



COUNCIL STAFF REPORT

CITY COUNCIL of SALT LAKE CITY

TO: City Council Members

FROM: Ben Luedtke and Kira Luke
Budget & Policy Analysts

DATE: May 8, 2017

**RE: Small Cell Wireless Facilities (SWF) Technology and
ExteNet Systems Inc. Master License Agreement for SWF in the Public Right of Way**

Item Schedule:

Briefing: May 8, 2018

Potential Action:

*Staff note: item does not require
public hearing to adopt*

ISSUE AT-A-GLANCE

Small cell wireless facilities (SWF) add capacity and coverage on a wireless network. This benefits locations with a high density of telecommunication users, such as downtown. SWF are expected to provide part of the infrastructure for fifth-generation wireless technologies ("5G"). Each facility includes an antenna, radio and power meter, and needs connections to power and fiber optic cables. Wireless providers will install SWF on public-right-of-way infrastructure including existing and new monopoles, billboards, street lights, street signs, traffic poles, utility poles and other structures.

Federal and State laws and rules give telecommunication providers the right to install facilities in the public-right-of-way subject to municipal regulations. Providers must be treated the same under municipal regulations so one company is not unduly favored over another. Salt Lake City does not currently have a process or governing ordinance to regulate installation of SWF.

The Administration recommends the Council adopt ordinances for Master License Agreements (MLAs) with SWF providers. This process mirrors franchise agreements but is tailored to SWF technology. An MLA is a general grant of permission to use the City's public-right-of-way. After receiving an MLA, a company must submit a permit application for each installation location. The Administration transmitted the first non-exclusive MLA for right-of-way access with ExteNet in tandem with the informational transmittal. The proposed MLA is for a five-year term with an automatic renewal for five more years. Negotiations for MLAs are ongoing with four other telecommunication providers.

SB189 Small Wireless Facilities Deployment Act (Effective Date September 1, 2018)

In March 2018, the State Legislature passed and the Governor signed SB189. The law conveys broad rights upon telecommunication providers to (1) install SWF on all municipally-owned infrastructure within the public-right-of-way and (2) construct new monopoles for SWF. Municipalities must allow installation of SWF but may narrowly regulate designs. Design guidelines for SWF installation are in development and may need to receive Council approval by September 1, 2018. See Additional Info section for the Administration's overview of the bill.

Timing

The providers working with the City prior to SB189's passage remain interested in moving forward with agreements. Justifications for doing so include:

- Enabling providers to begin installations sooner
- Providers would honor City's terms for sites that can be installed prior to September 1



- There is a line in the MLA ordinance that mentions come September 1, the law will change and contract will need to be amended by November 1 to adhere to State statute.
 - This may require Council approval of an amendment to the ExteNet MLA

Current City Ordinances Governing Antennas in Public-right-of-way

The Administration reports three sections of City Code govern SWF in the public-right-of-way. However, SB189 will supersede these ordinances and allow SWF potentially anywhere in the public-right-of-way.

Section of Salt Lake City Code	Title	Function
SLC §21A.40.090	Antenna Regulations in Public Right of Way (ROW)	a. Allows antennas to be mounted on <i>existing</i> 3 rd -party-owned utility poles. There are no other antenna installations allowed in the ROW. b. Requires the electric equipment to be placed underground or on private property (or on the pole, which is not allowed by RMP). c. Requires that facilities in the ROW be subject to any applicable franchise fees or lease agreement required by City.
SLC §14.32.425	Telecommunication Right of Way Permits	Allows conduit and cable to be located within the ROW
SLC § 14.40.020	Utility Poles and Wires	New poles are only allowed for franchise holders (but not permitted for antennas).

Budget Impact (See Additional Info Section)

A small positive budget impact is expected from adoption of the ExteNet MLA. The company will pay the City:

1. A one-time lump-sum of \$5,000 for administrative costs;
2. Ongoing annual access fee equal to 3.5% of gross revenue attributable to the company's network within Salt Lake City;
 - a. SWF's are not subject to telecommunication tax. This access fee is in place of that tax.
3. Ongoing annual ground equipment fee of \$200 per ground mounted facility;
4. Ongoing annual attachment fee of \$200 per facility attached to a utility pole;
5. Application fees for permits; and
6. Other fees potentially including consulting and engineering fees incurred by the City to approve a permit.

Goal of the briefing: Discuss with the Administration the proposed master license agreement process and the five-year ExteNet master license agreement to identify any policy issues for follow up.

POLICY QUESTIONS

1. **Presentation from Telecommunication Industry Vendor** – Does the Council want to learn more from the private sector about the growing SWF technology field? The Administration reports three private companies are available to give presentations to the Council. The presentations were previously given to a group of municipal attorneys. The companies are:
 - a. Tilson installs network infrastructure for telecommunication providers. They do not currently operate in Utah.
 - b. Mobilitie and Verizon are expected to request master license agreements from Salt Lake City.
2. **SB189 Potential Encroachment on Municipal Functions** – The Council may wish to ask the Attorney's Office for a legal opinion and/or closed session to discuss whether the new state law encroaches on traditional municipal control of public property.
3. **Design Guidelines for SWF** – The Administration is developing design standard recommendations. It's currently unclear if SB189 precludes the City from adopting design standards via ordinance; the Attorney's Office will provide clarification after further review. The Council may wish to ask what

monitoring and enforcement mechanisms are available to the Administration if reasonable design standards are not adhered to.

- a. **Public Input** –The MLA does not require a public hearing to adopt. If design standards are not tied to ordinance, the Council may wish to ask the Administration how the public can give input on draft design standards.
4. **No Duty to Underground SWF** – SB189 appears to preclude the City from requiring undergrounding of SWF electrical boxes and other infrastructure. The City’s standard franchise agreement stipulates a duty to underground lines and cables “to the greatest extent reasonably practicable” and is specifically required in four areas: (1) new residential subdivisions, (2) Central Business District, (3) any area of the City where existing utilities are already underground, and (4) whenever other utility companies are undergrounding cables and lines.
5. **Increased Workload and Staffing Levels** – Due to the potential volume of applications and review time constraints set by SB189, SWF applications may have significant impacts on workload and staffing:
 - a. There are an estimated 800-1000 SWF-eligible sites within City boundaries
 - b. Providers can submit up to three consolidated applications – each containing up to 25 similar applications – per 30 days, leading to a potential 75 applications per provider each month.
 - c. Review periods:
 - i. Application review: 30 days
 - ii. Existing pole installation: 60 days
 - iii. New/modified/replacement pole: 105 days
 - d. Departments/Divisions involved in application process:
 - i. Planning
 - ii. Public Utilities
 - iii. Engineering
 - iv. Building Services
 - v. Streets
 - vi. Transportation
 - e. The MLA requires an annual report forecasting providers’ installation and location needs. It may be helpful to inform City staffing needs based on the annual reports.
6. **Guarantee of Repairs when Caused by Company** – The Council may wish to ask the Administration how company repairs to the public-right-of-way are tracked and if more resources are needed. The Council Office periodically receives resident complaints about landscaping and right-of-way infrastructure when companies cut into pavement, dig trenches or other construction activities. The MLA states “for a period of three years...the company shall maintain, repair and keep in good condition those portions of the right-of-way, permitted structures, property, or facilities restored, repaired or replaced by the company to the reasonable satisfaction of the City Engineer, reasonable wear and tear excepted” (page seven). The guarantee of repairs also extends to landscaping and damage to private property.
7. **Company Tree Trimming Coordinated with Urban Forester** – The MLA states a “company may trim trees overhanging the [public] right-of-way...with the approval of and the direction of the City’s Urban Forester and at the expense of the company” (page eight). The Council may wish to discuss with the Administration (1) how this policy worked in practice, (2) if the Urban Forestry office has sufficient staff and (3) how this policy aligns with the City’s other urban forest goals.
8. **Digital Inclusion** – The Council may wish to request information from ExteNet on any efforts to expand digital inclusion and discuss with the Administration about opportunities for collaboration. SWF are typically concentrated in areas of high user density

ADDITIONAL & BACKGROUND INFORMATION

Coordination with Rocky Mountain Power (RMP)

The Administration provided the following summary of how RMP is involved in locating SWF in the public-right-of-way.

“Rocky Mountain Power (“RMP”) policies directly influence the implementation of City code. RMP allows for small cell infrastructure attachments to its existing utility poles as well as to overhead wires. Such attachments require a pole attachment or wireline attachment agreement between RMP and the small cell provider; once this agreement is in place, providers must submit pole location plan and then RMP does a site analysis of each location within a 45-day period. After pole sites are approved by RMP, the small cell provider submits to the City RMP’s written approval along with the company’s permit application to locate in the ROW. RMP does not have poles in the Central Business District as it is an underground district, and so other locations for small cell facilities must be identified.”

Administration’s Overview of SB189

- Wireless providers have the right to:
 - install small wireless facilities and utility poles within ROW; and
 - locate small wireless facilities on municipal poles (includes street lights, traffic lights, street signs) and other structures in the ROW (including billboards)
- City is required to recognize small wireless facilities in ROW as a permitted use in all zones and districts (strictly an administrative process)
- A small wireless facility consists of: an antenna of 6 cubic feet or less; pole and ground equipment of 28 cubic feet or less
- The small wireless facilities may be installed on a utility pole no taller than 50 ft. (potential additional 10 ft. for antennae)

City Powers

- Design/Historic and Underground Districts – City must allow small wireless facilities including utility poles (heightened design standards)
- May limit new utility poles in ROW that is 60 ft. wide or less and adjacent to residential property
- May adopt reasonable, nondiscriminatory design standards
- May adopt nondiscriminatory police-power-based regulations for management of ROW
- May deny applications for articulable public safety reasons
- May require agreement dealing with indemnification, insurance and bonding before ROW work

Compensation

- Annual ROW Access Rate
 - 3.5% of gross revenue under Municipal Telecommunications License Tax (if the tax applies), or
 - the greater of 3.5% of gross revenue or \$250 per small wireless facility
- Annual Authority Pole Attachment Rate: \$50 per collocated small wireless facility per authority pole
- Application Fees (for a Permit to work in the ROW)
 - \$100 per collocated small wireless facility
 - \$250 per utility pole with a small wireless facility
 - \$1000 per non-permitted use
- Other applicable permit fees

Application Limits

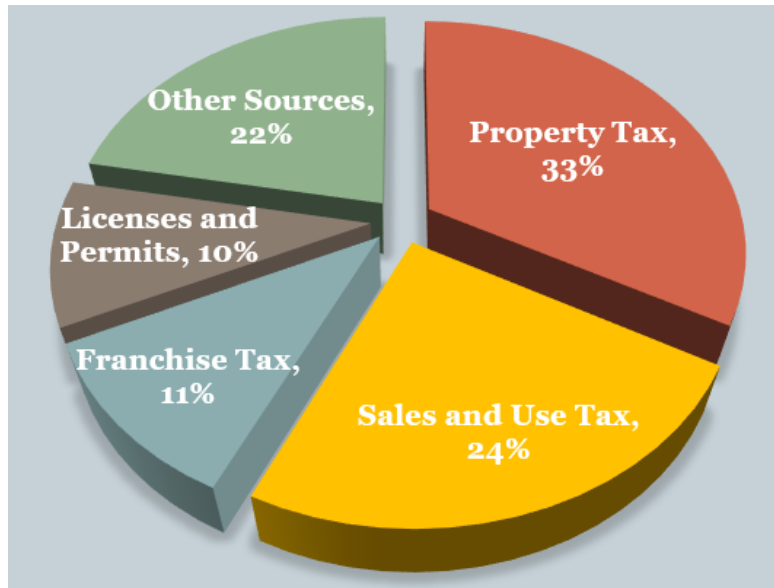
- Consolidated application: up to 25 small wireless facilities of substantially the same type; Up to 75 small wireless facility (3 consolidated applications) per 30 days

Shot Clocks (Review periods)

- Review for Completion: 30 days (City can deem application incomplete and applicant has 90 days to cure any deficiencies)
- Installation on existing pole: 60 days (including completion review)
- Installation on new, modified, or replacement utility pole: 105 days (including completion review)
- One additional extension of 10 business days
- Deemed complete and/or granted if municipality does not meet deadlines

Licenses and Permits Revenues in the City's General Fund

The City's General Fund has four major categories of revenue sources as shown in the graph below. In FY18 approximately 10% of General Fund revenues came from licenses and permits.



City Offices Involved in Master License Agreements

Multiple City offices are involved in MLAs in addition to the Mayor's Office and City Council. For example, the Attorney's Office drafts the agreements, the Engineering Division reviews construction proposals and issues permits, Real Estate Services coordinates correspondence and planning with the company and Finance tracks, receives and budgets license and permit revenues.

Standard Franchise Template Used for MLA

The proposed ExteNet MLA uses many section of the City's preferred franchise agreement standard template. One benefit of this approach is to help create a level playing field so no single company receives an advantage over others. The theme of fair competition is referenced several times in the MLA and is required under Federal laws and regulations.

ATTACHMENTS

1. SB189 of 2018 – Small Wireless Facilities Deployment Act
2. "No Cell Left Behind" Wall Street Journal illustration

ACRONYMS

5G – Fifth generation wireless technologies
FY – Fiscal Year
MLA – Master License Agreement
RMP – Rocky Mountain Power
ROW – Right of Way
SB – Senate Bill
SWF – Small cell wireless facilities

SMALL WIRELESS FACILITIES DEPLOYMENT ACT

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Timothy D. Hawkes

LONG TITLE

General Description:

This bill creates the Small Wireless Facilities Deployment Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits a wireless provider to deploy a small wireless facility and any associated utility pole within a right-of-way under certain conditions;
- ▶ permits an authority to establish a permitting process for the deployment of a small wireless facility and any associated utility pole under certain conditions;
- ▶ describes a wireless provider's access to an authority pole within a right-of-way;
- ▶ sets rates and fees for the placement of:
 - a small wireless facility; and
 - a utility pole;
- ▶ describes the implementation of requirements in relation to agreements and ordinances; and
- ▶ permits an authority to adopt indemnification, insurance, or bonding requirements for a small wireless facility permit, under certain conditions.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

30 AMENDS:

31 **72-6-116**, as last amended by Laws of Utah 2014, Chapter 184

32 ENACTS:

33 **54-21-101**, Utah Code Annotated 1953

34 **54-21-102**, Utah Code Annotated 1953

35 **54-21-103**, Utah Code Annotated 1953

36 **54-21-201**, Utah Code Annotated 1953

37 **54-21-202**, Utah Code Annotated 1953

38 **54-21-203**, Utah Code Annotated 1953

39 **54-21-204**, Utah Code Annotated 1953

40 **54-21-205**, Utah Code Annotated 1953

41 **54-21-206**, Utah Code Annotated 1953

42 **54-21-207**, Utah Code Annotated 1953

43 **54-21-208**, Utah Code Annotated 1953

44 **54-21-209**, Utah Code Annotated 1953

45 **54-21-210**, Utah Code Annotated 1953

46 **54-21-301**, Utah Code Annotated 1953

47 **54-21-302**, Utah Code Annotated 1953

48 **54-21-303**, Utah Code Annotated 1953

49 **54-21-401**, Utah Code Annotated 1953

50 **54-21-402**, Utah Code Annotated 1953

51 **54-21-403**, Utah Code Annotated 1953

52 **54-21-501**, Utah Code Annotated 1953

53 **54-21-502**, Utah Code Annotated 1953

54 **54-21-503**, Utah Code Annotated 1953

55 **54-21-504**, Utah Code Annotated 1953

56 **54-21-601**, Utah Code Annotated 1953

57 **54-21-602**, Utah Code Annotated 1953

58 **54-21-603**, Utah Code Annotated 1953

59

60 *Be it enacted by the Legislature of the state of Utah:*

61 Section 1. Section **54-21-101** is enacted to read:

62 **CHAPTER 21. SMALL WIRELESS FACILITIES DEPLOYMENT ACT**

63 **Part 1. General Provisions**

64 **54-21-101. Definitions.**

65 As used in this chapter:

66 (1) "Antenna" means communications equipment that transmits or receives an
67 electromagnetic radio frequency signal used in the provision of a wireless service.

68 (2) "Applicable codes" means the International Building Code, the International Fire
69 Code, the National Electrical Code, the International Plumbing Code, and the International
70 Mechanical Code, as adopted and amended under Title 15A, State Construction and Fire Codes
71 Act.

72 (3) "Applicable standards" means the structural standards for antenna supporting
73 structures and antenna, known as ANSI/TIA-222, from the American National Standards
74 Institute and the Telecommunications Industry Association.

75 (4) "Applicant" means a wireless provider who submits an application.

76 (5) "Application" means a request submitted by a wireless provider to an authority for a
77 permit to:

78 (a) collocate a small wireless facility in a right-of-way; or

79 (b) install, modify, or replace a utility pole or a wireless support structure.

80 (6) (a) "Authority" means:

81 (i) the state;

82 (ii) a state agency;

83 (iii) a county;

84 (iv) a municipality;

85 (v) a town;

86 (vi) a metrotownship;

87 (vii) a subdivision of an entity described in Subsections (6)(a)(i) through (vi); or

88 (viii) a special district or entity established to provide a single public service within a
89 specific geographic area, including:

90 (A) a public utility district; or

91 (B) an irrigation district.

92 (b) "Authority" does not include a state court having jurisdiction over an authority.

93 (7) "Authority pole" means a utility pole owned, managed, or operated by, or on behalf
94 of, an authority.

95 (8) "Authority wireless support structure" means a wireless support structure owned,
96 managed, or operated by, or on behalf of, an authority.

97 (9) "Category one authority" means a single authority with a population of 65,000 or
98 greater.

99 (10) "Category two authority" means a single authority with a population of less than
100 65,000.

101 (11) "Collocate" means to install, mount, maintain, modify, operate, or replace a small
102 wireless facility:

103 (a) on a wireless support structure or utility pole; or

104 (b) for ground-mounted equipment, adjacent to a wireless support structure or utility
105 pole.

106 (12) "Communications service" means:

107 (a) a cable service, as defined in 47 U.S.C. Sec. 522(6);

108 (b) a telecommunications service, as defined in 47 U.S.C. Sec. 153(53);

109 (c) an information service, as defined in 47 U.S.C. Sec. 153(24); or

110 (d) a wireless service.

111 (13) "Communications service provider" means:

112 (a) a cable operator, as defined in 47 U.S.C. Sec. 522(5);

113 (b) a provider of information service, as information service is defined in 47 U.S.C.

114 Sec. 153(24);

115 (c) a telecommunications carrier, as defined in 47 U.S.C. Sec. 153(51); or

116 (d) a wireless provider.

117 (14) "Decorative pole" means an authority pole:

118 (a) that is specially designed and placed for an aesthetic purpose; and

119 (b) (i) on which a nondiscriminatory rule or code prohibits an appurtenance or
120 attachment, other than:

121 (A) a small wireless facility;

122 (B) a specialty designed informational or directional sign; or

123 (C) a temporary holiday or special event attachment; or

124 (ii) on which no appurtenance or attachment has been placed, other than:

125 (A) a small wireless facility;

126 (B) a specialty designed informational or directional sign; or

127 (C) a temporary holiday or special event attachment.

128 (15) "Design district" means an area:

129 (a) that is zoned or otherwise designated by municipal ordinance or code; and

130 (b) for which the authority maintains and enforces unique design and aesthetic
131 standards on a uniform and nondiscriminatory basis.

132 (16) "FCC" means the Federal Communications Commission of the United States.

133 (17) "Fee" means a one-time, nonrecurring charge.

134 (18) "Gross revenue" means the same as gross receipts from telecommunications
135 service is defined in Section [10-1-402](#).

136 (19) "Historic district" means a group of buildings, properties, or sites that are:

137 (a) in accordance with 47 C.F.R. Part 1, Appendix C:

138 (i) listed in the National Register of Historic Places; or

139 (ii) formally determined eligible for listing in the National Register of Historic Places
140 by the Keeper of the National Register; or

141 (b) in an historic district or area created under Section [10-9a-503](#).

(20) "Nondiscriminatory" means treating similarly situated entities the same absent a reasonable, and competitively neutral basis, for different treatment.

(21) "Micro wireless facility" means a type of small wireless facility:

(a) that, not including any antenna, is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height;

(b) on which any exterior antenna is no longer than 11 inches; and

(c) that only provides Wi-Fi service.

(22) "Permit" means a written authorization an authority requires for a wireless provider to perform an action or initiate, continue, or complete a project.

(23) "Rate" means a recurring charge.

(24) (a) "Right-of-way" means the area on, below, or above a public:

(i) roadway;

(ii) highway;

(iii) street;

(iv) sidewalk;

(v) alley; or

(vi) property similar to property listed in Subsections (24)(a)(i) through (v).

(b) "Right-of-way" does not include:

(i) the area on, below, or above a federal interstate highway; or

(ii) a fixed guideway, as defined in Section [59-12-102](#).

(25) "Small wireless facility" means a type of wireless facility:

(a) on which each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and

(b) for which all wireless equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume, not including any:

(i) electric meter;

(ii) concealment element;

(iii) telecommunications demarcation box;

(iv) grounding equipment;

(v) power transfer switch;

(vi) cut-off switch;

(vii) vertical cable run for the connection of power or other service;

(viii) wireless provider antenna; or

(ix) coaxial or fiber-optic cable that is immediately adjacent to or directly associated with a particular collocation, unless the cable is a wireline backhaul facility.

(26) "Substantial modification" means:

(a) a proposed modification or replacement to an existing wireless support structure that will substantially change the physical dimensions of the wireless support structure under the substantial change standard established in 47 C.F.R. Sec. 1.40001(7); or

(b) a proposed modification in excess of the site dimensions specified in 47 C.F.R. Part 1, Appendix C, Sec. III.B.

(27) "Technically feasible" means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or the small wireless facility's design or site location, can be implemented without a significant reduction or impairment to the functionality of the small wireless facility.

(28) (a) "Utility pole" means a pole or similar structure that:

(i) is in a right-of-way; and

(ii) is or may be used, in whole or in part, for:

(A) wireline communications;

(B) electric distribution;

(C) lighting;

(D) traffic control;

(E) signage;

(F) a similar function to a function described in Subsections (28)(a)(ii)(A) through (E);

or

198 (G) the collocation of a small wireless facility.

199 (b) "Utility pole" does not include:

200 (i) a wireless support structure;

201 (ii) a structure that supports electric transmission lines; or

202 (iii) a municipally owned structure that supports electric lines used for the provision of
203 municipal electric service.

204 (29) (a) "Wireless facility" means equipment at a fixed location that enables wireless
205 communication between user equipment and a communications network, including:

206 (i) equipment associated with wireless communications; and

207 (ii) regardless of the technological configuration, a radio transceiver, an antenna, a
208 coaxial or fiber-optic cable, a regular or backup power supply, or comparable equipment.

209 (b) "Wireless facility" does not include:

210 (i) the structure or an improvement on, under, or within which the equipment is
211 collocated; or

212 (ii) a coaxial or fiber-optic cable that is:

213 (A) between wireless structures or utility poles;

214 (B) not immediately adjacent to or directly associated with a particular antenna; or

215 (C) a wireline backhaul facility.

216 (30) (a) "Wireless infrastructure provider" means a person that builds or installs
217 wireless communication transmission equipment, a wireless facility, or a wireless support
218 structure.

219 (b) "Wireless infrastructure provider" includes a person authorized to provide a
220 telecommunications service in the state.

221 (c) "Wireless infrastructure provider" does not include a wireless service provider.

222 (31) "Wireless provider" means a wireless infrastructure provider or a wireless service
223 provider.

224 (32) (a) "Wireless service" means any service using licensed or unlicensed spectrum,
225 whether at a fixed location or mobile, provided to the public using a wireless facility.

(b) "Wireless service" includes the use of Wi-Fi.

(33) "Wireless service provider" means a person who provides a wireless service.

