision, including an authority, to require wireless facility
2 deployment or to regulate wireless services.

3 SECTION 10. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 36-510 of Title 11, unless there
5 is created a duplication in numbering, reads as follows:

6 A. An authority may adopt an ordinance, resolution or standard
7 agreement that makes available to wireless providers rates, fees and
8 other terms that comply with this act.

9 1. Subject to subsections B, C, D and E of this section, in the
10 absence of an ordinance, resolution or standard agreement that fully
11 complies with this act and until such a compliant ordinance,
12 resolution or standard agreement is adopted, if at all, wireless
13 providers may collocate small wireless facilities on wireless
14 support structures and utility poles other than electric
15 distribution poles and may install and operate utility poles under
16 the requirements of this act.

17 2. Upon request, an authority shall enter into a pole
18 attachment agreement with a wireless provider for the collocation of
19 small wireless facilities on electric distribution poles. The
20 rates, fees and terms of the pole attachment agreement shall be
21 reasonable and nondiscriminatory and shall comply with this act. If
22 the wireless provider and the authority are not able to reach
23 agreement within ninety (90) days of the request for a pole
24 attachment agreement, the authority shall make a best-and-final

1 offer to the wireless provider within fifteen (15) days of the
2 expiration of the ninety-day period. The best-and-final offer shall
3 be in the form of a pole attachment agreement that is reasonable and
4 nondiscriminatory, complies with this act and may be accepted and
5 signed by the wireless provider. If the authority fails to make
6 such a best-and-final offer within fifteen (15) days of the
7 expiration of the ninety-day period, the wireless provider may
8 collocate small wireless facilities on the authority's electric
9 distribution poles under the requirements of this act until the
10 authority makes such a best-and-final offer.

11 B. Agreements between an authority and a wireless provider for
12 the deployment of small wireless facilities in the right-of-way
13 under the terms of this act are public/private agreements.

14 C. An agreement, ordinance or resolution that does not fully
15 comply with this act may apply only to small wireless facilities and
16 utility poles that became operational or were installed before the
17 effective date of this act. An agreement, ordinance or resolution
18 that applies to small wireless facilities and utility poles that
19 became operational or were constructed before the effective date of
20 this act is invalid and unenforceable beginning on the one-hundred-
21 eighty-first day after the effective date of this act unless it
22 fully complies with this act. If an agreement, ordinance or
23 resolution is invalid in accordance with this subsection, in the
24 absence of an agreement, ordinance or resolution that fully complies

1 with this act and until such a compliant agreement or ordinance is
2 entered or adopted, small wireless facilities and utility poles that
3 became operational or were constructed before the effective date of
4 this act may remain installed and be operated under the requirements
5 of this act.

6 D. An agreement, ordinance or resolution that applies to small
7 wireless facilities and utility poles that become operational on or
8 after the effective date of this act may not be enforced beginning
9 on the effective date of this act unless it fully complies with this
10 act. If an agreement, ordinance or resolution is invalid in
11 accordance with this subsection, in the absence of an agreement,
12 ordinance or resolution that fully complies with this act and until
13 such a compliant agreement, ordinance or resolution is entered or
14 adopted, small wireless facilities and utility poles may be
15 installed and operated in the right-of-way or become operational
16 under the requirements of this act.

17 E. Notwithstanding the requirements in subsections C and D of
18 this section, a communications service provider that has executed an
19 agreement with an authority relating to small wireless facilities
20 and utility poles prior to the effective date of this act may choose
21 to continue to be subject to the rates, terms and conditions of that
22 agreement for up to five (5) years beyond the effective date of this
23 act.

24

1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 36-511 of Title 11, unless there
3 is created a duplication in numbering, reads as follows:

4 A court of competent jurisdiction shall have jurisdiction to
5 determine all disputes arising under this act. Pending resolution
6 of a dispute concerning rates for collocation of small wireless
7 facilities on authority poles and nonauthority poles, the person
8 owning or controlling the pole shall allow the collocating person to
9 collocate on its poles at annual rates of no more than Twenty
10 Dollars (\$20.00) with rates to be trued up upon final resolution of
11 the dispute.

12 SECTION 12. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 36-512 of Title 11, unless there
14 is created a duplication in numbering, reads as follows:

15 A. An authority may adopt indemnification, insurance and
16 bonding requirements related to small wireless facility permits
17 subject to the requirements of this section.

18 B. An authority may require a wireless provider to defend,
19 indemnify and hold harmless the authority and its officers, agents
20 and employees against any claims, demands, damages, lawsuits,
21 judgments, costs, liens, losses, expenses and attorney fees
22 resulting from the installation, construction, repair, replacement,
23 operation or maintenance of wireless facilities, wireless support
24 structures or utility poles to the extent caused by the wireless

1 provider, its contractors, subcontractors and their officers,
2 employees or agents. A wireless provider has no obligation to
3 defend, indemnify or hold harmless an authority, its officers,
4 agents or employees against any liabilities or losses due to or
5 caused by the sole negligence of the authority or its employees or
6 agents.

