

# AN ACT

To amend sections 1332.23, 4939.01, 4939.02, 4939.03, 4939.031, 4939.035, 4939.038, 4939.0311, 4939.0313, 4939.0315, 4939.0319, 4939.0325, and 4939.08; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 4939.035 (4939.036), 4939.038 (4939.037), 4939.039 (4939.038), 4939.0313 (4939.0312), 4939.0315 (4939.0313), 4939.0317 (4939.0315), 4939.0319 (4939.0316), 4939.0325 (4939.0322), 4939.0327 (4939.0323), and 4939.08 (4939.09); to enact new sections 4939.032, 4939.033, 4939.039, 4939.0317, and 4939.08 and sections 4939.0314 and 4939.0329; and to repeal sections 4939.032, 4939.033, 4939.037, and 4939.0321 of the Revised Code to modify the law regarding wireless service and the placement of small cell wireless facilities in the public way.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 1332.23, 4939.01, 4939.02, 4939.03, 4939.031, 4939.035, 4939.038, 4939.0311, 4939.0313, 4939.0315, 4939.0319, 4939.0325, and 4939.08 be amended; sections 4939.035 (4939.036), 4939.038 (4939.037), 4939.039 (4939.038), 4939.0313 (4939.0312), 4939.0315 (4939.0313), 4939.0317 (4939.0315), 4939.0319 (4939.0316), 4939.0325 (4939.0322), 4939.0327 (4939.0323), and 4939.08 (4939.09) be amended for the purpose of adopting new section numbers as indicated in parentheses; and new sections 4939.032, 4939.033, 4939.039, 4939.0317, and 4939.08 and sections 4939.0314 and 4939.0329 of the Revised Code be enacted to read as follows:

Sec. 1332.23. (A) Except as otherwise provided in divisions (B)(1) and (2) of this section, no person shall provide video service in this state on or after ~~the effective date of this section~~ September 24, 2007, except pursuant to a video service authorization issued under section 1332.24 of the Revised Code. Nothing in sections 1332.21 to 1332.34 of the Revised Code equates authority to construct and operate telecommunications facilities in a public right-of-way to authority to provide access to video service.

(B)(1)(a) Subject to division (B)(2) of this section, a person that offers service under a franchise or competitive video service agreement in effect on ~~the effective date of this section~~ September 24, 2007, may continue on and after that date to provide service within the franchise area or the respective municipal corporation or unincorporated area of a township pursuant to the terms and conditions of the franchise or agreement. However, no such franchise or agreement shall be renewed or extended beyond the existing term of the franchise or agreement or its earlier termination pursuant to the terms and conditions of the franchise or agreement. With respect to such a franchise or competitive video service agreement but only for the time the franchise or agreement is in effect as

provided under divisions (B)(1)(a) and (2) of this section, the authority of a township under sections 505.90 to 505.92 of the Revised Code, as those sections existed on the day before their repeal by Am. Sub. S.B. 117 of the 127th ~~General Assembly~~ general assembly, shall continue, notwithstanding their repeal by that act.

(b) Any person that is providing video service in this state on ~~the effective date of this section September 24, 2007~~, pursuant to the terms and conditions of an expired franchise or competitive video service agreement, or is otherwise providing video service on that date other than as described in division (B)(1)(a) of this section, has ninety days beginning on ~~the effective date of this section September 24, 2007~~, to file an application for a video service authorization under section 1332.25 of the Revised Code.

(2) A person that offers service under a franchise or competitive video service agreement pursuant to division (B)(1)(a) of this section may apply, under any of the following circumstances, under section 1332.25 of the Revised Code for a video service authorization to provide video service within an area served by its video service network on ~~the effective date of this section September 24, 2007~~, under that franchise or agreement:

(a) Not sooner than one hundred twenty days before the expiration or termination of the person's franchise or competitive video service agreement for that area in accordance with its terms and conditions;

(b) After any other person provides or sells video service in that area;

(c) After receiving notice pursuant to division (A) of section 1332.27 of the Revised Code;

(d) After a determination by the federal communications commission under 47 C.F.R. 76.907 that the person is subject in that area to effective competition as defined in 47 C.F.R. 76.905(b).

Upon the effective date of a video service authorization obtained by the person under division (B)(2) of this section, the franchise or competitive video service agreement terminates, and no provision of that franchise or agreement is enforceable.

(C) Video service constitutes cable service over a cable system for the purposes of sections 1332.01 to 1332.10 of the Revised Code. For purposes of division (B)(4) of section 4939.05 and divisions (A)(3) and (D)(2) of section ~~4939.08-4939.09~~ of the Revised Code, a municipal corporation that receives a video service provider fee described in section 1332.32 of the Revised Code constitutes a municipal corporation that charges a franchise fee, and a video service authorization described in section 1332.24 of the Revised Code constitutes a franchise between a cable operator and a municipal corporation.

