

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: S4/1/19
A Bill

SENATE BILL 602

By: Senator J. Dismang
By: Representatives A. Davis, Love, Lynch

For An Act To Be Entitled

AN ACT TO ESTABLISH THE SMALL WIRELESS FACILITY
DEPLOYMENT ACT; AND FOR OTHER PURPOSES.

Subtitle

TO ESTABLISH THE SMALL WIRELESS FACILITY
DEPLOYMENT ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 23, Chapter 17, is amended to add an additional subchapter to read as follows:

Subchapter 5 – Small Wireless Facility Deployment Act

23-17-501. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The deployment of small wireless facilities and other next-generation wireless and broadband network facilities is a matter of federal and statewide concern and interest;

(2) Wireless and broadband products and services are a significant and continually growing part of the state economy, and accordingly, encouraging the development of strong and robust wireless and broadband communications networks throughout the state is integral to the state's economic competitiveness;

(3) Rapid deployment of small wireless facilities will serve numerous important statewide goals and public policy of:

(A) Meeting growing consumer demand for wireless data;



(B) Increasing competitive options for communications services available to the state's residents; and

(C) Promoting the ability of the state's citizens to communicate with other citizens and with their state and municipalities, and promoting public safety;

(4) Small wireless facilities, including facilities commonly referred to as "small cells" and distributed antenna systems often are deployed most effectively in a public right-of-way;

(5) To meet the key objectives of this subchapter and federal law, wireless service providers must have access to public rights-of-way and the ability to attach to infrastructure located in public rights-of-way to increase the density of the wireless service provider's networks and provide next generation wireless services;

(6) Rates and fees for the permitting and deployment of small wireless facilities in public rights-of-way and on authority infrastructure, including poles, throughout the state, consistent with federal law, is reasonable and will encourage the deployment of robust next-generation wireless and broadband networks for the benefit of citizens throughout the state;

(7) The procedures, rates, and fees in this subchapter are:

(A) Consistent with federal law and multiple ordinances adopted by municipalities throughout the state;

(B) Fair and reasonable when viewed from the perspective of the state's citizens and the state's interest in having robust, reliable, and technologically advanced wireless and broadband networks; and

(C) Reflective of a balancing of the interests of the wireless providers deploying new facilities and the interests of authorities in recovering their costs of managing access to the public rights-of-way and the attachment space provided on authority infrastructure in the public rights-of-way;

(8) Municipalities are the custodians of public rights-of-way, and public property within the public rights-of-way, within the limits of their respective jurisdictions;

(9) Municipalities may adopt ordinances and regulations governing the use, construction, development, and appearance of public and private property within their respective jurisdictions; and

(10) Municipalities recognize the economic and social value of data connectivity and desire to encourage wireless infrastructure investment by providing a fair and predictable process for the deployment of small wireless facilities within the public rights-of-way in a manner that is:

(A) Safe;

(B) Compatible with and complementary to the provision of services by the municipality and others lawfully using the rights-of-way; and

(C) Consistent with the aesthetic standards of the municipality.

(b) It is the intent of the General Assembly that the operation of small wireless facilities are matters of statewide concern and interest.

23-17-502. Title.

This subchapter shall be known and may be cited as the "Small Wireless Facility Deployment Act".

23-17-503. Definitions.

As used in this subchapter:

(1) "Affiliate" means an entity that directly or indirectly controls, is controlled by, or is under common control with another party;

(2) "Antenna" means communications equipment that transmits or receives an electromagnetic radio frequency signal in the provision of wireless service;

(3)(A) "Antenna equipment" means equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and when collocated on a structure is mounted or installed at the same time as the antenna.

(B) "Antenna equipment" does not include:

(i) The structure or improvements on, under, or within which the equipment is collocated; or

(ii) Wireline backhaul facilities, coaxial or fiber optic cable that is between structures, or coaxial or fiber optic cable that is otherwise not immediately adjacent to or directly associated with an antenna;

(4) "Antenna facility" means an antenna and associated antenna equipment;

(5) "Applicable codes" means uniform electrical reliability, building, fire, electrical, plumbing, or mechanical codes, as adopted by a recognized national code organization, or local amendments to the codes that are of general application, or local ordinances that are of general application, that address public health, safety, or welfare and are consistent with this subchapter;

(6) "Applicant" means a person who submits an application as or on behalf of a wireless provider;

(7) "Application" means a request submitted by an applicant to an authority for a permit:

(A) To collocate small wireless facilities; or

(B) To install, modify, or replace a pole on which a small wireless facility is or will be collocated, in the right-of-way;

(8)(A) "Authority" means a county, a municipality, a subdivision, or instrumentality thereof, including without limitation:

(i) A public utility district;

(ii) An irrigation district; or

(iii) A municipal electric utility.