(34) (a) "Wireless support structure" means an existing or proposed structure that is:

(i) in a right-of-way; and

(ii) designed to support or capable of supporting a wireless facility, including a:

(A) monopole;

(B) tower, either guyed or self-supporting;

(C) billboard; or

(D) building.

(b) "Wireless support structure" does not include a:

(i) structure designed solely for the collocation of a small wireless facility;

(ii) utility pole;

(iii) municipally owned structure that supports electric lines used for the provision of municipal electric service; or

(iv) structure owned by an energy services interlocal entity, as described in Subsection 11-13-203(4), that uses electric lines that are used for the provision of electrical service.

(35) "Wireline backhaul facility" means a facility used to transport communications by wire from a wireless facility to a communications network.

(36) (a) "Written" or "in writing" means a tangible or electronic record of a communication or representation.

(b) "Written" or "in writing" includes a communication or representation that is handwritten, typewritten, printed, photostated, photographed, or electronic.

Section 2. Section **54-21-102** is enacted to read:

54-21-102. Scope.

Nothing in this chapter:

(1) permits an entity to provide a service regulated under 47 U.S.C. Secs. 521 through 573, in a right-of-way without compliance with all applicable legal obligations;

(2) imposes a new requirement on the activity of a cable provider in a right-of-way for

254 a cable service provided in this state;

255 (3) governs:

256 (a) a pole that an electrical corporation owns or a wireless support structure that an
257 electrical corporation owns; or

258 (b) the attachment of a small wireless facility to a pole that an electrical corporation
259 owns or to a wireless support structure that an electrical corporation owns; or

260 (4) confers on an authority any new jurisdiction over an electrical corporation.

261 Section 3. Section **54-21-103** is enacted to read:

262 **54-21-103. Local authority jurisdiction.**

263 (1) Subject to Subsection (2), the provisions of this chapter, and applicable federal law,
264 an authority may continue to exercise zoning, land use, planning, and permitting authority
265 within the authority's territorial boundaries, including with respect to wireless support
266 structures and utility poles.

267 (2) An authority may exercise the authority's police-power-based regulations for the
268 management of a public right-of-way:

269 (a) on a nondiscriminatory basis to all users of the right-of-way;

270 (b) to the extent of the authority's jurisdiction; and

271 (c) consistent with state and federal law.

272 (3) An authority may impose a regulation based on the authority's police power in the
273 management of an activity of a wireless provider in a public right-of-way, if:

274 (a) to the extent the authority enforces the regulation, the authority enforces the
275 regulation on a nondiscriminatory basis; and

276 (b) the purpose of the regulation is to protect the health, safety, and welfare of the
277 public.

278 (4) An authority may adopt design standards for the installation and construction of a
279 small wireless facility or utility pole in a public right-of-way that:

280 (a) are reasonable and nondiscriminatory; and

281 (b) include additional installation and construction details that do not conflict with this

chapter, including a requirement that:

(i) an industry standard pole load analysis be completed and submitted to an authority, indicating that the utility pole, to which the small wireless facility is to be attached, will safely support the load; or

(ii) small wireless facility equipment, on new and existing utility poles, be placed higher than eight feet above ground level.

(5) (a) A wireless provider shall comply with an authority's design standards described in Subsection (4), if any, in place on the day on which the wireless provider files a permit application in relation to work for which the authority approves the permit application.

(b) An authority's obligations under this chapter may not be tolled or extended pending the adoption or modification of design standards.

(6) A wireless provider may not install a new utility pole in a public right-of-way without the authority's discretionary, nondiscriminatory, and written consent, if the public right-of-way is adjacent to a street or thoroughfare that is:

(a) not more than 60 feet wide, as depicted in the official plat records; and

(b) adjacent to single-family residential lots, other multifamily residences, or undeveloped land that is designated for residential use by zoning or deed restrictions.

(7) Nothing in this chapter authorizes the state or any political subdivision, including an authority, to:

(a) require the deployment of a wireless facility; or

(b) regulate a wireless service.

(8) Except as provided in this chapter or otherwise specifically authorized by state law, an authority may not impose or collect a tax, fee, or charge on a communications service provider authorized to operate in a right-of-way for the provision of communications service over the communications service provider's communications facilities in the right-of-way.

Section 4. Section **54-21-201** is enacted to read:

Part 2. Use of Right-of-Way for Small Wireless Facilities and Utility Poles

54-21-201. Applicability.

This part only applies to a wireless provider deploying, within a right-of-way:

(1) a small wireless facility; or

(2) a utility pole associated with a small wireless facility.

Section 5. Section **54-21-202** is enacted to read:

54-21-202. Prohibition on exclusive use.

An authority may not enter into an exclusive arrangement with any person for:

(1) use of a right-of-way for the collocation of a small wireless facility; or

(2) the installation, operation, marketing, modification, maintenance, or replacement of
a utility pole.

Section 6. Section **54-21-203** is enacted to read:

54-21-203. Right-of-way rates and fees.

(1) An authority may charge a wireless provider a rate or fee for the use of a
right-of-way to collocate a small wireless facility, or to install, operate, modify, maintain, or
replace a utility pole associated with the wireless provider's collocation of a small wireless
facility, if the authority:

(a) charges all other similarly situated wireless providers for use of the right-of-way;
and

(b) charges only the rate or fee in accordance with Part 5, Rates and Fees.

(2) An authority may, on a nondiscriminatory basis, refrain from charging a rate or fee
to a wireless provider for the use of a right-of-way.

Section 7. Section **54-21-204** is enacted to read:

54-21-204. Wireless provider right of access.

(1) Subject to the provisions of this part, along, across, upon, or under a right-of-way, a
wireless provider may, as a permitted use under the authority's zoning regulation and subject
only to administrative review:

(a) collocate a small wireless facility; or

(b) install, operate, modify, maintain, or replace:

(i) a utility pole associated with the wireless provider's collocation of a small wireless

338 facility; or

339 (ii) equipment described in Subsections 54-21-101(25)(b)(i) through (ix) required for a
340 wireless provider's collocation of a small wireless facility.

341 (2) A small wireless facility or utility pole under Subsection (1) may not:

342 (a) obstruct or hinder the usual travel or public safety on a right-of-way; or

343 (b) obstruct, damage, or interfere with:

344 (i) another utility facility in a right-of-way; or

345 (ii) a utility's use of the utility's facility in a right-of-way.

346 (3) Construction and maintenance by the wireless provider shall comply with all
347 applicable legal obligations for the protection of underground and overhead utility facilities.

348 Section 8. Section **54-21-205** is enacted to read:

349 **54-21-205. Height limitations in a right-of-way.**

350 (1) A new or modified utility pole that has a collocated small wireless facility, and that
351 is installed in a right-of-way, may not exceed 50 feet above ground level.

352 (2) An antenna of a small wireless facility may not extend more than 10 feet above the
353 top of a utility pole existing on or before September 1, 2018.

354 Section 9. Section **54-21-206** is enacted to read:

355 **54-21-206. Decorative poles.**

356 If necessary to collocate a small wireless facility, a wireless provider may replace a
357 decorative pole, if the replacement pole reasonably conforms to the design aesthetic of the
358 displaced decorative pole.

359 Section 10. Section **54-21-207** is enacted to read:

360 **54-21-207. Underground district.**

361 A wireless provider shall comply with an authority's prohibition on a communications
362 service provider installing a structure in the right-of-way in an area designated solely for
363 underground or buried cable and utility facilities, if:

364 (1) the prohibition is reasonable and nondiscriminatory; and

365 (2) the authority:

- 366 (a) (i) requires that all cable and utility facilities, other than an authority pole and
367 attachment, be placed underground; and
- 368 (ii) establishes the requirement in Subsection (2)(a)(i) more than 90 days before the day
369 on which the applicant submits the application;
- 370 (b) does not prohibit the replacement of an authority pole in the designated area; and
- 371 (c) permits a wireless provider to seek a waiver, that is administered in a
372 nondiscriminatory manner, of the undergrounding requirement for the placement of a new
373 utility pole to support a small wireless facility.

374 Section 11. Section **54-21-208** is enacted to read:

375 **54-21-208. Historic and design districts.**

376 (1) Subject to the permit process described in Section [54-21-302](#), an authority may
377 require a reasonable, technically feasible, nondiscriminatory, or technologically neutral design
378 or concealment measure in an historic district, unless the facility is excluded from evaluation
379 for effects on historic properties under 47 C.F.R. Sec. 1.1307(a)(4).

380 (2) A design or concealment measure described in Subsection (1) may not:

- 381 (a) have the effect of prohibiting a provider's technology; or
- 382 (b) be considered a part of the small wireless facility for purposes of the size
383 parameters in the definition of a small wireless facility.

384 (3) (a) A wireless provider shall obtain advance approval from an authority before
385 collocating a new small wireless facility or installing a new utility pole in an area that is zoned
386 or otherwise designated as an historic district or a design district.

387 (b) As a condition for approval of a new small wireless facility or a new utility pole in
388 an historic district or a design district, an authority may require reasonable design or
389 concealment measures for the new small wireless facility or the new utility pole.

390 (4) A wireless provider shall comply with an authority's reasonable and
391 nondiscriminatory design and aesthetic standards requiring the use of certain camouflage
392 measures in connection with a new small wireless facility in an historic district or a design
393 district, if the camouflage measures are technically and economically feasible consistent with

394 this chapter.

395 (5) This section does not limit an authority's ability to enforce historic preservation
396 zoning regulations consistent with:

397 (a) the preservation of local zoning authority under 47 U.S.C. Sec. 332(c)(7);

398 (b) the requirements for facility modifications under:

399 (i) 47 U.S.C. Sec. 1455(a); or

400 (ii) the National Historic Preservation Act of 1966, 16 U.S.C. Sec. 470 et seq.;

401 (c) the regulations adopted to implement the laws described in Subsections (5)(a) and
402 (b); and

403 (d) Section [10-9a-503](#).

404 Section 12. Section **54-21-209** is enacted to read:

405 **54-21-209. Manner of regulation.**

406 (1) An authority shall manage a wireless provider's use of a right-of-way in a
407 nondiscriminatory manner with regard to any other user of the right-of-way.

408 (2) Any term or condition an authority imposes on a right-of-way user may not:

409 (a) be unreasonable or discriminatory; or

410 (b) violate an applicable legal obligation or law.

411 Section 13. Section **54-21-210** is enacted to read:

412 **54-21-210. Damage and repair.**

413 (1) If a wireless provider's activity causes damage to a right-of-way, the wireless
414 provider shall repair the right-of-way to substantially the same condition as before the damage.

415 (2) If a wireless provider fails to make a repair required by an authority under
416 Subsection (1) within a reasonable time after written notice, the authority may:

417 (a) make the required repair; and

418 (b) charge the wireless provider the reasonable, documented, actual cost for the repair.

419 (3) If the damage described in Subsection (1) causes an urgent safety hazard, an
420 authority may:

421 (a) immediately make the necessary repair; and

(b) charge the wireless provider the reasonable, documented, actual cost for the repair.

Section 14. Section **54-21-301** is enacted to read:

Part 3. Permitting Process for Small Wireless Facilities

54-21-301. Applicability -- General.

(1) This part applies to:

(a) the collocation of a small wireless facility in a right-of-way;

(b) the collocation of a small wireless facility on a wireless support structure in a right-of-way; and

(c) the installation, modification, or replacement of a utility pole associated with a small wireless facility in a right-of-way.

(2) Except as provided in this chapter, an authority may not prohibit, regulate, or charge for the collocation of a small wireless facility.

Section 15. Section **54-21-302** is enacted to read:

54-21-302. Permitting process, requirements, and limitations.

(1) An authority may require an applicant to obtain a permit to:

(a) collocate a small wireless facility in a right-of-way; or

(b) install a new, modified, or replacement utility pole associated with a small wireless facility in a right-of-way, as provided in Section [54-21-204](#).

(2) If an authority establishes a permitting process under Subsection (1), the authority:

(a) shall ensure that a required permit is of general applicability;

(b) may not require:

(i) directly or indirectly, that an applicant perform a service or provide a good unrelated to the permit, including reserving fiber, conduit, or pole space for the authority;

(ii) an applicant to provide more information to obtain a permit than a communications service provider that is not a wireless provider or a utility, except to the extent the applicant is required to include construction or engineering drawings or other information to demonstrate the applicant's application should be not denied under Subsection (7);

(iii) the placement of a small wireless facility on a specific utility pole or category of

450 poles;
451 (iv) multiple antenna systems on a single utility pole; or
452 (v) a minimum separation distance, limiting the placement of a small wireless facility;
453 and
454 (c) may require an applicant to attest that the small wireless facility will be operational
455 for use by a wireless service provider within 270 days after the day on which the authority
456 issues the permit, except in the case that:
457 (i) the authority and the applicant agree to extend the 270-day period; or
458 (ii) lack of commercial power or communications transport infrastructure to the site
459 delays completion.
460 (3) Within 30 days after the day on which an authority receives an application for the
461 collocation of a small wireless facility or for a new, modified, or replacement utility pole, the
462 authority shall:
463 (a) determine whether the application is complete; and
464 (b) notify the applicant in writing of the authority's determination of whether the
465 application is complete.
466 (4) If an authority determines, within the applicable time period described in
467 Subsection (3), that an application is incomplete:
468 (a) the authority shall specifically identify the missing information in the written
469 notification sent to the applicant under Subsection (3)(b); and
470 (b) the processing deadline in Subsection (6) is tolled:
471 (i) from the day on which the authority sends the applicant the written notice to the day
472 on which the authority receives the applicant's missing information; or
473 (ii) as the applicant and the authority agree.
474 (5) An application for a small wireless facility expires if:
475 (a) the authority notifies the wireless provider that the wireless provider's application is
476 incomplete, in accordance with Subsection (4); and
477 (b) the wireless provider fails to respond within 90 days after the day on which the

authority notifies the wireless provider under Subsection (5)(a).

(6) (a) An authority shall:

(i) process an application on a nondiscriminatory basis; and

(ii) approve or deny an application:

(A) for the collocation of a small wireless facility, within 60 days after the day on which the authority receives the complete application; and

(B) for a new, modified, or replacement utility pole, within 105 days after the day on which the authority receives the complete application.

(b) If an authority fails to approve or deny an application within the applicable time period described in Subsection (6)(a)(ii), the application is approved.

(c) Notwithstanding Subsections (6)(a) and (b), an authority may extend the applicable period described in Subsection (6)(a)(ii) for a single additional period of 10 business days, if the authority notifies the applicant before the day on which approval or denial is originally due.

(7) An authority may deny an application to collocate a small wireless facility or to install, modify, or replace a utility pole that meets the height limitations under Section 54-21-205, only if the action requested in the application:

(a) materially interferes with the safe operation of traffic control equipment;

(b) materially interferes with a sight line or a clear zone for transportation or pedestrians;

(c) materially interferes with compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian access or movement;

(d) fails to comply with applicable laws or legal obligations;

(e) creates a public health or safety hazard; or

(f) obstructs or hinders the usual travel or public safety of the right-of-way.

(8) (a) If an authority denies an application under Subsection (7), the authority shall:

(i) document the basis for the denial, including any specific law on which the denial is based; and

(ii) send the documentation described in Subsection (8)(a)(i) to the applicant on or before the day on which the authority denies the application.

(b) Within 30 days after the day on which an authority denies an application, the applicant may, without paying an additional application fee:

(i) cure any deficiency the authority identifies in the applicant's application; and

(ii) resubmit the application.

(c) (i) An authority shall approve or deny an application revised in accordance with Subsection (8)(b) within 30 days after the day on which the authority receives the revised application.

(ii) A review of an application revised in accordance with Subsection (8)(b) is limited to the deficiencies documented as the basis for denial unless the applicant has changed another portion of the application.

(9) (a) Subject to Subsections (9)(b) and (c), if an applicant seeks to:

(i) collocate multiple small wireless facilities within a single authority, the authority shall allow the applicant, at the applicant's discretion, to file a consolidated application for the collocation of up to 25 small wireless facilities, if all of the small wireless facilities in the consolidated application are:

(A) substantially the same type; and

(B) proposed for collocation on substantially the same types of structures; or

(ii) install, modify, or replace multiple utility poles within a single authority, the authority shall allow the applicant, at the applicant's discretion, to file a consolidated application for the installation, modification, or replacement of up to 25 utility poles.

(b) An applicant may not file within a 30-day period:

(i) with a category one authority, more than:

(A) three consolidated applications; or

(B) multiple applications that collectively seek permits for a combined total of more than 75 small wireless facilities and utility poles; or

(ii) with a category two authority, more than:

534 (A) one consolidated application; or

535 (B) multiple applications that collectively seek permits for a combined total of more
536 than 25 small wireless facilities and utility poles.

537 (c) A consolidated application described in Subsection (9)(a) may not combine
538 applications solely for collocation of small wireless facilities on existing utility poles with
539 applications for the installation, modification, or replacement of a utility pole.

540 (d) If an authority denies the application for one or more utility poles, or one or more
541 small wireless facilities, in a consolidated application, the authority may not use the denial as a
542 basis to delay the application process of any other utility pole or small wireless facility in the
543 same consolidated application.

544 (10) A wireless provider shall complete the installation or collocation for which a
545 permit is granted under this part within 270 days after the day on which the authority issues the
546 permit, unless:

547 (a) the authority and the applicant agree to extend the one-year period; or

548 (b) lack of commercial power or communications facilities at the site delays
549 completion.

550 (11) Approval of an application authorizes the applicant to:

551 (a) collocate or install a small wireless facility or utility pole, as requested in the
552 application; and

553 (b) subject to applicable relocation requirements and the applicant's right to terminate
554 at any time, operate and maintain for a period of at least 10 years:

555 (i) any small wireless facility covered by the permit; and

556 (ii) any utility pole covered by the permit.

557 (12) If there is no basis for denial under Subsection (7), an authority shall grant the
558 renewal of an application under this section for an equivalent duration.

559 (13) An authority may not institute, either expressly or de facto, a moratorium on
560 filing, receiving, or processing an application, or issuing a permit or another approval, if any,
561 for:

562 (a) the collocation of a small wireless facility; or

563 (b) the installation, modification, or replacement of a utility pole to support a small
564 wireless facility.

565 (14) The approval of the installation, placement, maintenance, or operation of a small
566 wireless facility, in accordance with this chapter, does not authorize:

567 (a) the provision of a communications service in the right-of-way; or

568 (b) the installation, placement, or operation of a facility, other than the approved small
569 wireless facility, in the right-of-way.

570 Section 16. Section **54-21-303** is enacted to read:

571 **54-21-303. Exceptions to permitting.**

572 (1) Except as provided in Subsection (2), an authority may not require a wireless
573 provider to submit an application, obtain a permit, or pay a rate for:

574 (a) routine maintenance;

575 (b) the replacement of a small wireless facility with a small wireless facility that is
576 substantially similar or smaller in size; or

577 (c) the installation, placement, maintenance, operation, or replacement of a micro
578 wireless facility that is strung on a cable between existing utility poles, in compliance with the
579 National Electrical Safety Code.

580 (2) (a) An authority may require a wireless provider to obtain a permit in accordance
581 with Section [72-7-102](#) for work that requires excavation or closing of sidewalks or vehicular
582 lanes in a public right-of-way.

583 (b) If an authority requires a permit under Subsection (2)(a), the authority shall process
584 and approve the permit within the same time period the authority processes and approves a
585 permit for all other types of entities.

586 (3) (a) An authority may require advance notice of an activity described in Subsection
587 (1).

588 (b) A wireless provider may replace or upgrade a utility pole only with the approval of
589 the utility pole's owner.

Section 17. Section **54-21-401** is enacted to read:

Part 4. Access to Authority Poles Within a Right-of-Way

54-21-401. Applicability.

This part applies to activities of a wireless provider within a right-of-way.

Section 18. Section **54-21-402** is enacted to read:

54-21-402. Prohibition on exclusive use.

(1) A person owning, managing, or controlling an authority pole in a right-of-way may not enter into an exclusive arrangement with a person for the right to collocate a small wireless facility to the authority pole.

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

(3) An authority shall allow the collocation of a small wireless facility on an authority pole in a right-of-way:

(a) as provided in this chapter; and

(b) subject to the permitting process in Part 3, Permitting Process for Small Wireless Facilities.

Section 19. Section **54-21-403** is enacted to read:

54-21-403. Rates.

The rate to collocate a small wireless facility on an authority pole:

(1) shall be nondiscriminatory, regardless of the service provided by the collocating person; and

(2) is provided in Part 5, Rates and Fees.

Section 20. Section **54-21-501** is enacted to read:

Part 5. Rates and Fees

54-21-501. Applicability.

This part governs an authority's rates and fees for the placement in a right-of-way of:

(1) a small wireless facility; or

(2) a utility pole associated with a small wireless facility.

Section 21. Section **54-21-502** is enacted to read:

54-21-502. Right-of-way rates.

(1) Except as described in Subsection (2), an authority may not require a wireless provider to pay any rate, fee, or compensation to the authority, or to any other person, beyond what is expressly authorized in this chapter, for the right to use or occupy a right-of-way:

(a) for the collocation of a small wireless facility on a utility pole in the right-of-way;

or

(b) for the installation, operation, modification, maintenance, or replacement of a utility pole in the right-of-way.

(2) (a) An authority may charge a wireless provider a rate for the right to use or occupy a right-of-way as described in Subsection (1), if, except as provided in Subsection 54-21-601(6), the rate is:

(i) fair and reasonable;

(ii) competitively neutral;

(iii) nondiscriminatory;

(iv) directly related to the wireless provider's actual use of the right-of-way; and

(v) not more than the greater of:

(A) 3.5% of all gross revenue related to the wireless provider's use of the right-of-way for small wireless facilities; or

(B) \$250 annually for each small wireless facility.

(b) A wireless provider subject to a rate under this Subsection (2) shall remit payments to the authority on a monthly basis.

(c) A rate charged in accordance with Subsection (2)(a)(v) is presumed to be fair and reasonable.

(3) Notwithstanding Subsection (2), an authority may not require a wireless provider to pay an additional rate, fee, or compensation for the right to use or occupy a right-of-way as described in Subsection (1), if the wireless provider is subject to the municipal telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal

Telecommunications License Tax Act.

Section 22. Section **54-21-503** is enacted to read:

54-21-503. Application fees.

(1) An authority may charge an application fee, if:

(a) a similar fee is required for similar types of commercial development or construction within the authority's jurisdiction;

(b) the costs to be recovered by an application fee are not already recovered by existing fees, rates, licenses, or taxes paid by the wireless provider; and

(c) the fee does not include:

(i) travel expenses incurred by a third party in review of an application; or

(ii) payment or reimbursement of a third-party rate or fee charged on a contingency basis or a result-based arrangement.

(2) Subject to Subsection (3), an application fee for collocation of a small wireless facility is limited to the cost of granting a building permit for similar types of commercial development or construction within the authority's jurisdiction.

(3) An application fee for the collocation of a small wireless facility on an existing or replacement utility pole may not exceed \$100 for each small wireless facility on the same application.

(4) If the activity is a permitted use described in Section [54-21-204](#), an application fee may not exceed \$250 per application to install, modify, or replace a utility pole associated with a small wireless facility.

(5) If the activity is not a permitted use described in Section [54-21-204](#), an application fee may not exceed \$1,000 per application to:

(a) install, modify, or replace a utility pole; or

(b) install, modify, or replace a new utility pole associated with a small wireless facility.

Section 23. Section **54-21-504** is enacted to read:

54-21-504. Authority pole collocation rate.

The rate to collocate a small wireless facility on an authority pole is \$50 per year, per authority pole.

Section 24. Section **54-21-601** is enacted to read:

Part 6. Implementation

54-21-601. General.

(1) An authority may, to the extent allowed by law and consistent with this chapter, establish rates, fees, and other terms that comply with this chapter by:

(a) implementing an ordinance; or

(b) if applicable, executing an agreement with a wireless provider.

