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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO PUBLIC UTILITIES AND CARRIERS -- RHODE ISLAND SMALL CELL
SITING ACT

Introduced By: Representatives Ruggiero, McEntee, Kazarian, Williams, and Craven

Date Introduced: January 27, 2021

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. The general assembly hereby makes the following findings of fact:

2 (1) Fourth and fifth generation (4G and 5G) wireless deployment requires a fiber-optic
3 backbone to work. The telecommunications industry has been using fiber-optic cables for the past
4 forty (40) years, a compelling reason to invest in fiber-optic landline broadband as a robust
5 telecommunications infrastructure to support economic growth and diminish the risks to security,
6 privacy, public health and the environment.

7 (2) As more Rhode Island citizens use wireless and cell phones for video streaming,
8 gaming, and downloading apps, the telecommunications industry needs to create more small-cell
9 sites on telephone poles and buildings, also known as wireless communications facilities (WCF).

10 (3) The Federal Communications Commission (FCC) guidance on radio frequency and
11 energy transmissions has not been updated since 1996. Cell phone technology has changed
12 significantly in the last twenty-five (25) years. Cell phones were using 2G technology in 1996;
13 second generation (2G) introduced text messages. Third generation technology (3G) brought
14 mobile modems in laptop computers for wireless mobile Internet access. Fourth generation (4G)
15 added gaming services, high definition mobile video, and video conferencing. Fifth generation
16 (5G), marketed as the next generation of mobile communication, is still under development. The
17 features of 5G, not yet developed and introduced into the market, are two (2) to five (5) years away.

18 (4) As the data increases, the effective wireless signal range drops. Older cellular

1 deployment used lower frequency signals which traveled for miles, but with a lower data rate. 5G
2 wireless technology requires antennas every five hundred (500) feet throughout neighborhoods for
3 coverage (4G frequency range can reach up to ten (10) miles). Wireless networks are not as energy
4 efficient and sustainable as fiber-optic landline broadband.

5 (5) Since there has been little to no guidance from the FCC, which oversees the
6 telecommunications industry, and even less research on the biological and health effects of electro-
7 magnetic fields (EMF) from 5G systems, the installations of small cell sites, or WCFs, should be
8 installed in an open and transparent manner in order that neighborhood residents are cognizant of
9 any potential health risks.

10 SECTION 2. Sections 39-32-1, 39-32-2, 39-32-3 and 39-32-4 of the General Laws in
11 Chapter 39-32 entitled "Rhode Island Small Cell Siting Act" are hereby amended to read as follows:

12 **39-32-1. Definitions.**

13 As used in this chapter:

14 (1) "Authority" means a city, town, or any other state or municipal government subdivision,
15 agency, or governmental entity that is authorized by law to regulate or control the use of the public
16 rights-of-way or the construction or installation of poles or wireless facilities or that owns or
17 controls property suitable for collocating small wireless facilities. The term does not include the
18 state courts.

19 (2) "Authority pole" means a pole ~~owned or controlled by~~ regulated by or within the
20 jurisdiction of an authority and includes metal, composite, concrete, or wood poles, as well as
21 decorative poles.

22 (3) "Authority structure" means a building, water tower, or other structure ~~owned or~~
23 ~~controlled by~~ regulated by or within the jurisdiction of an authority, but not an authority pole.

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

27 (5) "Communications service provider" means a cable operator, as defined in 47 U.S.C. §
28 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications
29 carrier, as defined in 47 U.S.C. § 153(51); or a wireless service provider.

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

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

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

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

12 (i) Equipment associated with wireless services, such as private, broadcast, and public
13 safety services, as well as unlicensed wireless services and fixed wireless services, such as
14 microwave backhaul; and

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

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

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

26 **39-32-2. Regulation of small wireless facilities.**

27 (a) A wireless service provider authorized to do business in this state or a contractor acting
28 on its behalf may collocate small wireless facilities within, along, across, upon, and under any
29 public right-of-way in this state, including state highways and freeways, and may only construct
30 conduit, cables, and facilities between such small wireless facility and other equipment or services
31 located on or adjacent to the supporting pole or other structure, subject to the provisions of this
32 chapter, and any restrictions provided by the authorizing authority at the time of issuing any permit
33 in accordance with the provisions of this chapter.

34 (b) ~~Except as~~ As provided in this chapter, an authority ~~shall not~~ may prohibit, regulate, or

1 charge for the collocation of small wireless facilities.