(B) "Authority" does not include a state court having jurisdiction over an authority;

(9) "Authority pole" means a pole owned, managed, or operated by or on behalf of an authority;

(10)(A) "Collocate" or "collocate on" means the placement, mounting, replacement, or modification of a small wireless facility on, or of ground-mounted antenna equipment adjacent to, a structure.

(B) "Collocate" or "collocate on" includes collocated ground-mounted antenna equipment as a small wireless facility if it meets the requirements of § 23-17-503(25)(A)(iii)-(vi) and the associated facilities on the adjacent structure meet the requirements of § 23-17-503(25)(i)-(vi);

(11) "Communications service" means:

(A) A cable service, as defined in 47 U.S.C. § 522(6), as it existed on January 1, 2019;

(B) A telecommunications service, as defined in 47 U.S.C. § 153(53), as it existed on January 1, 2019;

(C) An information service, as defined in 47 U.S.C. § 153(24), as it existed on January 1, 2019; or

- (D) Wireless service;
- (12) "Communications service provider" means:
- (A) A cable operator, as defined in 47 U.S.C. § 522(5), as it existed on January 1, 2019;
- (B) A provider of information service, as defined in 47 U.S.C. § 153(24), as it existed on January 1, 2019;
- (C) A telecommunications carrier, as defined in 47 U.S.C. § 153(51); or
- (D) A wireless provider;
- (13) "Control" means the direct or indirect:
- (A) Ownership of at least fifty percent (50%) of the equity;
- (B) Ability to direct at least fifty percent (50%) of voting power; or
- (C) Ability otherwise to direct management policies;
- (14) "Controlled-access facility" means a highway or street described in § 27-68-102;
- (15) "Decorative pole" means an authority pole that is specifically designed and placed for aesthetic purposes and on which limited appurtenances or attachments, such as a small wireless facility, lighting, specially designed informational or directional signage, or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory authority rules or codes;
- (16) "Facility" means an antenna facility or a structure that is used for the provision of wireless service;
- (17) "Fee" means a one-time, nonrecurring charge;
- (18) "Historic district" means a group of buildings, properties, or sites that are either:
- (A) Listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register of Historic Places, according to Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, 47 C.F.R. Part 1, Appendix C, as it existed on January 1, 2019;
- (B) A historic district designated under the Historic Districts Act, § 14-172-201 et seq.; or

(C) A historic district otherwise designated under a local ordinance as of January 1, 2019;

(19) "Micro-wireless facility" means a wireless facility that:

(A) Is not larger in dimension than twenty-four inches (24") in length, fifteen inches (15") in width, and twelve inches (12") in height;

(B) Has an exterior antenna that is no longer than eleven inches (11"); and

(C) Is not placed any farther than ten feet (10') down the span as measured from the side of the pole;

(20) "Permit" means an authorization, written or otherwise, required by an authority to perform an action or initiate, continue, or complete a project for the deployment of wireless service at a specified location;

(21) "Person" means an individual, corporation, limited liability company, partnership, association, trust, authority, or other entity or organization;

(22)(A) "Pole" means a pole in a right-of-way that may be used by or for wireline communications, electric distribution, lighting, traffic control, signage, or a similar function, or for collocation of small wireless facilities.

(B) "Pole" does not include a wireless support structure or an electric transmission structure;

(23) "Rate" means a recurring charge;

(24)(A) "Right-of-way" means an area on, below, or above a public utility easement, roadway, highway, street, sidewalk, alley, or similar property.

(B) "Right-of-way" does not include a federal interstate highway, controlled-access facility, or a public utility easement that does not authorize the deployment sought by the wireless provider;

(25)(A) "Small wireless facility" means a wireless facility that meets all of the following specifications:

(i) The facility:

(a) Is mounted on a structure fifty feet (50') or less in height, including the antennas;

(b) Is mounted on a structure no more than ten

percent (10%) taller than other adjacent structures; or

(c) Does not extend an existing structure on which it is located to a height of more than fifty feet (50') or by more than ten percent (10%), whichever is greater;

(ii) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet (3 cu. ft.) in volume;

(iii) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any preexisting associated equipment on the structure, is no more than twenty-eight cubic feet (28 cu. ft.) in volume;

(iv) The facility does not require antenna structure registration under 47 C.F.R. Part 17, as it existed on January 1, 2019;

(v) The facility is not located on tribal lands, as defined in 36 C.F.R. 800.16(x), as it existed on January 1, 2019; and

(vi) The facility does not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. 1.1307(b), as it existed on January 1, 2019.