(2) In the absence of an ordinance or agreement that fully complies with this chapter, a wireless provider may install and operate a small wireless facility or a utility pole associated with a small wireless facility:

(a) subject to Section [54-21-602](#); and

(b) under the requirements of this chapter.

(3) An authority may establish an ordinance or require an agreement to implement this chapter.

(4) (a) Subject to Subsection (4)(b), an authority may require a wireless provider to agree to reasonable and nondiscriminatory indemnification, insurance, or bonding requirements before a wireless provider collocates a small wireless facility in a right-of-way.

(b) An authority may not impose on a wireless provider an indemnification requirement described in Subsection (4)(a) that requires the wireless provider to indemnify the authority for the authority's negligence.

(5) An authority's obligations under this chapter may not be tolled or extended pending the implementation of an ordinance or negotiation of an agreement to implement this chapter.

(6) (a) Nothing in this section prohibits an authority from entering into a written, nondiscriminatory agreement with one or more wireless providers to jointly test certain traffic-related functions, or other technology related to research, using specified assets of the authority or the wireless providers.

(b) An agreement described in Subsection (6)(a) may:

(i) waive certain fees the participating wireless provider would otherwise be required to pay to the authority; or

(ii) allow the participating wireless provider to pay certain fees in cash, in-kind compensation, or in a combination of cash and in-kind compensation.

Section 25. Section **54-21-602** is enacted to read:

54-21-602. Noncompliant agreements and ordinances.

(1) An agreement or ordinance that does not fully comply with this chapter and applies to a small wireless facility or a utility pole that is operational or installed before May 11, 2018:

(a) may not be renewed or extended unless the agreement is modified to fully comply with this chapter; and

(b) is invalid and unenforceable beginning November 8, 2018, unless the agreement or ordinance is modified before November 8, 2018, to fully comply with this chapter.

(2) An agreement or ordinance entered into or passed before May 11, 2018, that does not fully comply with this chapter and applies to a small wireless facility or a utility pole that was not operational or installed before May 11, 2018, is invalid and unenforceable:

(a) beginning May 11, 2018; and

(b) until the agreement or ordinance is modified to fully comply with this chapter.

(3) If an agreement or ordinance is invalid in accordance with this section, until an agreement or ordinance that fully complies with this chapter is entered or adopted:

(a) a small wireless facility or a utility pole that is operational or installed before May 11, 2018, may remain installed and operate under the requirements of this chapter; and

(b) a small wireless facility or utility pole may become operational or be installed in the right-of-way on or after May 11, 2018, under the requirements of this chapter.

Section 26. Section **54-21-603** is enacted to read:

54-21-603. Relocation.

(1) Notwithstanding any provision to the contrary, an authority may require a wireless provider to relocate or adjust a small wireless facility in a public right-of-way:

(a) in a timely manner; and

(b) without cost to the authority owning the public right-of-way.

(2) The reimbursement obligations under Section 72-6-116(3)(b) do not apply to the relocation of a small wireless facility.

Section 27. Section **72-6-116** is amended to read:

72-6-116. Regulation of utilities -- Relocation of utilities.

(1) As used in this section:

(a) "Cost of relocation" includes the entire amount paid by the utility company properly attributable to the relocation of the utility after deducting any increase in the value of the new utility and any salvage value derived from the old utility.

(b) "Utility" includes telecommunication, gas, electricity, cable television, water, sewer, data, and video transmission lines, drainage and irrigation facilities, and other similar utilities whether public, private, or cooperatively owned.

(c) "Utility company" means a privately, cooperatively, or publicly owned utility, including utilities owned by political subdivisions.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of all utilities.

(b) If the department determines under the rules established in this section that it is necessary that any utilities should be relocated, the utility company owning or operating the utilities shall relocate the utilities in accordance with this section and the order of the department.

(3) (a) The department shall pay 100% of the cost of relocation of a utility to accommodate construction of a state highway project, including the construction of a proposed state highway and the improvement, widening, or modification of an existing state highway if the:

(i) utility is owned or operated by a political subdivision of the state;

(ii) utility company owns the easement or fee title to the right-of-way in which the

utility is located; or

(iii) utility is located in a public utility easement as defined in Section 54-3-27.

(b) Except as provided in Subsection (3)(a) or (c) or Section 54-21-603, the department shall pay 50% of the cost of relocation of a utility to accommodate construction of a state highway project, including the construction of a proposed state highway and the improvement, widening, or modification of an existing state highway, and the utility company shall pay the remainder of the cost of relocation.

(c) This Subsection (3) does not affect the provisions of Subsection 72-7-108(5).

(4) If a utility is relocated, the utility company owning or operating the utility, its successors or assigns, may maintain and operate the utility, with the necessary appurtenances, in the new location.

(5) In accordance with this section, the cost of relocating a utility in connection with any project on a highway is a cost of highway construction.

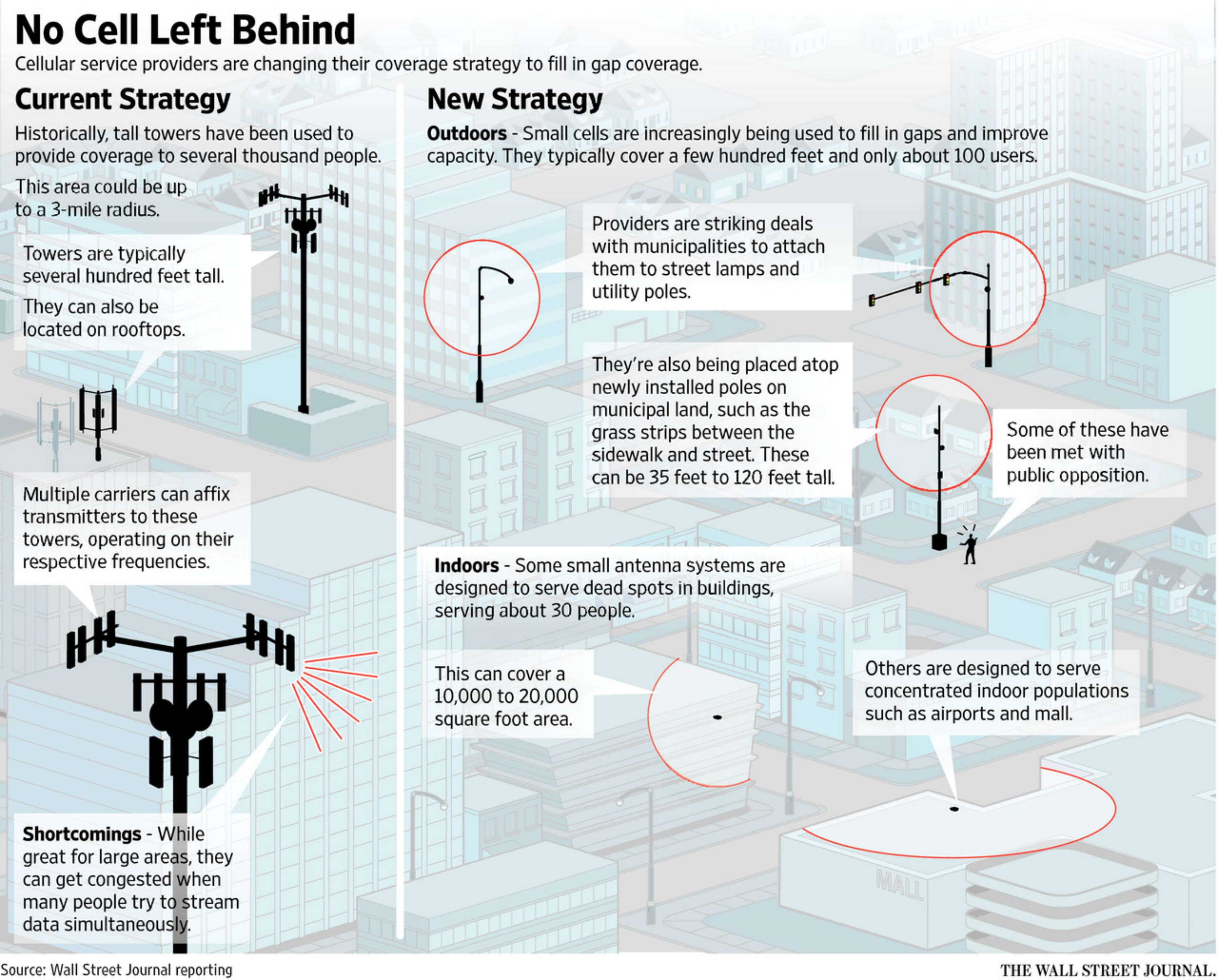
(6) (a) The department shall notify affected utility companies, in accordance with Section 54-3-29, whenever the relocation of utilities is likely to be necessary because of a reconstruction project.

(b) The notification shall be made during the preliminary design of the project or as soon as practical in order to minimize the number, costs, and delays of utility relocations.

(c) A utility company notified under this Subsection (6) shall coordinate and cooperate with the department and the department's contractor on the utility relocations, including the scheduling of the utility relocations.

Section 28. **Effective date.**

This bill takes effect on September 1, 2018.



No Cell Left Behind

Cellular service providers are changing their coverage strategy to fill in gap coverage.

Current Strategy

Historically, tall towers have been used to provide coverage to several thousand people.

This area could be up to a 3-mile radius.

Towers are typically several hundred feet tall.

They can also be located on rooftops.

Multiple carriers can affix transmitters to these towers, operating on their respective frequencies.

Shortcomings - While great for large areas, they can get congested when many people try to stream data simultaneously.

New Strategy

Outdoors - Small cells are increasingly being used to fill in gaps and improve capacity. They typically cover a few hundred feet and only about 100 users.

Providers are striking deals with municipalities to attach them to street lamps and utility poles.

They're also being placed atop newly installed poles on municipal land, such as the grass strips between the sidewalk and street. These can be 35 feet to 120 feet tall.

Indoors - Some small antenna systems are designed to serve dead spots in buildings, serving about 30 people.

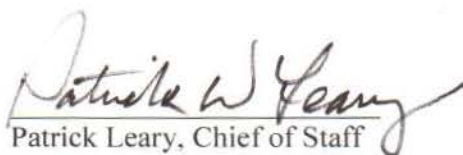
This can cover a 10,000 to 20,000 square foot area.

Others are designed to serve concentrated indoor populations such as airports and mall.

Some of these have been met with public opposition.



CITY COUNCIL TRANSMITTAL


Patrick Leary, Chief of Staff

Date Received: April 18, 2018
Date sent to Council: April 20, 2018

TO: Salt Lake City Council
Erin Mendenhall, Chair

DATE:

FROM: Mike Reberg, Department of Community & Neighborhoods Director


SUBJECT: Small cell wireless technology – City policy and State law

STAFF CONTACT: Melissa Jensen, Director Housing & Neighborhood Development
801-535-6035 – melissa.jensen@slcgov.com;
Dan Rip, Real Property Manager, Housing & Neighborhood Development
801-535-6308 – daniel.rip@slcgov.com;
Kimberly Chytraus, City Attorney's Office
801-535-7683 – kimberly.chytraus@slcgov.com

DOCUMENT TYPE: Informational

RECOMMENDATION: Council briefing on installation of small cell wireless facilities within City rights-of-way and future ordinance and policy recommendations based on new state law

BUDGET IMPACT: None

BACKGROUND/DISCUSSION: Telecommunications service providers use small wireless facilities ("SWF"), also known as small cell facilities, to add capacity and coverage to a wireless network. SWF are therefore concentrated where there is a higher density of users. Each SWF consists of an antenna, a radio, and a power meter, which are connected to power and fiber lines. They are attached to poles or other structures and have a relatively small coverage area, which means many SWF locations are required for effective service. The power meter and other equipment may be located on the pole where the SWF is attached, or in a nearby ground mounted cabinet.

The Federal Communications Commission (“FCC”) has classified these companies as “telecommunication providers,” and they hold Certificates of Public Convenience and Necessity from the Utah Public Service Commission. This gives them the right to install in the public right-of-way (“ROW”) with City’s reasonable regulation. The City cannot prohibit installation or treat providers differently as compared to each other.

Over the past two plus years and with increasing frequency and urgency, the City has been approached by several small cell wireless companies requesting to install SWF on utility poles and City light and traffic poles in the ROW. Throughout the country, there is a rapid growing demand for SWF installation in order to accommodate the expanding demand for wireless data services in densely populated areas and in anticipation of future technology that will rely on SWF. The City currently does not have many specific policies, procedures, or ordinances in place to facilitate installation of SWF. During the last two years, Real Estate Services has acted as a working group with various City stakeholders, including Engineering, Finance, Transportation/Streets, Public Utilities, Planning and Zoning, and the City Attorney’s Office, to develop an action plan to efficiently accommodate SWF in the ROW under current ordinance and potential new policies and processes.

Typically, to allow use of the ROW, the City enters into a franchise agreement or other ROW permit to grant use of the ROW (a franchise agreement is approved pursuant to ordinance adopted by the City Council). Once a party has entered into the franchise or other agreement, the company is eligible to apply for the necessary City permits (such as a ROW permit from Engineering). The internal working group reached consensus on a process for reviewing small cell applications that would mirror existing processes and a proposal for additional policy considerations. Real Estate services was negotiating with small cell providers on this basis, but put the negotiations on hold when the legislature proposed a SWF bill.

New State Law – SB189

In March 2018 the Legislature passed SB189, the Small Wireless Facilities Deployment Act, which permits wireless providers to install SWF and monopoles within all ROW in the City and to attach SWF to City owned poles. SB189 is extremely broad and infringes on what has been the City’s right under the Utah Constitution and state law to control its property and ROW. The City will have narrow authority to govern the design of SWF, but not the ability to prohibit installation of SWF or attachment of SWF on City-owned infrastructure. While current City ordinance only allows antennas to be installed on existing utility poles, SB189 allows installation on all City owned infrastructure in the ROW, including street lights, street signs, and traffic lights. SB189 also allows providers to install their own monopoles for the purpose of installing a SWF. SB189 will become effective September 1, 2018. The legislation is summarized below. The internal working group has been working diligently on a policy recommendation consistent with new state law. The effective date of the new law dictates the timeframe for the City to fully implement its desired policies.

Current City Ordinance

Current City Ordinances permit small cell attachments in the ROW on a very limited basis:

- SLC §21A.40.090 - Antenna Regulations regulates the placement of antennas in the ROW:
 - Allows antennas to be mounted on *existing* 3rd party owned utility poles. There are no other antenna installations allowed in the ROW.
 - Requires the electric equipment to be placed underground or on private property (or on the pole, which is not allowed by RMP).
 - Requires that facilities in the ROW be subject to any applicable franchise fees or lease agreement required by City.
- SLC §14.32.425 – Telecommunication Right of Way Permits: allows conduit and cable to be located within the ROW.
- SLC § 14.40.020 – Utility Poles and Wires: New poles are only allowed for franchise holders (but not permitted for antennas).

Rocky Mountain Power (“RMP”) policies directly influence the implementation of City code. RMP allows for small cell infrastructure attachments to its existing utility poles as well as to overhead wires. Such attachments require a pole attachment or wireline attachment agreement between RMP and the small cell provider; once this agreement is in place, providers must submit pole location plan and then RMP does a site analysis of each location within a 45 day period. After pole sites are approved by RMP, the small cell provider submits to the City RMP’s written approval along with the company’s permit application to locate in the ROW. RMP does not have poles in the Central Business District as it is an underground district, and so other locations for small cell facilities must be identified.

Recommended Policy Strategy and Process

The City stakeholders have recommended the following strategy to maximize City discretion and maintain effective City processes.

- City negotiates with providers a Master License Agreement (“MLA”) that is a general grant of permission to use the ROW, similar to a franchise agreement and more specific to this technology.
- City Council adopts an ordinance approving the MLA, just like other franchise agreements.
- A provider submits an application to Engineering for each proposed location in the ROW. The application would be reviewed by each applicable City department in connection with the needed permits. This process would be tracked by the City’s existing Accela database in order to coordinate the multiple City departments engaged in the process.
- By September 1, 2018 revise and update City code to be consistent with the requirements of SB189 and preserve the City’s rights to implement design guidelines for installation of the SWF.

Master License Agreements

The City has been negotiating with ExteNet, Mobilitie, Crown Castle, Verizon, and AT&T. Concurrent with this transmittal, the Real Property manager has transmitted a negotiated Master License Agreement. The agreement was completed prior to SB189, and has been revised to accommodate future changes in State and City law. The providers have requested that the agreement be forwarded to Council for approval as soon as possible so that they can begin the

application process under the current law. Due to market demand, providers are under pressure to install SWF as soon as possible, which is heightened because limited availability of existing utility poles on which they may attach under the current ordinances.

Overview of SB189

- Wireless providers have the right to:
 - install small wireless facilities and utility poles within ROW; and
 - locate small wireless facilities on municipal poles (includes street lights, traffic lights, street signs) and other structures in the ROW (including billboards)
- City is required to recognize small wireless facilities in ROW as a permitted use in all zones and districts (strictly an administrative process)
- A small wireless facility consists of: an antenna of 6 cubic feet or less; pole and ground equipment of 28 cubic feet or less
- The small wireless facilities may be installed on a utility pole no taller than 50 ft. (potential additional 10 ft. for antennae)

City Powers

- Design/Historic and Underground Districts – City must allow small wireless facilities including utility poles (heightened design standards)
- May limit new utility poles in ROW that is 60 ft. wide or less and adjacent to residential property
- May adopt reasonable, nondiscriminatory design standards
- May adopt nondiscriminatory police-power-based regulations for management of ROW
- May deny applications for articulable public safety reasons
- May require agreement dealing with indemnification, insurance and bonding before ROW work

Compensation

- Annual ROW Access Rate
 - 3.5% of gross revenue under Municipal Telecommunications License Tax (if the tax applies), or
 - the greater of 3.5% of gross revenue or \$250 per small wireless facility
- Annual Authority Pole Attachment Rate: \$50 per collocated small wireless facility per authority pole
- Application Fees (for a Permit to work in the ROW)
 - \$100 per collocated small wireless facility
 - \$250 per utility pole with a small wireless facility
 - \$1000 per non-permitted use
- Other applicable permit fees

Application Limits

- Consolidated application: up to 25 small wireless facilities of substantially the same type; Up to 75 small wireless facility (3 consolidated applications) per 30 days

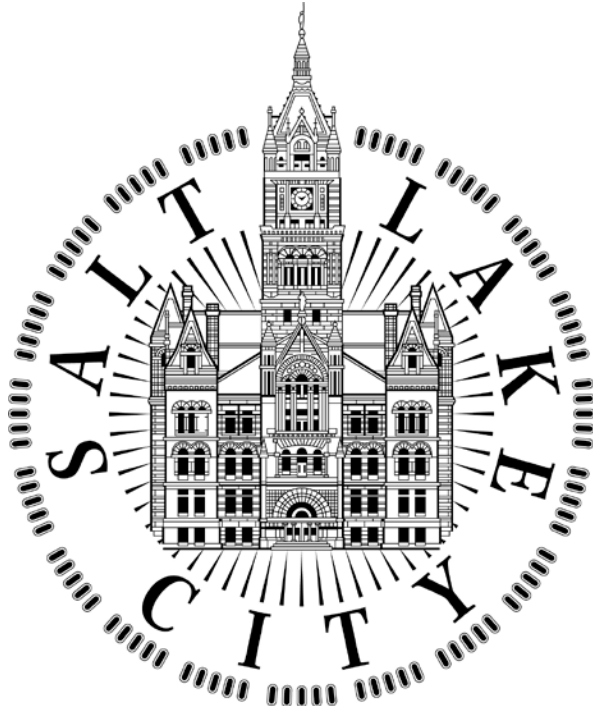
Shot Clocks (Review periods)

- Review for Completion: 30 days (City can deem application incomplete and applicant has 90 days to cure any deficiencies)

- Installation on existing pole: 60 days (including completion review)
- Installation on new, modified, or replacement utility pole: 105 days (including completion review)
- One additional extension of 10 business days
- Deemed complete and/or granted if municipality does not meet deadlines

PUBLIC PROCESS: None

EXHIBITS: Small Cell Summary Presentation



Small Cell Policy Development

Community & Neighborhoods/Public Utilities

April 17, 2018

Technology Overview

Small-cell Companies

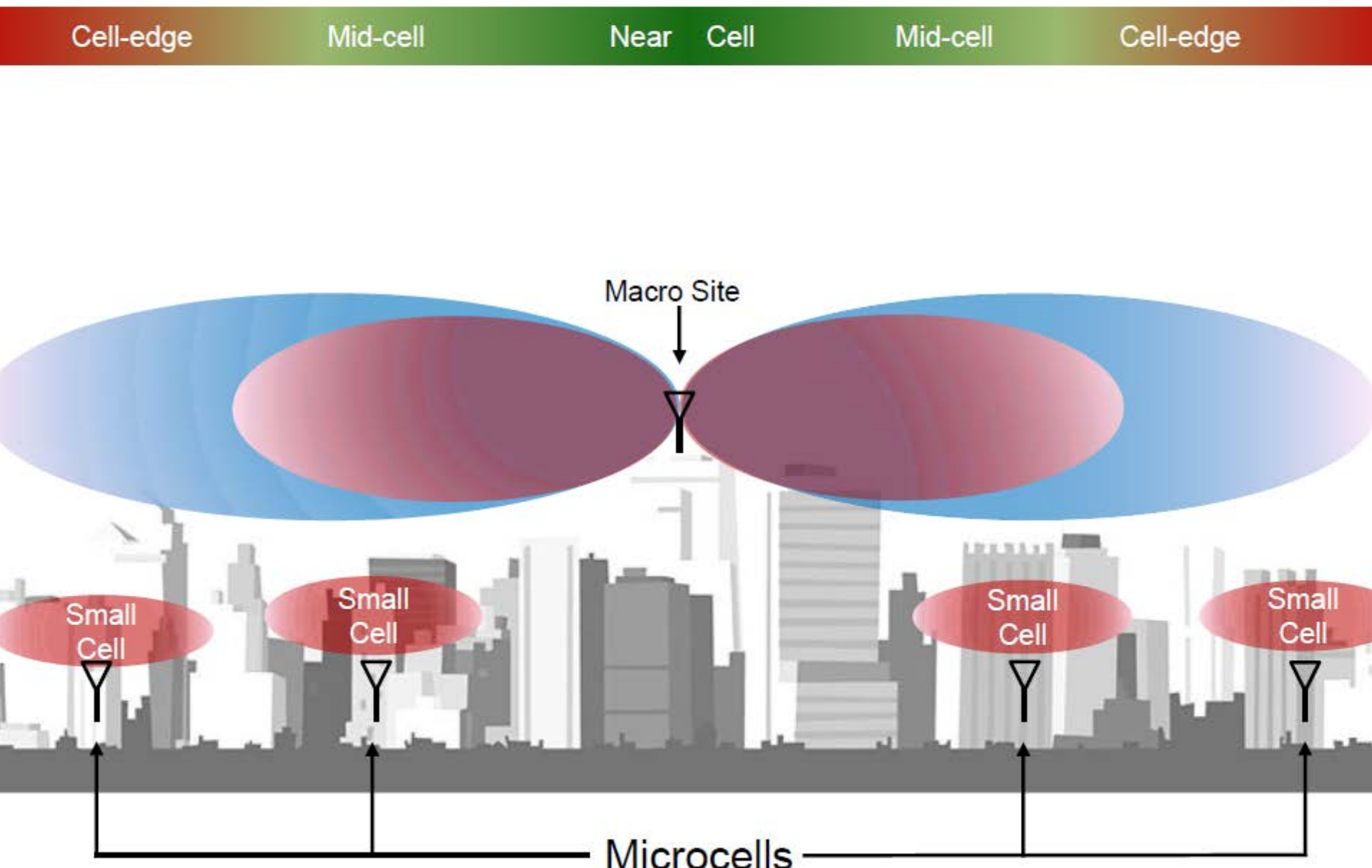
- FCC classified telecommunications provider
- Hold Certificates of Public Convenience and Necessity (“CPCN”) from the Utah Public Service Commission
- Have the right to install in the City ROW
- Requested installations on 3rd party utility poles, City-owned street lights and traffic poles, and installing monopoles

