

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

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

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1388

By: Treat of the Senate

and

Thomsen of the House

8
9 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

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

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

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

24

1 a. for a permit to collocate small wireless facilities,
2 or

3 b. to approve the installation, modification or
4 replacement of a utility pole;

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

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

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

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

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

1 10. "Electric distribution pole" means an authority pole used
2 to support an electric distribution system;

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

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

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

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

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

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

1 b. any exterior antenna is no longer than eleven (11)
2 inches;

3 16. "Permit" means a written authorization required by an
4 authority to perform an action or initiate, continue or complete a
5 project;

6 17. "Person" means an individual, corporation, limited
7 liability company, partnership, association, trust or other entity
8 or organization, including an authority;

9 18. "Rate" means a recurring charge;

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

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

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

20 b. all other wireless equipment associated with the
21 wireless facility, whether ground- or pole-mounted, is
22 cumulatively no more than twenty-eight (28) cubic feet
23 in volume. The following types of associated
24 ancillary equipment are not included in the

1 calculation of equipment volume: electric meter,
2 concealment elements, telecommunications demarcation
3 box, grounding equipment, power transfer switch, cut-
4 off switch and vertical cable runs for the connection
5 of power and other services;

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

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

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

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

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

12 25. "Wireless provider" means a wireless infrastructure
13 provider or a wireless services provider;

14 26. "Wireless services" means any services, whether at a fixed
15 location or mobile, provided to the public using wireless
16 facilities;

17 27. "Wireless services provider" means a person who provides
18 wireless services; and

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

SECTION 3. NEW LAW

A new section of law to be codified in the Oklahoma Statutes as Section 36-503 of Title 11, unless there is created a duplication in numbering, reads as follows:

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

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

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

D. Subject to the provisions of this section and approval of an application pursuant to Section 4 of this act, a wireless provider

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

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

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

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

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

22 F. A wireless provider shall have the right to collocate a
23 small wireless facility and install, maintain, modify, operate and
24 replace a utility pole that exceeds the height limits in subsection

1 E of this section along, across, upon and under the right-of-way,
2 subject to applicable zoning or other land-use regulations.

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

22 H. Wireless providers shall comply with reasonable and
23 nondiscriminatory requirements that prohibit communications service
24 providers from installing utility poles or other structures in the

1 right-of-way in an area designated solely for underground or buried
2 cable and utility facilities where:

3 1. The authority has required all cable and utility facilities
4 other than authority poles and attachments to be placed underground
5 (i) by a date certain before the application is submitted or (ii) by
6 a date certain within two (2) years after the application is
7 submitted, if relocation of facilities 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., Section 1.1307(a)(4)
17 of the FCC rules, an authority may require reasonable, technically
18 feasible, nondiscriminatory 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 effect 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 right-of-way and
16 vegetation management practices adopted by the authority that apply
17 to all occupants of the right-of-way.

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

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

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

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

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

22 C. Small wireless facilities shall be classified as permitted
23 uses and not subject to zoning review or approval if they comply
24 with the height requirements in subsection E of Section 3 of this

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

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

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

20 2. An applicant shall not be required to provide more
21 information to obtain a permit than communications service providers
22 that are not wireless providers, provided that an applicant may be
23 required to include construction and engineering drawings and
24 information demonstrating compliance with the criteria in paragraph

1 8 of this subsection and, for an application to collocate on an
2 authority pole, a wireless provider may be required to provide at
3 its expense engineering analysis demonstrating compliance with
4 applicable standards and codes, construction drawings stamped by a
5 professional engineer registered in Oklahoma and a description of
6 any recommended make-ready work, including any modification or
7 replacement of the authority pole;

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

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

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

20 6. Within twenty (20) days of receiving an application, an
21 authority must determine and notify the applicant in writing whether
22 the application is complete. If an application is incomplete, an
23 authority must specifically identify the missing information in
24 writing. The processing deadline in paragraph 7 of this subsection

