

2016 SESSION

LEGISLATION NOT PREPARED BY DLS
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HOUSE BILL NO. 1347

Offered January 21, 2016

A BILL to enact Chapter 28.3 of Title 15.2 of the Code of Virginia, relating to wireless communications infrastructure.

Patron—Heretick

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That Title 15.2 of the Code of Virginia is amended by the addition of Chapter 28.3 as follows:

Chapter 28.3. Wireless Communications Infrastructure.

§ 15.2-2834. Definitions.

As used in this chapter unless such construction would be inconsistent with the context or manifest intent of the statute:

"Accessory equipment" means any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures.

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Application" means a carrier or any person engaged in the business of providing the infrastructure required for a wireless facility who submits an application for placement of a wireless facility.

"Application" means a request submitted by an applicant to an Authority to construct a new wireless support structure, for the substantial modification of a wireless support structure, or for collocation of a wireless facility or replacement of a wireless facility on an existing structure or utility pole.

"Base station" means a station at the base of a mount or in the area near the wireless facility that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Broadband facility" means any infrastructure used to deliver broadband service or for the provision of broadband service.

"Collocation" means the mounting or installation of broadband service equipment on a tower, building or structure with existing broadband service equipment for the purpose of transmitting or receiving radio frequency signals for communications purposes.

"Distributed antenna system" means a network of spatially separated antenna nodes that is connected to a common source via a transport medium and that provides mobile service within a geographic area or structure.

"Existing structure" means a structure that exists at the time a request to place wireless facilities on a structure is filed with a locality. The term includes any structure that is capable of supporting the attachment of wireless facilities in compliance with applicable building codes, National Electric Safety Codes, and recognized industry standards for structural safety, capacity, reliability, and engineering, including, but not limited to, towers, buildings, and water towers. The term shall not include any utility pole.

"Personal wireless services" and "personal wireless service facilities" are as defined in the federal Telecommunications Act of 1996, 47 U.S.C. §332(c)(7)(C).

"Replacement" includes constructing a new wireless support structure of comparable proportions and of comparable height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation and includes the associated removal of the preexisting wireless facilities or wireless support structure.

"Small cell facility" means either:

A. A personal wireless service facility as defined by the federal Telecommunications Act of 1996, as amended as of the effective date of this chapter; or

B. A wireless service facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six (6) cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and (ii) primary equipment enclosures are no larger than seventeen (17) cubic feet in volume. The following associated equipment may be located outside the primary equipment, and if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power

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59 systems, grounding equipment, power transfer switch and cut-off switch.

60 "Small cell network" means a collection of interrelated small cell facilities designed to deliver
61 wireless service.

62 "Substantial modification" means the mounting of a proposed wireless facility on a wireless support
63 structure which, as applied to the structure as it was originally constructed:

64 A. Increases the existing vertical height of the structure by (i) more than ten percent; or (ii) the
65 height of one additional antenna array with separation from the nearest existing antenna not to exceed
66 twenty feet, whichever is greater; or

67 B. Involves adding an appurtenance to the body of a wireless support structure that protrudes
68 horizontally from the edge of the wireless support structure more than twenty feet or more than the
69 width of the wireless support structure at the level of the appurtenance, whichever is greater (except
70 where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower
71 via cable).

72 "Transmission equipment" means equipment that facilitates transmission for a wireless
73 communications service licensed or authorized by the Federal Communications Commission, including
74 but not limited to radio transceivers, antennas, coaxial or fiber optic cable, and regular and backup
75 power supply. "Transmission equipment" includes equipment associated with wireless communications
76 services, including but not limited to private, broadcast, and public safety services, such as wireless
77 local area network services and services utilizing a set of specifications developed by the institute of
78 electrical and electronics engineers for interface between a wireless client and a base station or between
79 two wireless clients, as well as unlicensed wireless services and fixed wireless services, such as
80 microwave backhaul.

81 "Wireless facility" means the set of equipment and network components, exclusive of the underlying
82 wireless support structure, including antennas, transmitters, receivers, base stations, power supplies,
83 cabling, and accessory equipment, used to provide wireless data and wireless telecommunications
84 services.