Small Cell Participants:

- Extenet
- Crown Castle
- Verizon
- Mobilitie



Macro vs Small Cell



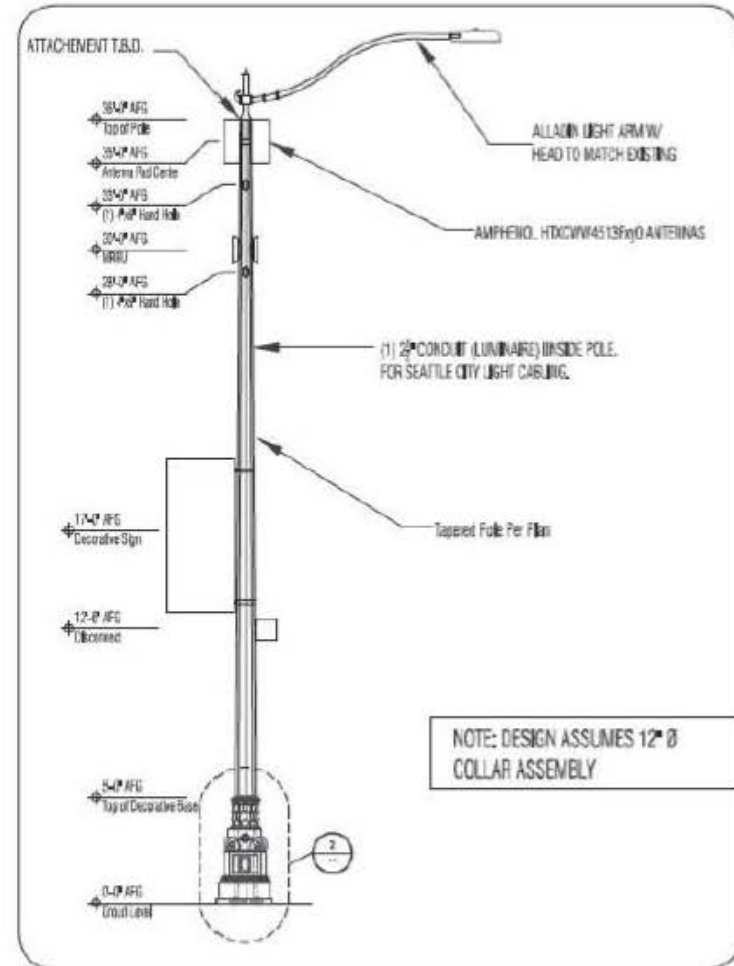
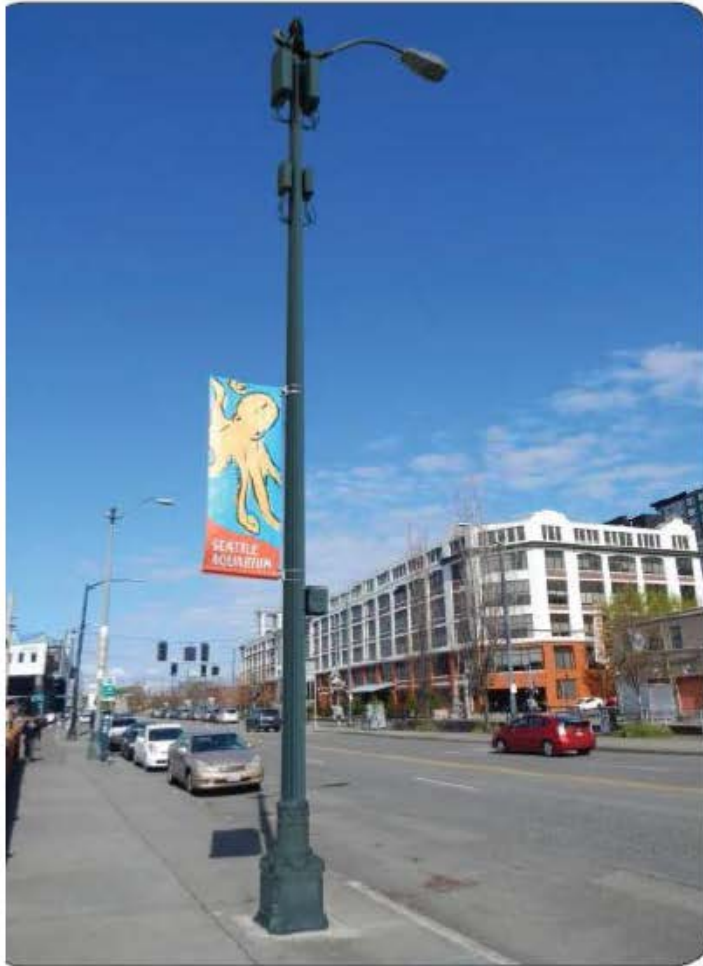
Components

- ☐ Antenna
- ☐ Radios
- ☐ Power
- ☐ Backhaul

verizon✓



Small Cell Deployment: Simulation



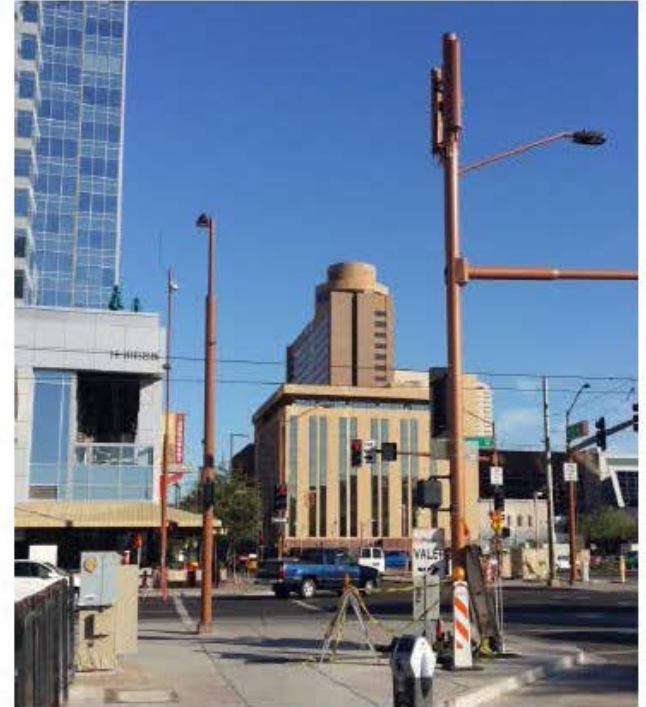
Design Options



Street Light



Utility Pole



Traffic Control Pole with Cabinet

Current ROW Agreements

- Franchise Agreement
 - Allows use of ROW by utilities with consumer as end user
- Telecom ROW Permit
 - Agreement to allow cable/conduits in ROW to connect multiple properties – i.e. LDS church HQ to auxiliary sites
- Encroachment ROW Permit
 - For installation of any structure in the ROW



Current City Code

- Wireless Infrastructure
 - Code requires franchise agreement for Video Service Systems (includes transmission of digital signals)
- Zoning
 - Allows antennas only to be located on existing utility poles
 - Electrical boxes for antennas must be underground if in ROW



SB 189 Small Wireless Facilities Deployment Act

City Owned Pole criteria

- Mandates installation on all City-owned infrastructure including street lights, street signs and traffic lights
- Allows for installation of monopoles



Compensation to the City

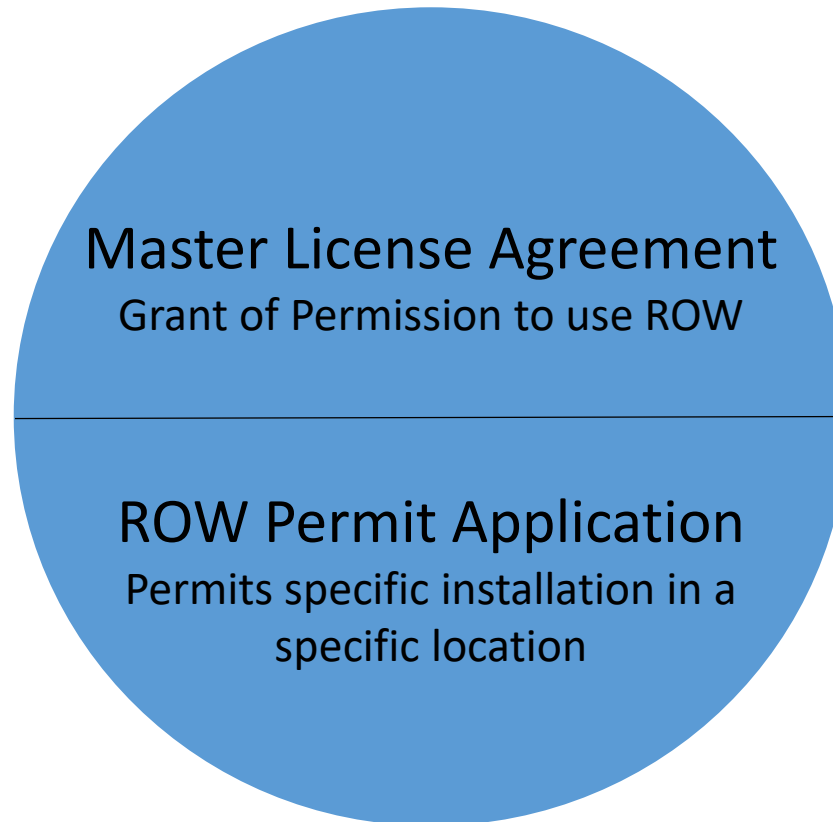
- Annual ROW access rate
 - 3.5% of gross revenue under Municipal Telecommunications License Tax, or
 - the greater of 3.5% of gross revenues or \$250 per small wireless facility
 - Annual Authority Pole Attachment Rate: \$50 per collocated small wireless facility per authority pole

Compensation to the City (cont)

- Application Fees (for a Permit to work in ROW)
 - \$100 per collocated small wireless facility
 - \$250 per utility pole with a small wireless facility
 - \$1,000 per non-permitted use
 - Other applicable fees

Policy Strategy

Agreement Structure: Two Agreements



Process Structure

Step 1

Master License
Agreement Petition

RES/City
Attorney

Grant of
Access

Step 2

Permit Application
Submission
(25 facilities per app)
(3 consolidated apps
per 30 days)

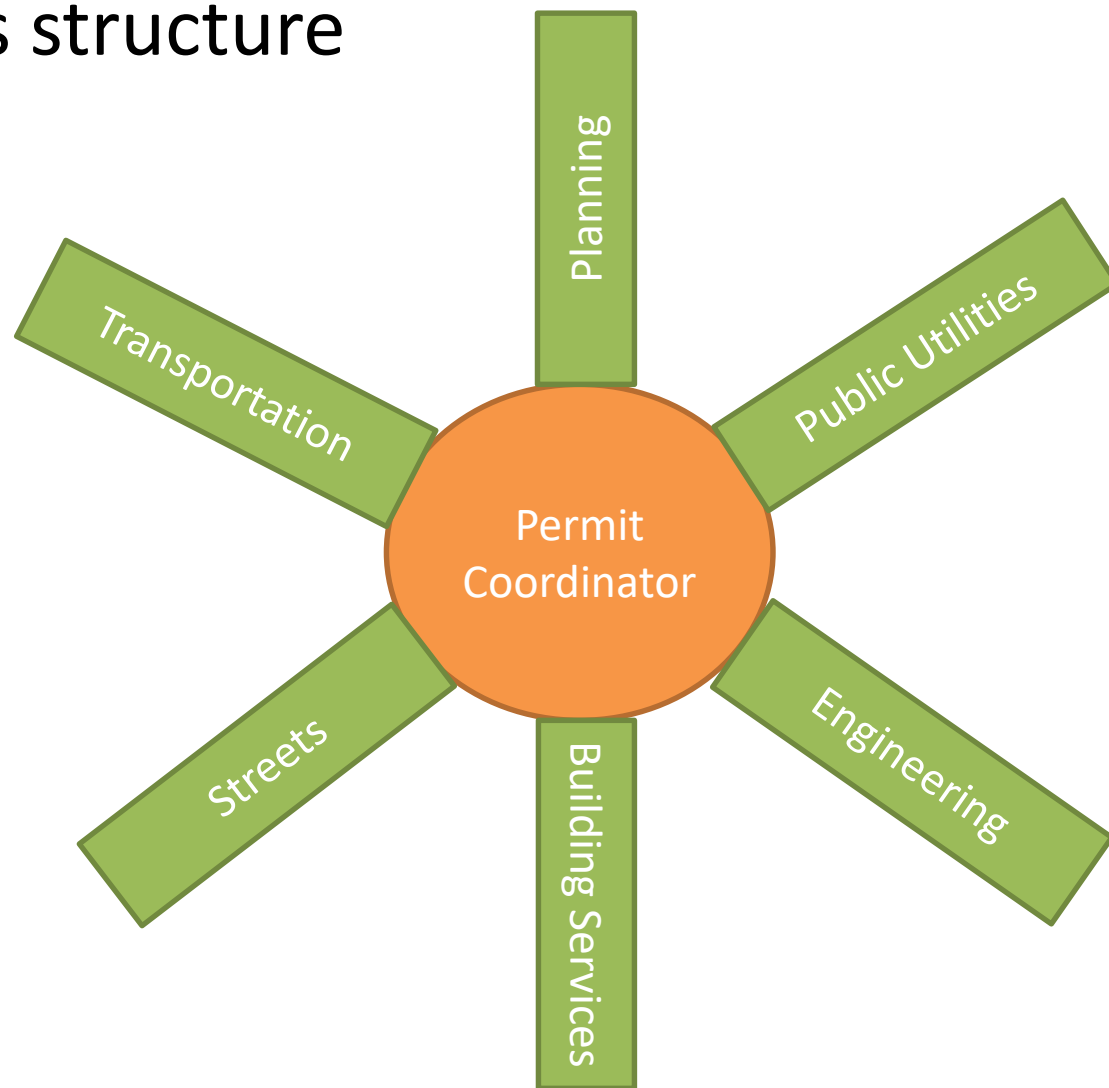
Various
Depts.

City Permits
Issued



Application Flow

Process structure



Carrier Status?

Current Status

- Master License Agreements done
- SB 189 effective September 1, 2018.
- Contemplating design standards



What's Next?

Next Steps

- City Council briefing
- Adopt official design standards
- Finalize permit structure and process
- City to approve permits for installation dates after SB 189 legislation in effect.



Interim Process Proposal

- Issue Master License Agreement (MLA) anticipating SB 189 effective date September 1, 2018
- MLA to be transmitted to City Council with ordinance for approval (same process as a Franchise Agreement)
- Hub and spoke process structure to process Site License application – Accela tracking





COUNCIL STAFF REPORT

CITY COUNCIL of SALT LAKE CITY

TO: City Council Members

FROM: Ben Luedtke and Kira Luke
Budget & Policy Analysts

DATE: May 8, 2017

**RE: Small Cell Wireless Facilities (SWF) Technology and
ExteNet Systems Inc. Master License Agreement for SWF in the Public Right of Way**

Item Schedule:

Briefing: May 8, 2018

Potential Action:

*Staff note: item does not require
public hearing to adopt*

ISSUE AT-A-GLANCE

Small cell wireless facilities (SWF) add capacity and coverage on a wireless network. This benefits locations with a high density of telecommunication users, such as downtown. SWF are expected to provide part of the infrastructure for fifth-generation wireless technologies ("5G"). Each facility includes an antenna, radio and power meter, and needs connections to power and fiber optic cables. Wireless providers will install SWF on public-right-of-way infrastructure including existing and new monopoles, billboards, street lights, street signs, traffic poles, utility poles and other structures.

Federal and State laws and rules give telecommunication providers the right to install facilities in the public-right-of-way subject to municipal regulations. Providers must be treated the same under municipal regulations so one company is not unduly favored over another. Salt Lake City does not currently have a process or governing ordinance to regulate installation of SWF.

The Administration recommends the Council adopt ordinances for Master License Agreements (MLAs) with SWF providers. This process mirrors franchise agreements but is tailored to SWF technology. An MLA is a general grant of permission to use the City's public-right-of-way. After receiving an MLA, a company must submit a permit application for each installation location. The Administration transmitted the first non-exclusive MLA for right-of-way access with ExteNet in tandem with the informational transmittal. The proposed MLA is for a five-year term with an automatic renewal for five more years. Negotiations for MLAs are ongoing with four other telecommunication providers.

SB189 Small Wireless Facilities Deployment Act (Effective Date September 1, 2018)

In March 2018, the State Legislature passed and the Governor signed SB189. The law conveys broad rights upon telecommunication providers to (1) install SWF on all municipally-owned infrastructure within the public-right-of-way and (2) construct new monopoles for SWF. Municipalities must allow installation of SWF but may narrowly regulate designs. Design guidelines for SWF installation are in development and may need to receive Council approval by September 1, 2018. See Additional Info section for the Administration's overview of the bill.

Timing

The providers working with the City prior to SB189's passage remain interested in moving forward with agreements. Justifications for doing so include:

- Enabling providers to begin installations sooner
- Providers would honor City's terms for sites that can be installed prior to September 1



- There is a line in the MLA ordinance that mentions come September 1, the law will change and contract will need to be amended by November 1 to adhere to State statute.
 - This may require Council approval of an amendment to the ExteNet MLA

Current City Ordinances Governing Antennas in Public-right-of-way

The Administration reports three sections of City Code govern SWF in the public-right-of-way. However, SB189 will supersede these ordinances and allow SWF potentially anywhere in the public-right-of-way.

Section of Salt Lake City Code	Title	Function
SLC §21A.40.090	Antenna Regulations in Public Right of Way (ROW)	a. Allows antennas to be mounted on <i>existing</i> 3 rd -party-owned utility poles. There are no other antenna installations allowed in the ROW. b. Requires the electric equipment to be placed underground or on private property (or on the pole, which is not allowed by RMP). c. Requires that facilities in the ROW be subject to any applicable franchise fees or lease agreement required by City.
SLC §14.32.425	Telecommunication Right of Way Permits	Allows conduit and cable to be located within the ROW
SLC § 14.40.020	Utility Poles and Wires	New poles are only allowed for franchise holders (but not permitted for antennas).

Budget Impact (See Additional Info Section)

A small positive budget impact is expected from adoption of the ExteNet MLA. The company will pay the City:

1. A one-time lump-sum of \$5,000 for administrative costs;
2. Ongoing annual access fee equal to 3.5% of gross revenue attributable to the company's network within Salt Lake City;
 - a. SWF's are not subject to telecommunication tax. This access fee is in place of that tax.
3. Ongoing annual ground equipment fee of \$200 per ground mounted facility;
4. Ongoing annual attachment fee of \$200 per facility attached to a utility pole;
5. Application fees for permits; and
6. Other fees potentially including consulting and engineering fees incurred by the City to approve a permit.

Goal of the briefing: Discuss with the Administration the proposed master license agreement process and the five-year ExteNet master license agreement to identify any policy issues for follow up.

POLICY QUESTIONS

1. **Presentation from Telecommunication Industry Vendor** – Does the Council want to learn more from the private sector about the growing SWF technology field? The Administration reports three private companies are available to give presentations to the Council. The presentations were previously given to a group of municipal attorneys. The companies are:
 - a. Tilson installs network infrastructure for telecommunication providers. They do not currently operate in Utah.
 - b. Mobilitie and Verizon are expected to request master license agreements from Salt Lake City.
2. **SB189 Potential Encroachment on Municipal Functions** – The Council may wish to ask the Attorney's Office for a legal opinion and/or closed session to discuss whether the new state law encroaches on traditional municipal control of public property.
3. **Design Guidelines for SWF** – The Administration is developing design standard recommendations. It's currently unclear if SB189 precludes the City from adopting design standards via ordinance; the Attorney's Office will provide clarification after further review. The Council may wish to ask what

monitoring and enforcement mechanisms are available to the Administration if reasonable design standards are not adhered to.

- a. **Public Input** –The MLA does not require a public hearing to adopt. If design standards are not tied to ordinance, the Council may wish to ask the Administration how the public can give input on draft design standards.
4. **No Duty to Underground SWF** – SB189 appears to preclude the City from requiring undergrounding of SWF electrical boxes and other infrastructure. The City’s standard franchise agreement stipulates a duty to underground lines and cables “to the greatest extent reasonably practicable” and is specifically required in four areas: (1) new residential subdivisions, (2) Central Business District, (3) any area of the City where existing utilities are already underground, and (4) whenever other utility companies are undergrounding cables and lines.
5. **Increased Workload and Staffing Levels** – Due to the potential volume of applications and review time constraints set by SB189, SWF applications may have significant impacts on workload and staffing:
 - a. There are an estimated 800-1000 SWF-eligible sites within City boundaries
 - b. Providers can submit up to three consolidated applications – each containing up to 25 similar applications – per 30 days, leading to a potential 75 applications per provider each month.
 - c. Review periods:
 - i. Application review: 30 days
 - ii. Existing pole installation: 60 days
 - iii. New/modified/replacement pole: 105 days
 - d. Departments/Divisions involved in application process:
 - i. Planning
 - ii. Public Utilities
 - iii. Engineering
 - iv. Building Services
 - v. Streets
 - vi. Transportation
 - e. The MLA requires an annual report forecasting providers’ installation and location needs. It may be helpful to inform City staffing needs based on the annual reports.
6. **Guarantee of Repairs when Caused by Company** – The Council may wish to ask the Administration how company repairs to the public-right-of-way are tracked and if more resources are needed. The Council Office periodically receives resident complaints about landscaping and right-of-way infrastructure when companies cut into pavement, dig trenches or other construction activities. The MLA states “for a period of three years...the company shall maintain, repair and keep in good condition those portions of the right-of-way, permitted structures, property, or facilities restored, repaired or replaced by the company to the reasonable satisfaction of the City Engineer, reasonable wear and tear excepted” (page seven). The guarantee of repairs also extends to landscaping and damage to private property.
7. **Company Tree Trimming Coordinated with Urban Forester** – The MLA states a “company may trim trees overhanging the [public] right-of-way...with the approval of and the direction of the City’s Urban Forester and at the expense of the company” (page eight). The Council may wish to discuss with the Administration (1) how this policy worked in practice, (2) if the Urban Forestry office has sufficient staff and (3) how this policy aligns with the City’s other urban forest goals.
8. **Digital Inclusion** – The Council may wish to request information from ExteNet on any efforts to expand digital inclusion and discuss with the Administration about opportunities for collaboration. SWF are typically concentrated in areas of high user density

ADDITIONAL & BACKGROUND INFORMATION

Coordination with Rocky Mountain Power (RMP)

The Administration provided the following summary of how RMP is involved in locating SWF in the public-right-of-way.

“Rocky Mountain Power (“RMP”) policies directly influence the implementation of City code. RMP allows for small cell infrastructure attachments to its existing utility poles as well as to overhead wires. Such attachments require a pole attachment or wireline attachment agreement between RMP and the small cell provider; once this agreement is in place, providers must submit pole location plan and then RMP does a site analysis of each location within a 45-day period. After pole sites are approved by RMP, the small cell provider submits to the City RMP’s written approval along with the company’s permit application to locate in the ROW. RMP does not have poles in the Central Business District as it is an underground district, and so other locations for small cell facilities must be identified.”