1 is tolled from the time the authority sends the notice of
2 incompleteness to the time the applicant provides the missing
3 information. That processing deadline also may be tolled by
4 agreement of the applicant and the authority;

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

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

- 13 a. materially interferes with the safe operation of
14 traffic control equipment or emergency management
15 systems or devices,
- 16 b. materially interferes with sight lines or clear zones
17 for transportation or pedestrians,
- 18 c. materially interferes with compliance with the
19 Americans with Disabilities Act or similar federal or
20 state standards regarding pedestrian access or
21 movement,
- 22 d. materially interferes with Federal Aviation
23 Administration requirements or the operation of an
24 airport or air traffic,

- 1 e. fails to comply with reasonable and nondiscriminatory
2 spacing requirements of general application adopted by
3 ordinance that concern the location of new utility
4 poles. Such spacing requirements shall not prevent a
5 wireless provider from serving any location,
- 6 f. with respect to ground-mounted equipment, fails to
7 comply with reasonable and nondiscriminatory
8 requirements of general application adopted by
9 ordinance that concern spacing of the ground-mounted
10 equipment; interference with sight lines, clear zones
11 or pedestrian access or movement; unhindered use of
12 the right-of-way by other right-of-way occupants,
13 including the authority; or design or concealment
14 measures in a historic district required under
15 subsection I of Section 3 of this act,
- 16 g. fails to comply with applicable codes, including
17 without limitation the most recent version of the
18 National Electrical Safety Code,
- 19 h. fails to comply with subsections D, G, H and I of
20 Section 3 of this act,
- 21 i. causes the utility pole or wireless support structure
22 to become structurally unsound, unless the applicant
23 demonstrates that it will address the problem
24

adequately, such as by modifying or replacing the structure, or

j. materially interferes with the intended use of an authority pole;

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 (25) small wireless facilities and receive a single permit; provided, however, the denial of one or more small wireless facilities in a consolidated application shall not delay processing of any other small wireless facilities in the same batch;

11. Installation or collocation for which a permit is granted pursuant to this section shall be completed within one (1) year after the permit issuance date, unless the authority and the

1 applicant agree to extend this period, or a delay is caused by the
2 lack of commercial power or communications facilities at the site.

3 Approval of an application authorizes the applicant to:

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

13 12. Wireless providers shall comply with relocation
14 requirements that apply to similarly situated occupants of the
15 right-of-way; and

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

- 18 a. filing, receiving or processing applications, or
- 19 b. issuing permits or other approvals, if any, for the
- 20 collocation of small wireless facilities or the
- 21 installation, modification or replacement of utility
- 22 poles to support small wireless facilities.

23 E. An authority shall not require an application for the
24 following:

1 1. Routine maintenance;

2 2. The replacement of small wireless facilities with small
3 wireless facilities that are substantially similar or the same size
4 or smaller; or

5 3. For the installation, placement, maintenance, operation or
6 replacement of micro wireless facilities that are strung on cables
7 between existing utility poles, in compliance with the National
8 Electrical Safety Code.

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

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

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

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

23 C. An authority shall allow the collocation of small wireless
24 facilities on authority poles subject to the application process in

1 Section 4 of this act and the make-ready process in this section.
2 The rates, fees and terms for such collocations shall be
3 nondiscriminatory regardless of the services provided by the
4 collocating person, comply with this act and be made available to
5 wireless providers under Section 10 of this act.

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

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

10 E. A wireless provider shall comply with the following
11 requirements and specifications:

12 1. Requirements and specifications of the National Electrical
13 Safety Code, the National Electrical Code and the Occupational
14 Safety and Health Act, including amendments or revisions to such
15 requirements or specifications, and in the event of conflict, the
16 most stringent of such requirements and specifications;

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

22 3. Notwithstanding subsection D of this section, requirements
23 and specifications of general application adopted by the authority
24

1 concerning make-ready work for authority electric distribution
2 poles.