(B) "Small wireless facility" does not include:

(i) The structure or improvements on, under, or within which the equipment is located or collocated or to which the equipment is attached; and

(ii) Any wireline backhaul facility or coaxial or fiber optic cable that is between wireless support structures or utility poles, or that is otherwise not immediately adjacent to or directly associated with a particular antenna;

(26) "Structure" means a pole or wireless support structure, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service;

(27) "Technically feasible" means that by virtue of engineering or spectrum usage the proposed placement for a small wireless facility, or its design, concealment measures, or site location, can be implemented without a material reduction in the functionality of the small wireless facility;

(28) "Wireless infrastructure provider" means a person or an affiliate thereof, including a person authorized to provide communications

service in the state, that builds or installs facilities for the provision of wireless service, but that is not a wireless service provider;

(29) "Wireless provider" means a wireless infrastructure provider or a wireless service provider;

(30) "Wireless service" means any service using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public;

(31) "Wireless service provider" means a person who provides wireless service;

(32)(A) "Wireless support structure" means a structure, including:

(i) A monopole;

(ii) A tower, either guyed or self-supporting;

(iii) A billboard;

(iv) A building; or

(v) Any other existing or proposed structure designed to support or that is capable of supporting small wireless facilities, other than a structure designed solely for the collocation of small wireless facilities.

(B) "Wireless support structure" does not include a pole; and

(33) "Wireline backhaul facility" means an aboveground or underground facility used to transport communications services from a wireless facility to a network.

23-17-504. Exclusive arrangements.

An authority shall not enter into an exclusive arrangement with a 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 poles for the collocation.

23-17-505. Use of rights-of-way by wireless provider.

(a) Subject to this subchapter, a wireless provider shall have the right, as a permitted use not subject to zoning review or approval, to collocate, maintain, modify, operate, and replace small wireless facilities and to install, maintain, modify, and replace poles it owns or manages or,

with the permission of the owner, a third party's pole, associated with a small wireless facility, along, across, upon, and under the right-of-way.

(b) Small wireless facilities and associated poles shall be installed and maintained as to not obstruct or hinder the usual travel or public safety of the right-of-way or the usage of the right-of-way by utilities.

23-17-506. Requirements – Height limits – Standards.

(a) Each new or modified pole installed in the right-of-way for the purpose of collocation of small wireless facilities shall not exceed the greater of:

(1) Fifty feet (50') in height above ground level; or

(2) Ten percent (10%) taller than the tallest existing pole in place in the same right-of-way as September 1, 2019, within three hundred feet (300') of the new or modified pole.

(b) A new small wireless facility in the right-of-way shall not extend more than ten percent (10%) above the existing structure on which it is located or fifty feet (50') above ground level, whichever is greater.

(c) A wireless provider shall have the right to collocate a wireless facility and install, maintain, modify, and replace a pole that exceeds the height limits required under subsection (a) of this section along, across, upon, and under the right-of-way, subject to this section and any applicable zoning regulations.

(d) A wireless provider shall not install a small wireless facility or pole in a historic district without complying with the requirements of general application for structures within the historic district.

(e) A wireless provider may replace decorative poles when necessary to deploy a small wireless facility so long as the replacement reasonably conforms to the design of the original decorative pole.

23-17-507. Damage and repair – Replacements – Abandonment – Removal.

(a)(1) A wireless provider shall repair all damage to the right-of-way directly caused by the activities of the wireless provider in the right-of-way and return the right-of-way to its functional and aesthetic equivalence before the damage under the competitively neutral, reasonable requirements and specifications of the authority.

(2) If the wireless provider fails to make the repairs required

by the authority within a reasonable time after written notice, the authority may make those repairs and charge the applicable party the actual and reasonable documented cost, including overhead, of the repairs.

(b)(1) A wireless provider is not be required to replace or upgrade an existing pole except for reasons of structural necessity or compliance with applicable codes.

(2) A wireless provider may, with the permission of the pole owner, replace or modify existing poles, but any such replacement or modification shall substantially conform to the design aesthetics of the pole being modified or replaced.

(c)(1) A wireless provider shall notify the authority at least thirty (30) days before the wireless provider's abandonment of a small wireless facility.

(2) If the wireless provider fails to remove the abandoned small wireless facility within ninety (90) days after the notice, the authority may undertake the removal and recover the actual and reasonable documented cost, including overhead, of the removal from the wireless provider, or its successors or assigns.

(d)(1) An authority may order the removal of a small wireless facility or associated pole in the right-of-way that violates § 23-17-505, § 23-17-506, or applicable codes.

(2) The authority shall provide written notice of the violation to the owner of the small wireless facility at least thirty (30) days before removal to afford the owner the opportunity to conduct repairs or removal, or otherwise remedy the violation.