7 C. An authority may require a wireless provider to have in
8 effect insurance coverage naming the authority and its officers,
9 agents and employees as additional insureds against the claims,
10 demands, damages, lawsuits, judgments, costs, liens, losses,
11 expenses and attorney fees described in subsection B of this
12 section, so long as the authority imposes similar requirements on
13 other right-of-way users and such requirements are reasonable and
14 nondiscriminatory.

15 D. An authority may require a wireless provider to furnish
16 proof of insurance, if required, prior to the effective date of any
17 permit issued for a small wireless facility.

18 E. An authority may adopt bonding requirements for small
19 wireless facilities if the authority imposes similar requirements in
20 connection with permits issued for other right-of-way users.

21 1. The purpose of such bonds shall be to:

22 a. provide for the removal of abandoned or improperly
23 maintained small wireless facilities, including those
24

1 that an authority determines need to be removed to
2 protect public health, safety or welfare,

3 b. restoration of the right-of-way in connection with
4 removals under this paragraph, or

5 c. recoup rates or fees that have not been paid by a
6 wireless provider in over twelve (12) months, so long
7 as the wireless provider has received reasonable
8 notice from the authority of any of the noncompliance
9 listed above and an opportunity to cure.

10 2. An authority shall not require either of the following under
11 paragraph 1 of this subsection:

12 a. a cash bond, unless any of the following apply:

13 (1) the wireless provider has failed to obtain or
14 maintain a bond required under this section, or

15 (2) the surety has defaulted or failed to perform on
16 a bond given to the authority on behalf of the
17 wireless provider, or

18 b. a bond in an amount exceeding One Thousand Dollars
19 (\$1,000.00) per small wireless facility.

20 SECTION 13. This act shall become effective November 1, 2018."
21
22
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Passed the House of Representatives the 17th day of April, 2018.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2018.

Presiding Officer of the Senate

1 ENGROSSED SENATE
2 BILL NO. 1388

By: Treat of the Senate

3 and

4 Thomsen of the House

5
6 [telecommunications - Oklahoma Small Wireless
7 Facilities Deployment Act - codification - effective
8 date]
9

10 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

11 SECTION 14. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 36-501 of Title 11, unless there
13 is created a duplication in numbering, reads as follows:

14 This act shall be known and may be cited as the "Oklahoma Small
15 Wireless Facilities Deployment Act".

16 SECTION 15. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 36-502 of Title 11, unless there
18 is created a duplication in numbering, reads as follows:

19 As used in the Oklahoma Small Wireless Facilities Deployment
20 Act:

21 1. "Antenna" means communications equipment that transmits or
22 receives electromagnetic radio frequency signals used in the
23 provision of wireless services;
24

1 2. "Applicable codes" means uniform building, fire, electrical,
2 plumbing or mechanical codes adopted by a recognized national code
3 organization or local amendments to those codes enacted solely to
4 address imminent threats of destruction of property or injury to
5 persons to the extent not inconsistent with this act;

6 3. "Applicant" means any person who submits an application and
7 is a wireless provider;

8 4. "Application" means a request submitted by an applicant to
9 an authority:

10 a. for a permit to collocate small wireless facilities,

11 or

12 b. to approve the installation, modification or
13 replacement of a utility pole or wireless support
14 structure;

15 5. "Authority" means a municipality or a municipal electric
16 utility;

17 6. "Authority pole" means a utility pole owned, managed or
18 operated by or on behalf of an authority;

19 7. "Collocate" means to install, mount, maintain, modify,
20 operate or replace wireless facilities on or adjacent to a wireless
21 support structure or utility pole. "Collocation" has a
22 corresponding meaning;

23 8. "Communications service provider" means a cable operator, as
24 defined in 47 U.S.C. § 522(5); a provider of information service, as

1 defined in 47 U.S.C. § 153(24); a telecommunications carrier, as
2 defined in 47 U.S.C. § 153(51); or a wireless provider;

3 9. "Decorative pole" means an authority pole that is specially
4 designed and placed for aesthetic purposes and on which no
5 appurtenances or attachments, other than a small wireless facility
6 or specially designed informational or directional signage or
7 temporary holiday or special event attachments, have been placed or
8 are permitted to be placed according to nondiscriminatory municipal
9 rules or codes;

10 10. "FCC" means the Federal Communications Commission of the
11 United States;

12 11. "Fee" means a one-time, nonrecurring charge;

13 12. "Historic district" means a group of buildings, properties
14 or sites that are either listed in the National Register of Historic
15 Places or formally determined eligible for listing by the Keeper of
16 the National Register, the individual who has been delegated the
17 authority by the federal agency to list properties and determine
18 their eligibility for the National Register, in accordance with
19 Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement
20 codified at 47 C.F.R. Part 1, Appendix C;

21 13. "Law" means federal, state, or local law, statute, common
22 law, code, rule, regulation, order or ordinance;

23 14. "Micro wireless facility" means a small wireless facility
24 that meets the following qualifications:

1 (a) is not larger in dimension than twenty-four (24)
2 inches in length, fifteen (15) inches in width, and
3 twelve (12) inches in height, and

