

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 345

97TH GENERAL ASSEMBLY

1193H.03P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, and to enact in lieu thereof thirteen new sections relating to broadband and wireless deployment.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 67.1830, 67.1836, 67.1838, and 67.1842, RSMo, are repealed and
2 thirteen new sections enacted in lieu thereof, to be known as sections 67.1830, 67.1836, 67.1838,
3 67.1842, 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, 67.5103, and 67.5104
4 to read as follows:

67.1830. As used in sections 67.1830 to 67.1846, the following terms shall mean:

2 (1) "Abandoned equipment or facilities", any equipment materials, apparatuses, devices
3 or facilities that are:

4 (a) Declared abandoned by the owner of such equipment or facilities;

5 (b) No longer in active use, physically disconnected from a portion of the operating
6 facility or any other facility that is in use or in service, and no longer capable of being used for
7 the same or similar purpose for which the equipment, apparatuses or facilities were installed; or

8 (c) No longer in active use and the owner of such equipment or facilities fails to respond
9 within thirty days to a written notice sent by a political subdivision;

10 (2) "Degradation", the actual or deemed reduction in the useful life of the public right-of-
11 way resulting from the cutting, excavation or restoration of the public right-of-way;

12 (3) "Emergency", includes but is not limited to the following:

13 (a) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public
14 utility facility that prevents or significantly jeopardizes the ability of a public utility to provide
15 service to customers;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (b) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public
17 utility facility that results or could result in danger to the public or a material delay or hindrance
18 to the provision of service to the public if the outage, cut, rupture, leak or any other such failure
19 of public utility facilities is not immediately repaired, controlled, stabilized or rectified; or

20 (c) Any occurrence involving a public utility facility that a reasonable person could
21 conclude under the circumstances that immediate and undelayed action by the public utility is
22 necessary and warranted;

23 (4) "Excavation", any act by which earth, asphalt, concrete, sand, gravel, rock or any
24 other material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced,
25 by means of any tools, equipment or explosives, except that the following shall not be deemed
26 excavation:

27 (a) Any de minimis displacement or movement of ground caused by pedestrian or
28 vehicular traffic;

29 (b) The replacement of utility poles and related equipment at the existing general
30 location that does not involve either a street or sidewalk cut; or

31 (c) Any other activity which does not disturb or displace surface conditions of the earth,
32 asphalt, concrete, sand, gravel, rock or any other material in or on the ground;

33 (5) "Management costs" or "rights-of-way management costs", the actual costs a political
34 subdivision reasonably incurs in managing its public rights-of-way, including such costs, if
35 incurred, as those associated with the following:

36 (a) Issuing, processing and verifying right-of-way permit applications;

37 (b) Inspecting job sites and restoration projects;

38 (c) Protecting or moving public utility right-of-way user construction equipment after
39 reasonable notification to the public utility right-of-way user during public right-of-way work;

40 (d) Determining the adequacy of public right-of-way restoration;

41 (e) Restoring work inadequately performed after providing notice and the opportunity
42 to correct the work; and

43 (f) Revoking right-of-way permits.

44

45 Right-of-way management costs shall be the same for all entities doing similar work.
46 Management costs or rights-of-way management costs shall not include payment by a public
47 utility right-of-way user for the use or rent of the public right-of-way, degradation of the public
48 right-of-way or any costs as outlined in paragraphs (a) to (h) of this subdivision which are
49 incurred by the political subdivision as a result of use by users other than public utilities, the
50 **attorneys'** fees and cost of litigation relating to the interpretation of this section or section
51 67.1832, or litigation, interpretation or development of any ordinance enacted pursuant to this

52 section or section 67.1832, **or attorneys' fees and costs in connection with issuing,**
53 **processing, or verifying right-of-way permit or other applications or agreements,** or the
54 political subdivision's fees and costs related to appeals taken pursuant to section 67.1838. In
55 granting or renewing a franchise for a cable television system, a political subdivision may impose
56 a franchise fee and other terms and conditions permitted by federal law;

57 (6) "Managing the public right-of-way", the actions a political subdivision takes, through
58 reasonable exercise of its police powers, to impose rights, duties and obligations on all users of
59 the right-of-way, including the political subdivision, in a reasonable, competitively neutral and
60 nondiscriminatory and uniform manner, reflecting the distinct engineering, construction,
61 operation, maintenance and public work and safety requirements applicable to the various users
62 of the public right-of-way, provided that such rights, duties and obligations shall not conflict
63 with any federal law or regulation. In managing the public right-of-way, a political subdivision
64 may:

