

1 State of Arkansas

2 92nd General Assembly

3 Regular Session, 2019

A Bill

HOUSE BILL 1874

5 By: Representatives A. Davis, Love, Lynch

6 By: Senator J. Dismang

For An Act To Be Entitled

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

Subtitle

14 TO ESTABLISH THE SMALL WIRELESS FACILITY
15 DEPLOYMENT ACT.

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

20 SECTION 1. Arkansas Code Title 23, Chapter 17, is amended to add an
21 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:

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

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

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

36 (A) Meeting growing consumer demand for wireless data;



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

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

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

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

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

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

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

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

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

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

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

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

5 (A) Safe;

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

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

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

12
13 23-17-502. Title.

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

16
17 23-17-503. Definitions.

18 As used in this subchapter:

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

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

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

28 (B) "Antenna equipment" does not include:

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

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

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

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

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

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

11 (A) To collocate small wireless facilities; or

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

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

16 (i) A public utility district;

17 (ii) An irrigation district; or

18 (iii) A municipal electric utility.

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

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

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

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

30 (11) "Communications service" means:

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

33 (B) A telecommunications service, as defined in 47 U.S.C.
34 § 153(53), as it existed on January 1, 2019;

35 (C) An information service, as defined in 47 U.S.C. §
36 153(24), as it existed on January 1, 2019; or

- 1 (D) Wireless service;
- 2 (12) "Communications service provider" means:
- 3 (A) A cable operator, as defined in 47 U.S.C. § 522(5), as
4 it existed on January 1, 2019;
- 5 (B) A provider of information service, as defined in 47
6 U.S.C. § 153(24), as it existed on January 1, 2019;
- 7 (C) A telecommunications carrier, as defined in 47 U.S.C.
8 § 153(51); or
- 9 (D) A wireless provider;
- 10 (13) "Control" means the direct or indirect:
- 11 (A) Ownership of at least fifty percent (50%) of the
12 equity;
- 13 (B) Ability to direct at least fifty percent (50%) of
14 voting power; or
- 15 (C) Ability otherwise to direct management policies;
- 16 (14) "Decorative pole" means an authority pole that is
17 specifically designed and placed for aesthetic purposes and on which limited
18 appurtenances or attachments, such as a small wireless facility, lighting,
19 specially designed informational or directional signage, or temporary holiday
20 or special event attachments, have been placed or are permitted to be placed
21 according to nondiscriminatory authority rules or codes;
- 22 (15) "Facility" means an antenna facility or a structure that is
23 used for the provision of wireless service;
- 24 (16) "Fee" means a one-time, nonrecurring charge;
- 25 (17) "Historic district" means a group of buildings, properties,
26 or sites that are either:
- 27 (A) Listed in the National Register of Historic Places or
28 formally determined eligible for listing by the Keeper of the National
29 Register of Historic Places, according to Section VI.D.1.a.i-v of the
30 Nationwide Programmatic Agreement Regarding the Section 106 National Historic
31 Preservation Act Review Process, 47 C.F.R. Part 1, Appendix C, as it existed
32 on January 1, 2019;
- 33 (B) A historic district designated under the Historic
34 Districts Act, § 14-172-201 et seq.; or
- 35 (C) A historic district otherwise designated under a local
36 ordinance as of January 1, 2019;

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

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

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

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

14 (21) "Rate" means a recurring charge;

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

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

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

23 (i) The facility:

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

26 (b) Is mounted on a structure no more than ten
27 percent (10%) taller than other adjacent structures; or

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

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

34 (iii) All other wireless equipment associated with
35 the structure, including the wireless equipment associated with the antenna
36 and any preexisting associated equipment on the structure, is no more than

1 twenty-eight cubic feet (28 cu. ft.) in volume;

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

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

6 (vi) The facility does not result in human exposure
7 to radio frequency in excess of the applicable safety standards specified in
8 47 C.F.R. 1.1307(b), as it existed on January 1, 2019.