(3)(A) If the authority determines that a wireless provider's activity in a right-of-way under this subchapter creates an imminent risk to public safety, the authority may provide written notice to the wireless provider and demand that the wireless provider address the risk.

(B) If the wireless provider fails to reasonably address the risk within twenty-four hours of the written notice, the authority may take or cause to be taken action to reasonably address the risk and charge the wireless provider the reasonable documented cost of the actions.

(e)(1) A wireless provider shall not collocate a small wireless facility or install, modify, or replace a pole in the right-of-way that:

(A) Materially interferes with the safe operation of

traffic control equipment;

(B) Materially interferes with sight lines or clear zones for transportation or pedestrians;

(C) Materially interferes with compliance with the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, or similar federal or state standards regarding pedestrian access or movement; or

(D) Fails to comply with applicable codes.

(2)(A) For an authority that requires permits under § 23-17-510, compliance with these criteria will be determined during the permitting process.

(B) An authority that does not require a permit under § 23-17-510 shall provide at least thirty (30) days' notice of and a reasonable opportunity to cure a violation of subdivision (e)(1) of this section.

23-17-508. Aesthetic standards.

(a) An authority that has adopted an ordinance under § 14-17-209 or § 14-56-416 may adopt and enforce standards that govern the aesthetic appearance of small wireless facilities and associated poles to ensure coordinated, adjusted, and harmonious development, as provided in this section.

(b) Aesthetic standards adopted by an authority for small wireless facilities and associated poles shall meet the following requirements:

(1) The aesthetic standards shall be:

(A) Reasonable, in that they are technically feasible and reasonably directed to avoiding or remedying unsightly or out-of-character deployments;

(B) No more burdensome than those applied to other types of utility and communications infrastructure deployments; and

(C) Objective and published at least ninety (90) days in advance of the filing of an application under this subchapter;

(2) Any design or concealment measures are not considered a part of the small wireless facility for purposes of the size parameters in the definition of "small wireless facility"; and

(3) An authority may deny an application for not complying with aesthetic requirements only if the authority finds that the denial does not prohibit or have the effect of prohibiting the provision of wireless service.

(c) An authority may prohibit wireless providers from installing poles in the right-of-way in areas where the authority has required that all communications and electric lines be placed underground, if:

(1) The authority has required all electric and communications lines to be placed underground by a date certain that is three (3) months before the submission of the application;

(2) Any poles the authority allows to remain shall be made available to wireless providers for the collocation of small wireless facilities, and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities, in compliance with this subchapter;

(3) A wireless provider may install a new pole in the designated area that otherwise complies with this section when it is not able to provide wireless service by collocating on a remaining structure; and

(4)(A) For small wireless facilities installed before an authority adopts requirements that communications and electric lines be placed underground, an authority adopting the requirements shall:

(i) Permit a wireless provider to maintain the small wireless facilities in a place on any pole not required to be removed, subject to any applicable pole attachment agreement with the pole owner; or

(ii) Permit the wireless provider to replace an existing pole within fifty feet (50') of the prior location.

(B) An authority may require wireless providers to comply with reasonable and nondiscriminatory horizontal spacing requirements of general application for new poles and ground-mounted small wireless facilities, but the requirements shall not prevent a wireless provider from serving any location.

(d)(1) When a wireless provider applies to install a new pole in the right-of-way in an area zoned for residential use, the authority may propose an alternative location in the right-of-way within one hundred feet (100') of the location stated in the application, and the wireless provider shall use the authority's proposed alternative location unless the location imposes technical limits or significant additional costs.

(2) The wireless provider shall certify that it has made the determination in good faith, based on the assessment of a licensed engineer, and the wireless provider shall provide a written summary of the basis for the determination.

(e) Aesthetic standards shall be effective after approval by ordinance, resolution, or rule of the governing body of the authority.

(f)(1) The board of zoning adjustment of an authority may:

(A) Hear appeals of the decision of the administrative officers in respect to the enforcement and application of the aesthetic standards, and may affirm or reverse, in whole or in part, the decision of the administrative officer; and

(B) Hear requests for variances from the literal provisions of the aesthetic standards and grant the variances only when it is necessary to avoid the prohibition of wireless service or otherwise comply with the law.

(2) Decisions of the board in respect to subdivision (f)(1) of this section shall be subject to appeal only to a court of record having jurisdiction.

23-17-509. Collocation on authority poles.

(a) This section applies to activities of a wireless provider collocating small wireless facilities on authority poles in the authority's right-of-way or in a right-of-way controlled by the Arkansas Department of Transportation located within an authority.

(b)(1) A person owning, managing, or controlling authority poles in the right-of-way shall not enter into an exclusive arrangement with any person for the right to attach to the poles.