Sec. 4939.01. As used in sections 4939.01 to ~~4939.08-4939.09~~ of the Revised Code:

(A) ~~"Accessory equipment" means any equipment used in conjunction with a wireless facility or wireless support structure. "Accessory equipment" includes utility or transmission equipment, power storage, generation or control equipment, cables, wiring, and equipment cabinets.~~ "Abandoned" means any small cell facilities or wireless support structures that are unused for a period of three hundred sixty-five days without the operator otherwise notifying the municipal corporation and receiving the municipal corporation's approval.

(B) "Antenna" means communications equipment that transmits or receives radio frequency signals in the provision of wireless service, ~~including associated accessory equipment.~~

(C) "Cable operator," "cable service," and "franchise" have the same meanings as in the

"Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522.

~~(D) "Distributed antenna system" means a network or facility to which all of the following apply:~~

~~(1) It distributes radio frequency signals to provide wireless service.~~

~~(2) It meets the height and size characteristics of a small cell facility.~~

~~(3) It consists of all of the following:~~

~~(a) Remote antenna nodes deployed throughout a desired coverage area;~~

~~(b) A high-capacity signal transport medium connected to a central hub site;~~

~~(c) Equipment located at the hub site to process or control the radio frequency signals through the antennas.~~

~~(4) It conforms to the size limitations specified in division (N) of this section.~~

~~(E) "Collocation" or "collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure.~~

~~(E) "Decorative pole" means a pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:~~

~~(1) Electric lighting;~~

~~(2) Specially designed informational or directional signage;~~

~~(3) Temporary holiday or special event attachments.~~

~~(F) "Eligible facilities request" has the same meaning as in 47 U.S.C. 1455(a)(2).~~

~~(F) "Micro wireless facility" includes both a distributed antenna system and a small cell facility, and the related wireless facilities.~~

~~(G) "Micro wireless facility operator" means a public utility or cable operator that operates a micro wireless facility.~~

~~(H)(G) "Historic district" means a building, property, or site, or group of buildings, properties, or sites that are either of the following:~~

~~(1) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C;~~

~~(2) A registered historic district as defined in section 149.311 of the Revised Code.~~

~~(H) "Micro wireless facility" means a small cell facility that is not more than twenty-four inches in length, fifteen inches in width, and twelve inches in height and that does not have an exterior antenna more than eleven inches in length suspended on cable strung between wireless support structures.~~

~~(I) "Municipal electric utility" has the same meaning as in section 4928.01 of the Revised Code.~~

~~(J) "Occupy or use" means, with respect to a public way, to place a tangible thing in a public way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services~~

provided by a cable operator.

~~(K)~~ "Operator" means a wireless service provider, cable operator, or a video service provider that operates a small cell facility and provides wireless service as defined in division (T) of this section. For the purpose of this chapter, "operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), and services that are fixed in nature or use unlicensed spectrum.

~~(J)-(L)~~ "Person" means any natural person, corporation, or partnership and also includes any governmental entity.

~~(K)-(M)~~ "Public utility" means a wireless service provider as defined in division (A)(20) of section 4927.01 of the Revised Code or any company described in section 4905.03 of the Revised Code except in divisions (B) and (I) of that section, which company also is a public utility as defined in section 4905.02 of the Revised Code; and includes any electric supplier as defined in section 4933.81 of the Revised Code.

~~(L)-(N)~~ "Public way" means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled by a municipal corporation. "Public way" excludes a private easement.

~~(M)-(O)~~ "Public way fee" means a fee levied to recover the costs incurred by a municipal corporation and associated with the occupancy or use of a public way.

~~(N)-(P)~~ "Small cell facility" means a wireless facility that meets both of the following requirements of division (N)(1) of this section and also division (N)(2) of this section:

(1)(a) Each antenna is located inside an enclosure of not more than six 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 enclosure of not more than six cubic feet in volume.

~~(b)-(2)~~ All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

~~(2)~~ If the wireless facility were placed on a wireless support structure, the increased height would be not more than ten feet or the overall resulting height would be not more than fifty feet.

~~(O)-(Q)~~ "Utility pole" means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs and decorative poles.

~~(P)-(R)~~ "Video service provider" has the same meaning as in section 1332.21 of the Revised Code.

~~(S)(1)~~ "Wireless facility" means an antenna, accessory equipment, or other wireless device or equipment used to provide wireless service.

~~(Q)~~ at a fixed location that enables wireless communications between user equipment and a

communications network, including all of the following:

(a) Equipment associated with wireless communications;

(b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

(2) The term includes small cell facilities.

(3) The term does not include any of the following:

(a) The structure or improvements on, under, or within which the equipment is collocated;

(b) Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(T) "Wireless service" means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

~~(R)~~(U) "Wireless service provider" means a person who provides wireless service as defined in division (A)(19) of section 4927.01 of the Revised Code.

(V) "Wireless support structure" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting wireless small cell facilities. As used in section 4939.031 of the Revised Code this chapter, "wireless support structure" excludes all of the following:

(1) A utility pole or other facility owned or operated by a municipal electric utility;

(2) A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

(W) "Wireline backhaul facility" is a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

(X) "Work permit" means a permit issued by a municipal corporation that must be obtained in order to perform any work in, on, above, within, over, below, under, or through any part of the public way, including, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, or installing, as well as the act of opening and cutting into the surface of any paved or improved surface that is part of the public way.