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

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

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

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

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

25 (26) "Wireless infrastructure provider" means a person or an
26 affiliate thereof, including a person authorized to provide communications
27 service in the state, that builds or installs facilities for the provision of
28 wireless service, but that is not a wireless service provider;

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

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

34 (29) "Wireless service provider" means a person who provides
35 wireless service;

36 (30)(A) "Wireless support structure" means a structure,

1 including:

2 (i) A monopole;

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

4 (iii) A billboard;

5 (iv) A building; or

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

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

11 and

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

15
 16 23-17-504. Exclusive arrangements.

17 An authority shall not enter into an exclusive arrangement with a
 18 person for use of the right-of-way for the collocation of small wireless
 19 facilities or the installation, operation, marketing, modification,
 20 maintenance, or replacement of poles for the collocation.

21
 22 23-17-505. Use of rights-of-way by wireless provider.

23 (a) Subject to this subchapter, a wireless provider shall have the
 24 right, as a permitted use not subject to zoning review or approval, to
 25 collocate, maintain, modify, operate, and replace small wireless facilities
 26 and to install, maintain, modify, and replace poles it owns or manages or,
 27 with the permission of the owner, a third party's pole, associated with a
 28 small wireless facility, along, across, upon, and under the right-of-way.

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

32
 33 23-17-506. Requirements – Height limits – Standards.

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

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

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

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

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

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

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

19
20 23-17-507. Damage and repair – Replacements – Abandonment – Removal.

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

26 (2) If the wireless provider fails to make the repairs required
27 by the authority within a reasonable time after written notice, the authority
28 may make those repairs and charge the applicable party the actual and
29 reasonable documented cost, including overhead, of the repairs.

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

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

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

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

9 (d)(1) An authority may order the removal of a small wireless facility
10 or associated pole in the right-of-way that violates § 23-17-505, § 23-17-
11 506, or applicable codes.

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

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

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

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

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

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

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

33 (D) Fails to comply with applicable codes.

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

1 (B) An authority that does not require a permit under §
2 23-17-510 shall provide at least thirty (30) days' notice of and a reasonable
3 opportunity to cure a violation of subdivision (e)(1) of this section.

4
5 23-17-508. Aesthetic standards.

6 (a) An authority that has adopted an ordinance under § 14-17-209 or §
7 14-56-416 may adopt and enforce standards that govern the aesthetic
8 appearance of small wireless facilities and associated poles to ensure
9 coordinated, adjusted, and harmonious development, as provided in this
10 section.

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

13 (1) The aesthetic standards shall be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 with the law.

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

5
6 23-17-509. Collocation on authority poles.

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

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

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

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

19 (d) The rate to collocate on authority poles is provided in § 23-17-
20 511.

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

26 (B) An authority may amend the make-ready design drawings
27 and work to comply with applicable codes before the issuance of a permit to
28 the extent reasonably necessary.

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

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

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

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

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

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

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

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

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

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

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

23 (B) If the authority electing to perform the make-ready
24 work has not completed the work within sixty (60) days after the written
25 acceptance and deposit of the good faith estimate by the applicant, the
26 applicant may demand a return of any deposited funds and proceed with the
27 make-ready work as described in subdivision (e)(1)(A) of this section, using
28 authorized, qualified contractors approved by the authority with the
29 authorization not to be unreasonably withheld, conditioned, or delayed.

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

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

35 (3) If replacement of the authority's pole is necessary to
36 accommodate the collocation of the small wireless facility and the future

1 use, the wireless provider shall pay for the replacement of the authority
2 pole and the replaced pole shall accommodate future use.

3
4 23-17-510. Permits.

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

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

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

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

18 (c) An authority may require an applicant to obtain one (1) or more
19 permits to collocate small wireless facilities or to install a new, modified,
20 or replacement pole associated with a small wireless facility as provided in
21 § 23-17-505 to § 23-17-507, provided the permits are of general applicability
22 and do not apply exclusively to small wireless facilities.

