August 10, 2018

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *In the Matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Development*, WT Docket No. 17-79; *In the Matter of Comment Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling*, WT Docket No. 16-421

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules,[1] Crown Castle hereby submits these *ex parte* comments to supplement the record regarding the need for the FCC to take swift and decisive action to enforce Sections 253 and 332 of the Communications Act and Section 6409 of the Spectrum Act to facilitate rapid deployment of the infrastructure necessary to support next generation wireless networks.

Crown Castle is at the forefront of our country's broadband revolution, deploying fiber optic and wireless infrastructure and developing the small cell networks[2] that will serve as the backbone for the broadband networks of the future. With more than 40,000 towers, 60,000 small cells constructed or under contract, and over 60,000 miles of fiber, Crown Castle is the country's largest independent owner and operator of shared wireless infrastructure. Notably, Crown Castle does not hold commercial mobile radio service ("CMRS") licenses, and does not itself provide personal wireless services; rather its network offerings are predominantly wireline. Utilizing its fiber networks, Crown Castle provides (among other service offerings) wholesale wireline transport services to its wireless carrier customers.[3] These fiber networks provide the necessary

[1] 47 C.F.R. § 1.1206.

[2] Except as otherwise specified, the term "small cell" as used herein includes both small cells and distributed antenna systems ("DAS").

[3] Crown Castle entities currently hold utility certifications in 47 states, the District of Columbia, and Puerto Rico. In all of these jurisdictions, utility commissions have issued Crown Castle entities certificates to provide its wholesale transport services. Although some states have called the status of Crown Castle's service offerings into question, a recent decision by the Commonwealth Court of Pennsylvania reaffirmed that Crown Castle's DAS operations qualify it as a public utility. *Crown Castle NG East LLC v. Pennsylvania Public Utility Commission*, No. 697 C.D. 2017 (June 7, 2018).

carriage of the signals to and from radios used by the wireless carrier customers in a manner often referred to as "wireless backhaul." These service offerings are a key component to every small cell deployment, and thus Crown Castle and other network providers like it are a critical piece of this country's broadband ecosystem, supporting the deployment of next-generation wireless services.

Crown Castle has worked cooperatively with many jurisdictions and has successfully deployed small cell networks in hundreds of places, taking advantage of densification to boost network capacity and throughput and provide millions of Americans with access to networks that are ready to meet the needs of an increasingly wireless future. The number of small cell deployments is expected to grow exponentially—carriers plan to install "hundreds of thousands of new small cells" around the country over the next few years.[4] Indeed, cities such as Cincinnati, Chicago, Charlotte, Houston, Orlando, Los Angeles, Long Beach, Pittsburgh, Minneapolis and the Louisville-Jefferson County Metro Government, along with smaller jurisdictions such as State College, Pennsylvania, Brookfield, Wisconsin, Little Elm, Texas, The Colony, Texas, and Texas City, Texas, have already facilitated the deployment of these networks to bring these services to their residents.

While Crown Castle's successful partnerships in many cities have allowed broadband networks to expand, still jurisdictions have continued to impose obstacles to the deployment of next-generation wireless systems in the public right-of-way ("ROW"). A number of jurisdictions impose unreasonable fees and conditions on wireless facilities that are particularly inappropriate in the context of small cells, which are a fraction of the size of macro towers and typically have minimal impact on the surrounding area. These fees, in particular, which lack any rational relation to the cost of approving applications or maintaining the ROW, can make deploying networks to serve consumers and businesses in these jurisdictions cost prohibitive. Even where the fees do not result in a direct lack of service in a high-demand area like a city or urban core, the high cost of building and operating facilities in these jurisdictions consume capital and revenue that could otherwise be used to expand wireless infrastructure in higher cost areas. This impact of egregious fees is prohibitory, and should be taken into account in any prohibition analysis.

Other jurisdictions, meanwhile, discriminate against wireless installations in the ROW. These jurisdictions apply one set of rules to installations of wireline facilities, while holding infrastructure used for wireless services to a much different and higher standard. In some cases, jurisdictions apply zoning rules to small cells in the right of way while permitting wireline facilities with similar or even greater physical impact to proceed without any discretionary review. These discriminatory practices are inconsistent with the language and intent of the Communications Act, and have the effect of stifling competition and slowing broadband deployment.

Finally, in some cases, municipalities have unjustifiably prohibited installations of equipment to facilitate wireless telecommunications or imposed moratoria that have the effect of prohibiting

[4] Comments of CTIA, WT Docket No. 16-421 at 2 (filed Mar. 8, 2017).

wireless small cell installations in the public ROW. These are the simplest and most direct forms of prohibition.

In the sections below, Crown Castle provides additional information regarding the challenges that it faces in deploying infrastructure for next generation wireless networks and enforcing its rights under Sections 253, 332, and 6409.

I. CROWN CASTLE CONTINUES TO ENCOUNTER FEES IN SOME JURISDICTIONS THAT SERVE AS A BARRIER TO DEPLOYMENT.

Many jurisdictions continue to impose onerous and discriminatory fees and related restrictions upon Crown Castle's small cell deployments. When faced with such unreasonable fee demands, Crown Castle is forced to choose between three undesirable options: (1) engaging in costly and time-consuming litigation over whether the fees are an effective barrier to the provision of telecommunications services; (2) allocating a disproportionate amount of resources to deploying in the unreasonably expensive jurisdiction at the expense of deployment in other areas; or (3) abandoning its planned deployment in the relevant jurisdiction because the costs are not economically feasible. The Commission can and should remove this barrier by clarifying that fees that are not cost-based are an effective barrier to competition.

A. Excessive Fees for Small Cell Deployments Hinder Deployment of Broadband Infrastructure.

The record is replete with examples of unreasonable fees charged by some municipalities. In its initial comments in this proceeding, Crown Castle identified a number of jurisdictions whose fees go beyond reasonable compensation for ROW management and appear designed either to deter small cell deployment or to merely generate revenue for the municipality.[5] Other commenters identified egregious examples, as well—perhaps none more so than the City of Cottleville, Missouri, which has recently interpreted its 20 year old business license fee as requiring an annual $6,000 payment *per antenna* in the jurisdiction.[6] Not only do fees like this have the effect of delaying or preventing the deployment of next generation broadband infrastructure, they are unreasonable and thus cannot be justified under Section 253(c).

The prohibitory effect of unreasonable fees is exemplified by the speed at which Crown Castle and others have moved to construct their networks once those fees have been removed. In Texas, infrastructure providers have faced extreme difficulty deploying small cell networks. Some jurisdictions simply denied requests for permits, while others imposed outrageous fees or permitting conditions that served as a de facto barrier to small cell deployment.

In Dallas, Crown Castle built a small network near Love Field in 2014, with each site subject to an annual license fee of $350. In early 2015, Crown Castle approached the City about

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[5] *See* Comments of Crown Castle Int'l, WT Docket No. 17-79, at 10-13 (June 15, 2017).

[6] *See* Reply Comments of T-Mobile USA, Inc., WT Docket No. 17-79, WC Docket No. 17-84, at 12 (July 17, 2017).

constructing a similar network of 23 nodes to address congestion in the Dallas central business district area. Crown Castle filed its permit applications for the proposed network in April 2015, which the City summarily denied in June. After weeks of discussions and negotiations, Dallas offered to issue the permits only if Crown Castle paid annual license fees of $2,500. After explaining to city staff that the proposed fee was not economically viable, Crown Castle was told that Dallas would develop a new small cell policy by the end of the summer, and Crown Castle could reapply for its permits to build the proposed network at that time. When the City staff finally presented a small cell policy to the City Council in November 2015, it would have required Crown Castle to pay a $2,500 annual node fee and an undisclosed fiber fee for all fiber used to support the proposed nodes. City staff also proposed that certain "high value" intersections in the central business district be subject to a bidding process to ensure the City obtained the highest value possible (notwithstanding the fact that, to the best of Crown Castle's knowledge, no other party had submitted applications to enable deployment at the same intersections Crown Castle had proposed). Based on the final proposed fiber fees, this compact network in the central business district would have been subject to annual fees totaling in excess of $280,000 per year.

In late December 2015, Crown Castle filed a complaint against the City of Dallas at the Texas Public Utilities Commission. The complaint was still being reviewed by the Texas PUC when Texas' small cell legislation passed in June 2017.

As a result of the state legislation, nearly 3.5 years after initially proposing this network, Crown Castle has finally received all permits for the proposed central business district network and expects to begin construction in August 2018. Additionally, Crown Castle is now preparing to submit permits for nearly 200 more small cell nodes in Dallas. While Crown Castle appreciates the work of Dallas City staff to rapidly change its policy to comply with the Texas small cell bill, statewide legislation should not be required to ensure a level playing field for deployment of small cell infrastructure.

In those states, however, without small cell legislation, municipalities continue to enact ordinances establishing excessive fees. For example, the Vacaville, California Planning Commission has reportedly approved an ordinance amendment requiring an initial application fee of $4,000 to install small cell facilities on city-owned light poles, plus an annual rental fee of $1,500 with an annual three percent escalator. Similarly, Philadelphia's recently enacted ordinance requires an annual payment of $3,000 per city-owned for 1500 poles with an annual escalator. A copy of the Philadelphia ordinance is attached hereto as Exhibit A.

B. The Commission Should Clarify That Fees Exceeding Reasonable Costs and Expenses Constitute an Effective Prohibition.

Given the extensive evidence not only that many municipalities charge unreasonable fees for small cell facilities, but that such fees interfere with the Federal interest in rapid deployment of next generation broadband networks, it is imperative that the FCC act to prohibit these unreasonable fees. First, the Commission should clarify that for a fee to constitute "fair and reasonable compensation" under Section 253(c), the fee must directly relate to costs reasonably

incurred by the municipality to process small cell applications or to maintain the portion of the ROW in which the small cell facilities are installed. Second, the Commission should adopt a rebuttable presumption that certain fees are directly related to costs reasonably incurred. If a municipality charges fees that are equal to or less than the presumptively reasonable fees, the burden would be on the applicant to prove that the fees are not directly related to costs reasonably incurred. Conversely, if the municipality charges fees that are greater than the presumptively reasonable fees, the burden would be on the municipality to prove that the fees are directly related to costs reasonably incurred.

Establishing a presumption of reasonability will increase certainty and avoid litigation risk, which will in and of itself help speed broadband deployment. Moreover, creating this presumption will decrease the burden on smaller jurisdictions that may have neither the time nor the staff necessary to create detailed (and defensible) cost models.[7]

For the purpose of establishing this kind of presumption Crown Castle believes the following fees are appropriate:

- Application fees: A maximum fee of $100 for up to 5 small cell facilities on a single application and $50 per additional small cell facility, but no more than $350 per pole, may be charged for all small cell facilities included on an application.
- Pole attachment fees (collocation): The maximum rate for the construction, placement, or use of small cell facilities on a utility pole owned or controlled by the utility (including those poles owned by municipalities and co-ops) is $50 per utility pole per year.
- ROW use fees: The maximum rate for the construction, placement, or use of small cell facilities in the public ROW shall not exceed $20 per small wireless facility per year.

These fees are consistent with legislation enacted by a number of states. For example, at least seven states establish a maximum fee of $100 per application for up to five small cell facilities.[8] Arizona, Indiana, North Carolina, and Utah each cap pole attachment fees at $50 per utility pole per year. Arizona and Oklahoma each cap ROW use fees at $20 per small wireless facility per year.

Because the legislature in each of these states has undertaken its own independent process and come to a conclusion about what constitutes a reasonable fee, these state statutes provide a solid foundation on which the Commission can rely in determining what is and is not presumptively reasonable. Further, the FCC has relied on state enactments in similar circumstances; in the *2009 Shot Clock Order*, the agency looked to the timeframes for review adopted by a number of

[7] Of course, in the event that a municipality has a basis to charge higher fees and that basis is directly related to the cost of processing applications or maintaining the ROW, it may charge the higher fee as long as it can establish the reasonability of the higher fee.

[8] These states include Arizona, New Mexico, North Carolina, Oklahoma, Tennessee, Texas, and Virginia. Indiana permits a maximum of $100 per application.

states in concluding that 90 and 150 days were, in fact, "reasonable" time periods within which to review wireless applications.[9]

Concurrent with the establishment of presumptively reasonable fees, the FCC should also clarify that, in the context of applications for small cell facilities, fees for outside consultants are presumably unreasonable. Given the limited visual and physical impact small cell facilities will have, approval of those facilities should be ministerial and not require an expert analysis. To the extent a municipality disagrees, it must either justify the need for an outside consultant – in which case all fees must be reasonable and nondiscriminatory with regard to how all other utilities are treated in the local ROW, or the local jurisdiction must incur the cost at its own expense.

The Commission has ample legal authority to define the scope of reasonable fees under Section 253. Section 253(a) includes a broad prohibition on any "State or local statute or regulation, or other State or local legal requirement" that "prohibit[s] or ha[s] the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications service."[10] As the agency tasked with "execut[ing] and enforce[ing] the provisions" of the Communications Act, it is within the FCC's purview to interpret what statutes, regulations, or requirements "prohibit or have the effect of prohibiting" telecommunications service.[11] Under the statute, however, the Commission's interpretation is limited by Section 253(c), which provides that "[n]othing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government."[12] As with Section 253(a), it is within the Commission's authority to determine what constitutes "fair and reasonable compensation" under Section 253(c).

As evidenced by the various approaches adopted in state legislation, the term "fair and reasonable compensation" could have a number of meanings. An interpretation that restricts fair and reasonable compensation to actual costs incurred constitutes a reasonable interpretation of the statutory language. Courts interpret the term "reasonable compensation" based on the

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[9] *See, e.g.*, *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals As Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd. 13994 ¶¶ 47-48 (2009) (citing 47 U.S.C. § 151) ("*2009 Declaratory Ruling*").

[10] 47 U.S.C. § 253(a); *see also Level 3 Commc'ns, L.L.C. v. City of St. Louis, Mo.*, 477 F.3d 528, 531-32 (8th Cir. 2007) (recognizing that Section 253(a) "articulates a reasonably broad limitation on state and local governments' authority to regulate telecommunications providers").

[11] *2009 Declaratory Ruling* ¶ 23.

[12] 47 U.S.C. § 253(c).

context in which the compensation is due.[13] In the context of Section 253, a reasonable construction of this term must account for the 1996 Act's purpose of "accelerat[ing] deployment of advanced telecommunications services to all Americans by opening all telecommunications markets to competition."[14] While some courts differ on whether a reasonable fee must be grounded in actual costs, there is general support for limiting fees to actual costs, and FCC interpretation regarding the same is certainly reasonable.[15]

The reasonableness of this interpretation is confirmed by the remaining clause of Section 253(c), which requires that fair and reasonable compensation also be competitively neutral and nondiscriminatory. Absent an objective metric such as actual costs, it would be difficult, if not impossible, to determine whether fees charged for installation and maintenance of small cell facilities are competitively neutral and non-discriminatory.

This interpretation also finds support in both the legislative history of Section 253 and decades of Commission precedent. During the debate over Section 253, Representative Stupak, a sponsor of the legislation, explained that "if a company plans to run 100 miles of trenching in our streets and wires to all parts of the cities, it imposes a different burden on the right-of-way than a company that just wants to string a wire across two streets to a couple of buildings,"[16] making clear that the compensation that municipalities may charge must be directly related to the "burden" imposed by a carrier's use of the ROW. Senator Feinstein similarly characterized "fair and reasonable compensation" as "fees to recover an appropriate share of increased street repair and paving costs that result from repeated excavations,"[17] and the FCC has endorsed that view[18].

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[13] *Compare Recorder's Court Bar Ass'n v. Wayne Circuit Court*, 503 N.W.2d 885, 893 (Mich. 1993) (finding that compensation for legal representation of indigent parties must account for professional duty to provide free legal services) *with Mohns, Inc. v. Lanser*, 522 B.R. 594, 600 (E.D. Wis. 2015), *aff'd sub nom. In re Wilson*, 796 F.3d 818 (7th Cir. 2015) (finding that for commission to Chapter 7 trustees, reasonable compensation must be based on statutory formula).

[14] *See In the Matter of New England Public Comms. Council Petition for Preemption Pursuant to Section 253*, Memorandum Opinion and Order, 11 FCC Rcd. 19713 ¶ 9 (1996) (quoting S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess., 1 (1996)).

[15] *See, e.g.*, *Puerto Rico Tel. Co. v. Municipality of Guayanilla*, 450 F.3d 9, 23 (1st Cir. 2006) (focusing on actual costs incurred when determining what is fair and reasonable); *New Jersey Payphone Ass'n, Inc. v. Town of West New York*, 130 F.Supp.2d 631, 638 (D. N.J. 2001) ("Plainly, a fee that does more than make a municipality whole is not compensatory in the literal sense, and risks becoming an economic barrier to entry."); *but see TCG Detroit v. City of Dearborn*, 16 F.Supp.2d 785, 790 (E.D. Mich. 1998) (applying totality of the factors test), *aff'd*, 206 F.3d 618 (6th Cir. 2000).

[16] 141 Cong. Rec. H8460-01, H8460 (daily ed. Aug. 4, 1995) (statement of Rep. Stupak).

[17] 141 Cong. Rec. S8134-01, S8170 (daily ed. June 12, 1995) (statement of Sen. Feinstein)

[18] *Classic Telephone, Inc.*, 11 FCC Rcd. 13082, 13103 (1996) (quoting Sen. Feinstein)

Although several municipal commenters have sought to downplay Senator Feinstein's statements because they were based on a letter from localities about their management practices in the ROW,[19] their criticism is misplaced. In addressing her concerns both about cities' costs in traveling to the FCC to defend against preemption proceedings, and her fear that federal law could prevent cities from recovering the costs associated with pavement cuts and other activity by providers accessing the rights-of-way, Senator Feinstein referenced this and other letters to substantiate her concerns. Her discussion provides critical guidance about congressional expectations regarding the scope of local authority to recover costs under Section 253 in general and 253(c) in particular. This understanding has been adopted by several courts as well as the FCC.[20] Indeed, the FCC previously observed that the examples cited by Senator Feinstein constitute "the types of restrictions that Congress intended to permit under section 253(c)…"[21]

Accordingly, the Commission has ample authority to clarify that fees for small cell facilities must be limited to actual costs incurred and to establish presumptively reasonable costs for this purpose.

C. The Commission Can Distinguish Between Proprietary and Regulatory Actions as it Pertains to Rights of Way.

The continued suggestion by some municipal interests that regulating the fees charged by states and localities for use of facilities in the ROW somehow interferes with their proprietary authority is simply wrong as a matter of law.[22] The Commission should confirm that this position is incorrect in this proceeding. As Crown Castle has explained, municipalities manage the ROW in public trust, and management of the right-of-way is a regulatory function, not a proprietary one.[23] That includes access to government owned or controlled facilities in the right of way, such as light poles, street furniture, poles owned by municipal utilities, and any other structures

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[19] *See, e.g.*, Reply Comments of Smart Communities and Special Districts Coalition at 57-58 (July 17, 2017); Reply Comments of the Cities of San Antonio et al. at 20-21 (July 17, 2017).

[20] *See, e.g.*, *City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1177 (9th Cir. 2001) (citing *Classic Telephone*, 11 FCC Rcd. at ¶ 39), *overruled by Sprint Telephony PCS, L.P. v. Cty. of San Diego*, 543 F.3d 571 (9th Cir. 2008); *NextG Networks of California, Inc. v. City & Cty. of San Francisco*, No. C 08-00985 MHP, 2008 WL 2563213, at *7 (N.D. Cal. June 23, 2008), *amended and vacated in part on reconsideration*, No. CV-08-0985-MHP, 2009 WL 5469914 (N.D. Cal. Sept. 25, 2009); *XO Missouri, Inc. v. City of Maryland Heights*, 256 F. Supp. 2d 987, 996 (E.D. Mo. 2003).

[21] *Classic Telephone, Inc.*, 11 FCC Rcd. at ¶ 39.

[22] *See, e.g.*, Letter from Gerard Lavery Lederer, Counsel for Smart Communities and Special Districts Coalition, to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (July 16, 2018) at 5.

[23] *See* Letter from Kenneth J. Simon Senior Vice President and General Counsel, Crown Castle International Corp., to Marlene Dortch, Secretary, FCC, WT Docket No. 17-79 (June 7, 2018) at 17-18; Reply Comments of Crown Castle International Corp., WT Docket No. 17-79 (July 17, 2017) at 13-14.

permitted in the right of way. The Commission undoubtedly has the authority in interpreting the protections afforded by the Communications Act to make this clear.

The Commission is not the general arbiter of municipal property rights and need not determine the full scope of a municipality's regulatory actions at this time. It is sufficient for the FCC to recognize that, consistent with Section 253(c), municipal actions to manage the public ROW are regulatory in nature, and the Commission may ensure that municipalities only charge fair and reasonable compensation for such management activities and do so on a competitively neutral and non-discriminatory basis.

II. CROWN CASTLE ENCOUNTERS OTHER, NON-FEE RESTRICTIONS THAT ALSO SERVE AS A BARRIER TO DEPLOYMENT.

A. Municipalities Use Non-Fee Restrictions to Effectively Prohibit Telecommunications Services.

Although excessive fees can create significant barriers to deployment of broadband infrastructure, Crown Castle frequently encounters non-fee restrictions that also create effective prohibitions, and these are just as problematic as the fee-based barriers discussed above. These non-fee barriers can take many different forms: from outright prohibitions to restrictions on service, to onerous requirements that delay if not prevent the deployment of infrastructure to support next generation networks.

Many municipalities simply refuse to consider Crown Castle's applications for permits to install small cell facilities unless and until Crown Castle enters into a franchise agreement governing not only the fees Crown Castle will pay for its facilities, but also the terms and conditions on which Crown Castle can access poles in the right-of-way, indemnification, the term of the agreement (which municipalities frequently insist be unreasonably short—thereby limiting Crown Castle's ability to recoup its investments), and in-kind "contributions" that the municipalities require as a term of the franchise agreement. Negotiation of these franchise agreements—which are frequently coupled with or dependent on changes in the municipal code—can take months or even years and almost always exceeds shot clock timelines. For example, in Gaithersburg, Maryland, the local jurisdiction negotiated and signed a franchise agreement with Crown Castle, and then turned around and repudiated the agreement and initiated a top to bottom rewrite of its code as it pertained to wireless siting. Nevertheless, jurisdictions like Gaithersburg take the position that the shot clocks cannot even be triggered prior to the adoption of a franchise agreement (and any attendant changes in legislation).[24] This, in essence establishes a *de facto* moratorium on the acceptance of applications for construction, something that the Commission just reiterated is violative of Section 253.[25]

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[24] Crown Castle identified certain of Gaithersburg's unreasonable policies in its initial comments in this proceeding. *See* Crown Castle NPRM Comments at 12, 20-21.

[25] *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, FCC 18-11, WC Dkt No. 17-84, DT Dkt No. 17-79 ¶¶ 145-160 (rel. Aug. 3, 2018).

In other cases, jurisdictions have taken the position that Crown Castle is not a public utility and should not be permitted to deploy its infrastructure in the right-of-way at all—notwithstanding the fact that Crown Castle holds utility certifications in 47 states, the District of Columbia, and Puerto Rico. This position is both overtly prohibitory and discriminatory.

Still, other jurisdictions continue to enact ordinances that place significant burdens on small cell deployment. For example, the city of Petaluma, California recently enacted a small cell ordinance that requires all equipment, except the antennas, to be either within the pole or undergrounded, sets a minimum distance between small cells of 1,500 feet, prohibits small cells within 200 feet of any residence, and requires small cell applicants deploying in the majority of districts to obtain conditional use permits through the full zoning process. A copy of the Petaluma ordinance is attached hereto as Exhibit B.

Finally, some jurisdictions have implemented inflexible "underground only" requirements (even after Crown Castle has filed its permit applications) that only apply prospectively and dramatically increase Crown Castle's costs for deployment vis-à-vis incumbent providers. To be clear, Crown Castle is willing to work with municipalities to locate its fiber and related facilities underground as part of a broad effort to relocate all facilities, where Crown Castle can share the costs of trenching and conduits with other providers. More often than not, however, these undergrounding requirements are applied in a discriminatory manner. For example, the city of Huntington Beach, California took the position that Crown Castle's above-ground installations violated environmental laws notwithstanding the fact that there were already existing facilities located above ground. Although Crown Castle was ultimately able to resolve the matter in its favor, this was not before a seven-year effort at the California Public Utilities Commission, the United States District Court for the Central District of California, and the United States Court of Appeals for the Ninth Circuit.[26] The Commission should clarify that any undergrounding requirements can only be applied in a neutral and non-discriminatory manner—and that, of course, "undergrounding" cannot be applied to wireless facilities, which physics dictates must be located above ground.