65 (a) Require construction performance bonds or insurance coverage or demonstration of
66 self-insurance at the option of the political subdivision or if the public utility right-of-way user
67 has twenty-five million dollars in net assets and does not have a history of permitting
68 noncompliance within the political subdivision as defined by the political subdivision, then the
69 public utility right-of-way user shall not be required to provide such bonds or insurance;

70 (b) Establish coordination and timing requirements that do not impose a barrier to entry;

71 (c) Require public utility right-of-way users to submit, for right-of-way projects
72 commenced after August 28, 2001, requiring excavation within the public right-of-way, whether
73 initiated by a political subdivision or any public utility right-of-way user, project data in the form
74 maintained by the user and in a reasonable time after receipt of the request based on the amount
75 of data requested;

76 (d) Establish right-of-way permitting requirements for street excavation;

77 (e) Establish removal requirements for abandoned equipment or facilities, if the
78 existence of such facilities prevents or significantly impairs right-of-way use, repair, excavation
79 or construction;

80 (f) Establish permitting requirements for towers and other structures or equipment for
81 wireless communications facilities in the public right-of-way, notwithstanding the provisions of
82 section 67.1832;

83 (g) Establish standards for street restoration in order to lessen the impact of degradation
84 to the public right-of-way; and

85 (h) Impose permit conditions to protect public safety;

86 (7) "Political subdivision", a city, town, village, county of the first classification or
87 county of the second classification;

88 (8) "Public right-of-way", the area on, below or above a public roadway, highway, street
89 or alleyway in which the political subdivision has an ownership interest, but not including:

90 (a) The airwaves above a public right-of-way with regard to cellular or other nonwire
91 telecommunications or broadcast service;

92 (b) Easements obtained by utilities or private easements in platted subdivisions or tracts;

93 (c) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or

94 (d) [Poles,] Pipes, cables, conduits, wires, optical cables, or other means of transmission,
95 collection or exchange of communications, information, substances, data, or electronic or
96 electrical current or impulses utilized by a municipally owned or operated utility pursuant to
97 chapter 91 or pursuant to a charter form of government;

98 (9) "Public utility", every cable television service provider, every pipeline corporation,
99 gas corporation, electrical corporation, rural electric cooperative, telecommunications company,
100 water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction
101 of the public service commission; every municipally owned or operated utility pursuant to
102 chapter 91 or pursuant to a charter form of government or cooperatively owned or operated
103 utility pursuant to chapter 394; every street light maintenance district; every privately owned
104 utility; and every other entity, regardless of its form of organization or governance, whether for
105 profit or not, which in providing a public utility type of service for members of the general
106 public, utilizes pipes, cables, conduits, wires, optical cables, or other means of transmission,
107 collection or exchange of communications, information, substances, data, or electronic or
108 electrical current or impulses, in the collection, exchange or dissemination of its product or
109 services through the public rights-of-way;

110 (10) "Public utility right-of-way user", a public utility owning or controlling a facility
111 in the public right-of-way; and

112 (11) "Right-of-way permit", a permit issued by a political subdivision authorizing the
113 performance of excavation work in a public right-of-way.

67.1836. 1. A political subdivision may deny an application for a right-of-way permit
2 if:

3 (1) The public utility right-of-way user fails to provide all the necessary information
4 requested by the political subdivision for managing the public right-of-way;

5 (2) The public utility right-of-way user has failed to return the public right-of-way to its
6 previous condition under a previous permit;

7 (3) The political subdivision has provided the public utility right-of-way user with a
8 reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative
9 method for performing the work identified in the permit application or a reasonable alternative

10 route that will result in neither additional installation expense up to ten percent to the public
11 utility right-of-way user nor a declination of service quality;

12 (4) The political subdivision determines that the denial is necessary to protect the public
13 health and safety, provided that the authority of the political subdivision does not extend to those
14 items under the jurisdiction of the public service commission, such denial shall not interfere with
15 a public utility's right of eminent domain of private property, and such denials shall only be
16 imposed on a competitively neutral and nondiscriminatory basis; or

17 (5) The area is environmentally sensitive as defined by state statute or federal law or is
18 a historic district as defined by local ordinance.