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

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

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

1 of Transportation located within an authority:

2 (A) Identification of the applicant;

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

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

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

9 (E) Electrical load information;

10 (F) Pole loading calculations;

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

13 (H) Evidence of bonding, if required;

14 (I) Evidence of insurance, if required; and

15 (J) Required application fees;

16 (3) An authority shall not require:

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

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

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

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

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

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

1 application is complete.

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

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

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

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

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

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

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

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

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

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

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

32 (D) Fails to comply with applicable codes; or

33 (E) Fails to comply with § 23-17-506(d) and (e) and § 23-
34 17-508;

35 (9) An authority may deny a proposed collocation of a small
36 wireless facility on an authority pole in a right-of-way controlled by the

1 Arkansas Department of Transportation located within the authority that meets
2 the requirements in § 23-17-506 only if the proposed collocation meets the
3 criteria in § 23-17-510(d)(8)(A) or (D) or fails to comply with aesthetic
4 standards adopted in an ordinance under § 23-17-508;

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

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

15 (B) The applicant may cure the deficiencies identified by
16 the authority and resubmit the application within thirty (30) days of the
17 denial without paying an additional application fee.

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

21 (12)(A)(i) An applicant seeking to collocate small wireless
22 facilities within the jurisdiction of a single authority shall be allowed at
23 the applicant's discretion to file a batched application for small wireless
24 facilities and associated poles and receive a single permit for the
25 collocation of multiple small wireless facilities and the placement of
26 associated poles.

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

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

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

35 (13)(A) Installation or collocation for which a permit is
36 granted under this section shall be completed within one (1) year after the

1 permit issuance date unless the authority and the applicant agree to extend
 2 this period, or a delay is caused by circumstances beyond the applicant's
 3 control.

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

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

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

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

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

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

19 (A) Routine maintenance; or

20 (B) The replacement of small wireless facilities with
 21 small wireless facilities that are substantially similar or the same size or
 22 smaller.

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

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

31 23-17-511. Fees and rates.

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

35 (b) An authority shall not require a wireless provider to pay any
 36 rates, fees, or compensation to the authority or other person other than what

1 is expressly authorized by this subchapter for the right to use or occupy a
2 right-of-way, for collocation of small wireless facilities on or in
3 structures in the right-of-way, or for the installation, maintenance,
4 modification, and replacement of associated poles in the right-of-way.

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

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

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

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

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

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

22
23 23-17-512. Local authority.

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

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

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

1
2 23-17-513. Arkansas Public Service Commission – Jurisdiction over pole
3 attachments.

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

9 (b) This subchapter does not authorize:

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

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

14 (3) Use of an electric cooperative-owned line, duct, conduit,
15 similar structure, or equipment of any type.

16 (c) This subchapter does not authorize:

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

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

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

23
24 23-17-514. Implementation.

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

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

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

36 (b) Ordinances and agreements implementing this subchapter are public

1 or private arrangements and are matters of legitimate and significant
2 statewide concern.

3 (c)(1) A provision of an agreement or ordinance with an effective date
4 before September 1, 2019, that does not fully comply with this subchapter
5 shall apply only to small wireless facilities and associated poles that were
6 operational before September 1, 2019, and shall be deemed invalid and
7 unenforceable beginning on the one hundred eighty-first day after September
8 1, 2019.

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

14 (d)(1) An agreement or ordinance with an effective date of September
15 1, 2019, or later that applies to small wireless facilities and associated
16 poles is invalid and unenforceable unless it fully complies with this
17 subchapter.

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

22
23 23-17-515. Dispute resolution.

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

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

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

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

35 (c) Any disputes, wherever filed, shall be pursued according to
36 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.

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

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

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

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

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

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

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

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

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

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

27
28 23-17-517. Overlapping jurisdiction of management of right-of-way.
29 In an area where more than one (1) authority may assert jurisdiction
30 over a right-of-way, only the authority controlling the smallest geographic
31 territory shall be authorized to adopt standards under § 23-17-508, issue
32 permits under § 23-17-510, or require the payment of fees under § 23-17-511.

33
34 SECTION 2. EFFECTIVE DATE. This act is effective on and after
35 September 1, 2019.