

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 1388

By: Treat

AS INTRODUCED

An Act relating to telecommunications; creating the Oklahoma Small Wireless Facilities Deployment Act; defining terms; establishing procedures for the collocation and deployment of small wireless facilities and utility poles within a right-of-way; establishing the permitting process for wireless providers utilizing small wireless facilities in certain areas; establishing permitting and application process for wireless providers installing and maintaining utility poles in certain areas; establishing exceptions to the permitting process; establishing procedures for wireless provider access to utility poles in certain areas; establishing permissible rates and fees for certain activities related to small wireless facility deployment; exempting certain entities from application of fees; establishing procedures for agreements and ordinances adopted by certain entities for implementation of this act; establishing jurisdiction for dispute resolutions related to this act; authorizing certain entities to adopt requirements related to indemnification insurance, and bonding in implementation of this act; establishing procedures for requirements related to indemnification, insurance and bonding in implementation of this act; providing for codification; and providing an effective date.

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

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

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

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

9 As used in the Oklahoma Small Wireless Facilities Deployment
10 Act:

11 1. "Antenna" means communications equipment that transmits or
12 receives electromagnetic radio frequency signals used in the
13 provision of wireless services;

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

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

21 4. "Application" means a request submitted by an applicant to
22 an authority:

23 a. for a permit to collocate small wireless facilities,
24 or

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

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

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

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

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

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

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

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

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

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

12 14. "Micro wireless facility" means a small wireless facility
13 that meets the following qualifications:

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

17 (b) any exterior antenna is no longer than eleven (11)
18 inches;

19 15. "Permit" means a written authorization required by an
20 authority to perform an action or initiate, continue, or complete a
21 project;

22 16. "Person" means an individual, corporation, limited
23 liability company, partnership, association, trust or other entity
24 or organization, including an authority;

1 17. "Rate" means a recurring charge;

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

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

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

12 b. all other wireless equipment associated with the
13 wireless facility, whether ground or pole-mounted, is
14 cumulatively no more than twenty-eight (28) cubic feet
15 in volume. The following types of associated
16 ancillary equipment are not included in the
17 calculation of equipment volume: electric meter,
18 concealment elements, telecommunications demarcation
19 box, grounding equipment, power transfer switch, cut-
20 off switch and vertical cable runs for the connection
21 of power and other services;

22 20. "Technically feasible" means that by virtue of engineering
23 or spectrum usage the proposed placement for a small wireless
24

1 facility, or its design or site location can be implemented without
2 a reduction in the functionality of the small wireless facility;

3 21. "Utility pole" means a pole or similar structure that is or
4 may be used in whole or in part by or for wireline communications,
5 electric distribution, lighting, traffic control, signage or a
6 similar function, or for the collocation of small wireless
7 facilities; provided, however, such term shall not include wireless
8 support structures or electric transmission structures;

9 22. "Wireless facility" means equipment at a fixed location
10 that enables wireless communications between user equipment and a
11 communications network, including: (a) equipment associated with
12 wireless communications; and (b) radio transceivers, antennas,
13 coaxial or fiber-optic cable, regular and backup power supplies, and
14 comparable equipment, regardless of technological configuration.
15 The term includes small wireless facilities. The term does not
16 include:

17 a. the structure or improvements on, under, or within
18 which the equipment is collocated, or

19 b. coaxial or fiber-optic cable that is between wireless
20 support structures or utility poles or that is
21 otherwise not immediately adjacent to or directly
22 associated with a particular antenna;

23 23. "Wireless infrastructure provider" means any person
24 authorized to provide telecommunications service in the state, that

1 builds or installs wireless communication transmission equipment,
2 wireless facilities or wireless support structures, but that is not
3 a wireless services provider;

4 24. "Wireless provider" means a wireless infrastructure
5 provider or a wireless services provider;

6 25. "Wireless services" means any services, whether at a fixed
7 location or mobile, provided to the public using wireless
8 facilities;

9 26. "Wireless services provider" means a person who provides
10 wireless services; and

11 27. "Wireless support structure" means a structure, such as a
12 monopole; tower, either guyed or self-supporting; billboard;
13 building; or other existing or proposed structure designed to
14 support or capable of supporting wireless facilities, other than a
15 structure designed solely for the collocation of small wireless
16 facilities. Such term shall not include a utility pole.