Administration’s Overview of SB189

- Wireless providers have the right to:
 - install small wireless facilities and utility poles within ROW; and
 - locate small wireless facilities on municipal poles (includes street lights, traffic lights, street signs) and other structures in the ROW (including billboards)
- City is required to recognize small wireless facilities in ROW as a permitted use in all zones and districts (strictly an administrative process)
- A small wireless facility consists of: an antenna of 6 cubic feet or less; pole and ground equipment of 28 cubic feet or less
- The small wireless facilities may be installed on a utility pole no taller than 50 ft. (potential additional 10 ft. for antennae)

City Powers

- Design/Historic and Underground Districts – City must allow small wireless facilities including utility poles (heightened design standards)
- May limit new utility poles in ROW that is 60 ft. wide or less and adjacent to residential property
- May adopt reasonable, nondiscriminatory design standards
- May adopt nondiscriminatory police-power-based regulations for management of ROW
- May deny applications for articulable public safety reasons
- May require agreement dealing with indemnification, insurance and bonding before ROW work

Compensation

- Annual ROW Access Rate
 - 3.5% of gross revenue under Municipal Telecommunications License Tax (if the tax applies), or
 - the greater of 3.5% of gross revenue or \$250 per small wireless facility
- Annual Authority Pole Attachment Rate: \$50 per collocated small wireless facility per authority pole
- Application Fees (for a Permit to work in the ROW)
 - \$100 per collocated small wireless facility
 - \$250 per utility pole with a small wireless facility
 - \$1000 per non-permitted use
- Other applicable permit fees

Application Limits

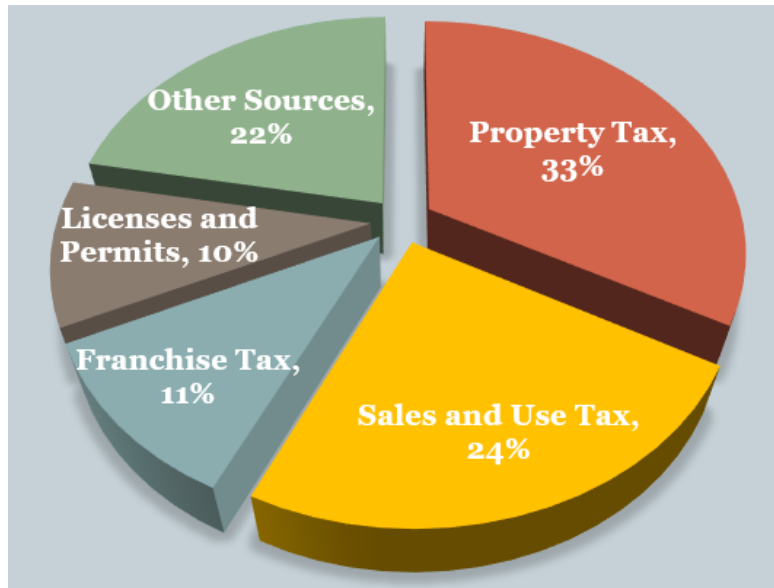
- Consolidated application: up to 25 small wireless facilities of substantially the same type; Up to 75 small wireless facility (3 consolidated applications) per 30 days

Shot Clocks (Review periods)

- Review for Completion: 30 days (City can deem application incomplete and applicant has 90 days to cure any deficiencies)
- Installation on existing pole: 60 days (including completion review)
- Installation on new, modified, or replacement utility pole: 105 days (including completion review)
- One additional extension of 10 business days
- Deemed complete and/or granted if municipality does not meet deadlines

Licenses and Permits Revenues in the City's General Fund

The City's General Fund has four major categories of revenue sources as shown in the graph below. In FY18 approximately 10% of General Fund revenues came from licenses and permits.



City Offices Involved in Master License Agreements

Multiple City offices are involved in MLAs in addition to the Mayor's Office and City Council. For example, the Attorney's Office drafts the agreements, the Engineering Division reviews construction proposals and issues permits, Real Estate Services coordinates correspondence and planning with the company and Finance tracks, receives and budgets license and permit revenues.

Standard Franchise Template Used for MLA

The proposed ExteNet MLA uses many section of the City's preferred franchise agreement standard template. One benefit of this approach is to help create a level playing field so no single company receives an advantage over others. The theme of fair competition is referenced several times in the MLA and is required under Federal laws and regulations.

ATTACHMENTS

1. SB189 of 2018 – Small Wireless Facilities Deployment Act
2. "No Cell Left Behind" Wall Street Journal illustration

ACRONYMS

5G – Fifth generation wireless technologies
FY – Fiscal Year
MLA – Master License Agreement
RMP – Rocky Mountain Power
ROW – Right of Way
SB – Senate Bill
SWF – Small cell wireless facilities

SMALL WIRELESS FACILITIES DEPLOYMENT ACT

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Timothy D. Hawkes

LONG TITLE

General Description:

This bill creates the Small Wireless Facilities Deployment Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits a wireless provider to deploy a small wireless facility and any associated utility pole within a right-of-way under certain conditions;
- ▶ permits an authority to establish a permitting process for the deployment of a small wireless facility and any associated utility pole under certain conditions;
- ▶ describes a wireless provider's access to an authority pole within a right-of-way;
- ▶ sets rates and fees for the placement of:
 - a small wireless facility; and
 - a utility pole;
- ▶ describes the implementation of requirements in relation to agreements and ordinances; and
- ▶ permits an authority to adopt indemnification, insurance, or bonding requirements for a small wireless facility permit, under certain conditions.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

30 AMENDS:

31 **72-6-116**, as last amended by Laws of Utah 2014, Chapter 184

32 ENACTS:

33 **54-21-101**, Utah Code Annotated 1953

34 **54-21-102**, Utah Code Annotated 1953

35 **54-21-103**, Utah Code Annotated 1953

36 **54-21-201**, Utah Code Annotated 1953

37 **54-21-202**, Utah Code Annotated 1953

38 **54-21-203**, Utah Code Annotated 1953

39 **54-21-204**, Utah Code Annotated 1953

40 **54-21-205**, Utah Code Annotated 1953

41 **54-21-206**, Utah Code Annotated 1953

42 **54-21-207**, Utah Code Annotated 1953

43 **54-21-208**, Utah Code Annotated 1953

44 **54-21-209**, Utah Code Annotated 1953

45 **54-21-210**, Utah Code Annotated 1953

46 **54-21-301**, Utah Code Annotated 1953

47 **54-21-302**, Utah Code Annotated 1953

48 **54-21-303**, Utah Code Annotated 1953

49 **54-21-401**, Utah Code Annotated 1953

50 **54-21-402**, Utah Code Annotated 1953

51 **54-21-403**, Utah Code Annotated 1953

52 **54-21-501**, Utah Code Annotated 1953

53 **54-21-502**, Utah Code Annotated 1953

54 **54-21-503**, Utah Code Annotated 1953

55 **54-21-504**, Utah Code Annotated 1953

56 **54-21-601**, Utah Code Annotated 1953

57 **54-21-602**, Utah Code Annotated 1953

58 **54-21-603**, Utah Code Annotated 1953

59
60 *Be it enacted by the Legislature of the state of Utah:*

61 Section 1. Section **54-21-101** is enacted to read:

62 **CHAPTER 21. SMALL WIRELESS FACILITIES DEPLOYMENT ACT**

63 **Part 1. General Provisions**

64 **54-21-101. Definitions.**

65 As used in this chapter:

66 (1) "Antenna" means communications equipment that transmits or receives an
67 electromagnetic radio frequency signal used in the provision of a wireless service.

68 (2) "Applicable codes" means the International Building Code, the International Fire
69 Code, the National Electrical Code, the International Plumbing Code, and the International
70 Mechanical Code, as adopted and amended under Title 15A, State Construction and Fire Codes
71 Act.

72 (3) "Applicable standards" means the structural standards for antenna supporting
73 structures and antenna, known as ANSI/TIA-222, from the American National Standards
74 Institute and the Telecommunications Industry Association.

75 (4) "Applicant" means a wireless provider who submits an application.

76 (5) "Application" means a request submitted by a wireless provider to an authority for a
77 permit to:

78 (a) collocate a small wireless facility in a right-of-way; or

79 (b) install, modify, or replace a utility pole or a wireless support structure.

80 (6) (a) "Authority" means:

81 (i) the state;

82 (ii) a state agency;

83 (iii) a county;

84 (iv) a municipality;

85 (v) a town;

86 (vi) a metrotownship;

87 (vii) a subdivision of an entity described in Subsections (6)(a)(i) through (vi); or

88 (viii) a special district or entity established to provide a single public service within a
89 specific geographic area, including:

90 (A) a public utility district; or

91 (B) an irrigation district.

92 (b) "Authority" does not include a state court having jurisdiction over an authority.

93 (7) "Authority pole" means a utility pole owned, managed, or operated by, or on behalf
94 of, an authority.

95 (8) "Authority wireless support structure" means a wireless support structure owned,
96 managed, or operated by, or on behalf of, an authority.

97 (9) "Category one authority" means a single authority with a population of 65,000 or
98 greater.

99 (10) "Category two authority" means a single authority with a population of less than
100 65,000.

101 (11) "Collocate" means to install, mount, maintain, modify, operate, or replace a small
102 wireless facility:

103 (a) on a wireless support structure or utility pole; or

104 (b) for ground-mounted equipment, adjacent to a wireless support structure or utility
105 pole.

106 (12) "Communications service" means:

107 (a) a cable service, as defined in 47 U.S.C. Sec. 522(6);

108 (b) a telecommunications service, as defined in 47 U.S.C. Sec. 153(53);

109 (c) an information service, as defined in 47 U.S.C. Sec. 153(24); or

110 (d) a wireless service.

111 (13) "Communications service provider" means:

112 (a) a cable operator, as defined in 47 U.S.C. Sec. 522(5);

113 (b) a provider of information service, as information service is defined in 47 U.S.C.

114 Sec. 153(24);

115 (c) a telecommunications carrier, as defined in 47 U.S.C. Sec. 153(51); or

116 (d) a wireless provider.

117 (14) "Decorative pole" means an authority pole:

118 (a) that is specially designed and placed for an aesthetic purpose; and

119 (b) (i) on which a nondiscriminatory rule or code prohibits an appurtenance or
120 attachment, other than:

121 (A) a small wireless facility;

122 (B) a specialty designed informational or directional sign; or

123 (C) a temporary holiday or special event attachment; or

124 (ii) on which no appurtenance or attachment has been placed, other than:

125 (A) a small wireless facility;

126 (B) a specialty designed informational or directional sign; or

127 (C) a temporary holiday or special event attachment.

128 (15) "Design district" means an area:

129 (a) that is zoned or otherwise designated by municipal ordinance or code; and

130 (b) for which the authority maintains and enforces unique design and aesthetic
131 standards on a uniform and nondiscriminatory basis.

132 (16) "FCC" means the Federal Communications Commission of the United States.

133 (17) "Fee" means a one-time, nonrecurring charge.

134 (18) "Gross revenue" means the same as gross receipts from telecommunications
135 service is defined in Section [10-1-402](#).

136 (19) "Historic district" means a group of buildings, properties, or sites that are:

137 (a) in accordance with 47 C.F.R. Part 1, Appendix C:

138 (i) listed in the National Register of Historic Places; or

139 (ii) formally determined eligible for listing in the National Register of Historic Places
140 by the Keeper of the National Register; or

141 (b) in an historic district or area created under Section [10-9a-503](#).

142 (20) "Nondiscriminatory" means treating similarly situated entities the same absent a
143 reasonable, and competitively neutral basis, for different treatment.

144 (21) "Micro wireless facility" means a type of small wireless facility:

145 (a) that, not including any antenna, is no larger in dimension than 24 inches in length,
146 15 inches in width, and 12 inches in height;

147 (b) on which any exterior antenna is no longer than 11 inches; and

148 (c) that only provides Wi-Fi service.

149 (22) "Permit" means a written authorization an authority requires for a wireless
150 provider to perform an action or initiate, continue, or complete a project.

151 (23) "Rate" means a recurring charge.

152 (24) (a) "Right-of-way" means the area on, below, or above a public:

153 (i) roadway;

154 (ii) highway;

155 (iii) street;

156 (iv) sidewalk;

157 (v) alley; or

158 (vi) property similar to property listed in Subsections (24)(a)(i) through (v).

159 (b) "Right-of-way" does not include:

160 (i) the area on, below, or above a federal interstate highway; or

161 (ii) a fixed guideway, as defined in Section [59-12-102](#).

162 (25) "Small wireless facility" means a type of wireless facility:

163 (a) on which each wireless provider's antenna could fit within an enclosure of no more
164 than six cubic feet in volume; and

165 (b) for which all wireless equipment associated with the wireless facility, whether
166 ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume, not
167 including any:

168 (i) electric meter;

169 (ii) concealment element;

(iii) telecommunications demarcation box;

(iv) grounding equipment;

(v) power transfer switch;

(vi) cut-off switch;

(vii) vertical cable run for the connection of power or other service;

(viii) wireless provider antenna; or

(ix) coaxial or fiber-optic cable that is immediately adjacent to or directly associated with a particular collocation, unless the cable is a wireline backhaul facility.

(26) "Substantial modification" means:

(a) a proposed modification or replacement to an existing wireless support structure that will substantially change the physical dimensions of the wireless support structure under the substantial change standard established in 47 C.F.R. Sec. 1.40001(7); or

(b) a proposed modification in excess of the site dimensions specified in 47 C.F.R. Part 1, Appendix C, Sec. III.B.

(27) "Technically feasible" means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or the small wireless facility's design or site location, can be implemented without a significant reduction or impairment to the functionality of the small wireless facility.

(28) (a) "Utility pole" means a pole or similar structure that:

(i) is in a right-of-way; and

(ii) is or may be used, in whole or in part, for:

(A) wireline communications;

(B) electric distribution;

(C) lighting;

(D) traffic control;

(E) signage;

(F) a similar function to a function described in Subsections (28)(a)(ii)(A) through (E);

or

198 (G) the collocation of a small wireless facility.

199 (b) "Utility pole" does not include:

200 (i) a wireless support structure;

201 (ii) a structure that supports electric transmission lines; or

202 (iii) a municipally owned structure that supports electric lines used for the provision of
203 municipal electric service.

204 (29) (a) "Wireless facility" means equipment at a fixed location that enables wireless
205 communication between user equipment and a communications network, including:

206 (i) equipment associated with wireless communications; and

207 (ii) regardless of the technological configuration, a radio transceiver, an antenna, a
208 coaxial or fiber-optic cable, a regular or backup power supply, or comparable equipment.

209 (b) "Wireless facility" does not include:

210 (i) the structure or an improvement on, under, or within which the equipment is
211 collocated; or

212 (ii) a coaxial or fiber-optic cable that is:

213 (A) between wireless structures or utility poles;

214 (B) not immediately adjacent to or directly associated with a particular antenna; or

215 (C) a wireline backhaul facility.

216 (30) (a) "Wireless infrastructure provider" means a person that builds or installs
217 wireless communication transmission equipment, a wireless facility, or a wireless support
218 structure.

219 (b) "Wireless infrastructure provider" includes a person authorized to provide a
220 telecommunications service in the state.

221 (c) "Wireless infrastructure provider" does not include a wireless service provider.

222 (31) "Wireless provider" means a wireless infrastructure provider or a wireless service
223 provider.

224 (32) (a) "Wireless service" means any service using licensed or unlicensed spectrum,
225 whether at a fixed location or mobile, provided to the public using a wireless facility.

(b) "Wireless service" includes the use of Wi-Fi.

(33) "Wireless service provider" means a person who provides a wireless service.

(34) (a) "Wireless support structure" means an existing or proposed structure that is:

(i) in a right-of-way; and

(ii) designed to support or capable of supporting a wireless facility, including a:

(A) monopole;

(B) tower, either guyed or self-supporting;

(C) billboard; or

(D) building.

(b) "Wireless support structure" does not include a:

(i) structure designed solely for the collocation of a small wireless facility;

(ii) utility pole;

(iii) municipally owned structure that supports electric lines used for the provision of municipal electric service; or

(iv) structure owned by an energy services interlocal entity, as described in Subsection 11-13-203(4), that uses electric lines that are used for the provision of electrical service.

(35) "Wireline backhaul facility" means a facility used to transport communications by wire from a wireless facility to a communications network.

(36) (a) "Written" or "in writing" means a tangible or electronic record of a communication or representation.

(b) "Written" or "in writing" includes a communication or representation that is handwritten, typewritten, printed, photostated, photographed, or electronic.

Section 2. Section **54-21-102** is enacted to read:

54-21-102. Scope.

Nothing in this chapter:

(1) permits an entity to provide a service regulated under 47 U.S.C. Secs. 521 through 573, in a right-of-way without compliance with all applicable legal obligations;

(2) imposes a new requirement on the activity of a cable provider in a right-of-way for

254 a cable service provided in this state;

255 (3) governs:

256 (a) a pole that an electrical corporation owns or a wireless support structure that an
257 electrical corporation owns; or

258 (b) the attachment of a small wireless facility to a pole that an electrical corporation
259 owns or to a wireless support structure that an electrical corporation owns; or

260 (4) confers on an authority any new jurisdiction over an electrical corporation.

261 Section 3. Section **54-21-103** is enacted to read:

262 **54-21-103. Local authority jurisdiction.**

263 (1) Subject to Subsection (2), the provisions of this chapter, and applicable federal law,
264 an authority may continue to exercise zoning, land use, planning, and permitting authority
265 within the authority's territorial boundaries, including with respect to wireless support
266 structures and utility poles.

267 (2) An authority may exercise the authority's police-power-based regulations for the
268 management of a public right-of-way:

269 (a) on a nondiscriminatory basis to all users of the right-of-way;

270 (b) to the extent of the authority's jurisdiction; and

271 (c) consistent with state and federal law.

272 (3) An authority may impose a regulation based on the authority's police power in the
273 management of an activity of a wireless provider in a public right-of-way, if:

274 (a) to the extent the authority enforces the regulation, the authority enforces the
275 regulation on a nondiscriminatory basis; and

276 (b) the purpose of the regulation is to protect the health, safety, and welfare of the
277 public.

278 (4) An authority may adopt design standards for the installation and construction of a
279 small wireless facility or utility pole in a public right-of-way that:

280 (a) are reasonable and nondiscriminatory; and

281 (b) include additional installation and construction details that do not conflict with this

chapter, including a requirement that:

(i) an industry standard pole load analysis be completed and submitted to an authority, indicating that the utility pole, to which the small wireless facility is to be attached, will safely support the load; or

(ii) small wireless facility equipment, on new and existing utility poles, be placed higher than eight feet above ground level.

(5) (a) A wireless provider shall comply with an authority's design standards described in Subsection (4), if any, in place on the day on which the wireless provider files a permit application in relation to work for which the authority approves the permit application.

(b) An authority's obligations under this chapter may not be tolled or extended pending the adoption or modification of design standards.

(6) A wireless provider may not install a new utility pole in a public right-of-way without the authority's discretionary, nondiscriminatory, and written consent, if the public right-of-way is adjacent to a street or thoroughfare that is:

(a) not more than 60 feet wide, as depicted in the official plat records; and

(b) adjacent to single-family residential lots, other multifamily residences, or undeveloped land that is designated for residential use by zoning or deed restrictions.

(7) Nothing in this chapter authorizes the state or any political subdivision, including an authority, to:

(a) require the deployment of a wireless facility; or

(b) regulate a wireless service.

(8) Except as provided in this chapter or otherwise specifically authorized by state law, an authority may not impose or collect a tax, fee, or charge on a communications service provider authorized to operate in a right-of-way for the provision of communications service over the communications service provider's communications facilities in the right-of-way.

Section 4. Section **54-21-201** is enacted to read:

Part 2. Use of Right-of-Way for Small Wireless Facilities and Utility Poles

54-21-201. Applicability.

This part only applies to a wireless provider deploying, within a right-of-way:

(1) a small wireless facility; or

(2) a utility pole associated with a small wireless facility.

Section 5. Section **54-21-202** is enacted to read:

54-21-202. Prohibition on exclusive use.

An authority may not enter into an exclusive arrangement with any person for:

(1) use of a right-of-way for the collocation of a small wireless facility; or

(2) the installation, operation, marketing, modification, maintenance, or replacement of
a utility pole.

Section 6. Section **54-21-203** is enacted to read:

54-21-203. Right-of-way rates and fees.

(1) An authority may charge a wireless provider a rate or fee for the use of a
right-of-way to collocate a small wireless facility, or to install, operate, modify, maintain, or
replace a utility pole associated with the wireless provider's collocation of a small wireless
facility, if the authority:

(a) charges all other similarly situated wireless providers for use of the right-of-way;
and

(b) charges only the rate or fee in accordance with Part 5, Rates and Fees.

(2) An authority may, on a nondiscriminatory basis, refrain from charging a rate or fee
to a wireless provider for the use of a right-of-way.

Section 7. Section **54-21-204** is enacted to read:

54-21-204. Wireless provider right of access.

(1) Subject to the provisions of this part, along, across, upon, or under a right-of-way, a
wireless provider may, as a permitted use under the authority's zoning regulation and subject
only to administrative review:

(a) collocate a small wireless facility; or

(b) install, operate, modify, maintain, or replace:

(i) a utility pole associated with the wireless provider's collocation of a small wireless

338 facility; or

339 (ii) equipment described in Subsections 54-21-101(25)(b)(i) through (ix) required for a
340 wireless provider's collocation of a small wireless facility.

341 (2) A small wireless facility or utility pole under Subsection (1) may not:

342 (a) obstruct or hinder the usual travel or public safety on a right-of-way; or

343 (b) obstruct, damage, or interfere with:

344 (i) another utility facility in a right-of-way; or

345 (ii) a utility's use of the utility's facility in a right-of-way.

346 (3) Construction and maintenance by the wireless provider shall comply with all
347 applicable legal obligations for the protection of underground and overhead utility facilities.

348 Section 8. Section **54-21-205** is enacted to read:

349 **54-21-205. Height limitations in a right-of-way.**

350 (1) A new or modified utility pole that has a collocated small wireless facility, and that
351 is installed in a right-of-way, may not exceed 50 feet above ground level.

352 (2) An antenna of a small wireless facility may not extend more than 10 feet above the
353 top of a utility pole existing on or before September 1, 2018.

354 Section 9. Section **54-21-206** is enacted to read:

355 **54-21-206. Decorative poles.**

356 If necessary to collocate a small wireless facility, a wireless provider may replace a
357 decorative pole, if the replacement pole reasonably conforms to the design aesthetic of the
358 displaced decorative pole.

359 Section 10. Section **54-21-207** is enacted to read:

360 **54-21-207. Underground district.**

361 A wireless provider shall comply with an authority's prohibition on a communications
362 service provider installing a structure in the right-of-way in an area designated solely for
363 underground or buried cable and utility facilities, if:

364 (1) the prohibition is reasonable and nondiscriminatory; and

365 (2) the authority:

- 366 (a) (i) requires that all cable and utility facilities, other than an authority pole and
367 attachment, be placed underground; and
- 368 (ii) establishes the requirement in Subsection (2)(a)(i) more than 90 days before the day
369 on which the applicant submits the application;
- 370 (b) does not prohibit the replacement of an authority pole in the designated area; and
- 371 (c) permits a wireless provider to seek a waiver, that is administered in a
372 nondiscriminatory manner, of the undergrounding requirement for the placement of a new
373 utility pole to support a small wireless facility.

374 Section 11. Section **54-21-208** is enacted to read:

375 **54-21-208. Historic and design districts.**

376 (1) Subject to the permit process described in Section [54-21-302](#), an authority may
377 require a reasonable, technically feasible, nondiscriminatory, or technologically neutral design
378 or concealment measure in an historic district, unless the facility is excluded from evaluation
379 for effects on historic properties under 47 C.F.R. Sec. 1.1307(a)(4).

380 (2) A design or concealment measure described in Subsection (1) may not:

- 381 (a) have the effect of prohibiting a provider's technology; or
- 382 (b) be considered a part of the small wireless facility for purposes of the size
383 parameters in the definition of a small wireless facility.

384 (3) (a) A wireless provider shall obtain advance approval from an authority before
385 collocating a new small wireless facility or installing a new utility pole in an area that is zoned
386 or otherwise designated as an historic district or a design district.