4 (b) any exterior antenna is no longer than eleven (11)
5 inches;

6 15. "Permit" means a written authorization required by an
7 authority to perform an action or initiate, continue, or complete a
8 project;

9 16. "Person" means an individual, corporation, limited
10 liability company, partnership, association, trust or other entity
11 or organization, including an authority;

12 17. "Rate" means a recurring charge;

13 18. "Right(s)-of-way" means the area within the jurisdiction of
14 the authority that is on, below or above a public roadway, highway,
15 street, sidewalk, alley or similar property, or a public easement
16 that authorizes the deployment sought by the wireless provider, but
17 does not include a federal interstate highway;

18 19. "Small wireless facility" means a wireless facility that
19 meets both of the following qualifications:

20 a. each antenna of the wireless provider could fit within
21 an enclosure of no more than six (6) cubic feet in
22 volume, and

23 b. all other wireless equipment associated with the
24 wireless facility, whether ground or pole-mounted, is

1 cumulatively no more than twenty-eight (28) cubic feet
2 in volume. The following types of associated
3 ancillary equipment are not included in the
4 calculation of equipment volume: electric meter,
5 concealment elements, telecommunications demarcation
6 box, grounding equipment, power transfer switch, cut-
7 off switch and vertical cable runs for the connection
8 of power and other services;

9 20. "Technically feasible" means that by virtue of engineering
10 or spectrum usage the proposed placement for a small wireless
11 facility, or its design or site location can be implemented without
12 a reduction in the functionality of the small wireless facility;

13 21. "Utility pole" means a pole or similar structure that is or
14 may be used in whole or in part by or for wireline communications,
15 electric distribution, lighting, traffic control, signage or a
16 similar function, or for the collocation of small wireless
17 facilities; provided, however, such term shall not include wireless
18 support structures or electric transmission structures;

19 22. "Wireless facility" means equipment at a fixed location
20 that enables wireless communications between user equipment and a
21 communications network, including: (a) equipment associated with
22 wireless communications; and (b) radio transceivers, antennas,
23 coaxial or fiber-optic cable, regular and backup power supplies, and
24 comparable equipment, regardless of technological configuration.

1 The term includes small wireless facilities. The term does not
2 include:

- 3 a. the structure or improvements on, under, or within
4 which the equipment is collocated, or
- 5 b. coaxial or fiber-optic cable that is between wireless
6 support structures or utility poles or that is
7 otherwise not immediately adjacent to or directly
8 associated with a particular antenna;

9 23. "Wireless infrastructure provider" means any person
10 authorized to provide telecommunications service in the state, that
11 builds or installs wireless communication transmission equipment,
12 wireless facilities or wireless support structures, but that is not
13 a wireless services provider;

14 24. "Wireless provider" means a wireless infrastructure
15 provider or a wireless services provider;

16 25. "Wireless services" means any services, whether at a fixed
17 location or mobile, provided to the public using wireless
18 facilities;

19 26. "Wireless services provider" means a person who provides
20 wireless services; and

21 27. "Wireless support structure" means a structure, such as a
22 monopole; tower, either guyed or self-supporting; billboard;
23 building; or other existing or proposed structure designed to
24 support or capable of supporting wireless facilities, other than a

1 structure designed solely for the collocation of small wireless
2 facilities. Such term shall not include a utility pole.

3 SECTION 16. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 36-503 of Title 11, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The provisions of this section shall only apply to the
7 collocation of small wireless facilities by a wireless provider in
8 the rights of way and the deployment of utility poles to support
9 small wireless facilities by a wireless provider in the rights of
10 way.

11 B. An authority may not enter into an exclusive arrangement
12 with any person for use of the rights of way for the collocation of
13 small wireless facilities or the installation, operation, marketing,
14 modification, maintenance, or replacement of utility poles or
15 wireless support structures.

16 C. An authority may only charge a wireless provider a rate or
17 fee for the use of the rights of way with respect to the collocation
18 of small wireless facilities or the installation, maintenance,
19 modification, operation or replacement of a utility pole in the
20 right-of-way, if the authority charges non-public entities for use
21 of the rights-of-way. Notwithstanding the foregoing, an authority
22 is permitted, on a nondiscriminatory basis, to refrain from charging
23 any rate to a wireless provider for the use of the right-of-way.

24

1 The rate for use of the right-of-way is provided in Section 6 of
2 this act.

3 D. Subject to the provisions of this section and the approval
4 of an application pursuant to Section 4 of this act, a wireless
5 provider shall have the right, as a permitted use not subject to
6 zoning review or approval, to collocate small wireless facilities
7 and install, maintain, modify, operate and replace utility poles
8 along, across, upon, and under the rights-of-way. Such structures
9 and facilities shall be so installed and maintained as not to
10 obstruct or hinder the usual travel or public safety on such right-
11 of-way or obstruct the legal use of such right-of-way by other
12 occupants of the right-of-way, including public utilities.

13 E. Each new or modified utility pole installed in the right-of-
14 way shall not exceed the greater of:

15 1. Ten (10) feet in height above the tallest existing utility
16 pole in place as of the effective date of this act located within
17 five hundred (500) feet of the new pole in the same right-of-way; or

18 2. Fifty (50) feet above ground level.