Sec. 4939.02. (A) It is the public policy of this state to do all of the following:

(1) Promote the public health, safety, and welfare regarding access to and the occupancy or use of public ways, to protect public and private property, and to promote economic development in this state;

(2) Promote the availability of a wide range of utility, communication, and other services to residents of this state at reasonable costs, including the rapid implementation of new technologies and innovative services;

(3) Promote the rapid deployment of small cell facility infrastructure and related capital investment in this state by ensuring that municipal corporations grant or deny consent to install, operate, modify, or replace wireless facilities in a timely manner;

(4) Ensure that access to and occupancy or use of public ways advances the state policies specified in sections 4927.02, 4928.02, and 4929.02 of the Revised Code;

~~(4)~~(5) Recognize the authority of a municipal corporation to manage access to and the occupancy or use of public ways to the extent necessary with regard to matters of local concern, and to receive cost recovery for the occupancy or use of public ways in accordance with law;

~~(5)-(6)~~ Ensure in accordance with law the recovery by a public utility of public way fees and related costs;

~~(6)-(7)~~ Promote coordination and standardization of municipal management of the occupancy or use of public ways, to enable efficient placement and operation of structures, appurtenances, or facilities necessary for the delivery of public utility or cable services;

~~(7)-(8)~~ Encourage agreement among parties regarding public way fees and regarding terms and conditions pertaining to access to and the occupancy or use of public ways, and to facilitate the resolution of disputes regarding public way fees;

~~(8) Expedite the installation and operation of micro, and smaller, wireless facilities in order to facilitate the deployment of advanced wireless service throughout the state~~ (9) Protect the integrity of the residential and historic locations and ensure that access to and occupancy or use of public ways in such districts is technologically and aesthetically appropriate.

(B) This policy establishes fair terms and conditions for the use of public ways and does not unduly burden persons occupying or using public ways or persons that benefit from the services provided by such occupants or users.

Sec. 4939.03. (A) No person shall occupy or use a public way except in accordance with law.

(B) In occupying or using a public way, no person shall unreasonably compromise the public health, safety, and welfare.

(C)(1) No person shall occupy or use a public way without first obtaining, under this section or section 1332.24 or 4939.031 of the Revised Code, any requisite consent of the municipal corporation owning or controlling the public way.

(2) Except as otherwise provided in division (C)~~(5)-(6)~~ of this section and sections 4939.031 and ~~4939.035-4939.036~~ of the Revised Code, a municipal corporation, not later than sixty days after the date of filing by a person of a completed request for consent, shall grant or deny its consent.

(3) A municipal corporation shall not unreasonably withhold or deny consent.

(4) If a request by a person for consent is denied, the municipal corporation shall provide to the person in writing its reasons for denying the request and such information as the person may reasonably request to obtain consent. If a request for consent is denied for an activity described in section 4939.031 of the Revised Code, the reasons required under this division shall be supported by substantial, competent evidence and the denial of consent shall not unreasonably discriminate against the entity requesting the consent.

(5) Except in the case of a public utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or of a cable operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, a municipal corporation, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

(6) Initial consent for occupancy or use of a public way shall be conclusively presumed for all lines, poles, pipes, conduits, ducts, equipment, or other appurtenances, structures, or facilities of a public utility or cable operator that, on July 2, 2002, lawfully so occupy or use a public way. However, such presumed consent does not relieve the public utility or cable operator of compliance with any law related to the ongoing occupancy or use of a public way.

Sec. 4939.031. (A) Subject to section 4939.0314 of the Revised Code and approval of an application under this section, an operator may, as a permitted use not subject to zoning review or approval, collocate a small cell facility and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under the public way. An operator shall comply with generally applicable standards that are consistent with this chapter and adopted by a municipal corporation for construction and public safety in a public way. All structures and facilities shall be constructed and maintained so as not to impede or impair public safety or the legal use of the public way by the municipal corporation, the traveling public, or other public utilities.

(B) A municipal corporation, not later than ninety days after the date of filing by an entity of a completed request for consent for any of the following, under divisions (B)(1) and (2) of this section or one hundred twenty days under division (B)(3) of this section to be done in a public way, shall, subject to sections 4939.03, 4939.033 to 4939.037, and 4939.0313 to 4939.0319 of the Revised Code this chapter, grant or deny its consent to:

- (1) Attaching micro wireless-Collocate small cell facilities to-on a wireless support structure;
- (2) Locating two or more wireless service providers' micro wireless facilities on the same wireless support structure;
- (3) Replacing or modifying a micro wireless-Replace or modify a small cell facility on a wireless support structure, if consent is required under this section;
- (4) Constructing, modifying, or replacing-(3) Construct, modify, or replace a wireless support structure associated with a micro wireless-small cell facility.

(B)-(C) If a municipal corporation fails to approve or deny a request for consent under this section or a request for a relevant work permit within the required time period, provided the time period is not tolled under section 4939.036 of the Revised Code, the request shall be deemed granted upon the requesting entity providing notice to the municipal corporation that the time period for acting on the request has lapsed.