387 (b) As a condition for approval of a new small wireless facility or a new utility pole in
388 an historic district or a design district, an authority may require reasonable design or
389 concealment measures for the new small wireless facility or the new utility pole.

390 (4) A wireless provider shall comply with an authority's reasonable and
391 nondiscriminatory design and aesthetic standards requiring the use of certain camouflage
392 measures in connection with a new small wireless facility in an historic district or a design
393 district, if the camouflage measures are technically and economically feasible consistent with

394 this chapter.

395 (5) This section does not limit an authority's ability to enforce historic preservation
396 zoning regulations consistent with:

397 (a) the preservation of local zoning authority under 47 U.S.C. Sec. 332(c)(7);

398 (b) the requirements for facility modifications under:

399 (i) 47 U.S.C. Sec. 1455(a); or

400 (ii) the National Historic Preservation Act of 1966, 16 U.S.C. Sec. 470 et seq.;

401 (c) the regulations adopted to implement the laws described in Subsections (5)(a) and
402 (b); and

403 (d) Section [10-9a-503](#).

404 Section 12. Section **54-21-209** is enacted to read:

405 **54-21-209. Manner of regulation.**

406 (1) An authority shall manage a wireless provider's use of a right-of-way in a
407 nondiscriminatory manner with regard to any other user of the right-of-way.

408 (2) Any term or condition an authority imposes on a right-of-way user may not:

409 (a) be unreasonable or discriminatory; or

410 (b) violate an applicable legal obligation or law.

411 Section 13. Section **54-21-210** is enacted to read:

412 **54-21-210. Damage and repair.**

413 (1) If a wireless provider's activity causes damage to a right-of-way, the wireless
414 provider shall repair the right-of-way to substantially the same condition as before the damage.

415 (2) If a wireless provider fails to make a repair required by an authority under
416 Subsection (1) within a reasonable time after written notice, the authority may:

417 (a) make the required repair; and

418 (b) charge the wireless provider the reasonable, documented, actual cost for the repair.

419 (3) If the damage described in Subsection (1) causes an urgent safety hazard, an
420 authority may:

421 (a) immediately make the necessary repair; and

(b) charge the wireless provider the reasonable, documented, actual cost for the repair.

Section 14. Section **54-21-301** is enacted to read:

Part 3. Permitting Process for Small Wireless Facilities

54-21-301. Applicability -- General.

(1) This part applies to:

(a) the collocation of a small wireless facility in a right-of-way;

(b) the collocation of a small wireless facility on a wireless support structure in a right-of-way; and

(c) the installation, modification, or replacement of a utility pole associated with a small wireless facility in a right-of-way.

(2) Except as provided in this chapter, an authority may not prohibit, regulate, or charge for the collocation of a small wireless facility.

Section 15. Section **54-21-302** is enacted to read:

54-21-302. Permitting process, requirements, and limitations.

(1) An authority may require an applicant to obtain a permit to:

(a) collocate a small wireless facility in a right-of-way; or

(b) install a new, modified, or replacement utility pole associated with a small wireless facility in a right-of-way, as provided in Section [54-21-204](#).

(2) If an authority establishes a permitting process under Subsection (1), the authority:

(a) shall ensure that a required permit is of general applicability;

(b) may not require:

(i) directly or indirectly, that an applicant perform a service or provide a good unrelated to the permit, including reserving fiber, conduit, or pole space for the authority;

(ii) an applicant to provide more information to obtain a permit than a communications service provider that is not a wireless provider or a utility, except to the extent the applicant is required to include construction or engineering drawings or other information to demonstrate the applicant's application should be not denied under Subsection (7);

(iii) the placement of a small wireless facility on a specific utility pole or category of

450 poles;
451 (iv) multiple antenna systems on a single utility pole; or
452 (v) a minimum separation distance, limiting the placement of a small wireless facility;
453 and
454 (c) may require an applicant to attest that the small wireless facility will be operational
455 for use by a wireless service provider within 270 days after the day on which the authority
456 issues the permit, except in the case that:
457 (i) the authority and the applicant agree to extend the 270-day period; or
458 (ii) lack of commercial power or communications transport infrastructure to the site
459 delays completion.
460 (3) Within 30 days after the day on which an authority receives an application for the
461 collocation of a small wireless facility or for a new, modified, or replacement utility pole, the
462 authority shall:
463 (a) determine whether the application is complete; and
464 (b) notify the applicant in writing of the authority's determination of whether the
465 application is complete.
466 (4) If an authority determines, within the applicable time period described in
467 Subsection (3), that an application is incomplete:
468 (a) the authority shall specifically identify the missing information in the written
469 notification sent to the applicant under Subsection (3)(b); and
470 (b) the processing deadline in Subsection (6) is tolled:
471 (i) from the day on which the authority sends the applicant the written notice to the day
472 on which the authority receives the applicant's missing information; or
473 (ii) as the applicant and the authority agree.
474 (5) An application for a small wireless facility expires if:
475 (a) the authority notifies the wireless provider that the wireless provider's application is
476 incomplete, in accordance with Subsection (4); and
477 (b) the wireless provider fails to respond within 90 days after the day on which the

authority notifies the wireless provider under Subsection (5)(a).

(6) (a) An authority shall:

(i) process an application on a nondiscriminatory basis; and

(ii) approve or deny an application:

(A) for the collocation of a small wireless facility, within 60 days after the day on which the authority receives the complete application; and

(B) for a new, modified, or replacement utility pole, within 105 days after the day on which the authority receives the complete application.

(b) If an authority fails to approve or deny an application within the applicable time period described in Subsection (6)(a)(ii), the application is approved.

(c) Notwithstanding Subsections (6)(a) and (b), an authority may extend the applicable period described in Subsection (6)(a)(ii) for a single additional period of 10 business days, if the authority notifies the applicant before the day on which approval or denial is originally due.

(7) An authority may deny an application to collocate a small wireless facility or to install, modify, or replace a utility pole that meets the height limitations under Section 54-21-205, only if the action requested in the application:

(a) materially interferes with the safe operation of traffic control equipment;

(b) materially interferes with a sight line or a clear zone for transportation or pedestrians;

(c) materially interferes with compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian access or movement;

(d) fails to comply with applicable laws or legal obligations;

(e) creates a public health or safety hazard; or

(f) obstructs or hinders the usual travel or public safety of the right-of-way.

(8) (a) If an authority denies an application under Subsection (7), the authority shall:

(i) document the basis for the denial, including any specific law on which the denial is based; and

506 (ii) send the documentation described in Subsection (8)(a)(i) to the applicant on or
507 before the day on which the authority denies the application.

508 (b) Within 30 days after the day on which an authority denies an application, the
509 applicant may, without paying an additional application fee:

510 (i) cure any deficiency the authority identifies in the applicant's application; and

511 (ii) resubmit the application.

512 (c) (i) An authority shall approve or deny an application revised in accordance with
513 Subsection (8)(b) within 30 days after the day on which the authority receives the revised
514 application.

515 (ii) A review of an application revised in accordance with Subsection (8)(b) is limited
516 to the deficiencies documented as the basis for denial unless the applicant has changed another
517 portion of the application.

518 (9) (a) Subject to Subsections (9)(b) and (c), if an applicant seeks to:

519 (i) collocate multiple small wireless facilities within a single authority, the authority
520 shall allow the applicant, at the applicant's discretion, to file a consolidated application for the
521 collocation of up to 25 small wireless facilities, if all of the small wireless facilities in the
522 consolidated application are:

523 (A) substantially the same type; and

524 (B) proposed for collocation on substantially the same types of structures; or

525 (ii) install, modify, or replace multiple utility poles within a single authority, the
526 authority shall allow the applicant, at the applicant's discretion, to file a consolidated
527 application for the installation, modification, or replacement of up to 25 utility poles.

528 (b) An applicant may not file within a 30-day period:

529 (i) with a category one authority, more than:

530 (A) three consolidated applications; or

531 (B) multiple applications that collectively seek permits for a combined total of more
532 than 75 small wireless facilities and utility poles; or

533 (ii) with a category two authority, more than:

534 (A) one consolidated application; or

535 (B) multiple applications that collectively seek permits for a combined total of more
536 than 25 small wireless facilities and utility poles.

537 (c) A consolidated application described in Subsection (9)(a) may not combine
538 applications solely for collocation of small wireless facilities on existing utility poles with
539 applications for the installation, modification, or replacement of a utility pole.

540 (d) If an authority denies the application for one or more utility poles, or one or more
541 small wireless facilities, in a consolidated application, the authority may not use the denial as a
542 basis to delay the application process of any other utility pole or small wireless facility in the
543 same consolidated application.

544 (10) A wireless provider shall complete the installation or collocation for which a
545 permit is granted under this part within 270 days after the day on which the authority issues the
546 permit, unless:

547 (a) the authority and the applicant agree to extend the one-year period; or

548 (b) lack of commercial power or communications facilities at the site delays
549 completion.

550 (11) Approval of an application authorizes the applicant to:

551 (a) collocate or install a small wireless facility or utility pole, as requested in the
552 application; and

553 (b) subject to applicable relocation requirements and the applicant's right to terminate
554 at any time, operate and maintain for a period of at least 10 years:

555 (i) any small wireless facility covered by the permit; and

556 (ii) any utility pole covered by the permit.

557 (12) If there is no basis for denial under Subsection (7), an authority shall grant the
558 renewal of an application under this section for an equivalent duration.

559 (13) An authority may not institute, either expressly or de facto, a moratorium on
560 filing, receiving, or processing an application, or issuing a permit or another approval, if any,
561 for:

562 (a) the collocation of a small wireless facility; or

563 (b) the installation, modification, or replacement of a utility pole to support a small
564 wireless facility.

565 (14) The approval of the installation, placement, maintenance, or operation of a small
566 wireless facility, in accordance with this chapter, does not authorize:

567 (a) the provision of a communications service in the right-of-way; or

568 (b) the installation, placement, or operation of a facility, other than the approved small
569 wireless facility, in the right-of-way.

570 Section 16. Section **54-21-303** is enacted to read:

571 **54-21-303. Exceptions to permitting.**

572 (1) Except as provided in Subsection (2), an authority may not require a wireless
573 provider to submit an application, obtain a permit, or pay a rate for:

574 (a) routine maintenance;

575 (b) the replacement of a small wireless facility with a small wireless facility that is
576 substantially similar or smaller in size; or

577 (c) the installation, placement, maintenance, operation, or replacement of a micro
578 wireless facility that is strung on a cable between existing utility poles, in compliance with the
579 National Electrical Safety Code.

580 (2) (a) An authority may require a wireless provider to obtain a permit in accordance
581 with Section [72-7-102](#) for work that requires excavation or closing of sidewalks or vehicular
582 lanes in a public right-of-way.

583 (b) If an authority requires a permit under Subsection (2)(a), the authority shall process
584 and approve the permit within the same time period the authority processes and approves a
585 permit for all other types of entities.

586 (3) (a) An authority may require advance notice of an activity described in Subsection
587 (1).

588 (b) A wireless provider may replace or upgrade a utility pole only with the approval of
589 the utility pole's owner.

Section 17. Section **54-21-401** is enacted to read:

Part 4. Access to Authority Poles Within a Right-of-Way

54-21-401. Applicability.

This part applies to activities of a wireless provider within a right-of-way.

Section 18. Section **54-21-402** is enacted to read:

54-21-402. Prohibition on exclusive use.

(1) A person owning, managing, or controlling an authority pole in a right-of-way may not enter into an exclusive arrangement with a person for the right to collocate a small wireless facility to the authority pole.

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

(3) An authority shall allow the collocation of a small wireless facility on an authority pole in a right-of-way:

(a) as provided in this chapter; and

(b) subject to the permitting process in Part 3, Permitting Process for Small Wireless Facilities.

Section 19. Section **54-21-403** is enacted to read:

54-21-403. Rates.

The rate to collocate a small wireless facility on an authority pole:

(1) shall be nondiscriminatory, regardless of the service provided by the collocating person; and

(2) is provided in Part 5, Rates and Fees.

Section 20. Section **54-21-501** is enacted to read:

Part 5. Rates and Fees

54-21-501. Applicability.

This part governs an authority's rates and fees for the placement in a right-of-way of:

(1) a small wireless facility; or

(2) a utility pole associated with a small wireless facility.

Section 21. Section **54-21-502** is enacted to read:

54-21-502. Right-of-way rates.

(1) Except as described in Subsection (2), an authority may not require a wireless provider to pay any rate, fee, or compensation to the authority, or to any other person, beyond what is expressly authorized in this chapter, for the right to use or occupy a right-of-way:

(a) for the collocation of a small wireless facility on a utility pole in the right-of-way;

or

(b) for the installation, operation, modification, maintenance, or replacement of a utility pole in the right-of-way.

(2) (a) An authority may charge a wireless provider a rate for the right to use or occupy a right-of-way as described in Subsection (1), if, except as provided in Subsection 54-21-601(6), the rate is:

(i) fair and reasonable;

(ii) competitively neutral;

(iii) nondiscriminatory;

(iv) directly related to the wireless provider's actual use of the right-of-way; and

(v) not more than the greater of:

(A) 3.5% of all gross revenue related to the wireless provider's use of the right-of-way for small wireless facilities; or

(B) \$250 annually for each small wireless facility.

(b) A wireless provider subject to a rate under this Subsection (2) shall remit payments to the authority on a monthly basis.

(c) A rate charged in accordance with Subsection (2)(a)(v) is presumed to be fair and reasonable.

(3) Notwithstanding Subsection (2), an authority may not require a wireless provider to pay an additional rate, fee, or compensation for the right to use or occupy a right-of-way as described in Subsection (1), if the wireless provider is subject to the municipal telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal

Telecommunications License Tax Act.

Section 22. Section **54-21-503** is enacted to read:

54-21-503. Application fees.

(1) An authority may charge an application fee, if:

(a) a similar fee is required for similar types of commercial development or construction within the authority's jurisdiction;

(b) the costs to be recovered by an application fee are not already recovered by existing fees, rates, licenses, or taxes paid by the wireless provider; and

(c) the fee does not include:

(i) travel expenses incurred by a third party in review of an application; or

(ii) payment or reimbursement of a third-party rate or fee charged on a contingency basis or a result-based arrangement.

(2) Subject to Subsection (3), an application fee for collocation of a small wireless facility is limited to the cost of granting a building permit for similar types of commercial development or construction within the authority's jurisdiction.

(3) An application fee for the collocation of a small wireless facility on an existing or replacement utility pole may not exceed \$100 for each small wireless facility on the same application.

(4) If the activity is a permitted use described in Section [54-21-204](#), an application fee may not exceed \$250 per application to install, modify, or replace a utility pole associated with a small wireless facility.

(5) If the activity is not a permitted use described in Section [54-21-204](#), an application fee may not exceed \$1,000 per application to:

(a) install, modify, or replace a utility pole; or

(b) install, modify, or replace a new utility pole associated with a small wireless facility.

Section 23. Section **54-21-504** is enacted to read:

54-21-504. Authority pole collocation rate.

The rate to collocate a small wireless facility on an authority pole is \$50 per year, per authority pole.

Section 24. Section **54-21-601** is enacted to read:

Part 6. Implementation

54-21-601. General.

(1) An authority may, to the extent allowed by law and consistent with this chapter, establish rates, fees, and other terms that comply with this chapter by:

(a) implementing an ordinance; or

(b) if applicable, executing an agreement with a wireless provider.

(2) In the absence of an ordinance or agreement that fully complies with this chapter, a wireless provider may install and operate a small wireless facility or a utility pole associated with a small wireless facility:

(a) subject to Section [54-21-602](#); and

(b) under the requirements of this chapter.

(3) An authority may establish an ordinance or require an agreement to implement this chapter.

(4) (a) Subject to Subsection (4)(b), an authority may require a wireless provider to agree to reasonable and nondiscriminatory indemnification, insurance, or bonding requirements before a wireless provider collocates a small wireless facility in a right-of-way.

(b) An authority may not impose on a wireless provider an indemnification requirement described in Subsection (4)(a) that requires the wireless provider to indemnify the authority for the authority's negligence.

(5) An authority's obligations under this chapter may not be tolled or extended pending the implementation of an ordinance or negotiation of an agreement to implement this chapter.

(6) (a) Nothing in this section prohibits an authority from entering into a written, nondiscriminatory agreement with one or more wireless providers to jointly test certain traffic-related functions, or other technology related to research, using specified assets of the authority or the wireless providers.

(b) An agreement described in Subsection (6)(a) may:

(i) waive certain fees the participating wireless provider would otherwise be required to pay to the authority; or

(ii) allow the participating wireless provider to pay certain fees in cash, in-kind compensation, or in a combination of cash and in-kind compensation.

Section 25. Section **54-21-602** is enacted to read:

54-21-602. Noncompliant agreements and ordinances.

(1) An agreement or ordinance that does not fully comply with this chapter and applies to a small wireless facility or a utility pole that is operational or installed before May 11, 2018:

(a) may not be renewed or extended unless the agreement is modified to fully comply with this chapter; and

(b) is invalid and unenforceable beginning November 8, 2018, unless the agreement or ordinance is modified before November 8, 2018, to fully comply with this chapter.

(2) An agreement or ordinance entered into or passed before May 11, 2018, that does not fully comply with this chapter and applies to a small wireless facility or a utility pole that was not operational or installed before May 11, 2018, is invalid and unenforceable:

(a) beginning May 11, 2018; and

(b) until the agreement or ordinance is modified to fully comply with this chapter.

(3) If an agreement or ordinance is invalid in accordance with this section, until an agreement or ordinance that fully complies with this chapter is entered or adopted:

(a) a small wireless facility or a utility pole that is operational or installed before May 11, 2018, may remain installed and operate under the requirements of this chapter; and

(b) a small wireless facility or utility pole may become operational or be installed in the right-of-way on or after May 11, 2018, under the requirements of this chapter.

Section 26. Section **54-21-603** is enacted to read:

54-21-603. Relocation.

(1) Notwithstanding any provision to the contrary, an authority may require a wireless provider to relocate or adjust a small wireless facility in a public right-of-way:

(a) in a timely manner; and

(b) without cost to the authority owning the public right-of-way.

(2) The reimbursement obligations under Section 72-6-116(3)(b) do not apply to the relocation of a small wireless facility.

Section 27. Section **72-6-116** is amended to read:

72-6-116. Regulation of utilities -- Relocation of utilities.

(1) As used in this section:

(a) "Cost of relocation" includes the entire amount paid by the utility company properly attributable to the relocation of the utility after deducting any increase in the value of the new utility and any salvage value derived from the old utility.

(b) "Utility" includes telecommunication, gas, electricity, cable television, water, sewer, data, and video transmission lines, drainage and irrigation facilities, and other similar utilities whether public, private, or cooperatively owned.

(c) "Utility company" means a privately, cooperatively, or publicly owned utility, including utilities owned by political subdivisions.

(2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules for the installation, construction, maintenance, repair, renewal, system upgrade, and relocation of all utilities.

(b) If the department determines under the rules established in this section that it is necessary that any utilities should be relocated, the utility company owning or operating the utilities shall relocate the utilities in accordance with this section and the order of the department.

(3) (a) The department shall pay 100% of the cost of relocation of a utility to accommodate construction of a state highway project, including the construction of a proposed state highway and the improvement, widening, or modification of an existing state highway if the:

(i) utility is owned or operated by a political subdivision of the state;

(ii) utility company owns the easement or fee title to the right-of-way in which the

utility is located; or

(iii) utility is located in a public utility easement as defined in Section 54-3-27.

(b) Except as provided in Subsection (3)(a) or (c) or Section 54-21-603, the department shall pay 50% of the cost of relocation of a utility to accommodate construction of a state highway project, including the construction of a proposed state highway and the improvement, widening, or modification of an existing state highway, and the utility company shall pay the remainder of the cost of relocation.

(c) This Subsection (3) does not affect the provisions of Subsection 72-7-108(5).

(4) If a utility is relocated, the utility company owning or operating the utility, its successors or assigns, may maintain and operate the utility, with the necessary appurtenances, in the new location.

(5) In accordance with this section, the cost of relocating a utility in connection with any project on a highway is a cost of highway construction.

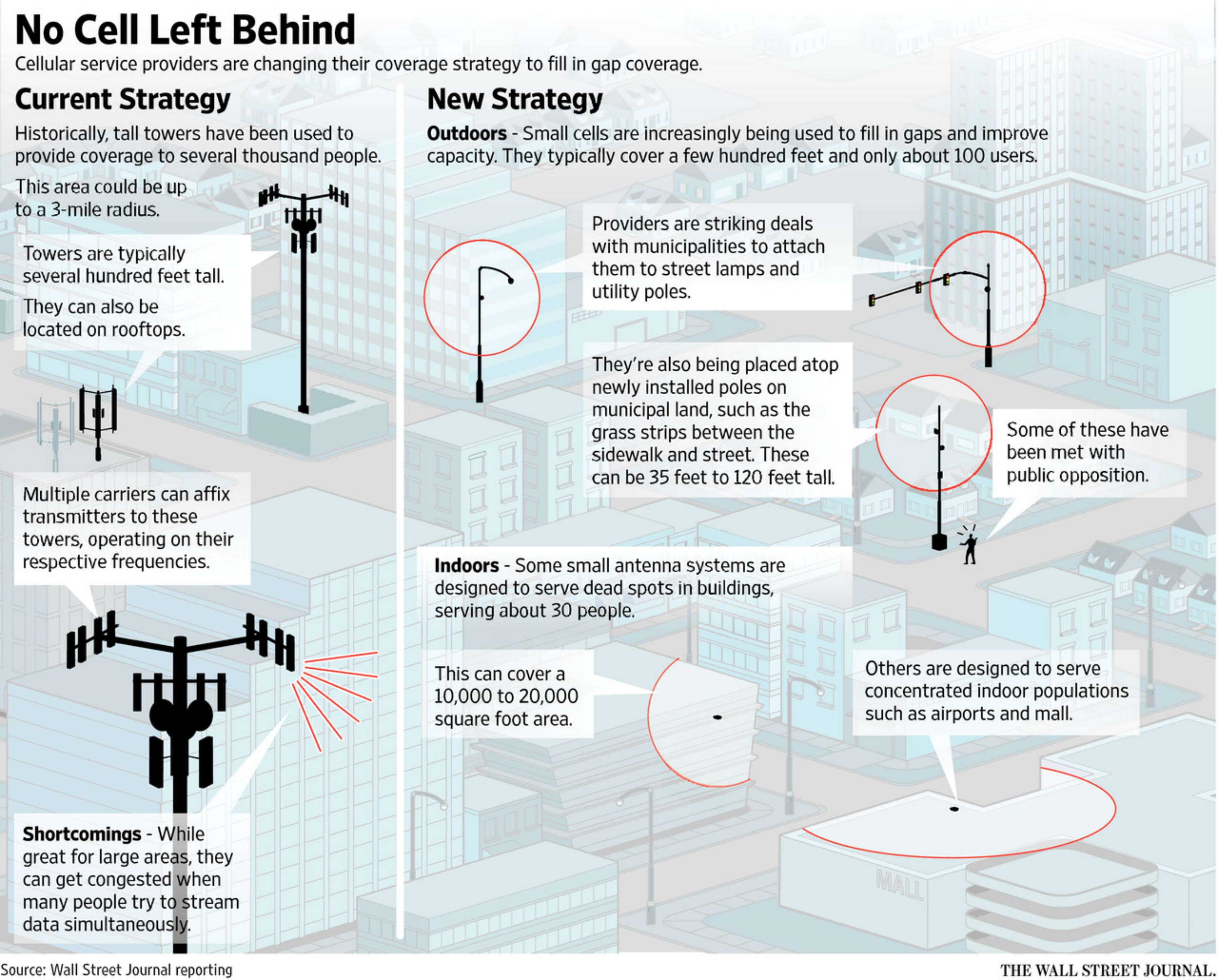
(6) (a) The department shall notify affected utility companies, in accordance with Section 54-3-29, whenever the relocation of utilities is likely to be necessary because of a reconstruction project.

