

AMENDMENTS TO LB184

Introduced by Transportation and Telecommunications.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 44 of this act shall be known and may be
4 cited as the Small Wireless Facilities Deployment Act.

5 Sec. 2. The Legislature finds and declares that:

6 (1) The deployment of small wireless facilities and other next-
7 generation wireless facilities is a matter of statewide concern and
8 interest and public policy;

9 (2) Wireless products and services are a significant and continually
10 growing part of the state's economy. Encouraging the development of
11 strong and robust wireless communications networks throughout the state
12 is necessary to address public need and policy and is integral to the
13 state's economic competitiveness;

14 (3) Rapid deployment of small wireless facilities will serve
15 numerous important statewide goals and public policy, including meeting
16 growing consumer demand for wireless data, increasing competitive options
17 for communications services available to the state's residents, improving
18 the ability of the state's residents to communicate with other residents
19 and with their state and local governments, and promoting public safety;

20 (4) Small wireless facilities, including facilities commonly
21 referred to as small cells and distributed antenna systems, are deployed
22 most effectively in public rights-of-way;

23 (5) To meet the public need and policy and key objectives of the
24 Small Wireless Facilities Deployment Act, wireless providers must have
25 access to the public rights-of-way to densify their networks and provide
26 next-generation wireless services;

27 (6) Uniform procedures, rates, and fees for permit issuance and

1 deployment of small wireless facilities in public rights-of-way and on
2 authority infrastructure, including poles, throughout the state are
3 reasonable and will encourage the development of robust next-generation
4 wireless networks for the benefit of residents throughout the state; and

5 (7) The procedures, rates, and fees in the Small Wireless Facilities
6 Deployment Act, together with any taxes, fees, or charges imposed under
7 section 86-704, are fair and reasonable when viewed from the perspective
8 of the state's residents and the state's interest in having robust,
9 reliable, and technologically advanced wireless networks, and reflect a
10 balancing of the interests of the wireless providers deploying new
11 facilities and the interests of authorities in receiving fair value by
12 recovering their costs of managing access to the public rights-of-way and
13 the attachment space provided on authority infrastructure, and reviewing
14 and processing applications for the installation of small wireless
15 facilities within the right-of-way.

16 Sec. 3. For purposes of the Small Wireless Facilities Deployment
17 Act, the definitions in sections 4 to 35 of this act apply.

18 Sec. 4. Antenna means communications equipment that transmits or
19 receives electromagnetic radio frequency signals used in providing
20 wireless services.

21 Sec. 5. Applicable codes means uniform building, fire, safety,
22 electrical, plumbing, or mechanical codes adopted by a recognized
23 national code organization or local amendments to such codes so long as
24 such amendments are not in conflict with the Small Wireless Facilities
25 Deployment Act and to the extent such codes have been adopted by the
26 authority or are generally applicable in the jurisdiction.

27 Sec. 6. Applicant means any person who submits an application and
28 is a wireless provider.

29 Sec. 7. Application means a written request submitted by an
30 applicant to an authority (1) for a permit to collocate small wireless
31 facilities on an existing utility pole or wireless support structure or

1 (2) for a permit for approval for the installation, modification, or
2 replacement of a utility pole to support the installation of a small
3 wireless facility.

4 Sec. 8. Authority means the State of Nebraska or any agency,
5 county, city, village, or other political subdivision thereof, except as
6 otherwise excluded herein. Authority does not include public power
7 suppliers, state courts having jurisdiction over an authority, or an
8 entity that does not have zoning or permit granting authority.

9 Sec. 9. Authority pole means a utility pole owned, managed, or
10 operated by or on behalf of an authority.

11 Sec. 10. Collocate or collocation means to install, mount,
12 maintain, modify, operate, or replace small wireless facilities on or
13 adjacent to a wireless support structure or utility pole. Collocate or
14 collocation does not include the installation of a new utility pole or
15 new wireless support structure in the right-of-way.

16 Sec. 11. Communications facility means the set of equipment and
17 network components including wires, cables, and associated facilities
18 used by a cable operator as defined in 47 U.S.C. 522(5), as such section
19 existed on January 1, 2019, a telecommunications carrier as defined in 47
20 U.S.C. 153(51), as such section existed on January 1, 2019, a provider of
21 information service as defined in 47 U.S.C. 153(24), as such section
22 existed on January 1, 2019, or a wireless services provider, to provide
23 communications services, including cable service as defined in 47 U.S.C.
24 153(8), as such section existed on January 1, 2019, an information
25 service as defined in 47 U.S.C. 153(24), as such section existed on
26 January 1, 2019, wireless services, or other one-way or two-way
27 communications service.

