

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2957

By: Thomsen

7 COMMITTEE SUBSTITUTE

8 An Act relating to telecommunications; creating the
9 Oklahoma Small Wireless Facilities Deployment Act;
10 stating Legislative findings; defining terms;
11 establishing procedures for the deployment of small
12 wireless facilities and utility poles within a right-
13 of-way; establishing the permitting process for
14 wireless providers utilizing small wireless
15 facilities in certain areas; establishing permitting
16 process for wireless providers installing and
17 maintaining utility poles in certain areas;
18 establishing exceptions to the permitting process;
19 establishing procedures for wireless provider access
20 to utility poles in certain areas; establishing
21 permissible rates and fees for certain activities
22 related to small wireless facility deployment;
23 exempting certain entities from application of act;
24 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

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

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

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

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

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

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

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

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

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

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

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

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

19 b. any exterior antenna is no longer than eleven (11)
20 inches;

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

24

1 16. "Person" means an individual, corporation, limited
2 liability company, partnership, association, trust or other entity
3 or organization, including an authority;

4 17. "Rate" means a recurring charge;

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

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

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

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

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

5 21. "Utility pole" means a pole or similar structure that is or
6 may be used in whole or in part by or for wireline communications,
7 electric distribution, lighting, traffic control, signage or a
8 similar function, or for the collocation of small wireless
9 facilities; provided, however, such term shall not include wireless
10 support structures or electric transmission structures. Utility
11 poles controlled by an investor-owned electric utility or electric
12 cooperative are subject to Section 7 of this act;

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

- 21 a. the structure or improvements on, under or within
- 22 which the equipment is collocated, or
- 23 b. coaxial or fiber-optic cable that is between wireless
- 24 support structures or utility poles or that is

1 otherwise not immediately adjacent to or directly
2 associated with a particular antenna;

3 23. "Wireless infrastructure provider" means any person
4 authorized to provide telecommunications service in the state that
5 builds or installs wireless communication transmission equipment,
6 wireless facilities or wireless support structures but that is not a
7 wireless services provider;

8 24. "Wireless provider" means a wireless infrastructure
9 provider or a wireless services provider;

10 25. "Wireless services" means any services, whether at a fixed
11 location or mobile, provided to the public using wireless
12 facilities;

13 26. "Wireless services provider" means a person who provides
14 wireless services; and

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

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

1 A. The provisions of this section shall only apply to the
2 collocation of small wireless facilities by wireless provider in the
3 rights-of-way and the deployment of utility poles to support small
4 wireless facilities by a wireless provider in the rights-of-way.

5 B. An authority may not enter into an exclusive arrangement
6 with any person for use of the rights-of-way for the collocation of
7 small wireless facilities or the installation, operation, marketing,
8 modification, maintenance or replacement of utility poles.

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

19 D. Subject to the provisions of this section and approval of an
20 application under Section 4 of this act, a wireless provider shall
21 have the right, as a permitted use not subject to zoning review or
22 approval, to collocate small wireless facilities and install,
23 maintain, modify, operate and replace utility poles along, across,
24 upon and under the rights-of-way. Such structures and facilities

1 shall be so installed and maintained as not to obstruct or hinder
2 the usual travel or public safety on such right-of-way or obstruct
3 the legal use of such right-of-way by other occupants of the right-
4 of-way, including public utilities.

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

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

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

11 New small wireless facilities in the right-of-way may not extend
12 more than ten (10) feet above an existing utility pole in place as
13 of the effective date of this act or, for small wireless facilities
14 on a new utility pole, above the height permitted for a new utility
15 pole under this section.

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

21 G. An authority may adopt written guidelines establishing
22 reasonable and objective stealth or concealment criteria for small
23 wireless facilities in designated areas, reasonable and objective
24 design criteria for small wireless facilities to be collocated on

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

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

21 1. The authority has required all cable and utility facilities
22 other than authority poles and attachments to be placed underground
23 (i) by a date certain before the application is submitted or (ii) by
24

1 a date certain within two (2) years after the application is
2 submitted, if relocation of facilities has commenced;

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

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

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

19 J. The authority, in the exercise of its administration and
20 regulation related to the management of the right-of-way, must be
21 competitively neutral with regard to other users of the right-of-
22 way, including that terms may not be unreasonable or discriminatory
23 and may not violate any applicable law.