19 2. A political subdivision may, after reasonable notice and an opportunity to cure, revoke
20 a right-of-way permit granted to a public utility right-of-way user, with or without fee refund,
21 and/or impose a penalty as established by the political subdivision until the breach is cured, but
22 only in the event of a substantial breach of the terms and material conditions of the permit. A
23 substantial breach by a permittee includes but is not limited to:

24 (1) A material violation of a provision of the right-of-way permit;

25 (2) An evasion or attempt to evade any material provision of the right-of-way permit, or
26 the perpetration or attempt to perpetrate any fraud or deceit upon the political subdivision or its
27 citizens;

28 (3) A material misrepresentation of fact in the right-of-way permit application;

29 (4) A failure to complete work by the date specified in the right-of-way permit, unless
30 a permit extension is obtained or unless the failure to complete the work is due to reasons beyond
31 the permittee's control; and

32 (5) A failure to correct, within the time specified by the political subdivision, work that
33 does not conform to applicable national safety codes, industry construction standards, or local
34 safety codes that are no more stringent than national safety codes, upon inspection and
35 notification by the political subdivision of the faulty condition.

36 3. Any political subdivision that requires public utility right-of-way users to obtain a
37 right-of-way permit, except in an emergency, prior to performing excavation work within a
38 public right-of-way shall promptly, but not longer than thirty-one days, process all completed
39 permit applications. **If a political subdivision fails to act on an application for a right-of-way
40 permit within thirty-one days, the application shall be deemed approved.** In order to avoid
41 excessive processing and accounting costs to either the political subdivision or the public utility
42 right-of-way user, the political subdivision may establish procedures for bulk processing of
43 permits and periodic payment of permit fees.

67.1838. [1.] A public utility right-of-way user that has been denied a right-of-way
2 permit, has had its right-of-way permit revoked, believes that the fees imposed on the public

3 right-of-way user by the political subdivision do not conform to the requirements of section
4 67.1840, **believes the political subdivision has violated any provision of sections 67.1830 to**
5 **67.1848**, or asserts any other issues related to the use of the public right-of-way, [shall have,
6 upon written request, such denials, revocations, fee impositions, or other disputes reviewed by
7 the governing body of the political subdivision or an entity assigned by the governing body for
8 this purpose. The governing body of the political subdivision or its delegated entity shall specify,
9 in its permit processing schedules, the maximum number of days by which the review request
10 shall be filed in order to be reviewed by the governing body of the political subdivision or its
11 delegated entity. A decision affirming the denial, revocation, fee imposition or dispute resolution
12 shall be in writing and supported by written findings establishing the reasonableness of the
13 decision.

14 2. Upon affirmation by the governing body of the denial, revocation, fee imposition or
15 dispute resolution, the public utility right-of-way user may, in addition to all other remedies and
16 if both parties agree, have the right to have the matter resolved by mediation or binding
17 arbitration. Binding arbitration shall be before an arbitrator agreed to by both the political
18 subdivision and the public utility right-of-way user. The costs and fees of a single arbitrator shall
19 be borne equally by the political subdivision and the public utility right-of-way user.

20 3. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three-
21 person arbitration panel consisting of one arbitrator selected by the political subdivision, one
22 arbitrator selected by the public utility right-of-way user, and one person selected by the other
23 two arbitrators. In the event that a three-person arbitrator panel is necessary, each party shall
24 bear the expense of its own arbitrator and shall jointly and equally bear with the other party the
25 expense of the third arbitrator and of the arbitration.

26 4. Each party to the arbitration shall pay its own costs, disbursements and attorney fees]
27 **may bring an action for review in any court of competent jurisdiction. The court shall rule**
28 **on any such petition for review within forty-five days of service. The petition for review**
29 **shall be deemed granted if the court fails to rule within the forty-five-day time period.**

67.1842. 1. In managing the public right-of-way and in imposing fees pursuant to
2 sections 67.1830 to 67.1846, no political subdivision shall:

3 (1) Unlawfully discriminate among public utility right-of-way users;

4 (2) Grant a preference to any public utility right-of-way user;

5 (3) Create or erect any unreasonable requirement for entry to the public right-of-way by
6 public utility right-of-way users;

7 (4) Require a telecommunications company to obtain a franchise or require a public
8 utility right-of-way user to pay for the use of the public right-of-way, except as provided in
9 sections 67.1830 to 67.1846; [or]

10 (5) Enter into a contract or any other agreement for providing for an exclusive use,
11 occupancy or access to any public right-of-way; or

12 (6) **Require any public utility that has legally been granted access to the political**
13 **subdivision's right-of-way prior to August 28, 2001, to enter into an agreement or obtain**
14 **a permit for general access to or the right to remain in the right-of-way of the political**
15 **subdivision.**

16 2. A public utility right-of-way user shall not be required to apply for or obtain right-of-
17 way permits for projects commenced prior to August 28, 2001, requiring excavation within the
18 public right-of-way, for which the user has obtained the required consent of the political
19 subdivision, or that are otherwise lawfully occupying or performing work within the public right-
20 of-way. The public utility right-of-way user may be required to obtain right-of-way permits prior
21 to any excavation work performed within the public right-of-way after August 28, 2001.