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

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

7 (e) All agreements between authorities and wireless service providers that are in effect on
8 the effective date of this chapter [September 27, 2017] and that relate to the collocation of small
9 wireless facilities in the public right-of-way or on authority poles or structures shall remain in
10 effect, subject to any termination provisions in such agreements. Notwithstanding the foregoing, at
11 the election of a wireless service provider, the rates, fees, terms, and conditions established pursuant
12 to this chapter shall apply to small wireless facilities that are the subject of an application submitted
13 after the effective date of this chapter.

14 **39-32-3. Collocation of small wireless facilities on authority poles and authority**
15 **structures.**

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

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

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

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

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

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

12 (5) All permits regarding the collocation of small wireless facilities shall be of unlimited
13 duration but initial construction shall be completed within one hundred eighty (180) days after the
14 permit issuance date, unless the authority and wireless provider agree to extend this period or a
15 delay is caused by a lack of commercial power at the site.

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

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

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

33 (a) An authority ~~shall~~ may, after a public hearing, approve an application for a permit under
34 this chapter, if the authority determines that approval is for work or facilities that are suitably safe

1 ~~and in the best interest of the public. unless the collocation does not meet applicable building or~~
2 ~~electrical codes or, if applicable, standards for construction in the right of way, provided such~~
3 ~~codes and standards are of general applicability. The authority must document the basis for any~~
4 ~~denial, including the specific code provisions or standards on which the denial was based, and send~~
5 ~~the documentation to the applicant on or before the day the authority denies an application. The~~
6 ~~applicant may cure the deficiencies identified by the authority and resubmit the application within~~
7 ~~thirty (30) days of the denial without paying an additional processing fee. The authority shall~~
8 ~~approve or deny the revised application within thirty (30) days. Any subsequent denial shall be~~
9 ~~limited to the deficiencies cited in the original denial. Where one or more locations addressed in a~~
10 ~~consolidated application do not meet the criteria of this section, the authority shall allow the~~
11 ~~application as to all other locations.~~

12 (b) An application shall be deemed ~~approved~~ denied if the authority fails to approve or
13 deny the application within sixty (60) days of submission. If the authority notifies the applicant
14 within fourteen (14) days after the initial submission that the application is incomplete and
15 reasonably identifies at that time the information that is lacking, the time period stated above shall
16 be tolled during the time it takes the applicant to respond. No other request for additional
17 information shall toll such time periods.

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

21 SECTION 3. Chapter 39-32 of the General Laws entitled "Rhode Island Small Cell Siting
22 Act" is hereby amended by adding thereto the following sections:

23 **39-32-7. Rules and regulations.**

24 The public utilities commission shall promulgate rules and regulations to implement the
25 provisions of this chapter to include, but not limited to, determination of safe exposure levels for
26 radiation emission levels and/or electro-magnetic fields and the requirements to accommodate the
27 welfare and convenience of the public.

28 **39-32-8. Public hearing.**

29 All applications for permits and public hearings pursuant to the provisions of § 39-32-4
30 shall be conducted in accordance with the provisions of chapter 46 of title 42 ("open meetings").

31 **39-32-9. Violations -- Penalty.**

32 (a) Any person, subject to the provisions of this chapter, who shall knowingly or willfully
33 cause to be done any act prohibited by this chapter or in violation of the terms of any permit issued
34 pursuant to the provisions of this chapter, shall be guilty of a misdemeanor, and shall, upon

1 conviction, be subject to a fine not to exceed one thousand dollars (\$1,000) or imprisonment for a
2 term not exceeding one year, or both, for each offense.

3 (b) The administrator of the division of public utilities carriers may, in the administrator's
4 discretion, in lieu of seeking criminal sanctions, impose upon its regulated common or contract
5 carriers after a hearing, an administrative civil penalty (fine). The fine shall not exceed one
6 thousand dollars (\$1,000) per each violation of the sections contained in this chapter or the rules
7 and regulations promulgated thereunder.

8 SECTION 4. 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 -- RHODE ISLAND SMALL CELL
SITING ACT

1 This act would provide that governmental authorities are to license small wireless facilities
2 if the authority determines that the work is suitably safe and in the interest of the public. The public
3 utilities commission would promulgate rules and regulations. Violations would be a misdemeanor
4 punishable by a one thousand dollar (\$1,000) fine or imprisonment for one year, or both.

5 This act would take effect upon passage.

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