WEST VIRGINIA CODE: §31H-2-4

§31H-2-4. Local authority; miscellaneous provisions.

(a) Nothing in this chapter may be construed to relieve any person from any requirement:

(1) To obtain a franchise or a state-issued authorization to offer cable television service; or

(2) To obtain any required permission to install, place, maintain, or operate communications facilities, other than small wireless facilities subject to this chapter. The permitting procedures and authorizations set forth in this chapter apply only to the placement of small wireless facilities and associated utility poles, and do not authorize the installation or operation of a wireline backhaul facility.

(b) Except as provided in this chapter or otherwise specifically authorized by state or federal law, an authority shall not adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a right-of-way by a communications service provider authorized by state or local law to operate in a right-of-way.

(c) Except as authorized by federal law, this chapter, and municipal taxation ordinances authorizing collection of business and occupation taxes since at least November 1, 1998, an authority shall not regulate any communications services or impose or collect any tax, fee, or charge for the provision of communications service over the communications service provider's communications facilities in a right-of-way, to the extent the communications service provider is already paying the authority a fee for access to the right-of-way.

(d) Subject to the provisions of this chapter and applicable federal law, an authority may continue to exercise zoning, land use, planning, and permitting authority within its territorial boundaries with respect to wireless support structures and utility poles; no authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not owned or controlled by the authority, other than to comply with applicable codes; and an authority shall evaluate the structure classification for wireless support structures under the latest version of ANSI/TIA-222. Nothing in this chapter authorizes the state or any political subdivision, including an authority, to require wireless facility deployment or to regulate wireless services.

(e) An authority may adopt an ordinance that makes available to wireless providers rates, fees, and other terms that comply with the provisions of this chapter. Subject to the provisions of this section, in the absence of an ordinance that fully complies with this chapter and until such a compliant ordinance is adopted, if at all, wireless providers may install and operate small wireless facilities and utility poles under the requirements of this chapter. An authority and a wireless provider may enter into a voluntary and

WV Legislature

nondiscriminatory agreement implementing the provisions of this chapter, but an authority may not require a wireless provider to enter into such an agreement.

(f) An agreement or ordinance that does not fully comply with this chapter may apply only to small wireless facilities and associated utility poles that became operational or were installed before the effective date of this chapter. Such an agreement or ordinance may not be renewed, or extended, unless it is modified to fully comply with this chapter. An agreement or ordinance that applies to small wireless facilities and associated utility poles that became operational or were constructed before the effective date of this chapter is invalid and unenforceable beginning on the 181st day after the effective date of this chapter unless it fully complies with this chapter. If an agreement or ordinance is invalid in accordance with this subsection, in the absence of an agreement or ordinance that fully complies with this chapter and until such a compliant agreement or ordinance is entered or adopted, small wireless facilities and associated utility poles that become operational or were constructed before the effective date of this chapter may remain installed and be operated under the requirements of this chapter.

(g) An agreement or ordinance that applies to small wireless facilities and utility poles that become operational on or after the effective date of this chapter is invalid and unenforceable beginning on the effective date of this chapter unless it fully complies with this chapter. If an agreement or ordinance is invalid in accordance with this subsection, in the absence of an agreement or ordinance that fully complies with this chapter and until such a compliant agreement or ordinance is entered or adopted, small wireless facilities and utility poles may be installed and operated in the right-of-way or become operational under the requirements of this chapter.

(h) Any wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way shall indemnify, protect, defend, and hold the authority and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the wireless provider who owns or operates small wireless facilities or utility poles in the right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the wireless provider, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in rights-of-way.

(i) Except for a wireless provider with an existing franchise to occupy and operate in the rights-of-way, during the period in which the wireless provider’s facilities are located on the authority improvements or rights-of-way, the authority may require the wireless provider to carry, at the wireless provider’s own cost and expense, the following insurance:

(1) Property insurance for its property’s replacement cost against all risks;

WV Legislature

(2) Workers' compensation insurance, as required by law; or

(3) Commercial general liability insurance with respect to its activities on the authority improvements or rights-of-way to afford minimum protection limits consistent with its requirements of other users of authority improvements or rights-of-way, including coverage for bodily injury and property damage. An authority may require a wireless provider to include the authority as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the authority in a commercial general liability policy as reasonably required by the authority.

A wireless provider may self-insure all or a portion of the insurance coverage and limit requirements required by an authority. A wireless provider that self-insures is not required, to the extent of the self-insurance, to comply with the requirement for the naming of additional insureds under this section. A wireless provider that elects to self-insure shall provide to the authority evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limits required by the authority.

(j) An authority may impose reasonable and nondiscriminatory requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities or damage to the right-of-way or authority property caused by the wireless provider or its agent.

(k) On or before December 31, 2026, all Class I and Class II municipalities shall report to the Joint Committee on Government and Finance of the effects of the implementation of this article.

WV Legislature