19 New small wireless facilities in the right-of-way may not extend
20 more than ten (10) feet above an existing utility pole in place as
21 of the effective date of this act or, for small wireless facilities
22 on a new utility pole, above the height permitted for a new utility
23 pole under this section. Subject to this section and Section 6 of
24 this act, a wireless provider shall have the right to collocate a

1 small wireless facility and install, maintain, modify, operate and
2 replace a utility pole that exceeds these height limits along,
3 across, upon and under the right-of-way, subject to applicable
4 zoning regulations.

5 F. A wireless provider shall have the right to collocate a
6 small wireless facility and install, maintain, modify, operate and
7 replace a utility pole that exceeds the height limits in subsection
8 E of this section along, across, upon and under the right-of-way,
9 subject to applicable zoning regulations.

10 G. An authority may adopt written guidelines establishing
11 reasonable and objective stealth or concealment criteria for small
12 wireless facilities in designated areas; reasonable and objective
13 design criteria for small wireless facilities to be collocated on
14 decorative poles; and reasonable and objective design criteria for
15 utility poles deployed in areas with decorative poles. Such
16 guidelines may be adopted by any appropriate means, including
17 without limitation by inclusion in the authority's zoning code, but
18 such inclusion shall not subject small wireless facilities and
19 utility poles classified as permitted uses in subsection D of this
20 section to zoning review. Such guidelines may be adopted only if
21 they apply on a nondiscriminatory basis to all other occupants of
22 the right-of-way, including the authority. A wireless provider that
23 seeks to collocate small wireless facilities on a decorative pole
24 shall comply with Section 4 of this act. A wireless provider that

1 is required to replace a decorative pole at its expense in
2 compliance with Section 5 of this act shall conform the new
3 decorative pole to the design aesthetics and material of the
4 decorative pole being replaced.

5 H. Wireless providers shall comply with reasonable and
6 nondiscriminatory requirements that prohibit communications service
7 providers from installing structures in the right-of-way in an area
8 designated solely for underground or buried cable and utility
9 facilities where:

10 1. The authority has required all cable and utility facilities
11 other than authority poles and attachments to be placed underground
12 by:

- 13 a. a date certain before the application is submitted, or
- 14 b. a date certain within two (2) years after the
15 application is submitted, if relocation of facilities
16 has commenced;

17 2. The authority does not prohibit the replacement of authority
18 poles in the designated area; and

19 3. The authority permits wireless providers to seek a waiver of
20 the undergrounding requirements for the placement of a new utility
21 pole to support small wireless facilities, which waivers shall be
22 addressed in a nondiscriminatory manner.

23 I. Subject to Section 4 of this act and subsection D of this
24 section, and except for facilities excluded from evaluation for

1 effects on historic properties under 47 C.F.R. § 1.1307(a)(4) of the
2 FCC rules, an authority may require reasonable, technically
3 feasible, non-discriminatory and technologically neutral design or
4 concealment measures in a historic district. Any such design or
5 concealment measures may not have the effect of prohibiting any
6 provider's technology; nor may any such measures be considered a
7 part of the small wireless facility for purposes of the size
8 restrictions in the definition of small wireless facility.

9 J. The authority, in the exercise of its administration and
10 regulation related to the management of the right-of-way, must be
11 competitively neutral with regard to other users of the right-of-
12 way, including that terms may not be unreasonable or discriminatory
13 and may not violate any applicable law.

14 K. The authority may require a wireless provider to repair all
15 damage to the right-of-way directly caused by the activities of the
16 wireless provider in the right-of-way and to return the right-of-way
17 to its functional equivalence before the damage pursuant to the
18 competitively neutral, reasonable requirements and specifications of
19 the authority. If the wireless provider fails to make the repairs
20 required by the authority within a reasonable time after written
21 notice, the authority may affect those repairs and charge the
22 applicable party the reasonable, documented cost of such repairs. A
23 wireless provider shall be required to comply with rights-of-way and
24

1 vegetation management practices adopted by the authority that apply
2 to all occupants of the rights-of-way.

3 L. Nothing in this act precludes an authority from adopting
4 reasonable and nondiscriminatory requirements with respect to
5 the removal of abandoned small wireless facilities. A small
6 wireless facility that is not operated for a continuous period
7 of twelve (12) months shall be considered abandoned and the
8 owner of the facility must remove the small wireless facility
9 within ninety (90) days after receipt of written notice from
10 the authority notifying the owner of the abandonment. The
11 notice shall be sent by certified or registered mail, return
12 receipt requested, by the authority to the owner at the last
13 known address of the owner. If the owner neither provides the
14 authority written notice that the small wireless facility has
15 not been out of operation for a continuous period of twelve
16 (12) months nor removes the small wireless facility within the
17 90-day period, the authority may remove the small wireless
18 facility, take ownership of the small wireless facility, and,
19 take ownership of the small wireless facility, and assess the
20 cost of removal to the owner.