(b) The notification shall be made during the preliminary design of the project or as soon as practical in order to minimize the number, costs, and delays of utility relocations.

(c) A utility company notified under this Subsection (6) shall coordinate and cooperate with the department and the department's contractor on the utility relocations, including the scheduling of the utility relocations.

Section 28. **Effective date.**

This bill takes effect on September 1, 2018.



No Cell Left Behind

Cellular service providers are changing their coverage strategy to fill in gap coverage.

Current Strategy

Historically, tall towers have been used to provide coverage to several thousand people.

This area could be up to a 3-mile radius.

Towers are typically several hundred feet tall.

They can also be located on rooftops.

Multiple carriers can affix transmitters to these towers, operating on their respective frequencies.

Shortcomings - While great for large areas, they can get congested when many people try to stream data simultaneously.

New Strategy

Outdoors - Small cells are increasingly being used to fill in gaps and improve capacity. They typically cover a few hundred feet and only about 100 users.

Providers are striking deals with municipalities to attach them to street lamps and utility poles.

They're also being placed atop newly installed poles on municipal land, such as the grass strips between the sidewalk and street. These can be 35 feet to 120 feet tall.

Indoors - Some small antenna systems are designed to serve dead spots in buildings, serving about 30 people.

This can cover a 10,000 to 20,000 square foot area.

Others are designed to serve concentrated indoor populations such as airports and mall.

Some of these have been met with public opposition.



CITY COUNCIL TRANSMITTAL



Patrick Leary, Chief of Staff

Date Received: May 3, 2018
Date sent to Council: May 3, 2018

TO: Salt Lake City Council
Erin Mendenhall, Chair

DATE:

FROM: Mike Reberg, Department of Community & Neighborhoods Director


SUBJECT: Extenet Master License Agreement for Small Cell Installation in the Right-of-Way

STAFF CONTACT: Melissa Jensen, Director Housing & Neighborhood Development
801-535-6035 – melissa.jensen@slcgov.com;
Dan Rip, Real Property Manager, Housing & Neighborhood Development
801-535-6308 – daniel.rip@slcgov.com;
Kimberly Chytraus, City Attorney's Office
801-535-7683 – kimberly.chytraus@slcgov.com

DOCUMENT TYPE: Ordinance

RECOMMENDATION: Pass an Ordinance approving the Master License Agreement with Extenet for small cell installation in the right-of-way.

BUDGET IMPACT: None

BACKGROUND/DISCUSSION: Extenet has applied for a new, non-exclusive Master License Agreement to access Salt Lake City rights-of way to install small cell infrastructure for wireless provider clients, which will allow a wireless carrier to increase its wireless capacity in installation areas. This will be the first Master License Agreement granted by the City to allow small cell providers to install and maintain small cell infrastructure within the City rights-of-way, subject to conditions in the agreement and after securing specific site approvals. The Master License Agreement also requires payment for the grant of access to the City's right-of-way. Current City ordinance allows the installation of antennas in the rights-of-way on utility poles owned by third parties (i.e. Rocky Mountain Power and Century Link). Extenet and the City

have negotiated the terms of the proposed Master License Agreement, attached as Exhibit “A” to the proposed Ordinance.

Additionally, please refer to the written briefing submitted by City staff describing small cell technology, outlining its impact on City infrastructure, the requirements of current City ordinances, and a proposal for allowing such technology to be installed in the rights-of-way through a Master License Agreement (in a similar form to, and process for, a franchise agreement).

The Master License Agreement was negotiated prior to the 2018 legislative session. Accordingly, the parties acknowledge that new Utah law becomes effective September 1 and there may be updated City ordinances and regulations that will govern installation of small cell infrastructure. The parties agree that to the extent the MLA is not consistent with new state law or city ordinances and regulations, that they will amend the MLA by November 1, 2018. The Ordinance authorizes the administration to negotiate the MLA and enter into such amendment.

PUBLIC PROCESS: None

EXHIBITS: Copy of Master License Agreement

SALT LAKE CITY ORDINANCE
No. __ of 2018

(Granting a Master License Agreement for Right-of-Way
Access to ExteNet Systems, Inc.)

WHEREAS, ExteNet Systems, Inc., a Delaware corporation (the “Company”) desires to install equipment to provide third party broadband wireless services within Salt Lake City, Utah (the “City”), and in connection therewith to establish a network in, under, along, over, and across present and future streets, alleys and rights-of-way of the City, consisting of antennas, telecommunication lines and cables, radios, and conduit, together with all necessary and desirable appurtenances, for the operation of a wireless broadband small cell network for communication services; and

WHEREAS, the City, in the exercise of its police power, ownership, use or rights over and in the public rights-of-way, and pursuant to its other regulatory authority, believes it is in the best interest of the public to provide to the Company, and its successors, access rights pursuant to a non-exclusive license agreement to operate its business within the City; and

WHEREAS, the City and the Company propose to enter into a Master License Agreement for Right-of-Way Access the substantially final form of which has been presented to the City Council at the meeting at which this Ordinance is being considered for adoption; and

WHEREAS, the City desires to approve the execution and delivery of such Master License Agreement for Right-of-Way Access and to otherwise take all actions necessary to grant the referenced rights to the Company; and

WHEREAS, the City believes this Ordinance to be in the best interest of the citizens of the City.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah, as follows:

SECTION 1. Purpose. The purpose of this Ordinance is to grant to the Company, and its successors and assigns, a non-exclusive right to use the present and future streets, alleys, viaducts, bridges, roads, lanes and public way within and under control of the City for its business purposes, under the constraints and for the compensation enumerated in the substantially final form of the Master License Agreement for Right-of-Way Access attached hereto as Exhibit A, and by this reference incorporated herein, as if fully set forth herein (the “Master License Agreement”).

SECTION 2. Short Title. This Ordinance shall constitute the ExteNet Small Cell Master License Ordinance.

SECTION 3. Grant of Access Rights. The administration is hereby authorized to negotiate and execute the Master License Agreement reflecting the terms of this Ordinance and incorporating such other terms and agreements as recommended by the City Attorney’s Office, and if needed, amend the Master License Agreement as contemplated therein. There is hereby granted to the Company, and its successors and assigns, in accordance with the terms and conditions of the Master License Agreement, the right and privilege, to construct, maintain and operate in, under, along, over and across the present and future streets, alleys, and rights-of-way and other property of the City, all as more particularly described in the Master License Agreement.

SECTION 4. Term. The term of the Master License Agreement is for a period of five years from and after the recordation of this Ordinance with the Salt Lake City Recorder’s Office,

with a renewal of an additional five year term. The Company shall pay all costs of publishing this Ordinance.

SECTION 5. Acceptance by Company. Within thirty (30) days after the effective date of this Ordinance, the Company shall execute the Master License Agreement; otherwise, this Ordinance and the rights granted hereunder shall be null and void.

SECTION 6. No revocation or termination may be effected until the City Council shall first adopt an ordinance terminating the Master License Agreement and setting forth the reasons therefor, following not less than thirty (30) days prior written notice to the Company of the proposed date of the ordinance adoption. The Company shall have an opportunity on said ordinance adoption date to be heard upon the proposed termination.

SECTION 7. This Ordinance shall take effect immediately upon publication.

Passed by the City Council of Salt Lake City, Utah, this ____ day of _____, 2018.

CHAIRPERSON

ATTEST:

CHIEF DEPUTY CITY RECORDER

Transmitted to Mayor on _____.
Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

ATTEST:

CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. _____ of 2018.
Published: _____.
HB_ATT-#67508-v1

Salt Lake City Attorney's Office Approved As To Form By: <u>Kimberly K. Chytraus</u> Kimberly K. Chytraus Date: <u>April 27, 2018</u>

EXHIBIT “A”

MASTER LICENSE AGREEMENT

MASTER LICENSE AGREEMENT FOR RIGHT OF WAY ACCESS

THIS MASTER LICENSE AGREEMENT FOR RIGHT OF WAY ACCESS (this “**Agreement**”), dated as of its date of recordation with the Salt Lake City Recorder (the “**Effective Date**”), by and between SALT LAKE CITY CORPORATION, a Utah municipal corporation (the “**City**”), and EXTENET SYSTEMS, INC., a Delaware corporation (the “**Company**”).

RECITALS

A. The Company desires a non-exclusive agreement to install, at its sole cost and expense, a network of Facilities within the boundaries of Salt Lake City, Utah, and to utilize Salt Lake City rights-of-way for such purpose, in order to provide third party broadband wireless service and expand the available data transmission bandwidth for mobile devices.

B. The City owns or controls such rights of way and has agreed to grant access to the Company in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration and, further, in contemplation of subsequent approval by legislative action of the City Council as hereinafter provided, the parties mutually agree as follows:

ARTICLE 1 ORDINANCE

1.1 Defined Terms. All capitalized terms not otherwise defined herein have the meanings given them on Schedule 1 attached hereto and incorporated herein.

1.2 Ordinance. The City Council has adopted an ordinance entitled ExteNet Small Cell Master License Ordinance (the “**Ordinance**”), approving the execution of this Agreement. Execution of this Agreement constitutes the unqualified acceptance of the Ordinance by the Company. Such Ordinance is incorporated herein by reference, and made an integral part of this Agreement.

1.3 Description. The Ordinance confers upon the Company, and its successors and assigns, the non-exclusive right, privilege, and access (the “**Access Rights**”), subject to the terms of this Agreement, to construct, install, maintain, repair, replace, modify, relocate, remove, and operate the Company Facilities in, under, along, over, across, and through portions of the Right-of-Way and attach Company Facilities to a Permitted Structure in the Right-of-Way, as described in this Agreement. The Company Facilities shall be used for a Permitted Use and located pursuant to a Site Approval (each as defined below). This Agreement does not grant to Company any interest in any property.

1.4 Term. The term of the Agreement is for a period from and after the date hereof, until five years from the Effective Date, which shall renew automatically for one additional five year term, provided that there is not any uncured event of default by either party, unless Company

notifies City in writing of its intent to not renew this Agreement at least three months prior to the expiration of the term.

ARTICLE 2 SITE APPROVAL

2.1 Application and Review.

(a) For the application to locate any Company Facilities within the Right-of Way via a Permit to Work in the Right-of-Way (each, a “**Permit Application**”), the form of which will be determined by City, Company shall submit a map showing the intended location(s) of the Company Facilities, representative drawings or pictures of the intended Company Facilities, and proposed engineering and construction plans and drawings that meet or exceed the requirements of City (including Salt Lake City Code) along with the other requirements of this Agreement. Company and City shall cooperate as necessary to reasonably mutually agree on the designs and construction plans. Company shall comply with the reasonable design standards required by City. One Permit Application shall be submitted for each proposed location, unless otherwise agreed by City. An approved Permit Application shall be deemed a “**Site Approval**” for purposes of this Agreement and is subject to the terms and conditions of this Agreement.

(b) Company must obtain the relevant City permits in connection with each Site Approval and prior to installation of any Company Facility. No Company Facilities shall be installed or the installation thereof commenced on any Permitted Structure until the proposed location, specifications and manner of installation thereof are set forth and approved by the City pursuant to this Agreement and applicable law.

(c) The Permit Application shall include evidence of permission from the entity or entities which own or otherwise legally control any existing Permitted Structure that Company may install Company Facilities on such Permitted Structure. This evidence of permission shall be a condition to receiving any City permit and Site Approval. In addition, payment of any fees or costs charged by the Permitted Structure owner is a condition to receiving Site Approval and any permits.

(d) Company represents and warrants that Company, on behalf of itself, a wholly owned subsidiary of Company, or third party user of Company Facilities, is authorized to provide wireless broadband services on Company Facilities within Salt Lake City. Acceptable evidence of such authorization includes a letter of authorization from the user of Company Facilities or something similar that is reasonably acceptable to City. Company may not obtain a Site Approval or permits, or build Company Facilities, on a speculative basis without an agreement between the Company and a broadband wireless services provider that will use the Company Facilities upon completion of installation.

(e) Company shall be responsible for obtaining any electrical power service to the Company Facilities, and shall include electrical service location and construction plans with a Permit Application. City shall not be liable for any stoppages or shortages or electrical power.

(f) Company shall be responsible for obtaining access and connection to fiber optic lines or other backhaul solutions that may be required for its Company Facilities, and shall include location and construction plans with a Permit Application.

(g) The Company Facilities shall be concealed or enclosed as much as possible in an equipment box, cabinet, or other unit that may include ventilation openings. External cables and wires hanging off a pole shall be sheathed or enclosed in a conduit, so that wires are protected and not visible or visually minimized to the extent possible.

(h) For any addition, removal, or alteration of any kind to any Company Facilities, including altering their camouflaging or appearance, Company shall submit a request to modify the respective Site Approval and must receive City approval of such modifications prior to making such modifications, except for routine maintenance or replacement of an existing Company Facility with equipment that (1) has identical dimensions and appearance or smaller dimensions and a less intrusive appearance, and (2) does not require any additional permit or plan approval from the City.

(i) Company will use its best efforts to design Company Facilities to be aesthetically acceptable and unobtrusive as possible, as determined by City, and install Company Facilities in an unobtrusive manner that minimizes and mitigates anticipated detrimental effects of Company Facilities without interfering with, impairing or diminishing the function of Company Facilities.

(j) Any Company Facility that is not subject to a Site Approval, does not receive the required permits, or does not meet the specifications of this Agreement or the Site Approval, shall be deemed unauthorized. City may cause Company to remove any unauthorized facilities upon 30 days' written notice at Company's cost and expense, or following the 30 day-period may remove such facilities and will invoice Company for the cost of such removal.

2.2 Annual Plans. Company shall provide to City a two-year non-binding forecast for installations and location needs within the City, and shall update such forecast as there are material changes on an annual basis.

ARTICLE 3 FEES

3.1 Access Fee.

(a) For and in consideration of the Access Rights, and as fair and reasonable compensation to the City for the use by the Company of the Right-of-Way, the Company will pay to the City an annual fee equal to 3.5% of Gross Revenue (the "**Access Fee**"). In the event that revenue cannot be specifically identified to be generated from individual Company Facilities, Company will calculate the Access Fee based upon the total Gross Revenue generated by the Company's network within the boundaries of Salt Lake City.

(b) The Access Fee is being charged in lieu of the Telecom Tax, as it is currently understood by the Parties that such Tax is inapplicable to the types of services being provided by

Company, which are anticipated to consist of the sale of wholesale bandwidth to carriers and not sales to consumers. Company hereby waives any argument that the imposition of the Access Fee is a violation of the provisions or limitations of the Telecom Tax Act. If it is determined that the Telecom Tax Act is applicable then the parties will amend this Agreement to provide that any tax, applicable fees, and other reports are provided or paid by the Company consistent with the City's ordinances, rules, and regulations for other similar uses of the Right-of-Way.

(c) With the payment of each annual Access Fee, Company shall include a report indicating the Gross Revenue upon which the Access Fee is calculated and a description, of reasonable specificity, of the Facilities which have generated the revenue upon which the Access Fee is based. In the event the Telecom Tax is imposed, the Company shall annually prepare and deliver to the City a report summarizing Company payments to the Utah State Tax Commission for the requested period. Such report shall include such information related to such payment as the City shall reasonably request, including by way of example, and not limitation, the gross receipts of the Company from telecommunications service that are attributed to the City during such period, and the methodology for calculating such gross receipts.

(d) The records of the Company pertaining to the reports and payment required in this Agreement, including but not limited to any records deemed necessary or useful by the City to calculate or confirm Gross Revenue, and all other records of the Company reasonably required by the City to assure compliance by the Company with the terms of this Agreement ("**Company Confidential Information**"), shall be open to inspection by the City and its duly authorized representatives upon reasonable notice at all reasonable business hours of the Company. The Company may require such inspection to be performed at any Company Facilities where such Company Confidential Information may be located; provided that in the event such Company Confidential Information is not located at Company Facilities within the City, such Company Confidential Information shall be delivered by the Company for inspection by the City at the address of the City set forth herein. Company acknowledges that City is subject to the requirements of GRAMA as provided for in Section 12.4 below. City may disclose Company Confidential Information to its employees, officers, directors, consultants, advisors and agents (collectively, "**Representatives**") to the extent reasonably necessary to carry out the inspection; provided, however, that such Representatives are informed of the confidential nature of the Company Confidential Information, and are bound by confidentiality obligations no less stringent than those set forth herein.

3.2 Attachment Fee. Company will pay to City, as fair and reasonable consideration to the City for the attachment by the Company to a Permitted Structure in the Right-of-Way, an annual attachment fee per Permitted Structure (the "**Attachment Fee**") for one attachment of Company Facilities (including a strand mounted attachment), which includes one radio, one antenna, and one meter (if attached to the Permitted Structure), or their functional equivalent.

(a) The Attachment Fee to attach to a Utility Pole shall be \$200 per pole.

(b) The Attachment Fee to attach to a City-owned Permitted Structure shall be an amount to be determined by the City.

(c) The Attachment Fee to place a Company-owned Permitted Structure in the Right-of-Way and attach to it Company Facilities shall be an amount to be determined by the City.

3.3 Ground Equipment Fee. Company will pay to City, as fair and reasonable consideration to City for the location of any ground mounted equipment in the Right-of-Way, such as a meter, node, or similar equipment, an annual fee of \$200 per ground mounted equipment installation (the “**Ground Equipment Fee**”). The size of such ground equipment shall comply with the permitted size of a ground mounted utility box as set forth in Salt Lake City Code.

3.4 Administrative Fee. Upon execution of this Agreement, the Company will pay to the City, upon execution and delivery hereof, a one-time administrative fee of \$5,000, which shall compensate the City for (but which does not exceed), the direct costs and expenses incurred by the City in preparing, considering, approving, executing and implementing the Ordinance and this Agreement.

3.5 Other Fees. Company shall also pay any reasonable fees or costs, including outside engineering and consulting fees, charged by City or Permitted Structure owner and associated with obtaining a Site Approval and any related permits or approvals, and any other ad valorem taxes, special assessments or other lawful obligations of the Company to the City.

3.6 Fee Payment. Company will pay the Access Fee, Attachment Fee, and Ground Equipment Fee (collectively, the “**Small Cell Fees**”) annually on or before the anniversary of the Effective Date. The Small Cell Fees are payable to the Department of Real Estate Services at the address for City. Any Small Cell Fee paid after the due date shall incur 12% annual interest, compounded daily from the due date until payment is received on the amount due. If Company holds over past the expiration of this Agreement, each of the Small Cell Fees shall increase to 150% of the most recent respective Small Cell Fees paid monthly. Payment of a hold over fee does not extend or renew this Agreement.

ARTICLE 4 COMPANY USE OF RIGHT-OF-WAY

4.1 Permitted Use; Installation; Maintenance. The Company Facilities shall be used for a Permitted Use and subject to the respective Site Approval and this Agreement. Each location of Company Facilities requires a Site Approval. Company shall install the Company Facilities in a good and workmanlike manner and in accordance with the requirements of the City. Company’s work shall be subject to the regulation, control, and direction of the City. If Company fails to install and operate Company Facilities within twelve (12) months following receipt of a Site Approval, then the respective Site Approval shall be revoked and Company will be required to reapply. During the Term, Company shall maintain, repair, and keep in good condition the Company Facilities, reasonable wear and tear excepted.

4.2 Rights to Access and Use Right-of-Way.

(a) The Company shall have the right to use a portion of a Right-of-Way in the precise location described in the Site Approval to locate and install Company Facilities on a Permitted

Structure, subject to the terms and conditions of this Agreement.

(b) The rights granted to the Company herein do not include the right to (i) excavate in, occupy or use any City park, recreational areas or other property owned by the City (or regulated by the City, such as riparian areas of water source protection areas), or (ii) attach or locate any of the Company Facilities to or on, or otherwise utilize any of, any City-owned property, facilities, or structures, including without limitation light poles, traffic signal lights, towers, buildings, and trees, except as may be a Permitted Structure.

4.3 Company Duty to Relocate. Whenever the City shall require the relocation or reinstallation of any of the Company Facilities situated within the Right-of-Way, it shall be the obligation of the Company and at Company's sole cost and expense, to commence the removal of the respective Company Facilities within 60 days of receipt of notice to relocate as may be reasonably necessary to meet the requirements of the City. The Company's relocation may be required by the City for any lawful purpose, including, without limitation, the resolution of existing or anticipated conflicts or the accommodation of any conflicting uses or proposed uses of the Right-of-Way, whether such conflicts arise in connection with a City project or a project undertaken by some other person or entity, public or private. The City will cooperate with the Company to provide alternate space where available, within the Right-of-Way. The new location shall be subject to obtaining a Site Approval. Such relocation shall be accomplished by the Company at no cost or expense to the City. In the event the relocation is ordered to accommodate the facilities of an entity other than City or Company, the cost and expense of such relocation shall be borne by such other entity.

4.4 Approval to Move Company Property; Emergency Exception. Except as otherwise provided herein, the City shall not, without the prior written approval of the Company, intentionally alter, remove, relocate or otherwise interfere with any portion of the Company Facilities. Any written approval request shall be promptly reviewed (within 30 days) and processed by the Company and approval shall not be unreasonably withheld, conditioned, or delayed. However, if it becomes necessary, in the reasonable judgment of City, to move any of the Company Facilities because of a fire, flood, emergency, earthquake disaster or other imminent and material threat thereof, or to relocate any portion of the Company Facilities upon the Company's failure to do so following a written request by the City under Section 4.3 hereof, these acts may be done by the City without prior written approval of the Company at the Company's sole cost and expense.

4.5 Duty to Underground. It is the policy of the City to have lines and cables placed underground to the greatest extent reasonably practicable. In furtherance of this policy, the Company will place newly constructed lines and cables underground whenever practicable when building in (i) new residential subdivision areas, if required by subdivision regulations adopted by the City, and (ii) within the Central Business District of the City. In addition, the Company shall locate wires, cables, or other facilities that are not required to be above ground underground in the manner provided by the City. Any request by Company for location of any overhead or aerial facilities (other than the antennas or other facilities required to remain above ground in order to be functional) shall be considered by City in accordance with this policy and applicable rules and regulations.

4.6 Compliance with Rules and Regulations and Applicable Laws. Company Facilities located on, upon, over or under the Right-of-Way shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with such lawful rules and regulations as the City may issue. The Company shall acquire, and pay any fees with respect to, such permits as may be required by such rules and regulations, and the City may inspect the manner of such work and require remedies as may be necessary to assure compliance. All Company Facilities installed or used pursuant to this Agreement shall be used, constructed, repaired, replaced, and maintained in accordance with applicable federal, state and City laws, rules, and regulations, including without limitation environmental laws, now existing or from time to time adopted or promulgated.

4.7 Hazardous Materials. Company shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to, or from any Right-of-Way except in compliance with all applicable environmental laws and pre-approved by City. Company shall promptly reimburse City for any fines or penalties levied against City because of Company's failure to comply with environmental laws. The provisions of this Section 4.7 shall survive the termination or expiration of this Agreement.

4.8 Location to Minimize Interference. All Company Facilities shall be reasonably located so as to cause minimum interference with the use of the Right-of-Way by others, with City or public operations, with the rights of the owners of property which abuts any portion of the Right-of-Way, and pursuant to FCC regulations.

4.9 Repair Damage. If during the course of work on Company Facilities, the Company causes damage to or alters any portion of the Right-of-Way, Permitted Structure, or any City facilities or other public property or facilities, the Company shall (at its own cost and expense and in a manner reasonably approved by City), replace and restore such portion of the Right-of-Way, Permitted Structure, or any City facilities or other public or private property or facilities, in accordance with applicable City ordinances, policies and regulations relating to repair work of similar character. If Company does not complete such work within a reasonable time frame set by City, the City may complete such work and bill Company for the cost and expense, to be paid within 30 days' following the date of an invoice for such work.