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

20 A. The provisions of this section shall only apply to the
21 collocation of small wireless facilities by a wireless provider in
22 the rights of way and the deployment of utility poles to support
23 small wireless facilities by a wireless provider in the rights of
24 way.

1 B. An authority may not enter into an exclusive arrangement
2 with any person for use of the rights of way for the collocation of
3 small wireless facilities or the installation, operation, marketing,
4 modification, maintenance, or replacement of utility poles or
5 wireless support structures.

6 C. An authority may only charge a wireless provider a rate or
7 fee for the use of the rights of way with respect to the collocation
8 of small wireless facilities or the installation, maintenance,
9 modification, operation or replacement of a utility pole in the
10 right-of-way, if the authority charges non-public entities for use
11 of the rights-of-way. Notwithstanding the foregoing, an authority
12 is permitted, on a nondiscriminatory basis, to refrain from charging
13 any rate to a wireless provider for the use of the right-of-way.
14 The rate for use of the right-of-way is provided in Section 6 of
15 this act.

16 D. Subject to the provisions of this section and the approval
17 of an application pursuant to Section 4 of this act, a wireless
18 provider shall have the right, as a permitted use not subject to
19 zoning review or approval, to collocate small wireless facilities
20 and install, maintain, modify, operate and replace utility poles
21 along, across, upon, and under the rights-of-way. Such structures
22 and facilities shall be so installed and maintained as not to
23 obstruct or hinder the usual travel or public safety on such right-
24

1 of-way or obstruct the legal use of such right-of-way by other
2 occupants of the right-of-way, including public utilities.

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

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

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

9 New small wireless facilities in the right-of-way may not extend
10 more than ten (10) feet above an existing utility pole in place as
11 of the effective date of this act or, for small wireless facilities
12 on a new utility pole, above the height permitted for a new utility
13 pole under this section. Subject to this section and Section 6 of
14 this act, a wireless provider shall have the right to collocate a
15 small wireless facility and install, maintain, modify, operate and
16 replace a utility pole that exceeds these height limits along,
17 across, upon and under the right-of-way, subject to applicable
18 zoning regulations.

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

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

20 H. Wireless providers shall comply with reasonable and
21 nondiscriminatory requirements that prohibit communications service
22 providers from installing structures in the right-of-way in an area
23 designated solely for underground or buried cable and utility
24 facilities where:

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

- 4 a. a date certain before the application is submitted, or
- 5 b. a date certain within two (2) years after the
- 6 application is submitted, if relocation of facilities
- 7 has commenced;

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

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

14 I. Subject to Section 4 of this act and subsection D of this
15 section, and except for facilities excluded from evaluation for
16 effects on historic properties under 47 C.F.R. § 1.1307(a)(4) of the
17 FCC rules, an authority may require reasonable, technically
18 feasible, non-discriminatory and technologically neutral design or
19 concealment measures in a historic district. Any such design or
20 concealment measures may not have the effect of prohibiting any
21 provider's technology; nor may any such measures be considered a
22 part of the small wireless facility for purposes of the size
23 restrictions in the definition of small wireless facility.

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

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

18 L. Nothing in this act precludes an authority from adopting
19 reasonable and nondiscriminatory requirements with respect to
20 the removal of abandoned small wireless facilities. A small
21 wireless facility that is not operated for a continuous period
22 of twelve (12) months shall be considered abandoned and the
23 owner of the facility must remove the small wireless facility
24 within ninety (90) days after receipt of written notice from

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

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

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

20 B. Except as provided in this act, an authority may not
21 prohibit, regulate, or charge for the collocation of small wireless
22 facilities classified as permitted uses in subsection C of this
23 section.