28 Sec. 12. Communications network means a network used to provide
29 communications service.

30 Sec. 13. Communications service means a cable service as defined in
31 47 U.S.C. 522, as such section existed on January 1, 2019, an information

1 service as defined in 47 U.S.C. 153, as such section existed on January
2 1, 2019, a telecommunications service as defined in 47 U.S.C. 153, as
3 such section existed on January 1, 2019, or a wireless service.

4 Sec. 14. Communications service provider means a cable operator as
5 defined in 47 U.S.C. 522, a provider of information service as defined in
6 47 U.S.C. 153, or a telecommunications carrier as defined in 47 U.S.C.
7 153, as such sections existed on January 1, 2019. Communications service
8 provider includes a wireless provider.

9 Sec. 15. Decorative pole means an authority pole that is specially
10 designed and placed for aesthetic purposes.

11 Sec. 16. Fee means a one-time, nonrecurring charge.

12 Sec. 17. Historic district means any prehistoric or historic
13 district, site, building, structure, or object included in, or eligible
14 for inclusion in, the National Register, in accordance with section
15 VI.D.1.a (i)-(v) of the Nationwide Programmatic Agreement for the
16 Collocation of Wireless Antennas codified at 47 C.F.R. part 1, Appendix
17 C, as such regulation existed on January 1, 2019, or designated pursuant
18 to state historic preservation law if such designation exists at the time
19 of application.

20 Sec. 18. Law means federal, state, or local law, statute, common
21 law, code, rule, regulation, order, or ordinance.

22 Sec. 19. Microwireless facility means a small wireless facility
23 that is not larger in dimension than twenty-four inches in length,
24 fifteen inches in width, and twelve inches in height and with any
25 exterior antenna no longer than eleven inches.

26 Sec. 20. Permit means a written authorization required by an
27 authority to perform an action, initiate, continue, or complete
28 installation of a small wireless facility on an existing utility pole or
29 attached to an existing wireless support structure, or to install,
30 modify, or replace a utility pole to support installation of a small
31 wireless facility.

1 Sec. 21. Person means an individual, a corporation, a limited
2 liability company, a partnership, an association, a trust, or any other
3 entity or organization, including an authority.

4 Sec. 22. Public power supplier means a public power district or any
5 other governmental entity providing electric service. Public power
6 supplier includes a municipal electric utility or a rural public power
7 supplier.

8 Sec. 23. Rate means a recurring charge.

9 Sec. 24. Right-of-way means the area on, below, or above a public
10 roadway, highway, street, sidewalk, alley, dedicated utility easement, or
11 similar property, but not including a freeway as defined in section
12 39-1302, the National System of Interstate and Defense Highways, or a
13 private easement.

14 Sec. 25. Rural public power supplier means a public power district,
15 a public power and irrigation district, an electric cooperative, or an
16 electric membership association, that does not provide electric service
17 to any city of the metropolitan class, city of the primary class, or city
18 of the first class.

19 Sec. 26. Small wireless facility means a wireless facility that
20 meets each of the following conditions: (1) The facilities (a) are
21 mounted on structures fifty feet or less in height including the antennas
22 or (b) are mounted on structures no more than ten percent taller than
23 other adjacent structures; (2) each antenna associated with the
24 deployment is no more than three cubic feet in volume; (3) all other
25 equipment associated with the structure, whether ground-mounted or pole-
26 mounted, is no more than twenty-eight cubic feet in volume; (4) the
27 facilities do not require antenna structure registration under 47 C.F.R.
28 part 17, as such regulation existed on January 1, 2019; (5) the
29 facilities are not located on tribal lands, as defined in 36 C.F.R.
30 800.16(x), as such regulation existed on January 1, 2019; and (6) the
31 facilities do not result in human exposure to radio frequency radiation

1 in excess of the applicable safety standards specified in 47 C.F.R.
2 1.1307(b), as such regulation existed on January 1, 2019.

3 Sec. 27. Technically feasible means that by virtue of engineering
4 or spectrum usage, the proposed placement for a small wireless facility,
5 or its design or site location, can be implemented without a reduction in
6 the functionality of the small wireless facility.

7 Sec. 28. Utility pole means a pole located in the right-of-way that
8 is used for wireline communications, lighting, the vertical portion of
9 support structures for traffic control signals or devices or a similar
10 function, or for the collocation of small wireless facilities and located
11 in the right-of-way. Utility pole does not include (1) wireless support
12 structures, (2) any transmission infrastructure owned or operated by a
13 public power supplier or rural public power supplier, and (3) any
14 distribution or communications infrastructure owned or operated by a
15 rural public power supplier.