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

13 L. Nothing in this act precludes an authority from adopting
14 reasonable and nondiscriminatory requirements with respect to the
15 removal of abandoned small wireless facilities. A small wireless
16 facility that is not operated for a continuous period of twelve (12)
17 months shall be considered abandoned and the owner of the facility
18 must remove the small wireless facility within ninety (90) days
19 after receipt of written notice from the authority notifying the
20 owner of the abandonment. The notice shall be sent by certified or
21 registered mail, return receipt requested, by the authority to the
22 owner at the last-known address of the owner. If the owner neither
23 provides the authority written notice that the small wireless
24 facility has not been out of operation for a continuous period of

1 twelve (12) months nor removes the small wireless facility within
2 the ninety-day period, the authority may remove the small wireless
3 facility, take ownership of the small wireless facility and assess
4 the cost of removal to the owner.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 36-504 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 the permitting
9 of small wireless facilities by a wireless provider in or outside
10 the right-of-way as specified in subsection C of this section and to
11 the permitting of the installation, modification and replacement of
12 utility poles by a wireless provider inside the right-of-way.

13 B. Except as provided in this act, an authority may not
14 prohibit, regulate or charge for the collocation of small wireless
15 facilities classified as permitted uses in subsection C of this
16 section.

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

1 height requirements in subsection E of Section 3 of this act and are
2 collocated in the right-of-way in any zone.

3 D. An authority may require an applicant to obtain one or more
4 permits to collocate a small wireless facility or install a new,
5 modified or replacement utility pole associated with a small
6 wireless facility as provided in Section 3 of this act, provided
7 such permits are of general applicability and do not apply
8 exclusively to wireless facilities. An authority shall receive
9 applications for, process and issue such permits subject to the
10 following requirements:

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

15 2. An applicant shall not be required to provide more
16 information to obtain a permit than communications service providers
17 that are not wireless providers, provided that an applicant may be
18 required to include construction and engineering drawings and
19 information demonstrating compliance with the criteria in paragraph
20 8 of this subsection and, for an application to collocate on an
21 authority pole, a wireless provider may be required to provide at
22 its expense engineering analysis demonstrating compliance with
23 applicable standards and codes, construction drawings stamped by a
24 professional engineer registered in Oklahoma and a description of

1 any recommended make-ready work, including any modification or
2 replacement of the authority pole;

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

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

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

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

23 7. An application shall be processed on a nondiscriminatory
24 basis and deemed approved if the authority fails to approve or deny

1 the application within seventy-five (75) days of receipt of the
2 application;

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

- 7 a. materially interferes with the safe operation of
8 traffic control equipment or emergency management
9 systems or devices,
- 10 b. materially interferes with sight lines or clear zones
11 for transportation or pedestrians,
- 12 c. materially interferes with compliance with the
13 Americans with Disabilities Act or similar federal or
14 state standards regarding pedestrian access or
15 movement,
- 16 d. materially interferes with Federal Aviation
17 Administration requirements or the operation of an
18 airport or air traffic,
- 19 e. fails to comply with reasonable and nondiscriminatory
20 spacing requirements of general application adopted by
21 ordinance that concern the location of ground-mounted
22 equipment and new utility poles. Such spacing
23 requirements shall not prevent a wireless provider
24 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 application within thirty (30) days of the denial without paying an additional application fee. The authority shall approve or deny the revised application within thirty (30) days. Any subsequent review shall be limited to the deficiencies cited in the denial;

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

1 more small wireless facilities in a consolidated application shall
2 not delay processing of any other small wireless facilities in the
3 same batch;

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

- 10 a. undertake the installation or collocation, and
11 b. subject to applicable relocation requirements and the
12 applicant's right to terminate at any time, operate
13 and maintain the small wireless facilities and any
14 associated utility pole covered by the permit for a
15 period of not less than ten (10) years, which must be
16 renewed for equivalent durations so long as they are
17 in compliance with the criteria set forth in paragraph
18 8 of this subsection;

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

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

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

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

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

7 1. Routine maintenance;

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

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

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

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

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

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

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

13 D. The rates, fees and terms and conditions for the make-ready
14 work to collocate on an authority pole described in the application
15 shall be nondiscriminatory, competitively neutral and commercially
16 reasonable and must comply with this act.