22 3. A political subdivision shall not collect a fee imposed pursuant to section 67.1840
23 through the provision of in-kind services by a public utility right-of-way user, nor require the
24 provision of in-kind services as a condition of consent to use the political subdivision's public
25 right-of-way; however, nothing in this subsection shall preclude requiring services of a cable
26 television operator, open video system provider or other video programming provider as
27 permitted by federal law.

67.5090. Sections 67.5090 to 67.5102 shall be known and may be cited as the
2 **"Uniform Wireless Communications Infrastructure Deployment Act" and is intended to**
3 **encourage and streamline the deployment of broadband facilities and to help ensure that**
4 **robust wireless communication services are available throughout Missouri.**

67.5092. As used in sections 67.5090 to 67.5102, the following terms mean:

2 (1) **"Accessory equipment", any equipment serving or being used in conjunction**
3 **with a wireless facility or wireless support structure. The term includes utility or**
4 **transmission equipment, power supplies, generators, batteries, cables, equipment**
5 **buildings, cabinets and storage sheds, shelters, or similar structures;**

6 (2) **"Antenna", communications equipment that transmits or receives**
7 **electromagnetic radio signals used in the provision of any type of wireless communications**
8 **services;**

9 (3) **"Applicant", any person engaged in the business of providing wireless**
10 **communications services or the wireless communications infrastructure required for**
11 **wireless communications services who submits an application;**

12 (4) **"Application", a request submitted by an applicant to an authority to construct**
13 **a new wireless support structure, for the substantial modification of a wireless support**

14 structure, or for collocation of a wireless facility or replacement of a wireless facility on an
15 existing structure;

16 (5) "Authority", each state, county, and municipal governing body, board, agency,
17 office, or commission authorized by law and acting in its capacity to make legislative,
18 quasi-judicial, or administrative decisions relative to zoning or building permit review of
19 an application. The term shall not include state courts having jurisdiction over land use,
20 planning, or zoning decisions made by an authority;

21 (6) "Base station", a station at a specific site authorized to communicate with
22 mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power
23 supplies, and other associated electronics, and includes a structure that currently supports
24 or houses an antenna, a transceiver, coaxial cables, power supplies, or other associated
25 equipment;

26 (7) "Building permit", a permit issued by an authority prior to commencement of
27 work on the collocation of wireless facilities on an existing structure, the substantial
28 modification of a wireless support structure, or the commencement of construction of any
29 new wireless support structure, solely to ensure that the work to be performed by the
30 applicant satisfies the applicable building code;

31 (8) "Collocation", the placement or installation of a new wireless facility on existing
32 structure, including electrical transmission towers, water towers, buildings, and other
33 structures capable of structurally supporting the attachment of wireless facilities in
34 compliance with applicable codes;

35 (9) "Electrical transmission tower", an electrical transmission structure used to
36 support high voltage overhead power lines. The term shall not include any utility pole;

37 (10) "Equipment compound", an area surrounding or near a wireless support
38 structure within which are located wireless facilities;

39 (11) "Existing structure", a structure that exists at the time a request to place
40 wireless facilities on a structure is filed with an authority. The term includes any structure
41 that is capable of supporting the attachment of wireless facilities in compliance with
42 applicable building codes, National Electric Safety Codes, and recognized industry
43 standards for structural safety, capacity, reliability, and engineering, including, but not
44 limited to, towers, buildings, and water towers. The term shall not include any utility pole;

45 (12) "Replacement", includes constructing a new wireless support structure of
46 equal proportions and of equal height or such other height that would not constitute a
47 substantial modification to an existing structure in order to support wireless facilities or
48 to accommodate collocation and includes the associated removal of the pre-existing wireless
49 facilities or wireless support structure;

50 **(13) "Substantial modification", the mounting of a proposed wireless facility on a**
51 **wireless support structure which, as applied to the structure as it was originally**
52 **constructed:**