16 Sec. 29. (1) Wireless facility means equipment at a fixed location
17 that enables wireless communications between user equipment and a
18 communications network, including (a) equipment associated with wireless
19 communications and (b) radio transceivers, antennas, coaxial or fiber-
20 optic cable, regular power supply, and small back-up battery, regardless
21 of technological configuration. Wireless facility includes small wireless
22 facilities.

23 (2) Wireless facility does not include (a) the structure or
24 improvements on, under, or within the equipment which is collocated, (b)
25 coaxial or fiber-optic cable that is between wireless structures or
26 utility poles or that is otherwise not immediately adjacent to, or
27 directly associated with, a particular antenna, or (c) a wireline
28 backhaul facility.

29 Sec. 30. Wireless infrastructure provider means any person,
30 including a person authorized to provide telecommunications service in
31 the State of Nebraska, when acting to build or install wireless

1 communication transmission equipment, wireless facilities, or wireless
2 support structures, but that is not a wireless services provider.

3 Sec. 31. Wireless provider means a wireless services provider or a
4 wireless infrastructure provider when acting as a co-applicant for a
5 wireless services provider.

6 Sec. 32. Wireless services means any services using licensed or
7 unlicensed spectrum, including the use of Wi-Fi, whether mobile or at a
8 fixed location, provided to the public using wireless facilities.

9 Sec. 33. Wireless services provider means a person who provides
10 wireless services.

11 Sec. 34. Wireless support structure means a structure such as a
12 guyed or self-supporting tower, billboard, building, or other existing or
13 proposed structure designed to support or capable of supporting wireless
14 facilities other than a structure designed solely for the collocation of
15 small wireless facilities. Wireless support structure does not include a
16 utility pole.

17 Sec. 35. Wireline backhaul facility means an above-ground or
18 underground facility used to transport communications services from a
19 wireless facility to a communications network.

20 Sec. 36. (1) This section applies only to activities of a wireless
21 provider within the right-of-way to deploy small wireless facilities and
22 associated utility poles.

23 (2) An authority shall not enter into an exclusive arrangement with
24 any person for use of the right-of-way.

25 (3) Subject to the exception in subsection (7) of section 37 of this
26 act, an authority may only charge a wireless provider on a
27 nondiscriminatory basis the rate or fee provided in section 39 of this
28 act for the use of any right-of-way for the collocation of small wireless
29 facilities or the installation, maintenance, modification, operation, or
30 replacement of a utility pole in the right-of-way if the authority
31 charges other entities for the use of the right-of-way. An authority may,

1 on a nondiscriminatory basis, refrain from charging any rate to a
2 wireless provider for the use of the right-of-way.

3 (4) Except as provided in this section, a wireless provider shall
4 have the right, as a permitted use not subject to zoning review or
5 approval, to collocate small wireless facilities and install, maintain,
6 modify, operate, and replace utility poles along, across, upon, and under
7 the right-of-way so long as such facilities and poles do not obstruct or
8 hinder the usual travel or public safety on such right-of-way or obstruct
9 the legal use of such right-of-way by utilities or the safe operation of
10 their systems or provision of service.

11 (5)(a) Any new or modified utility pole installed in a right-of-way
12 shall not exceed the greater of (i) five feet in height above the tallest
13 existing utility pole in place as of the effective date of this act
14 located within five hundred feet of the new utility pole in the same
15 right-of-way or (ii) fifty feet above ground level.

16 (b) New small wireless facilities in a right-of-way shall not extend
17 more than the greater of (i) fifty feet in height, including antenna, or
18 (ii) more than five feet above an existing utility pole in place as of
19 the effective date of this act and located within five hundred feet in
20 the same right-of-way.

21 (c) An authority shall have the right, at its sole discretion and
22 subject to applicable nondiscriminatory regulations, to consider and
23 approve an application to install a utility pole or wireless support
24 structure that exceeds the height limits in this subsection for the right
25 to collocate a small wireless facility and install, maintain, modify,
26 operate, and replace a utility pole that exceeds such height limits
27 along, across, upon, and under a right-of way.

28 (6) An applicant may request approval from an authority, as part of
29 the application process, to replace a decorative pole when necessary to
30 collocate a small wireless facility. Any replacement decorative pole
31 shall conform to the non-discriminatory design aesthetics of the

1 decorative pole being replaced.

2 (7) Except for facilities excluded from evaluation for effects on
3 historic properties under 47 C.F.R. 1.1307(a)(4), as such regulation
4 existed on January 1, 2019, an authority shall have the right to require
5 design or concealment measures in a historic district established prior
6 to January 1, 2019. Such design or concealment measures shall be
7 objective and directed to avoid or remedy the intangible public harm of
8 unsightly or out-of-character wireless facilities deployed at the
9 proposed location within the authority's jurisdiction. Any such design or
10 concealment measures shall be reasonable, nondiscriminatory, and
11 published in advance, and shall not be considered a part of the small
12 wireless facility for purposes of the size restrictions of a small
13 wireless facility.

