

AN ACT

1 Providing for small wireless facilities deployment.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

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

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Accessory equipment." Equipment serving or being used in
12 conjunction with a small wireless facility.

13 "Antenna." Telecommunications equipment that transmits and
14 receives electromagnetic radio signals used in the provision of
15 all types of wireless telecommunications services.

16 "Applicable codes." Uniform building, fire, electrical,

1 plumbing or mechanical codes adopted by a recognized national
2 code organization or local amendments to those codes enacted
3 solely to address imminent threats of destruction of property or
4 injury to persons and local zoning, land use, streets and
5 sidewalks, right-of-way, and permitting ordinances that comply
6 with this Act.

7 "Applicant." A communications service provider that submits
8 an application.

9 "Application." A request submitted by an applicant to a
10 municipality:

11 (1) for a permit to collocate small wireless facilities;
12 or

13 (2) to approve the installation, modification or
14 replacement of a utility pole with small wireless facilities
15 attached.

16 "Cable facility." Buildings, other structures and equipment
17 used by the owner or operator of a cable television system to
18 provide service. As used in this definition, the term "cable
19 system" shall have the meaning given to it in section 602.7 of
20 the Cable Communications Policy Act of 1984, as amended, 47
21 U.S.C. §522(7).

22 "Collocation" or "collocate." To install, mount, maintain,
23 modify or replace small wireless facilities on an existing
24 utility pole or other wireless support structure.

25 "Communications facility." A set of equipment and network
26 components, including wires and cables and associated
27 facilities, used by a communications service provider to provide
28 a communications service.

29 "Communications service provider." Any of the following:

1 (1) A cable operator as defined in section 522(5) of the
2 Cable Communications Policy Act of 1984 (47 U.S.C. § 522(5)).

3 (2) A provider of information service as defined in
4 section 153(24) of the Communications Act (47 U.S.C. §
5 153(24)).

6 (3) A telecommunications carrier as defined in section
7 153(51) of the Communications Act (47 U.S.C. § 153(51)).

8 (4) A wireless provider.

9 "Decorative pole." A municipal pole that is specially
10 designed and placed for aesthetic purposes.

11 "Electrical transmission structure." A structure used to
12 support overhead power lines consisting of 69 kilovolt or
13 greater conducting lines, generally of steel construction and
14 having a height of at least 75 feet. The term shall not include
15 any utility pole having a height of less than 75 feet.

16 "FCC." The Federal Communications Commission.

17 "Historic district or building." A building that is or a
18 group of buildings, properties or sites that are:

19 (1) Listed in the National Register of Historic Places
20 or formally determined eligible for listing by the Keeper of
21 the National Register.

22 (2) Determined to be eligible for listing by the Keeper
23 of the National Register of Historic Places who has been
24 delegated the authority by a Federal agency to list
25 properties and determine their eligibility for the National
26 Register of Historic Places in accordance with section
27 VI.D.1.a.i-v of the Nationwide Programmatic Agreement for
28 Review Regarding the Section 106 National Historic
29 Preservation Act Review Process (47 CFR Pt. 1, App. C).

1 (3) Marked as a historical site by the Pennsylvania
2 Historical and Museum Commission pursuant to 37 Pa.C.S.
3 (relating to historical and museums).

4 (4) Within a historic district created pursuant to the
5 act of June 13, 1961 (P.L.282, No.167), entitled "An act
6 authorizing counties, cities, boroughs, incorporated towns
7 and townships to create historic districts within their
8 geographic boundaries; providing for the appointment of
9 Boards of Historical Architectural Review; empowering
10 governing bodies of political subdivisions to protect the
11 distinctive historical character of these districts and to
12 regulate the erection, reconstruction, alteration,
13 restoration, demolition or razing of buildings within the
14 historic districts."

15 "Micro wireless facility." A small wireless facility that:

- 16 (1) does not exceed two cubic feet in volume; and
17 (2) has an exterior antenna no longer than 11 inches.