85 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
86 or self-supporting, or suitable existing or alternative structure designed to support or capable of
87 supporting wireless facilities. Such term shall not include any telephone or electrical utility pole or any
88 tower used for the distribution of transmission or electrical service.

89 "Utility pole" means a structure owned and/or operated by a public utility, municipality, electric
90 membership corporation, or rural electric cooperative that is designed specifically for and used to carry
91 lines, cables, or wires for telephony, cable television, or electricity, or to provide lighting.

92 "Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support
93 structure, originally constructed for use as a reservoir or facility to store or deliver water.

94 **§ 15.2-2835. Fees.**

95 **A. Application Fees.**

96 (i) A locality shall not charge an application fee, consulting fee, or other fee associated with the
97 submission, review, processing and approval of an application that is not required for similar types of
98 commercial development within the locality's jurisdiction.

99 (i) A locality shall only charge fees for the costs directly incurred by it relating to the granting or
100 processing of an application. Such fees and charges shall be reasonably related in time to the
101 occurrence of such costs.

102 (iii) A locality shall not charge market based or value based fees for the processing of an
103 application.

104 (iv) A fee may not include: (a) travel expenses incurred by a third party in its review of an
105 application; or (b) direct payment or reimbursement of third party fees charged on a contingency basis
106 or a result-based arrangement.

107 (v) In any controversy concerning the appropriateness of a fee or charge, the locality shall have the
108 burden of proving that the fee or charge is reasonably related to the direct costs incurred by the
109 Authority.

110 (vi) Total charges and fees shall be the lesser of the amount charged by the locality for a building
111 permit for any other type of commercial development or land use development, or \$500 for a collocation
112 application, small cell facility or distributed antenna system or \$1,000 for a new wireless support
113 structure or for a substantial modification of a wireless support structure.

114 **B. Land Use/Rights of Way Fees.**

115 (i) A locality may not charge a wireless service provider or wireless infrastructure provider any
116 rental, license, or other fee to locate a wireless facility or wireless support structure on an Authority's
117 property, including the rights of way controlled by the Authority if the Authority does not charge other
118 commercial carriers and/or utilities for the rental or use of similarly situated property and rights of
119 way.

120 (ii) If a locality does charge a wireless service provider or wireless infrastructure provider for use of

its property or rights of way, it may not charge more than the lesser of: (a) the amount it charges other commercial carriers and/or utilities for the same amount of space; or (b) the costs of any maintenance or other activities required to be performed by the locality as a result of the location or modification of the facility or rights of way; or (c) \$1000 annually.

(iii) A locality may choose not to charge for the placement of wireless facilities on its property or rights of way.

§ 15.2-2836. Permit Process.

A. A locality shall not:

(i) require an applicant to submit information about, or evaluate an applicant's business decisions with respect to its designed service, customer demand for service, or quality of its service to or from a particular area or site;

(ii) require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. It may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies;

(iii) evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities, including without limitation the option to collocate instead of construct a new wireless support structure or for substantial modifications of a support structure;

(iv) dictate the type of wireless facilities, infrastructure or technology to be used by the applicant, including, but not limited to, requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure;

(v) require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application;

(vi) impose surety requirements, including bonds, escrow deposits, letters of credit, or any other type of financial surety, to ensure that abandoned or unused facilities can be removed unless the authority imposes similar requirements on other permits for other types of commercial development or land uses and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the facility;

(vii) discriminate or create a preference on the basis of the ownership, including ownership by the Authority, of any property, structure or tower when promulgating rules or procedures for siting wireless facilities or for evaluating applications;

(viii) impose any requirements or obligations regarding the presentation or appearance of facilities, including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening, or landscaping of facilities if such regulations or obligations are unreasonable;

(ix) impose any requirements that an applicant purchase, subscribe to, use, or employ facilities, networks, or services owned, provided or operated by an Authority, in whole or in part, or by any entity in which an Authority has a competitive, economic, financial, governance or other interest;

(x) condition or require the approval of an application based on the applicant's agreement to permit any wireless facilities provided or operated, in whole or in part, by an Authority or by any other entity, to be placed at or collocated with the applicant's wireless support structure;

(xi) prohibit, or have the effect of prohibiting the provision of personal wireless services or personal wireless service facilities, or the ability of any entity to provide any service in support of personal wireless service facilities; or

(xii) limit the duration of any permit that is granted.