24

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

11 D. An authority may require an applicant to obtain one or more
12 permits to collocate a small wireless facility or install a new,
13 modified or replacement utility pole associated with a small
14 wireless facility as provided in Section 4 of this act, provided
15 such permits are of general applicability and do not apply
16 exclusively to wireless facilities. An authority shall receive
17 applications for, process and issue such permits subject to the
18 following requirements:

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

23 2. An applicant shall not be required to provide more
24 information to obtain a permit than communications service providers

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

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

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

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

22 6. Within twenty (20) days of receiving an application, an
23 authority must determine and notify the applicant in writing whether
24 the application is complete. If an application is incomplete, an

1 authority must specifically identify the missing information in
2 writing. The processing deadline in paragraph 7 of this subsection
3 is tolled from the time the authority sends the notice of
4 incompleteness to the time the Applicant provides the missing
5 information. That processing deadline also may be tolled by
6 agreement of the applicant and the authority;

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

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

- 15 a. materially interferes with the safe operation of
16 traffic control equipment or emergency management
17 system or devices,
- 18 b. materially interferes with sight lines or clear zones
19 for transportation or pedestrians,
- 20 c. materially interferes with compliance with the
21 Americans with Disabilities Act or similar federal or
22 state standards regarding pedestrian access or
23 movement,

- d. materially interferes with Federal Aviation Administration requirements or the operation of an airport or air traffic,
- e. fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by ordinance that concern the location of ground-mounted equipment and new Utility Poles. Such spacing requirements shall not prevent a wireless provider from serving any location,
- f. fails to comply with applicable codes, including without limitation the most recent version of the National Electric Safety Code,
- g. fails to comply with subsections D, G, H and I of Section 3 of this act, or
- h. causes the utility pole or wireless support structure to become structurally unsound, unless the applicant demonstrates that it will address the problem adequately, such as by modifying or replacing the structure;

9. The authority shall document the basis for a denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the authority denies an application. The applicant may cure the deficiencies identified by the authority and resubmit the

1 application within thirty (30) days of the denial without paying an
2 additional application fee. The authority shall approve or deny the
3 revised application within thirty (30) days. Any subsequent review
4 shall be limited to the deficiencies cited in the denial;

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

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

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

1 renewed for equivalent durations so long as they are
2 in compliance with the criteria set forth in paragraph
3 8 of this subsection;

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

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

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

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

- 16 1. Routine maintenance;
 - 17 2. The replacement of small wireless facilities with small
 - 18 wireless facilities that are substantially similar or the same size
 - 19 or smaller; or
 - 20 3. For the installation, placement, maintenance, operation, or
 - 21 replacement of micro wireless facilities that are strung on cables
 - 22 between existing utility poles, in compliance with the National
 - 23 Electrical Safety Code.
- 24

1 An authority may, however, require a permit to work within the
2 right-of-way for such activities, if applicable. Any such permits
3 shall be subject to the requirements provided in subsections C and D
4 of this section.

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

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

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

15 C. An authority shall allow the collocation of small wireless
16 facilities on authority poles subject to the application process in
17 Section 4 of this act and the make-ready process in this section.
18 The rates, fees and terms for such collocations shall:

- 19 a. be nondiscriminatory regardless of the services
20 provided by the collocating person,
21 b. comply with this act, and
22 c. be made available to wireless providers under Section
23 9 of this act.

24

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

18 The person owning, managing, or controlling the authority pole
19 shall not require more make-ready work than required to meet
20 applicable codes or industry standards. Fees for make-ready work
21 shall not include costs related to pre-existing or prior damage or
22 noncompliance. Fees for make-ready work including any pole
23 replacement, shall be reasonable and nondiscriminatory and shall not
24 exceed actual costs, which may include the amount the authority pays

1 a professional engineer registered in this state to review the make-
2 ready work plans of the wireless provider.

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

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

9 B. An authority may not require a wireless provider to pay any
10 rates, fees, or compensation to the authority or other person other
11 than what is expressly authorized by this act for the right to use
12 or occupy a right-of-way, for collocation of small wireless
13 facilities on utility poles in the right-of-way, or for the
14 installation, maintenance, modification, operation and replacement
15 of utility poles in the right-of-way.

16 C. Application fees shall be subject to the following
17 requirements:

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

21 2. An application fee may not include:

22 a. travel expenses incurred by a third party in its
23 review of an application, or
24

1 b. direct payment or reimbursement of third-party rates
2 or fees charged on a contingency basis or a result-
3 based arrangement;

4 3. An application fee for a collocation shall be limited to the
5 cost of granting a permit for similar types of commercial
6 development or construction within the authority's jurisdiction.
7 The application and permit fees for collocation of small wireless
8 facilities on an existing or replacement authority pole shall not
9 exceed Two Hundred Dollars (\$200.00) each for the first five (5)
10 small wireless facilities on the same application and One Hundred
11 Dollars (\$100.00) for each additional small wireless facility on the
12 same application; and

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

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

21 E. The rates to collocate on authority poles in the rights-of-
22 way shall not exceed Twenty Dollars (\$20) per authority pole per
23 year.