18 "Modification" or "modify." The improvement, upgrade or
19 replacement of a small wireless facility or an existing utility
20 pole that does not increase the height of a pole, increase the
21 distance by which an antenna or other facility extends from the
22 top or side of a pole, or increase the height or volume of an
23 existing ground cabinet. ~~does not substantially change, as~~
24 defined in 47 C.F.R. 1.6100(b)(7) (relating to wireless facility
25 modifications), the physical dimension of the small wireless
26 facility or utility pole.

27 "Municipality." Any of the following:

- 28 (1) A city of the first, second, second class A or third
29 class.

Commented [SR1]: Note: For facilities in public rights of way, 47 CFR 1.6100(b)(7) allows for a 10 foot increase in pole height, an antenna or box to protrude up to 6 feet from the edge of the pole, and up to a 10% increase in height or volume of existing ground cabinets

1 (2) A borough.

2 (3) An incorporated town.

3 (4) A township of the first or second class.

4 (5) A county.

5 (6) A home rule municipality.

6 (7) A similar general purpose unit of government

7 established by the General Assembly.

8 "Municipal pole." A utility pole owned, managed or operated

9 by or on behalf of a municipality.

10 "Right-of-way." The area on, below or above a public

11 roadway, highway, street, sidewalk, alley, utility easement or

12 similar property. The term does not include a Federal interstate

13 highway.

14 "Small wireless facility." The equipment and network

15 components, including antennas, transmitters and receivers, used

16 by a wireless provider that meet the following qualifications:

17 (1) Each antenna associated with the deployment is no

18 more than three cubic feet in volume.

19 (2) The volume of all other equipment associated with

20 the wireless facility, whether ground-mounted or pole-

21 mounted, is cumulatively no more than 28 cubic feet. Any

22 equipment used solely for the concealment of the small

23 wireless facility shall not be included in the calculation of

24 equipment volume under this paragraph.

25 "Technically feasible." By virtue of engineering or spectrum

26 usage, the proposed placement for a small wireless facility or

27 its design or site location can be implemented without a

28 material reduction in the functionality of the small wireless

29 facility.

1 "Utility facility." Buildings, other structures and
2 equipment owned or operated by a public utility, as defined in
3 66 Pa.C.S. § 102 (relating to definitions), to provide service.

4 "Utility pole." A pole or similar structure that is or may
5 be used, in whole or in part, by or for telecommunications,
6 electric distribution, lighting, traffic control, signage or a
7 similar function or for collocation. The term includes the
8 vertical support structure for traffic lights but does not
9 include wireless support structures or horizontal structures to
10 which signal lights or other traffic control devices are
11 attached.

12 "Wireless facility." As follows:

13 (1) Equipment at a fixed location that enables wireless
14 service between user equipment and a communications network,
15 including any of the following:

16 (i) Equipment associated with wireless services.

17 (ii) Radio transceivers, antennas, coaxial or fiber
18 optic cables, regular and backup power supplies or
19 comparable equipment, regardless of technological
20 configuration.

21 (2) The term includes a small wireless facility.

22 (3) The term does not include any of the following:

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

25 (ii) The coaxial or fiber optic cables that are not
26 immediately adjacent to or directly associated with a
27 particular antenna.

28 "Wireless infrastructure provider." A person authorized by
29 the Pennsylvania PUC to provide telecommunications service in

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

4 "Wireless provider." A wireless infrastructure provider or a
5 wireless services provider.

6 "Wireless services." Services, whether at a fixed location
7 or mobile, using a licensed or unlicensed spectrum, provided to
8 the public using wireless facilities.

9 "Wireless services provider." A person who provides wireless
10 services.

11 "Wireless support structure." The term shall have the same
12 meaning given to it in the act of October 24, 2012 (P.L.1501,
13 No.191), known as the Wireless Broadband Collocation Act.

14 Section 3. Use of right-of-way for small wireless facilities
15 and utility poles with small wireless facilities
16 attached.

17 (a) Applicability.--The provisions of this section shall
18 only apply to activities of a wireless provider within the
19 right-of-way to deploy small wireless facilities and associated
20 new utility poles with small wireless facilities attached.

21 (b) Exclusive use prohibited.--A municipality shall not
22 enter into an exclusive arrangement with any person for use of
23 the right-of-way for:

24 (1) collocation; or

25 (2) the installation, operation, modification or
26 replacement of utility poles with small wireless facilities
27 attached.