53 **(a) Increases the existing vertical height of the structure by:**

54 **a. More than ten percent; or**

55 **b. The height of one additional antenna array with separation from the nearest**
56 **existing antenna not to exceed twenty feet, whichever is greater; or**

57 **(b) Involves adding an appurtenance to the body of a wireless support structure that**
58 **protrudes horizontally from the edge of the wireless support structure more than twenty**
59 **feet or more than the width of the wireless support structure at the level of the**
60 **appurtenance, whichever is greater (except where necessary to shelter the antenna from**
61 **inclement weather or to connect the antenna to the tower via cable);**

62 **(c) Involves the installation of more than the standard number of new outdoor**
63 **equipment cabinets for the technology involved, not to exceed four new equipment**
64 **cabinets; or**

65 **(d) Increases the square footage of the existing equipment compound by more than**
66 **two thousand five hundred square feet;**

67 **(14) "Utility", any person, corporation, county, municipality acting in its capacity**
68 **as a utility, municipal utility board, or other entity, or department thereof or entity related**
69 **thereto, providing retail or wholesale electric, natural gas, water, waste water, data, cable**
70 **television, or telecommunications or internet protocol-related services;**

71 **(15) "Utility pole", a structure owned or operated by a utility that is designed**
72 **specifically for and used to carry lines, cables, or wires for telephony, cable television, or**
73 **electricity, or to provide lighting;**

74 **(16) "Water tower", a water storage tank, or a standpipe or an elevated tank**
75 **situated on a support structure, originally constructed for use as a reservoir or facility to**
76 **store or deliver water;**

77 **(17) "Wireless facility", the set of equipment and network components, exclusive**
78 **of the underlying wireless support structure, including, but not limited to, antennas,**
79 **accessory equipment, transmitters, receivers, power supplies, cabling and associated**
80 **equipment necessary to provide wireless communications services;**

81 **(18) "Wireless support structure", a structure, such as a monopole, tower, or**
82 **building capable of supporting wireless facilities. This definition does not include utility**
83 **poles.**

67.5094. In order to ensure uniformity across the state of Missouri with respect to
2 **the consideration of every application, an authority shall not:**

- 3 **(1) Require an applicant to submit information about, or evaluate an applicant's**
4 **business decisions with respect to its designed service, customer demand for service, or**
5 **quality of its service to or from a particular area or site;**
- 6 **(2) Evaluate an application based on the availability of other potential locations for**
7 **the placement of wireless support structures or wireless facilities, including without**
8 **limitation the option to collocate instead of construct a new wireless support structure or**
9 **for substantial modifications of a support structure, or vice versa;**
- 10 **(3) Dictate the type of wireless facilities, infrastructure or technology to be used by**
11 **the applicant, including, but not limited to, requiring an applicant to construct a**
12 **distributed antenna system in lieu of constructing a new wireless support structure;**
- 13 **(4) Require the removal of existing wireless support structures or wireless facilities,**
14 **wherever located, as a condition for approval of an application;**
- 15 **(5) With respect to radio frequency emissions, impose environmental testing,**
16 **sampling, or monitoring requirements or other compliance measures on wireless facilities**
17 **that are categorically excluded under the Federal Communication Commission's rules for**
18 **radio frequency emissions under 47 CFR 1.1307(b)(1) or other applicable federal law, as**
19 **the same may be amended or supplemented;**
- 20 **(6) Establish or enforce regulations or procedures for RF signal strength or the**
21 **adequacy of service quality;**
- 22 **(7) In conformance with 47 U.S.C. Section 332(c)(7)(b)(4), reject an application, in**
23 **whole or in part, based on perceived or alleged environmental effects of radio frequency**
24 **emissions;**
- 25 **(8) Impose any restrictions with respect to objects in navigable airspace that are**
26 **greater than or in conflict with the restrictions imposed by the Federal Aviation**
27 **Administration;**
- 28 **(9) Prohibit the placement of emergency power systems that comply with federal**
29 **and state environmental requirements;**
- 30 **(10) Charge an application fee, consulting fee, or other fee associated with the**
31 **submission, review, processing, and approval of an application that is not required for**
32 **similar types of commercial development within the authority's jurisdiction. Fees imposed**
33 **by an authority for or directly by a third-party entity providing review or technical**
34 **consultation to the authority must be based on actual, direct, and reasonable**
35 **administrative costs incurred for the review, processing, and approval of an application.**
36 **In no case should total charges and fees exceed five hundred dollars for a collocation**
37 **application or one thousand five hundred dollars for an application for a new wireless**
38 **support structure or for a substantial modification of a wireless support structure.**