(D) Except as provided in division (B) of section 4939.0311 of the Revised Code, this chapter as well as, and any franchise, pole attachment, or other agreements between a municipal corporation and a cable operator or public utility, a municipal corporation shall not require any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a micro wireless-small cell facility in the public way, or otherwise prohibit or restrain the activities as described in this section.

(E) For purposes of submitting a request for municipal corporation consent under this section, "operator" also includes any person that, at the time of filing the request, provides the municipal corporation the person's written authorization to perform the specific work for which consent has been requested on behalf of an operator.

Sec. 4939.032. Applications for requests for consent pursuant to section 4939.03 or 4939.031 of the Revised Code shall include the name of the person who owns or will own the small cell facility or wireless support structure for which consent is requested. A permit or other record of consent issued by a municipal corporation that authorizes the use of the public way pursuant to section 4939.03 or 4939.031 of the Revised Code shall include the name of the person who owns or will own the facility or structure.

Sec. 4939.033. A person who is not an operator under section 4939.031 of the Revised Code

shall request, pursuant to and in accordance with the requirements of section 4939.03 of the Revised Code, municipal corporation consent to collocate a small cell facility and construct, maintain, modify, operate, or replace wireless support structures in, along, across, upon, and under a public way.

Sec. 4939.035-4939.036. (A) The ~~ninety-day~~ time period required in section 4939.031 of the Revised Code may be tolled only:

(1) By mutual agreement between the entity requesting consent and the municipal corporation;

(2) In cases where the municipal corporation determines that the application is incomplete; or

(3) By the ~~municipal corporation in the event it has an extraordinary number of wireless facilities contained in pending requests, in which case~~ If the number of requests for consent for small cell facilities or wireless support structures received is likely to result in difficulty processing applications within the time limits set forth in section 4939.031 of the Revised Code due to the lack of resources of the municipal corporation, then the municipal corporation may toll the ~~ninety-day~~ period for a reasonable amount of days not exceeding an additional ninety days time limits as follows:

(a) The time period may be tolled for up to twenty-one days for the first fifteen small cell facility or wireless support structure requests received by a municipal corporation above the thresholds provided in divisions (A)(3)(a)(i) to (v) of this section and for the first thirty small cell facility or wireless support structure requests received by a municipal corporation above the thresholds provided in division (A)(3)(a)(vi) of this section, within any consecutive thirty-day period:

(i) For a municipal corporation having a population of thirty thousand persons or less when it receives applications for at least fifteen small cell facility or wireless support structure requests;

(ii) For a municipal corporation having a population of thirty thousand one to forty thousand persons when it receives applications for at least twenty small cell facility or wireless support structure requests;

(iii) For a municipal corporation having a population of forty thousand one to fifty thousand persons when it receives applications for at least twenty-five small cell facility or wireless support structure requests;

(iv) For a municipal corporation having a population of fifty thousand one to sixty thousand persons when it receives applications for at least thirty small cell facility or wireless support structure requests;

(v) For a municipal corporation having a population of sixty thousand one to one hundred thousand persons when it receives applications for at least sixty small cell facility or wireless support structure requests;

(vi) For a municipal corporation having a population of one hundred thousand one persons or more when it receives applications for at least ninety small cell facility or wireless support structure requests.

(b) Further, for every additional fifteen requests that the municipal corporation receives above the thresholds provided in divisions (A)(3)(a)(i) to (v) of this section, and every additional thirty requests that the municipal corporation receives above the threshold provided in division (A)(3)(a)(vi) of this section within any consecutive thirty-day period, the municipal corporation may toll



the time period for those requests for up to fifteen days in addition to the time period provided in division (A)(3)(a) of this section.

(c) In no instance shall a municipal corporation toll the time period for any small cell facility or wireless support structure request by more than ninety consecutive days. Upon request, a municipal corporation shall provide an operator written notice of the time limit for a small cell facility or wireless support structure request.

(B) To toll the time period for incompleteness, the municipal corporation shall provide written notice to the ~~entity~~ person requesting consent not later than thirty days after receiving the request, clearly and specifically delineating all missing documents or information. The missing documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in section ~~4939.0315~~ 4939.0313 of the Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, does not toll the time period.

(C) The time period ~~begins running again~~ resumes when the entity makes a supplemental submission in response to the municipal corporation's notice of incompleteness.

(D) If a supplemental submission is inadequate, the municipal corporation shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (A) to (C) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that ~~were~~ was not delineated in the original notice of incompleteness.

Sec. ~~4939.038~~ 4939.037. Nothing in this chapter precludes a municipal corporation from applying its generally applicable health, safety, and welfare regulations when granting consent for a ~~micro wireless small cell facility or wireless support structure~~.

Sec. ~~4939.039~~ 4939.038. Notwithstanding sections 4939.031 to 4939.037 of the Revised Code, a municipal corporation shall approve within sixty days, and may not deny, an eligible facilities request under 47 C.F.R. 1.40001.