28 (c) Right-of-way rates and fees.--Subject to the fee
29 adjustment requirements of Section 7(c) of this act, a

1 municipality shall have the right to charge an annual fee for
2 the use of the right-of-way. An annual right-of-way fee shall
3 not exceed \$270 per small wireless facility or \$270 per new
4 utility pole with a small wireless facility unless a
5 municipality demonstrates that such fee is (1) a reasonable
6 approximation of the municipality's costs; (2) those costs
7 themselves are reasonable; and (3) the fees are non-
8 discriminatory.

9 (d) Right of access.--

10 (1) Under the provisions of this act, in accordance with
11 applicable codes, and with the permission of the owner of the
12 structure, a wireless provider shall have the right to
13 perform the following within the right-of-way:

14 (i) Collocate.

15 (ii) Replace an existing utility pole or install a
16 new utility pole with attached small wireless facilities;
17 provided, however, that the wireless provider has entered
18 into an agreement with the municipality or a utility pole
19 owner for the inspection, maintenance, repair,
20 reinforcement, replacement, and removal of the pole in
21 accordance with standard practices in the utility
22 industry. Each such agreement shall be provided to the
23 municipality as part of the permit application and is
24 subject to review, modification, and approval by the
25 municipality.

26 (2) All structures and facilities shall be installed and
27 maintained so as not to obstruct nor hinder travel or public
28 safety within the right-of-way or obstruct the legal use of
29 the right-of-way by the municipality and utilities.

1 (e) Size limits.--

2 (1) Each new or modified small wireless facility
3 installed in the right-of-way shall be installed on an
4 existing utility pole or a new utility pole subject to the
5 following:

6 (i) The installation of a small wireless facility on
7 an existing utility pole shall not extend more than five
8 feet above the existing utility pole.

9 (ii) If collocation on an existing utility pole
10 cannot be achieved under section 4(i), a small wireless
11 facility may be installed on a new or replacement utility
12 pole, subject to the requirements of subsection
13 (3)(d)(1)(ii). The maximum permitted height of the
14 facility, which shall include the utility pole and small
15 wireless facility, shall not be taller than 50 feet above
16 ground level.

17 (2) Subject to the provisions of this act, a wireless
18 provider may collocate or install a new utility pole with
19 small wireless facilities attached that exceeds these height
20 limits by including a height limit waiver request or
21 variances in the application. Height limit waivers or
22 variances shall be processed subject to applicable codes.

23 (f) Underground district.--A wireless provider shall comply
24 with reasonable and nondiscriminatory requirements that prohibit
25 communications service providers from placing or installing
26 structures in the right-of-way in an area designated solely for
27 underground or buried cable facilities and utility facilities if
28 the municipality:

29 (1) Requires all cable facilities and utility

1 facilities, other than municipal poles and attachments, to be
2 placed underground by a date certain that is three months
3 prior to the submission of the application.

4 (2) Does not prohibit the replacement of municipal poles
5 in the designated area.

6 (3) Permits wireless providers to seek a waiver of the
7 underground requirements for the installation of a new
8 utility pole to support small wireless facilities. Upon the
9 submission of a request for a waiver by a wireless provider,
10 the municipality may require a public hearing and, with the
11 approval of the property owner, permit a waiver request.
12 Waivers shall be addressed in a nondiscriminatory manner and
13 in accordance with applicable codes.

14 (g) Historic district or building.--Except for facilities
15 excluded from evaluation for effects on historic properties
16 under 47 CFR 1.1307(a)(4) (relating to actions that may have a
17 significant environmental effect, for which Environmental
18 Assessments (EAs) must be prepared), a municipality may require
19 reasonable, technically feasible, nondiscriminatory and
20 technologically neutral design or concealment measures in a
21 historic district or on historic buildings. Any design or
22 concealment measures may not have the effect of prohibiting any
23 provider's technology or be considered a part of the small
24 wireless facility for purposes of the size restrictions of small
25 wireless facilities.