B. Municipalities Apply a Variety of Approaches to Hinder the Application of Section 6409.

In its previous filings, Crown Castle highlighted the practices of a number of localities that hinder the application of Section 6409, including applying improper conditions on eligible facilities requests ("EFRs") under Section 6409, applying onerous application requirements that are unrelated to determining whether the modification to the existing structure is an EFR, seeking information from EFR applicants unrelated to the determination of whether the application meets the EFR requirements, and simply denying applications without justification.

[26] *See, e.g.*, *NextG Networks of Cal., Inc,. v. City of Huntington Beach,* No. 07-cv-1471 (C.D. Cal. Mar. 16, 2009); *NextG Networks of Cal., Inc,. v. City of Huntington Beach,* 294 Fed. Appx. 303 (9th Cir. 2008).

The use of such obstructionist tactics has only increased since our initial filings and impedes our progress in upgrading facilities and ultimately rolling out 5G services.

1. Municipalities Use "Amortization" Requirements to Evade EFRs.

Crown Castle previously reported an ordinance in Vista, California (virtually identical to ordinances previously adopted in Irvine, Santa Monica and San Diego) governing the review process for wireless facilities that include an "amortization" provision effectively prohibiting the grant of new EFR permits for an existing facility.[27] Under these ordinances, all new permits, including EFR permits, must comply with an amortization schedule under which existing structures must meet the new ordinance's concealment requirements. As a result, in most cases, no additional EFR permits will be granted for the structure because the addition of antennas will "defeat the existing concealment" and therefore not qualify as EFRs. Within 10 years, as a result of these ordinances, localities will effectively evade and totally negate the requirements of Section 6409. Over the past several months, it has come to Crown Castle's attention that other California jurisdictions, including Oceanside, San Anselmo and El Monte have enacted or are considering the adoption of similar amortization schemes. Indeed, the County of Los Angeles takes the position that all new facilities and existing facilities, including facilities in the public ROW, whose permits are up for renewal are subject to full conditional use permitting and must be camouflaged. A copy of a memorandum from the Los Angeles County Department of Regional Planning setting forth this position is attached hereto as Exhibit C.

The Commission should remedy this improper interference with the plain language of Section 6409 and Congressional intent by stating that a community may not evade the applicability of Section 6409 by instituting a blanket requirement that all wireless facilities within its jurisdiction or certain areas within the jurisdiction be replaced with camouflaged structures. Furthermore, any camouflaging requirements should be clear, objective, and published in advance.

2. Municipalities Abuse the Exception for Concealment Modifications to Preclude EFRs.

In the 2014 *Infrastructure Order,* the Commission found that a modification constitutes a substantial change in physical dimensions under Section 6409(a) if the change would defeat the existing concealment elements of the tower or base station.[28] Many jurisdictions have taken this statement beyond its logical limit by delineating certain elements of the original zoning permit

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[27] See Comments of Crown Castle, WT Docket No. 16-421 (Mar. 8, 2017) ("Crown Castle PN Comments") at 20-21; Comments of Crown Castle, WT Docket No. 17-79 (June 15, 2017) ("Crown Castle NPRM Comments") at 20-21.

[28] *In the Matter of Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies*, Report and Order, 30 FCC Rcd. 31 ¶ 200 (2014) ("2014 *Infrastructure Order*") ("We agree with commenters that in the context of a modification request related to concealed or 'stealth'-designed facilities—i.e., facilities designed to look like some feature other than a wireless tower or base station—any change that defeats the concealment elements of such facilities would be considered a 'substantial change' under Section 6409(a).").

(such as paint color, height, width, size of the mount, etc.) as concealment factors so that any modification in the future will defeat the concealment. For example:

- SeaWorld, California calls out the dimensions of "every aspect" of the project as an element of concealment. This means than any proposed increase in size would defeat concealment – and therefore not qualify as an EFR under 6409(a).

- San Diego and Cerritos, California take the position that additions or modifications of antennas on faux trees defeat concealment even if the appearance of the faux tree remains the same. Also, existing walls and fences around non-camouflaged towers are being considered concealment elements, making the addition of any piece of equipment that might rise above an existing fence or wall ineligible for an EFR because such modification would defeat the concealment. Just last month, Crown Castle received a denial from Los Angeles County of an EFR application on a non-camouflaged tower. In contravention of the Commission's position in the 2014 *Infrastructure Order,* the jurisdiction took the position that the existing permit requires compliance with the site plan approved on May 9, 2009 and the placement of new equipment at different elevations on the tower violates the existing permit and does not meet "any of the Department's current aesthetic development standards for wireless facilities." A copy of the letter from the Los Angeles County Department of Regional Planning denying the EFR application is attached hereto as Exhibit D.

- Relatedly, municipal consultants advising the cities of Thousand Oaks and Calabasas, California have taken the position that remote radio units ("RRUs") (typically very small in size) to be installed on the tower behind existing antennas are "cabinets," and therefore adding more than four of these on any one wireless facility exceeds the EFR requirements.

- In Douglas County, Colorado, the local jurisdiction failed to act on an EFR because it claimed that an expansion of the shroud well within the size limits set by the Commission "defeated the concealment elements" of an unadorned pole in a rural area. The locality then brought suit challenging a deemed grant letter, which has led to months-long litigation in federal court that is still not resolved.

The Commission should clarify its statement from the 2014 *Infrastructure Order* to ensure that exceptions to the EFR procedures do not swallow the rule and allow jurisdictions to relegate all EFR applications through the full zoning process. Specifically, the FCC should consider the following points of clarification to ensure Section 6409 remains an effective tool for deploying 5G infrastructure:

- Only those towers and poles that are "purpose built" for concealment are to be included in the concealment consideration. In other words, only those structures that are designed by the manufacturer to resemble a structure different than a standard tower or pole in an effort to conceal equipment would be subject to the concealment exclusion and only if such concealment would be defeated. With respect to non-tower structures, only those permit requirements that would be defeated by the modification and were originally

required specifically to blend the equipment with the building or other non-tower structure would be considered under the concealment exclusion. In other words, if an antenna was required to be painted brown to match the underlying building, and the new or modified antenna would be painted the same color, it would not defeat the concealment exclusion.

- Permitting conditions that simply state the size as a concealment element should not be sufficient to exclude the installations from Section 6409 expansion. Imposing size-based "concealment elements" is nothing more than an attempt to evade the specific, objective size criteria that the Commission adopted in the *2014 Infrastructure Order*.

- New permit conditions may not be placed on EFR permits unless such conditions relate to generally applicable laws codifying objective standards reasonably related to health and safety. Many jurisdictions hang dubious requirements on "health and safety" that only apply to towers and wireless facilities or are not specifically contained in any ordinance.

- Any permit requirement placed on the installation of an otherwise eligible wireless infrastructure, such as maximum height, width, paint color, fencing, mount size, etc., cannot be considered a concealment element for the purposes of EFR permits.

- With regard to tower sites, the term "equipment cabinets" is limited to "equipment cabinets that are placed on the ground" at a tower and do not include other facilities attached to the tower itself that a jurisdiction may define as an "equipment cabinet."

3. Municipalities Force Providers to Agree to Contractual Prohibitions Against Use of EFRs.

Another tactic used by some jurisdictions to foreclose future EFRs is to force infrastructure providers like Crown Castle to agree to a contractual provision that prohibits the providers from submitting EFRs in the future. These waiver provisions are typically non-negotiable and essentially mandated by the municipalities to operate in their jurisdiction. By way of example:

- The City of Boston expressly provides in its agreements that use of City poles shall not "cause the City Pole to be a "wireless tower or base station," within the meaning of Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455." The definition of City Poles includes any replacement of a City-owned pole, or the placement of a net new pole, which the agreement obligates the constructor to give to the City. As a result, any current City Pole—whether it needs to be replaced or not—or any new net pole, is explicitly excluded from Section 6409. Reportedly, other Massachusetts municipalities are considering similar restrictive EFR language.

- The Village of Freeport, New York, includes provisions in its ROW use agreements that impose size restrictions on antennas that effectively prohibit otherwise permissible EFRs.

- Relatedly, the city of Palo Alto, California requires applicants to identify in their application for an initial installation a representation of the maximum possible future upgrade under Section 6409.

To prevent jurisdictions using their negotiating leverage to evade the requirements of Section 6409, the Commission should clarify that jurisdictions may not contractually negotiate or mandate exclusion from Section 6409 and that any such efforts—or other contractual size restrictions engaged prior to the issuance of the *Infrastructure Order*—are no longer valid. Instead, Section 6409 should apply to all eligible facilities, even those where the jurisdiction attempts to contract around the federal requirements. A valid EFR permit application must be accepted notwithstanding any contractual restrictions to the contrary, and the EFRs must be approved and may not be denied, within the 60-day shot clock.

The Commission also should clarify that jurisdictions may not condition EFR permit review on factors unrelated to the proposed EFR, including projections of future EFR applications and requirements for such projections that are not relevant to the EFR review.

4. Municipalities Place Improper Condition on Permits for EFRs

In other jurisdictions, Crown Castle has experienced municipalities attempting to condition the grant of permits for EFRs on issues completely unrelated to the proposal at hand. For instance, in Doral, Florida, the city will not issue permits for EFRs (or any other facilities, for that matter) if there are any expired permits at the site—regardless of whether the permit is related to the tower or not. For example, at one tower site, the property owner had an expired roof permit. The city refused to issue Crown Castle's permit for an undisputed EFR until the property owner renewed its permit, after significant time and expense. Other jurisdictions add conditions unrelated to the equipment that is the subject of the modification. For example, in Mountain View, California, the city is requiring, as a condition of permits approving an EFR, that if the property is redeveloped the zoning administrator may require the relocation or removal of any or all equipment on a site, including the tower.

And despite the statement in the 2014 *Infrastructure Order* statement that "[a] State or local government may only require applicants to provide documentation that is reasonably related to determining whether the eligible facilities request meets the requirements of Section 6409(a)",[29] Crown Castle has been subjected to extensive application requirements by various local jurisdictions that are not reasonably related to determining whether the request is subject to EFR permit review. For example, in East Hampton, New York, an EFR filed as a Site Plan/Special Permit Application was approved by the town, but it conditioned the permit on obtaining architectural review board ("ARB") approval. By ordinance, ARB approval is design review only. Further, the planning board would not forward the Site Plan application to the ARB as required by ordinance, and instead, Crown Castle was forced to make a separate application and attend a full ARB hearing. The town refused to issue a building permit absent ARB approval, subjecting Crown Castle and its contractors to very severe and broad criminal and financial penalties for proceeding without a building permit.

[29] 2014 *Infrastructure Order* ¶¶ 21 & 214.

To address these improper requirements and conditions on EFRs, the FCC should restate, as it previously did under the 2014 *Infrastructure Order*, that legal, non-conforming structures are available for modification under Section 6409. Moreover, the Commission should emphasize that the status of the property with respect to zoning or other municipal compliance is not relevant and may not be considered as part of an EFR.

The Commission should also clarify that jurisdictions must issue all approvals within the shot clock period or that those approvals shall be "deemed approved." The Commission should further clarify that any and all conditions placed by a jurisdiction in contradiction of the provisions of Section 6409 are impermissible and unenforceable, and an applicant does not consent to and should not be bound by such conditions solely because it proceeds with the requested attachment upon receipt of the permit.

III. EXISTING REMEDIES TO OVERCOME BARRIERS TO DEPLOMENT ARE INEFFECTIVE.

Even in circumstances where there can be no doubt that a municipality is in violation of Sections 253, 332, and/or 6409, difficulties in enforcing a provider's rights under those sections serve as a significant barrier to deployment.

A. Jurisdictions Deny the Applicability of Section 6409 to the Municipal Process.

All too frequently, Crown Castle has encountered jurisdictions that do not understand Section 6409, refuse to accept that a federal law can affect their approval process, or both. As a result, Crown Castle has experienced needless delays that defeat the purpose of Section 6409.

- The town of Cedar Grove, New Jersey denied an EFR, claiming that Section 6409 did not apply to the town, and instead required Crown Castle to obtain variance relief from the zoning board. Although Crown Castle sent a deemed approved letter to the planning board, the building department refused to recognize this approval, leaving Crown Castle without the building permits it needs to construct the subject facilities.

- The town of Piscataway, New Jersey would not accept an EFR request from Crown Castle, instead requiring Crown Castle to appear before the zoning board to determine whether it is exempt from local zoning regulations.

- The City of Malibu, California refused to accept uncontested and uncontroverted evidence supplied by Crown Castle that a proposed project would not "substantially change the physical dimensions" of the base station and therefore qualified as an EFR. Crown Castle had to commence litigation against the City, which ultimately settled, but not without delaying the project by approximately two years and adding significant legal expenses to the project.

- A third-party consultant acting on behalf of Findley Township, Pennsylvania simply refuses to acknowledge Section 6409. As a result, the Township requires excessive

documentation and information beyond what is required to determine whether a request is an EFR before it will process applications.

- EFR applications before the town of Raritan, New Jersey require legal analysis and a hearing before its board of adjustment to obtain a waiver of the town's site plan approval requirement under 6409 as well as under state law. The town expressly finds in its resolutions that 6409 does not prohibit the imposition of conditions on the approval. Further, the resolution approving the waiver of site plan approval typically takes much longer than 60 days and requires the applicant to subsequently take further action to revise the site plan and obtain another approval.

- Finally, although Greene County, Ohio only requires a building permit for collocation, the County has taken the position that Section 6409 does not apply to building permits and has placed unreasonable and improper requirements on Crown Castle's modification requests.

The refusal by some jurisdictions to recognize their responsibilities under Section 6409 has resulted in unreasonable delays for projects that both Congress and the Commission have deemed worthy of a streamlined approach. Under the present rules, an applicant that faces a jurisdiction refusing to recognize Section 6409 has two options—neither of which are satisfactory: (1) accept the jurisdiction's requirements for obtaining a permit; or (2) litigate the issue. To help eliminate these unnecessary delays, the FCC should note that local government compliance with the requirements of the *2014 Infrastructure Order* continues to be a concern. The agency should reiterate unequivocally that jurisdictions must accept valid EFR permit applications, that the only review appropriate is whether the project qualifies as an EFR, that EFRs must be approved and may not be denied, within the 60-day shot clock, and that failure to grant an EFR within 60 days results in a deemed grant.

B. Jurisdictions Refuse to Issue Permits to Construct EFRs That Have Been "Deemed Granted."

Even after an application has been granted, many jurisdictions require providers to obtain additional permits, including a building permit (or highway permit for ROW work) before work may be authorized. These permits are typically ministerial in nature and are issued by the Building Department or municipal transportation department upon documentation that an application has been approved. When an EFR is deemed approved pursuant to Section 6409, however, such municipal departments often will not issue the ministerial permits because such issuance would be outside of their standard process or because they are hesitant or unwilling to act based on an awareness of controversy surrounding the EFR that resulted in the deemed approved notice being issued.

To ensure that the non-issuance of such permits does not negate the effect of Section 6409, the FCC should take steps to facilitate the enforcement of applications that are "deemed granted." The FCC should clarify that "deemed granted" means the project may proceed to construction without the need to obtain any additional permits at the state or local level. Alternatively, the FCC should consider a process by which an applicant could obtain documentation of its "deemed approved" status. For example, the Commission could establish an online portal for an applicant

to certify (under the Commission's Rules) that it has met the requirements for a "deemed granted" application and automatically obtain a letter deeming the project approved for construction. This approach, similar to the Commission's earlier process for obtaining antenna structure registrations, would remove the uncertainty inherent in the current process and provide municipal departments with conclusive documentation that the application is approved and they should issue any required permits.

C. Despite the Shot Clocks Under Sections 332 and 6409, Crown Castle Frequently Has to Resort to Expensive and Time-Consuming Litigation to Resolve Disputes

All too often, Crown Castle finds itself having to go to court to enforce applications that the municipality fails to act upon at all, improperly denies, or adds inappropriate conditions to permits. Although Crown Castle prevails in the vast majority of these cases, the harm is already done in the form of substantial delays in the deployment of wireless facilities and resources expended on legal battles that could be better spent on new infrastructure. Below, we discuss a representative sample of these cases.

- The city of Orem, Utah failed to act in a reasonable timeframe on Crown Castle's applications for deployment of a small cell network in the public ROW. The matter did not settle until several months of delay, and only after Utah adopted statewide broadband legislation. (U.S. District Court for the District of Utah, Case No. 2:17-cv-1240).

- The city of Charleston, South Carolina still has not issued permits for Crown Castle to install fiber in the South Carolina Department of Transportation ROW more than three-and-a-half years after Crown Castle first approached the city to deploy its small cell network. On September 22, 2017, Crown Castle filed a lawsuit against the city that remains pending. (U.S. District Court for the District of South Carolina, Case No. 2:17-cv-2562).

- The township of Abington, Pennsylvania refused to approve Crown Castle's request to modify existing small cell facilities in the municipal ROW, insisting that full zoning was required, even though the modifications qualified as EFRs. After Crown Castle formally demanded that the Township approve the EFRs in August and September 2016, the Township instead sought and obtained a temporary restraining order ("TRO") in state court. In May 2017, the Township's petition for preliminary injunction was denied and the TRO was dissolved. Notwithstanding this, the Township continued to insist that full zoning review and variances were required. Crown Castle brought suit in September 2017 against the Township. The case ultimately settled. (U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:17-cv-4169).

- The township of Haverford, Pennsylvania denied Crown Castle's EFR to modify an existing facility in the Haverford Township ROW. Crown Castle filed a complaint against the Township in in May 2017, and more than a year later, the matter remains pending. (U.S. District Court for the Eastern District of Pennsylvania, Case No. 2:17-cv-2333).

- The city of Rye, New York subjected Crown Castle to a lengthy and arbitrary process for approval of Crown's submission to expand its existing small cell and DAS network to serve areas of historically poor wireless service. Ultimately, after over a year of shifting and unreasonable demands, the City denied Crown Castle's request. Crown Castle filed suit alleging, among other things, that the City's actions breached Crown Castle's contractual rights as well as violating NY state and federal law. The matter remains pending. (U.S. District Court for the Southern District of New York (Case No. 7:17-cv-3535).

- After working with Crown Castle to identify sites for nine small cell antenna nodes that would fill significant gaps in coverage in the least intrusive locations, the city of Piedmont, California proceeded to initially deny Crown Castle's applications and then, after meeting with Crown Castle, deny some applications and apply such onerous conditions to others as to make them effective denials. Crown Castle filed suit in November 2017 asserting its rights under federal and state law, and the matter remains pending. (U.S. District Court for the Northern District of California (Case No. 4:17-cv-6595).

- Following a collaborative effort to identify sites, which included Crown Castle agreeing to two extensions of the "shot clock," the town of Hillsborough, California staff initially recommended approval of Crown Castle's applications to install 16 small cell antenna nodes as well as electrical equipment and fiber optic cables, all to be located within the public ROW. After publishing a public notice that approval would be granted at the next public hearing, however, the City Manager reversed course and denied all 16 applications without basis and contrary to the City Manager's previously published findings in support of approving the applications. When Crown Castle appealed the City Manager's decision, the City Council denied all applications without analysis or substantial evidence. Crown Castle filed suit asserting its rights under federal and state law, and the matter remains pending. (U.S. District Court for the Northern District of California, Case No. 3:18-cv-2473).

- In 2017, the town of Oyster Bay, New York issued permits for 22 applications to supplement Crown Castle's existing small cell network, and Crown Castle began installation of the facilities. Then, after local public pressure and without any notice or opportunity for Crown Castle to be heard, the Town purported to revoke the permits by issuing a "cease and desist" letter to Crown Castle and physically removed Crown Castle's property on two of the sites. Crown Castle filed suit to assert its federal and state law rights, and the matter remains pending. (U.S. District Court for the Eastern District of New York, Case No. 2:17-cv-3445).

- In the town of Hempstead, New York, after Crown Castle signed a ROW use agreement (RUA) recognizing Crown Castle's rights to install and operate a small cell network, or DAS, installed numerous nodes on utility poles, and filed applications in three phases to install 48 nodes in the ROW, the Town enacted an ordinance imposing excessive escrow fees and charging discriminatory fees on Crown Castle's applications. After the Town allowed the shot clock to expire on all of Crown Castle's applications (purportedly

while an outside consultant reviewed the applications), Crown Castle filed suit in federal district court, which remains pending. (U.S. District Court for the Eastern District of New York, Case No. 2:17-cv-03148).

- In 2005 and 2006, Los Angeles County, California refused to process Crown Castle's applications for several DAS projects, instead requiring the Crown Castle obtain conditional use permits (CUPs). Crown Castle filed suit in federal district court seeking an injunction against the imposition of a CUP requirement. The court agreed that the CUP requirement violated Section 253 and enjoined the County from enforcing the CUP requirement. *See NextG Networks of Cal., Inc. v. County of Los Angeles*, 522 F. Supp. 2d 1240 (C.D. Cal. 2007).

As Crown Castle has previously proposed, one way for the FCC to help reduce the damage from lengthy judicial reviews would be to determine that a local jurisdiction's failure to comply with the "deemed grant" process results in irreparable injury and public interest harm, and that issuance of a preliminary injunction is an appropriate remedy in cases involving Section 6409.

IV. STATE LEGISLATION NEEDS TO BE BUTTRESSED BY UNIFORM FEDERAL POLICIES.

Crown Castle is pleased that some states have recognized the importance of encouraging development of next generation wireless networks through passage of state legislation to govern the deployment of small cells. Crown Castle has worked collaboratively with many policymakers and legislators as they have drafted codes and ordinances across the country, and stands ready to continue this process with jurisdictions that are willing to adopt reasonable, good faith measures to permit carriers to access the rights-of-way.

There are several problems with relying on a state-by-state or locality-by-locality model for reform. First, the passage of state legislation is typically a lengthy process potentially subject to executive veto and legal challenges. With respect to municipal ordinances, significant disparities can exist between neighboring jurisdictions resulting in deployment complexity across various jurisdictions. Also, jurisdictions that have passed positive small cell ordinances remain a small minority of those jurisdictions that would benefit from small cell networks. In Crown Castle's experience, it is far more likely for a jurisdiction to have imposed a moratorium on approval of small cell applications than to have adopted a model ordinance specifically governing small cell applications. Even where municipalities work in good faith to try and develop standards, these processes can take months—or even years.

Second, a state-by-state approach does not address the problems that come with having to devote resources to navigate piecemeal rules and regulations governing small cell deployment. Attached hereto as Exhibit E is a summary of legislation adopted in 21 states as of July 1, 2018. While there are some commonalities, there are also differences. For example, Delaware's legislation (HB189) only applies to the Delaware Department of Transportation right-of-way, not to municipalities within the state, while, as noted above, Illinois' legislation (SB1451) excludes Chicago. Moreover, while most states permit an antenna that fits within an enclosure of 6 cubic feet in volume and other equipment that is up to 28 cubic feet in volume, Illinois and Oklahoma impose an aggregate limit of 25 cubic feet for all other equipment, and Kansas imposes a limit of

17 cubic feet. The imposition of different equipment limitations results in the need to develop standardized form factors on a state-by-state basis rather than universally, thereby limiting efficiencies of scale in equipment design and manufacture. Furthermore, while some states, such as Arizona, impose reasonable limits on fees for applications and use of the right-of-way, others permit fees that are more burdensome, and still others do not address fees at all.

The Commission should resolve these disparate standards and promote uniform deployment of next generation broadband networks by clarifying what state and local actions serve as impermissible barriers to entry consistent with the foregoing recommendations.

V. CONCLUSION

Crown Castle appreciates the work the Commission has done to date to streamline the deployment of infrastructure to support wireless broadband networks. For the reasons stated above, Crown Castle encourages the Commission to use its authority under Sections 253, 332, and 6409 to act swiftly to remove remaining state and local barriers to infrastructure deployment.

Respectfully submitted,

CROWN CASTLE
INTERNATIONAL CORP.

By: /s/ Kenneth J. Simon /s/
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EXHIBIT A

CITY OF PHILADELPHIA

DEPARTMENT OF STREETS
ADMINISTRATION DIVISION
730 Municipal Services Building
1401 John F. Kennedy Blvd.
Philadelphia, PA 19102-1676

CARLTON WILLIAMS

33735

MEMORANDUM

TO: **JAMES P. LEONARD, Esq., Commissioner**
Records Department

FROM: **CARLTON WILLIAMS, Commissioner**
Streets Department

MC
for

DATE: **April 9, 2018**

RE: **Amendments To Regulations Governing Communication Antenna Facilities in the Public Right-Of-Way Under Section 9-360 of the Philadelphia Code**

Please find attached for filing the above referenced regulation. In accordance with Section 8-407 of the City Charter, I am filing this Regulation with your Department in order to initiate the public inspection period. These amendments are in response to the public hearing held on January 16, 2018. We have attached a red-line copy which summarizes the changes.

Also, please find attached a memorandum from the Law Department approving the Regulation as legal and in the proper form.