Sec. 4939.039. Any operator who owns or operates small cell facilities or wireless support structures in the public way shall indemnify, protect, defend, and hold the municipal corporation 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 operator who owns or operates small cell facilities and wireless service in the public way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in a public way.

Sec. 4939.0311. (A) Consent of a municipal corporation shall not be required for either of the following activities conducted in the public way:

(1) Routine maintenance of wireless facilities;  
 (2) The replacement of wireless facilities with wireless facilities that are consistent with the municipal corporation's current design guidelines and that are either of the following:

- (a) Substantially similar to the existing wireless facilities;
- (b) The same size or smaller than the existing wireless facilities.

(B) A municipal corporation may require a work permit for ~~an~~any activity described in division (A) of this section and for any activity for which consent is authorized under section 4939.031 of the Revised Code. Any such permit shall be subject to any applicable law in this chapter.

(C) Notwithstanding the amendments and enactments made to sections 4939.01 to 4939.09 of the Revised Code by H.B. 478 of the 132nd General Assembly, a cable or video service provider shall not be required to obtain permits from a municipal corporation or to pay fees, with the exception of work permits and associated fees, to place, operate, maintain, or replace micro wireless facilities pursuant to an existing franchise or video service authorization under Chapter 1332. of the Revised Code; nor shall a holder of an existing franchise or video service authorization be required to obtain additional authorizations or to pay additional fees for the placement of micro wireless facilities already covered under an existing franchise or video service authorization under Chapter 1332. of the Revised Code.

(D) The permitting procedures and authorizations set forth in the amendments and enactments made to sections 4939.01 to 4939.09 of the Revised Code by H.B. 478 of the 132nd General Assembly shall apply only to the placement of small cell facilities and wireless support structures in the public way, and do not authorize the construction and operation of a wireline backhaul facility.

Sec. ~~4939.0313~~ 4939.0312. (A) ~~An entity~~A municipal corporation shall permit a person seeking to construct, modify, collocate, or replace more than one micro-small cell facility or more than one wireless facility support structure within the jurisdiction of a single municipal corporation may to file, at the entity's-person's discretion, a consolidated request-application for consent under division (A)(4) of section 4939.031 of the Revised Code for up to thirty small cell facilities requests in a single application or up to thirty wireless support structure requests in a single application and receive a single permit for the construction, modification, collocation, or replacement of the micro-wireless-small cell facilities or associated-wireless support structures. However, this single application may only address multiple small cell facilities or multiple wireless support structures if they each involve substantially the same type of small cell facilities or substantially the same type of wireless support structures. A municipal corporation may separately address small cell facility collocations or wireless support structures for which incomplete information has been received or which are denied.

(B) In the case of a consolidated ~~request application~~, the fees provided for in section ~~4927.0319~~ 4939.0316 of the Revised Code may be cumulative. However, a municipal corporation, at its discretion, may opt to reduce such fees in order to encourage persons to submit consolidated applications.

(C) In the case of a consolidated application, each small cell facility or wireless support structure proposed to be constructed, modified, collocated on, or replaced shall constitute a separate request for consent for purposes of tolling the response deadline as authorized under section

4939.036 of the Revised Code. A request by a single operator for a new or replacement support structure and associated small cell facility constitutes one request.

~~Sec. 4939.0315-4939.0313.~~ With respect to the provision of any ~~micro-wireless-small cell facility or the associated wireless support structure in a public way~~, a municipal corporation shall not do any of the following:

(A) ~~Require the requestor-a person~~ to submit information about, or evaluate a ~~requestor's person's~~ business decisions with respect to, the ~~requestor's person's~~ service, customer demand, or quality of service to or from a particular area or site as a condition for approval of the request;

(B) ~~Require the requestor-a person~~ to submit information about the need for the ~~micro-wireless-small cell~~ facility or the associated wireless support structure, including additional wireless coverage, capacity, or increased speeds, as a condition for approval of the request;

(C) ~~Require the requestor-a person~~ to justify the need for the new ~~micro-wireless-small cell~~ facility or associated wireless support structure, or to submit business information, including strategy documents, propagation maps, or telecommunications traffic studies as a condition for approval of the request;

(D) ~~Evaluate the request based on the availability of other potential locations for the placement of the micro-wireless facility or associated wireless support structure, including the options to submit a request under division (A)(1) or (2) of section 4939.031 of the Revised Code or under division (A)(4) of that section to modify an existing micro-wireless facility or associated wireless support structure except that a municipal corporation may propose an alternate location within fifty feet of the proposed location, which the requestor shall use if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs;~~

~~(E)-~~Require the removal of existing wireless support structures or ~~wireless-small cell~~ facilities, wherever located, as a condition for approval of the request, unless the existing wireless support structures or small cell facilities have been unused or abandoned. This division shall not preclude a municipal corporation from adopting reasonable rules intended to ensure the public health, safety, and welfare with respect to the removal of an abandoned wireless support structure or abandoned wireless ~~facilities~~ facility.