39 Notwithstanding the foregoing, in no event shall an authority or any third party entity
40 include within its charges any travel expenses incurred in a third-party's review of an
41 application and in no event shall an applicant be required to pay or reimburse an authority
42 for consultation or other third-party fees based on a contingency or result-based
43 arrangement;

44 (11) Impose surety requirements, including bonds, escrow deposits, letters of credit,
45 or any other type of financial surety, to ensure that abandoned or unused facilities can be
46 removed unless the authority imposes similar requirements on other permits for other
47 types of commercial development or land uses;

48 (12) Condition the approval of an application on the applicant's agreement to
49 provide space on or near the wireless support structure for authority or local governmental
50 services at less than the market rate for space or to provide other services via the structure
51 or facilities at less than the market rate for such services;

52 (13) Limit the duration of the approval of an application;

53 (14) Discriminate or create a preference on the basis of the ownership, including
54 ownership by the authority, of any property, structure, or tower when promulgating rules
55 or procedures for siting wireless facilities or for evaluating applications;

56 (15) Impose any requirements or obligations regarding the presentation or
57 appearance of facilities, including, but not limited to, those relating to the kind or type of
58 materials used and those relating to arranging, screening, or landscaping of facilities if
59 such regulations or obligations are unreasonable;

60 (16) Impose any requirements that an applicant purchase, subscribe to, use, or
61 employ facilities, networks, or services owned, provided, or operated by an authority, in
62 whole or in part, or by any entity in which an authority has a competitive, economic,
63 financial, governance, or other interest;

64 (17) Condition the approval of an application on, or otherwise require, the
65 applicant's agreement to indemnify or insure the authority in connection with the
66 authority's exercise of its police power-based regulations; or

67 (18) Condition or require the approval of an application based on the applicant's
68 agreement to permit any wireless facilities provided or operated, in whole or in part, by an
69 authority or by any entity in which an authority has a competitive, economic, financial,
70 governance, or other interest, to be placed at or collocated with the applicant's wireless
71 support structure.

2 67.5096. 1. Authorities may continue to exercise zoning, land use, planning, and
permitting authority within their territorial boundaries with regard to the siting of new

3 wireless support structures, subject to the provisions of sections 67.5090 to 67.5104,
4 including without limitation section 67.5094, and subject to federal law.

5 2. Any applicant that proposes to construct a new wireless support structure within
6 the jurisdiction of any authority, planning or otherwise, that has adopted planning and
7 zoning regulations in accordance with sections 67.5090 to 67.5104 shall:

8 (1) Submit the necessary copies and attachments of the application to the
9 appropriate authority. Each application shall include a copy of a lease, letter of
10 authorization or other agreement from the property owner evidencing applicant's right to
11 pursue the application; and

12 (2) Comply with applicable local ordinances concerning land use and the
13 appropriate permitting processes.

14 3. Disclosure of records in the possession or custody of authority personnel,
15 including but not limited to documents and electronic data, shall be subject to chapter 610.

16 4. The authority, within ninety calendar days of receiving an application to
17 construct a new wireless support structure or within such additional time as may be
18 mutually agreed to by an applicant and an authority, shall:

19 (1) Review the application in light of its conformity with applicable local zoning
20 regulations. An application is deemed to be complete unless the authority notifies the
21 applicant in writing, within thirty calendar days of submission of the application, of the
22 specific deficiencies in the application which, if cured, would make the application
23 complete. Upon receipt of a timely written notice that an application is deficient, an
24 applicant may take thirty calendar days from receiving such notice to cure the specific
25 deficiencies. If the applicant cures the deficiencies within thirty calendar days, the
26 application shall be reviewed and processed within ninety calendar days from the initial
27 date the application was received. If the applicant requires a period of time beyond thirty
28 calendar days to cure the specific deficiencies, the ninety calendar days deadline for review
29 shall be extended by the same period of time;

30 (2) Make its final decision to approve or disapprove the application; and

31 (3) Advise the applicant in writing of its final decision.

32 5. If the authority fails to act on an application to construct a new wireless support
33 structure within the ninety calendar days review period specified under subsection 4 of this
34 section or within such additional time as may be mutually agreed to by an applicant and
35 an authority, the application shall be deemed approved.

36 6. A party aggrieved by the final action of an authority, either by its affirmatively
37 denying an application under the provisions of this section or by its inaction, may bring an
38 action for review in any court of competent jurisdiction.

