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HOUSE BILL 38

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

James E. Smith and Debbie A. Rodella

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE WIRELESS CONSUMER  
ADVANCED INFRASTRUCTURE INVESTMENT ACT; ESTABLISHING PROVISIONS  
FOR THE DEPLOYMENT OF CELLULAR NETWORK NODES IN PUBLIC RIGHTS  
OF WAY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Wireless Consumer Advanced Infrastructure  
Investment Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Wireless Consumer Advanced Infrastructure Investment Act:

A. "antenna" means communications equipment that  
transmits or receives electromagnetic radio frequency signals  
and that is used to provide wireless services;

B. "applicable codes" means uniform building, fire,

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1 electrical, plumbing or mechanical codes adopted by a  
2 recognized national code organization and enacted by the  
3 authority, including the local amendments to those codes  
4 enacted by the authority solely to address imminent threats of  
5 destruction of property or injury to persons, to the extent  
6 that those amendments are consistent with the Wireless Consumer  
7 Advanced Infrastructure Investment Act;

8 C. "applicant" means a wireless provider that  
9 submits an application;

10 D. "application" means a request submitted by an  
11 applicant to an authority for a permit to collocate one or more  
12 small wireless facilities or to approve the installation,  
13 modification or replacement of a utility pole or wireless  
14 support structure;

15 E. "authority" means a municipality or county;

16 F. "authority utility pole" means a utility pole,  
17 owned or operated by an authority, in a right of way;

18 G. "collocate" means to install, mount, maintain,  
19 modify, operate or replace one or more wireless facilities on,  
20 in or adjacent to a wireless support structure or utility pole;

21 H. "communications service" means cable service as  
22 defined in 47 U.S.C. Section 522(6), information service as  
23 defined in 47 U.S.C. Section 153(24), mobile service as defined  
24 in 47 U.S.C. 153(33), telecommunications service as defined in  
25 47 U.S.C. Section 153(53) or wireless service other than mobile

1 service;

2 I. "fee" means a one-time charge;

3 J. "law" includes federal, state or local law;

4 K. "permit" means the written permission of an  
5 authority for a wireless provider to install, mount, maintain,  
6 modify, operate or replace a utility pole or to collocate a  
7 small wireless facility on a utility pole or wireless support  
8 structure;

9 L. "person":

10 (1) means an individual, corporation, limited  
11 liability company, partnership, association, trust or other  
12 entity or organization; and

13 (2) includes an authority;

14 M. "private easement" means an easement or other  
15 real property right given for the benefit of the grantee of the  
16 easement and the grantee's successors and assigns;

17 N. "rate" means a recurring charge;

18 O. "right of way":

19 (1) means the area on, below or above a public  
20 roadway, highway, street, sidewalk, alley or utility easement;  
21 and

22 (2) does not include the area on, below or  
23 above:

24 (a) a federal interstate highway;

25 (b) a state highway or route under the

1 jurisdiction of the department of transportation;

2 (c) a private easement; or

3 (d) a utility easement that does not  
4 authorize the deployment sought by a wireless provider;

5 P. "small wireless facility" means a wireless  
6 facility whose:

7 (1) antennas are, or could fit, inside an  
8 enclosure with a volume of six or fewer cubic feet; and

9 (2) other ground- or pole-mounted wireless  
10 equipment, not including the following, is twenty-eight or  
11 fewer cubic feet in volume:

12 (a) electric meter;

13 (b) concealment elements;

14 (c) telecommunications demarcation box;

15 (d) grounding equipment;

16 (e) power transfer switch;

17 (f) cutoff switch;

18 (g) vertical cable runs for the  
19 connection of power and other services; and

20 (h) elements required by an authority in  
21 accordance with Subsection G of Section 3 of the Wireless  
22 Consumer Advanced Infrastructure Investment Act;

23 Q. "utility pole" means a pole or similar structure  
24 used in whole or in part for communications services,  
25 electricity distribution, lighting or traffic signals;

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1 R. "wireless facility":

2 (1) means equipment at a fixed location that  
3 enables wireless communications between user equipment and a  
4 communications network, including:

5 (a) equipment associated with wireless  
6 communications; and

7 (b) radio transceivers, antennas,  
8 coaxial or fiber-optic cables, regular and backup power  
9 supplies and comparable equipment, regardless of technological  
10 configuration;