14 (8) An authority may require a wireless provider to repair all
15 damage to a right-of-way directly caused by the activities of the
16 wireless provider in the right-of-way and return the right-of-way to
17 equal or better condition to that before the damage occurred pursuant to
18 the competitively neutral and reasonable requirements and specifications
19 of the authority. If the applicant fails to make the repairs that are
20 reasonably required by the authority within fourteen days after written
21 notice, the authority may undertake such repairs and charge the wireless
22 provider the reasonable, documented cost of such repairs. An authority
23 shall grant an extension of up to ten days to complete such repairs if
24 the wireless provider requests such extension within the original
25 fourteen-day period. In the event of immediate threat to life, safety, or
26 to prevent serious injury, the authority may immediately undertake to
27 restore the site and then notify the applicant and charge the applicant
28 for all reasonable restoration costs.

29 Sec. 37. (1) This section applies to the issuance of a permit for a
30 small wireless facility within the right-of-way as specified in
31 subsection (4) of this section and the issuance of a permit for the

1 installation, modification, and replacement of utility poles by an
2 applicant within a right-of-way.

3 (2) Except as provided in the Small Wireless Facilities Deployment
4 Act, an authority shall not prohibit, regulate, or charge for the
5 collocation of small wireless facilities or the installation,
6 modification, or replacement of utility poles to support small wireless
7 facilities.

8 (3)(a) An applicant that collocates a small wireless facility within
9 an authority right-of-way or on a utility pole assumes the risk of loss,
10 damage to, or loss of use of such facility when such pole is damaged,
11 destroyed, or taken out of service on authority property, except to the
12 extent that such loss or damage is due to or caused by the negligence or
13 willful misconduct of the authority or its employees, contractors, or
14 agents. This subdivision does not preclude claims against entities other
15 than the authority.

16 (b) The construction, operation, maintenance, collocation, or
17 placement of wireless facilities, utility poles, or wireless support
18 structures shall occur at no cost from an applicant to an authority
19 unless otherwise agreed to in advance between an applicant and the
20 authority.

21 (c) If the future maintenance or construction of an authority road
22 requires the moving or relocating of wireless facilities, utility poles,
23 or wireless support structures currently located within a right-of-way,
24 such facilities, poles, or structures shall be removed or relocated by
25 the owner of such small wireless facilities, poles, or structures at the
26 owner's expense and as directed by the authority.

27 (4) Small wireless facilities shall be classified as a permitted use
28 and not subject to zoning review or approval if collocated within the
29 right-of-way. Small wireless facilities to be located in an airport
30 hazard area as defined by section 3-301 shall comply with any regulations
31 governing such area.

1 (5) An authority may require an applicant to apply for and obtain
2 one or more permits to collocate a small wireless facility or install a
3 new, modified, or replacement utility pole associated with a small
4 wireless facility. Such permits shall be of general applicability and not
5 apply exclusively to wireless facilities. An authority shall receive
6 applications for, process, and issue such permits subject to the
7 following requirements:

8 (a) Except as otherwise provided in subdivision (b) of this
9 subsection, an authority shall not directly or indirectly require an
10 applicant to perform services or provide goods unrelated to the permit,
11 such as in-kind contributions to the authority, including reserving
12 fiber, conduit, or utility pole space for the authority;

13 (b) An authority shall be allowed to reserve space on authority
14 poles and the applicant shall cooperate with the authority in any such
15 reservation, except that the authority shall first notify the applicant
16 in writing that it is interested in reserving such pole space or sharing
17 the trenches or bores in the area where the collocation is to occur. The
18 applicant shall allow the authority to place its infrastructure in the
19 applicant's trenches or bores or on the utility pole as requested by the
20 authority, except that the authority shall incur the incremental costs of
21 placing the conduit or infrastructure as requested. The authority shall
22 be responsible for maintaining its facilities in the trenches and bores
23 and on the authority pole;

24 (c) An applicant shall not be required to provide more information
25 to obtain a permit than a communications service provider that is not a
26 wireless provider, except as directly related to the impairment of
27 wireless service in the immediate area of the proposed small wireless
28 facility and except that an applicant may be required to include
29 construction and engineering drawings and information demonstrating
30 compliance with the criteria in subdivision (j) of this subsection;

