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*Broadband Deployment Advisory Committee*

*State Model Code for Accelerating Broadband  
Infrastructure Deployment and Investment*

**State Model Code for Accelerating Broadband Infrastructure  
Deployment and Investment**

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## ARTICLE 1: SHORT TITLE AND PURPOSE

### State Model Code for Accelerating Broadband Infrastructure Deployment and Investment<sup>1</sup>

1. Short Title.

The Title of this Act shall be the State Broadband Infrastructure Deployment Act.

2. Purpose.

- a. It is hereby declared to be the public policy of this State to encourage the development and deployment of broadband infrastructure to better serve the public and further industrial economic development in this State. The State recognizes that both fixed and mobile, including satellite, broadband infrastructure are a necessary foundation for an innovative economy. To achieve the vision of ubiquitous broadband throughout the State, broadband must be
- i. Available. Broadband should be available to accomplish necessary goals from a technology-neutral perspective;
  - ii. Affordable. For broadband to be available, it must be both affordable for the consumer to purchase and the provider to offer. The State understands that what is affordable may differ for different areas of the State; and
  - iii. Ample. Broadband is considered ample if it provides enough bandwidth to meet personal, business, educational, and economic development needs and is capable of expansion to meet future needs.

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<sup>1</sup> The State Model Code Working Group recognizes that many of the barriers to broadband infrastructure deployment involve circumstances beyond the jurisdiction of the federal government and so this Model Code addresses options that are within the jurisdiction of State governments to adopt. The Broadband Deployment Advisory Committee believes that States are key drivers of change and that considering model codes may be necessary to reduce local barriers and speed the deployment of broadband services. Moreover, the Working Group acknowledges that all States are different and that there is no one size fits all solutions to broadband deployment. For example, States will have different preferences regarding local control and have different authorities within their constitutions. Some States' constitutions will not allow them to pass legislation that preempts local governments. Therefore, this Model Code is not a single solution document but is structured as a severable collection of independent proposals that address various aspects of deployment that a State may face. The Working Group encourages each State to review the Model Code and adopt those portions of the Model Code which best address the realities on the ground in each respective State. The Working Group also suggests that Tribes may wish to consider adopting a version of the Model Code appropriate to their circumstances.

- b. Additionally, the State finds that broadband is
  - i. Key and vital infrastructure to the State; and
  - ii. Essential to
    - 1. The fundamental activities of an advanced society including education, economic development, health, the pursuit of science and technology, and the conduct of government at all levels; and
    - 2. Obtaining economic and educational equality among the different counties and regions of the State;
  - iii. As a key and vital infrastructure:
    - 1. The first phase of the Statewide broadband effort must be to make broadband accessible to every individual and organization in the State; and
    - 2. The second phase of the Statewide broadband effort must be to establish the State as a leader in the leveraging of broadband in support of the activities essential to an advanced society.
  - iv. The inclusion of both fixed and mobile, including satellite, broadband in State and county economic development plans should be encouraged.
- c. State activities in support of county economic development plans shall give priority to county economic development plans that include regional broadband collaborations to assist in situations in which broadband providers within those counties cannot independently establish broadband.
- d. To achieve the aforestated objectives, it shall be the policy of this State to:
  - i. Promote efforts to attain the highest quality of both fixed and mobile, including satellite, broadband capabilities in the State and to make high speed communication available to all residents and businesses in the State;

- ii. Encourage the continued development and expansion of broadband infrastructure, both fixed and mobile, including satellite, to accommodate future growth and innovation in the State's economy;
  - iii. Facilitate the development of new or innovative business and service ventures in the information industry which will provide employment opportunities for the people of \_\_\_\_\_;
  - iv. Encourage greater cooperation between the public and private sectors in developing, deploying, and maintaining a robust State-wide broadband infrastructure;
  - v. Eliminate as much as possible any digital divide between urban and rural areas of the State, and make access to broadband internet available to all residents and businesses regardless of location, as well as the elimination of, to greatest extent possible, any digital divide across an urban area;
  - vi. Facilitate new mechanisms, including new business and investment models, that address the difficulties financing the construction and upgrade of Broadband in high-cost, particularly low-density rural areas, that encourages, to the greatest extent, private investment, recognizing that traditional methods of funding networks have not achieved this goal; and
  - vii. Recognize that communication infrastructure of the various agencies of State government are valuable strategic assets belonging to the people of the State and should be managed accordingly.
- e. The Articles of the Model Code are modular and severable and may be adopted individually and in whole or in part.
  - f. In the Model Code, words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. References to including and include(s) shall be deemed to mean respectively, including without limitation and include(s) without limitation.
  - g. This Model Code shall become effective upon passage or at another date specified by the State legislature.