~~(F)-(E)~~ Impose restrictions with respect to objects in navigable airspace that are stricter than or in conflict with any restrictions imposed by the federal aviation administration;

~~(G)-~~Impose requirements for bonds, escrow deposits, letters of credit, or any other type of financial surety to ensure removal of abandoned or unused wireless facilities, unless the municipal corporation imposes similar requirements on other permits for occupancy of the public way;

~~(H)-(F)~~ Unreasonably discriminate among providers of functionally equivalent services;

~~(I)-~~Impose unreasonable requirements regarding the maintenance or appearance of the ~~micro-wireless facility or associated wireless support structure and accessory equipment, including the types of materials to be used and the screening or landscaping of wireless facilities;~~

~~(J)-~~Require that the requestor purchase, lease, or use ~~(G)~~ Condition the grant of consent on the requirement that a person purchase or lease facilities, networks, or services owned or operated by the municipal corporation, in whole or in part, or owned or operated, in whole or in part, by any entity in which the municipal corporation has an economic governance interest;

~~(K)-(H)~~ Condition the grant of consent on the requestor's agreement to permit other wireless facilities to be placed at, attached to, or located on the associated wireless support structure;

~~(L)~~ Limit the duration of any permit that is granted, except that a municipal corporation may require that construction commence within two years;

~~(M)-(I)~~ Impose setback or fall-zone requirements for the associated wireless support structure that are different from requirements imposed on other similar types of structures in the public way;

~~(N)-(J)~~ Impose environmental testing, sampling, or monitoring requirements that exceed rules and regulations established under state or federal law or that are not imposed on other types of construction or elements of the construction;

~~(O)-(K)~~ Impose any regulations pertaining to radio frequency emissions or exposure to such emissions that are contrary to or exceed rules of the federal communications commission;

~~(P)~~ Impose ~~(L)~~ Except as set forth in section 4939.0314 of the Revised Code, impose separation requirements that require any space to be maintained regarding spacing between an operator's facilities and other wireless facilities or wireless support structures;

~~(Q)~~ Prevent the requestor from locating the micro wireless facility or wireless support structure in a residential area or within a specific distance from a residence or other structure, utility poles, ground-mounted equipment, or other utility facilities within the public way.

Sec. 4939.0314. With respect to the placement of any small cell facility or wireless support structure in a public way, a municipal corporation may do any of the following:

(A) Reserve space for future public safety or transportation uses in the public way or on a wireless support structure or pole owned by a municipal corporation in a documented and approved plan in place at the time an application is filed. A reservation of space shall not preclude placement of a pole or collocation of a small cell facility. If replacement of the municipal corporation's pole or wireless support structure is necessary to accommodate the collocation of the small cell facility and the future use, the operator shall pay for the replacement of the pole or wireless support structure, and the replaced pole or wireless support structure must accommodate the future use.

(B) Require reasonable and nondiscriminatory spacing requirements for the location of new wireless support structures set forth in an ordinance, local rule, or design guidelines. Such spacing requirements shall not prohibit, or have the effect of prohibiting, the provision of wireless service to any location.

(C) Adopt reasonable written design guidelines with objective, technologically feasible criteria that reasonably match the aesthetics and character of the immediate area regarding all of the following:

(1) The location of any ground-mounted small cell facilities;

(2) The location of a small cell facility on a wireless support structure;

(3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, or landscaping;

(4) The design and appearance of a wireless support structure including any height requirements adopted by a municipality in accordance with division (F) of this section.

Any such guidelines shall be applied in a nondiscriminatory manner. Materials utilized to comply with the appearance and concealment criteria established in the guidelines shall not be considered part of the small cell facility for purposes of facility size restrictions in this chapter.

(D) Propose an alternate location to the proposed location of a new wireless support structure that is within one hundred feet of the proposed location or within a distance that is equivalent to the width of the public way in or on which the new wireless support structure is proposed, whichever is greater, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.

(E) Require that a collocation or a new wireless support structure for which a permit is granted shall be completed within one hundred eighty days after issuance of the permit, unless the municipal corporation and the operator agree to extend this period or a delay is caused by make-ready work for a municipally owned wireless support structure or decorative pole or by the lack of commercial power or backhaul availability at the site, provided that the operator has made a timely request within sixty days after the issuance of the permit for commercial power or backhaul services, and the additional time to complete installation does not exceed three hundred sixty days after issuance of the permit. Otherwise, the permit shall be void unless the municipal corporation grants an extension in writing to the operator.

(F) Set restrictions for the height of a wireless support structure and the placement of a wireless facility as follows:

(1) For a new wireless support structure, the overall height of the wireless support structure and any collocated antennas shall not be more than forty feet in height above ground level.

(2) Notwithstanding division (F) of this section, and except that the cap shall not be below thirty-five feet in height above ground level, a municipal corporation may adopt design guidelines under division (C) of this section to cap the permissible height of small cell facilities in areas meeting the following criteria:

(a) The area is within three hundred feet of the proposed site for a new wireless support structure in the same public way or a connecting public way, and there are no wireless support structures or utility poles taller than thirty feet in height above ground level;

(b) The maximum allowable height for building construction in the underlying zoning district is thirty-five feet in height above ground level or less.