4.10 Guarantee of Repairs. For a period of three years following the completion of any work by Company in the Right-of-Way or any repair work by Company performed pursuant to Section 4.9 above, the Company shall maintain, repair, and keep in good condition those portions of the Right-of-Way, Permitted Structures, property, or facilities restored, repaired or replaced by Company, to the reasonable satisfaction of the City Engineer, reasonable wear and tear excepted.

4.11 Safety Standards. The Company's work, while in progress, shall be properly protected at all times with suitable barricades, flags, lights, flares, or other devices in accordance with applicable safety regulations or standards imposed by law.

4.12 Inspection by the City. The Company Facilities shall be subject to inspection by the City to assure compliance by the Company with the terms of this Agreement. Company shall pay any fees charged or costs or expenses incurred by City in connection with such inspections.

4.13 Company's Duty to Remove Company Facilities from the Right-of-Way.

(a) Subject to subsection (c) below, the Company shall remove from the Right-of-Way all or any part of the Company Facilities, when one or more of the following conditions occur:

(i) The Company ceases to operate such Company Facilities for a continuous period of 30 days, except when the cessation of service is a direct result of a natural or man-made disaster;

(ii) The construction or installation of such Company Facilities does not meet the requirements of this Agreement or the Site Approval; or

(iii) The Agreement or use of a Permitted Structure is terminated or revoked pursuant to notice as provided herein.

(b) Upon receipt by the Company of written notice from the City setting forth one or more of the occurrences specified in subsection (a) above, the Company shall have 90 days from the date upon which said notice is received to remove such Company Facilities, or, in the case of subsection (a)(i), to begin operating the Company Facilities.

(c) If Company fails to timely remove the Company Facilities as set forth in this Section, City may remove such facilities and bill Company for the cost and expense, to be paid within 30 days' following the date of an invoice for such work.

4.14 Tree Trimming. With the approval of City, Company may trim trees overhanging the Right-of-Way of the City to prevent the branches of such trees from coming in contact with Company Facilities. All trimming on City property shall be done under the direction of the City's Urban Forester and at the expense of the Company.

4.15 Identification. All Company Facilities shall be clearly marked with Company's name and emergency contact information.

ARTICLE 5
POLICE POWER

The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances, rules and regulations as the City may deem necessary in the exercise of its police power for the protection of the health, safety and welfare of its residents and their properties. This Agreement is subject to any such ordinances, rules, and regulations.

ARTICLE 6
TRANSFER OF RIGHTS

6.1 Terms of Transfer.

(a) Except as provided in subsection (c) and provided that the Company has not defaulted on any provision of this Agreement or a Site Approval, the Company shall not sell,

transfer, lease, assign, sublet, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation, or otherwise make available, the Access Rights or any rights or privileges under this Agreement, (each, a “**Transfer**”), to any person or entity other than the Company (a “**Proposed Transferee**”), without the prior written consent of the City.

(b) For the purpose of determining whether it shall grant its consent, the City may inquire into the qualifications of the Proposed Transferee, and the Company shall assist the City in the inquiry. City may condition or deny its consent based on any or a combination of the following or similar criteria. The Proposed Transferee shall indicate by affidavit whether it or any of its principals:

(i) has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(ii) has ever had a judgment entered against it in an action for fraud, deceit, or misrepresentation by any court of competent jurisdiction;

(iii) has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a system similar to the Company Facilities, except that any such claims, suits or proceedings relating to insurance claims, theft or service, or employment matters need not be disclosed;

(iv) is financially solvent, by submitting financial data, including financial statements, that have been audited by a certified public accountant, along with any other data that the City may reasonably require; and

(v) has the financial and technical capability to enable it to maintain and operate the Company Facilities for the remaining term of this Agreement and is in the business of operating Facilities.

In addition, Company shall provide to the City information regarding any failure by the Company to comply with any provision of this Agreement or of any applicable customer or consumer service standards promulgated or in effect in the City’s jurisdiction at any point during the term of this Agreement.

(c) Notwithstanding the foregoing, the City’s consent shall not be required in connection with the following circumstances, provided that Company is not released from the obligations under this Agreement and such transferee assumes this Agreement and agrees in writing to comply with the terms and conditions of this Agreement, including subsections (d) and (e) below:

(i) The intracorporate Transfer from a parent corporation to a wholly-owned subsidiary, or from one wholly-owned subsidiary to another wholly-owned subsidiary of a parent corporation;

(ii) Any Transfer in trust, a mortgage, or other instrument of hypothecation of

the assets of the Company, in whole or in part, to secure an indebtedness, provided that such pledge of the assets of the Company shall not impair or mitigate the Company's responsibility and capability to meet all its obligations under this Agreement, and provided further that such Proposed Transferee subordinates to this Agreement; or

(iii) Interconnection, license, or use agreements pursuant to which the Company Facilities may be used by another entity providing telecommunication services within the City, provided that any such interconnection, license, or use agreement is subordinate to this Agreement.

(d) Transfer by the Company shall not constitute a waiver or release of any rights of the City in or to its Right-of-Way and any Transfer shall by its own terms be expressly subject to the terms and conditions of this Agreement and not create any conflict with any applicable laws, rules, or regulations.

(e) A Transfer of this Agreement will only be effective upon the Proposed Transferee becoming a signatory to this Agreement by executing an unconditional acceptance of this Agreement.

(f) As contemplated by Section (c)(iii) above, the parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Company Facilities deployed by Company in the Right-of-Way pursuant to this Agreement may be owned and/or operated by Company's third-party wireless carrier customers ("**Carriers**") and installed and maintained by Company pursuant to license agreements between Company and such Carriers. Such license agreements shall be subordinate to this Agreement. Such Company Facilities shall be treated as the Company's for all purposes under this Agreement provided that (i) Company remains responsible and liable for all performance obligations under the Agreement with respect to such Company Facilities; (ii) City's sole point of contact regarding such Company Facilities as it relates solely to this Agreement shall be Company; and (iii) Company shall have the right to remove and relocate such Company Facilities pursuant to the terms of this Agreement.

ARTICLE 7 EARLY TERMINATION OR REVOCATION OF ACCESS RIGHTS

7.1 Grounds for Termination by City. The City may terminate or revoke this Agreement and all rights and privileges herein provided for any of the following reasons:

(a) The Company fails to make timely payments of the Small Cell Fees as required under Article 3 of this Agreement, or any other fee due to the City under the terms of this Agreement, and does not correct such failure within 20 business days after receipt of written notice by the City of such failure.

(b) The Company, by act or omission, violates a material term or condition herein set forth within the Company's control, and with respect to which redress is not otherwise herein provided. In such event, the City may determine that such failure is of a material nature and thereupon, after written notice given to the Company of such determination, the Company shall,

within 30 days of such notice, commence efforts to remedy the conditions identified in the notice, and shall have three months from the date it receives notice to remedy the conditions. After the expiration of such three month period and upon failure by the Company to correct such conditions, the City may declare the Access Rights forfeited and this Agreement terminated, and thereupon the Company shall have no further rights or authority hereunder; provided, however, that any such declaration of forfeiture and termination shall be subject to judicial review as provided by law, and provided further that in the event such failure is of such nature that it cannot be reasonably corrected within the three month period above, the City shall provide additional time for the reasonable correction of such alleged failure if the Company (i) commences corrective action during 30 days following notice of the failure, and (ii) is diligently pursuing such corrective action to completion.

(c) The Company becomes insolvent, unable or unwilling to pay its debts, is adjudged bankrupt, or all or part of its Facilities are sold under an instrument to secure a debt and is not redeemed by the Company within 60 days.

(d) In furtherance of the Company policy or through acts or omissions done within the scope and course of employment, a member of the Board of Directors or an officer of the Company knowingly engages in conduct or makes a material misrepresentation with or to the City, that is fraudulent or in violation of a felony criminal statute of the State of Utah.

(e) Company abandons use of all Company Facilities for 12 consecutive months, except as otherwise provided in Section 4.13.

7.2 Grounds for termination by Company.

(a) Default. In the event there is a material breach by City with respect to any of the provisions of this Agreement or its obligations under it, Company shall give City written notice of such breach. After receipt of such written notice, City shall have 30 days in which to cure any breach, provided City shall have such extended period as may be required beyond the 30 days if City commences the cure within the 30 day period and thereafter continuously and diligently pursues the cure to completion. Company may not maintain any action or effect any remedies for default against City unless and until City has failed to cure the breach within the time periods provided in this Section.

(b) 30 Days' Notice.

(i) Agreement Termination. Company may terminate this Agreement by giving at least 30 days' written notice. Company shall not be subject to any penalty or fee for terminating this Agreement prior to the end of the term of the Agreement. Responsibility for Small Cell Fees shall cease upon removal of Company's Facilities, subject to Section 4.13 above and following payment of the Small Cell Fees for the year during which the Company's Facilities are removed.

(ii) Termination of Use. Without terminating the Agreement, by giving at least 30 days' prior written notice, Company may terminate paying the Attachment Fee for a Permitted Structure and the Ground Equipment Fee for ground mounted equipment from which the Company

has discontinued use and removed the Company Facilities. City shall not provide partial reimbursement for termination of use during any partial year.

ARTICLE 8 COMPANY INDEMNIFICATION; INSURANCE

8.1 No City Liability. The City shall in no way be liable or responsible for any loss or damage to property, or any injury to or death of any person that may occur in the construction, operation, or maintenance by the Company of the Company Facilities. City will be liable only for its own conduct, subject to and without waiving any defenses, including limitation of damages, provided for in the Utah Governmental Immunity Act (Utah Code Ann. 63G-7-101, et. seq.) or successor provision. Company agrees that the Rights-of-Way are delivered in an “AS IS, WHERE IS” condition and City makes no representation or warranty regarding their condition, and disclaims all express and implied warranties, including the implied warranties of habitability and fitness for a particular purpose.

8.2 Indemnification.

(a) Company shall indemnify, save harmless, and defend City, its officers and employees, from and against all losses, claims, counterclaims, demands, actions, damages, costs, charges, and causes of action of every kind or character, including attorneys’ fees, arising out of Company’s intentional, reckless, or negligent performance hereunder or under the Ordinance. Company’s duty to defend City shall exist regardless of whether City or Company may ultimately be found to be liable for anyone’s negligence or other conduct. If City’s tender of defense, based upon this indemnity provision, is rejected by Company, and Company is later found by a court of competent jurisdiction to have been required to indemnify City, then in addition to any other remedies City may have, Company shall pay City’s reasonable costs, expenses, and attorneys’ fees incurred in proving such indemnification, defending itself, or enforcing this provision. Nothing herein shall be construed to require Company to indemnify the indemnitee against the indemnitees’ own negligence. The provisions of this section 8.2 shall survive the termination or expiration of this Agreement.

(b) City assumes no responsibility for any damage or loss that may occur to Company’s property, except the obligation City assumes that it will not willfully or intentionally damage the property of Company. City has no responsibility for any equipment maintenance, or for Company’s employees. Nothing in this Agreement shall be construed to create a partnership, joint venture, or employment relationship

8.3 Notice of Indemnification. The City shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City seeks indemnification hereunder and (b) unless in the City’s judgment a conflict of interest may exist between the City and the Company with respect to such claim, demand or lien, permit the Company to assume the defense of such claim, demand, or lien with counsel mutually satisfactory to City. If such defense is not assumed by the Company, the Company shall not be subject to any liability for any settlement made without its consent.

8.4 Insurance.

(a) The Company, at its own cost and expense, shall secure and maintain, and shall ensure that any subcontractor to the Company shall secure and maintain, during the term of this Agreement the following policies of insurance:

(i) Commercial General Liability Insurance. Commercial general liability insurance with the Salt Lake City Corporation named as an additional insured on a primary and non-contributory basis in comparison to all other insurance including City's own policy or policies of insurance, in the minimum amount of \$2,000,000 per occurrence with a \$3,000,000 general aggregate and \$3,000,000 products completed operations aggregate. The policy shall protect the City and the Company from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from the Company's operations under this Agreement whether performed by Company itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, products and completed operations. The Company may utilize its umbrella policy to meet the required limits.

(ii) Commercial Automobile Liability Insurance. Commercial automobile liability insurance naming City as an additional insured that provides coverage for owned, hired, and non-owned automobiles used in connection with this Agreement, with a combined single limit of \$2,000,000 per occurrence. The Company may utilize its umbrella policy to meet the required limits. If the policy only covers certain vehicles or types of vehicles, such as scheduled autos or only hired and non-owned autos, Company shall only use those vehicles that are covered by its policy in connection with any work performed under this Agreement.

(iii) Workers' Compensation and Employer's Liability. Worker's compensation and employer's liability insurance sufficient to cover all of the Company's employees pursuant to Utah law. In the event any work is subcontracted, the Company shall require its subcontractor(s) similarly to provide worker's compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

(b) General Insurance Requirements.

(i) Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form shall (A) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (B) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the City.

(ii). All policies of insurance shall be issued by insurance companies authorized to do business in the state of Utah and either:

(A) Currently rated A- or better by A.M. Best Company; *and* (A(1)) for construction contracts only, the insurer must also have an A.M. Best Company financial size category rating of not less than VII.

—OR—

(B) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended.

(iii) The Company shall furnish certificates of insurance, acceptable to the City, verifying the foregoing matters concurrent with the execution hereof and thereafter upon renewal.

(iv) In the event any work is subcontracted, the Company shall require its subcontractor, at no cost to the City, to secure and maintain all minimum insurance coverages required of the Company hereunder. Company shall remain liable for all work of its subcontractors.

(v) All required certificates and policies shall provide that insurers of coverage thereunder shall provide 30 days' prior written notice of cancellation to the City. Company must provide to City written notice of any notice of cancellation of a policy at least 30 days prior to such cancellation, and evidence of a successor policy complying with the requirements of this Agreement.

8.5 Damages Waiver. Notwithstanding any provision in this Agreement to the contrary, in no event shall any party be liable to any other party for indirect, special, punitive, or consequential damages, including, without limitation, lost profits.

8.6 Bonds. Company shall comply with all bonding requirements required by Salt Lake City Code, including those required to obtain permits.

ARTICLE 9 REMEDIES

9.1 Duty to Perform. The Company and the City agree to take all reasonable and necessary actions to assure that the terms of this Agreement are performed and neither will take any action for the purpose of securing modification of this Agreement before the FCC or other governmental authority with jurisdiction or any court of competent jurisdiction; provided, however, that neither party shall be precluded from taking any action it deems necessary to resolve differences in interpretation of this Agreement.

9.2 Remedies at Law. In the event the Company or the City fails to fulfill any of its respective obligations under this Agreement, the party that is not in default may exercise any remedies available to it provided by law; however, no remedy that would have the effect of

amending the provisions of this Agreement shall become effective without a formal amendment of this Agreement.

ARTICLE 10 NOTICES

10.1 City Designee and Address. Unless otherwise specified herein, all notices from the Company to the City pursuant to or concerning this Agreement shall be delivered to the City at Housing and Neighborhood Development Division, Real Estate Services Manager, 451 South State Street, Room 425, P.O. Box 145460, Salt Lake City, Utah, 84114-5460, with a copy to the City Attorney, at 451 South State Street, Room 505A, P.O. Box 145478 Salt Lake City, Utah 84114-5478, and (b) such other offices as the City may designate by written notice to the Company.

10.2 Company Designee and Address. During the term of this Agreement, the Company shall maintain a registered agent on file with the Utah Division of Corporations for services of notices by mail, and an office and telephone number for the conduct of matters relating to this Agreement during normal business hours. Unless otherwise specified herein, all notices from the City to the Company pursuant to or concerning this Agreement or the Access Rights shall be delivered to:

Company:	ExteNet Systems, Inc. 3030 Warrenville Road, Suite 340 Lisle, Illinois 60532 ATTN: Chief Financial Officer Phone: 630-505-3800 (Corporate number for all purposes) Fax: 630-577-1332 (number for all purposes)
----------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

With a copy to:	ExteNet Systems, Inc. 3030 Warrenville Road, Suite 340 Lisle, Illinois 60532 ATTN: General Counsel
-----------------	-------------------------------------------------------------------------------------------------------------

For invoices:	ExteNet Systems, Inc. 3030 Warrenville Road, Suite 340 Lisle, Illinois 60532 ATTN: Accounts Payable
---------------	--------------------------------------------------------------------------------------------------------------

Or by e-mail to ap@util.extenetsystems.com

Network Operation Center (24/7):	866-892-5327
-------------------------------------	--------------

ARTICLE 11 AMENDMENT

11.1 Changing Conditions; Duty to Negotiate.

(a) The Company and the City recognize that many aspects of the telecommunications business are currently the subject of discussion, examination and inquiry by different segments of the industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way the Company conducts its business. In recognition of the present state of uncertainty respecting these matters, the Company and the City each agree, at the request of the other during the term of this Agreement, to meet with the other and discuss in good faith whether it would be appropriate, in view of developments of the kind referred to above during the term of this Agreement, to amend this Agreement or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of any such developments. Nothing herein prohibits the City from charging Company or any transferee any applicable taxes or fees that may be determined to be relevant or enacted in the future.

(b) Either party may propose amendments to this Agreement by giving 30 days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s).

11.2 Application of Superseding Governing Law. The parties acknowledge that on September 1, 2018, Utah Senate Bill 189 will become effective and may render this Agreement invalid and unenforceable. The parties further acknowledge that there may be updated City ordinances and regulations that will govern the Access Rights and installation of Facilities within the Right-of-Way. The parties agree that to the extent that this Agreement is inconsistent with such new state law or City ordinances and regulations, that this Agreement will continue to be valid and enforceable and the parties will amend this Agreement and memorialize the revised terms in a written addendum to this Agreement by November 1, 2018.

11.3 Amendment Approval Required. Except as otherwise provided above, no amendment or amendments to this Agreement shall be effective until mutually agreed upon by the City and the Company and an ordinance or resolution approving such amendments is approved by the City Council, if appropriate.

ARTICLE 12 MISCELLANEOUS

12.1 Conditions. If any section, sentence, paragraph, term or provision of this Agreement (except for Article 3 hereof) or the Ordinance is for any reason determined to be or rendered illegal, invalid, or superseded by other lawful authority including any state or federal, legislative, regulatory or administrative authority having jurisdiction thereof, or determined to be unconstitutional, illegal or invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof or thereof, all of which will remain in full force and effect for the term of this Agreement and the Ordinance or any renewal or renewals thereof.

12.2 No Waiver or Estoppel. Neither the City nor the Company shall be excused from complying with any of the terms and conditions of this Agreement by any failure of the other, or

any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any of such terms and conditions.

12.3 Fee Article Essential. Article 3 hereof is essential to the adoption of this Agreement. In the event the Small Cell Fees or tax provisions hereof (whichever are applicable) are determined to be illegal, invalid, unconstitutional, or are superseded by legislation, in whole or in part, this entire Agreement and the Access Rights shall, to the fullest extent not prohibited by law, and subject to the following provisions of this Article, be voided and terminated. Such termination shall be effective as of the date of a final appealable order, or the effective date of any such legislation, unless otherwise agreed by the City and the Company.

12.4 Utah Governmental Records Management Act. Whenever the Company is required to deliver to the City, or make available to the City for inspection, any records of the Company, and such records are delivered to or made available to the City with a written claim of business confidentiality which meets, in the judgment of the City, the requirements of the Utah Governmental Records Management Act (“GRAMA”), such records shall be classified by the City as “protected” within the meaning of GRAMA, and shall not be disclosed by the City except as may otherwise be required by GRAMA, by court order, or by applicable City ordinance or policy. Company specifically waives any claims against City related to disclosure of any materials as required by GRAMA.

12.5 Timeliness of Approvals. Whenever either party is required by the terms of this Agreement to request the approval or consent of the other party, such request shall be acted upon at the earliest reasonable convenience of the party receiving the request, and the approval or consent so requested shall not be unreasonably denied, delayed, conditioned or withheld. Time is of the essence under this Agreement.

12.6 Representation Regarding Ethical Standards for City Officers and Employees and Former City Officers and Employees. The Company represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City’s conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City’s conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

12.7 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Utah. Venue shall reside in Salt Lake City, Utah.

12.8 Entire Agreement. This Agreement contains all of the agreements of the parties with respect to any matter addressed in this Agreement, excluding any permits and Site Approvals issued in connection with this Agreement, and supersedes all prior discussions, agreements or understandings pertaining to any such matters for all purposes.

12.9 Authority. Each individual executing this Agreement on behalf of the City and Company represents and warrants that such individual is duly authorized to execute and deliver this Agreement on behalf of the City or Company (as applicable).

WITNESS WHEREOF, this Agreement is executed in duplicate originals as of the day and year first above written.

SALT LAKE CITY CORPORATION, a
Utah municipal corporation

Jacqueline M. Biskupski, Mayor

Date: _____

Attest and Countersign:

City Recorder

Date of Recordation: _____

Approved As To Form:

Kimberly K Chytraus
Senior City Attorney

**ExteNet Systems, Inc., a Delaware
corporation**

By _____

Name: _____

Title: _____

Date: _____

State of _____)

:ss

County of _____)

On the ____ day of _____, 2018, personally appeared before me _____,
who, being by me duly sworn did say that he/she is the _____ of ExteNet Systems, Inc.,
and that the foregoing instrument was signed on behalf of said company and said person
acknowledged to me that he/she is authorized to execute such instrument on behalf of said
company.

NOTARY PUBLIC, residing in _____ County,

My Commission Expires:

Schedule 1

Definitions

“Company” means ExteNet Systems, Inc., a Delaware corporation, and its successors and assigns.

“Company Facilities” means the Company’s Facilities.

“Control” or **“Controlling Interest”** means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the Company Facilities or of the Company. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly, by any person, or group of persons or entities acting in concert, of more than fifty percent (50%) of the Company. “Control” or “Controlling Interest” as used herein may be held simultaneously by more than one Person.

“Facilities” means equipment consisting of antennas, telecommunication lines and cables, radios, conduit, ducts, vaults, equipment, plant, power sources, and control boxes, together with all necessary and desirable appurtenances, for attachment to a Permitted Structure and the operation of a wireless broadband small cell network for communication services as related to this Agreement. Facilities may not include advertising logos, lights, flashing lights, audible fans, or make audible noises, or other distractive elements.

“Hazardous Substances” means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders.

“Gross Revenue” means all revenues received by Company attributable to the installation and operation of the Company Facilities utilizing any Permitted Structure in the Right-of-Way, including, but not limited to all rents, payments, fees, and other amounts actually collected from any third party and received by Company and allocable to the period within the term or any renewal term of this Agreement Term pursuant to any sublease, sublicense, or other agreement for telecommunications services provided with respect to the Company Facilities, but exclusive of any payments, reimbursements, or pass-throughs from the third party to Company for utility charges, taxes, and other pass-through expenses.

“Right-of-Way” means a City-owned or controlled street, alley, viaduct, bridge, road, lane or public way within the City, including the surface, subsurface and airspace.

“Utility Pole” means a pole owned by a third party utility provider (such as Rocky Mountain Power or CenturyLink) and its successors and assigns and located within a Right-of-Way.

“Permitted Use” means the attachment of Company Facilities to a Permitted Structure within the Right-of-Way for small cell networks to provide better wireless data coverage.

“Permitted Structure” means a structure in the Right-of-Way, including an existing Utility Pole, upon which Company may attach Company Facilities as permitted by applicable Salt Lake City Code and in compliance with this Agreement.

“Person” means any individual, sole proprietorship, partnership, association or corporation, or any other form of organization, and includes any natural person.

“Proposed Transferee” means a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the Company.

“Telecom Tax Act” means the Utah Municipal Telecommunications License Tax Act, Title 10, Chapter 1, Part 4, Utah Code Annotated 1953, as amended.

“Telecom Tax” means the municipal telecommunications license tax authorized pursuant to the Telecom Tax Act.