## ARTICLE 2: DEFINITIONS

1. **“Affordable”** means offering broadband service in rural areas at rates that are reasonably comparable to urban areas.
2. **“Antenna”** means communications equipment that transmits and/or receives over-the-air electromagnetic signals used in the provision of Wireless Services.
3. **“Applicable Codes”** means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendment to those codes to the extent such codes have been adopted by the Authority or otherwise are applicable in the jurisdiction.
4. **“Applicant”** means a Person who submits an Application under this Model Code.
5. **“Application”** means a written request submitted by an Applicant to an Authority for a Permit (i) to locate or Collocate, or to modify, a Communications Facility underground or on any existing Communication Network Support Structure, Pole or Tower, or (ii) to construct, modify or replace a new Support Structure, Pole or Tower or any other structure on which a Communications Network Facility will be collocated.
6. **“As-Built Report”** means a report indicating any changes to an Attachment caused by Make Ready, including a unique field label identifier, the pole number if available, and the address or coordinates of the Attachment.
7. **“Attacher”** means any Person or its agents or contractors seeking to fasten or affix any Attachment in the Public Right-of-Way.
8. **“Attachment”** means communications equipment, Antenna, line, or Facility of any kind fastened or affixed to a Pole or other structure, or its guys and anchors used to support communications Attachments.
9. **“Attachment Application”** means the Application made by an Attacher to an Owner for consent to attach such Attacher’s Attachments to the Owner’s Pole or similar structure, or its guys and anchors, used to support communications.
10. **“Authority”** means a State, county, municipality, district, local authority or other subdivision thereof, authorized by applicable Law to make legislative, quasi-judicial, or administrative decisions, including concerning an Application, but shall not include State courts having jurisdiction over an Authority or any entities that do not have zoning or permitting authority jurisdiction.

11. **“Authority Pole”** means a Pole owned, managed or operated by or on behalf of an Authority and located in the Public Right-of-Way.
12. **“Available”** or **“Availability”** means Broadband Services are available for purchase by at least 90% of the residents and businesses of a particular area.
13. **“Broadband”** means any high-speed, telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any transmission media or technology and at a minimum shall meet the definition of ‘advanced telecommunications capability’ as determined by the FCC from time to time except in Unserved or Rural areas where, at minimum, it shall; 1) Meet the highest speed definition of ‘advanced telecommunications capability’ as determined by the FCC from time to time, regardless of technology; 2) Latency that does not exceed 100 milliseconds round trip; and 3) Minimum usage allowance of 150 gigabytes (GB) per month.
14. **“Broadband Dependent Service”** means a subscription-based retail service for which consumers pay a one time or recurring fee, and shall also include advertising-supported services which require the capabilities of the Broadband Service which the consumer has purchased.
15. **“Broadband Service”** means a fixed or mobile, including satellite, transmission media or technology capable of delivering Broadband.
16. **“Civil Works”** means any building or engineering works which, taken as a whole with other related works, are sufficiently material to require a License in order to conduct such works.
17. **“Collocate”** or **“Collocation”** means to install, mount, maintain, modify, operate and/or replace a Communications Facility on an existing Support Structure, Pole, or Tower or any other structure capable of supporting such Communications Network Facility. **“Collocation”** has a corresponding meaning. The term does not include the installation of a new Pole, Tower or Communications Network Support Structure in the Public Right-of-Way.
18. **“Communications Infrastructure Provider”** means a Person, including a person authorized to provide Communications Services in the State, who builds or installs communication transmission equipment, Communications Network Facilities, or Communications Network Support Structures but is not a provider of Communications Services.”
19. **“Communications Network”** means any Network used or authorized to be used to transmits electronic, optical or radio (whether using regulated frequencies or otherwise) signals including, without limitation, sounds, images and data, and whether using wired, wireless or radio network.

20. **“Communications Network Facility”** means equipment used by a Communications Provider in the provision of a Communications Service over a Communications Network, including: (1) equipment associated with wireless and wireline communications, and (2) radio transceivers, Antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless and wireline communications. The term includes Small Wireless Facilities. The term does not include the structure or improvements on, under, or within which the equipment is located.
21. **“Communications Network Support Structure”** or **“Support Structure”** means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting Communications Network Facilities. The term does not include a Pole.
22. **“Communications Provider”** means a cable operator, as defined in 47 U.S.C. § 522(5), a provider of information service, as defined in 47 U.S.C. § 153(24), a provider of telecommunications service, as defined in 47 U.S.C. § 153(53), or provider of fixed wireless, or other wireless services as defined in 47 U.S.C. § 332(c)(7)(C)(i).
23. **“Communications Service”** means, for purposes limited to this Model Code only,
  - 23.1. Cable Service as defined in 47 U.S.C. § 522(6); or
  - 23.2. Broadband Service, as defined in the Model Code above; or
  - 23.3. Telecommunications Service, as defined in 47 U.S.C. § 153(53); or
  - 23.4. Wireless Service as defined in the Model Code below.
  - 23.5. For the avoidance of doubt, the term ‘Communications Service’ shall also include Satellite communications services.
24. **“Complex Make Ready”** means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.