(2) A person who purchases or otherwise acquires an authority pole is subject to the requirements of this section.

(c) An authority shall allow the collocation of small wireless facilities on authority poles on nondiscriminatory terms and conditions using the process in § 23-17-510.

(d) The rate to collocate on authority poles is provided in § 23-17-511.

(e)(1)(A) As part of an application to collocate a small wireless facility on an authority pole, the wireless provider shall submit make-ready design drawings and work descriptions that enable the pole to support the requested collocation by the wireless provider, including pole replacement if necessary.

(B) An authority may amend the make-ready design drawings

and work to comply with applicable codes before the issuance of a permit to the extent reasonably necessary.

(2) The rates, fees, and terms and conditions for the make-ready work to collocate on an authority pole shall be nondiscriminatory, competitively neutral, and commercially reasonable and shall comply with this subchapter.

(3) The authority shall not require more make-ready work than required to meet applicable codes or industry standards nor may the fees for make-ready work include costs related to preexisting or prior damage or noncompliance.

(4)(A) An authority may require replacement of an authority pole only if the collocation would make the authority pole structurally unsound.

(B) The authority may require that the replaced authority pole have the same functionality as the pole being replaced.

(C) If the authority pole is replaced, the authority shall take ownership of the new pole and operate authority fixtures on the pole.

(5)(A) Make-ready fees charged by an authority may include the amount the authority pays a professional engineer registered in Arkansas to review the wireless provider's make-ready work plans.

(B) Fees for make-ready work shall not include any revenue or contingency-based consultant's fees or expenses of any kind.

(6) Within sixty (60) days of the receipt of the application filed to collocate on an authority pole, the authority shall elect to:

(A) Perform the make-ready work necessary to enable the pole to support the requested collocation by a wireless provider and provide a good-faith estimate for the work, including pole replacement, if necessary; or

(B) Authorize the wireless provider to perform the make-ready work.

(7)(A) The authority shall complete make-ready work it elects to perform, including any pole replacement, within sixty (60) days of written acceptance of the good faith estimate of the applicant.

(B) If the authority electing to perform the make-ready work has not completed the work within sixty (60) days after the written acceptance and deposit of the good faith estimate by the applicant, the applicant may demand a return of any deposited funds and proceed with the

make-ready work as described in subdivision (e)(1)(A) of this section, using authorized, qualified contractors approved by the authority with the authorization not to be unreasonably withheld, conditioned, or delayed.

(f)(1) An authority may reserve space on an authority pole for future public safety or transportation uses in a documented and approved plan in place at the time an application is filed.

(2) A reservation of space shall not preclude placement of a pole or collocation of a small wireless facility.

(3) If replacement of the authority's pole is necessary to accommodate the collocation of the small wireless facility and the future use, the wireless provider shall pay for the replacement of the authority pole and the replaced pole shall accommodate future use.

23-17-510. Permits.

(a)(1) This section applies to all permits required for the collocation of small wireless facilities and to the permitting of the installation, modification, and replacement of associated poles by a wireless provider that:

(A) Is in an authority's right-of-way; or

(B) Is in a right-of-way controlled by the Arkansas Department of Transportation located within the jurisdiction of an authority if the application is for collocation on an authority pole or if the authority has adopted aesthetic standards under § 23-17-508.

(2) A permit issued under subdivision (a)(1)(B) of this section remains subject to the rules of the Arkansas Department of Transportation.

(b) Except as provided in this subchapter, an authority shall not prohibit, regulate, or charge for the collocation of small wireless facilities or the installation, modification, or replacement of associated poles that may be permitted in this section.

(c) An authority may require an applicant to obtain one (1) or more permits to collocate small wireless facilities or to install a new, modified, or replacement pole associated with a small wireless facility as provided in § 23-17-505 to § 23-17-507, provided the permits are of general applicability and do not apply exclusively to small wireless facilities.

(d) An authority shall receive and process applications subject to the following requirements:

(1) An authority shall not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the authority, including without limitation reserving fiber, conduit, or space on the applicant's pole for the authority;

(2) An authority may require an applicant to submit the information and fees stated in subdivision (d)(2)(A)-(J) of this section for a permit for a deployment in the authority's right-of-way or on an authority pole in the right-of-way controlled by the Arkansas Department of Transportation located within an authority and may only require an applicant to submit the information and fees stated in subdivision (d)(2)(A)-(C) and (J) of this section for deployments of or on poles that are not owned by the authority located in the right-of-way controlled by the Arkansas Department of Transportation located within an authority:

(A) Identification of the applicant;

(B) A map or description of the location of the facilities;

(C) An illustration that shows the final appearance of the facilities;

(D) Engineering drawings of the facilities to be installed, including required make-ready work to be performed;