Thank you for your assistance in this matter.

CITY OF PHILADELPHIA

LAW DEPARTMENT
One Parkway
1515 Arch Street
Philadelphia, PA 19102-1595

Marcel S. Pratt, Acting City Solicitor

MEMORANDUM

TO: **Carlton Williams, Streets Commissioner**

FROM: **Michele Sarkos, Deputy City Solicitor**

DATE: **April 9, 2018**

SUBJECT: **Post-Hearing Report on The Regulations of The Philadelphia Department of Streets Governing Communication Antennas in the Public Right-of-Way**

I have reviewed the attached "Post-Hearing Report on The Regulations of The Philadelphia Department of Streets Governing Communication Antennas in the Public Right-of-Way" and the Modified Regulations attached thereto that was submitted to the Law Department and find the Report and Modified Regulations to be legal and in proper form. In accordance with Section 8-407(c) of The Philadelphia Home Rule Charter, you may forward the Report to the Department of Records.

MICHELE SARKOS
Deputy City Solicitor

Hearing Report

City of Philadelphia
Department of Streets Regulations Governing
Communication Antenna Facilities in the Public Right-of-Way
April 9, 2018

Background

On January 16, 2018, the City's Streets Department filed regulations with the Department of Records entitled "Regulations Governing Communication Antenna Facilities in the Public Right-of-Way" in furtherance of § 9-306 of The Philadelphia Code, (the "Regulations").

The Regulations were adopted to establish permitting requirements for the placement in the public right-of-way of certain telecommunication facilities, as authorized by Section 9-306 of the Code. During the same time as it was engaged in the process of preparation of the regulations, the City has also been engaged in a process, in its proprietary capacity, to establish standardized rules for the allowance of the placement of such facilities on City infrastructure located in the public rights-of-way. The Regulations and this Report do not address the additional terms and conditions for placement of telecommunications facilities on City-owned infrastructure.

Crown Castle and Verizon requested, in writing, a public hearing on the Regulations.

On February 22, 2018, the Streets Department held a public hearing, at One Parkway Bldg, 1515 Arch Street, 18th floor, to provide interested stakeholders with an opportunity to express specific concerns regarding the Regulations.

The City was represented at the hearing by Richard Montanez Deputy Commissioner, Streets Department; Kristin del Rossi, Chief Lighting Engineer, Streets Department, St. Martin Torrence, Legislative Affairs Director, Streets Department; Patrick O'Donnell, ROW Unit Manager, Streets Department; and Michele Sarkos, Deputy City Solicitor, City Solicitor's Office.

Testimony was presented at the hearing by:

1) Rory Whelan, Northeast Regional Director of Government Relations, Crown Castle;

2) Douglas Smith, Vice President, State Government Affairs, Verizon;

3) Kerri Strike Stahler, Area Director for Engineering and Operations, T-Mobile;

4) Paul Hartman, Director of Government Relations for Northeast, Mobilitie; and

5) Phillip Burtner, representing Pennsylvania Wireless Association, an industry advocacy group.

Written comments ("Comments") were submitted by:

1) Crown Castle- black-line proposed revisions to the Regulations and a letter raising legal issues dated 1/26/18;

2) Verizon- black-line proposed revisions to the Regulations and a letter raising legal issues dated 1/26/18;

3) Mobilitie - comments to Regulations, dated 2/14/18;

4) ATT - comments to Regulations submitted to City in January 2018.

The entities that provided testimony and/or Comments will be referred to herein, collectively, as "Interested Parties"

Summary of Testimony and Comments

Apart from specific comments about specific regulatory provisions (addressed further below), the Interested Parties expressed two main concerns at the public hearing and in written comments, namely: 1) the Regulations, if implemented, will impede provision of telecommunication services, including by limiting deployment of 5G technology, to which they object as a matter of policy and as a matter of law; and 2) the regulatory fees established by the Regulations are excessive.

The Interested Parties stated that the City's design, aesthetic and placement requirements will limit deployment of facilities and thereby prevent the provision of services in violation of the federal Telecommunications Act ("TCA").

The Interested Parties also stated that the City's monthly cap on submission of applications will suppress the provision of telecommunication services.

Concerns were also raised about discrimination between Carriers and Providers.

The Interested Parties state that the City's application fees for placing communication antennas in the public right-of-way are too high and unreasonable and, therefore, violate the federal TCA and Pennsylvania law. They contend that the application fees exceed the City's costs of administration, and are impermissible.

Discussion

The City has reviewed the testimony and written materials provided by the Interested Parties.

In drafting the Regulations, the City's goal was to balance the competing rights and needs of all users of the public right-of-way. In light of the Comments and testimony, the City reviewed the design, aesthetic and placement requirements of the Regulations. The City disagrees that the proposed requirements will prevent the provision of telecommunication services. The City does not believe the Regulations will inhibit the provision of services or prohibit the deployment of 5G technologies. In fact, the City believes the Regulations will facilitate the orderly deployment of 5G technology by all interested companies while maintaining public safety, orderly use of the public right-of-way and the historical character and beauty of Philadelphia.

Based on concerns expressed in the Comments and at the hearing, the City will omit language in the Regulations capping the submission of applications to 15 per month. The revised Regulations will not include a limitation on the number of applications submitted each month.

The Regulations do not differentiate, in any substantive way, between Carriers and Providers; a definition of Carriers is included only in connection with information collected on application forms for informational purposes.

The City disagrees that the proposed permit and annual monitoring fees exceed the City costs and are unreasonable in violation of the TCA. The City has reviewed all relevant City costs and has appropriately allocated certain costs to the permitting, inspection and monitoring of wireless infrastructure in the right-of-way. Only these costs have been considered in establishing the permit fee. The City notes that City charges for use of City infrastructure for the placement of communication antenna facilities is not the subject of these regulations.

Black-Line Comments to Regulations

The comments provided by the Interested Parties are grouped together here and addressed collectively:

1. As requested, the City provided a definition of "Associated Facilities."
2. Regulations were revised to provide for "strand-mounted equipment". This equipment will be subject to aesthetic and placement requirements of Regulations.

3. Regarding proposed revisions to Section 4.D., the City will not significantly revise the requirements of Section 4.D, the list of information to be provided in connection with an application to place facilities in a new location. The Department needs this information to effectively determine compliance with the standards set forth in the

regulations, monitor activities in the public ROW for public safety and to balance competing public interests in use of the ROW.

4. With respect to requirements regarding obtaining approval of the infrastructure owner before applying for a permit, it is the intent of the Department to streamline the application process by requiring Providers to first obtain permission of the owner of infrastructure located in the ROW prior to applying to the City for a permit for occupancy of the ROW.

5. Based on stated concerns of Interested Parties, the City revised the Regulations to delete Sections 4.E.12.and 4.F. The City will not require information regarding carriers or require a monthly cap on submission of applications.

6. Regarding Section 9.C, based on stated concerns of Interested Parties, the City has changed the 20-foot height requirement. The new requirement is based on the lower of 20 feet from ground level or the height of the lowest strand attached to the pole. The Regulations also provide for an exception to the requirement based on the Commissioner's assessment of public safety and interference with use of the ROW.

7. Regarding proposed deletion of Section 9.E-J, the City will not omit the requirements in Section 9 E-J. The Department will maintain these standards of approval. The City has demonstrated a reasonable and accommodating approach to allow placements that deviate from the requirements by reviewing on a case-by-case basis. The Department, as the manager of the public ROW, has to balance competing public interests, including public safety and unreasonable interference with the ROW, and the standards being promulgated permit the Department to do so.

8. Regarding proposed deletion of Section 19*,* the City will not omit the requirements in Section 19. The City has a duty to maintain public safety which includes the operation of the City's radio frequency and wireless network. The Department, as the manager of the public ROW, has to balance competing public interests, including public safety and unreasonable interference with the ROW, and the requirements of Section 19 allow the Department to do so.

9. Based on stated concerns of Interested Parties, the City will allow for self-insurance under Section 24, and has eliminated the umbrella insurance requirement. Insurance limits have been adjusted and other minor changes have been incorporated also based on stated concerns of Interested Parties.

10. The "Security" requirements of Section 14 have been deleted and replaced with an assurance requirement associated with responsibilities of the infrastructure owner.

Findings and Conclusions

The TCA and PA law prevent municipalities from prohibiting the provision of telecommunication services. Recognizing the important services provided by telecommunication companies, the City has worked with them for many years to facilitate telecommunication infrastructure development in the City.

The City also has a responsibility to oversee and protect the public right-of-way for all users of the right-of-way, and those who live, work and visit Philadelphia. This responsibility includes ensuring the safety of the public right-of-way and protecting the historical character of the City now, and for future generations. The Regulations are balanced and nuanced to meet these sometimes - competing responsibilities.

The Interested Parties are incorrect in claiming that the City's permit and monitoring fees are excessive or illegal. Nor have they made a convincing argument that any other requirements of the Regulations are inappropriate for maintaining public safety and an environment conducive for all uses of the public right-of-way.

Accordingly, the Department of Streets adopts the Regulations attached hereto as Exhibit "A" as the final Department of Streets Regulations Governing Communication Antenna Facilities in the Public Right-of-Way.

Exhibit "B" hereto shows the changes made from the Regulations as originally filed with the Department of Records.

This Report pertains to written comments and public testimony regarding the City's promulgation of regulations in furtherance of Philadelphia Code § 9-306. License agreements required for attachment to City- owned poles will be consistent with these Regulations. Such agreements, however, will be offered separate and apart from this regulatory process, and responses to stated concerns of Interested Parties to the City's proposed Master License Agreement will be provided at another time.

The City will continue to work with the telecommunications companies and their facilities providers to facilitate the provision of their services and the deployment of 5G technology to enable the City, and the general public, to enjoy the full potential of such technology.

EXHIBIT A

The Philadelphia Department of Streets
Regulations Governing Communication Antenna Facilities in the Public Right-of-Way

Section 1. Authority.

These Regulations Governing Communication Antenna Facilities in the public Right-of-Way are promulgated pursuant to Section 5-500 of The Philadelphia Home Rule Charter and Chapter 9-300 of The Philadelphia Code.

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Section 2. Definitions.

In these Regulations, the following definitions shall apply.

A. ‘‘Affiliate” means a person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

B. “Application” means an application filed with the Department of Streets requesting permission to install Communication Antenna Facilities in the public Right-of-Way.

C. “Associated Facilities” means any equipment that facilitates transmission for a wireless antenna, including, but not limited to coaxial or fiber-optic cable, strand-mounted equipment and regular and backup power supply and other supporting devices installed above the ground, but does not include a pole or structure on which the Communication Antenna Facilities are located.

D. ‘‘Carrier” means a person or entity authorized by the Federal Communication Commission and any other regulatory agency to operate a telecommunication system to provide telecommunications services.

E. “City-owned Infrastructure” means street light poles, traffic signal devices and similar infrastructure owned by the City and located in the public Right-of-Way.

F. “Collocate” or “Collocation” means installing or maintaining multiple Communication Antenna Facilities belonging to more than one Provider on a single support structure.

G. “Commissioner” shall mean Commissioner of the Department of Streets or his or her designee.

H. “Communication Antenna Facilities” or “Facilities” means equipment necessary or incidental to the distribution of and use of telecommunications services including, but not limited to, antennas,

small cell nodes, distributed antenna systems (DAS) and associated facilities for "personal wireless services," as that term is defined in 47 U.S.C. § 332(c)(7)(C), and "commercial mobile services," as that term is defined in 47 U.S.C. § 332(d).

I. "Communication Antenna Facilities Public Right-of-Way Use Permit" ("CAP") means a permit issued by the Department authorizing Provider to occupy a discreet location of the public Right-of-Way to maintain, install, remove or modify Communication Antennas Facilities.

J. "Department" means the City of Philadelphia's Department of Streets.

K. "Existing Facilities" means Facilities located in the public Right-of-Way and authorized by a permit issued by the City prior to the effective date of these Regulations.

L. "Guaranteed Pavement Information System" ("GPIS") means the online permitting system developed for and used by the Department in connection with the Department's street opening permit process.

M. "Historic building" has the meaning as defined in the Zoning Code, subsection 14-203(147) of The Philadelphia Code.

N. "Master License Agreement" means a license agreement entered into by the City and a Provider setting forth the particular terms and provisions under which the City has granted a Provider the right to make use of City-owned Infrastructure in the public Right-of-Way for installation of Communication Antenna Facilities.

O. "Modification" means any addition to, partial removal of, or alteration of any kind to Communication Antenna Facilities, including routine maintenance or alteration of appearance.

P. "PECO" means the electricity delivery company known as PECO Energy Company, an Exelon Corporation or any successor electricity delivery company.

Q. "Permitted Location" means the portions of the public Right-of-Way in which Provider has received the Department's approval to construct and install Communication Antenna Facilities pursuant to this Regulation and for which a CAP has been obtained from the Department.

R. "Provider" means a corporation, company, association, firm, partnership, person or entity that owns, operates or manages any facilities used to provide telecommunications service for hire, sale, or resale to the general public. "Provider" includes Affiliate(s) and/or the legal successor(s) to any such corporation, company, association, firm, partnership, person or entity.

S. "Public Right-of-Way" or "public ROW" means the Right-of-Way as defined in Chapter 11-700

of The Philadelphia Code.

T. "Routine Maintenance" means an in-kind Modification of a component of Communication Antenna Facilities or other similar de minimis changes.

U. "Street Occupancy Permit" means a permit required under The Philadelphia Code and/or Department Regulations and issued by the Department authorizing the temporary (partial or full) closure of the public ROW, including the roadway and/or footway, for the temporary placement of equipment necessary to perform work.

V. "Street Opening Permit" means the permit required under the Philadelphia Code and/or Department Regulations and issued by the Department to authorize a party to open the street or excavate within the public ROW.

W. "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this chapter, telecommunications service excludes over-the-air transmission of broadcast television or broadcast radio signals.

X. "Utility Pole" means a pole or vertical structure owned by PECO or another utility company that is located in the public ROW pursuant to State law authorization or City franchise agreement to support electric utility or wireline Communication Antenna Facilities. Utility Poles as defined herein shall not be considered "towers" or "tower structures" as defined in Section 14-601(4)(o)(.2) of the City Code.

Section 3. Communication Antenna Facilities Public Right-of-Way Permit.

No Provider or other person shall maintain, install, modify, replace or remove any Communication Antenna Facilities on any pole or other structure located in the public ROW without a CAP.

Section 4. Application for Communication Antenna Facilities Public ROW Permit (CAP)

A. An Application for a CAP shall be filed with the Department using the City's on-line portal. A separate Application must be filed for each requested location.

B. Applications with respect to all Communication Antenna Facilities, whether existing, new, modified or replaced, shall include:

1. The name of the applicant, including all Affiliates of applicant;
2. Applicant contact information including address, telephone number and email address;
3. A listing of all Provider's Communication Antenna Facilities (existing & proposed);
4. Identification of the pole location using the City's map and identification system in the on-line system, which shall include identification of whether the pole is City-owned or utility-owned; and
5. Information regarding whether the applicant would be willing to Collocate.

C. An Application in connection with Existing Facilities shall be submitted on the form attached to these Regulations as Exhibit "B," which form may be changed from time to time, and shall in addition to the information requested on the form also include:

1. Approval documentation from the Department for location of the Existing Facilities in the public ROW;
2. Documentation of permission from the pole owner for installation and maintenance of the Existing Facilities;
3. As-built engineering plans for the Existing Facilities;
4. Photos of Existing Facilities as attached to the Utility Pole or City-owned Infrastructure;
5. Proof of Insurance, as required pursuant to these Regulations; and
6. Agreement to comply with the terms of these Regulations.

D. An Application to install Facilities in a new location, to modify Existing Facilities (except as provided in subsection E. below) or to replace or remove Facilities shall be submitted on the form attached to these Regulations as Exhibit "A," which form may be changed from time to time, and shall in addition to the information requested on the form also include:

1. Information to establish that Provider has all other governmental approvals and permits necessary to construct and operate the Communication Antenna Facilities;
2. Proof of Insurance, as required pursuant to these Regulations;
3. List components of the Communication Antenna Facilities (in tabular format). A sample form is attached as Exhibit "C" to these Regulations;
4. Map showing the proposed location of the Facilities with identification of any park, school or Historic building within 300 feet of the proposed location;
5. Representative drawings and pictures of the Communication Antenna Facilities as they will look when installed, including the immediate surrounding area. Design drawings shall also

include plans for the design and concealment of Communication Antenna Facilities, and portions thereof, if applicable;

6. Engineering and construction plans, design drawings and photos of all Communication Antenna Facilities;
7. Proposal for collocation, if collocation is requested;
8. Identification of proposed location of connection to electrical supply or of any fiber connection required, including the identification of any planned interconnection with the Facilities of any other Providers;
9. Written confirmation of agreement between Provider and utility owner that Provider has authority to attach to Utility Pole;
10. RF Emissions Report and Noise Report confirming that all Communication Antenna Facilities, and associated equipment, meet all applicable legal requirements;
11. Structural calculations, signed by a Professional Engineer, licensed in the Commonwealth of Pennsylvania, showing that the structure can safely tolerate the weight loads of proposed Communication Antenna Facilities;
12. Agreement to comply with the terms of these Regulations.

E. An Application regarding a Modification that involves only Routine Maintenance or a modification of appearance shall include the information required under subsection B, paragraphs 1, 2 and 4 and information identifying the Modification to be made. A new design drawing shall be submitted if changes are made that are not reflected on the originally submitted drawing.

Section 5. Completeness Review

A. The Department shall review an application for completeness and will notify the Provider in writing if additional or missing information is required. The notice shall identify any information that must be submitted to the Department to make the Application complete.

B. Upon applicant's subsequent submission, the Department shall notify the applicant if the Application remains incomplete and the Department shall identify any information that must be submitted to make the Application complete.

C. If missing or additional information is not submitted to the Department within thirty (30) days of a written notice requesting additional information, the Department shall provide applicant with written notice that its Application has been deemed withdrawn.

D. The Department will provide applicant with written notice of a completed Application and will invoice applicant the Application Review Fee, in accordance with Section 8. Except as provided with respect to Applications regarding Existing Facilities, full payment of the Application Review Fee is required before the Department will proceed with its determination regarding issuance of the CAP.

Section 6. Issuance/Denial of CAP

A. The Department, shall issue a written determination granting or denying the application. If the application is denied, the written determination shall include the reason(s) for denial.

B. Upon determination that an application for Existing Facilities is complete, the Department shall grant the CAP for up to such time period as the applicant has demonstrated authorization to occupy the pole, but in no event for longer than 10 years. Modification or removal of Existing Facilities requires filing a new Application for a CAP.

C. The decision to grant or deny a CAP regarding new Facilities or a modification or replacement of Facilities, shall be based upon the following standards:

1. Whether the Provider has received all requisite licenses, certificates, and authorizations from the Federal Communications Commission, the Pennsylvania Public Utilities Commission and any other federal or state agency with jurisdiction over the activities proposed by the Provider;
2. Compliance with the City's Development Standards set forth in Section 9;
3. Whether the proposed Communication Antenna Facilities will unreasonably interfere with the public ROW, including whether the proposal negatively impacts the aesthetics of the public ROW to an unreasonable degree;
4. The damage or disruption, if any, to public or private facilities, improvements, service, travel or landscaping if the CAP is granted;
5. Whether the proposal presents an unreasonable risk to public health, safety or welfare;
6. Whether the Provider has permission from the owner of the Utility Pole;
7. Whether the Provider has an uncured default under: i) any prior CAP; ii) these Regulations or iii) a Master License Agreement between City and Provider; and
8. Whether the requested site has already been approved as a Permitted Location.

D. Unless otherwise specified in a CAP, a CAP shall provide an authorization for twenty (20) years.

Section 7. Approval Rights

A. No authorization granted under these Regulations shall confer any exclusive right, privilege, license or permit to occupy or use the public ROW for delivery of personal wireless services or commercial mobile services or for any other purposes.

B. The City specifically reserves the right to install, and permit others to install Facilities in the public ROW. The City shall not be liable to Provider for any damage caused by third parties permitted to install Facilities or otherwise authorized to utilize the public ROW.

C. No authorization granted under these Regulations shall convey any right, title or interest in the public ROW, but shall be deemed an authorization only to use and occupy the public ROW for the limited purposes and term stated in the authorization.

D. Authorization granted under these Regulations is subject to the existing uses, as well as, the prior and continuing right of the City to use the public ROW for municipal and public purposes.

Section 8. Fees

A. The fee for a CAP Application review is $400 per Application. The fee is waived for initial Applications in connection with Existing Facilities and Applications in connection with a Modification involving solely Routine Maintenance or a modification of appearance.

B. The program fee for inspection of installations and administration of the Facilities program is $50 per year per CAP. No program fee shall be charged in connection a CAP during the first calendar year of its issuance.

C. Provider shall, within thirty (30) days after written demand, reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Provider's Communication Antenna Facilities.

Section 9. Development Standards

All new and modified Facilities shall be subject to the following standards:

A. The dimensions of the Facilities shall not exceed 6 feet in height, 2 feet in width, and 2 feet in depth, unless an exception is authorized by the Commissioner based on a determination that larger dimensions will not unreasonably interfere with the public ROW.

B. Facilities shall not exceed 24 cubic feet per facility. No more than 48 cubic feet of Facilities are permitted on a single pole, unless an exception is authorized by the Commissioner based on a determination that additional Facilities will not unreasonably interfere with the public ROW.

C. Facilities shall be installed above the surface of the public ROW at a minimum elevation which is the lower of 20 feet or the lowest pole-supported strand based on a review by the Chief Streets Lighting Engineer, or his/her designee. An exception to this height requirement may be granted on a case-to-case basis based on the Commissioner's determination that a lower height will not unreasonably interfere with the public ROW. Installation or placement of Facilities, or any portion thereof, on the surface of the public ROW is prohibited.

D. Facilities shall not extend more than 3 feet as measured from the edge of the vertical structure of the Utility Pole.

E. Except for permitted Collocation, no Facilities shall be within 300 feet of other permitted Facilities, per block face, unless an exception is authorized by the Commissioner based on a determination that Facilities within such proximity will not unreasonably interfere with the public ROW.

F. No more than two CAPs shall be granted at an intersection of streets unless an exception is authorized by the Commissioner based on a determination that more than two sets of Facilities at a particular intersection will not unreasonably interfere with the public ROW.

G. Installation of Communication Antenna Facilities within 300 feet of the boundary line of a City Park is prohibited unless approved, in writing, by the Department of Parks and Recreation, based on a determination that the installation will not negatively impact on Park use.

H. Installation of Communication Antenna Facilities on any part of a bridge, overpass, or tunnel within the city, or a structure located on a bridge, overpass or tunnel is prohibited.

I. Installation of Communication Antenna Facilities on a structure located in a street or portion of the public ROW that is 15 feet or less in width and that is adjacent to primarily residential properties is prohibited, unless, an exception is authorized by the Commissioner based on a determination that such a location will not unreasonably interfere with the public ROW.

J. Facilities shall be enclosed in an equipment box or other concealing unit that may include ventilation openings.

K. Facilities shall, at a minimum, display the following in an area on the equipment box or other concealing unit in a manner visible to the public:

i. Company Name
ii. Company Node ID
iii. Location
iv. Streets Department CAP Authorization Number
v. Streets Department CAP Date

vi. Emergency telephone contact information

L. Displays or signs shall not exceed 4” x 6”, unless otherwise required by law or the Department.

M. Placement of advertising on Facilities or in the public ROW is prohibited.

N. Facilities must be connected to the electrical grid and may not be powered by a generator for primary power or for back-up power except as deemed necessary by the Commissioner to maintain public safety.

O. Cables and wires must be located inside the interior of all non-wooden poles. External cables and wires for facilities on wooden poles shall be sheathed or enclosed in a conduit so that wires are protected and are visually minimized.

P. Installation of aerial wires is permitted only for connecting the Facilities to wires or junction boxes on the Utility Pole to which the Facilities are attached.

Q. Underground junction boxes in the public ROW shall be similar in size to the City’s “standard” junction box. A junction box must be rated “tier 22”, or approved equal, to sustain live loads without damage. The junction box cover must be labeled with the company name outside. All interior wires must be labeled, kept in good condition and replaced, if faded or missing. Junction box dimensions and placement locations are subject to Department approval.

R. Facilities shall comply with the federal radio frequency (RF) emissions standards set forth in Federal Communications Commission OET Bulletin 65 (as may be amended).

Section 10. Compliance with Other Laws

Compliance with all applicable City, State, and federal statutes and regulations is mandatory while any CAP is in effect.

Section 11. Master License Agreement.

No authorization to attach to City-owned Infrastructure shall be deemed to have been granted upon issuance of a CAP unless the Provider and the City have executed a Master License Agreement.