25. **“Conduit”** means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.
26. **“Crossing”** means a Facility constructed over, under, or across a Railroad right-of-way. The term does not include longitudinal occupancy of Railroad right-of-way.
27. **“Dark Fiber”** means Fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying Communications Services.
28. **“Decorative Pole”** means an Authority Pole that is specially designed and placed for aesthetic purposes.
29. **“Duct”** means a single enclosed raceway for conductors, cable and/or wire.
30. **“Facility”** means any Network Support Infrastructure or item of private property placed over, across, or underground including for use in connection with the storage or conveyance of:
  - 30.1. water;
  - 30.2. sewage;
  - 30.3. electronic, telephone, or telegraphic communications;
  - 30.4. Fiber;
  - 30.5. cable television;
  - 30.6. electric energy;
  - 30.7. oil;
  - 30.8. natural gas; or
  - 30.9. hazardous liquids.
31. **“FCC”** means the Federal Communications Commission of the United States.
32. **“Fiber”** means a technology that converts electrical signals carrying data to light and sends the light through transparent glass fibers to provide Broadband internet services.
33. **“Franchise”** means an authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, license, resolution, contract, certificate, agreement, or otherwise, to construct and operate a Communications Service in the Public Right-of-Way.

34. **“Infrastructure”** means any physical infrastructure of any nature including Network Support Infrastructure or otherwise.
35. **“Latency”** means the delay before a transfer of data begins following an instruction for its transfer.
36. **“Law”** means any federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
37. **“License”** means the documented terms of approval of Civil Works by any competent Authority which regulates or otherwise controls the carrying out of such Civil Works.
38. **“Make Ready”** means the transfer, relocation, rearrangement, or alteration of a Pre-Existing Third Party User’s communications equipment, Antenna, line or Facility of any kind necessary to provide space for an Attacher to install an Attachment.
39. **“Micro Wireless Facility”** means a Small Wireless Facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior Antenna, if any, no longer than 11 inches.
40. **“Model Code”** means the State Model Code for Accelerating Broadband Infrastructure Deployment and Investment.
41. **“Network”** means any Network Support Infrastructure used or authorized to be used by a Communications Provider or Network Support Infrastructure Owner to provide Network Services.
42. **“Network Access Point”** means a physical connection point, whether located inside or outside any building or Infrastructure that enables Communications Providers to access the necessary Network Support Infrastructure so as to be able to provide Network Services to Subscribers, but does not include access to inside wiring.
43. **“Network Services”** means any services that Communications Providers or Network Support Infrastructure Owners provide or are authorized to provide to Subscribers.
44. **“Network Support Infrastructure”** means:
  - 44.1. any aspect of the physical Infrastructure used or authorized to be used by a Network Support Infrastructure Owner to provide Network Services, provided that such physical Infrastructure carries, contains, houses or supports the active component of the Network Service being provided without itself becoming an active component of the Network

including, without limitation, Antenna installations, cabinets, communications exchanges, Conduits, Ducts, inspection chambers, manholes, masts, Network Access Points, Network components within cabinets, pipes, poles, roads, railways, towers, Transportation Networks, Utility Networks, Poles, Waterways Networks, equipment for transmitting wireless or satellite signals or any other physical part of a Network or any legal rights to use, share or access such

- 44.2. For the avoidance of doubt, the active components of a Communications Network including, without limitation, cables conveying electricity, Dark Fiber conveying optical signals, Fiber optic cables and Antennas conveying wireless or radio frequencies. Components used or intended to be used for carrying drinking water for human consumption shall be excluded from this definition of Network Support Infrastructure.
45. **“Network Support Infrastructure Owner”** means an Authority providing or authorized to provide Networks including:
  - 45.1. Utility networks including, without limitation, any physical Infrastructure used or authorized to be used to provide the service, transport or distribution of communications, drainage, gas, electricity, public lighting, hazardous liquids, heating, water and sewage (“Utility Networks”); or
  - 45.2. Transportation networks including any physical Infrastructure used or authorized to be used to provide transportation services, including, without limitation, bridges, railways, roads, ports and airports (“Transportation Networks”); or
  - 45.3. Waterways networks including without limitation, canals, rivers, viaducts, navigation channels and other waterways (“Waterways Networks”).
46. **“Owner”** means a Person owning or operating a Pole or similar structure in the Public Right-of-Way on which Facilities for the distribution of electricity or communications are or may be located.
47. **“Overlash”** means the tying of additional communications facilities to those previously attached to Poles.
48. **“Paralleling”** means a Network Support Infrastructure that runs adjacent to and alongside the lines of a Railroad for no more than one mile, or another distance agreed to by the parties, after which the Network Support Infrastructure crosses the Railroad lines, terminates, or exits the Railroad right-of-way.