26 (h) Design guidelines.--A municipality shall have the
27 authority to develop objective design guidelines for small
28 wireless facilities relating to minimization of aesthetic
29 impact. Any design guidelines must be technically feasible, may

1 not have the effect of prohibiting the provider's technology,
2 and may not unreasonably discriminate among providers of
3 functionally equivalent services.

4 (i) Damage and repair.--A wireless provider shall repair all
5 damage to the right-of-way or any other land so disturbed,
6 directly caused by the activities of the wireless provider or
7 its contractors and return the right-of-way in as good of
8 condition as it existed prior to any work being done in the
9 right-of-way by the wireless provider. If the wireless provider
10 fails to make the repairs required by the municipality within 30
11 days after written notice, the municipality may perform those
12 repairs and charge the wireless provider the reasonable,
13 documented cost of the repairs plus a penalty not to exceed
14 \$500. The municipality may suspend the ability of an applicant
15 to receive a new permit from the municipality until the
16 applicant has paid the amount assessed for the repair costs and
17 the assessed penalty. The municipality may not suspend the
18 ability of an applicant to receive a new permit that has
19 deposited the amount assessed for the repair costs and the
20 assessed penalty in escrow pending an adjudication of the merits
21 of the dispute by a court of competent jurisdiction.

22 (j) Communications services.--The approval of the
23 installation, placement, maintenance or operation of a small
24 wireless facility under this section shall not authorize the
25 provision of any communications services without compliance with
26 all applicable laws or the installation, placement, maintenance
27 or operation of any communications facilities other than
28 wireless facilities and associated utility poles in the right-
29 of-way.

1 Section 4. Permitting process for small wireless facilities and
2 utility poles within right-of-way.

3 (a) Applicability.--The provisions of this section shall
4 apply to a municipality's permitting of small wireless
5 facilities by a wireless provider or the installation,
6 modification and replacement of utility poles with small
7 wireless facilities attached by a wireless provider within the
8 right-of-way.

9 (b) Review.--An application under this section shall be
10 treated as a permitted use in all areas of a municipality,
11 except underground districts in accordance with section 3(f),
12 and reviewed by municipal staff for conformance with applicable
13 codes. Such applications shall not be subject to discretionary
14 zoning review, including conditional use or special exception
15 requirements.

16 (c) Permits.--

17 (1) A municipality may require an applicant to obtain
18 one or more permits of general applicability to perform the
19 following within the right-of-way:

20 (i) Collocate, maintain and modify small wireless
21 facilities.

22 (ii) Replace existing utility poles for collocation.

23 (iii) Install new utility poles with attached small
24 wireless facilities.

25 (2) Permits of general applicability shall not apply
26 exclusively to small wireless facilities. A municipality
27 shall receive applications for collocation or for
28 installation, modification or replacement of utility poles
29 with small wireless facilities attached and process and issue

1 permits, subject to the requirements of applicable codes. In
2 addition:

3 (i) A municipality may not directly or indirectly
4 require an applicant to perform services or provide goods
5 unrelated to the permit, such as in-kind contributions to
6 the municipality, including reserving fiber, conduit or
7 pole space for the municipality.

8 (ii) An applicant shall not be required to provide
9 justification for capacity or radio frequency. An
10 applicant may be required to:

11 (A) Include documentation with an application
12 that includes construction and engineering drawings,
13 demonstrates compliance with the criteria specified
14 under subsection (f) and includes all necessary
15 approvals from the pole owner.

16 (B) Self-certify that the filing and approval of
17 the application is required by the wireless provider
18 to provide additional capacity or coverage for
19 wireless services. Nothing in this subsection shall
20 be construed to permit a municipality to require an
21 applicant to submit information about an applicant's
22 business decisions with respect to its service,
23 customer demand for service or quality of service.

24 (C) Include documentation showing compliance
25 with design guidelines consistent with Section 3(h)
26 of this Act.

27 (d) Completed application.--Within 10 business days of
28 receiving an application, a municipality must determine and
29 notify the applicant in writing whether the application is

1 incomplete. If an application is incomplete, the notice must
2 specifically identify the missing information. The processing
3 deadline shall restart at zero on the date the applicant
4 provides the missing information. The processing deadline may be
5 tolled by agreement of the applicant and the municipality.