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

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

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

11 This act does not impose or otherwise affect any tariff,
12 contractual obligation or right, or federal or state law regarding
13 utility poles, similar structures or equipment of any type owned or
14 controlled by an investor-owned electric utility or electric
15 cooperative.

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

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

1 SECTION 9. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 36-509 of Title 11, unless there
3 is created a duplication in numbering, reads as follows:

4 Subject to the provisions of this act and applicable federal
5 law, an authority may continue to exercise zoning, land use,
6 planning and permitting authority within its territorial boundaries
7 with respect to wireless support structures and utility poles. No
8 authority shall have or exercise any jurisdiction or authority over
9 the design, engineering, construction, installation, or operation of
10 any small wireless facility located in an interior structure or upon
11 the site of any campus, stadium, or athletic facility not owned or
12 controlled by the authority, other than to comply with applicable
13 codes. An authority shall evaluate the structure classification for
14 wireless support structures under the latest version of ANSI/TIA-
15 222. Nothing in this act authorizes the state or any political
16 subdivision, including an authority, to require wireless facility
17 deployment or to regulate wireless services.

18 SECTION 10. NEW LAW A new section of law to be codified

19 in the Oklahoma Statutes as Section 36-510 of Title 11, unless there
20 is created a duplication in numbering, reads as follows:

21 A. An authority may adopt an ordinance, resolution or standard
22 agreement that makes available to wireless providers rates, fees,
23 and other terms that comply with this act. Subject to subsections
24 B, C, D and E of this section, in the absence of an ordinance,

1 resolution or standard agreement that fully complies with this act
2 and until such a compliant ordinance, resolution or standard
3 agreement is adopted, if at all, wireless providers may install and
4 operate small wireless facilities and utility poles under the
5 requirements of this act.

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

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

1 act may remain installed and be operated under the requirements of
2 this act.

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

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

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

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

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

12 A. An authority may adopt indemnification, insurance and
13 bonding requirements related to small wireless facility permits
14 subject to the requirements of this section.

15 B. An authority shall not require a wireless provider to
16 indemnify and hold the authority and its officers and employees
17 harmless against any claims, lawsuits, judgments, costs, liens,
18 losses, expenses or fees, except when a court of competent
19 jurisdiction has found that the negligence of the wireless provider
20 while installing, repairing, or maintaining caused the harm that
21 created such claims, lawsuits, judgments, costs, liens, losses,
22 expenses, or fees.

23 C. An authority may require a wireless provider to have in
24 effect insurance coverage consistent with subsection A of this

1 section, so long as the authority imposes similar requirements on
2 other rights of way users and such requirements are reasonable and
3 nondiscriminatory.

4 D. An authority may not require a wireless provider to obtain
5 insurance naming the authority or its officers and employees an
6 additional insured.

7 E. An authority may require a wireless provider to furnish
8 proof of insurance, if required, prior to the effective date of any
9 permit issued for a small wireless facility.

10 F. An authority may adopt bonding requirements for small
11 wireless facilities if the authority imposes similar requirements in
12 connection with permits issued for other rights of way users.

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

14 a. provide for the removal of abandoned or improperly
15 maintained small wireless facilities, including those
16 that an authority determines need to be removed to
17 protect public health, safety, or welfare,

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

20 c. recoup rates or fees that have not been paid by a
21 wireless provider in over twelve (12) months, so long
22 as the wireless provider has received reasonable
23 notice from the authority of any of the non-compliance
24 listed above and an opportunity to cure.

1 2. Bonding requirements may not exceed Two Hundred Dollars
2 (\$200.00) per small wireless facility. For wireless providers with
3 multiple small wireless facilities within the jurisdiction of a
4 single authority, the total bond amount across all facilities may
5 not exceed Ten Thousand Dollars (\$10,000.00), which amount may be
6 combined into one bond instrument.

7 SECTION 13. This act shall become effective November 1, 2018.

8
9 56-2-3417 CB 7/17/2018 9:59:49 AM