B. (i) In the case of small cell networks involving multiple individual small cell facilities within the jurisdiction of a single locality, it shall allow the applicant, at the applicant's discretion, to file a consolidated application and receive a single permit for the small cell network instead of filing separate applications for each individual small cell facility.

(ii) If a wireless service provider applies to locate several wireless facilities within the jurisdiction of a single locality, it shall:

(a) allow the applicant, at the applicant's discretion, to file a single set of documents that will apply to all the wireless service facilities to be sited; and

(b) render a decision regarding all the wireless service facilities in a single administrative proceeding, unless local requirements call for an elected or appointed body to render such decision.

C. (i) A collocation or siting application for a wireless telecommunications facility shall be deemed approved if all of the following occur:

(a) The locality fails to approve or disapprove the application within a reasonable period of time in accordance with the time periods and procedures established by applicable Federal Communications Commission decisions. The reasonable period of time may be tolled to accommodate timely requests for

182 information required to complete the application or may be extended by mutual agreement between the
183 applicant and the locality, consistent with applicable Federal Communications Commission decisions.

184 (b) The applicant has provided all public notices regarding the application that the applicant is
185 required to provide under applicable laws consistent with the public notice requirements for the
186 application.

187 (c) The applicant has provided notice to the locality that the reasonable time period has lapsed and
188 that the application is deemed approved pursuant to this section.

189 (ii) Within 30 days of the applicant's notice that the reasonable time period has lapsed, the locality
190 may seek judicial review of the operation of this section on the application.

191 (iii) Any decision to deny a request to place, construct, or modify personal wireless service facilities
192 shall be in writing and supported by substantial evidence contained in a written record and publicly
193 released contemporaneously. If a locality denies an application, there must be a reasonable basis
194 for the denial. In addition, it may not deny an application if such denial is discriminatory against the
195 wireless applicant with respect to the placement of the facilities of other utilities or wireless
196 carriers.

197 (iv) A party aggrieved by the final action of a locality, either by its affirmatively denying an
198 application or by its inaction, may bring an action for review in any court of competent jurisdiction in
199 this state.

200 **§ 15.2-2837. Use of public highways or rights of way.**

201 Any domestic or foreign telecommunications provider or broadband provider authorized to do
202 business under the laws of this state shall have the right to construct, maintain, and operate conduit,
203 poles, cable, switches and related appurtenances and facilities along, across, upon and under any public
204 highway or rights-of-way in this state; and the construction, maintenance, operation and regulation of
205 such facilities, including the right to occupy and utilize the public rights-of-way, by telecommunications
206 providers and broadband providers are hereby declared to be matters of statewide concern. Such
207 facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel on or by
208 such highway or rights of way.

209 **§ 15.2-2838. Environmental reviews.**

210 A locality shall not impose environmental testing, sampling, or monitoring requirements that exceed
211 federal law or requirements as the same may be amended or supplemented; impose compliance
212 measures for radio frequency emissions on wireless facilities that are categorically excluded under the
213 Federal Communications Commission's rules for radio frequency emissions pursuant to 47 C.F.R.
214 section 1.1307(b)(1), or other applicable federal law, as the same may be amended or supplemented;
215 establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of
216 service quality; reject a collocation application or modification application, in whole or in part, based
217 on perceived or alleged environmental effects of radio frequency emissions; impose any restrictions with
218 respect to objects in navigable airspace that are greater than or in conflict with the restrictions imposed
219 by the Federal Aviation Administration; or prohibit the placement of emergency power systems that
220 comply with federal and state environmental requirements.

221 **§ 15.2-2839. Moratoriums prohibited.**

222 A locality may not institute any moratorium on the permitting, construction or issuance of approvals
223 of new wireless support structures, substantial modifications of wireless support structures, or
224 collocations.

225 **§15.2-2840. Local authority.**

226 Subject to the provisions of this chapter and applicable federal law, a locality may continue to
227 exercise zoning, land use, planning and permitting authority within their territorial boundaries with
228 regard to the siting of new or modification of wireless support structures, wireless facilities, small cell
229 facilities, or utility poles.