21 SECTION 17. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 36-504 of Title 11, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. The provisions of this section shall apply to the permitting
2 of small wireless facilities by a wireless provider in or outside
3 the right-of-way as specified in subsection C of this section and to
4 the permitting of the installation, modification, and replacement of
5 utility poles by a wireless provider inside the right-of-way.

6 B. Except as provided in this act, an authority may not
7 prohibit, regulate, or charge for the collocation of small wireless
8 facilities classified as permitted uses in subsection C of this
9 section.

10 C. Small wireless facilities shall be classified as permitted
11 uses and not subject to zoning review or approval if they comply
12 with the height requirements of subsection E of Section 3 of this
13 act and are collocated in the right-of-way in any zone or outside
14 the right-of-way in property not zoned exclusively for residential
15 single family or duplex use. Utility poles installed to support
16 small wireless facilities shall be classified as permitted uses and
17 not subject to zoning review or approval if they comply with the
18 height requirements in subsection E of Section 3 of this act and are
19 collocated in the right-of-way in any zone.

20 D. An authority may require an applicant to obtain one or more
21 permits to collocate a small wireless facility or install a new,
22 modified or replacement utility pole associated with a small
23 wireless facility as provided in Section 4 of this act, provided
24 such permits are of general applicability and do not apply

1 exclusively to wireless facilities. An authority shall receive
2 applications for, process and issue such permits subject to the
3 following requirements:

4 1. An authority may not directly or indirectly require an
5 applicant to perform services or provide goods unrelated to the
6 permit, such as in-kind contributions to the authority including
7 reserving fiber, conduit or pole space for the authority;

8 2. An applicant shall not be required to provide more
9 information to obtain a permit than communications service providers
10 that are not wireless providers, provided that an applicant may be
11 required to include construction and engineering drawings and
12 information demonstrating compliance with the criteria in paragraph
13 8 of this subsection and, for an application to collocate on an
14 authority pole, a wireless provider may be required to provide, at
15 its expense, engineering analysis demonstrating compliance with
16 applicable standards and codes, construction drawings stamped by a
17 professional engineer registered in Oklahoma, and a description of
18 any recommended make-ready work, including any modification or
19 replacement of the authority pole;

20 3. An authority may not require the placement of small wireless
21 facilities on any specific utility pole or category of poles or
22 require multiple antenna systems on a single utility pole;

23 4. An authority may not limit the placement of small wireless
24 facilities by minimum separation distances;

1 5. The authority may require an applicant to include an
2 attestation that the small wireless facilities will be operational
3 for use by a wireless services provider within one (1) year after
4 the permit issuance date, unless the authority and the applicant
5 agree to extend this period or delay is caused by lack of commercial
6 power or communications transport facilities to the site;

7 6. Within twenty (20) days of receiving an application, an
8 authority must determine and notify the applicant in writing whether
9 the application is complete. If an application is incomplete, an
10 authority must specifically identify the missing information in
11 writing. The processing deadline in paragraph 7 of this subsection
12 is tolled from the time the authority sends the notice of
13 incompleteness to the time the Applicant provides the missing
14 information. That processing deadline also may be tolled by
15 agreement of the applicant and the authority;

16 7. An application shall be processed on a nondiscriminatory
17 basis and deemed approved if the authority fails to approve or deny
18 the application within seventy five (75) days of receipt of the
19 application;

20 8. An authority may deny a proposed collocation of a small
21 wireless facility or installation, modification or replacement of a
22 utility pole that meets the height requirements in subsection E of
23 Section 3 of this act only if the proposed application:
24

- 1 a. materially interferes with the safe operation of
2 traffic control equipment or emergency management
3 system or devices,
- 4 b. materially interferes with sight lines or clear zones
5 for transportation or pedestrians,
- 6 c. materially interferes with compliance with the
7 Americans with Disabilities Act or similar federal or
8 state standards regarding pedestrian access or
9 movement,
- 10 d. materially interferes with Federal Aviation
11 Administration requirements or the operation of an
12 airport or air traffic,
- 13 e. fails to comply with reasonable and nondiscriminatory
14 spacing requirements of general application adopted by
15 ordinance that concern the location of ground-mounted
16 equipment and new Utility Poles. Such spacing
17 requirements shall not prevent a wireless provider
18 from serving any location,
- 19 f. fails to comply with reasonable and nondiscriminatory
20 requirements, with respect to ground-mounted
21 equipment, of general application adoption by
22 ordinances that concern the following:
23 (1) spacing of the ground-mounted equipment,
24

1 (2) interference with sight lines, clear zones or
2 pedestrian access or movement,

3 (3) unhindered use of the right-of-way by other
4 right-of-way occupants, including the authority,
5 or

6 (4) objective concealment measures in a historic
7 district,

8 g. fails to comply with applicable codes, including
9 without limitation the most recent version of the
10 National Electric Safety Code,

11 h. fails to comply with subsections D, G, H and I of
12 Section 3 of this act, or

13 j. causes the utility pole or wireless support structure
14 to become structurally unsound, unless the applicant
15 demonstrates that it will address the problem
16 adequately, such as by modifying or replacing the
17 structure;

