

2017 -- S 0342 SUBSTITUTE A

=====
LC000977/SUB A
=====

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 0SECTION 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:

19 (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 and includes
6 metal, composite, concrete, or wood poles as well as decorative poles.

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

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

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

15 (6) "Person" means an individual, corporation, limited liability company, partnership,
16 association, trust, or other entity or organization, including an authority.

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

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

29 (9) "Wireless facilities" means equipment at a fixed location that enables wireless
30 communications between user equipment and a communications network, including, but not
31 limited to:

32 (i) Equipment associated with wireless services such as private, broadcast, and public
33 safety services, as well as unlicensed wireless services and fixed wireless services such as
34 microwave backhaul; and

1 (ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power
2 supplies, and comparable equipment, regardless of technological configuration. The term
3 "wireless facilities" includes small wireless facilities but does not include the structure or
4 improvements on, under or within which the equipment is collocated; wireline backhaul facilities;
5 coaxial or fiber-optic cable that is between wireless support structures or poles; or coaxial or fiber
6 optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

7 (10) "Wireless service" means any services using licensed or unlicensed wireless
8 spectrum, whether at a fixed location or mobile, provided using wireless facilities.

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

12 **39-32-2. Regulation of small wireless facilities.**

13 (a) A wireless service provider authorized to do business in this state or a contractor
14 acting on its behalf may collocate small wireless facilities within, along, across, upon and under
15 any public right-of-way in this state, including state highways and freeways, and may construct
16 conduit, cables, and facilities between such small wireless facility and other equipment or
17 services located on or adjacent to the supporting pole or other structure, subject to the provisions
18 of this chapter.

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

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

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

26 (e) All agreements between authorities and wireless service providers that are in effect on
27 the effective date of this chapter and that relate to the collocation of small wireless facilities in the
28 public right-of-way or on authority poles or structures shall remain in effect, subject to any
29 termination provisions in such agreements. Notwithstanding the foregoing, at the election of a
30 wireless service provider, the rates, fees, terms and conditions established pursuant to this chapter
31 shall apply to small wireless facilities that are the subject of an application submitted after the
32 effective date of this chapter.

33 **39-32-3. Collocation of small wireless facilities on authority poles and authority**
34 **structures.**

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

8 (1) An authority shall receive applications for, and process and issue permits for,
9 collocating small wireless facilities on a nondiscriminatory basis and in substantially the same
10 manner as the permitting of other applicants within the jurisdiction of the authority. An applicant
11 for a collocation permit shall not be required to provide more information to obtain a permit than
12 communications service providers that are not wireless providers. If consistent with the preceding
13 sentence, an authority may require an application to include information sufficient to determine
14 whether the collocation meets applicable building or electrical codes or, if applicable, standards
15 for construction in the right-of-way, provided such codes and standards are of general
16 applicability.

17 (2) An authority may charge a fee to process an application to collocate a small wireless
18 facility. The fee shall be no greater than the reasonable, direct and actual costs incurred by the
19 authority to process the application, excluding any fees for review of an application charged by
20 third parties on a contingency basis or a result-based arrangement, and further excluding any
21 costs already recovered by existing fees, rates or taxes paid by a wireless provider. The
22 application processing fee shall be no greater than the application processing fee, if any, charged
23 by the authority to persons seeking to place a pole in the public way. Except as provided in §39-
24 32-5, an applicant shall not be required to pay any additional fees or charges, or perform or
25 provide any services not directly related to the collocation, in order to collocate small wireless
26 facilities.

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

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

32 (5) All permits regarding the collocation of small wireless facilities shall be of unlimited
33 duration but initial construction shall be completed within one hundred eighty (180) days after the
34 permit issuance date, unless the authority and wireless provider agree to extend this period or a

1 delay is caused by a lack of commercial power at the site.

2 (6) Notwithstanding the provisions of §39-32-2(c), a permit for a collocation within an
3 historic district as defined in §45-24.1-1.1 shall be subject to historic district commission review
4 and approval, in accordance with standards to be adopted by regulation or rule. Such standards
5 may include that a collocation meet reasonable design, context, color and stealth and concealment
6 requirements and make reasonable accommodation for location within the district. The historic
7 district commission may waive one or more standards upon a showing that the standard(s) are not
8 reasonably compatible with the particular location of a small wireless facility, or that the
9 standard(s) impose an excessive expense. The waiver shall be granted or denied within forty-five
10 (45) days after the date of the request for waiver.

11 (7) A permit may require a collocation on an authority pole that is a decorative pole to
12 meet objective design standards, including that a collocation meet reasonable location, context,
13 color and stealth and concealment requirements. Such standards shall be adopted by ordinance,
14 regulation or rule. An authority may waive one or more standards upon a showing that the
15 standard(s) are not reasonably compatible with the particular location of a small wireless facility,
16 or that the standard(s) impose an excessive expense. The waiver shall be granted or denied within
17 forty-five (45) days after the date of the request.

18 **39-32-4. Action on permit applications.**

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

31 (b) An application shall be deemed approved if the authority fails to approve or deny the
32 application within sixty (60) days of submission. If the authority notifies the applicant within
33 fourteen (14) days after the initial submission that the application is incomplete and reasonably
34 identifies at that time the information that is lacking, the time period stated above shall be tolled

1 during the time it takes the applicant to respond. No other request for additional information shall
2 toll such time periods.

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

6 **39-32-5. Additional terms for collocation on authority poles and structures.**

7 (a) Within six (6) months of receiving its first request to collocate small wireless facilities
8 on authority poles located within the public rights-of-way, but in no event later than April 1,
9 2018, an authority shall establish by ordinance, regulation or rule nondiscriminatory,
10 competitively neutral and commercially reasonable rates, terms and conditions for such
11 collocation that are consistent with the provisions of this chapter. Aside from the application
12 processing fee allowed under §39-32-3, an authority shall not charge on an annual recurring basis
13 more for such a collocation than one hundred dollars (\$100) or the rate produced by applying the
14 formula adopted by the Federal Communications Commission for telecommunications
15 attachments under 47 U.S.C. §224(e). Provided further, that all requests to collocate small
16 wireless facilities on authority poles located within the public rights-of-way after June 30, 2020
17 shall be subject to a maximum annual recurring fee of two hundred dollars (\$200). Such fee
18 limitation shall not apply to authority structures.

19 (b) An authority shall authorize the collocation of small wireless facilities on authority
20 poles not located within the public rights-of-way and on authority structures to the same extent
21 the authority permits access to such poles and structures for other commercial projects or uses,
22 and may authorize such collocation if the authority has not previously permitted such access.
23 Such collocation shall be subject to reasonable and nondiscriminatory rates, terms and conditions
24 as provided by ordinance or in one or more agreements between the wireless provider and the
25 authority. An authority may not charge on an annual recurring basis more for such a collocation
26 than the amount charged for similar commercial projects or uses to occupy or use the same
27 amount of space on similarly situated property.

28 **39-32-6. Collocation of small wireless facilities on private poles and structures.**

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

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

1 [similar requests by other persons seeking to place poles in the public ways.](#)

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

=====
LC000977/SUB A
=====

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

1 This act would establish the "Small Cell Siting Act", which specifies how local
2 authorities may regulate the collocation of small wireless facilities and small wireless facility
3 networks.

4 This act would take effect upon passage.

=====
LC000977/SUB A
=====