11 (2) includes a small wireless facility; and

12 (3) does not include:

13 (a) the structure or improvements on,  
14 under or within which the equipment is collocated;

15 (b) a wireline backhaul facility,  
16 coaxial cable or fiber-optic cable between wireless support  
17 structures or utility poles; or

18 (c) coaxial or fiber-optic cable  
19 otherwise not immediately adjacent to, or directly associated  
20 with, an antenna;

21 S. "wireless infrastructure provider" means a  
22 person, other than a wireless services provider, that may  
23 provide telecommunications service in New Mexico and that  
24 builds or installs wireless communications transmission  
25 equipment, wireless facilities or utility poles;

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1 T. "wireless provider" means a wireless  
2 infrastructure provider or wireless services provider;

3 U. "wireless services" means services provided to  
4 the public that use licensed or unlicensed spectrum, either  
5 mobile or at a fixed location, through wireless facilities;

6 V. "wireless services provider" means a person that  
7 provides wireless services;

8 W. "wireless support structure" means a  
9 freestanding structure, including a monopole, guyed or  
10 self-supporting tower, sign or billboard, but not including a  
11 utility pole designed to support, or capable of supporting, a  
12 small wireless facility; and

13 X. "wireline backhaul facility" means a facility  
14 used to transport services by wire from a wireless facility to  
15 a network.

16 SECTION 3. [NEW MATERIAL] WIRELESS PROVIDER--USE OF RIGHT  
17 OF WAY--RATES, FEES AND TERMS--RIGHT TO ACCESS--DAMAGE AND  
18 REPAIR.--

19 A. This section applies to the activities of a  
20 wireless provider within a right of way.

21 B. An authority shall not enter into an exclusive  
22 agreement with a wireless provider for the use of a right of  
23 way in:

24 (1) constructing, installing, maintaining,  
25 modifying, operating or replacing a utility pole; or

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1                   (2) collocating a small wireless facility on a  
2 utility pole or wireless support structure.

3                   C. An authority may charge a wireless provider a  
4 rate or fee for the provider's use of a right of way in  
5 constructing, installing, maintaining, modifying, operating or  
6 replacing a utility pole, or in collocating a small wireless  
7 facility, in the right of way only if:

8                   (1) the authority otherwise may, under law,  
9 charge the rate or fee;

10                   (2) the authority charges other communications  
11 service providers or publicly, cooperatively or municipally  
12 owned utilities for their use, if any, of the right of way; and

13                   (3) the rate or fee:  
14                   (a) is competitively neutral as compared  
15 to other users, including investor-owned, authority-owned or  
16 cooperatively owned entities, if any, of the right of way,  
17 unless the other users are exempt under law from paying a rate  
18 or fee for their use of the right of way;

19                   (b) is not in the form of a franchise or  
20 other fee based on revenue or customer counts;

21                   (c) is reasonable and nondiscriminatory;  
22 and

23                   (d) annually, does not exceed an amount  
24 equal to two hundred fifty dollars (\$250) multiplied by the  
25 number of small wireless facilities placed by the wireless

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1 provider in the right of way and in the authority's  
2 jurisdiction.

3 D. Except as otherwise provided in the Wireless  
4 Consumer Advanced Infrastructure Investment Act, and subject to  
5 the approval of an application as provided in Section 4 of that  
6 act, a wireless provider may collocate small wireless  
7 facilities and construct, install, modify, mount, maintain,  
8 operate and replace utility poles associated with the  
9 collocation of a small wireless facility along, across, on or  
10 under the right of way.

11 E. If a wireless provider or the provider's  
12 contractor causes damage to the authority's property or right  
13 of way while the provider or contractor occupies, installs,  
14 repairs or maintains a small wireless facility, wireless  
15 support structure or utility pole in the right of way, the  
16 authority may require the provider to return the property to  
17 its pre-damage condition according to the authority's  
18 requirements and specifications if the requirements and  
19 specifications are competitively neutral and reasonable and  
20 upon written notice of the requirement to the provider. If the  
21 provider does not, within a reasonable period after receiving  
22 the notice, repair the property as required by the authority,  
23 the authority may make the repairs and charge the provider the  
24 reasonable, documented cost of the repairs.