(3) For an existing wireless support structure, the antenna and any associated shroud or concealment material are permitted to be collocated at the top of the existing wireless support structure and shall not increase the height of the existing wireless support structure by more than five feet.

(G) Require an operator to comply with reasonable and nondiscriminatory requirements that prohibit public utilities or cable operators from installing structures and facilities in the public way because an area is either designated solely for undergrounding or structures and facilities are required to be placed elsewhere in the public way, if the following apply:

(1) The municipal corporation has required all structures and facilities, including structures and facilities owned by a municipal electric company, but not including structures and facilities owned by a municipal corporation or a transit authority, to be placed underground or elsewhere in the public way or a utility easement by a date certain that is three months prior to the submission of the application;

(2) Subject to the provisions of this chapter, the municipal corporation does not prohibit the replacement of wireless support structures or the collocation of small cell facilities on wireless

support structures in the designated area:

(3) The municipal corporation permits operators to seek a waiver of the undergrounding or alternative location requirements for the placement of a new wireless support structure to support small cell facilities if the operator is unable to achieve its service objective using a small cell facility under the following circumstances:

(a) From a location in the public way where the prohibition does not apply;

(b) In a utility easement the operator has the right to access; or

(c) In or on other suitable locations or structures made available by the municipal corporation at reasonable rates, fees, and terms. A municipal corporation shall process waivers in a reasonable and nondiscriminatory manner that does not have the effect of prohibiting the provision of wireless service.

(H) Subject to section 4939.0313 of the Revised Code, and except for facilities excluded from evaluation for effects on historic properties under 47 C.F.R. 1.1307(a)(4) of the federal communications commission's rules, a municipal corporation may require reasonable, technically feasible, and nondiscriminatory design or concealment measures in an historic district. Any such design or concealment measures may not have the effect of prohibiting any operator's technology, nor may any such measures be considered a part of the small cell facility for purposes of the size restrictions in the definition of small cell facility.

(I) If multiple requests are received by the municipal corporation to install two or more poles that would violate applicable spacing requirements under division (B) of this section, or to collocate two or more small cell facilities on the same wireless support structure, notwithstanding division (I) of section 4939.0313 of the Revised Code, the municipal corporation may resolve conflicting requests through whatever reasonable and nondiscriminatory manner the municipal corporation deems appropriate.

(J) Impose reasonable 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 municipal property caused by an operator or its agent.

Sec. 4939.0317-4939.0315. No municipal corporation may institute a moratorium on the filing, acceptance of filings, consideration, or approval of requests for consent described in section 4939.031 of the Revised Code.

Sec. 4939.0319-4939.0316. Any fee charged by a municipal corporation for a request for consent under section 4939.031 of the Revised Code for granting or processing an application for consent shall not exceed the lesser a one-time fee of two hundred fifty dollars per micro wireless small cell facility or the amount charged by the. Beginning on the effective date of this section, a municipal corporation for a building permit for any other type of commercial development or land use development may adjust this fee ten per cent every five years, rounded to the nearest five dollars. During each five-year period, the adjustment may be applied incrementally or as a single adjustment.

Sec. 4939.0317. A municipal corporation's approval term of an attachment to a wireless support structure shall be for a period of not less than ten years, with presumption of renewal for successive five-year terms, subject to terms providing for early termination or nonrenewal for cause or by mutual agreement and unless otherwise agreed to by both the operator and the municipal corporation, except for generally applied permitting to safeguard the public health, safety, and

welfare. An operator may remove its small cell facilities at any time subject to applicable work permit requirements and may stop paying annual charges or fees under division (B) of section 4939.0322 of the Revised Code.

Sec. 4939.0325–4939.0322. (A) A municipal corporation shall permit, for the purpose of providing wireless service, an attachment by a micro wireless facility operator to consistent with this chapter and for the purpose of providing wireless service, a collocation of a small cell facility by an operator to a wireless support structure owned by the municipal corporation and located in the public way, provided that the operator comply with any applicable design guidelines under division (C) of section 4939.0314 of the Revised Code and reasonable terms and conditions for such collocations adopted by the municipal corporation that are consistent with the design guidelines and this chapter. The municipal corporation may condition approval of the collocation on replacement or modification of the wireless support structure at the operator's cost if the municipal corporation determines that replacement or modification is necessary for compliance with its written construction or safety standards. A replacement or modification of the wireless support structure shall conform to the applicable design guidelines and the municipal corporation's applicable specifications for the type of structure being replaced. The municipal corporation may retain ownership of a replacement wireless support structure.

(B) The total annual charges to reimburse the municipal corporation for the attachment shall not exceed two hundred dollars per small cell facility collocated on a wireless support structure owned or operated by the municipal corporation and located in the public way. Beginning on the effective date of this section, a municipal corporation may adjust this charge ten per cent every five years, rounded to the nearest five dollars. During each five-year period, the adjustment may be applied incrementally or as a single adjustment.

(B)(1) The total annual charges and fees for the attachment and any activities related to the attachment shall be the lesser of the actual, direct, and reasonable costs related to the use of the wireless support structure by the operator or two hundred dollars per attachment.