Section 12. Inventory and Accounting

A. Each Provider shall maintain a list of the locations of its Communication Antenna Facilities located in the public ROW while any CAP is in effect and shall provide the Department with an accounting of its current inventory each year on the first business day in January.

Section 13. Renewal of CAP

A Provider that desires to renew an expiring CAP shall, not more than one hundred eighty (180) days nor less than ninety (90) days before expiration of the CAP, file an application with the Department pursuant to the requirements of these Regulations.

Section 14. Provider Assurance

Provider must confirm, in writing, that the owner of the Utility Pole agrees to remove Provider's Facilities in the event Provider fails to remove its Facilities upon the City's determination of a violation under these Regulations and receipt of notice to remove.

Section 15. Street Occupancy and Opening Permits and Deadlines for Installation; Construction and Restoration Standards

A. Upon issuance of a CAP, the Provider may apply for a Street Occupancy Permit, for occupancy of the public ROW for installation, modification or removal of Facilities, or a Street Opening Permit, as may be required for associated electrical or fiber underground conduit, as may be necessary for installation of the Facilities.

B. Any required Street Occupancy Permit or Street Opening Permit shall be applied for within ninety (90) days after the Department issues a CAP.

C. Installation of authorized Communication Antenna Facilities shall be completed within one-hundred and eighty (180) days from the date of issuance of the CAP, unless an extension is granted by the Department based on a showing of good cause.

D. The Department may rescind a CAP based on failure to meet a deadline set forth in this Section.

E. Communication Antenna Facilities shall be installed in conformance with plans submitted in connection with issuance of the CAP. Installation, maintenance, repair and removal of underground components of Communication Antenna Facilities shall be accomplished without cost or expense to the City. If components include underground communication cable, the installation, repair, removal shall be in accordance with all applicable requirements of the Philadelphia Code and relevant City Regulations. All work in the public ROW shall be accomplished in such manner as not to endanger persons or property or unreasonably obstruct access to, travel upon or other use of the public ROW.

F. Prior to beginning any work in the public ROW, Provider shall comply with the provisions of the Pennsylvania One Call utility locator service at least forty-eight (48) hours in advance. Provider has the responsibility to protect and support the various utility facilities of other entities during Provider's work.

G. Provider shall, at its own cost, after the installation, removal or relocation of its Communication Antenna Facilities, repair and return the public ROW and any impacted private property to a safe and no worse condition than at the start of work.

H. Provider shall be responsible for any damage to public ROW, existing utilities, curbs and sidewalks due to its installation, maintenance, repair or removal of its Communication Antenna Facilities and shall repair, replace and restore, in-kind, any such damage at its sole cost and expense, in accordance with all applicable City requirements.

Section 16. Removal or Power Down of Communication Antenna Facilities

A. Department may require Provider, at Provider's sole expense, to modify, remove or power down permitted Facilities: (a) to accommodate a governmental or municipal project; (b) for the construction, repair, relocation, or maintenance of a public improvement in, on, under or about the public ROW; (c) to protect the public health and safety or otherwise serve the public interest; or (d) because of Interference, as set forth in Section 19.

B. The Department will provide written notice to Provider as soon as reasonably practical, of the requirement to remove, modify or power down, which requirement shall be completed within such time as the Department may reasonably direct.

C. If, after delivery of written notice and a reasonable opportunity to respond, Provider fails or refuses to comply with a written notice to follow such a requirement, the Department shall have the authority to remove, modify or power down the Facilities at the sole cost of Provider. Provider shall be responsible for, and liable to, the City for any and all costs associated with such action.

D. If Provider intends to remove or relocate any of its Communication Antenna Facilities in the public ROW, it shall give the Department not less than ten (10) days written notice of its intent to do so. Before proceeding with removal or relocation work, Provider shall obtain such additional permits as may be required by the Department and adhere to all applicable Department Regulations.

Section 17. Non-Use of Communication Antenna Facilities

A. No later than thirty (30) days prior to the proposed termination of use of any permitted Communication Antenna Facilities, Provider shall submit to the Department written notification identifying the Communication Antenna Facilities and the date of the proposed termination of use.

B. Provider shall remain responsible for Facilities which Provider stops utilizing until such time as the Facilities are removed and the public ROW repaired under the requirements of these Regulations.

C. The City shall not be deemed the owner or responsible party for any property owned, or used and/or abandoned in place by Provider.

D. Provider's continuous abandonment of permitted Communication Antenna Facilities within the public ROW, and failure to respond to Department's written notice to remove or modify the same will result in removal, at Provider's sole cost, of such Communication Antenna Facilities.

Section 18. Requirements to Maintain Permits

Failure to comply with any of the following requirements may result in revocation of a CAP:

A. Failure to pay any required fee and failure to cure such arrearage within thirty (30) days after receiving written notice from City;

B. Failure to maintain Insurance as required in these Regulations;

C. Failure to maintain any required licenses, permits, or other governmental approvals pertaining to the installation or use of Communication Antenna Facilities;

D. Failure to comply with any other requirements of these Regulations, including the "Development Standards" of Section 9.

E. Failure to provide Communication Antenna Facilities maintenance assurances if Provider becomes the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or an assignment is made of any of Provider's property for the benefit of creditors; or

F. Ongoing harmful interference, as set forth in Section 19 below.

Section 19. Interference

A. Provider's Communication Antenna Facilities shall not cause harmful interference to the City's radio frequency, wireless network, or communication operations ("City Operations) or Communication Antenna Facilities used by other Providers with a CAP ("Protected Equipment").

B. In the event of interference with the City's Operations, Provider shall take steps necessary to correct and eliminate such interference within 24 hours of receipt of notice from the Department, or such shorter time as may be required in notice from the City in the event of a threat to public safety. In the event of interference with Protected Equipment, Provide shall take steps necessary to correct and eliminate such interference within 24 hours of receipt of notice from the City. If the interference is not resolved within the required time frame, Provider will power down the Communication Antenna Facilities causing interference, except for intermittent testing coordinated with the Department as part of the remedial process, until the interference is remedied.

C. Upon Department's request, Provider shall test the Communication Antenna Facilities' radio

frequency and other functions to confirm it does not interfere with the City's current or future operations or Protected Equipment.

Section 20. No Liability

A. The City shall not be liable to any Provider for any damage caused by other Providers with Communication Antenna Facilities, whether sharing the same structure or otherwise.

B. The City shall not be liable to any Provider by reason of inconvenience, annoyance or injury to any Communication Antenna Facilities, or activities conducted by Provider therefrom, arising from the necessity of repairing any portion of the public ROW, or from the making of any necessary alteration or improvements, in, or to, any portion of the public ROW, or in, or to, City's fixtures, appurtenances or equipment.

Section 21. Graffiti Abatement

Provider shall remove all graffiti on any of its permitted Communication Antenna Facilities as soon as practical, but not later than fourteen (14) days from the date Provider receives notice thereof. The foregoing shall not relieve the Provider from complying with any City graffiti or visual blight ordinance or regulation.

Section 22. Tree Maintenance

Prior to trimming trees hanging over Communication Antenna Facilities, written permission from the Department and the Department of Parks and Recreation is required. When directed by the Department, tree maintenance shall occur under the supervision and direction of the Department of Parks and Recreation. The City shall not be liable for any damages, injuries, or claims arising from Provider's actions pursuant to this Section.

Section 23. Release and Indemnification

A. As a condition of its CAP, Provider agrees to and shall release the City, its agents, employees, officers, and legal representatives (collectively the "City") from all liability for injury, death, damage, or loss to persons or property sustained in connection with or incidental to performance under any Department -issued permit related to these Regulations, even if the injury, death, damage, or loss is caused by the City's concurrent negligence. Neither Provider nor City will be liable to the other for any indirect, incidental, special, consequential, or punitive damages, or lost profits for any claim arising out any Department-issued permit.

B. Provider agrees to and shall defend, indemnify, and hold harmless (collectively "indemnify"

and “indemnification”) the City, its agents, employees, officers, and legal representatives (collectively the "City Parties") for all third-party claims, suits, damages, liabilities, fines, and expenses including, without limitation, reasonable attorneys’ fees, court costs, and all other defense costs (collectively “Losses”) for injury, death, damage, or loss to persons or property sustained in connection with Provider’s use or operation of any Communication Antenna Facilities, Utility Pole or City-owned Infrastructure including, without limitation those caused by Provider or its agents’, employees’, officers’, directors’, consultants’ or subcontractors’ actual or alleged negligence or intentional acts or omissions.

C. Provider’s indemnification obligations under each CAP will survive for four (4) years after the CAP expires or terminates.

Section 24. Insurance Requirements

A. (i) Provider shall, at its sole cost and expense, procure and maintain and shall ensure any contractor it engages to perform any work, installation and/or maintenance required under these Regulations to procure and maintain, substantially the same insurance with substantially the same limits as that required of Provider, the limits of coverage specified below. All insurance shall be procured from reputable insurers who are acceptable to the City of Philadelphia, and authorized or permitted to do business in the Commonwealth of Pennsylvania. All insurance required herein shall be written on an “occurrence” basis and not a “claims-made” basis. The City of Philadelphia, its officers, employees and agents, shall be included as an additional insured as their interests may appear under these Regulations on the Commercial General Liability and Automobile Liability insurance policies.

(ii) Notwithstanding the forgoing, Provider may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Regulation. In the event Provider elects to self-insure its obligation under these Regulations to include City as an additional insured, the following conditions apply: (i) City shall promptly provide Provider with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Provider with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Provider; and (iii) City shall fully cooperate with Provider in the defense of the claim, demand, lawsuit, or the like.

1. Workers' Compensation and Employers' Liability

(a) Workers Compensation – Statutory Limits.

(b) Employers Liability:

$100,000 Each Accident - Bodily Injury by Accident;

$100,000 Each Employee - Bodily Injury by Disease;

$500,000 Policy limit - Bodily Injury by Disease;

(c) Other states' insurance including Pennsylvania.

2. Commercial General Liability Insurance

(a) Limit of Liability: $5,000,000 per occurrence for bodily injury (including death) and property damage liability; $2,000,000 personal and advertising injury; $2,000,000 general aggregate for products/ completed operations. The City may require higher limits of liability, if in the City's sole discretion, the potential risks so warrants.

(b) Coverage: Including but not limited to premises, operations, personal injury liability (employee exclusion deleted); employees as additional insureds, cross liability, property damage liability, products and completed operations; explosion, collapse and underground damage (XCU), independent contractors, and blanket contractual liability (including liability for Employee Injury assumed under a Contract) provided by the Standard ISO Policy Form or its equivalent.

3. Commercial Automobile Liability Insurance

(a) Limit of Liability: $2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability;

(b) Coverage: Owned, hired and non-owned vehicles (Any Auto).

B. Deductibles: Provider shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, employees or agents.

C. Waiver of Recovery/Subrogation: Provider waives any claim or right of subrogation to recover against the City, its officers, employees or agents and each of Provider's insurance policies must state that the issuer waives any claim or right of subrogation to recover against the City, its officers, employees or agents.

D. Primary Insurance: Each policy, except Workers Compensation, shall be primary and non-contributory in regards to any insurance or program of self-insurance maintained by the City.

E. Liability for Premium: Provider shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

F. Certificates of Insurance delivered to the City of Philadelphia, evidencing the required coverage shall be submitted to:

City of Philadelphia
Risk Manager
One Parkway
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

G. The required certificates of Insurance must be provided to the City 10 days prior to start of work or by the effective date of these Regulations. Provider shall submit to the City of Philadelphia's Risk Manager, endorsements evidencing the coverage required in this Section within thirty (30) days from the date of submitting the Certificates of Insurance. The City reserves the right to require Provider to furnish written responses from its authorized insurance carrier representatives to all inquiries made pertaining to the insurance required under these Regulations at any time upon ten (10) days written notice to Provider.

H. The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in these Regulations by the Provider to the City or to limit the Provider's liability under these Regulations to the limits of the policy(ies) of insurance required to be maintained by Provider under these Regulations.

I. All insurance policies shall provide for at least thirty (30) days prior written notice to be given to the City of any cancellation or non-renewal of any required insurance that is not replaced. At least ten (10) business days prior to the expiration of each policy, Provider shall deliver to the City, a certificate of insurance evidencing the replacement policy(ies) to become effective immediately upon the termination of the previous policy(ies). Provider shall, in no event, permit any lapse in the insurance coverage required under these Regulations, and replacement coverage meeting the requirements of this Section shall be in effect prior to the expiration of the policy period.

J. In the event the Provider fails to procure and/or cause such insurance to be maintained, the City shall not be limited in the proof of any damages which the City may claim against Provider or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but the City shall also be entitled to recover

damages for such breach, the uninsured amount of any loss, damages and expenses of suit and costs, including without limitation, reasonable collection fees, suffered or incurred during any period when Provider shall have failed or neglected to provide the insurance as required herein.

Section 25. Effective Date

These Regulations shall be effective immediately.

EXHIBIT A

Application for Communication Antenna Facilities Permit (CAP)

Application for Communication Antenna Facilities Permit & License (CAP+License)

1/9/18 version ~ Subject to change

Applications for Communication Antenna Facilities ("Facilities") in the public Right-of-Way.

Please Note: Submittal of false information will result rejection of the Application and/or rescission of associated CAP / CAP+License.

Please read the following information before proceeding.

• Field Marks with * are required
• An Application submitted by anyone other than the Facilities owner must be accompanied by a certification verifying applicant is an authorized representative of the Facilities owner.
• The specified number of sheets must be accurate or the Application may not be accepted.

(A) Application

* Request location for (Please check all the boxes that apply for the location):
□ Attachment to Utility Pole
□ Attachment to City-owned Infrastructure
□ Upgrade of Existing Facilities
Number of Sheets

(B) Applicant Information

* Applicant Type	□ Facility / Company personnel	□ Consultant / Authorized Representative
*Applicant Name		
*Mailing Address		
City	State	Zip
* Phone Number	*Email Address	
Engineer of Record (If applicable)		
*Phone Number	*Email Address	
Fax Number	*Emergency Contact Number	

(C) Facilities Owner Information

* Type:	□ Individual □ Corporation	□ Applicant is Owner
*Entity Name		
Mailing Address		
City	State	Zip
*Phone Number	*Email Address	
Fax Number	* Emergency Contact Number	

(D) Requested Location

*GIS Coordinates	*City Pole ID #	
*Street Number (provide closest number)		
Address		Zip Code
*Is requested location within 300 feet of a Historic building?	□ Yes	□ No
*Is requested location within 300 feet of another pole?	□ Yes	□ No
*Is requested location within 300 feet of a school?	□ Yes	□ No
*Is requested location within 300 feet of a hospital / medical facility?	□ Yes	□ No
*Is requested location within 300 feet of an Existing Facility?	□ Yes	□ No

(E) Pole Description

* Pole type	*Name of pole owner	
*Pole dimension (feet)	Height	Circumference

(F) Existing Facilities Attached to the Pole

* Facility Type	□ Carrier	□ Neutral-Host Provider (if selected, complete Section H)	
*Number of Facilities attached to the Pole:			
Dimensions of Proposed Facilities (Antenna)	Height	Width	Depth
Dimensions of Proposed Facilities (Enclosure Box 1)	Height	Width	Depth

Dimensions of Proposed Facilities (Enclosure Box 2)	Height	Width	Depth
Backhaul Type and Provider			
FCC License # (if any)			

(G) Power & Communication Connection(s)

Power connection		□ Underground	□ Aerial
Power connection type			
Communication connection		□ Underground	□ Aerial
Communication connection type(s)			
Proposing New Junction box(s)?		□ Yes	□ No
Number of Junction box(s)			
Dimensions of Junction box # 1	Height	Width	Depth
Dimensions of Junction box # 2	Height	Width	Depth

Permission

Permission for use of Utility Poles
□ If applicant is installing, modifying, or removing Facilities from a Utility Pole, applicant certifies that s/he has permission from the Utility Pole owner. A copy of the agreement or permission from the Utility Pole owner has been provided and will be attached to this Application.
License Agreement for use of City-owned Infrastructure
□ Applicant certifies that s/he has permission from the City to attach to City-owned Infrastructure under the Communication Antenna Facilities Master License Agreement ("Agreement") for the purposes specified therein.

EXHIBIT B

Application for Existing Communication Antenna Facilities Permit (CAP)

Application for Existing Communication Antenna Facilities Permit & License (CAP+License)

1/9/18 version ~ Subject to change

Applications regarding existing Communication Antenna Facilities ("Existing Facilities") in the public Right-of-Way

Please Note: Submittal of false information will result in rejection of the Application and/or rescission of associated CAP/CAP+License. Please read the following information before proceeding.

• Field Marks with * are required
• An Application submitted by anyone other than the Facilities owner must be accompanied by a certification verifying applicant is an authorized representative of the Facilities owner. The specified number of sheets must be accurate or the Application may not be accepted.

(A) Application

* Existing Facilities attached to (Please check all the boxes that apply for the location):	
□ Utility Pole	□ City-owned Infrastructure

(B) Applicant Information

* Applicant Type	□ Facility / Company personnel		□ Consultant / Authorized Representative
*Applicant Name			
*Mailing Address			
City	State		Zip
* Phone Number	*Email Address		
*Emergency Contact Person(ECP) (If different than the applicant)			
*ECP Phone Number	*ECP Email Address		

(C) Facilities Owner Information

* Type:	□ Individual	□ Corporation	□ Applicant is the owner
*Entity Name			
Mailing Address			
City	State		Zip
*Phone Number	*Email Address		
Fax Number	* Emergency Contact Number		

(D) Pole Location

*GIS /GPS Coordinates: (x):	(y):	
*City Pole ID #	*Company's Pole/Node ID #	
*Street Number (provide closest house number / closest Intersection)		
Address		Zip Code

(E) Pole Description

* Pole type	*Name of pole owner	
*Pole dimension (feet)	Height	Circumference

(F) Existing Facilities Attached to the Pole

* Facility Type	□ Carrier	□ Neutral-Host Provider (if selected, complete Section H)	
*Number of Facilities attached to the Pole:			
Dimensions of Existing Facilities # 1	Height	Width	Depth
Dimensions of Existing Facilities # 2	Height	Width	Depth
Dimensions of Existing Facilities # 3	Height	Width	Depth
Backhaul Type and Provider			
FCC License # (if any)			

(G) Power & Communication Connection(s)

Power connection			□ Underground	□ Aerial
Power connection type				
Communication connection			□ Underground	□ Aerial
Communication connection type(s)				
Existing junction box(s)?		□ Yes	□ No	
Number of junction box(s)				
Dimensions of junction box # 1	Height	Width	Depth	
Dimensions of junction box # 2	Height	Width	Depth	

*Permission for Existing Facilities **(Applicant must select at least one (1) of the following)**

Authorization from the Utility Pole owner for use of Utility Pole(s) located in the public ROW
□ Applicant certifies that s/he has proof of Utility Pole owner's permission for placement of Existing Facilities on the Utility Pole, as specified. A copy of the agreement or permission from the Utility Pole owner has been provided and will be attached to this Application.
Authorization from the City for Existing Facilities located in the public ROW
□ Applicant certifies that s/he has proof of City's permission for placement of Existing Facilities on City-owned Infrastructure, as specified. A copy of the agreement or permission from the City has been provided and will be attached to this Application.

EXHIBIT C

Communication Antenna Facilities and Equipment/Components List

1/9/18 version ~ Subject to change

The following is a list of components for the location specified in this Application:

Component Type	Model / Identification Name	Notes

EXHIBIT B

The Philadelphia Department of Streets
Regulations Governing Communication Antenna Facilities in the Public Right-of-Way

Section 1. Authority.

These Regulations Governing Communication Antenna Facilities in the public Right-of-~~-~~Way are promulgated pursuant to Section 5-500 of The Philadelphia Home Rule Charter and Chapter 9-300 of The Philadelphia Code.

Section 2. Definitions.

In these Regulations, the following definitions shall apply.

A. "Affiliate" means a person who (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person.

B. "Application" means an application filed with the Department of Streets requesting permission to install Communication Antenna Facilities in the public Right-of-Way.

C. "Associated Facilities" means any equipment that facilitates transmission for a wireless antenna, including, but not limited to coaxial or fiber-optic cable, strand-mounted equipment and regular and backup power supply and other supporting devices installed above the ground, but does not include a pole or structure on which the Communication Antenna Facilities are located.

~~C.~~D. "Carrier" means a person or entity authorized by the Federal Communication Commission and any other regulatory agency to operate a telecommunication system ~~made up of large, complex configurations of hardware, interconnected to provide communications services to people spread over large geographic areas~~to provide telecommunications services.

~~D~~E. "City-owned Infrastructure" means street light poles, traffic signal devices and similar infrastructure owned by the City and located in the public Right-of-Way.

~~E~~F. "Collocate" or "Collocation" means ~~the mounting~~installing or ~~installation of~~maintaining multiple Communication Antenna Facilities ~~for multiple~~belonging to more than one Provider ~~use~~ on ~~an existing tower, pole, building or~~a single support structure.

~~F~~G. "Commissioner" shall mean Commissioner of the Department of Streets or his or her designee.

~~G~~H. "Communication Antenna Facilities" or "Facilities" means equipment necessary or incidental to the distribution of and use of telecommunications services including, but not limited to, antennas, small cell nodes, distributed antenna systems (DAS) and associated facilities ~~deployed in the public Right-of-Way~~ for "personal wireless services," as that term is defined in 47 U.S.C. § ~~322~~332(c)(7)(C), and "commercial mobile services," as that term is defined in 47 U.S.C. § 332(d). ~~Associated facilities include any equipment that facilitates transmission for the wireless antenna, including, but not limited to coaxial or fiber-optic cable, and regular and backup power supply and other supporting devices installed above the ground, but does not include a pole or structure on which the~~

I. "Communication Antenna Facilities ~~are located.~~

~~H. "Communication Antenna Facilities public~~Public Right-of-Way Use Permit" ("CAP") means a permit issued by the Department authorizing Provider to occupy a discreet location of the public Right-of-Way to maintain, install, remove or modify Communication Antennas Facilities.

~~I~~J. "Department" means the City of Philadelphia's Department of Streets.

~~J~~K. "Existing Facilities" means Facilities located in the public Right-of-Way and authorized by a permit issued by the City ~~at the time of~~prior to the effective date of these Regulations.

~~K~~L. "Guaranteed Pavement Information System" ("GPIS") means the online permitting system developed for and used by the Department in connection with the Department's street opening permit process.

~~L~~M. "Historic building" has the meaning as defined in the Zoning Code, subsection 14-203(147) of The Philadelphia Code.

~~M~~N. "Master License Agreement" means a license agreement entered into by the City and a Provider setting forth the particular terms and provisions under which the City has granted a Provider the right to make use of City-owned Infrastructure in the public Right-of-Way for installation of Communication Antenna Facilities.

~~N~~O. "Modification" means any addition to, partial removal of, or alteration of any kind to Communication Antenna Facilities, including routine maintenance or alteration of appearance.

~~O~~P. "PECO" means the electricity delivery company known as PECO Energy Company, an Exelon Corporation or any successor electricity delivery company.

~~P~~Q. "Permitted Location" means the portions of the public Right-of-Way in which Provider has received the Department's approval to construct and install Communication Antenna Facilities

pursuant to this Regulation and for which a CAP has been obtained from the Department.

~~Q~~R. "Provider" means a corporation, company, association, firm, partnership, person or entity that ~~deploys, installs~~owns, operates or ~~maintains Communication Antenna Facilities,~~manages any facilities used to provide telecommunications service for ~~its own use as a Carrier~~hire, sale, or ~~to use as a lessor of space or access~~resale to ~~a Carrier.~~the general public. "Provider" includes Affiliate(s) and/or the legal successor(s) to any such corporation, company, association, firm, partnership, person or entity.

~~R~~S. "Public Right-of-Way" or "public ROW" means the Right-of-Way as defined in Chapter 11-700 of The Philadelphia Code.

~~S~~T. "Routine Maintenance" means an in-kind Modification of a component of Communication Antenna Facilities or other similar de minimis changes.

~~T~~U. "Street Occupancy Permit" means a permit required under The Philadelphia Code and/or Department Regulations and issued by the Department authorizing the temporary (partial or full) closure of the public ROW, including the roadway and/or footway, for the temporary placement of equipment necessary to perform work.

~~U~~V. "Street Opening Permit" means the permit required under the Philadelphia Code and/or Department Regulations and issued by the Department to authorize a party to open the street or excavate within the public ROW.

~~V~~W. "Telecommunications service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For the purpose of this chapter, telecommunications service excludes over-the-air transmission of broadcast television or broadcast radio signals.

X. "Utility Pole" means a pole or vertical structure owned by PECO or another utility company that is located in the public ROW pursuant to State law authorization or City franchise agreement to support electric utility or wireline Communication Antenna Facilities. Utility Poles as defined herein shall not be considered "towers" or "tower structures" as defined in Section 14-601(4)(o)(.2) of the City Code.