25 F. A wireless provider that deploys a utility pole

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1 or small wireless facility in a right of way shall construct,  
2 maintain and locate it so as not to obstruct or hinder the  
3 usual travel on, or endanger the public in, the right of way,  
4 damage or interfere with another utility facility in the right  
5 of way or interfere with another utility's use of its facility  
6 in the right of way. In constructing and maintaining its  
7 utility pole or small wireless facility, the wireless provider  
8 shall comply with the national electrical safety code and all  
9 applicable laws for the protection of underground and overhead  
10 utility facilities. An authority shall treat a wireless  
11 provider's utility poles and small wireless facilities in a  
12 right of way as it does the facilities, if any, of other  
13 utilities in the right of way; however, the authority may adopt  
14 reasonable regulations concerning the separation of the  
15 wireless provider's utility poles and small wireless facilities  
16 from other utility facilities in the right of way to prevent  
17 damage to, or interference with, the facilities or to prevent  
18 interference with a utility's use of its facility or facilities  
19 in, or to be placed in, the right of way.

20 G. Subject to Subsection E of Section 4 of the  
21 Wireless Consumer Advanced Infrastructure Investment Act, an  
22 authority may require, as they pertain to small wireless  
23 facilities located in historic districts, reasonable,  
24 technically feasible, non-discriminatory and technologically  
25 neutral design or concealment measures and reasonable measures

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1 for conforming to the design aesthetics of historic districts,  
2 as long as the measures do not have the effect of prohibiting a  
3 wireless provider's technology. As used in this subsection,  
4 "historic district" means a group of buildings, properties or  
5 sites that:

6 (1) fall within the category defined in 47  
7 C.F.R. 1.1307(a)(4); and

8 (2) are:

9 (a) listed in the national register of  
10 historic places or formally determined eligible for listing in  
11 that register by the keeper of the register in accordance with  
12 the nationwide programmatic agreement found in 47 C.F.R. Part  
13 1, Appendix C; or

14 (b) designated as a historic district in  
15 accordance with the Historic District and Landmark Act.

16 H. A wireless provider shall notify an authority in  
17 writing of its intention to discontinue its use of a small  
18 wireless facility or utility pole. The notice shall inform the  
19 authority of the time and the way in which the wireless  
20 provider intends to remove the small wireless facility or  
21 utility pole. The wireless provider is responsible for the  
22 costs of the removal. If the wireless provider does not  
23 complete the removal within forty-five days after the notice,  
24 the authority may complete the removal and assess the costs of  
25 removal against the wireless provider. The permit for the

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1 small wireless facility or utility pole expires upon removal.

2 SECTION 4. [NEW MATERIAL] COLLOCATION OF A SMALL WIRELESS  
3 FACILITY--PERMITS--APPLICATION--FEE.--

4 A. This section applies to a wireless provider's  
5 collocation activities within a right of way.

6 B. An authority may prohibit, regulate or charge  
7 for the collocation of a small wireless facility only as  
8 provided in this section and Sections 3, 6 and 7 of the  
9 Wireless Consumer Advanced Infrastructure Investment Act.

10 C. A small wireless facility collocated on a  
11 utility pole or wireless support structure that extends ten or  
12 fewer feet above the pole or structure in a right of way in any  
13 zone is classified as a permitted use and is not subject to  
14 zoning review or approval.

15 D. An authority may require an applicant to obtain  
16 one or more permits to collocate a small wireless facility in a  
17 right of way if the requirement is of general applicability to  
18 users of the right of way. An applicant seeking to collocate,  
19 within an authority's jurisdiction, up to twenty-five small  
20 wireless facilities, all of which are substantially the same  
21 type, on substantially the same types of structures may file a  
22 consolidated application for the collocation of the facilities.  
23 The applicant shall include in that application an attestation  
24 that, unless a delay in collocation is caused by the lack of  
25 commercial power or fiber at the site, the collocation will

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1 begin within one hundred eighty days after the permit issuance  
2 date. The authority and the provider may subsequently agree to  
3 extend that period.

