

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS - SMALL CELL SITING ACT

Introduced By: Senators DiPalma, DaPonte, Sosnowski, and Pearson

Date Introduced: February 16, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Legislative Findings. Because of the integral role that technology plays in
2 economic development and the vitality of the State of Rhode Island and Providence Plantations
3 and in the lives of its citizens, the general assembly has determined that a law addressing the
4 deployment of wireless technology is of vital interest to the state. Rhode Island is one of the
5 foremost states with broadband coverage and capability and must continue to lead in the
6 advancement of new technology. Small wireless facilities are critical to delivering wireless access
7 to advanced technology, broadband and 911 services to homes, businesses and schools in the
8 state. To ensure that the state and those who live and work here continue to benefit from these
9 advanced services as soon as possible and to ensure that providers of wireless services have a fair
10 and predictable process for the deployment of small wireless facilities, the general assembly
11 enacts this "Rhode Island Small Cell Siting Act", which specifies how local authorities may
12 regulate the collocation of small wireless facilities and small wireless facility networks.

13 SECTION 2. Title 39 of the General Laws entitled "PUBLIC UTILITIES AND
14 CARRIERS" is hereby amended by adding thereto the following chapter:

CHAPTER 32

RHODE ISLAND SMALL CELL SITING ACT

39-32-1. Definitions.

As used in this chapter:

(1) "Authority" means a city, town, or any other state or municipal government

1 subdivision, agency or entity that is authorized by law to regulate or control the use of the public
2 rights-of-way or the construction or installation of poles or wireless facilities or that owns or
3 controls property suitable for collocating small wireless facilities. The term does not include the
4 state courts.

5 (2) "Authority pole" means a pole owned or controlled by an authority.

6 (3) "Authority structure" means a building, water tower or other structure owned or
7 controlled by an authority, but not an authority pole.

8 (4) "Collocate" means to install, mount, maintain, modify, operate, or replace wireless
9 facilities on a pole, including an authority pole, or on a building, water tower or other structure,
10 including an authority structure. "Collocation" has a corresponding meaning.

11 (5) "Communications service provider" means a cable operator, as defined in 47 U.S.C.
12 §522(5); a provider of information service, as defined in 47 U.S.C. §153(24); a
13 telecommunications carrier, as defined in 47 U.S.C. §153(51); or a wireless service provider.

14 (6) "Pole" means a utility pole, light pole, light standard or similar structure that is used
15 in whole or in part for telephone service, wireless service, cable television service, information
16 service, electric service, lighting, traffic control, signage or similar function.

17 (7) "Small wireless facility" means a wireless facility with an antenna of no more than six
18 (6) cubic feet in volume and associated equipment with a cumulative volume no larger than
19 twenty-eight (28) cubic feet. The following types of associated equipment may be located outside
20 the primary enclosure and are not included in the calculation of equipment volume: electric
21 meter, concealment, telecommunications demarcation box, ground-based enclosures, backup
22 power system, grounding equipment, power transfer switch, cut-off switch, and cable and conduit
23 runs for the connection of power and other services. Equipment that is concealed from public
24 view within or behind an existing structure or concealment is not included in the volume
25 calculations.

26 (8) "Wireless facilities" means equipment at a fixed location that enables wireless
27 communications between user equipment and a communications network, including, but not
28 limited to:

29 (i) Equipment associated with wireless services such as private, broadcast, and public
30 safety services, as well as unlicensed wireless services and fixed wireless services such as
31 microwave backhaul; and

32 (ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power
33 supplies, and comparable equipment, regardless of technological configuration.

34 (9) "Wireless service" shall have the meaning defined in §39-1-2.

1 (10) "Wireless service provider" means a person who provides wireless service as well as
2 a person who builds or installs wireless communications transmission equipment, wireless
3 facilities or wireless support structures.

4 **39-32-2. Regulation of small wireless facilities.**

5 (a) A wireless service provider authorized to do business in this state or a contractor
6 acting on its behalf may collocate small wireless facilities and construct related conduit, cables
7 and facilities within, along, across, upon and under any public right-of-way in this state, including
8 state highways and freeways, subject to the provisions of this chapter.

9 (b) Except as provided in this chapter, an authority shall not prohibit, regulate or charge
10 for the collocation of small wireless facilities.

11 (c) Small wireless facilities shall be classified as permitted uses in all zoning districts and
12 shall not be subject to zoning review or approval.

13 (d) Nothing in this chapter shall be construed to authorize a person to collocate a small
14 wireless facility on a privately owned pole, structure or other private property without the consent
15 of the property owner.

16 **39-32-3. Collocation of small wireless facilities on authority poles and authority**
17 **structures.**

18 An authority may require a person to obtain a building, electrical or a public right-of-way
19 use or work permit to collocate small wireless facilities on authority poles or authority structures,
20 provided such permits are of general applicability and do not apply exclusively to wireless
21 facilities. An authority may not require a permit, other than a public right-of-way work permit, for
22 routine maintenance on a previously-approved small wireless facility or to replace a small
23 wireless facility with a facility of substantially similar or smaller size and weight. An authority
24 shall accept an application for, process and issue a permit allowed under this chapter as follows:

25 (1) An authority shall receive applications for, and process and issue permits for,
26 collocating small wireless facilities on a nondiscriminatory basis and in substantially the same
27 manner as the permitting of other applicants within the jurisdiction of the authority. An applicant
28 for a collocation permit shall not be required to provide more information to obtain a permit than
29 communications service providers that are not wireless providers.