18 9. The authority shall document the basis for a denial,
19 including the specific code provisions on which the denial was
20 based, and send the documentation to the applicant on or before the
21 day the authority denies an application. The applicant may cure the
22 deficiencies identified by the authority and resubmit the
23 application within thirty (30) days of the denial without paying an
24 additional application fee. The authority shall approve or deny the

1 revised application within thirty (30) days. Any subsequent review
2 shall be limited to the deficiencies cited in the denial;

3 10. An applicant seeking to collocate small wireless facilities
4 within the jurisdiction of a single authority shall be allowed at
5 the applicant's discretion to file a consolidated application for
6 the collocation of up to twenty-five (25) small wireless facilities
7 and receive a single permit; provided, however, the denial of one or
8 more small wireless facilities in a consolidated application shall
9 not delay processing of any other small wireless facilities in the
10 same batch;

11 11. Installation or collocation for which a permit is granted
12 pursuant to this section shall be completed within one year of after
13 the permit issuance date unless the authority and the applicant
14 agree to extend this period or a delay is caused by the lack of
15 commercial power or communications facilities at the site. Approval
16 of an application authorizes the applicant to:

- 17 a. undertake the installation or collocation, and
- 18 b. subject to applicable relocation requirements and the
19 applicant's right to terminate at any time, operate
20 and maintain the small wireless facilities and any
21 associated utility pole covered by the permit for a
22 period of not less than ten (10) years, which must be
23 renewed for equivalent durations so long as they are
24

1 in compliance with the criteria set forth in paragraph
2 8 of this subsection;

3 12. Wireless providers shall comply with relocation
4 requirements that apply to similarly situated occupants of the
5 rights-of-way; and

6 13. An authority may not institute, either expressly or de
7 facto, a moratorium on:

- 8 a. filing, receiving, or processing applications, or
- 9 b. issuing permits or other approvals, if any, for the
10 collocation of small wireless facilities or the
11 installation, modification, or replacement of utility
12 poles to support small wireless facilities.

13 E. An authority shall not require an application for the
14 following:

- 15 1. Routine maintenance;
- 16 2. The replacement of small wireless facilities with small
17 wireless facilities that are substantially similar or the same size
18 or smaller; or
- 19 3. For the installation, placement, maintenance, operation, or
20 replacement of micro wireless facilities that are strung on cables
21 between existing utility poles, in compliance with the National
22 Electrical Safety Code.

23 An authority may, however, require a permit to work within the
24 right-of-way for such activities, if applicable. Any such permits

1 shall be subject to the requirements provided in subsections C and D
2 of this section.

3 SECTION 18. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 36-505 of Title 11, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The provisions of this section shall apply to activities of
7 the wireless provider within the right-of-way.

8 B. A person owning, managing, or controlling authority poles in
9 the right-of-way may not enter into an exclusive arrangement with
10 any person for the right to attach to such poles. A person who
11 purchases or otherwise acquires an authority pole is subject to the
12 requirements of this section.

13 C. An authority shall allow the collocation of small wireless
14 facilities on authority poles subject to the application process in
15 Section 4 of this act and the make-ready process in this section.

16 The rates, fees and terms for such collocations shall:

17 a. be nondiscriminatory regardless of the services
18 provided by the collocating person,

19 b. comply with this act, and

20 c. be made available to wireless providers under Section
21 9 of this act.

22 D. The rates, fees, and terms and conditions for the make-ready
23 work to collocate on an authority pole described in the application
24 shall be nondiscriminatory, competitively neutral, and commercially

1 reasonable and must comply with this act. The authority may perform
2 the make-ready work necessary to enable the pole to support the
3 requested collocation by a wireless provider or require the wireless
4 provider to perform the make-ready work. If the authority elects to
5 perform the make-ready work, it shall provide a good faith estimate
6 for the work, including pole replacement if necessary, within sixty
7 (60) days after receipt of a complete application. The authority
8 shall complete any make-ready work it elects to perform, including
9 any pole replacement, within sixty (60) days of written acceptance
10 of the good faith estimate by the applicant. An authority may
11 require replacement of the authority pole only if it demonstrates
12 that the collocation would make the authority pole structurally
13 unsound. If the pole is replaced, the authority shall take
14 ownership of the pole.

15 The person owning, managing, or controlling the authority pole
16 shall not require more make-ready work than required to meet
17 applicable codes or industry standards. Fees for make-ready work
18 shall not include costs related to pre-existing or prior damage or
19 noncompliance. Fees for make-ready work including any pole
20 replacement, shall be reasonable and nondiscriminatory and shall not
21 exceed actual costs, which may include the amount the authority pays
22 a professional engineer registered in this state to review the make-
23 ready work plans of the wireless provider.

24

1 E. A wireless provider shall comply with the following
2 requirements and specifications when collocating on an authority
3 electric distribution pole:

4 1. Requirements and specifications of the National Electrical
5 Code and the Occupational Safety and Health Act, including
6 amendments or revisions to such requirements or specifications, and
7 in the event of conflict, the most stringent of such requirements
8 and specifications; and

9 2. Requirements and specifications of general application
10 adopted by the authority that do not conflict with this act,
11 including requirements and specifications that concern how equipment
12 shall be attached to electric distribution poles so that the poles
13 may be safely climbed.