4 E. An authority shall:

5 (1) without bias, accept and process  
6 applications and issue permits to collocate small wireless  
7 facilities;

8 (2) within thirty days after receiving an  
9 application, determine and notify the applicant of whether the  
10 application is complete and:

11 (a) for an incomplete application,  
12 specifically identify the information missing from it; and

13 (b) deem the application complete if the  
14 applicant is not notified within the thirty-day period;

15 (3) within ninety days after receiving a  
16 completed application, approve or deny it and deem the  
17 application approved if that approval or denial is not given  
18 within the ninety-day period. The authority may request an  
19 extension of the ninety-day period, and the authority and  
20 applicant may agree to extend that period. An applicant shall  
21 not unreasonably deny an authority's request to extend the  
22 period;

23 (4) approve a completed application unless the  
24 application does not conform with:

25 (a) applicable codes or local laws

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1 concerning: 1) public safety; 2) design for utility poles, but  
2 only to the extent that the standards the codes or laws impose  
3 are objective; 3) stealth and concealment, but only to the  
4 extent that the restrictions the codes or laws impose are  
5 reasonable; and 4) the spacing of ground-mounted equipment in a  
6 right of way; and

7 (b) requirements imposed by the  
8 authority in accordance with Subsection G of Section 3 of the  
9 Wireless Consumer Advanced Infrastructure Investment Act; and

10 (5) if it denies an application, document the  
11 basis for the denial, including the specific code or law on  
12 which the denial was based, and send that documentation to the  
13 applicant on or before the date the application is denied.

14 F. In the ninety-day period after an authority  
15 receives an application to collocate a small wireless facility,  
16 the authority may:

17 (1) provide public notice of the application  
18 and an opportunity for written public comment on the  
19 application; and

20 (2) submit the written public comment to the  
21 applicant and request that the applicant respond to it.

22 G. If an authority determines that applicable codes  
23 or laws require that a utility pole or wireless support  
24 structure be replaced before an application for collocation is  
25 approved, the authority may condition approval of the

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1 application on that replacement. That replacement is subject  
2 to Section 3 of the Wireless Consumer Advanced Infrastructure  
3 Investment Act.

4 H. An applicant whose application is denied may  
5 cure the deficiencies identified by the authority and submit a  
6 revised application within thirty days after the denial for no  
7 additional fee. The authority shall base its review of the  
8 revised application only on the deficiencies cited in the  
9 denial and shall approve or deny the revised application within  
10 thirty days after receiving it.

11 I. If an application is for the collocation of  
12 multiple small wireless facilities, the authority may:

13 (1) treat as separate those for which  
14 incomplete information has been provided, that do not qualify  
15 for consolidated treatment or that are denied; and

16 (2) issue separate permits for the  
17 collocations that it approves.

18 J. An authority shall not:

19 (1) directly or indirectly require an  
20 applicant to perform services unrelated to the collocation for  
21 which approval is sought, such as the making of in-kind  
22 contributions to the authority of reserving fiber, conduit or  
23 pole space on the wireless provider's utility pole;

24 (2) require an applicant to provide more  
25 information to obtain a permit than the authority requires of a

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1 communications service provider that is not a wireless provider  
2 and that requests a permit to attach facilities to a structure;  
3 however, the authority may require the applicant to certify  
4 that the small wireless facilities to be collocated conform  
5 with the federal communications commission's regulations  
6 concerning radio frequency emissions;

7 (3) institute, either expressly or de facto, a  
8 moratorium on the acceptance or processing of applications or  
9 on the issuance of permits or other approvals, if any, for the  
10 collocation of small wireless facilities; or

11 (4) except as otherwise provided in Subsection  
12 K of this section, require an application, approval or permit  
13 or impose a fee, rate or other charge for:

14 (a) the routine maintenance of a small  
15 wireless facility;

16 (b) the replacement of a small wireless  
17 facility with one that is substantially similar in size to, the  
18 same size as or smaller than it, as long as the wireless  
19 provider that owns the wireless facility notifies the authority  
20 of the replacement at least ten days before the replacement; or

21 (c) the installation, maintenance,  
22 operation, placement or replacement of a micro wireless  
23 facility that is, in accordance with applicable codes,  
24 suspended on cables strung between utility poles or wireless  
25 structures. As used in this subparagraph, "micro wireless

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1 facility" means a small wireless facility less than twenty-four  
2 inches long, fifteen inches wide and twelve inches high whose  
3 exterior antenna, if any, is less than eleven inches long.