6 (e) Deadlines.--An application shall be processed on a
7 nondiscriminatory basis and deemed approved if the municipality
8 fails to approve or deny the application within 60 days of
9 receipt of a complete application to collocate and within 90
10 days of receipt of a complete application to replace an existing
11 utility pole or install a new utility pole with small wireless
12 facilities attached. Any associated permits applicable to an
13 application deemed granted under this section shall be deemed
14 granted if not issued within 7 business days after filing with
15 the municipality, unless there is a public safety basis for
16 delay.

17 (f) Denial.--

18 (1) A municipality may deny an application under this
19 section only if any of the following apply:

20 (i) The small wireless facility materially
21 interferes with the safe operation of traffic control
22 equipment, sight lines or clear zones for transportation
23 or pedestrians or compliance with the Americans with
24 Disabilities Act of 1990 (Public Law 101-336, 104 Stat.
25 327) or similar Federal or State standards regarding
26 pedestrian access or movement.

27 (ii) The small wireless facility fails to comply
28 with applicable codes.

29 (iii) The small wireless facility fails to comply

1 with the requirements specified under this act.

2 (iv) The applicant fails to submit a report by a
3 qualified engineering expert which shows that the small
4 wireless facility will comply with applicable FCC
5 regulations.

6 (2) Within the time frame established under subsection
7 (e), the municipality shall document the basis for a denial,
8 including the specific provisions of applicable codes on
9 which the denial was based, and send the documentation to the
10 applicant within five business days of the denial.

11 (3) The applicant may cure the deficiencies identified
12 by the municipality and resubmit the application within 30
13 days of receiving the written basis for the denial without
14 being required to pay an additional application fee. The
15 municipality shall approve or deny the revised application
16 within 30 days of the application being resubmitted for
17 review or the resubmitted application shall be deemed
18 approved 30 days after resubmission. Any subsequent review
19 shall be limited to the deficiencies cited in the denial. If
20 the resubmitted application addresses or changes other
21 sections of the application that were not previously denied,
22 the municipality shall be given an additional 15 days to
23 review the resubmitted application and may charge an
24 additional fee for the review.

25 (g) Consolidated application.--An applicant seeking to
26 collocate within the jurisdiction of a single municipality shall
27 be allowed at the applicant's discretion to file a consolidated
28 application for collocation of multiple small wireless
29 facilities as follows:

1 (1) The consolidated application does not exceed 20
2 small wireless facilities.

3 (2) The denial of one or more small wireless facilities
4 in a consolidated application shall not delay processing of
5 any other small wireless facilities in the same consolidated
6 application.

7 (3) A single applicant may not submit more than one
8 consolidated or 20 single applications in a 30-day period in
9 a municipality with a population of less than 50,000. If a
10 municipality with a population of less than 50,000 receives
11 more than one consolidated application or 20 single
12 applications within a 45-day period, the processing deadline
13 shall be extended 15 days in addition to the processing
14 deadline specified under subsection (d) to allow the
15 municipality to complete its initial review under subsection
16 (d).

17 (i) For the purpose of counting the number of small
18 wireless facilities each applicant has before a single
19 municipality at a given time, small wireless facilities
20 and poles that a wireless provider applicant has
21 requested a third party to deploy and that are included
22 in a pending application by the third party shall be
23 counted as pending requests by the wireless provider
24 applicant.

25 (ii) Applications tolled under paragraph (3) shall count
26 towards the total number of applications included in a
27 consolidated application unless withdrawn by the applicant. As
28 the processing of applications is completed, the municipality
29 shall begin processing previously tolled applications in the

1 order in which the tolled applications were submitted, unless
2 the applicant specifies a different order.

3 (h) Time limit for work.--The proposed collocation, the
4 modification or replacement of a utility pole or the
5 installation of a new utility pole with small wireless
6 facilities attached for which a permit is granted under this
7 section shall be completed within one year of the permit
8 issuance date unless the municipality and the applicant agree in
9 writing to extend the period.