17 The authority may perform the make-ready work necessary to
18 enable the pole to support the requested collocation by a wireless
19 provider or require the wireless provider to perform the make-ready
20 work. If the authority elects to perform the make-ready work, it
21 shall provide a good faith estimate for the work, including pole
22 replacement if necessary, within sixty (60) days after receipt of a
23 complete application. The authority shall complete any make-ready
24 work it elects to perform, including any pole replacement within

1 sixty (60) days of written acceptance of the good faith estimate by
2 the applicant. An authority may require replacement of the
3 authority pole only if it demonstrates that the collocation would
4 make the authority pole structurally unsound. If the pole is
5 replaced, the authority shall take ownership of the pole.

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

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

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

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

1 facilities on utility poles in the right-of-way, or for the
2 installation, maintenance, modification, operation and replacement
3 of utility poles in the right-of-way.

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

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

9 2. An application fee may not include:

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

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

15 3. An application fee for a collocation shall be limited to the
16 cost of granting a permit for similar types of commercial
17 development or construction within the authority's jurisdiction.
18 The application and permit fees for collocation of small wireless
19 facilities on an existing or replacement authority pole shall not
20 exceed Two Hundred Dollars (\$200.00) each for the first five (5)
21 small wireless facilities on the same application and One Hundred
22 Dollars (\$100.00) for each additional small wireless facility on the
23 same application; and
24

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

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

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

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

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

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

22 This act does not impose or otherwise affect any tariff,
23 contractual obligation or right, or federal or state law regarding
24 utility poles, similar structures or equipment of any type owned or

1 controlled by an investor-owned electric utility or electric
2 cooperative.

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

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

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

15 Subject to the provisions of this act and applicable federal
16 law, an authority may continue to exercise zoning, land use,
17 planning and permitting authority within its territorial boundaries
18 with respect to wireless support structures and utility poles. No
19 authority shall have or exercise any jurisdiction or authority over
20 the design, engineering, construction, installation or operation of
21 any small wireless facility located in an interior structure or upon
22 the site of any campus, stadium or athletic facility not owned or
23 controlled by the authority, other than to comply with applicable
24 codes. An authority shall evaluate the structure classification for

1 wireless support structures under the latest version of ANSI/TIA-
2 222. Nothing in this act authorizes the state or any political
3 subdivision, including an authority, to require wireless facility
4 deployment or to regulate wireless services.

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

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

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

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

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

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

23 E. Notwithstanding the requirements in subsections C and D of
24 this section, a communications service provider that has executed an

1 agreement with an authority relating to small wireless facilities
2 and utility poles prior to the effective date of this act may choose
3 to continue to be subject to the rates, terms and conditions of that
4 agreement for up to five (5) years beyond the effective date of this
5 act.

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

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

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

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

23 B. An authority shall not require a wireless provider to
24 indemnify and hold the authority and its officers and employees

1 harmless against any claims, lawsuits, judgments, costs, liens,
2 losses, expenses or fees, except when a court of competent
3 jurisdiction has found that the negligence of the wireless provider
4 while installing, repairing or maintaining caused the harm that
5 created such claims, lawsuits, judgments, costs, liens, losses,
6 expenses or fees.

7 C. An authority may require a wireless provider to have in
8 effect insurance coverage consistent with subsection A of this
9 section, so long as the authority imposes similar requirements on
10 other rights-of-way users and such requirements are reasonable and
11 nondiscriminatory.

12 D. An authority may not require a wireless provider to obtain
13 insurance naming the authority or its officers and employees an
14 additional insured.

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

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

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

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

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

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

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

10 2. Bonding requirements may not exceed Two Hundred Dollars
11 (\$200.00) per small wireless facility. For wireless providers with
12 multiple small wireless facilities within the jurisdiction of a
13 single authority, the total bond amount across all facilities may
14 not exceed Ten Thousand Dollars (\$10,000.00), which amount may be
15 combined into one bond instrument.

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

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18 COMMITTEE REPORT BY: COMMITTEE ON UTILITIES, dated 03/01/2018 - DO
19 PASS, As Amended.
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