(E) Electrical load information;

(F) Pole loading calculations;

(G) Worker safety information related to small wireless facility installation;

(H) Evidence of bonding, if required;

(I) Evidence of insurance, if required; and

(J) Required application fees;

(3) An authority shall not require:

(A) The collocation of small wireless facilities on any specific pole or category of poles or require multiple antenna facilities on a single pole;

(B) The use of specific pole types or configurations when installing new or replacement poles; or

(C) The underground placements of small wireless facilities that are, or are designated in an application, to be pole-mounted or ground-mounted;

(4) An authority shall not limit the collocation of small wireless facilities by minimum horizontal separation distance requirements from existing small wireless facilities, poles, or wireless support structures;

(5) The applicant shall attest that the small wireless facilities will be operational for use by a wireless service provider within one (1) year of after the permit issuance date, unless the authority and the applicant agree to extend this period or delay is caused by lack of commercial power, communications, transport facilities to the site, or any other factors outside of the applicant's control;

(6)(A) Within ten (10) days of receiving an application, an authority shall determine and notify the applicant in writing whether the application is complete.

(B) If an application is incomplete, the authority shall specifically identify the missing information in writing.

(C) The processing deadline in subdivision (d)(7) of this section shall restart at zero (0) on the date the applicant provides the missing information identified under subdivision (b)(6)(B) to complete the application;

(7)(A) Applications shall be processed on a nondiscriminatory basis within:

(i) Sixty (60) days of receipt of an application for the collocation of a small wireless facility; and

(ii) Ninety (90) days for an application to install, modify, or replace a pole on which a small wireless facility is or will be collocated.

(B) The processing deadline may be tolled by agreement of the applicant and the authority.

(C) If an authority fails to act on a complete application within the applicable deadline, the application shall be deemed to be approved ten (10) days after written notice is provided by the applicant to the authority that the time period for acting on the application has lapsed;

(8) An authority may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a pole in its right-of-way that meets the requirements in § 23-17-506(a)-(c) only if authorized under subdivisions (d)(9) or (d)(10) or the proposed deployment:

(A) Materially interferes with the safe operation of traffic control equipment;

(B) Materially interferes with sight lines or clear zones for transportation or pedestrians;

(C) Materially interferes with compliance with the Americans with Disabilities Act of 1990, Pub. L. No. 101-336, or similar federal or state standards regarding pedestrian access or movement;

(D) Fails to comply with applicable codes; or

(E) Fails to comply with § 23-17-506(d) and (e) and § 23-17-508;

(9) An authority may deny a proposed collocation of a small wireless facility on an authority pole in a right-of-way controlled by the Arkansas Department of Transportation located within the authority that meets the requirements in § 23-17-506 only if the proposed collocation meets the criteria in § 23-17-510(d)(8)(A) or (D) or fails to comply with aesthetic standards adopted in an ordinance under § 23-17-508;

(10) An authority may deny a proposed collocation of a small wireless facility or installation, modification, or replacement of a pole in a right-of-way controlled by the Arkansas Department of Transportation located within the authority that meets the requirements in § 23-17-506 only if the proposed deployment fails to comply with aesthetic standards adopted in an ordinance under § 23-17-508;

(11)(A) The authority shall document the basis for a denial, including the specific code, rule, or statutory authority on which the denial is based, and send the documentation to the applicant on or before the day the authority denies an application.

(B) 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.

(C) The authority shall approve or deny the revised application within thirty (30) days of resubmission and limit its review to the deficiencies cited in the denial;

(12)(A)(i) 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 batched application for small wireless facilities and associated poles and receive a single permit for the

collocation of multiple small wireless facilities and the placement of associated poles.

(ii) However, the denial of one (1) or more small wireless facilities in a batched application shall not delay processing of any other small wireless facilities or poles in the same consolidated application.

(B) Batched applications shall be collectively processed according to the procedures in this section.

(C) A consolidated application that includes new pole deployments shall be subject to a ninety-day timeframe for approval;

(13)(A) Installation or collocation for which a permit is granted under this section shall be completed within one (1) year after the permit issuance date unless the authority and the applicant agree to extend this period, or a delay is caused by circumstances beyond the applicant's control.

(B) Approval of an application authorizes the applicant to undertake the installation or collocation;

(14) Subject to applicable relocation requirements and the applicant's right to terminate at any time, the applicant shall operate and maintain the small wireless facilities and any associated poles covered by the permit for a period of not less than ten (10) years, which shall be renewed for equivalent durations so long as the small wireless facilities comply with the criteria stated in subdivision (d)(8) of this section; and

(15) An authority shall not institute, either expressly or de facto, a moratorium on:

(A) Filing, receiving, or processing applications; or

(B) Issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of associated poles.