Section 3. Communication Antenna Facilities Public Right-of-Way Permit.

No Provider or other person shall maintain, install, modify, replace or remove any Communication

Antenna Facilities on any pole or other structure located in the public ROW without a CAP.

Section 4. Application for Communication Antenna Facilities Public ROW Permit (CAP)

A. An Application for a CAP shall be filed with the Department using the City's on-line portal. A separate Application must be filed for each requested location.

B. Applications with respect to all Communication Antenna Facilities, whether existing, new, modified or replaced, shall include:

1. The name of the applicant, including all Affiliates of applicant;
2. Applicant contact information including address, telephone number and email address;
3. A listing of all ~~of the~~ Provider's Communication Antenna Facilities (existing & proposed~~)~~ ~~installed for Provider's sole use and for shared use. For Facilities installed for shared use, indicate the number of Carriers that use each Facility;~~);
4. Identification of the pole location using the City's map and identification system in the on-line system, which shall include identification of whether the pole is City-owned or utility-owned; and
5. Information regarding whether the applicant would be willing to ~~collocate~~Collocate.

C. An Application in connection with Existing Facilities shall be submitted on the form attached to these Regulations as Exhibit "B," which form may be changed from time to time, and shall in addition to the information requested on the form also include:

1. Approval documentation from the Department for location of the Existing Facilities in the public ROW;
2. Documentation of permission from the pole owner for installation and maintenance of the Existing Facilities;
3. As-built engineering plans for the Existing Facilities;
4. Photos of Existing Facilities as attached to the Utility Pole or City-owned Infrastructure;
5. Proof of ~~Security and~~ Insurance, as required pursuant to these Regulations; and
6. Agreement to comply with the terms of these Regulations.

D. An Application to install Facilities in a new location, to modify Existing Facilities (except as provided in subsection E. below) or to replace or remove Facilities shall be submitted on the form attached to these Regulations as Exhibit "A," which form may be changed from time to time, and shall in addition to the information requested on the form also include:

1. Information to establish that Provider has all other governmental approvals and permits necessary to construct and operate the Communication Antenna Facilities;
2. Proof of ~~Security and~~ Insurance, as required pursuant to these Regulations;
3. List components of the Communication Antenna Facilities (in tabular format). A sample form is attached as Exhibit "C" to these Regulations;
4. Map showing the proposed location of the Facilities with identification of any park, school or Historic building within 300 feet of the proposed location;
5. Representative drawings and pictures of the Communication Antenna Facilities as they will look when installed, including the immediate surrounding area. Design drawings shall also include plans for the design and concealment of Communication Antenna Facilities, and portions thereof, if applicable;
6. Engineering and construction plans, design drawings and photos of all Communication Antenna Facilities;
7. Proposal for collocation, if collocation is requested;
8. Identification of proposed location of connection to electrical supply or of any fiber connection required, including the identification of any planned interconnection with the Facilities of any other Providers;
9. Written confirmation of agreement between Provider and utility owner that Provider has authority to attach to Utility Pole;
10. RF Emissions Report and Noise Report confirming that all Communication Antenna Facilities, and associated equipment, meet all applicable legal requirements;
11. Structural calculations, signed by a Professional Engineer, licensed in the Commonwealth of Pennsylvania, showing that the structure can safely tolerate the weight loads of proposed Communication Antenna Facilities;
12. ~~Identification of any agreement between a Carrier and the Provider for the Carrier's use of Provider's Communication Antenna Facilities, if applicable; and~~
~~13~~12. Agreement to comply with the terms of these Regulations.

E. An Application regarding a Modification that involves only Routine Maintenance or a modification of appearance shall include the information required under subsection B, paragraphs 1, 2 and 4 and information identifying the Modification to be made. A new design drawing shall be submitted if changes are made that are not reflected on the originally submitted drawing.

~~F. Beginning ninety (90) days after the effective date of these Regulations, no more than fifteen (15) Applications of a particular applicant will be reviewed by the Department within a thirty (30) day period.~~

Section 5. Completeness Review

A. The Department shall review an application for completeness and will notify the Provider in writing if additional or missing information is required. The notice shall identify any information that must be submitted to the Department to make the Application complete.

B. Upon applicant's subsequent submission, the Department shall notify the applicant if the Application remains incomplete and the Department shall identify any information that must be submitted to make the Application complete.

C. If missing or additional information is not submitted to the Department within thirty (30) days of a written notice requesting additional information, the Department shall provide applicant with written notice that its Application has been deemed withdrawn.

D. The Department will provide applicant with written notice of a completed Application and will invoice applicant the Application Review Fee, in accordance with Section 8. Except as provided with respect to Applications regarding Existing Facilities, full payment of the Application Review Fee is required before the Department will proceed with its determination regarding issuance of the CAP.

Section 6. Issuance/Denial of CAP

A. The Department, shall issue a written determination granting or denying the application. If the application is denied, the written determination shall include the reason(s) for denial.

B. Upon determination that an application for Existing Facilities is complete, the Department shall grant the CAP for up to such time period as the applicant has demonstrated authorization to occupy the pole, but in no event for longer than 10 years. Modification or removal of Existing Facilities requires filing a new Application for a CAP.

C. The decision to grant or deny a CAP regarding new Facilities or a modification or replacement of Facilities, shall be based upon the following standards:

1. Whether the Provider has received all requisite licenses, certificates, and authorizations from the Federal Communications Commission, the Pennsylvania Public Utilities Commission and any other federal or state agency with jurisdiction over the activities proposed by the Provider;

2. Compliance with the City's Development Standards set forth in Section 9;

3. Whether the proposed Communication Antenna Facilities will unreasonably interfere with the public ROW, including whether the proposal negatively impacts the aesthetics of the public ROW to an unreasonable degree;

4. The damage or disruption, if any, to public or private facilities, improvements, service, travel or landscaping if the CAP is granted;

5. Whether the proposal presents an unreasonable risk to public health, safety or welfare;

6. Whether the Provider has permission from the owner of the Utility Pole;

7. Whether the Provider has an uncured default under: i) any prior CAP; ii) these Regulations~~,~~ or iii) a Master License Agreement between City and Provider; and

8. Whether the requested site has already been approved as a Permitted Location.

D. Unless otherwise specified in a CAP, a CAP shall provide an authorization for ~~ten (10~~twenty (20) years.

Section 7. Approval Rights

A. No authorization granted under these Regulations shall confer any exclusive right, privilege, license or permit to occupy or use the public ROW for delivery of personal wireless services or commercial mobile services or for any other purposes.

B. The City specifically reserves the right to install, and permit others to install Facilities in the public ROW. The City shall not be liable to Provider for any damage caused by ~~3rd Parties~~third parties permitted to install Facilities or otherwise authorized to utilize the public ROW.

C. No authorization granted under these Regulations shall convey any right, title or interest in the public ROW, but shall be deemed an authorization only to use and occupy the public ROW for the limited purposes and term stated in the authorization.

D. Authorization granted under these Regulations is subject to the existing uses, as well as, the prior and continuing right of the City to use the public ROW for municipal and public purposes.

Section 8. Fees

A. The fee for a CAP Application review is $400 per Application. The fee is waived for initial Applications in connection with Existing Facilities and Applications in connection with a Modification

involving solely Routine Maintenance or a modification of appearance.

B. The program fee for inspection of installations and administration of the Facilities program is $50 per year per CAP. No program fee shall be charged in connection a CAP during the first calendar year of its issuance.

C. Provider shall, within thirty (30) days after written demand, reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Provider's Communication Antenna Facilities.

Section 9. Development Standards

All new and modified Facilities shall be subject to the following standards:

A. The dimensions of the Facilities shall not exceed 6 feet in height, 2 feet in width, and 2 feet in depth, unless an exception is authorized by the Commissioner based on a determination that larger dimensions will not unreasonably interfere with the public ROW.

B. Facilities shall not exceed 24 cubic feet per facility. No more than 48 cubic feet of Facilities are permitted on a single pole, unless an exception is authorized by the Commissioner based on a determination that additional Facilities will not unreasonably interfere with the public ROW.

C. Facilities shall be installed ~~at least 20 feet~~ above the surface of the public ROW~~, unless an exception~~ at a minimum elevation which is ~~authorized by the Commissioner~~the lower of 20 feet or the lowest pole-supported strand based on a review by the Chief Streets Lighting Engineer, or his/her designee. An exception to this height requirement may be granted on a case-to-case basis based on the Commissioner's determination that a lower height will not unreasonably interfere with the public ROW. Installation or placement of Facilities, or any portion thereof, on the surface of the public ROW is prohibited.

D. Facilities shall not extend more than 3 feet as measured from the edge of the vertical structure of the Utility Pole.

E. Except for permitted ~~colocation~~Collocation, no Facilities shall be within 300 feet of other permitted Facilities, per block face, unless an exception is authorized by the Commissioner based on a determination that Facilities within such proximity will not unreasonably interfere with the public ROW.

F. No more than two CAPs shall be granted at an intersection of streets unless an exception is authorized by the Commissioner based on a determination that more than two sets of Facilities at a particular intersection will not unreasonably interfere with the public ROW.

G. Installation of Communication Antenna Facilities within 300 feet of the boundary line of a City Park is prohibited unless approved, in writing, by the Department of Parks and Recreation, based on a determination that the installation will not negatively impact on Park use.

H. Installation of Communication Antenna Facilities on any part of a bridge, overpass, or tunnel within the city, or a structure located on a bridge, overpass or tunnel is prohibited.

I. Installation of Communication Antenna Facilities on a structure located in a street or portion of the public ROW that is 15 feet or less in width and that is adjacent to primarily residential properties is prohibited, unless, an exception is authorized by the Commissioner based on a determination that such a location will not unreasonably interfere with the public ROW.

J. Facilities shall be enclosed in an equipment box or other concealing unit that may include ventilation openings.

K. Facilities shall, at a minimum, display the following in an area on the equipment box or other concealing unit in a manner visible to the public:

i. Company Name
ii. Company Node ID
iii. Location
iv. Streets Department CAP Authorization Number
v. Streets Department CAP Date
vi. Emergency telephone contact information

L. Displays or signs shall not exceed 4" x 6", unless otherwise required by law or the Department.

M. Placement of advertising on Facilities or in the public ROW is prohibited.

N. Facilities must be connected to the electrical grid and may not be powered by a generator for primary power or for back-up power~~.~~ except as deemed necessary by the Commissioner to maintain public safety.

O. Cables and wires must be located inside the interior of all non-wooden poles. External cables and wires for facilities on wooden poles shall be sheathed or enclosed in a conduit so that wires are protected and are visually minimized.

P. Installation of aerial wires is permitted only for connecting the Facilities to wires or junction boxes on the Utility Pole to which the Facilities are attached.

Q. Underground junction boxes in the public ROW shall be similar in size to the City's "standard"

junction box. A junction box must be rated "tier 22", or approved equal, to sustain live loads without damage. The junction box cover must be labeled with the company name outside. All interior wires must be labeled, kept in good condition and replaced, if faded or missing. Junction box dimensions and placement locations are subject to Department approval.

R. Facilities shall comply with the federal radio frequency (RF) emissions standards set forth in Federal Communications Commission OET Bulletin 65 (as may be amended).

Section 10. Compliance with Other Laws

Compliance with all applicable City, State, and federal statutes and regulations is mandatory while any CAP is in effect.

Section 11. Master License Agreement.

No authorization to attach to City-owned Infrastructure shall be deemed to have been granted upon issuance of a CAP unless the Provider and the City have executed a Master License Agreement.

Section 12. Inventory and Accounting

A. ~~Providers~~Each Provider shall maintain a list of the locations of its Communication Antenna Facilities located in the public ROW while any CAP is in effect and shall provide the Department with an accounting of its current inventory each year on the first business day in January.

~~B. Providers shall provide the Department with an updated list of Carriers using Provider's Facilities in the public ROW for each location every ninety (90) days while any CAP is in effect.~~

Section 13. Renewal of CAP

A Provider that desires to renew an expiring CAP shall, not more than one hundred eighty (180) days nor less than ninety (90) days before expiration of the CAP, file an application with the Department pursuant to the requirements of these Regulations.

Section 14. ~~Security~~Provider Assurance

~~A. "Security" means either a letter of credit, or a bank or cashier's check made payable to the City, or other form of security acceptable to the City for the purpose of protecting the City from the costs and expenses associated with Provider's failure to comply with its obligations in connection with~~

~~a CAP, including but not limited to: (a) the City's restoration of the public ROW based on disturbance caused by the Provider; (b) the City's removal of any of Provider's Communication Antenna Facilities that are abandoned or not properly maintained or pursuant to an Order to remove; or (c) the City's remediation of environmental or other waste caused by the Provider.~~

~~B. Unless otherwise provided in an agreement with the City, the amount of the Security shall be $1,500 per CAP, up to a maximum of $200,000 per Provider.~~

~~C. In the event the party issuing the Security cancels or decides not to renew or extend the Security, Provider shall obtain replacement Security within thirty (30) days of the date the Security has been cancelled or non-renewed. If Provider fails to provide the replacement Security within the thirty-day period, the Department may suspend Provider from any further occupancy in the public ROW.~~

~~D. Department shall notify Provider in writing as a precondition to drawing on, seeking payment under, or executing against the Security. In the event that the City draws upon the Security, Provider must replenish the amount of the Security within thirty (30) days of notice of withdrawal.~~

~~E. Absent City action against the Security, or a determination by the City that such action is necessary, the City shall return the Security to Provider within sixty (60) days of the expiration of the associated CAP.~~

Provider must confirm, in writing, that the owner of the Utility Pole agrees to remove Provider's Facilities in the event Provider fails to remove its Facilities upon the City's determination of a violation under these Regulations and receipt of notice to remove.

Section 15. Street Occupancy and Opening Permits and Deadlines for Installation; Construction and Restoration Standards

A. Upon issuance of a CAP, the Provider may apply for a Street Occupancy Permit, for occupancy of the public ROW for installation, modification or removal of Facilities, or a Street Opening Permit, as may be required for associated electrical or fiber underground conduit, as may be necessary for installation of the Facilities.

B. Any required Street Occupancy Permit or Street Opening Permit shall be applied for within ninety (90) days after the Department issues a CAP.

C. Installation of authorized Communication Antenna Facilities shall be completed within one-hundred and eighty (180) days from the date of issuance of the CAP, unless an extension is granted by

the Department based on a showing of good cause.

D. The Department may rescind a CAP based on failure to meet a deadline set forth in this Section.

E. Communication Antenna Facilities shall be installed in conformance with plans submitted in connection with issuance of the CAP. Installation, maintenance, repair and removal of underground components of Communication Antenna Facilities shall be accomplished without cost or expense to the City. If components include underground communication cable, the installation, repair, removal shall be in accordance with all applicable requirements of the Philadelphia Code and relevant City Regulations. All work in the public ROW shall be accomplished in such manner as not to endanger persons or property or unreasonably obstruct access to, travel upon or other use of the public ROW.

F. Prior to beginning any work in the public ROW, Provider shall comply with the provisions of the Pennsylvania One Call utility locator service at least forty-eight (48) hours in advance. Provider has the responsibility to protect and support the various utility facilities of other entities during Provider's work.

G. Provider shall, at its own cost, after the installation, removal or relocation of its Communication Antenna Facilities, repair and return the public ROW and any impacted private property to a safe and no worse condition than at the start of work.

H. Provider shall be responsible for any damage to public ROW, existing utilities, curbs and sidewalks due to its installation, maintenance, repair or removal of its Communication Antenna Facilities and shall repair, replace and restore, in-kind, any such damage at its sole cost and expense, in accordance with all applicable City requirements.

Section 16. Removal or Power Down of Communication Antenna Facilities

A. Department may require Provider, at Provider's sole expense, to modify, remove or power down permitted Facilities: (a) to accommodate a governmental or municipal project; (b) for the construction, repair, relocation, or maintenance of a public improvement in, on, under or about the public ROW; (c) to protect the public health and safety or otherwise serve the public interest; or (d) because of Interference, as set forth in Section 19.

B. The Department will provide written notice to Provider as soon as reasonably practical, of the requirement to remove, modify or power down, which requirement shall be completed within such time as the Department may reasonably direct.

C. If, after delivery of written notice and a reasonable opportunity to respond, Provider fails or refuses to comply with a written notice to follow such a requirement, the Department shall have the authority to remove, modify or power down the Facilities at the sole cost of Provider. Provider shall be responsible for, and liable to, the City for any and all costs associated with such action.

D. If Provider intends to remove or relocate any of its Communication Antenna Facilities in the public ROW, it shall give the Department not less than ten (10) days written notice of its intent to do so. Before proceeding with removal or relocation work, Provider shall obtain such additional permits as may be required by the Department and adhere to all applicable Department Regulations.

Section 17. Non-Use of Communication Antenna Facilities

A. No later than thirty (30) days prior to the proposed termination of use of any permitted Communication Antenna Facilities, Provider shall submit to the Department written notification identifying the Communication Antenna Facilities and the date of the proposed termination of use.

B. Provider shall remain responsible for Facilities which Provider stops utilizing until such time as the Facilities are removed and the public ROW repaired under the requirements of these Regulations.

C. The City shall not be deemed the owner or responsible party for any property owned, or used and/or abandoned in place by Provider.

D. Provider's continuous abandonment of permitted Communication Antenna Facilities within the public ROW, and failure to respond to Department's written notice to remove or modify the same will result in removal, at Provider's sole cost, of such Communication Antenna Facilities.

Section 18. Requirements to Maintain Permits

Failure to comply with any of the following requirements may result in revocation of a CAP:

A. Failure to pay any required fee and failure to cure such arrearage within thirty (30) days after receiving written notice from City;

B. Failure to maintain ~~Security or~~ Insurance as required in these Regulations;

C. Failure to maintain any required licenses, permits, or other governmental approvals pertaining to the installation or use of Communication Antenna Facilities;

D. Failure to comply with any other requirements of these Regulations, including the "Development Standards" of Section 9.

E. Failure to provide Communication Antenna Facilities maintenance assurances if Provider becomes the subject of a voluntary or involuntary bankruptcy, receivership, insolvency or similar proceeding or an assignment is made of any of Provider's property for the benefit of creditors; or

F. Ongoing harmful interference, as set forth in Section 19 below.

Section 19. Interference

A. Provider's Communication Antenna Facilities shall not cause harmful interference to the City's radio frequency, wireless network, or communication operations ("City Operations) or Communication Antenna Facilities used by other Providers with a CAP ("Protected Equipment").

B. In the event of interference with the City's Operations, Provider shall take steps necessary to correct and eliminate such interference within 24 hours of receipt of notice from the Department, or such shorter time as may be required in notice from the City in the event of a threat to public safety. In the event of interference with Protected Equipment, Provide shall take steps necessary to correct and eliminate such interference within 24 hours of receipt of notice from the City. If the interference is not resolved within the required time frame, Provider will power down the Communication Antenna Facilities causing interference, except for intermittent testing coordinated with the Department as part of the remedial process, until the interference is remedied.

C. Upon Department's request, Provider shall test the Communication Antenna Facilities' radio frequency and other functions to confirm it does not interfere with the City's current or future operations or Protected Equipment.

Section 20. No Liability

A. The City shall not be liable to any Provider for any damage caused by other Providers with Communication Antenna Facilities, whether sharing the same structure or otherwise.

B. The City shall not be liable to any Provider by reason of inconvenience, annoyance or injury to any Communication Antenna Facilities, or activities conducted by Provider therefrom, arising from the necessity of repairing any portion of the public ROW, or from the making of any necessary alteration or improvements, in, or to, any portion of the public ROW, or in, or to, City's fixtures, appurtenances or equipment.

Section 21. Graffiti Abatement

Provider shall remove all graffiti on any of its permitted Communication Antenna Facilities as soon as practical, but not later than fourteen (14) days from the date Provider receives notice thereof. The foregoing shall not relieve the Provider from complying with any City graffiti or visual blight ordinance or regulation.

Section 22. Tree Maintenance

Prior to trimming trees hanging over Communication Antenna Facilities, written permission from the Department and the Department of Parks and Recreation is required. When directed by the Department, tree maintenance shall occur under the supervision and direction of the Department of Parks and Recreation. The City shall not be liable for any damages, injuries, or claims arising from Provider's actions pursuant to this Section.

Section 23. Release and Indemnification

A. As a condition of its CAP, Provider agrees to and shall release the City, its agents, employees, officers, and legal representatives (collectively the "City") from all liability for injury, death, damage, or loss to persons or property sustained in connection with or incidental to performance under any Department -issued permit related to these Regulations, even if the injury, death, damage, or loss is caused by the City's concurrent negligence. Neither Provider nor City will be liable to the other for any indirect, incidental, special, consequential, or punitive damages, or lost profits for any claim arising out any Department-issued permit.

B. Provider agrees to and shall defend, indemnify, and hold harmless (collectively "indemnify" and "indemnification") the City, its agents, employees, officers, and legal representatives (collectively the "City Parties") for all third-party claims, suits, damages, liabilities, fines, and expenses including, without limitation, reasonable attorneys' fees, court costs, and all other defense costs (collectively "Losses") for injury, death, damage, or loss to persons or property sustained in connection with Provider's use or operation of any Communication Antenna Facilities, Utility Pole or City-owned Infrastructure including, without limitation those caused by Provider or its agents', employees', officers', directors', consultants' or subcontractors' actual or alleged negligence or intentional acts or omissions.

C. Provider's indemnification obligations under each CAP will survive for four (4) years after the CAP expires or terminates.

Section 24. Insurance Requirements

A. ~~A.~~ (i) Provider shall, at its sole cost and expense, procure and maintain and shall ensure any contractor it engages to perform any work, installation and/or maintenance required under these Regulations to procure and maintain, ~~the types and minimum~~substantially the same insurance with substantially the same limits as that required of Provider, the limits of coverage specified below. All insurance shall be procured from reputable insurers who are acceptable to the City of Philadelphia, - and authorized or permitted to do business in the Commonwealth of Pennsylvania. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis. The City of

Philadelphia, its officers, employees and agents, shall be ~~named~~included as an additional insured as their interests may appear under these Regulations on the Commercial General Liability~~,~~ and Automobile Liability ~~and Umbrella Liability~~ insurance policies.

(ii) Notwithstanding the forgoing, Provider may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Regulation. In the event Provider elects to self-insure its obligation under these Regulations to include City as an additional insured, the following conditions apply: (i) City shall promptly provide Provider with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide Provider with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Provider; and (iii) City shall fully cooperate with Provider in the defense of the claim, demand, lawsuit, or the like.

1. Workers' Compensation and Employers' Liability

   (a) Workers Compensation – Statutory Limits.

   (b) Employers Liability:

   $100,000 Each Accident - Bodily Injury by Accident;

   $100,000 Each Employee - Bodily Injury by Disease;

   $500,000 Policy limit - Bodily Injury by Disease;

   (c) Other states' insurance including Pennsylvania.

2. Commercial General Liability Insurance

   (a) Limit of Liability: $~~1~~5,000,000 per occurrence for bodily injury (including death) and property damage liability; $~~1~~2,000,000 personal and advertising injury; $2,000,000 general aggregate for products ~~and~~/ completed operations. The City may require higher limits of liability, if in the City's sole discretion, the potential risks so warrants.

   (b) Coverage: Including but not limited to premises, operations, personal injury liability (employee exclusion deleted); employees as additional insureds, cross liability, ~~broad form~~ property damage ~~(including completed operations and loss of use)~~ liability, products and completed operations; explosion, collapse and underground damage

(XCU), independent contractors, and blanket contractual liability (including liability for Employee Injury assumed under a Contract) provided by the Standard ISO Policy Form ~~CG 00 01~~or its equivalent.

3. Commercial Automobile Liability Insurance

(a) Limit of Liability: $~~1~~2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability;

(b) Coverage: Owned, hired and non-owned vehicles (Any Auto).

~~4. Umbrella Liability Insurance~~

~~(a) Limits of Liability totaling $5,000,000 per occurrence when combined with insurance required under (1), (2) and (3) above.~~

B. Deductibles: Provider shall be responsible for and pay any claims or losses to the extent of any deductible amounts and waives any claim it may have for the same against the City, its officers, employees or agents.

C. Waiver of Recovery/Subrogation: Provider waives any claim or right of subrogation to recover against the City, its officers, employees or agents and each of Provider's insurance policies must state that the issuer waives any claim or right of subrogation to recover against the City, its officers, employees or agents.

D. Primary Insurance: Each policy, except Workers Compensation, shall be primary and non-contributory in regards to any insurance or program of self-insurance maintained by the City.

E. Liability for Premium: Provider shall pay all insurance premiums, and the City shall not be obligated to pay any premiums.