31 (d) An authority may propose a technically feasible alternate

1 utility pole location. The wireless provider shall cooperate with the
2 authority to address the authority's reasonable proposal. The authority
3 shall not require the placement of small wireless facilities on any
4 specific utility pole or category of poles or require multiple antenna
5 systems on a single utility pole;

6 (e) An authority shall not limit the placement of small wireless
7 antennas by minimum horizontal separation distances;

8 (f) An authority may require an applicant to include an attestation
9 that the small wireless facilities will be operational for use by a
10 wireless services provider within nine months after the later of the
11 completion of all make-ready work or the permit issuance date unless a
12 delay is caused by lack of commercial power or communications transport
13 facilities to the site. In such case the applicant shall have an
14 extension not to exceed nine months. The authority and applicant may
15 mutually agree to an additional extension;

16 (g) Within twenty days after receiving an application, an authority
17 shall determine and notify the applicant in writing whether the
18 application is complete. If an application is incomplete, the authority
19 shall specifically identify the missing information in writing. The
20 processing deadline in subdivision (h) of this subsection shall restart
21 upon the first finding of incompleteness. The applicant may resubmit the
22 completed application within thirty days without additional charge.
23 Subsequent findings of incompleteness shall toll the application
24 processing deadline in subdivision (h) of this subsection. The subsequent
25 review shall be limited to the specifically identified information
26 subsequently completed except to the extent material changes have been
27 made by the applicant, other than those required by the authority, in
28 which case a new application and application fee shall be submitted.
29 Subsequent findings of incompleteness will toll the deadline from the
30 time the authority sends notice of incompleteness to the time the
31 applicant provides the missing information. The application processing

1 deadline also may be tolled by agreement of the applicant and the
2 authority;

3 (h) An application shall be processed on a nondiscriminatory basis
4 and deemed approved if the authority fails to approve or deny the
5 application within ninety days after receipt of the application. An
6 authority may extend the application processing deadline described in
7 subdivision (g) of this subsection for a single period of ten business
8 days if the authority notifies the applicant in advance before the day on
9 which approval or denial is originally due. Upon mutual agreement between
10 the applicant and the authority, the authority may extend the period for
11 consideration of an application for thirty days;

12 (i) A permit shall authorize an applicant to undertake only certain
13 activities in accordance with this section and does not create a property
14 right or grant authority to the applicant to infringe upon the rights of
15 others who may own or have other interests in a right-of-way, utility
16 easement, or other privately owned property;

17 (j) An authority may deny a proposed collocation of a small wireless
18 facility or installation, modification, or replacement of a utility pole
19 that meets the requirements of section 36 of this act only if the
20 proposed application:

21 (i) Materially and demonstrably interferes with the safe operation
22 of traffic control equipment or the right-of-way;

23 (ii) Materially interferes with sight lines or clear zones for air
24 or land transportation or pedestrians;

25 (iii) Materially interferes with compliance with the federal
26 Americans with Disabilities Act of 1990 or similar federal or state
27 standards regarding pedestrian access or movement;

28 (iv) Fails to comply with reasonable and nondiscriminatory spacing
29 requirements of general application adopted by ordinance or resolution
30 that concern the location of ground-mounted equipment and new utility
31 poles. Such spacing requirements shall not prevent a wireless provider

1 from serving any location;

2 (v) Fails to comply with applicable codes if they are of general
3 applicability and do not apply exclusively to wireless facilities;

4 (vi) Fails to comply with the authority's aesthetic requirements
5 that are reasonable, objective, and published in advance; or

6 (vii) Designates the location of a new utility pole within seven
7 feet in any direction of an electrical conductor unless the wireless
8 provider obtains the written consent of the public power supplier that
9 owns or manages the electrical conductor;

10 (k) An authority shall document the basis for a permit application
11 denial, including any specific code provisions on which the denial was
12 based, and send such documentation to the applicant on or before the day
13 the authority denies the application. The applicant may cure the
14 deficiencies identified by the authority and resubmit the application
15 within thirty days after the denial without paying an additional
16 application fee. The authority shall approve or deny the resubmitted
17 application within thirty days. Any subsequent review shall be limited to
18 the deficiencies cited in the denial;

19 (l) An applicant seeking to collocate small wireless facilities
20 within the jurisdiction of a single authority may, at the applicant's
21 discretion, file a consolidated application for up to thirty individual
22 small wireless facilities if the population within the jurisdiction of
23 the authority is fifty thousand people or more, or up to five individual
24 small wireless facilities if the population within the jurisdiction of
25 the authority is less than fifty thousand people, instead of filing a
26 separate application for each individual small wireless facility. Each
27 small wireless facility within a consolidated application is subject to
28 individual review, except that the denial of one or more small wireless
29 facilities in a consolidated application shall not delay processing of
30 any other small wireless facilities in the same application or be a basis
31 upon which to deny the consolidated application as a whole. If an