4 K. An authority may require a permit to engage,  
5 within rights of way, in activities that are identified in  
6 Paragraph (4) of Subsection J of this section and that affect  
7 traffic patterns or require lane closures.

8 L. The collocation for which a permit is issued  
9 shall begin within one hundred eighty days after the permit  
10 issuance date, unless the authority and the wireless provider  
11 agree to extend that period or a delay in collocation is caused  
12 by the lack of commercial power or fiber at the site. The  
13 permit gives the wireless provider the right to:

14 (1) collocate the small wireless facility; and

15 (2) subject to applicable relocation  
16 requirements, the requirements imposed on the authority by  
17 Section 3 of the Wireless Consumer Advanced Infrastructure  
18 Investment Act and to the wireless provider's right to  
19 terminate collocation at any time:

20 (a) operate and maintain the small  
21 wireless facility for at least ten years; and

22 (b) renew the permit for the same  
23 period, unless the authority finds that the small wireless  
24 facility does not conform with the applicable codes and local  
25 laws set forth in Paragraph (4) of Subsection E of this

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1 section.

2 M. An authority may charge an applicant an  
3 application fee in the amount of one hundred dollars (\$100) or  
4 less for each of up to five small wireless facilities and fifty  
5 dollars (\$50.00) or less for each additional small wireless  
6 facility whose collocation is requested in a single  
7 application.

8 N. The approval of an application under the  
9 Wireless Consumer Advanced Infrastructure Investment Act does  
10 not authorize the provision of a service or authorize the  
11 installation, placement, maintenance or operation of a wireline  
12 backhaul facility in a right of way.

13 O. The Wireless Consumer Advanced Infrastructure  
14 Investment Act shall not be deemed to allow a person, without  
15 the consent of the property owner, to collocate a small  
16 wireless facility on a privately owned utility pole, a  
17 privately owned wireless support structure or private property.

18 SECTION 5. [NEW MATERIAL] INSTALLATION, REPLACEMENT OR  
19 MODIFICATION OF A UTILITY POLE--PERMITS--APPLICATION--FEE.--

20 A. This section applies to the activities of a  
21 wireless provider in installing a new, replacement or modified  
22 utility pole associated with the collocation of a small  
23 wireless facility in a right of way.

24 B. A new, replacement or modified utility pole  
25 associated with the collocation of a small wireless facility

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1 and installed in a right of way is not subject to zoning review  
2 and approval, except for that which pertains to the under-  
3 grounding prohibitions described in Subparagraph (c) of  
4 Paragraph (1) of Subsection C of this section, unless the  
5 utility pole, as measured from the ground level, is higher than  
6 whichever of the following is greater:

7 (1) ten feet plus the height in feet of the  
8 tallest existing utility pole, other than a utility pole  
9 supporting only one or more wireless facilities, that is:

10 (a) in place on the effective date of  
11 the Wireless Consumer Advanced Infrastructure Investment Act;

12 (b) located within five hundred feet of  
13 the new, replacement or modified utility pole;

14 (c) in the same right of way and within  
15 the jurisdictional boundary of the authority; and

16 (d) fifty or fewer feet above ground  
17 level; or

18 (2) fifty feet.

19 C. An authority may require an application for the  
20 installation of a new, replacement or modified utility pole  
21 associated with the collocation of a small wireless facility in  
22 a right of way. An authority shall approve such an application  
23 unless the authority finds that the installation of the utility  
24 pole does not conform with:

25 (1) applicable codes or local laws concerning:

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(a) public safety;

(b) design for utility poles, but only to the extent that the standards the codes or laws impose are objective; and

(c) under-grounding prohibitions on the installation of new, or the modification of existing, utility poles in a right of way without prior approval, if those regulations: 1) require that all cable and public utility facilities be placed underground by a date certain within one year after the application; 2) include a waiver, zoning or other process that addresses requests to install such new utility poles or modify such existing utility poles; and 3) allow the replacement of utility poles;

(2) the federal Americans with Disabilities Act of 1990 or similar federal or state standards for pedestrian access or movement;

(3) requirements imposed by the authority in accordance with Subsection G of Section 3 of the Wireless Consumer Advanced Infrastructure Investment Act;

(4) requirements imposed by contract between an authority and a private property owner concerning the design of utility poles in the right of way; or

(5) the authority's laws concerning public safety and imposing minimum spacing requirements, if reasonable, for new utility poles in rights of way.