F. Certificates of Insurance delivered to the City of Philadelphia, evidencing the required coverage shall be submitted to:

City of Philadelphia
Risk Manager
One Parkway
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

G. The required ~~Certificates~~certificates of Insurance must be ~~submitted~~provided to the ~~City's Risk~~

~~Manager at least (~~City ~~10) ten~~ days prior to ~~the~~ start of ~~Work~~work or ~~upon execution~~by the effective date of ~~this Agreement, whichever is first.~~ these Regulations. Provider shall ~~cause its insurance company to~~ submit to the City of Philadelphia's Risk Manager, endorsements evidencing the coverage required in this ~~section~~Section within thirty (30) days from the date of submitting the Certificates of Insurance. ~~Upon written request by~~ The City reserves the ~~City,~~right to require Provider ~~shall, within ten (10) days,~~to furnish ~~certified copies of~~written responses from its authorized insurance carrier representatives to all inquiries made pertaining to the ~~original policies of all~~ insurance required under ~~this Agreement.~~these Regulations at any time upon ten (10) days written notice to Provider.

H. The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in ~~this Agreement~~these Regulations by the Provider to the City or to limit the Provider's liability under ~~this Agreement~~these Regulations to the limits of the policy(ies) of insurance required to be maintained by Provider under ~~this Agreement~~these Regulations.

I. All insurance policies shall provide for at least thirty (30) days prior written notice to be given to the City ~~in the event the coverage is materially changed, canceled or not renewed.~~of any cancellation or non-renewal of any required insurance that is not replaced. At least ten (10) business days prior to the expiration of each policy, Provider shall deliver to the City, a certificate of insurance evidencing the replacement policy(ies) to become effective immediately upon the termination of the previous policy(ies). Provider shall, in no event, permit any lapse in the insurance coverage required under ~~this Agreement~~these Regulations, and replacement coverage meeting the requirements of this Section shall be in effect prior to the expiration of the policy period.

J. In the event the Provider fails to procure and/or cause such insurance to be maintained, the City shall not be limited in the proof of any damages which the City may claim against Provider or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but the City shall also be entitled to recover damages for such breach, the uninsured amount of any loss, damages and expenses of suit and costs, including without limitation, reasonable collection fees, suffered or incurred during any period when Provider shall have failed or neglected to provide the insurance as required herein.

Section 25. Effective Date

These Regulations shall be effective immediately.

EXHIBIT A

Application for Communication Antenna Facilities Permit (CAP)

Application for Communication Antenna Facilities Permit & License (CAP+License)

1/9/18 version ~ Subject to change

Applications for Communication Antenna Facilities ("Facilities") in the public Right-of-Way.

Please Note: Submittal of false information will result rejection of the Application and/or rescission of associated CAP / CAP+License.

Please read the following information before proceeding.

• Field Marks with * are required
• An Application submitted by anyone other than the Facilities owner must be accompanied by a certification verifying applicant is an authorized representative of the Facilities owner.
• The specified number of sheets must be accurate or the Application may not be accepted.

(A) Application

* Request location for (Please check all the boxes that apply for the location):
□ Attachment to Utility Pole
□ Attachment to City-owned Infrastructure
□ Upgrade of Existing Facilities
Number of Sheets

(B) Applicant Information

* Applicant Type	□ Facility / Company personnel	□ Consultant / Authorized Representative
*Applicant Name		
*Mailing Address		
City	State	Zip
* Phone Number	*Email Address	
Engineer of Record (If applicable)		
*Phone Number	*Email Address	
Fax Number	*Emergency Contact Number	

(C) Facilities Owner Information

* Type:	□ Individual □ Corporation	□ Applicant is Owner
*Entity Name		
Mailing Address		
City	State	Zip
*Phone Number	*Email Address	
Fax Number	* Emergency Contact Number	

(D) Requested Location

*GIS Coordinates	*City Pole ID #	
*Street Number (provide closest number)		
Address		Zip Code
*Is requested location within 300 feet of a Historic building?	□ Yes	□ No
*Is requested location within 300 feet of another pole?	□ Yes	□ No
*Is requested location within 300 feet of a school?	□ Yes	□ No
*Is requested location within 300 feet of a hospital / medical facility?	□ Yes	□ No
*Is requested location within 300 feet of an Existing Facility?	□ Yes	□ No

(E) Pole Description

* Pole type	*Name of pole owner	
*Pole dimension (feet)	Height	Circumference

(F) Existing Facilities Attached to the Pole

* Facility Type	□ Carrier	□ Neutral-Host Provider (if selected, complete Section H)	
*Number of Facilities attached to the Pole:			
Dimensions of Proposed Facilities (Antenna)	Height	Width	Depth
Dimensions of Proposed Facilities (Enclosure Box 1)	Height	Width	Depth

Dimensions of Proposed Facilities (Enclosure Box 2)	Height	Width	Depth
Backhaul Type and Provider			
FCC License # (if any)			

(G) Power & Communication Connection(s)

Power connection		□ Underground	□ Aerial
Power connection type			
Communication connection		□ Underground	□ Aerial
Communication connection type(s)			
Proposing New Junction box(s)?		□ Yes	□ No
Number of Junction box(s)			
Dimensions of Junction box # 1	Height	Width	Depth
Dimensions of Junction box # 2	Height	Width	Depth

~~**(H) Sublease (Must complete if "Neutral-Host Provider" per Section "F")**~~

~~Number of Sublease(s)~~	
~~Names of the Carrier # 1~~	~~Date of the Sublease~~
~~Names of the Carrier # 2~~	~~Date of the Sublease~~
~~Names of the Carrier # 3~~	~~Date of the Sublease~~
~~Names of the Carrier # 4~~	~~Date of the Sublease~~

Permission

Permission for use of Utility Poles
□ If applicant is installing, modifying, or removing Facilities from a Utility Pole, applicant certifies that s/he has permission from the Utility Pole owner. A copy of the agreement or permission from the Utility Pole owner has been provided and will be attached to this Application.
License Agreement for use of City-owned Infrastructure
□ Applicant certifies that s/he has permission from the City to attach to City-owned Infrastructure under the Communication Antenna Facilities Master License Agreement ("Agreement") for the purposes specified therein.

EXHIBIT B

Application for Existing Communication Antenna Facilities Permit (CAP)
Application for Existing Communication Antenna Facilities Permit & License (CAP+License)

1/9/18 version ~ Subject to change

Applications regarding existing Communication Antenna Facilities ("Existing Facilities") in the public Right-of-Way

Please Note: Submittal of false information will result in rejection of the Application and/or rescission of associated CAP/CAP+License. Please read the following information before proceeding.

• Field Marks with * are required
• An Application submitted by anyone other than the Facilities owner must be accompanied by a certification verifying applicant is an authorized representative of the Facilities owner. The specified number of sheets must be accurate or the Application may not be accepted.

(A) Application

* Existing Facilities attached to (Please check all the boxes that apply for the location):	
□ Utility Pole	□ City-owned Infrastructure

(B) Applicant Information

* Applicant Type	□ Facility / Company personnel	□ Consultant / Authorized Representative
*Applicant Name		
*Mailing Address		
City	State	Zip
* Phone Number	*Email Address	
*Emergency Contact Person(ECP) (If different than the applicant)		
*ECP Phone Number	*ECP Email Address	

(C) Facilities Owner Information

* Type:	□ Individual	□ Corporation	□ Applicant is the owner
*Entity Name			
Mailing Address			
City	State		Zip
*Phone Number	*Email Address		
Fax Number	* Emergency Contact Number		

(D) Pole Location

*GIS /GPS Coordinates: (x):	(y):	
*City Pole ID #	*Company's Pole/Node ID #	
*Street Number (provide closest house number / closest Intersection)		
Address		Zip Code

(E) Pole Description

* Pole type	*Name of pole owner	
*Pole dimension (feet)	Height	Circumference

(F) Existing Facilities Attached to the Pole

* Facility Type	□ Carrier	□ Neutral-Host Provider (if selected, complete Section H)	
*Number of Facilities attached to the Pole:			
Dimensions of Existing Facilities # 1	Height	Width	Depth
Dimensions of Existing Facilities # 2	Height	Width	Depth
Dimensions of Existing Facilities # 3	Height	Width	Depth
Backhaul Type and Provider			
FCC License # (if any)			

(G) Power & Communication Connection(s)

Power connection			□ Underground	□ Aerial
Power connection type				
Communication connection		□ Underground	□ Aerial	
Communication connection type(s)				
Existing junction box(s)?		□ Yes	□ No	
Number of junction box(s)				
Dimensions of junction box # 1	Height	Width	Depth	
Dimensions of junction box # 2	Height	Width	Depth	

~~(H) Sublease~~ ~~(Must complete if "Neutral-Host Provider" per Section "F")~~

~~Number of Sublease(s)~~	
~~Names of the Carrier # 1~~	~~Date of the Sublease~~
~~Names of the Carrier # 2~~	~~Date of the Sublease~~
~~Names of the Carrier # 3~~	~~Date of the Sublease~~
~~Names of the Carrier # 4~~	~~Date of the Sublease~~

*Permission for Existing Facilities (Applicant must select at least one (1) of the following)

Authorization from the Utility Pole owner for use of Utility Pole(s) located in the public ROW
□ Applicant certifies that s/he has proof of Utility Pole owner's permission for placement of Existing Facilities on the Utility Pole, as specified. A copy of the agreement or permission from the Utility Pole owner has been provided and will be attached to this Application.
Authorization from the City for Existing Facilities located in the public ROW
□ Applicant certifies that s/he has proof of City's permission for placement of Existing Facilities on City-owned Infrastructure, as specified. A copy of the agreement or permission from the City has been provided and will be attached to this Application.

EXHIBIT C

Communication Antenna Facilities and Equipment/Components List

1/9/18 version ~ Subject to change

The following is a list of components for the location specified in this Application:

Component Type	Model / Identification Name	Notes

EXHIBIT B

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA AMENDING THE TEXT OF CHAPTER 14.44 OF THE PETALUMA MUNICIPAL CODE TO ADD A DEFINITION FOR SMALL CELL FACILITIES AND IMPLEMENTING ZONING ORDINANCE, ORDINANCE 2300 N.C.S., CHAPTER 7 SECTION 7.090 – TELECOMMUNICATIONS FACILITIES TO ADD A DEFINITION AND TABLE COLUMN FOR SMALL CELL FACILITIES

WHEREAS, California Public Utilities Code Section 7901.1 gives the City the right to control, in a reasonable manner, the time, place, and manner, when applied equally, where telecommunications facilities can be located; and

WHEREAS, Petaluma Municipal Code Chapter 14.44 and the Implementing Zoning Ordinance Chapter 7.090 both govern telecommunications facilities within Petaluma; and

WHEREAS, as telecommunications facilities are increasingly used, there is a request for the addition of Small Cell facilities within Petaluma from existing telecommunications companies to offload data from existing telecommunications infrastructure; and

WHEREAS, the City, at this time, and within its absolute right as owner of its personal property, declines to add small cell telecommunications facilities to existing City infrastructure; and

WHEREAS, by precedent set in a Public Utilities Commission case (*GTE Mobilnet of Cal. Ltd. P'ship v. City & Cty. of San Francisco*, 440 F. Supp. 2d 1097 (N.D. Cal. 2006)), Small Cell Facilities may be located on existing privately-owned infrastructure in the right-of-way; and

WHEREAS, under California Public Utilities Code Section 7901, the City may not ban such small cell facilities; and

WHEREAS, in order to protect the general welfare of citizens of Petaluma, updates will be made to the Petaluma Municipal Code and Implementing Zoning Ordinance to limit the siting of small cell facilities within the scope of existing laws; and

WHEREAS, Section 25.010 of the City of Petaluma Implementing Zoning Ordinance (IZO) provides in pertinent part that no amendment that regulates matters listed in Government Code Section 65850, which matters include the use of buildings and structures, shall be made to the IZO unless the Planning Commission and City Council find the amendment to be in conformity with the General Plan and consistent with the public necessity, convenience and general welfare in accordance with Section 25.050(B) of the IZO; and

WHEREAS, the City Council found that due to the negligible environmental impacts anticipated from enactment of the edits to Chapter 14.44 of the Petaluma Municipal Code Ordinance 2634 N.C.S. was exempt from CEQA pursuant to Sections 15061(b)(3), 15183 and 15301;

WHEREAS, the text amendments contained in Exhibit A to this resolution to modify the City's Municipal Code Chapter 14, Section 14.44 and Implementing Zoning Ordinance, Chapter 7, Section 7.090 – Telecommunications Facilities implements, consistent with applicable state laws, the precise requirements, including location, for Small Cell facilities; and

WHEREAS, on June 12, 2018, the Planning Commission held a duly noticed public hearing in accordance with Chapter 25 of the Implementing Zoning Ordinance to consider the amendments.

WHEREAS, after the conclusion of said public hearing, the Planning Commission adopted Resolution No. 2018-XX, recommending that the City Council adopt the amendments; and

WHEREAS, on XXXX XX, 2018, a public notice of the XXXX XX, 2018 public hearing before the City Council to consider the amendments was published in the Argus-Courier; and,

WHEREAS, on XXXX XX, 2018, the City Council of the City of Petaluma held a duly noticed public hearing to consider the amendments; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PETALUMA AS FOLLOWS:

Section 1. FINDINGS. The City Council of the City of Petaluma hereby finds:

1. In accordance with Sections 25.010 and 25.050(B) of the City's Implementing Zoning Ordinance, Ordinance no. 2300N.C.S., ("IZO"), the proposed amendments to the IZO in Chapter 7, Section 7.090 –Telecommunications Facilities contained in Exhibit A are in general conformity with the Petaluma General Plan 2025 in that these changes do not change the general character and impacts of current zoning regulations. In accordance with Section 25.050(B) of IZO, the proposed amendments are consistent with the public necessity, convenience and welfare in that they:

    a. Ensure Petaluma's land use and zoning regulations provide safe and appropriate locations where installation of Small Cell Facilities are appropriate;
    b. Comply with California Public Utilities Code sections 7901 and 7901.1 which regulate telecommunication facilities; and
    c. Provide for buffers to assure that Small Cell facilities are a safe distance from residential land uses.

2. The text amendments contained in Exhibit 1 to this ordinance, which exhibit is hereby made a part of this resolution for all purposes, are exempt from CEQA pursuant to Sections 15061(b)(3), 15183 and 15301of the CEQA Guidelines in that Small Cell facilities will be limited in a consistent manner and permitted in locations consistent with the Telecommunications chapter and state law without creating any additional impacts.

Section 2. Section 14.44 – Telecommunications Facility and Antenna Requirement of the

Petaluma Municipal Code is hereby amended to read as follows:

14.44.020 Definitions

S. "Telecommunication facility" means a facility that transmits and/or receives electromagnetic signals. It includes antennas, microwave dishes, horns, and other types of equipment for the transmission or receipt of such signals, telecommunication towers or similar structures supporting said equipment, equipment buildings, parking area, and other accessory development.

1. "Telecommunications facility - exempt" includes but is not limited to, the following unless located within a recognized Historic District:

   a. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying the residential parcel on which the radio or television antenna is located; with an antenna height not exceeding twenty-five feet;

   b. A ground or building mounted citizens band radio antenna including any mast, if the height (post and antenna) does not exceed thirty-five feet;

   c. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed thirty-five feet;

   d. A ground or building mounted receive-only radio or television satellite dish antenna, which does not exceed thirty-six inches in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel.

   e. All citizens band radio antenna or antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service which existed at the time of the adoption of this chapter (September, 1996).

   f. Mobile services providing public information coverage of news events of a temporary nature.

   g. Hand-held devices such as cell phones, business-band mobile radios, walkie-talkies, cordless telephones, garage door openers and similar devices as determined by the planning director.

   h. City government owned and operated receive and/or transmit telemetry station antennas for supervisory control and data acquisition (SCADA) systems for water, flood alert, traffic control devices and signals, storm water, pump stations and/or irrigation systems, with heights not exceeding thirty-five feet.

2. "Telecommunications facilities -major" are all telecommunication facilities not clearly set forth and included in the definition of exempt, minor or mini facilities.

3. "Telecommunication facility - mini" is an attached wireless communication facility consisting, but not limited to, the following unless located on a structure recognized as a historic landmark:

   a. A single ground or building mounted receive-only radio or television antenna including any mast, for the sole use of the tenant occupying the parcel on which the radio or television antenna is located; with an antenna height not exceeding fifty feet;

   b. A ground or building mounted citizens band radio antenna including any mast, if the height (tower, support structure, post and antenna) does not exceed seventy feet;

   c. A ground, building, or tower mounted antenna operated by a federally licensed amateur radio operator as part of the Amateur Radio Service, if the height (post and antenna) does not exceed seventy feet.

d. A ground or building mounted receive-only radio or television satellite dish antenna, with diameter exceeding thirty-six inches but less than eight feet in diameter, for the sole use of the resident occupying a residential parcel on which the satellite dish is located; provided the height of said dish does not exceed the height of the ridgeline of the primary structure on said parcel.

e. Exempt telecommunication facility located within a recognized historic district.

f. City owned and operated antennae used for emergency response services, public utilities, operations and maintenance if the height does not exceed seventy feet.

If a facility does not meet these criteria then it is considered either an "exempt", "minor" or "major" telecommunication facility.

4. "Telecommunication facility - minor" means any of the following:

a. Antenna which meet the definition of "mini" with the exception of the height limit.

b. Telecommunication facilities less than thirty-five feet in height and that adhere to Section 14.44.090 of Chapter 14.44 of the Petaluma Municipal Code.

c. A single ground or building mounted whip (omni) antenna without a reflector, less than four inches in diameter whose total height does not exceed thirty-five feet; including any mast to which it is attached, located on commercial and/or industrial zoned property.

d. A ground or building mounted panel antenna whose height is equal to or less than four feet and whose area is not more than four hundred eighty square inches in the aggregate (e.g., one foot diameter parabola or two feet by one and one-half foot panel) as viewed from any one point, located on commercial or industrial zoned property. The equipment cabinets shall be designed, placed and screened to be unobtrusive and effectively unnoticeable.

e. More than three antennas, satellite dishes (greater than three feet in diameter), panel antennas, or combination thereof, are proposed to be placed on the commercial or industrial parcel, including existing facilities.

f. Building mounted antennas which, in the opinion of the planning director, are unobtrusive or undetectable by way of design and/or placement on the building, regardless of number, when located on commercial or industrial zoned property.

g. Telecommunication facilities less than fifty feet in height, in compliance with the applicable sections of this chapter, located on a parcel owned by the city of Petaluma and utilized for public and/or quasi-public uses where it is found by the planning director to be compatible with the existing city uses of the property.

h. Telecommunication facilities, including multiple antennas, in compliance with the applicable sections of this chapter, located on an industrial parcel and utilized for the sole use and purpose of a research and development tenant of said parcel, where it is found by the planning director to be aesthetically compatible with the existing and surrounding structures.

i. Telecommunication facilities located on a structure recognized as a historic landmark.

If a facility does not meet these criteria then it is considered a "major" telecommunication facility.

5. "Telecommunication facility - co-located" means a telecommunication facility comprised of a single telecommunication tower or building supporting one or more antennas, dishes, or similar devices owned or used by more than one public or private entity.

6. "Telecommunication facility - commercial" means a telecommunication facility that is operated primarily for a business purpose or purposes.

7. "Telecommunication facility - multiple user" means a telecommunication facility comprised of multiple telecommunication towers or buildings supporting one or more antennas owned or used by more than one public or private entity, excluding research and development industries with antennas to serve internal uses only.

8. "Telecommunications facility - noncommercial" means a telecommunication facility that is operated solely for a non-business purpose.

9. "Telecommunications facility – small cell" means a telecommunications facility that is pole mounted to existing public utility infrastructure.

AND

14.44.095 Small Cell facilities—Basic Requirements.

Small Cell facilities as defined in Section 14.44.020 of this chapter may be installed, erected, maintained and/or operated in any commercial or industrial zoning district where such antennas are permitted under this title, upon the issuance of a minor conditional use permit, so long as all the following conditions are met:

A. The Small Cell antenna must connect to an already existing utility pole that can support its weight.

B. All new wires needed to service the Small Cell must be installed within the width of the existing utility pole so as to not exceed the diameter and height of the existing utility pole.

C. All ground-mounted equipment not to be installed inside the pole must be undergrounded, flush to the ground, within three (3) feet of the utility pole.

D. Each pole is to have its own, dedicated power source to be installed and metered separately.

E. Each Small Cell is to be no less than 1,500 feet away from the nearest Small Cell facility.

F. Aside from the transmitter/antenna itself, no additional equipment shall be visible.

G. No Small Cell shall be within 200 feet of any residence.

H. An encroachment permit must be obtained for any work in the right-of-way.

Section 3. Section 7.090 of the Implementing Zoning Ordinance is amended to read as follows:

7.090 - Telecommunications Facilities

The following requirements apply to Telecommunications Facilities as defined by the City's Telecommunications Ordinance (Municipal Code 14.44).

A. Definitions. The types of facilities regulated by this section are defined in the City's Telecommunications Ordinance (Municipal Code 14.44).

B. Telecommunications facilities are allowed only as described in Table 7.090(B).

Table 7.090B

Zoning District	Type of Telecommunications Facility				
	Exempt	Mini	Minor	Major	Small
OSP	A	A	CUP	CUP	CUP
AG	A	A	-	-	-
RR	A	A	-	-	-
R1	A	A	-	-	-
R2	A	A	-	-	-
R3	A	A	-	-	-
R4	A	A	-	-	-
R5	A	A	-	-	-
C1	A	A	CUP	CUP	CUP
C2	A	A	CUP	CUP	CUP
MU1A	A	A	CUP	CUP	CUP
MU1B	A	A	CUP	CUP	CUP
MU1C	A	A	-	-	-
MU2	A	A	CUP	CUP	CUP
BP	A	A	CUP	CUP	CUP
I	A	A	CUP	CUP	CUP
CF	A	A	CUP	CUP	CUP

C. Where a telecommunications facility is permitted by Table 7.090B. the approval(s) required prior to the commencement of the operation of a Telecommunications Facility areas prescribed in subsections 1-4 below.

1. Exempt Facility. An Exempt facility is an Accessory Use and no special permit is required,except when an Exempt facility is located in a Historic District an Exempt facility located in a Historic District or on the site of a designated landmark is considered a Mini Facility subject to administrative Historic and Cultural Preservation approval as prescribed in Section 15.050.

2. Mini Facility. A Mini Facility is an Accessory Use subject to administrative site plan and architectural review approval as prescribed by Section 24.010. When a Mini facility is located in a Historic District or on the site of a designated landmark, the following special permits are required:

   a. A Minor conditional use permit as prescribed in Section 24.030; and

   b. Administrative Historic and Cultural Review as prescribed in 15.030.

3. Minor Facility. A Minor facility requires approval of a minor conditional use permit as prescribed in Section 24.030 and administrative site plan and architectural review approval as prescribed in Section 24.010. When a Minor facility is located in a Historic District or on the site of a designated landmark, approval of a major conditional use permit as prescribed in Section 24.030 and Historic and Cultural Preservation Committee approval as prescribed In Section 15.030 are required.

4. Major Facility. A major facility requires approval of a major conditional use permit as prescribed in Section 24.030 and Planning Commission approval as prescribed in Section 24.101.

5. Small Facility. A Small Cell facility requires approval of a minor conditional use permit as prescribed in Section 24.030 and administrative site plan and architectural review approval as prescribed in Section 24.010. An encroachment permit for right-of-way work is also required. The right-of-way shall carry the designation of the zone adjacent to the right-of-way, for purposes of Table 7.090(B) designation.

D. A Telecommunication facility shall comply with the development standards (Tables 4.6 – 4.13) for the zoning district in which the facility is located, the City's Telecommunications Ordinance, and all other applicable City requirements.

Section 4. Except as amended herein, the City of Petaluma Municipal Code and the Implementing Zoning Ordinance, Ordinance No. 2300 N.C.S. remain unchanged and in full force and effect.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Petaluma hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

Section 6. Effective Date. This ordinance shall become effective thirty (30) days after the date of its adoption by the Petaluma City Council.

Section 7. Posting/Publishing of Notice. The City Clerk is hereby directed to publish or post this ordinance or a synopsis for the period and in the manner provided by the City Charter and other applicable law.

EXHIBIT C

LA County

DEPARTMENT OF REGIONAL PLANNING

Memorandum

July 26, 2010

TO: DRP Staff

FROM: Richard Bruckner
Director

Subject: Subdivision & Zoning Ordinance Policy No. 01-2010
Wireless Telecommunications Facilities

This memo establishes policies and guidelines regarding permits for the siting and maintenance of wireless telecommunications facilities (hereinafter titled *wireless facilities*). Currently, Regional Planning processes applications for a wireless facility, as conditional use permit (CUP) applications because they are deemed to be similar to radio and television towers, which are specifically identified as a type of use in the Zoning Ordinance, and which require a CUP. Rather than establishing an ordinance to deal specifically with wireless facilities while the FCC decision and there are potential court cases which may impact local land use decision cases, it is necessary to establish policies and guidelines to help interpret the broad and general parameters of the burden of proof set forth in the Zoning Ordinance for obtaining a CUP and to identify necessary application materials when reviewing and processing wireless facility applications. Guidelines allow for flexibility to change at a later time, pending the outcome of the decision challenges.