1 applicant applies to construct or collocate several small wireless
2 facilities within the jurisdiction of a single authority, the authority
3 shall:

4 (i) Allow the applicant, at the applicant's discretion, to file a
5 single set of documents that apply to all of the applicant's small
6 wireless facilities; and

7 (ii) Render a decision regarding all of the applicant's small
8 wireless facilities in a single administrative proceeding unless local
9 requirements require an elected or appointed body to render such
10 decision;

11 (m) Installation or collocation for which a permit is granted
12 pursuant to this section shall be completed within one year of the later
13 of the completion of all make-ready work or permit issuance date unless a
14 delay is caused by the lack of commercial power or communications
15 transport facilities at the site. In such case the applicant shall have
16 an extension up to nine months. The authority and applicant may mutually
17 agree to an additional extension. Approval of an application authorizes
18 the applicant to maintain and operate the small wireless facilities and
19 any associated utility pole covered by the permit for a period of not
20 less than five years, subject to applicable relocation requirements and
21 the applicant's right to terminate at any time. The authority shall renew
22 such permit for an equivalent duration so long as the applicant is in
23 compliance with the criteria set forth in subdivision (j) of this
24 subsection as such criteria existed at the time the permit was granted;

25 (n) An authority shall not institute a moratorium on filing,
26 receiving, or processing applications or issuing permits or other
27 approvals, if any, for the collocation of small wireless facilities or
28 the installation, modification, or replacement of utility poles to
29 support small wireless facilities; and

30 (o) Nothing in the Small Wireless Facilities Deployment Act shall be
31 construed to allow any entity to provide communications services without

1 complying with all laws applicable to such providers. Nothing in the act
2 shall be construed to authorize the collocation, installation, placement,
3 maintenance, or operation of any communications facility, including a
4 wireline backhaul facility, other than a small wireless facility or a
5 utility pole, in a right-of-way.

6 (6)(a) Notwithstanding any other provision of the Small Wireless
7 Facilities Deployment Act, for any construction, operation, collocation,
8 maintenance, management, relocation, or placement of wireless facilities,
9 utility poles, decorative poles, or wireless support structures that
10 occurs above, across, under, or upon a state or federal highway right-of-
11 way, as such term is defined in section 39-1302, or upon a state-owned
12 utility pole, decorative pole, or wireless support structure, the
13 application process, location, and installation of such facilities,
14 poles, or structures, as such pertain to the present and future use of
15 the right-of-way or state-owned poles or wireless support structures for
16 highway purposes, shall be subject to the rules and regulations, guidance
17 documents, and usual and customary permit requirements of the State of
18 Nebraska and the Department of Transportation, including, but not limited
19 to, requirements, fees, rates, and deadlines for location and engineering
20 review and response, liability and automobile insurance, indemnification
21 of the Department of Transportation from liability, protection of public
22 safety and property interests, and compliance with federal transportation
23 funding requirements. Nothing in this subdivision affects, modifies,
24 expands, or narrows the application or effect of any federal law,
25 statute, rule, regulation, or order.

26 (b) Traffic signal utility poles and traffic control devices owned
27 by the Department of Transportation shall not be used for the collocation
28 of small wireless facilities under the Small Wireless Facilities
29 Deployment Act. State highway lighting utility poles or decorative poles
30 may be used for collocation of small wireless facilities only if:

31 (i) There are insufficient reasonable alternative collocation

1 options at or near the requested location;

2 (ii) The small wireless facilities can be safely installed,
3 operated, and maintained; and

4 (iii) The collocation of the small wireless facilities will not
5 violate reasonable wind, ice, weight, and seismic load requirements on
6 state highway lighting utility poles or decorative poles.

7 (c) Applicants that collocate small wireless facilities on state
8 highway lighting utility poles or decorative poles assume the risk of
9 loss or damage to, or loss of use of, such facilities when such poles are
10 damaged, destroyed, or taken out of service on state property, except to
11 the extent that such loss or damage is due to or caused by the negligence
12 or willful misconduct of the Department of Transportation or its
13 employees, contractors, or agents. This subdivision does not preclude
14 claims against entities other than the Department of Transportation.

15 (d) The construction, operation, maintenance, collocation, or
16 placement of wireless facilities, utility poles, decorative poles, or
17 wireless support structures shall occur at no cost to the Department of
18 Transportation unless otherwise agreed in advance between an applicant
19 and the department.