14 SECTION 19. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 36-506 of Title 11, unless there
16 is created a duplication in numbering, reads as follows:

17 A. This section shall govern an authority's rates and fees for
18 the placement of a wireless facility, wireless support structure or
19 utility pole.

20 B. An authority may not require a wireless provider to pay any
21 rates, fees, or compensation to the authority or other person other
22 than what is expressly authorized by this act for the right to use
23 or occupy a right-of-way, for collocation of small wireless
24 facilities on utility poles in the right-of-way, or for the

1 installation, maintenance, modification, operation and replacement
2 of utility poles in the right-of-way.

3 C. Application fees shall be subject to the following
4 requirements:

5 1. An authority may charge an application fee only if such fee
6 is required for similar types of commercial development or
7 construction within the authority's jurisdiction;

8 2. An application fee may not include:

9 a. travel expenses incurred by a third party in its
10 review of an application, or

11 b. direct payment or reimbursement of third-party rates
12 or fees charged on a contingency basis or a result-
13 based arrangement;

14 3. An application fee for a collocation shall be limited to the
15 cost of granting a permit for similar types of commercial
16 development or construction within the authority's jurisdiction.
17 The application and permit fees for collocation of small wireless
18 facilities on an existing or replacement authority pole shall not
19 exceed Two Hundred Dollars (\$200.00) each for the first five (5)
20 small wireless facilities on the same application and One Hundred
21 Dollars (\$100.00) for each additional small wireless facility on the
22 same application; and

23 4. The application and permit fees for the installation,
24 modification or replacement of a utility pole and the collocation of

1 an associated small wireless facility that are permitted uses in
2 accordance with the specifications in subsection D of Section 3 of
3 this act shall not exceed Three Hundred Fifty Dollars (\$350.00) per
4 pole for access to the right-of-way.

5 D. The rate for occupancy of the right-of-way shall not exceed
6 Twenty Dollars (\$20.00) per year per small wireless facility.

7 E. The rates to collocate on authority poles in the rights-of-
8 way shall not exceed Twenty Dollars (\$20.00) per authority pole per
9 year.

10 F. There shall be no rate charged for the installation,
11 placement, maintenance, operation, or replacement of micro-wireless
12 facilities that are strung on cables between existing utility poles,
13 in compliance with the National Electrical Safety Code.

14 G. Rates provided in this section do not include any applicable
15 charges for electric power. A wireless provider must pay separately
16 for such services.

17 SECTION 20. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 507 of Title 11, unless there is
19 created a duplication in numbering, reads as follows:

20 This act does not impose or otherwise affect any tariff,
21 contractual obligation or right, or federal or state law regarding
22 utility poles, similar structures or equipment of any type owned or
23 controlled by an investor-owned electric utility or electric
24 cooperative.

1 SECTION 21. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 36-508 of Title 11, unless there
3 is created a duplication in numbering, reads as follows:

4 This section applies to activities in the right-of-way only.
5 Nothing in this act shall be interpreted to allow any entity to
6 provide services regulated under 47 U.S.C. § 521 to 573, without
7 compliance with all laws applicable to such providers. Nor shall
8 this act be interpreted to impose any new requirements on cable
9 providers for the provision of such service in this state.

10 SECTION 22. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 36-509 of Title 11, unless there
12 is created a duplication in numbering, reads as follows:

13 Subject to the provisions of this act and applicable federal
14 law, an authority may continue to exercise zoning, land use,
15 planning and permitting authority within its territorial boundaries
16 with respect to wireless support structures and utility poles. No
17 authority shall have or exercise any jurisdiction or authority over
18 the design, engineering, construction, installation, or operation of
19 any small wireless facility located in an interior structure or upon
20 the site of any campus, stadium, or athletic facility not owned or
21 controlled by the authority, other than to comply with applicable
22 codes. An authority shall evaluate the structure classification for
23 wireless support structures under the latest version of ANSI/TIA-
24 222. Nothing in this act authorizes the state or any political

1 subdivision, including an authority, to require wireless facility
2 deployment or to regulate wireless services.

3 SECTION 23. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 36-510 of Title 11, unless there
5 is created a duplication in numbering, reads as follows:

6 A. An authority may adopt an ordinance, resolution or standard
7 agreement that makes available to wireless providers rates, fees,
8 and other terms that comply with this act. Subject to subsections
9 B, C, D and E of this section, in the absence of an ordinance,
10 resolution or standard agreement that fully complies with this act
11 and until such a compliant ordinance, resolution or standard
12 agreement is adopted, if at all, wireless providers may install and
13 operate small wireless facilities and utility poles under the
14 requirements of this act.

15 B. Agreements between an authority and a wireless provider for
16 the deployment of small wireless facilities in the right-of-way
17 under the terms of this act are public/private agreements.

