WEST VIRGINIA CODE CHAPTER 31J

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§31J-1-1. Definitions.

Terms used in this article have the following meanings:

"Action" or "to act" on a siting application means the reviewing authority's grant of a siting application or issuance of a written decision denying a siting application.

"Antenna" means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation for the provision of personal wireless service and any commingled information services.

"Antenna equipment" means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when colocated on a structure, is mounted or installed at the same time as such antenna.

"Antenna facility" means an antenna and associated antenna equipment.

"Applicant" means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

"Authorization" means any approval that a siting authority must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, zoning approval and building permit.

"Colocation" means:

(1) Mounting or installing an antenna, or an antenna and associated equipment, on a pre-existing structure; and/or

(2) Modifying a structure for the purpose of mounting or installing an antenna, or an antenna and associated equipment, on that structure.

"Deployment" means placement, construction, or modification of a personal wireless service facility.

"Facility" or "personal wireless service facility" means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

"Siting application" or "application" means a written submission to a siting authority requesting authorization for the deployment of a personal wireless service facility at a specified location.

"Structure" means a pole, tower, base station, or other building that is supporting or is capable of supporting broadband facilities or wireless service facilities, whether or not it is

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currently supporting a broadband facility or wireless service facility.

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§31J-1-2. Timing to act on siting applications.

(a) Timely action required. If the reviewing authority fails to act on a siting application on or before the shot clock date for the application, as defined in subsection (e) of this section, it is presumed not to have acted within a reasonable period of time.

(b) Shot clock period. The shot clock period for a siting application is the sum of:

(1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to §31J-1-2(c) plus

(2) The number of days of the tolling period, if any, pursuant to subsection (d) of this section.

(c) Presumptively reasonable periods of time:

(1) Review periods for individual applications. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments of facilities subject to this section:

(A) Review of an application to colocate a facility using an existing structure: 90 days.

(B) Review of an application to deploy a facility using a new structure: 150 days.

(2) Commencement of Review Period. An applicant has submitted a request for approval that triggers the running of the timeframe for review in §31J-1-2(c):

(1) when it takes the first procedural step that the local government requires as part of its applicable regulatory review process, and, to the extent it has not done so as part of the first required procedural step, or

(2) the applicant submits written documentation showing that a proposed modification is an eligible facilities request.

The reviewing authority may not define the first procedural step as a combination or sequencing of steps, rather than a single step.

(d) Tolling period. Unless a written agreement between the applicant and the reviewing authority provides otherwise, the tolling period for an application (if any) is as set forth herein.

(1) For initial applications, the tolling period shall be the number of days from:

(A) The day after the date when the reviewing authority notifies the applicant in writing that the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until

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(B) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(C) But only if the notice pursuant to §31J-1-2(d)(2)(A) is effectuated on or before the 30th day after the date when the application was submitted; or

(2) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from:

(A) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under §31J-1-2(d); until

(B) The date when the applicant submits all the documents and information identified by the reviewing authority to render the application complete;

(C) But only if the notice pursuant to paragraph §31J-1-2(d)(2)(A) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under §31J-1-2(d) of this section.

(e) Shot clock date. The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to §31J-1-2(b) and including any pre-application period asserted by the siting authority: *Provided*, That if the date calculated in this manner is a legal holiday under either federal or state law, the shot clock date is the next business day after such date. The term "business day" means any day that is not a weekend day or a legal holiday as defined by the State of West Virginia.

(f) Failure to act. In the event the reviewing authority fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(g) Fees for applications. A reviewing authority may not impose on an applicant fees or charges that exceed the one-time non-recurring reasonable costs actually incurred by the reviewing authority to review the application.

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§31J-1-3. Wireless facility modifications.

(a) Definitions. Terms used in this section have the following meanings.

"Base station" means a structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.

(A) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(B) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

(C) The term includes any structure other than a tower that, at the time the relevant application is filed with the state or local government under this section, supports or houses equipment defined as base stations and transmission equipment that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(D) The term does not include any structure that, at the time the relevant application is filed with the state or local government under this section, does not support or house equipment defined as base stations and transmission equipment.

"Concealment element" means elements of a stealth-designed facility intended to make the facility look like something other than a telecommunications tower. There must be express evidence in the record to demonstrate that the reviewing authority considered in its approval of the original facility for wireless service that a stealth design would look like something other than a facility for wireless service, such as a pine tree, flag pole, or chimney.

"Colocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

"Eligible facilities request" means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(A) Colocation of new transmission equipment;

(B) Removal of transmission equipment; or

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(C) Replacement of transmission equipment.

"Eligible support structure" means any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the state or local government under this section.

"Existing" means a constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

"Site" means for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the adoption of this Act.

"Substantial change" means a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(A) For towers, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, and where separation from the nearest existing antenna means the distance from the top of the highest existing antenna on the tower to the bottom of the proposed new antenna to be deployed above it; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(i) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station.

(ii) For towers, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four

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cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment: *Provided however,* That this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in 47 C.F.R. § 1.40001(b)(7)(i) through (iv).

"Transmission equipment" means equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

"Tower" means any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(b) Review of applications. A state or local government may not deny and shall approve an application for a modification of an existing wireless service facility if:

(1) The request modification would not substantially change the physical dimensions of the wireless service facility;

(2) The requested modification involves:

(A) Colocation of new transmission equipment;

(B) Removal of transmission equipment; or

(C) Replacement of transmission equipment; and

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(3) The request meets the requirements of this section.

(c) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, the reviewing authority may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. The reviewing authority may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(d) Fees for applications. A reviewing authority may not impose on an applicant fees or charges that exceed the one-time non-recurring reasonable costs actually incurred by the reviewing authority to review the application.

(e) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the reviewing authority shall approve the application unless it determines that the application is not covered by this section.

(f) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the reviewing state or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(1) To toll the timeframe for incompleteness, the reviewing state or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under §31J-1-3(c).

(2) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the state or local government's notice of incompleteness.

(3) Following a supplemental submission, the state or local government will have 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in §31J-1-3(e). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(g) Failure to act. In the event the reviewing authority fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

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§31J-1-4. Construction code.

The state adopts and incorporates by reference the current TIA 222 Standard of the International Building Code, as amended, as the applicable wireless infrastructure construction code.

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§31J-1-5. Remedies.

Applicants and reviewing authorities may bring claims related to this Chapter to any court of competent jurisdiction.

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§31J-1-6. Prior law, interpretations, preemption preserved.

Nothing herein shall be interpreted to change or otherwise impact the application of this state's existing West Virginia Small Wireless Facilities Development Act, being §31H-1-1 *et seq*. of this code; the Vertical Real Estate Management and Availability Act, being §31G-5-1 *et seq*. of this code; or the state's existing Pre-emption of Conflicting Local Ordinances and Private Restrictions statute, being §31G-6-1 *et seq*. of this code.

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