This memo is necessary for planners to accurately and consistently advise applicants regarding the processing and recommended development guidelines of wireless facilities. This memo provides definitions, permit requirements, additional application materials and development guidelines, including guidelines for wireless facilities within right-of-ways.

These guidelines shall apply to all proposals for new facilities and upon expiration of a conditional use permit for a wireless facility that was issued prior to this memorandum, the facilities shall be subject to these guidelines.

Definitions

Antenna - One or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antennas (whip), directional antennas (panel), and parabolic antennas (dish), but excluding any support structure.

Camouflage - Concealment of a wireless facility through incorporation into architectural design of a building or structure or by utilizing design and siting techniques that disguise the wireless facility as a structure or object other than a wireless facility. The structure or object shall either be already present in the area or blend in with the existing environment. Examples of

camouflage techniques include, but are not limited to, bell or clock towers, bell steeples, monument signs, water tanks, light poles and flag poles. The use of monopines, monopalms or other monotree types shall not be considered appropriate camouflage unless integrated into the surrounding landscape with the use of live trees, new or existing structures or other design features.

Co-location - The placement of portions of two or more wireless facilities on the same building, tower, pole, freestanding sign, or other structure.

Ground-mounted - The placement of a wireless facility or its antennas upon the ground, or on a lattice tower, mono-pole, utility pole, tower or other structure such as, but not limited to, a freestanding sign, which is erected on the ground. Ground-mounted includes structures built solely or primarily for the purpose of housing or locating a wireless facility, or upon a foundation or platform that is three feet or less above ground.

Monopalm or monopine - A structure containing a wireless facility or antenna(s), disguised as a palm tree or a pine tree.

Monopole means a freestanding structure composed of a single pole without guy wires and ground anchors and used primarily to support a wireless facility.

Monorock means a wireless facility disguised to resemble one or a grouping of rocks.

Monotree - Any type of artificial tree used for disguising a wireless facility. Monotrees include monoshrubs, which are a wireless facility or antenna(s) disguised to resemble one or a grouping of shrubs or bushes.

Public right-of-way or right-of-way - Any street, local street or highway, currently laid out or dedicated, and the space on, above or below it, under the jurisdiction of the County.

Screen or screened – Concealment of a wireless facility from view at ground level from adjacent properties and the right-of-way. The placement of a stucco wall in front of a wireless facility generally shall not be considered an appropriate screen unless architecturally integrated into an existing structure as determined by the Hearing Officer or Planning Commission.

Structure-mounted - The placement of a wireless facility upon the roof or side of a building, or upon the top, side or inside of a fully enclosed structure such as, but not limited to, a steeple, tower, monument sign, or water tank. For purposes of this definition, the term "structure" shall exclude a foundation or platform that is three feet or less above ground or a structure built solely or primarily for the purpose of housing or locating a wireless facility – these are considered ground-mounted facilities.

Support structure - Any type of structure or pole on which a wireless facility, or a portion thereof, is mounted.

Wireless facility - A ground-mounted or structure-mounted antenna, with any necessary appurtenance, such as an equipment box, cabinet, pedestal or vault. The facility is used to send or receive radio frequency transmissions for mobile or fixed telephone or data transmission service to provide wireless telecommunication services to the public; as may be described in the

Communications Act of 1934, as amended by the Telecommunications Act of 1996, or as otherwise authorized by the Federal Communications Commission.

Permit Required

A wireless facility requires approval of a conditional use permit (CUP) in all zones and within the public right-of-way. A CUP requires public notification and a public hearing before the Hearing Officer or Planning Commission. The Director shall make the determination if the application will be heard by the Hearing Officer or Planning Commission.

Additional Application Materials

Section 22.56.030.A.11 of the Zoning Ordinance allows the Director to request application materials deemed necessary in addition to those listed in section 22.56.030. For wireless facilities, in addition to all application requirements for a CUP, the applicant shall provide a written explanation, and documentation of, the following:

A. That the proposed wireless facility is necessary to close a significant gap in coverage in the applicant's service;
B. Except where the wireless facility is proposed to be co-located with one or more existing authorized wireless facilities that the applicant has undertaken and completed a good-faith effort to inventory all wireless facilities within one-quarter mile of the proposed site and to co-locate the proposed facility on the site of another such facility;
C. That the proposed site is the least intrusive site that is available in the coverage area that is capable of closing the significant coverage gap in terms of visual and aesthetic impacts; and
D. Documentation that the wireless facility as proposed is expected to comply with FCC limits and guidelines on RF emissions.

Development Guidelines

Height

A. A structure-mounted wireless facility shall not exceed the maximum height allowed in the applicable zone, or 16 feet above the building roof line, whichever is higher.
B. If the proposed wireless facility is located in a CSD, the height shall not exceed the applicable height limit for the CSD, and any CSD area height standards that apply to the subject property. If the proposed facility is not within a CSD, Height A shall apply.
C. A ground-mounted wireless facility, not located on a public right-of-way, shall not exceed the maximum height allowed in the applicable zone. The maximum permitted height is 75 feet.
D. For wireless facilities located within public rights-of-ways, see Development Guidelines for Highways and Rights-of-Way below.

Setback Requirements for Structure-Mounted Facilities

A. Unless screened, the wireless facility and equipment boxes are to be set back from the roof's edges and parapet walls to the maximum extent possible to minimize their visual impact from public rights-of-way and adjacent properties.

Roof Coverage Limits for Structure-Mounted Facilities

A. Unless screened and not visible from ground level, the total of all structure-mounted wireless facilities (antennae and equipment) located on one roof shall not cover more

than 10 percent of the total area of the roof.

Design

A. All wireless facilities shall use camouflage techniques to minimize visual impacts and provide appropriate screening.

B. Depending on the proposed site and surroundings, certain camouflage techniques may be deemed by the Director as ineffective or inappropriate and alternate techniques may be required.

C. The following is a menu of camouflage techniques that should be considered; this list is not all inlusive: monopole, flagpole, monotree, monorock, bell or clock tower, steeple, penthouse, monument sign, finish, and underground placement of appurtenant equipment. A wireless facility that proposes to use one of these techniques as listed below shall comply with the following design standards:

1. *Monopole:* A monopole installation shall be situated so as to utilize existing natural or man-made features including topography, vegetation, buildings or other structures to provide the greatest amount of visual screening.
2. *Flagpole:* A wireless facility may be mounted upon a flagpole that bears the national, state, and/or local government flags. Flagpole wireless sites that fly the national flag shall comply with United States Code Title 4, Chapter 1 as to flag maintenance and lighting. All other flags, signs, pennants, banners, streamers, balloons, graphic markings, and other attention-getting devices on a wireless facility shall be prohibited, with the exception of public safety devices required by law.
3. *Monotree:* It shall be of a type of tree compatible with those existing in the immediate area of the installation. If no trees exist within the immediate area, the applicant shall create a landscape setting that integrates the monotree with added trees of similar height and type. Antennas shall be painted or covered to match their background (branches or trunk). The antennas shall not extend beyond the monotree branches or fronds. There shall be ample branch coverage to hide the antennas from view as effectively as possible. Faux bark cladding shall be provided from the ground to five feet beyond where the faux branches begin; above the faux bark shall be flat non-reflective brown paint to match the bark. Additional camouflage may be required, depending on the type and design of mono-tree proposed.
4. *Monorock:* The proposed screen shall match in color and scale other rock outcroppings in the general vicinity of the proposed project site. A monorock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
5. *Finish:* The finished surface of the wireless facility shall not be glossy or reflective in nature unless such a finish is necessary to blend into existing design features. The finish shall be graffiti-resistant and shall have a color that blends in with the immediately surrounding environment.

D. *Structure-Mounted:* A structure-mounted wireless facility may be required to be integrated into the building's or structure's architecture through design, color, and texture and/or be fully screened.

E. *Ground-Mounted*: Appurtenant equipment boxes shall be screened or camouflaged.

Underground Requirement

A. Wireless facilities located along a scenic highway, in an SEA, within 250 feet of an SEA, or on a significant ridgeline are discouraged, however if they are to be placed in these locations, they shall be placed underground, unless the applicant provides documentation to the Director that undergrounding is infeasible. If undergrounding is infeasible, the facility shall be fully screened with landscaping and/or other camouflaging techniques and designed in a way not to impact biotic resources in the area.

Co-Location

A. Newly installed monopoles and towers shall be constructed so as to physically and structurally allow co-location of at least one other wireless facility.
B. On co-located wireless facilities, the electric meters for all of the facilities shall be placed on one pedestal or at one location, whenever possible.
C. Co-locations shall use screening methods similar to those used on the existing wireless facility.

Security

A. Provide fencing, gates, and/or locks to secure the wireless facility from access by all persons other than authorized personnel.

Fencing and Walls

A. All fencing or walls used for screen or securing a wireless facility shall be composed of wood, vinyl, stone, concrete, stucco or wrought iron. Chain links, chain link with slats, barbed and other types of wire fencing are prohibited.
B. When the wireless facility's fences or walls are visible from the public right-of-way, landscaping shall be provided to screen the fence or wall from the street. A minimum planter width of five feet shall be provided.

Lighting

A. Any exterior lighting for wireless facilities shall be fully shielded.
B. Antenna lighting is prohibited.
C. Beacon lights are prohibited unless required by the FAA.

Sensitive Use

A. Any wireless facility located on school grounds, a day care facility, or in a park or recreational area, shall be isolated from and not intrusive on the educational or recreational activities at such location. Whenever practicable, the facility shall be located the furthest distance from the center of activity of the use on the lot.
B. The applicant shall provide the name, address, and telephone number of the service provider, which shall be displayed on the grounds of the property of the sensitive use where the wireless facility is located.

Displacement of Required Parking

A. Placement of a wireless facility in a parking lot or parking structure may not cause a reduction in the required parking spaces to below the number required for the existing use on the subject property.

Maintenance

A. All wireless facilities shall be maintained in good condition and repair, and shall remain

free of general dirt and grease, chipping, fading, peeling or cracked paint, and free of cracks, dents, blemishes and discoloration.

B. Rust and corrosion shall not be visible on any unpainted metal areas.
C. All landscaping provided as screening shall be maintained at all times and shall be promptly replaced if needed.

Graffiti

A. The wireless facility shall remain free of graffiti. Any and all graffiti shall be removed by the operator or property owner within 48 hours.

Removal

A. The operator of a wireless facility shall remove such facility within six months after its lawful operation has ceased, and restore the site as nearly as practicable to its original condition.

Compliance Reports

A. The applicant shall submit on an annual basis, reports to the Department to show compliance with the maintenance and removal conditions.

Federal Communications Commission (FCC)

A. Upon completion of construction of all wireless facilities, the applicant shall submit written certification that the radio frequency electromagnetic emissions levels comply with adopted Federal Communications Commission (FCC) limitations for general population/uncontrolled exposure to such emissions when operating at full strength and capacity.

Development Guidelines in Highways and Public Right-of-Ways

In addition to the development standards listed above, wireless facilities located on, under, or projecting onto any highway or public right-of-way shall also comply with the following:

Ground-Mounted Facility

A. When installed in a parkway or other landscaped area, the wireless facility owner shall install drought-tolerant landscaping immediately surrounding the installation or restore any existing landscaping and irrigation system disturbed by the installation.
B. The installed or restored landscaping shall be consistent with the existing landscaping in the immediate vicinity.

Underground Requirement

A. All appurtenant wireless facility equipment that is not structure-mounted shall be placed underground, unless the applicant provides documentation to the Director that undergrounding is infeasible.
B. If the underground requirement is waived due to infeasibility:
    1. For wireless facilities in non-urban areas - the equipment shall be fully screened with or camouflaged to resemble locally existing natural materials.
    2. For wireless facilities in urban areas - concrete pads for the appurtenant equipment shall be a color that is consistent with adjacent surrounding sidewalks. Where there is no existing sidewalk, concrete pads shall be earth-tone color that is consistent with existing surrounding earth.

Height

A. The height of a wireless facility shall not exceed 50 feet, regardless of the height of any existing structure located within the public right-of-way.

Placement

A. The placement of wireless facilities shall not interfere with the public's unobstructed use of highways, sidewalks or trails, or unobstructed access from private property to highways and other public access.

Encroachment Permit

A. In addition to obtaining a conditional use permit from the Department of Regional Planning for a wireless facility, the applicant shall obtain an encroachment permit from the Department of Public Works.

Relocation

A. The Department of Public Works may require wireless facilities to relocate due to street improvement projects and undergrounding of utilities. The cost of relocation of wireless facilities due to such projects shall be fully borne by the owner, operator, or permittee of the wireless facilities involved.

RB:RCH:KMS:ASP

EXHIBIT D

BAA968

Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

Amy J. Bodek, AICP
Director

July 10, 2018

Christopher Voss
200 Spectrum Center Drive, Suite 1700
Irvine, CA 92618

Dear Mr. Voss,

PROJECT NO. 96-025-(2)
REVISED EXHIBIT "A" NO. RPPL2018002859
4251 E. Rosecrans Ave (APN: 6185-010-054)

This is to inform you that the Department of Regional Planning (Department) has **denied** Revised Exhibit "A" No. RPPL2018002859.

Your application requested the installation of "six (6) new antennas and nine (9) new RRUs on an existing monopole", in addition to installing three (3) new hybrid cables and two (2) new equipment cabinets. According to Condition of Approval No. 23 (attached), the subject property is required to be developed in substantial compliance with the site plan and elevations approved and dated May 6, 2009. The condition further states that the placement and height of all pole mounted equipment is to be in substantial conformance with the site plan.

The addition of a new facility with six new antennas at a different height on the existing pole violates this conditional of approval. In addition, per Finding No. 17, there are existing visual impacts to adjacent properties caused by the monopole, and the implementation of further new equipment would cause further visual impacts to the area. Finally, the proposed new equipment does not meet any of the Department's current aesthetic development standards for wireless facilities.

As a final reminder, the Conditional Use Permit for the existing facility is set to expire on May 19, 2019. For questions or for additional information, please contact Travis Seawards of the Zoning Permits West Section at (213) 974-6462, or by email at TSeawards@planning.lacounty.gov. Our office hours are Monday through Thursday, 7:30 a.m. to 5:30 p.m.

Sincerely,

Travis Seawards, Principal Planner
Zoning Permits West Section

NP:TSS

Enclosure:

c: Zoning Enforcement

EXHIBIT E

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Arizona HB 2365	August 8, 2017	All antennas must be located within an enclosure of not more than 6 cubic feet in volume (actual or imaginary).	All other wireless equipment must fit within a volume of 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch; vertical cable runs.	Authorities may not require placement of small wireless facilities on any specific utility pole or category of poles or require multiple antennas on a single pole. The Authority can require reasonable spacing of new poles.	There is no zoning review for placement of new poles in the ROW for small wireless facilities provided the new pole does not exceed the greater of 10 feet above the tallest existing utility pole (but not more than 50 feet) or 40 feet.	Collocations of small wireless facilities on existing poles are not subject to zoning if they do not extend more than 10 feet above the pole and do not exceed 50 feet.	Application Fees –may not exceed $100/application covering up 5 small wireless facilities; $50 for each additional small wireless facility in application For County owned poles, the application fee is $65 per small wireless facility per collocation application If zoning review is required, fees are $1,000 where there is a new pole plant and $750 per collocation	Poles owned by county: collocation fees capped at $50/per year	Fees must be competitively neutral and limited to the cost of managing the ROW Annual Fees –capped at $50/small wireless facility per year If using County poles, the annual rate is capped at $20 per small wireless facility or $175 if ground mounted equipment The fees are limited to 90% of the fair market value of the ROW
Colorado HB 1193	July 1, 2017	Each antenna must fit within an enclosure of no more than 3 cubic feet in volume (actual or imaginary).	All other wireless equipment must fit within a volume of 17 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch.	The jurisdiction may reasonably limit the number of vertical structures in the ROW based on public health, safety and welfare considerations.	Consent of the political subdivision required for the construction of new poles, small cell facilities, conduit, and cable in the ROW.	Consent of the political subdivision required for the construction of new poles, small cell facilities, conduit, and cable in the ROW.	No local government entity nor municipality may require a fee for establishing a small cell facility that exceeds the amount authorized by 47 U.S.C. § 224. (A $200 per pole fee is typical). No fee or application for Micro Wireless Facilities that are strand-mounted	N/A	N/A

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Delaware HB189 **ONLY APPLIES TO DEL DOT**	August 31, 2017	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume.	All other wireless equipment must fit within a volume of 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch and vertical cable runs.	New or modified utility pole and small wireless support structure installed in ROW shall not exceed the greater of 10 feet in height above the tallest existing utility pole in place (as of the effective date of this Act) located within 500 feet of the new pole in the same ROW, or 50 feet above ground level	New small wireless facilities in the ROW: May not extend more than 10 feet above an existing utility pole or small wireless support structure in place as of effective date of this Act; May not extend above the height permitted for a new utility pole or small wireless support structure. The height limitations do not apply to the placement of any small wireless facility on a utility pole constructed on or before June 30, 2017, if the small wireless facility does not extend more than 10 feet above the structure. New or modified utility pole and small wireless support structure installed in ROW: Shall not exceed the greater of 10 feet in height above the tallest existing utility pole in place as of the effective date of this Act located within 500 feet of the new pole in the same ROW, or 50 feet above ground level	Collocations of small wireless facilities on Department poles will be determined by the Department subject to: 1) A person owning or controlling Department Poles may not enter into an exclusive arrangement with any person for the right to attach to such poles, 2) collocations will be subject to reasonable, cost-based, competitively neutral and nondiscriminatory rates, fees, and terms as provided in an agreement between the Department and the wireless provider, 3) the Department and wireless provider shall negotiate in good faith to arrive at mutually agreeable contract terms and conditions, 4) the annual recurring rate to collocate a small cell facility on a Department pole shall not exceed the actual direct and reasonable costs related to the wireless service providers use of space on the pole.	Application Fee: $100 for each small cell facility on a permit application. A consolidated application proximate to roadways or geographic areas are allowed to be filed as a single permit for the collocation of multiple small wireless facilities.	The annual recurring rate to collocate a small cell facility on a Department pole shall not exceed the actual direct and reasonable costs related to the wireless service provider's use of space on the pole.	N/A
Florida HB 687	July 1, 2017	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume (actual or imaginary).	All other wireless equipment must fit within a volume of 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch; vertical cable runs.	Authorities may not limit the placement of small wireless facilities on any specific utility pole by minimum separation distances or category of poles or require multiple antennas on a single pole. However, the Authority may propose an alternate authority pole in the ROW or placement of a new pole.	An Authority shall limit the height of a small wireless facility to 10 feet above the utility pole. The height of the new pole is limited to the tallest existing utility pole in the ROW or 50 feet whichever is greater. New poles are subject to the authority rules for placement of utility poles in the ROW.	An Authority may deny collocation of a small wireless facility in the ROW if it fails to meet applicable codes or the FDOT UAM. Local governments may enforce historic preservation zoning regulations applicable to historic areas designated by the state or Authority on or before April 1, 2017.	Rates, terms and fees must be non-discriminatory and competitively neutral	The rate to collocate small wireless facilities on an authority utility pole may not exceed $150 annually per pole. Authority may not require approval or fees for: 1) Routine maintenance 2) Replacement of existing facility that are similar or smaller in size 3) Installation, placement, maintenance, or replacement of suspended facilities	Authority may not collect any tax, fee or charge not specifically authorized by state law (FL charges wireless providers a communications service tax.)

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Hawaii HB 2651	June 21, 2018	Can fit within an enclosure of no more than six (6) cubic feet in volume	All other equipment associated with the communications service facility, whether ground- or pole-mounted, that is cumulatively no more than twenty-eight (28) cubic feet in volume	The State or county shall not limit the placement of small wireless facilitates by minimum separation distances; provided that the State or county may limit the number of small wireless facilities placed on a single pole	New small wireless facilities in the right of way shall not extend more than ten feet above an existing utility pole in place as of July 1, 2018	Each modified or replacement utility pole installed in the right of way for the collocation of small wireless facilitates shall not exceed the greater of: -Ten feet in height above the tallest existing utility pole in place as of July 1, 2018, located within five hundred feet of the modified or replaced pole in the same right of way; or -Fifty feet above ground level	N/A	N/A	Rates, terms and fees must be non-discriminatory, competitively neutral and commercially reasonable
Illinois SB1451	June 1, 2018	Antenna—not more than 6 cubic feet in volume.	All other wireless equipment attached directly to utility pole associated with facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included: Electric meter; concealment elements; demarcation box; ground based enclosures; grounding equipment; power transfer switch; cutoff switch and vertical cable runs.		Pole heights may not exceed a height of 10 feet higher than existing pole, 300 feet from another pole, and 45 feet above ground.	Collocate small wireless facility on existing utility pole or structure: Application shall be processed on non-discriminatory basis and deemed approved if authority fails to approve or deny within 90 days. Collocate small wireless facility of a NEW utility pole: Application shall be processed on non-discriminatory basis and deemed approved if authority fails to approve or deny within 120 days. Consolidated applications can receive a single permit for the collocation of up to 25 small wireless facilities.	An authority may charge an application fee of up to $650 for an application to collocate a single small wireless facility on an existing utility pole or wireless support structure and up to $350 for each small wireless facility addressed in an application to collocate more than one small wireless facility on existing utility poles or wireless support structures. An authority may charge an application fee of $1,000 for each small wireless facility addressed in an application that includes the installation of a new utility pole for such collocation.	An authority may charge an annual recurring rate to collocate small wireless facility on an authority utility pole located in the ROW of $200 per year	N/A

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Indiana Act 213 (Act 1050)	April 30, 2017	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume (actual or imaginary).	All other wireless equipment must fit within a volume of 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch; vertical cable runs.	For new poles, the Authority may propose collocation as an alternative to the new pole, if there is an existing structure within 50 feet. Otherwise, the Authority may not limit the placement of small cell facilities by distance.	Deployment of small cell facilities and supporting structures in designated historic preservation districts and areas or areas subject to the Meridian Street preservation commission, must obtain a certificate of appropriateness prior to construction. Otherwise, the placement of a small cell facility and supporting structure is exempt from zoning review if the total height of the structure does not exceed the greater of 50 feet or 10 feet above the height of any existing utility pole. Act 1050 amendment: Provides that a resolution, ordinance, or other regulation: (1) adopted by a permit authority after April 14, 2017, and before May 2, 2017; and (2) that designates an area within the jurisdiction of the permit authority as strictly for underground or buried utilities; applies only to communications service providers and those geographic areas that are zoned residential and where all existing utility infrastructure is already buried. Provides that, with respect Small cell wireless structures. Specifies that the statute concerning permits for wireless facilities and wireless support structures applies to permits issued by a permit authority to a communications service provider.	The placement of a small cell facility and supporting structure is exempt from zoning review if the total height of the structure does not exceed the greater of 50 feet or 10 feet above the height of any existing utility pole.	A maximum fee of $100 will apply to all small cell facilities included on the application.	The rate for the construction, placement, or use of small cell facilities on the utility pole owned or controlled by the utility may not exceed $50 per utility pole per year	N/A
Iowa SF 431	July 1, 2017	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume.	All other wireless equipment must fit within a volume of 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch; vertical cable runs and any equipment that is concealed from public view within or behind an existing structure or concealment.	An authority may reasonably limit the number of utility poles or structures in the ROW consistent with health, safety and welfare provided such does not have the effect of prohibiting or impairing the ability to provide wireless service.	Authorities may not prohibit or restrict new poles of similar height and appearance to existing poles within a 500 foot radius, unless the new pole will be in a residential area or areas designated as historical. In such cases, a special use permit may be required. New or modified poles in the ROW do not require zoning review if the new or modified pole does not exceed 10 feet above existing poles or 40 feet, whichever is greater.	Through the issuance of building permits, Authorities may require the small wireless facility to reasonably match the aesthetics of an existing utility pole that incorporates decorative elements.	An applicant shall not be required to provide more information or pay a higher application fee, consulting fee, or other fee associated with the processing or issuance of a permit than the amount charged to a telecommunications service provider that is not a wireless service provider. The total amount of fees for processing or issuing a permit, including any fees charged by third parties, shall not exceed $500 for an application addressing no more than five small wireless facilities, and an additional $50		An authority shall not require a person to apply for or enter into an individual license, franchise, or other agreement with the authority or any other entity for the siting of a small wireless facility on a utility pole located in a public ROW However, an authority may, through the conditions set forth in a building permit obtained pursuant to this subsection, do any of the following: (1) Establish nondiscriminatory, competitively neutral and commercially reasonable rates, terms, and conditions for such siting, which rates, terms, and conditions shall comply with the federal pole attachment requirements provided in 47

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
							for each small wireless facility addressed in an application in excess of five small wireless facilities.		U.S.C. 224 and any regulations promulgated thereunder.
Kansas HB 2131	October 1, 2016	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume (actual or imaginary).	All other wireless equipment must fit within a volume of 17 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch.			An authority may require an applicant filing an application for a new wireless support structure to state in such application that the applicant conducted an analysis of available collocation opportunities on existing wireless support structures with the same search ring defined by the applicant. An authority shall not evaluate an application based on the availability of other potential locations for the placement of wireless support structures (including the option to collocate) An authority may not institute any moratorium on the filing, consideration or approval of applications permitting construction of new wireless support structures or substantial modification of structure or collocations.	Shall not exceed $500 for a collocation application that is not a substantial modification, small cell facility application, or distributed antenna system application. Shall not exceed: $2,000 for an application for a new wireless support structure or for a collocation application that is a substantial modification of a wireless support structure.	N/A	An authority may not charge a wireless services provider or wireless infrastructure provider any rental, license or other fee to locate a wireless facility or wireless support structure on any public right-of-way controlled by the authority, if the authority does not charge other telecommunications or video service providers, alternative infrastructure or wireless services providers or any investor-owned utilities or municipally-owned commercial broadband providers for the use of public right-of-way. If an authority does assess a charge, including a charge or rental fee for attachment to the facilities owned by the authority in the right-of-way, any such charge must be competitively neutral, with regard to other users of the public right-of-way, including investor-owned utilities or municipally-owned commercial broadband providers, and may not be unreasonable or discriminatory or violate any applicable state or federal law, rule or regulation.