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 small
10 wireless facilities on the same application and One Hundred Dollars
11 (\$100.00) for each additional small wireless facility on the same
12 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 right-of-
22 way shall not exceed Twenty Dollars (\$20.00) 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 H. An authority may adjust the fees and rates it adopts under
9 this section ten percent (10%) every five (5) years rounded to the
10 nearest dollar.

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

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

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

22 This section applies to activities in the right-of-way only.
23 Nothing in this act shall be interpreted to allow any entity to
24 provide services regulated under 47 U.S.C., Sections 521 to 573,

1 without compliance with all laws applicable to such providers nor
2 shall this act be interpreted to impose any new requirements on
3 cable providers for the provision of such service in this state.

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

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

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

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

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

12 2. Upon request, an authority shall enter into a pole
13 attachment agreement with a wireless provider for the collocation of
14 small wireless facilities on electric distribution poles. The
15 rates, fees and terms of the pole attachment agreement shall be
16 reasonable and nondiscriminatory and shall comply with this act. If
17 the wireless provider and the authority are not able to reach
18 agreement within ninety (90) days of the request for a pole
19 attachment agreement, the authority shall make a best-and-final
20 offer to the wireless provider within fifteen (15) days of the
21 expiration of the ninety-day period. The best-and-final offer shall
22 be in the form of a pole attachment agreement that is reasonable and
23 nondiscriminatory, complies with this act and may be accepted and
24 signed by the wireless provider. If the authority fails to make

1 such a best-and-final offer within fifteen (15) days of the
2 expiration of the ninety-day period, the wireless provider may
3 collocate small wireless facilities on the authority's electric
4 distribution poles under the requirements of this act until the
5 authority makes such a best-and-final offer.

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

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

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

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

22 A court of competent jurisdiction shall have jurisdiction to
23 determine all disputes arising under this act. Pending resolution
24 of a dispute concerning rates for collocation of small wireless

1 facilities on authority poles and nonauthority poles, the person
2 owning or controlling the pole shall allow the collocating person to
3 collocate on its poles at annual rates of no more than Twenty
4 Dollars (\$20.00) with rates to be trued up upon final resolution of
5 the dispute.

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

9 A. An authority may adopt indemnification, insurance and
10 bonding requirements related to small wireless facility permits
11 subject to the requirements of this section.

12 B. An authority may require a wireless provider to defend,
13 indemnify and hold harmless the authority and its officers, agents
14 and employees against any claims, demands, damages, lawsuits,
15 judgments, costs, liens, losses, expenses and attorney fees
16 resulting from the installation, construction, repair, replacement,
17 operation or maintenance of wireless facilities, wireless support
18 structures or utility poles to the extent caused by the wireless
19 provider, its contractors, subcontractors and their officers,
20 employees or agents. A wireless provider has no obligation to
21 defend, indemnify or hold harmless an authority, its officers,
22 agents or employees against any liabilities or losses due to or
23 caused by the sole negligence of the authority or its employees or
24 agents.

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

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

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

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

- 16 a. provide for the removal of abandoned or improperly
17 maintained small wireless facilities, including those
18 that an authority determines need to be removed to
19 protect public health, safety or welfare,
- 20 b. restoration of the right-of-way in connection with
21 removals under this paragraph, or
- 22 c. recoup rates or fees that have not been paid by a
23 wireless provider in over twelve (12) months, so long
24 as the wireless provider has received reasonable

1 notice from the authority of any of the noncompliance
2 listed above and an opportunity to cure.

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

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

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

8 (2) the surety has defaulted or failed to perform on
9 a bond given to the authority on behalf of the
10 wireless provider, or

11 b. a bond in an amount exceeding One Thousand Dollars
12 (\$1,000.00) per small wireless facility.

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

14
15 COMMITTEE REPORT BY: COMMITTEE ON UTILITIES, dated 04/12/2018 - DO
16 PASS, As Amended.
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