10 (i) Utility poles.--When applying to install a new utility
11 pole under this act, the municipality ~~may shall~~ require the
12 wireless provider to demonstrate that it cannot meet the service
13 reliability and functional objectives of the application by
14 collocating on an existing utility pole or municipal pole
15 instead of installing a new utility pole. The municipality ~~may~~
16 ~~require the wireless provider to self-certify that the wireless~~
17 ~~provider has made this determination in good faith and to~~
18 ~~provide a documented summary of the basis for the~~
19 ~~determination~~ shall require the wireless provider to provide
20 written documentation that the existing owner of the utility
21 pole or municipal pole has declined the collocation request and
22 that such owner has declined to install a new or replacement
23 pole that meets the wireless provider's requirements. ~~The~~
24 ~~wireless provider's determination shall be based on~~
25 ~~whether~~ Collocation on an existing pole shall not be required if
26 such collocation would prevent the wireless provider ~~can from~~
27 meeting the service objectives of the application; ~~by~~
28 ~~collocating on an existing utility pole or municipal pole on~~
29 ~~which.~~

1 ~~(1) The wireless provider has the right to collocation.~~

2 ~~(2) The collocation is would not be technically feasible; -~~
3 ~~and would not impose substantial additional cost.~~

4 ~~(3) The collocation or would ~~not~~ obstruct or hinder travel or~~
5 have a negative impact on public safety.

6 (j) Approval.--Approval of an application authorizes the
7 applicant to:

8 (1) Collocate on an existing utility pole, modify or
9 replace a utility pole or install a new utility pole with
10 small wireless facilities attached as identified in the
11 initial application, subject to the requirements of
12 subsection (3) (d) (1) (ii).

13 (2) Subject to the permit requirements and the
14 applicant's right to terminate at any time, operate and
15 maintain small wireless facilities and any associated
16 equipment on a utility pole covered by the permit for a
17 period of not less than five years, which shall be renewed
18 for two additional five-year periods if the applicant is in
19 compliance with the criteria set forth in this act or
20 applicable codes consistent with this act and the applicant
21 has obtained all necessary consent from the utility pole
22 owner.

23 (k) Removal of equipment.--

24 (i) Within 60 days of suspension or revocation of a permit
25 due to noncompliance with this act or applicable codes
26 consistent with this act, the applicant shall remove the small
27 wireless facility and any associated equipment, including the
28 pole and any support structures if the applicant's wireless
29 facilities and associated equipment are the only facilities on

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1 the pole, after receiving adequate notice and an opportunity to
2 cure any noncompliance.

3 (ii) Within 90 days of the end of the permit term and any
4 extensions thereto, the applicant shall remove the small
5 wireless facility and any associated equipment, including the
6 pole and any support structures if the applicant's wireless
7 facilities and associated equipment are the only facilities on
8 the pole.

9 (l) Moratorium prohibited.--A municipality may not
10 institute, either expressly or de facto, a moratorium on:

- 11 (1) filing, receiving or processing applications; or
- 12 (2) issuing permits for:
 - 13 (i) collocation;
 - 14 (ii) modification or replacement of utility poles to
 - 15 support small wireless facilities; or
 - 16 (iii) installation of new utility poles to support
 - 17 small wireless facilities.

18 (m) When applications not required.--

- 19 (1) A municipality shall not require an application for:
 - 20 (i) Routine maintenance or repair work.
 - 21 (ii) The replacement of small wireless facilities
 - 22 with small wireless facilities that are substantially
 - 23 similar or the same size or smaller, and still qualify as
 - 24 a small wireless facility..
 - 25 (iii) The installation, placement, maintenance,
 - 26 operation or replacement of micro wireless facilities
 - 27 that are strung on cables between existing utility poles
 - 28 by or for a communications service provider authorized to
 - 29 occupy the right-of-way, in compliance with the National

1 Electrical Safety Code.

2 (2) A municipality may require a permit to perform work
3 within the right-of-way for the activities under paragraph
4 (1) or subsection (c), if applicable for work that involves
5 excavation, closure of a sidewalk or closure of a vehicular
6 lane. Permits shall be subject to the requirements provided
7 in this act or applicable codes consistent with this act.