67.5098. 1. Authorities may continue to exercise zoning, land use, planning, and permitting authority within their territorial boundaries with regard to applications for substantial modifications of wireless support structures, subject to the provisions of sections 67.5090 to 67.5104, including without limitation section 67.5094, and subject to federal law.

2. Any applicant that applies for a substantial modification of a wireless support structure within the jurisdiction of any authority, planning or otherwise, that has adopted planning and zoning regulations in accordance with this title shall:

(1) Submit the necessary copies and attachments of the application to the appropriate authority. Each application shall include a copy of a lease, letter of authorization or other agreement from the property owner evidencing applicant's right to pursue the application; and

(2) Comply with applicable local ordinances concerning land use and the appropriate permitting processes.

3. Disclosure of records in the possession or custody of authority personnel, including but not limited to documents and electronic data, shall be subject to chapter 610.

4. The authority, within ninety calendar days of receiving an application for a substantial modification of wireless support structures, shall:

(1) Review the application in light of its conformity with applicable local zoning regulations. An application is deemed to be complete unless the authority notifies the applicant in writing, within thirty calendar days of submission of the application, of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take thirty calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within thirty calendar days, the application shall be reviewed and processed within ninety calendar days from the initial date the application was received. If the applicant requires a period of time beyond thirty calendar days to cure the specific deficiencies, the ninety calendar days deadline for review shall be extended by the same period of time;

(2) Make its final decision to approve or disapprove the application; and

(3) Advise the applicant in writing of its final decision.

5. If the authority fails to act on an application for a substantial modification within the ninety calendar days review period specified under subsection 4 of this section, or within such additional time as may be mutually agreed to by an applicant and an authority, the application for a substantial modification shall be deemed approved.

36 **6. A party aggrieved by the final action of an authority, either by its affirmatively**
37 **denying an application under the provisions of this section or by its inaction, may bring an**
38 **action for review in any court of competent jurisdiction.**

67.5100. 1. Subject to the provisions of sections 67.5090 to 67.5104, including
2 **section 67.5094, collocation applications and applications for replacement of wireless**
3 **facilities shall be reviewed for conformance with applicable building permit requirements,**
4 **National Electric Safety Codes, and recognized industry standards for structural safety,**
5 **capacity, reliability, and engineering, but shall not otherwise be subject to zoning or land**
6 **use requirements, including design or placement requirements, or public hearing review.**

2. The authority, within forty-five calendar days of receiving a collocation
8 **application or application for replacement of wireless facilities, shall:**

9 **(1) Review the collocation application or application to replace wireless facilities in**
10 **light of its conformity with applicable building permit requirements and consistency with**
11 **sections 67.5090 to 67.5104. A collocation application or application to replace wireless**
12 **facilities is deemed to be complete unless the authority notifies the applicant in writing,**
13 **within fifteen calendar days of submission of the application, of the specific deficiencies in**
14 **the application which, if cured, would make the application complete. Each collocation**
15 **application or application to replace wireless facilities shall include a copy of a lease, letter**
16 **of authorization or other agreement from the property owner evidencing applicant's right**
17 **to pursue the application. Upon receipt of a timely written notice that a collocation**
18 **application or application to replace wireless facilities is deficient, an applicant may take**
19 **fifteen calendar days from receiving such notice to cure the specific deficiencies. If the**
20 **applicant cures the deficiencies within fifteen calendar days, the application shall be**
21 **reviewed and processed within forty-five calendar days from the initial date the application**
22 **was received. If the applicant requires a period of time beyond fifteen calendar days to**
23 **cure the specific deficiencies, the forty-five calendar days deadline for review shall be**
24 **extended by the same period of time;**

25 **(2) Make its final decision to approve or disapprove the collocation application or**
26 **application for replacement of wireless facilities; and**

27 **(3) Advise the applicant in writing of its final decision.**

28 **3. If the authority fails to act on a collocation application or application to replace**
29 **wireless facilities within the forty-five calendar days review period specified in subsection**
30 **2 of this section, the application shall be deemed approved.**

31 **4. Except as provided in section 67.5104, the provisions of sections 67.5090 to**
32 **67.5104 shall not:**

33 **(1) Authorize an authority, except when acting solely in its capacity as a utility, to**
34 **mandate, require, or regulate the placement, modification, or collocation of any new**
35 **wireless facility on new, existing, or replacement poles owned or operated by a utility;**