18 C. An ordinance, resolution or standard agreement that does not
19 fully comply with this act may apply only to small wireless
20 facilities and utility poles that became operational or were
21 installed before the effective date of this act. An ordinance,
22 resolution or standard agreement that applies to small wireless
23 facilities and utility poles that became operational or were
24 constructed before the effective date of this act is invalid and

1 unenforceable beginning on the one hundred eighty first day after
2 the effective date of this act unless it fully complies with this
3 act. If an ordinance, resolution or standard agreement is invalid
4 in accordance with this subsection, in the absence of an ordinance,
5 resolution or standard agreement that fully complies with this act
6 and until such a compliant agreement or ordinance is entered or
7 adopted, small wireless facilities and utility poles that become
8 operational or were constructed before the effective date of this
9 act may remain installed and be operated under the requirements of
10 this act.

11 D. An agreement or ordinance that applies to small wireless
12 facilities and utility poles that become operational on or after the
13 effective date of this act may not be enforced beginning on the
14 effective date of this act unless it fully complies with this act.
15 If an ordinance, resolution or standard agreement is invalid in
16 accordance with this subsection, in the absence of an ordinance,
17 resolution or standard agreement that fully complies with this act
18 and until such a compliant ordinance, resolution or standard
19 agreement is entered or adopted, small wireless facilities and
20 utility poles may be installed and operated in the right-of-way or
21 become operational under the requirements of this act.

22 E. Notwithstanding the requirements in subsections C and D of
23 this section, a communications service provider that has executed an
24 agreement with an authority relating to small wireless facilities

1 and utility poles prior to the effective date of this act may choose
2 to continue to be subject to the rates, terms and conditions of that
3 agreement for up to five years beyond the effective date of this
4 act.

5 SECTION 24. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 36-511 of Title 11, unless there
7 is created a duplication in numbering, reads as follows:

8 A court of competent jurisdiction shall have jurisdiction to
9 determine all disputes arising under this act. Pending resolution
10 of a dispute concerning rates for collocation of small wireless
11 facilities on authority poles and non-authority poles, the person
12 owning or controlling the pole shall allow the collocating person to
13 collocate on its poles at annual rates of no more than Twenty
14 Dollars (\$20.00) with rates to be trued up upon final resolution of
15 the dispute.

16 SECTION 25. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 36-512 of Title 11, unless there
18 is created a duplication in numbering, reads as follows:

19 A. An authority may adopt indemnification, insurance and
20 bonding requirements related to small wireless facility permits
21 subject to the requirements of this section.

22 B. An authority may require a wireless provider to defend,
23 indemnify and hold harmless the authority and its officers, agents
24 and employees against any claims, demands, damages, lawsuits,

1 judgments, costs, liens, losses, expenses and attorney fees
2 resulting from the installation, construction, repair, replacement,
3 operation or maintenance of wireless facilities, wireless support
4 structures or utility poles to the extent caused by the wireless
5 provider, its contractors, subcontractors and their officers,
6 employees or agents. A wireless provider has no obligation to
7 defend, indemnify or hold harmless an authority, its officers,
8 agents or employees against any liabilities or losses due to or
9 caused by the sole negligence of the authority or its employees or
10 agents.

11 C. An authority may require a wireless provider to have in
12 effect insurance coverage naming the authority and its officers,
13 agents, and employees as additional insureds against the claims,
14 demands, damages, lawsuits, judgments, costs, liens, losses,
15 expenses and attorney fees described in subsection A of this
16 section, so long as the authority imposes similar requirements on
17 other users of the rights-of-way and such requirements are
18 reasonable and nondiscriminatory.

19 D. An authority may require a wireless provider to furnish
20 proof of insurance, if required, prior to the effective date of any
21 permit issued for a small wireless facility.

22 E. An authority may adopt bonding requirements for small
23 wireless facilities if the authority imposes similar requirements in
24 connection with permits issued for other users of the rights-of-way.

1 1. The purpose of such bonds shall be to:

2 a. provide for the removal of abandoned or improperly
3 maintained small wireless facilities, including those
4 that an authority determines need to be removed to
5 protect public health, safety, and welfare,

6 b. restore the right-of-way in connection with removals
7 initiated under this paragraph, or

8 c. recoup rates or fees that have not been paid by a
9 wireless provider in over twelve (12) months, so long
10 as the wireless provider has received reasonable
11 notice from the authority of any of the non-compliance
12 listed above and is given an opportunity to cure the
13 non-compliance;

14 2. An authority shall not require either of the following:

15 a. a cash bond, unless any of the following apply:

16 (1) the wireless provider has failed to obtain or
17 maintain a bond required under this section, or

18 (2) the surety has defaulted or failed to perform on
19 a bond given to the authority on behalf of the
20 wireless provider,

21 b. a bond in an amount exceeding One Thousand Dollars
22 (\$1,000.00) per small wireless facility.

23 SECTION 26. This act shall become effective November 1, 2018.
24

1 Passed the Senate the 13th day of March, 2018.

2

3

Presiding Officer of the Senate

4

5 Passed the House of Representatives the ____ day of _____,

6 2018.

7

8

Presiding Officer of the House
of Representatives

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24