8 (n) Application fees.-- Subject to the fee adjustment
9 requirements of Section 7(c) of this act, a municipality shall
10 have the right to charge an application fee for the review of a
11 permit application and plans submitted for the work to be done
12 within the right-of-way. A municipality may charge a one-time
13 application fee of up to the following:

14 (1) Five hundred dollars for an application seeking
15 approval for no more than five collocated small wireless
16 facilities and up to \$100 for each collocated small wireless
17 facility beyond five.

18 (2) One thousand dollars for an application seeking
19 approval of a small wireless facility that requires the
20 installation of a new or replacement utility pole.

21 Section 5. Access to municipal poles within right-of-way.

22 (a) Applicability.--The provisions of this section shall
23 apply to activities of the wireless provider within a right-of-
24 way.

25 (b) Exclusive use prohibited.--A municipality may not enter
26 into an exclusive arrangement with any person for the right to
27 collocate on municipal poles.

28 (c) Collocation.--A municipality shall allow collocation on
29 municipal poles using the process required under this act and

1 applicable codes unless the small wireless facility would cause
2 structural or safety deficiencies to the municipal pole, in
3 which case the municipality and applicant shall work together
4 for any make-ready work or modifications or replacements that
5 are needed to accommodate the small wireless facility. All
6 structures and facilities shall be installed and maintained so
7 as not to obstruct nor hinder travel or public safety within the
8 right-of-way.

9 (d) Rates.-- Subject to the fee adjustment requirements of
10 Section 7(c) of this act, a municipality shall not charge a
11 wireless provider a fee to collocate on municipal poles.

12 (e) Implementation and make-ready work.--

13 (1) The rates, fees and terms and conditions for the
14 make-ready work to collocate on a municipal pole must be
15 nondiscriminatory, competitively neutral and commercially
16 reasonable and must comply with this act.

17 (2) The municipality shall provide a good faith estimate
18 for any make-ready work necessary to enable the municipal
19 pole to support the requested collocation by a wireless
20 provider, including pole replacement if necessary, within 60
21 days after receipt of a complete application. Make-ready
22 work, including pole replacement, shall be completed within
23 60 days of written acceptance of the good faith estimate by
24 the applicant. A municipality may require replacement of the
25 municipal pole only if the municipality demonstrates that the
26 collocation would make the municipal pole structurally
27 unsound.

28 (3) The municipality shall not require more make-ready
29 work than required to meet applicable codes or industry

1 standards. Fees for make-ready work on a nonreplacement
2 municipal pole shall not include costs related to preexisting
3 or prior damage or noncompliance. Fees for make-ready work,
4 including replacement, shall not exceed actual costs or the
5 amount charged to other similarly situated communications
6 service providers for similar work and shall not include any
7 consultant fees or expenses that are charged on a contingency
8 basis.

9 (f) Future use.--A municipality may reserve space on an
10 existing municipal pole for future public safety or
11 transportation uses in a documented and approved plan as adopted
12 at the time an application is filed. A reservation of space
13 shall not preclude collocation, the replacement of an existing
14 utility pole or the installation of a new utility pole. If the
15 replacement of a municipal pole is necessary to accommodate
16 collocation and the reserved future use, the wireless provider
17 shall pay for the replacement municipal pole and the municipal
18 pole shall accommodate the future use.

19 Section 6. Local authority.

20 Subject to the provisions of this act and applicable Federal
21 and State laws and regulations, nothing in this act shall be
22 construed to:

23 (1) Limit or preempt the scope of a municipality's
24 zoning, land use, planning, streets and sidewalks, rights-of-
25 way, and permitting authority as it relates to small wireless
26 facilities.

27 (2) Grant the authority to a municipality to exercise
28 zoning jurisdiction over the design, engineering,
29 construction, installation or operation of a small wireless

1 facility located in an interior structure or on the site of a
2 campus, stadium or athletic facility not owned or controlled
3 by the municipality. Nothing in this act authorizes the
4 Commonwealth or any municipality to require small wireless
5 facility deployment or to regulate wireless services.