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1           D. An authority shall process an application for a  
2 permit to install a new, replacement or modified utility pole  
3 associated with the collocation of a small wireless facility  
4 within one hundred fifty days after receiving the application.  
5 If the authority fails to approve or deny the application  
6 within that period, the authority shall deem the application  
7 approved. The application fee, if any, imposed by the  
8 authority for such an application shall conform with the  
9 requirements of Subsection M of Section 4 of the Wireless  
10 Consumer Advanced Infrastructure Investment Act and shall not  
11 exceed seven hundred fifty dollars (\$750).

12           E. The installation, modification or replacement  
13 for which a permit is issued under this section shall begin  
14 within one hundred eighty days after the permit issuance date,  
15 unless the authority and wireless provider agree to extend that  
16 period or a delay in the installation, modification or  
17 replacement is caused by the lack of commercial power or fiber  
18 at the site. The permit gives the wireless provider the right  
19 to:

20                   (1) undertake the requested deployment; and  
21                   (2) subject to applicable relocation  
22 requirements, to the requirements imposed on the authority by  
23 this section and to the provider's right to terminate the  
24 installation at any time:

25                   (a) operate and maintain the new,

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1 modified or replacement utility pole for a period of at least  
2 ten years; and

3 (b) renew the permit for that same  
4 period, unless the authority finds that the new or modified  
5 utility pole does not conform with the restrictions set forth  
6 in Subsection C of this section.

7 SECTION 6. [NEW MATERIAL] ACCESS TO AUTHORITY UTILITY  
8 POLES--RATES AND FEES--COLLOCATIONS FOR OTHER COMMERCIAL  
9 PROJECTS OR USES.--

10 A. An authority shall not enter into an exclusive  
11 agreement with a person for the right to attach to an authority  
12 utility pole.

13 B. The rates and fees an authority imposes for the  
14 collocation of a small wireless facility on an authority  
15 utility pole shall not vary according to the services provided  
16 by the collocating person.

17 C. The rate to collocate a small wireless facility  
18 on an authority utility pole shall not exceed twenty dollars  
19 (\$20.00) per utility pole per year.

20 D. An authority shall process an application for a  
21 permit to collocate a small wireless facility on an authority  
22 utility pole in accordance with Section 4 of the Wireless  
23 Consumer Advanced Infrastructure Investment Act. The authority  
24 may condition the issuance of the permit on the wireless  
25 provider's replacement of the authority utility pole if the

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1 authority determines that applicable codes or local laws  
2 concerning public safety require that replacement. The  
3 authority shall process an application for a permit to install  
4 a replacement authority utility pole in accordance with Section  
5 5 of the Wireless Consumer Advanced Infrastructure Investment  
6 Act. The authority shall retain ownership of the replacement  
7 utility pole.

8 E. An authority may prohibit, regulate and charge  
9 for the collocation of a small wireless facility on a wireless  
10 support structure owned by the authority.

11 SECTION 7. [NEW MATERIAL] ESTABLISHMENT OF RATES, FEES  
12 AND TERMS--EXTENSION OF TERM TO FULFILL DUTIES.--

13 A. An authority may adopt an ordinance setting  
14 forth the rates, fees and terms for implementing the Wireless  
15 Consumer Advanced Infrastructure Investment Act. In the  
16 absence of such an ordinance, an authority and a wireless  
17 provider may enter into an agreement setting forth those rates,  
18 fees and terms. Documents showing the rates, fees and terms  
19 agreed to by an authority and a wireless provider are public  
20 records.