(e)(1) An authority shall not require an application for:

(A) Routine maintenance;

(B) The replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller; or

(C) The installation, placement, maintenance, operation, or replacement of a micro-wireless facility that is suspended on cables that

are strung between existing poles and that complies with the applicable codes.

(2) However, an authority may require a permit for work that requires excavation or closure of sidewalks or vehicular lanes within the right-of-way for the activities.

(3) A permit shall be issued to the applicant on a nondiscriminatory basis upon terms and conditions applied to any other person's activities in the right-of-way that requires excavation, closing of sidewalks, or vehicular lanes.

23-17-511. Fees and rates.

(a) This section shall govern an authority's rates and fees for use of authority poles and the placement of a small wireless facility or associated poles.

(b) An authority shall not require a wireless provider to pay any rates, fees, or compensation to the authority or other person other than what is expressly authorized by this subchapter for the right to use or occupy a right-of-way, for collocation of small wireless facilities on or in structures in the right-of-way, or for the installation, maintenance, modification, and replacement of associated poles in the right-of-way.

(c) Application fees for a permit shall be nondiscriminatory and shall not collectively exceed the following:

(1) One hundred dollars (\$100) for each small wireless facility;

or

(2) Two hundred fifty dollars (\$250) for the installation, modification, or replacement of a pole together with the collocation of an associated small wireless facility in the right-of-way.

(d)(1) Except as described in § 23-17-510(e), a wireless provider shall pay an authority compensation for use of the right-of-way, an annual rate of up to thirty dollars (\$30.00) per small wireless facility.

(2) A wireless provider shall pay an authority compensation for collocation of small wireless facilities on authority poles an annual rate of up to two hundred forty dollars (\$240) for each authority pole.

(e) A wireless provider is not required to pay an authority compensation for micro-wireless facilities that are suspended on cables strung between existing utility poles in the right-of-way as long as the

wireless provider compensates the authority through other licenses or franchises held directly or through one (1) of the wireless provider's affiliates for the placement of the suspension cables in the right-of-way.

(f) The rates under this section, together with a one-time application fee, shall be the total compensation that the wireless provider is required to pay the authority for the deployment of small wireless facilities in the right-of-way and any associated poles.

23-17-512. Local authority.

(a)(1) Subject to this subchapter and applicable federal law, an authority may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries with respect to wireless support structures, including the enforcement of applicable codes.

(2) An authority shall not have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of a small wireless facility located in an interior structure or upon the site of a campus, stadium, or athletic facility not owned or controlled by the authority, other than to require compliance with applicable codes.

(b) This subchapter does not authorize the state or any political subdivision, including an authority, to require small wireless facility deployment or to regulate wireless service.

23-17-513. Arkansas Public Service Commission – Jurisdiction over pole attachments.

(a) This subchapter does not limit, abrogate, or supersede the jurisdiction of the Arkansas Public Service Commission, or any rule or order of the commission concerning pole attachments under § 23-4-1001 et seq., or any agreement of a public utility pole owner and attacher related to the rates, terms, and conditions for a pole attachment.

(b) This subchapter does not authorize:

(1) Any attachment or installation to or on an electric cooperative-owned pole;

(2) Any attachment or installation within a nonpublic right-of-way acquired by an electric cooperative; or

(3) Use of an electric cooperative-owned line, duct, conduit,

similar structure, or equipment of any type.

(c) This subchapter does not authorize:

(1) Any attachment or installation to or on an investor-owned electric utility-owned pole;

(2) Any attachment or installation within a nonpublic right-of-way acquired by an investor-owned electric public utility; or

(3) Use of an investor-owned electric public utility owned line, duct, conduit, similar structure, or equipment of any type.

23-17-514. Implementation.

(a)(1) An authority may adopt an ordinance that makes available to wireless providers rates, fees, and other terms that comply with this subchapter.

(2) Subject to the other provisions of this section, in the absence of an ordinance or agreement that substantially implements this subchapter and until such an ordinance is adopted or agreement is reached, if at all, a wireless provider may collocate small wireless facilities and install associated poles under the requirements of this subchapter.

(3) An authority shall not require a wireless provider to enter into an agreement to implement this subchapter, but such agreements are permissible if voluntary and nondiscriminatory.

(b) Ordinances and agreements implementing this subchapter are public or private arrangements and are matters of legitimate and significant statewide concern.

(c)(1) A provision of an agreement or ordinance with an effective date before September 1, 2019, that does not fully comply with this subchapter shall apply only to small wireless facilities and associated poles that were operational before September 1, 2019, and shall be deemed invalid and unenforceable beginning on the one hundred eighty-first day after September 1, 2019.