6 Section 7. Implementation.

7 (a) Ordinances.--A municipality may adopt ordinances that
8 comply with this act and shall amend existing ordinances as
9 necessary to comply with this act. If a municipality does not
10 adopt an ordinance that complies with this act within 60 days of
11 the effective date of this Act, applications seeking permits to
12 collocate, modify or replace existing utility poles or install
13 new utility poles shall be processed in compliance with this
14 act. A municipality shall not require a wireless provider to
15 enter into an agreement to implement this act. Nothing in this
16 subsection shall be construed to prohibit an agreement between a
17 municipality and a wireless provider to implement this act if
18 nondiscriminatory and entered into voluntarily.

19 (b) Agreements.--All agreements between municipalities and
20 wireless service providers that are in effect on the effective
21 date of this act shall remain in effect, subject to any
22 termination provisions in the agreements. When an application is
23 submitted after the effective date of this act, a wireless
24 provider may elect to have the rates, fees, terms and conditions
25 established under this act apply to the small wireless facility
26 or utility pole installed after the effective date of this act.

27 (c) Rate or fee adjustments.--

28 (1) If the FCC adjusts its levels for fees for small
29 wireless facilities, a municipality may adjust any impacted

1 rate or fee under sections 3(c), 4(n) or 5(d), on a pro rata
2 basis, and consistent with the FCC's adjustment.

3 (2) If, in a final adjudication not subject to further
4 appeal or to review by the United States Supreme Court, a
5 Federal court reviewing Accelerating Wireless Broadband
6 Deployment by Removing Barriers to Infrastructure Investment,
7 et al., Declaratory Ruling and Third Report and Order, WT
8 Docket No. 17-79 and WC Docket No. 17-84, FCC 18-133
9 (released September 27, 2018), reverses or repeals the rates
10 outlined in that FCC order, then the monetary caps under
11 sections (3)(c), (4)(n) and (5)(d) may increase 3% annually
12 beginning January 1, 2021, at the discretion of a
13 municipality.

14 Section 8. Indemnification.

15 Except for a wireless provider with an existing agreement to
16 occupy and operate in a right-of-way, a wireless provider shall
17 fully indemnify and hold the municipality and its officers,
18 employees and agents harmless against any claims, lawsuits,
19 judgments, costs, liens, expenses or fees or any other damages
20 caused by the act, error or omission of the wireless provider or
21 its officers, agents, employees, directors, contractors or
22 subcontractors while installing, repairing or maintaining small
23 wireless facilities or utility poles within the right-of-way. A
24 wireless provider shall not be required to indemnify for an act
25 of negligence or willful misconduct by the municipality, its
26 elected and appointed officials, employees and agents.

27 Section 9. General requirements for uses of rights-of-way.

28 (a) Construction and maintenance.--

29 (1) Structures and facilities deployed by a wireless

1 provider under this act shall be constructed, maintained and
2 located in a manner as to not obstruct, endanger or hinder
3 the usual travel or public safety on a right-of-way, damage
4 or interfere with other utility facilities located within a
5 right-of-way or interfere with the other utility's use of the
6 utility's facilities located or to be located within the
7 right-of-way.

8 (2) The construction and maintenance of structures and
9 facilities by the wireless provider shall comply with the
10 2017 National Electrical Safety Code and all applicable laws,
11 ordinances and regulations for the protection of underground
12 and overhead utility facilities.

13 Section 10. Construction.

14 (a) Obligations.--Nothing in this act shall be construed to
15 impact, modify or supersede any construction standard,
16 engineering practice, tariff provision, collective bargaining
17 agreement, contractual obligation or right, Federal or State law
18 or regulation relating to facilities or equipment owned or
19 controlled by an electric distribution company or its affiliate,
20 a telecommunications carrier, an electric cooperative or an
21 independent transmission company that is not a wireless
22 provider.

23 (b) Definitions.--As used in this section, the following
24 words and phrases shall have the meanings given to them in this
25 subsection unless the context clearly indicates otherwise:

26 "Electric distribution company." As defined in 66 Pa.C.S. §
27 2803 (relating to definitions).

28 "Facilities." As defined in 66 Pa.C.S. § 102 (relating to
29 definitions).

1 "Telecommunications carrier." As defined in 66 Pa.C.S. § 3012

2 (related to definitions).

3 Section 11. Effective date.

4 This act shall take effect in 60 days.