(2) In any controversy concerning the appropriateness of a charge or fee under this section, the municipal corporation shall have the burden of proving that the charge or fee is reasonably related to its actual, direct, and reasonable costs.

(C) The charges, fees, terms, and conditions for attachments under this section, including the processes and time for approval of applications and permits for the attachments, shall be nondiscriminatory as to all attaching operators regardless of the types of services provided by the operators. Except for any applicable work permit under division (B) of section 4939.0311 of the Revised Code and financial surety under division (J) of section 4939.0314 of the Revised Code, a municipal corporation may not charge an operator any other charge or fee for a small cell facility or associated wireless support structure except as set forth in section 4939.0316 and division (B) of section 4939.0322 of the Revised Code. The fees set forth in sections 4939.0316 and 4939.0322 of the Revised Code are not public way fees.

(D) Nothing in this chapter affects the need for an entity seeking to place a micro wireless facility on a public-utility owned utility pole to obtain from the public utility any necessary authority to place the facility. Placement of small cell facilities in the public way or attachment of small cell facilities to a wireless support structure and any fees associated therewith shall not subject a

municipal corporation to any state or local tax liabilities or assessments.

(E) To the extent that an investor-owned electric utility whose rates are regulated by the public utilities commission, its affiliate, an electric cooperative, or an independent transmission company is not an operator as defined by this chapter, nothing in sections 4939.01 and 4939.031 to 4939.039 of the Revised Code shall be construed to modify, add to, replace, or supersede any construction standard or engineering practice, tariff, contractual obligation or right, or federal or state law or regulation regarding utility poles, similar structures, or equipment of any type owned or controlled by that investor-owned electric utility, affiliate, electric cooperative, or independent transmission company.

Sec. 4939.0327-4939.0323. A municipal corporation shall not enter into an exclusive arrangement with any entity for the right to attach to the municipal corporation's wireless support structures.

Sec. 4939.0329. A person may construct, modify, or maintain a utility pole or wireless support structure along, across, and under a public way in excess of the size limits, to the extent permitted by the municipal corporation's applicable regulations.

Sec. 4939.08. If requested by a municipal corporation, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety, and welfare of the public, an operator shall relocate or adjust its facilities within the public way at no cost to the municipal corporation, as long as such request similarly binds all users in or on such public way. Such relocation or adjustment shall be completed in accordance with local law.

Sec. 4939.08-4939.09. (A) Nothing in sections 4939.01 to ~~4939.07-4939.08~~ of the Revised Code applies to a franchise or to any agreement with a public utility, cable operator, or ~~micro-wireless facility~~ operator, for the balance of its term, if the franchise or agreement meets all of the following, as applicable:

(1)(a) With respect to a public utility or cable operator, the franchise was granted, or the agreement was authorized by ordinance or otherwise and was entered into, by a municipal corporation prior to July 2, 2002.

(b) With respect to ~~a micro-wireless facility~~ an operator, the agreement was authorized by ordinance or otherwise and was entered into by a municipal corporation and the ~~micro-wireless facility~~ operator prior to the effective date of the amendments to this section by S.B. 331 of the 131st general assembly.

(2) The franchise or agreement authorizes the occupation or use of public ways.

(3) The public utility or ~~micro-wireless facility~~ operator agrees with the applicable public way fees, or nonmonetary compensation, if any, or the cable operator pays the applicable fee or utilizes the credit, offset, or deduction specified in division (B)(4) of section 4939.05 of the Revised Code.

(B)(1) Except as otherwise provided in division (A) of section 4939.06 of the Revised Code, nothing in sections 4939.01 to ~~4939.07-4939.08~~ of the Revised Code applies to an ordinance both governing public ways and enacted by a municipal corporation prior to September 29, 1999, unless, on or after that date, the ordinance is materially modified.

(2) Division (B)(1) of this section does not apply to ~~micro-wireless facility~~ operators and their facilities.

(C) Nothing in sections 4939.01 to ~~4939.07-4939.08~~ of the Revised Code authorizes a



municipal corporation to levy a fee, other than a public way fee authorized by section 4939.05 of the Revised Code, on a pipeline company or an operator of a pipeline facility regulated under the "Accountable Pipeline Safety and Partnership Act of 1996," 110 Stat. 3793, 49 U.S.C.A. 60101, or on an operating partner or affiliated business unit operating under guidelines of the federal energy regulatory commission as they relate to the construction and operation of a pipeline.

(D) Nothing in sections 4939.01 to ~~4939.07~~~~4939.08~~ and this section of the Revised Code prohibits a municipal corporation from doing either of the following:

(1) Charging a cable operator a franchise fee in accordance with the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 542;

(2) Allowing a credit, offset, or deduction against the payment of a construction permit fee for any franchise fee a cable operator pays to the municipal corporation.

SECTION 2. That existing sections 1332.23, 4939.01, 4939.02, 4939.03, 4939.031, 4939.035, 4939.038, 4939.039, 4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 4939.0325, 4939.0327, and 4939.08 and sections 4939.032, 4939.033, 4939.037, and 4939.0321 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_