36 **(2) Expand the power of an authority to regulate any utility; or**

37 **(3) Restrict any utility's rights or authority, or negate any utility's agreement,**
38 **regarding requested access to, or the rates and terms applicable to placement of any**
39 **wireless facility on new, existing, or replacement poles, structures, or existing structures**
40 **owned or operated by a utility.**

41 **5. A party aggrieved by the final action of an authority, either by its affirmatively**
42 **denying an application under the provisions of this section or by its inaction, may bring an**
43 **action for review in any court of competent jurisdiction.**

67.5102. In accordance with the policies of this state to further the deployment of
2 **wireless communications infrastructure:**

3 **(1) An authority may not institute any moratorium on the permitting, construction,**
4 **or issuance of approval of new wireless support structures, substantial modifications of**
5 **wireless support structures, or collocations if such moratorium exceeds six months in**
6 **length and if the legislative act establishing it fails to state reasonable grounds and good**
7 **cause for such moratorium. No such moratorium shall affect an already pending**
8 **application;**

9 **(2) To encourage applicants to request construction of new wireless support**
10 **structures on public lands and to increase local revenues:**

11 **(a) An authority may not charge a wireless service provider or wireless**
12 **infrastructure provider any rental, license, or other fee to locate a wireless support**
13 **structure on an authority's property in excess of the current market rates for rental or use**
14 **of similarly situated property. If the applicant and the authority do not agree on the**
15 **applicable market rate for any such public land and cannot agree on a process by which**
16 **to derive the applicable market rate for any such public land, then the market rate will be**
17 **determined by a panel of three certified appraisers licensed under chapter 339, using the**
18 **following process. Each party will appoint one certified appraiser to the panel, and the two**
19 **certified appraisers so appointed will appoint a third certified appraiser. Each appraiser**
20 **will independently appraise the appropriate lease rate, and the market rate shall be set at**
21 **the mid-point between the highest and lowest market rates among the three independent**
22 **appraisals, provided the mid-point between the highest and lowest appraisals is greater**
23 **than or less than ten percent of the appraisal of the third appraiser chosen by the parties'**
24 **appointed appraisers. In such case, the third appraisal will determine the rate for the**
25 **lease. The appraisal process shall be concluded within ninety calendar days from the date**

26 the applicant first tenders its proposed lease rate to the authority. Each party will bear the
27 cost of its own appointed appraiser, and the parties shall share equally the cost of the third
28 appraiser chosen by the two appointed appraisers. Nothing in this paragraph shall bar an
29 applicant and an authority from agreeing to reasonable, periodic reviews and adjustments
30 of current market rates during the term of a lease or contract to use an authority's
31 property; and

32 (b) An authority may not offer a lease or contract to use public lands to locate a
33 wireless support structure on an authority's property that is less than fifteen years in
34 duration unless the applicant agrees to accept a lease or contract of less than fifteen years
35 in duration;

36 (3) Nothing in subsection 2 of this section is intended to limit an authority's lawful
37 exercise of zoning, land use, or planning and permitting authority with respect to
38 applications for new wireless support structures on an authority's property under
39 subsection 1 of section 67.5096.

67.5103. Notwithstanding any provision of sections 67.5090 to 67.5102, nothing
2 herein shall provide any applicant the power of eminent domain or the right to compel any
3 private or public property owner, or the department of conservation or department of
4 natural resources to:

5 (1) Lease or sell property for the construction of a new wireless support structure;
6 or

7 (2) Locate or cause the collocation or expansion of a wireless facility on any existing
8 structure or wireless support structure.

67.5104. Any pole attachment rates, terms, and conditions, including those related
2 to the granting or denial of access, demanded by a municipal utility pole owner or
3 controlling authority of a municipality shall be nondiscriminatory, just and reasonable and
4 shall not be subject to any required franchise authority or government entity permitting.
5 An annual pole attachment rental rate shall be calculated on a per pole basis and shall be
6 considered just and reasonable if it does not exceed a rate calculated in accordance with
7 the federal cable rate formula, found at 47 U.S.C. Section 224(d), as applied by the Federal
8 Communications Commission. As used in this section, "pole attachment" means an
9 attachment by a video service provider, or by a telecommunications, wireless
10 communications or other communications-related service provider or municipal utility pole
11 owner, to a pole. A service provider may seek review of any rate, term, or condition under
12 this section at the appropriate circuit court if that entity believes the rates, terms, and
13 conditions are not fair, just, and reasonable.

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