(2) To the extent an agreement or ordinance, or part thereof, is invalid under subdivision (c)(1) of this section, small wireless facilities and associated poles that became operational before September 1, 2019, under the agreement or ordinance, may remain installed and be operated under the requirements of this subchapter.

(d)(1) An agreement or ordinance with an effective date of September

1, 2019, or later that applies to small wireless facilities and associated poles is invalid and unenforceable unless it fully complies with this subchapter.

(2) In the absence of an ordinance or agreement that complies with this subchapter, a wireless provider may install and operate small wireless facilities and associated poles in the right-of-way under the requirements of this subchapter.

23-17-515. Dispute resolution.

(a) A court of competent jurisdiction shall have jurisdiction to determine disputes arising under this subchapter.

(b) Pending resolution of a dispute concerning rates for collocation of small wireless facilities on authority poles in the right-of-way, the authority owning or controlling the structure shall allow the collocating person to collocate at annual rates of no more than:

(1) Thirty dollars (\$30.00) per small wireless facility for use of the right-of-way; and

(2) An annual rate of up to two hundred forty dollars (\$240) for each authority pole used for the collocation of small wireless facilities, with rates to be trued up upon final resolution of the dispute.

(c) Any disputes, wherever filed, shall be pursued according to accelerated docket or complaint procedures, if available.

23-17-516. Indemnification, insurance, and bonding.

(a) An authority may adopt reasonable indemnification, insurance, and bonding requirements related to the deployment of small wireless facilities and associated poles under this subchapter.

(b)(1) An authority may require a wireless provider to defend, indemnify and hold harmless the authority and its officers, agents and employees against any claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney's fees resulting from the installation, construction, repair, replacement, operation, or maintenance of poles, small wireless facilities, or attachments to authority poles to the extent directly caused by the negligence of the wireless provider, its contractors, subcontractors and their officers, employees or agents.

(2) A wireless provider has no obligation to defend, indemnify,

or hold harmless an authority or its officers, agents, or employees against any liabilities or losses due to or caused by the sole negligence of the authority or its employees or agents.

(c)(1) An authority may require a wireless provider to have in effect insurance coverage against the claims, demands, damages, lawsuits, judgments, costs, liens, losses, expenses, and attorney's fees described in subsection (b) of this section, so long as the authority imposes similar requirements on other right-of-way users and the requirements are reasonable and nondiscriminatory, and provided that an authority does not require a wireless provider to obtain insurance naming the authority or its officers and employees as additional insureds.

(2)(A) A wireless provider with net assets of at least five hundred million dollars (\$500,000,000), including the assets of its affiliates, may self-insure as to any required coverage.

(B) An authority may require reasonable proof that the wireless provider is eligible under subdivision (c)(2)(A) of this section to self-insure.

(C) A wireless provider shall immediately notify each authority in which the wireless provider has obtained permits of any change in its self-insured status as to any coverage required under this subsection, and of any change in the ability of the wireless provider to cover the losses specified in subdivision (c)(1) of this section.

(d)(1) An authority may adopt bonding requirements for small wireless facility collocations if the authority imposes similar requirements in connection with other right-of-way users.

(2) The purpose of the bonds shall be to:

(A) Provide for the removal of abandoned or improperly maintained small wireless facilities, including those that an authority determines needs to be removed to protect public health, safety, or welfare; and

(B) Recoup rates or fees that have not been paid by a wireless provider in over twelve (12) months, so long as the wireless provider has received reasonable notice from the authority of any of the noncompliance listed above and an opportunity to cure.

(3)(A) Bonding requirements shall not exceed one thousand dollars (\$1,000) per small wireless facility.

(B) For wireless providers with multiple small wireless facilities within the jurisdiction of a single authority, the total bond amount across all facilities may not exceed ten thousand dollars (\$10,000), which amount may be combined into a single bond instrument.

(C) An authority may waive bonding requirements for a wireless provider that already maintains bonding for other operations.

(D) An authority shall not require a cash bond, unless either of the following applies:

(i) The wireless provider has failed to obtain or maintain a bond required under this section; or

(ii) The surety has defaulted or failed to perform on a bond given to the authority on behalf of the wireless provider.

23-17-517. Overlapping jurisdiction of management of right-of-way.

(a) In an area where more than one (1) authority may assert jurisdiction over a right-of-way, only the authority controlling the smallest geographic territory shall be authorized to adopt standards under § 23-17-508, issue permits under § 23-17-510, or require the payment of fees under § 23-17-511.

(b) This section does not restrict the authority of the Arkansas Department of Transportation over the location of a facility in a right-of-way controlled by the department.

SECTION 2. EFFECTIVE DATE. This act is effective on and after September 1, 2019.

/s/J. Dismang