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Minnesota HF 739	May 31, 2017	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume (actual or imaginary).	All other wireless equipment must fit within a volume of 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch; vertical cable runs and any equipment that is concealed from public view within or behind an existing structure or concealment.	Collocation permits; placement. (a) A local government unit may not require the placement of small wireless facilities on any specific utility pole or type of pole, or require multiple small wireless facilities to be placed on a single pole. (b) A local government unit must not limit the placement of small wireless facilities, either by minimum separation distances or maximum height limitations, except that each wireless support structure installed in the right-of-way after the effective date of this act must not exceed the greater of: (1) ten feet in height above the tallest existing utility pole in place that is located within 500 feet of the new wireless support structure in the same right-of-way as of the effective date of this act; or (2) 50 feet above ground level. (c) Wireless facilities constructed in the right-of-way after the effective date of this act may not extend more than ten feet above an existing wireless support structure in place as of the effective date of this act.	The placement of structures to support small wireless facilities is a permitted use in the ROW, unless the new pole will be in a residential area or areas designated as historical. In such cases, a special use permit may be required. New poles in the ROW are limited to 50' in height, unless the pole is replacing a taller pole at equal height. The local government unit can agree in either case to a taller height.	Wireless facilities in the ROW may not extend more than 10 feet above existing pole in place as of the effective date.	Fees. (a) A local government unit may recover its right-of-way management costs by imposing a fee for registration, a fee for each right-of-way permit, or, when appropriate, a fee applicable to a particular telecommunications right-of-way user when that user causes the local government unit to incur costs as a result of actions or inactions of that user. A local government unit may not recover from a telecommunications ROW user costs caused by another entity's activity in the ROW. (b) Fees, or other ROW obligations, imposed by a local government unit on telecommunications ROW users under this section must be: (1) based on the actual costs incurred by the local government unit in managing the public right-of-way;(2) based on an allocation among all users of the public ROW, including the local government unit itself, which shall reflect the proportionate costs imposed on the local government unit by each of the various types of uses of the public ROW; (3) imposed on a competitively neutral basis; and (4) Imposed in a manner so that aboveground uses of public ROW do not bear costs incurred by the local government unit to regulate underground uses of public ROW.	A local government unit may elect to charge each small wireless facility attached to a wireless support structure owned by the local government unit a fee, in addition to other fees or charges allowed under this subdivision, consisting of: (1) up to $150 per year for rent to occupy space on a wireless support structure; (2) up to $25 per year for maintenance associated with the space occupied on a wireless support structure; and (3) a monthly fee for electricity used to operate a small wireless facility, if not purchased directly from a utility, at the rate of: (i) $73 per radio node less than or equal to 100 max watts; (ii) $182 per radio node over 100 max watts; or (iii) the actual costs of electricity, if the actual costs exceed the amount in item (i) or (ii).	A wireless provider may collocate small wireless facilities on wireless support structures owned or controlled by a local government unit and located within the public roads or rights-of-way without being required to apply for or enter into any individual license, franchise, or other agreement with the local government unit or any other entity other than a small wireless facility collocation agreement

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Missouri HB 1991	8/28/2018	Each antenna must fit within an enclosure of no more than six cubic feet in volume.	All other equipment associated with the wireless facility, whether ground or pole mounted, is cumulatively no more than twenty-eight cubic feet in volume. No single piece of equipment on the utility pole shall exceed nine cubic feet in volume; and no single piece of ground mounted equipment shall exceed fifteen cubic feet in volume, exclusive of equipment required by an electric utility or municipal electric utility to power the small wireless facility.	An authority shall not limit the placement of small wireless facilities by minimum horizontal separation distances. An authority shall not require the placement of small wireless facilities on any specific utility pole or category of poles or require multiple antenna systems on a single utility pole.	Each new, replacement, or modified utility pole installed in the right-of-way shall not exceed the greater of 10 feet above the tallest existing utility pole within 500 of the new pole in the same right-of-way, or 50 feet above ground level.	New small wireless facilities in the right-of-way shall not extend more than 10 feet above an existing utility pole in place as of August 28, 2018 or 10 feet above a new utility pole. A new, modified, or replacement utility pole that exceeds these height limits shall be subject to any applicable zoning requirements that apply to other utility poles.	The total application fee for collocation on existing authority poles shall not exceed $100 per facility including consolidated applications not exceeding 20 locations. The total application fees for the installation, modification, or replacement of a utility pole and the collocation of an associated small wireless facility shall not exceed $500 per pole.	The rate for collocation of a small wireless facility to an authority pole shall not exceed $150 per year.	An authority shall not charge a wireless provider any fee to locate a wireless facility or wireless support structure on private property or on a wireless support structure not owned by the authority.
New Mexico HB 38	September 1, 2018	Antenna—with or without shroud—must fit inside an enclosure (shroud), real or imaginary, of not more than 6 cubic feet in volume.	All other wireless equipment may not exceed more than 28 cubic feet in volume. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch and vertical cable runs.		Pole Heights must not exceed the greater of: 1) 50' above ground level; or 2) 10' higher than the tallest existing utility pole within 500' of the new pole in the same ROW that does not have a wireless facility on it, and which pole was already in place on the effective date of the law, and is 50' or less above ground level. Residential: a new pole plant requires separate, discretionary but nondiscriminatory authority written consent when: 1) It is adjacent to a single-family residential lot, other multifamily residence, or undeveloped land that is designated for residential use by zoning or deed restrictions; and 2) where the street is 50 ft. wide or less	The authority may require one or more permits, valid for at least 10 years (with opportunity for renewal for additional 10 years if in conformance with law) to collocate wireless facilities and install, replace, modify poles in the ROW so long as the permit requirement is generally applicable to other ROW users. Consolidated applications for up to 25 facilities may be filed so long as they are substantially the same type on substantially the same types of structures	Application Fees – may not exceed $100 pre-application for each node up to 5 nodes; $50 or less for each additional node; but for a new pole plant, replacement pole or pole modification - $750	Collocation of nodes on authority owned poles (including traffic signals, light poles, communication services poles, electric distribution poles) are limited to $20/year	"Authority" (defined as a municipality or county) may only charge a reasonable, nondiscriminatory fee for use of the ROW if it is allowed by law to do so, the authority charges other communications service providers for their use of the ROW, the fee is competitively neutral, is not in the form of a franchise or other fee based on revenue, and which does not exceed $250/node/year.

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
North Carolina	July 21, 2017	All antennas must be located within an enclosure of not more than 6 cubic feet in volume.	All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch and vertical cable runs.	In no instance in an area zoned single-family residential where the existing utilities are installed underground may a utility pole, city utility pole, or wireless support structure exceed 40 feet above ground level, unless the city grants a waiver or variance	Each new small wireless facility in ROW shall not extend more than 10 feet above the utility pole or wireless structure upon which it is collocated. Each new utility pole and each modified or replacement utility pole or city utility pole installed in the ROW shall not exceed 50 feet above ground level.	City shall allow any wireless provider to collocate small wireless facilities on its city utility poles. An applicant shall be allowed to file a consolidated application for no more than 25 separate facilities (A city may remove a small wireless facility from application and treat separately if incomplete information has been provided)	A city may charge an application fee that shall not exceed the lesser of: 1) The actual, direct, and reasonable costs to process and review application for collocated small wireless facilities 2) The amount charged by the city for permitting of any similar activity 3) $100.00 per facility for the first 5 small wireless facilities addressed in application, plus $50.00 for each additional small wireless facility A city may also assess a technical consulting fee of up to $500 per application to offset the cost of reviewing and processing these applications	A city shall allow any wireless provider to collocate small wireless facilities on its city utility poles but in no instance may the rate exceed $50.00 per city utility pole per year	ROW charges shall not exceed the direct and actual costs of managing the City ROW and shall not be based on wireless provider's revenue or customer counts. The ROW charges may not exceed those charged to other utilities and must be reasonable and nondiscriminatory
Ohio HB 478	August 18, 2018	Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.	All other wireless equipment associated with the facility is cumulatively not more than 28 cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.	Propose an alternate location to the proposed location of a new wireless support structure that is within one hundred feet of the proposed location or within a distance that is equivalent to the width of the public way in or on which the new wireless support structure is proposed, whichever is greater, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.	For a new wireless support structure, the overall height of the wireless support structure and any collocated antennas shall not be more than forty feet in height above ground level. Local ordinance may require reasonable and nondiscriminatory spacing requirements for the location of new wireless support structures set forth in an ordinance, local rule, or design guidelines. Such spacing requirements shall not prohibit, or have the effect of prohibiting, the provision of wireless service to any location.	For an existing wireless support structure, the antenna and any associated shroud or concealment material are permitted to be collocated at the top of the existing wireless support structure and shall not increase the height of the existing wireless support structure by more than five feet.	Any fee charged by a municipal corporation for a request granting or processing an application for consent shall not exceed a one-time fee of $250 dollars per micro wireless small cell facility. The fee may be adjusted by 10% every 5 years.	The total annual charges to reimburse the municipal corporation for the attachment shall not exceed $200 dollars per small cell facility collocated on a wireless support structure owned or operated by the municipal corporation and located in the public ROW. The fee may be adjusted by 10% every 5 years.	N/A

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Oklahoma SB1388	November 1, 2018	Antenna of wireless provider could fit within an enclosure of no more than 6 cubic feet.	All other wireless equipment attached directly to utility pole associated with facility is cumulatively no more than 25 cubic feet in volume. The following types of associated ancillary equipment are not included: Electric meter; concealment elements; demarcation box; ground based enclosures; grounding equipment; power transfer switch; cutoff switch and vertical cable runs.	An authority may deny a proposed collocation of a small wireless facility or installation, modification or replacement of a utility pole that meets the height requirements in subsection E of Section 3 of this act only if the proposed application: fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance that concern the location of new utility poles. Such spacing requirements shall not prevent a wireless provider from serving any location	Pole heights may not exceed a height of 10 feet higher than existing pole, 500 feet from another pole, and 50 feet above ground.	May deny proposed application if new or modified pole is greater than 10 feet height above tallest existing pole and not exceed 50 feet above ground level. Consolidated application for collocation of up to 25 small wireless facilities and receive a single permit.	May not exceed $200 for first 5 small cell facilities on same application. $100 for each additional on same application. Shall not exceed $350 per pole for access to ROW.	The rate for occupancy of the ROW shall not exceed $20 per year per small wireless facility. The rates to collocate on authority poles in ROW shall not exceed $20 per authority pole per year. An authority may adjust the fees and rates it adopts under this section 10% every 5 years.	An authority may only charge a fee to a wireless provider if it charges a fee to nonpublic entities for use of the ROW. The annual rate shall not exceed $20 per small wireless facility in the ROW.
Rhode Island SB 342	September 27, 2017	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume (actual or imaginary).	All other wireless equipment must fit within a volume of 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch and vertical cable runs.		A wireless provider may install poles in the public ROW in order to collocate small wireless facilities, subject to request and authority approval. An authority shall receive, process and approve such requests on a non-discriminatory basis and in substantially the same manner and on substantially the same terms and condition as the authority applies to similar request by other person seeking to place poles in public ways.	An authority may require a person to obtain a building, electrical or public ROW use or work permit to collocate small wireless facilities on authority poles or structures, provided such permits are of general applicability and do not apply exclusively to wireless facilities. An authority may not require a permit, other than a public ROW work permit, for routine maintenance on a previously-approved small wireless facility or to replace a small wireless facility with a facility of substantially similar or smaller size and weight. An authority shall receive applications for, and process and issue permits for, collocating small wireless facilities on a non-discriminatory basis and in substantially the same manner as the permitting of other applicants. An applicant for a collocation permit shall not be required to provide more information to obtain a permit tan communication service providers that are not wireless providers.	An authority may charge a fee to process an application to collocate a small wireless facility. The application processing fee shall be no greater than the application processing fee, if any, charged by the authority to persons seeking to place a pole in the public way.	An authority shall not charge on an annual basis more than $150 per collocation or the FCC pole attachment rate.	Except for collocations on authority poles, an applicant shall not be required to pay additional fees or charges or perform or provide any services to collocate small wireless facilities.

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Tennessee HB 2279	April 12, 2018	An antenna that could fit within an enclosure of no more than six (6) cubic feet in volume.	Other wireless equipment in addition to the antenna that is cumulatively no more than twenty-eight (28) cubic feet in volume, regardless of whether the facility is ground-mounted or pole-mounted. For purposes of this subdivision (14)(A)(ii), "other wireless equipment" does not include an electric meter, concealment element, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, or a vertical cable run for the connection of power and other services.	No authority shall limit the placement of small wireless facilities by imposing minimum separation distances for small wireless facilities or the structures on which the facilities are collocated.	A new or modified utility pole installed in the ROW not exceed the greater of: (i) Ten feet (10') in height above the tallest existing utility pole in place as of the effective date of this act that is located within five hundred feet (500') of the new pole in the same ROW; or (ii) Fifty feet (50') above ground level	Small wireless facilities deployed in the ROW after the effective date of this part shall not extend: (i) More than ten feet (10') above an existing utility pole in place as of the effective date of this act; or (ii) On a new utility pole, ten feet (10') above the height permitted for a new utility pole under this section. An authority may prohibit colocation on authority-owned utility poles that are identified as utility poles the mast arms of which are routinely removed to accommodate frequent events, including, but not limited to, regularly scheduled street festivals or parades.	Maximum of $100 each for the first five small wireless facilities and $50.00 for each additional small wireless facility in a single application. New applicants may be charged $200 for first application after effective date. Applications fees increase by 10% on 1/1/20 and every five years thereafter. Note: Fees and costs for consultant or third party may not be charged to applicant. Fees may be charged for work or traffic permits. Authority may charge a $100 per facility surcharge to high volume applicants for review period. In State or DOT ROW: $100 application fee for up to maximum of five small wireless facilities and additional fee of $50 per facility in single application (all subject to 10% increase on 1/1/20 and every five years thereafter). DOT may also require surety bond.	Annual collocation rate on local authority owned pole is $100	

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Texas SB 1004	September 1, 2017	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume (actual or imaginary). The antenna may not exceed a height of 3 feet above an existing pole and may not protrude more than 2 feet from the outer circumference of the pole.	All other wireless equipment must fit within a volume of 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch and vertical cable runs. The wireless equipment may not protrude more than 2 feet from the outer circumference of the pole. Ground based enclosures must not be more than 3"6" above grade, wider than 3'6" or deeper than 3'6".		Except in municipal parks, residential areas and historic areas, poles may be constructed, modified and relocated in the ROW without special permits or similar zoning review provided the poles may not exceed the lesser of 10 feet above the tallest existing utility pole in the same ROW within 500 linear feet of the proposed pole or 55 feet above grade. Permit applications may be required for new pole placement. New poles planned in ROWs within municipal parks or adjacent to streets not more than 50' wide and adjacent to areas zoned residential must obtain discretionary, non-discriminatory permits from the jurisdiction. Advance municipal approval is required for placement of a pole in an historic area.	With the exception of historic districts and design districts, nodes may be constructed, modified and relocated in the ROW without the need for a special permit or similar zoning review. Advance municipal approval is required for placement of a node in an historic area or design district.	The lesser of the actual direct, and reasonable costs incurred in processing the application OR $500/application covering up to 5 nodes; $250 for each additional node; and $1000 per application for each pole	Annual pole attachment rate for collocation on municipally owned poles must be consistent with Section 54.204 Utilities Code, applied on a per-foot basis. Section 54.204 provides has anti-discrimination clause and limits pole attachment rate to what would be permitted under FCC rules under 47 USC 224(e). Collocation on service poles capped at $20 per pole annually.	Capped at $250/node/year plus a fiber fee (there is an allowable adjustment based on CPI)
Utah SB189	September 1, 2018	Each wireless provider's antenna (with or without shroud) must fit inside an enclosure (shroud), real or imaginary, of not more than 6 cubic feet in volume	All wireless equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume The following is *excluded* from "wireless equipment": Electric meter; antenna; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch and vertical cable runs.	Prohibited per Section 54-21-302	Installation of new poles is permitted subject to only administrative review. A new or modified utility pole that has a collocated wireless facility on it must not exceed 50' above ground level. A new pole plant requires separate, discretionary but nondiscriminatory, authority written consent when: it is adjacent to a single-family residential lot, other multifamily residence, or undeveloped land that is designated for residential use by zoning or deed restrictions; and where the street is 60 ft. wide or less as depicted in official plat records	An authority may require an applicant to obtain a permit to: collocate a small wireless facility in a right-of-way and shall ensure that a required permit is of general applicability. Consolidated applications may be filed for up to 25 collocated wireless facilities so long as they are substantially the same type on substantially the same types of structures. Consolidated applications may be filed for up to 25 utility pole installations, modifications or replacements (cannot mix and match collocation applications for attachment to existing utility poles and applications to install, modify, or replace utility poles under a consolidated application)	Fees limited to cost of granting a building permit, but for collocation on existing or replacement pole, may not exceed $100 per small wireless facility on same application; for new, replacement or modification of pole in ROW, may not exceed $250 per application. For non-permitted uses (defined in 54-21-204), may not exceed $1,000 per application. Fees may only be charged if similar fee required for similar types of commercial development and construction and costs are not already recovered by existing fees, rates, licenses or taxes.	Collocation of nodes on authority owned utility poles (including traffic signals, light poles, communication services poles, signage poles, electric distribution poles but excluding municipally owned structure that supports electric lines for muni electric service) are limited to $50/year per pole.	May not exceed greater of 3.5% of all gross revenue related to use of ROW or $250 annually for each small wireless facility.

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	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Vermont H50	July 1, 2017	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume (actual or imaginary). New antennas do not extend up or out more than 10 feet from the support structure and do not increase surface area of antennas on the facility by more than 75 square feet in order to qualify for equipment upgrades at an existing facility.		A new support structure for a new wireless telecommunications facility will exceed 50 feet in height in a cleared area or will exceed 20 feet in height above the average tree line measured within a 100 foot radius from the structure in a wooded area, the application shall identify all existing telecommunication facilities within the area to be served by the proposed structure and, for each such existing facility, shall include a projection of the coverage and an estimate of additional capacity that would be provided if the applicant's proposed telecommunication equipment were located on or at the existing facility.	The developer must give at least 60 days advance notice of its intent to file an application to various state agencies, the town and adjoining landowners --Legislative bodies, municipal and regional planning commissions --Secretary of Agency of Natural Resources --Secretary of Transportation --Division for Historic Preservation --Commissioner of Public Service (Director for Public Advocacy) --Natural Resources Board --Public Utility Commission Once the application is filed those parties have 21 days to raise any objections --The comment period is extended to 30 days If there are no objections the certificate of public good is to be issued within 45 days of the filing of the application	If a proposed new support structure for a new wireless telecommunications facility will exceed 50 feet in height in a cleared area or will exceed 20 feet in height above the average tree line measured within a 100 foot radius from the structure in a wooded area, the application shall identify all existing telecommunication facilities within the area to be served by the proposed structure and, for each such existing facility, shall include a projection of the coverage and an estimate of additional capacity that would be provided if the applicant's proposed telecommunication equipment were located on or at the existing facility.	Applicant must also provide certification that the fees required under the form have been submitted to the State Treasury pursuant to 30 V.S.A. 248b(e) 30 V.S.A. 248b(e) Telecommunications facilities. For an application under section 248a of this title proposing a wireless telecommunications facility that includes a new support structure, the fee shall be equal to $2.50 for each $1,000.00 of construction costs, but in no event greater than $15,000.00.		http://anr.vermont.gov/sites/anr/files/co/planning/documents/guidance/248-fee-form.pdf Fees shall be calculated from this document and per usage.
Virginia SB 1282	July 1, 2017	Each antenna must fit within an enclosure of no more than 6 cubic feet in volume (actual or imaginary).	All other wireless equipment must fit within a volume of 28 cubic feet. The following is not counted as part of the "wireless equipment" calculus: Electric meter; concealment elements; demarcation box; grounding equipment; power transfer switch; cutoff switch and vertical cable runs.	A locality may disapprove a proposed location for a small cell facility only if it will interfere with existing or currently planned communication facilities; public safety needs or conflict with local ordinance regarding historic property.	New pole rules are addressed in the 2018 legislative session.	Locality may not require a special exception, special use permit or variance for any small cell facility installed on an existing structure. Localities may require administrative review of any required zoning permit for small cell facilities.	$100 each for up to 5 small cell facilities on a permit application, plus an additional $50 for each small cell facility on an application. Localities may not exceed $250 fee for ROW applications.	Facilities suspended on cables or strung on lines between poles are exempt from permitting and fees except under certain circumstances.	DOT may not impose fee for use of ROW to attach or co-locate small cell facilities on existing structure in ROW except for processing fee not to exceed $750 for districtwide permit or $250 for single use permit.

Summary of Passed Legislation

	Effective Date	Antenna Size Limitation	Equipment Size Limitation	Spacing Requirements	New Pole Limitations	New Collocations	Application Fees	Pole Attachment Fees (Collocation)	Right of Way Use Fees
Virginia SB405	July 1, 2018			Locality not prohibited from limiting the number of new structures or the number of wireless facilities that can be installed in a specific location; or from disapproving an application submitted under a standard process project on the basis of availability of existing wireless support structures within a reasonable distance that could be used for co-location at reasonable terms and conditions without imposing technical limitations. Locality shall not require zoning approval for routine maintenance, replacement of wireless facilities or wireless support structures within a six (6) foot perimeter with wireless facilities or support structures that are substantially similar or same size or smaller.	Administrative review eligible project for installation or construction of a new not more than 50 feet above ground level, provided that the structure with attached wireless facilities is (i) not more than 10 feet above the tallest existing utility pole located within 500 feet of the new structure within the same public right-of-way or within the existing line of utility poles; (ii) not located within the boundaries of a local, state, or federal historic district; (iii) not located inside the jurisdictional boundaries of a locality having expended a total amount equal to or greater than 35 percent of its general fund operating revenue, as shown in the most recent comprehensive annual financial report, on undergrounding projects since 1980; and (iv) designed to support small cell facilities. 'Standard process project' means any project other than an administrative review eligible project (discretionary zoning).	Administrative review eligible project for collocation on an existing structure of a wireless facility (antenna and equipment) that does not otherwise conform with the definition of 'small cell facility' established under SB1282 (prior legislative session). 'Project does not include the installation of a small cell facility on an existing structure to which the provisions of 15.2-2316.4 apply. 'Standard process project' means any project other than an administrative review eligible project (discretionary zoning).	Fee may not exceed $500 for an administrative review eligible project. For standard process project, fees shall not exceed the actual direct costs to process the application, including permits and inspection.		
Virginia H 1427	July 1, 2018								Annual wireless support structure public ROW fees (may be adjusted every five years based on CPI-U): $1,000 for any wireless support structure at or below 50 feet in height; $3,000 for any wireless support structure above 50 feet and at or below 120 feet in height; $5,000 for any wireless support structure above 120 feet in height; and $1 per square foot for any other equipment, shelter, or associated facilities constructed on the ground