30 (2) An authority may charge a fee to process an application to collocate a small wireless
31 facility. The fee shall be no greater than the reasonable, direct and actual costs incurred by the
32 authority to process the application, excluding any travel expenses charged by third parties or any
33 fees for review of an application charged by third parties on a contingency basis or a result-based
34 arrangement, and further excluding any costs already recovered by existing fees, rates or taxes

1 paid by a wireless provider. The application processing fee shall be no greater than the
2 application processing fee, if any, charged by the authority to persons seeking to place a pole in
3 the public way. Except as provided in §39-32-5, an applicant shall not be required to pay any
4 additional fees or charges, or perform or provide any services not directly related to the
5 collocation, in order to collocate small wireless facilities.

6 (3) At its discretion, an applicant shall be allowed to file a consolidated application and
7 receive a single permit to collocate small wireless facilities at multiple locations within the
8 jurisdiction of the authority.

9 (4) An authority may not institute a moratorium on filing, receiving or processing
10 applications or issuing permits or approvals for the collocation of small wireless facilities.

11 (5) All permits regarding the collocation of small wireless facilities shall be of unlimited
12 duration, except that an authority may require that initial construction commence within one year
13 of approval and be pursued to completion.

14 (6) A permit may require reasonable accommodations for a collocation within a
15 registered historic district as defined in §44-33.2-2(9).

16 **39-32-4. Action on permit applications.**

17 (a) An authority shall approve an application for a permit under this chapter unless the
18 collocation does not meet applicable building or electrical codes or, if applicable, standards for
19 construction in the right-of-way, provided such codes and standards are of general applicability.
20 The authority must document the basis for any denial, including the specific code provisions or
21 standards on which the denial was based, and send the documentation to the applicant on or
22 before the day the authority denies an application. The applicant may cure the deficiencies
23 identified by the authority and resubmit the application within thirty (30) days of the denial
24 without paying an additional processing fee. The authority shall approve or deny the revised
25 application within thirty (30) days. Any subsequent denial shall be limited to the deficiencies
26 cited in the original denial. Where one or more locations addressed in a consolidated application
27 do not meet the criteria of this section, the authority shall allow the application as to all other
28 locations.

29 (b) An application shall be deemed approved if the authority fails to approve or deny the
30 application within sixty (60) days of submission. If the authority notifies the applicant within ten
31 (10) days after the initial submission that the application is incomplete and reasonably identifies
32 at that time the information that is lacking, the time period stated above shall be tolled during the
33 time it takes the applicant to respond. No other request for additional information shall toll such
34 time periods.

1 (c) A person whose application or revised application is denied by an authority may
2 appeal to the superior court within thirty (30) days of the denial. The superior court shall have
3 jurisdiction to determine all disputes arising under this chapter.

4 **39-32-5. Additional terms for collocation on authority poles and structures.**

5 (a) Within three (3) months of receiving its first request to collocate small wireless
6 facilities on authority poles located within the public rights-of-way, an authority shall establish by
7 ordinance, regulation or rule nondiscriminatory, competitively neutral and commercially
8 reasonable rates, terms and conditions for such collocation that are consistent with the provisions
9 of this chapter. Should an authority require additional time to promulgate such ordinance,
10 regulation or rule, it shall process authority pole collocation requests, issue permits and allow
11 such collocation in the interim. Aside from the application processing fee allowed under §39-32-
12 3, an authority shall not charge on an annual recurring basis more for such a collocation than the
13 rate produced by applying the formula adopted by the Federal Communications Commission for
14 telecommunications pole attachments under 47 U.S.C. §224(e).

15 (b) An authority shall authorize the collocation of small wireless facilities on authority
16 poles not located within the public rights-of-way and on authority structures to the same extent
17 the authority permits access to such poles and structures for other commercial projects or uses,
18 and may authorize such collocation if the authority has not previously permitted such access.
19 Such collocation shall be subject to reasonable and nondiscriminatory rates, terms and conditions
20 as provided by ordinance or in one or more agreements between the wireless provider and the
21 authority. An authority may not charge on an annual recurring basis more for such a collocation
22 than the lesser of:

23 (1) The amount charged for similar commercial projects or uses to occupy or use the
24 same amount of space on similarly situated property; or

25 (2) The projected cost to the authority resulting from the collocation.

26 **39-32-6. Collocation of small wireless facilities on private poles and structures.**

27 (a) An authority may not prohibit, regulate or charge for the collocation of small wireless
28 facilities on poles or structures other than authority poles and authority structures.

29 (b) A wireless service provider may install poles in the public rights-of-way in order to
30 collocate small wireless facilities, subject to request and authority approval. An authority shall
31 receive, process and approve such requests on a non-discriminatory basis and in substantially the
32 same manner and on substantially the same terms and conditions as the authority applies to
33 similar requests by other persons seeking to place poles in the public ways.

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1 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO PUBLIC UTILITIES AND CARRIERS - SMALL CELL SITING ACT

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2 authorities may regulate the collocation of small wireless facilities and small wireless facility
3 networks.

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