20 (e) The Department of Transportation may set and collect a
21 reasonable application fee to cover its costs in administering the
22 activities described in this subsection, a uniform and nondiscriminatory
23 system of annual occupancy rates for the use and occupancy of state-owned
24 property, and a uniform and nondiscriminatory system for setting fees,
25 rates, terms, and conditions for make-ready work.

26 (f) If the future maintenance or construction of a state or federal
27 highway by the Department of Transportation requires the moving or
28 relocating of wireless facilities, utility poles, decorative poles, or
29 wireless support structures located within the right-of-way, such
30 facilities, poles, or structures shall be removed or relocated by the
31 owner of the facilities, poles, or structures at the owner's expense and

1 as directed by the department.

2 (g) Nothing in the Small Wireless Facilities Deployment Act affects
3 or prevents the Department of Transportation from imposing its usual and
4 customary permit requirements for the deployment of wireless facilities
5 that are not small wireless facilities.

6 (7) An authority shall not require an application, permit, or other
7 approval or charge fees or rates for routine maintenance of small
8 wireless facilities, replacement of small wireless facilities with small
9 wireless facilities that are substantially similar in weight or windage
10 or the same size or smaller, or for the installation, placement,
11 maintenance, operation, or replacement of microwireless facilities that
12 are strung on cables between existing utility poles in compliance with
13 the National Electrical Safety Code. An authority may require a permit
14 for work that exceeds original weight or windage or requires excavation
15 or closing of sidewalks or vehicular lanes within the right-of-way for
16 such activities.

17 (8) Any small wireless facility that is not operated for a
18 continuous period of ninety days after completion of initial
19 installation, excluding nonoperation due to a natural disaster or other
20 unforeseeable circumstance or temporary equipment failure, shall be
21 considered abandoned. If a small wireless facility is abandoned, the
22 small wireless facility owner shall notify the authority within thirty
23 days of the abandoned status of such facility and such owner shall remove
24 the abandoned facility. The related utility pole shall also be removed
25 unless such pole is otherwise being used by another utility or is owned
26 by a party other than the owner of the removed small wireless facility.

27 Sec. 38. (1) This section applies to the activities of a wireless
28 provider within the right-of-way.

29 (2) A person owning, managing, or controlling authority poles in a
30 right-of-way may enter into an exclusive arrangement with any person for
31 the management of an attachment to such poles. A person who manages

1 attachments to authority poles or who manages, purchases, or otherwise
2 acquires an authority pole is subject to the requirements of the Small
3 Wireless Facilities Deployment Act.

4 (3) An authority shall allow the collocation of small wireless
5 facilities on authority poles using the process in section 37 of this
6 act.

7 (4) The rates provided under section 39 of this act to collocate on
8 authority poles shall be nondiscriminatory regardless of the services
9 provided by the collocating person.

10 (5)(a) The rates, fees, terms, and conditions for make-ready work to
11 collocate on an authority pole shall be nondiscriminatory, competitively
12 neutral, and commercially reasonable and shall reimburse all reasonable
13 costs incurred by an authority in compliance with the Small Wireless
14 Facilities Deployment Act.

15 (b) An authority shall provide a good faith estimate for any make-
16 ready work necessary to enable the authority pole to support the
17 requested collocation by an applicant, including pole replacement if
18 necessary, within one hundred twenty days after receipt of a completed
19 application. Make-ready work, including any pole replacement, shall be
20 completed within ninety days after written acceptance of the good faith
21 estimate by the applicant. An authority may require replacement of the
22 authority pole only if it determines and provides details indicating that
23 the collocation would make the authority pole structurally unsound.

24 (c) The person owning, managing, or controlling the authority pole
25 shall not require more make-ready work than required to meet applicable
26 codes or industry standards. Fees for make-ready work shall not include
27 costs related to known preexisting or prior damage or noncompliance. Fees
28 for make-ready work, including any pole replacement, shall not exceed
29 actual costs or the amount charged to other communications service
30 providers for reasonably similar work and may include reasonable
31 consultant fees or expenses.

1 (d) For purposes of this subsection, make-ready work generally
2 refers to the modification of utility poles or lines or the installation
3 of guys and anchors to accommodate additional facilities.

4 Sec. 39. (1) An authority shall not require a wireless provider to
5 pay any rate, fee, or compensation to the authority or other person other
6 than what is expressly authorized by section 86-704, or, where
7 applicable, sections 14-109, 15-203, 16-205, or 17-525, or the Small
8 Wireless Facilities Deployment Act for the right to use or occupy a
9 right-of-way for collocation of small wireless facilities on wireless
10 support structures or utility poles in the right-of-way or for the
11 installation, maintenance, modification, operation, and replacement of
12 utility poles in the right-of-way.