21 B. The rates, fees and terms for the use of a right  
22 of way as set forth in Section 3 of the Wireless Consumer  
23 Advanced Infrastructure Investment Act and for access to  
24 authority utility poles as set forth in Section 6 of that act  
25 shall accord with that act, and the terms:

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1 (1) shall be reasonable and nondiscriminatory;

2 (2) may include requirements applicable to  
3 other users of the right of way;

4 (3) may require that the wireless provider's  
5 operation of a small wireless facility in the right of way not  
6 interfere with the authority's public safety communications;

7 (4) except as otherwise provided in Subsection  
8 C of Section 5 of that act, shall not:

9 (a) require the placement of a small  
10 wireless facility on a specific utility pole or category of  
11 poles or require multiple antenna systems on a single utility  
12 pole; or

13 (b) restrict the placement of small  
14 wireless facilities by imposing minimum horizontal spacing  
15 requirements; and

16 (5) shall provide for the reasonable  
17 accommodation of a power supply to, and electric metering of,  
18 the small wireless facility.

19 C. An agreement between an authority and a wireless  
20 provider in effect on the effective date of the Wireless  
21 Consumer Advanced Infrastructure Investment Act and that  
22 concerns the collocation of one or more small wireless  
23 facilities in a right of way, including that collocation on  
24 authority utility poles, remains in effect subject to  
25 applicable termination provisions. A wireless provider in such

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underscored material = new  
[bracketed material] = delete

1 an agreement may, after they become effective, accept the  
2 rates, fees and terms established in accordance with Subsection  
3 B of this section for the small wireless facilities and utility  
4 poles that are the subject of an application.

5 D. If the federal government, the state or an  
6 authority declares a disaster and that disaster impedes an  
7 authority's or wireless provider's ability to fulfill the  
8 duties imposed on it by the Wireless Consumer Advanced  
9 Infrastructure Investment Act or by an ordinance adopted in  
10 accordance with this section, the term under which those duties  
11 must be fulfilled is extended for a reasonable period.

12 SECTION 8. [NEW MATERIAL] SCOPE OF LOCAL AUTHORITY.--

13 A. Except as otherwise provided in the Wireless  
14 Consumer Advanced Infrastructure Investment Act, an authority  
15 may exercise its zoning, land use, planning and permitting  
16 authority and its police power for the installation,  
17 modification and replacement of wireless support structures and  
18 utility poles.

19 B. An authority's power to control the design,  
20 engineering, construction, installation or operation of a small  
21 wireless facility in an interior structure or on the site of a  
22 campus, stadium or athletic facility not owned or controlled by  
23 the authority is limited to its authority to enforce compliance  
24 with applicable codes.

25 C. The Wireless Consumer Advanced Infrastructure

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underscoring material = new  
~~[bracketed material]~~ = delete

1 Investment Act does not authorize the state or a political  
2 subdivision of the state to require small wireless facility  
3 deployment or to regulate wireless services.

4 D. If an authority determines that a utility pole  
5 or the wireless support structure of a wireless provider must  
6 be relocated to accommodate a public project, the provider  
7 shall assume the costs of relocating the wireless facilities  
8 deployed on the pole or structure.

9 SECTION 9. [NEW MATERIAL] APPLICABILITY.--The Wireless  
10 Consumer Advanced Infrastructure Investment Act does not:

11 A. affect the authority, under state or federal  
12 law, of an investor-owned electric utility or electric  
13 cooperative that owns, controls or operates utility poles or  
14 wireless support structures to deny, limit, restrict or  
15 determine the rates, fees, terms and conditions for the use of,  
16 or attachment to, those poles or structures by a wireless  
17 provider;

18 B. confer on an authority any zoning, land use,  
19 planning, permitting or other regulatory authority over the  
20 utility poles, wireless support structures or small wireless  
21 facilities owned, controlled or operated by an investor-owned  
22 electric utility or electric cooperative or the installation of  
23 those poles, structures or facilities by an investor-owned  
24 electric utility or electric cooperative;

25 C. impose a duty, liability or restriction on any

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underscoring material = new  
~~[bracketed material] = delete~~

1 investor-owned electric utility or electric cooperative;  
2 D. amend, modify or otherwise affect the provisions  
3 affecting a private easement; or  
4 E. authorize an authority to:  
5 (1) require of a public telecommunications  
6 company that provides telecommunications services under a  
7 certificate of public convenience and necessity issued by the  
8 state an additional grant of authority to provide those  
9 services; or  
10 (2) discriminate against such a company in its  
11 use of rights of way.