13 (2)(a) An authority that charges occupation taxes under section
14 86-704 shall not charge a wireless services provider any additional
15 amount for the use of a right-of-way. An authority may charge a wireless
16 provider that does not pay the authority's occupation tax under section
17 86-704 either a rate of two hundred fifty dollars for each small wireless
18 facility each year, or a fee equal to the occupation tax charged by the
19 authority under section 14-109, 15-203, 16-205, or 17-525.

20 (b) The application fees for collocation of small wireless
21 facilities on an existing or replacement authority pole shall not exceed
22 five hundred dollars for up to five small wireless facilities on the same
23 application and one hundred dollars for each additional small wireless
24 facility on the same application.

25 (c) The application fees for the installation, modification, or
26 replacement of a utility pole and the collocation of an associated small
27 wireless facility that are a permitted use in accordance with the
28 specifications in subsection (5) of section 36 of this act shall not
29 exceed two hundred fifty dollars per pole.

30 (d) In the case of co-applicants for a single site, only one
31 application fee may be charged for the site.

1 (3) The rate for collocation of a small wireless facility on an
2 authority pole in the right-of-way shall be no more than twenty dollars
3 per authority pole per year.

4 Sec. 40. Nothing in the Small Wireless Facilities Deployment Act
5 shall be interpreted to allow any entity to provide services regulated
6 under 47 U.S.C. 521 to 573, as such sections existed on January 1, 2019,
7 without compliance with all laws applicable to providers of such
8 services. The Small Wireless Facilities Deployment Act shall not be
9 interpreted to impose any new requirements on cable operators for the
10 provision of cable service in this state.

11 Sec. 41. (1) Except as provided by the Small Wireless Facilities
12 Deployment Act or applicable federal law, an authority shall continue to
13 exercise zoning, land-use, planning, and permit granting authority within
14 its territorial boundaries, including with respect to wireless support
15 structures and utility poles, except that no authority shall have or
16 exercise any jurisdiction or authority over the design, engineering,
17 construction, installation, or operation of any small wireless facility
18 located in an interior structure or upon the site of any college or
19 university campus, stadium, or athletic facility not owned or controlled
20 by the authority, other than to comply with applicable codes. An
21 authority shall evaluate the structure classification for wireless
22 support structures under the standard of the American National Standards
23 Institute found in ANSI/TIA-222, as such standard existed on January 1,
24 2019. Nothing in the Small Wireless Facilities Deployment Act shall
25 authorize the State of Nebraska or any agency or political subdivision
26 thereof, including an authority, to require wireless facility deployment
27 or to regulate wireless services.

28 (2) Except as provided in the Small Wireless Facilities Deployment
29 Act or as otherwise specifically authorized by state or federal law, an
30 authority may not impose or collect a tax, fee, or rate on a
31 communications service provider authorized to operate in a right-of-way

1 by federal, state, or local law for the provision of communications
2 service over the communications service provider's communications
3 facilities in the right-of-way, adopt or enforce any regulations or
4 requirements on the placement or operation of communications facilities
5 in the right-of-way by the communications services provider, or regulate
6 any communications services.

7 Sec. 42. A court of competent jurisdiction shall have jurisdiction
8 to determine all disputes arising under the Small Wireless Facilities
9 Deployment Act. Pending resolution of a dispute concerning rates for
10 collocation of small wireless facilities on authority poles, the rates
11 listed in section 39 of this act shall apply.

12 Sec. 43. The Small Wireless Facilities Deployment Act does not
13 apply to the University of Nebraska system and its affiliates, the
14 Nebraska state college system, the community college system, and all
15 campuses, area, and property of such systems.

16 Sec. 44. (1) A public power supplier shall not be required to allow
17 the collocation of small wireless facilities on utility poles owned,
18 operated, or managed by a public power supplier except pursuant to a
19 negotiated pole attachment agreement containing reasonable and
20 nondiscriminatory terms and conditions, including, but not limited to,
21 applicable rates, and the permit, operational, and safety requirements of
22 the public power supplier.

23 (2) The annual pole attachment rate for the collocation of a small
24 wireless facility supported by or installed on a utility pole owned,
25 operated, or managed by a public power supplier shall be fair,
26 reasonable, nondiscriminatory, cost-based, and set by the board of such
27 public power supplier in accordance with section 70-655.

28 (3) Except for the findings and declarations set forth in section 2
29 of this act, the definitions set forth in sections 4 to 35 of this act,
30 and subsections (1) and (2) of this section, the Small Wireless
31 Facilities Deployment Act shall not apply to public power suppliers or to

- 1 the collocation of small wireless facilities on utility poles owned,
- 2 operated, or managed by a public power supplier.