49. **“Permit”** means a written authorization (in electronic or hard copy format) required by an Authority to initiate, continue, or complete installation of a Communications Facility, or an associated Network Communications Support Structure, Pole, or Tower.
50. **“Person”** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an Authority.
51. **“Pole”** means a pole, such as a utility, lighting, traffic, or similar pole, made of wood, concrete, metal or other material, located or to be located within the Public Right of Way or Utility Easement. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached. The term does not include electric transmission poles or structures, towers, or Communications Network Support Structure
52. **“Pre-Approved Contractor”** means contractors the Utility already has authorized to work on its poles. These contractors have met the pole owner’s own standards for skill, experience, and safety.
53. **“Pre-Existing Third Party User”** means the owner of any pre-existing Attachment located in the Public Right-of-Way.
54. **“Public Right-of-Way”** means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, but not including a federal interstate highway or other area not within the legal jurisdiction, or within the legal ownership or control of the Authority.
55. **“Railroad”** means any association, corporation, or other entity engaged in operating a common carrier by rail, or its agents or assigns, including any entity responsible for the management of Crossings or collection of Crossing fees.
56. **“Rural” means**, if not otherwise defined by the State, a county with an average population density of less than 300 persons per square mile, excluding the incorporated communities of 20,000 people or greater within the county.<sup>1</sup>
57. **“Simple Make Ready”** means any Make Ready that is not a Complex Make Ready.

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<sup>1</sup> The Model Code for States Working Group recommends this definition of “Rural,” but recognizes that individual States may wish to adopt a different definition, particularly with respect to population thresholds.

58. **“Small Wireless Facility”** means a Wireless Facility that meets both of the following qualifications: (i) each Wireless Provider’s Antenna (including, without limitation, any strand-mounted Antenna) could fit within an enclosure of no more than ( ) cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than ( ) cubic feet in volume. The following types of associated, ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for connection of power and other services. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.
59. **“Subscriber”** means any Person that uses or is authorized to use a Network Service, whether for value or otherwise.
60. **“Substantial Modification”** means a proposed modification of an existing Communications Network Support Structure or Pole which will substantially change the physical dimensions of the Communications Network Support Structure or Pole under the objective standard for substantial change adopted by the FCC pursuant to 47 C.F.R. § 1.40001.
61. **“Underserved”** means an area in which less than 10% of the persons in such area have access to Broadband Services.
62. **“Unserved”** means an area that is not served by Broadband Services.
63. **“Utility”** means a company, electric cooperative, or other entity that owns and/or operates facilities used for generation and transmission or distribution of electricity, gas, water, sewage or telecommunications services to general public. This term does not include providers of Wireless Services or Communications Infrastructure Providers.
64. **“Vertical Asset”** means any Pole, cellular tower, building, water tower, granary, or other structure capable of being used to deploy any Communications Service.
65. **“Wireless Services”** means any wireless services including, without limitation, personal wireless services as that term is defined in 47 U.S.C. § 332(c)(7)(C)(i), fixed wireless and other wireless services.

## **ARTICLE 3: RIGHTS OF ACCESS TO EXISTING NETWORK SUPPORT INFRASTRUCTURE**

### **1. Special Provisions Relating to the Right to Lease of Certain Publicly Owned Assets located outside the public Right of Way.**

#### **11. Dark Fiber**

1.1.1. Subject to Articles 3 and 4, Dark Fiber located outside the public right of way that is owned or operated by an Authority may be leased to any private sector Communications Provider, when a private sector Communications Provider requests to lease such Dark Fiber from the Authority. The Authority may retain enough Dark Fiber for reasonably anticipated 50-year Fiber needs and shall not be required to enter into any lease agreement that impinges upon such needs.

#### **12. Communications Network Support Structure**

1.2.1. Unless addressed elsewhere in this code and subject to Articles 3 and 4, Communications Network Support Structure that are located outside the public right of way, and are owned or operated by an Authority may be leased to any private sector Communications Provider, when a private sector Communications Provider requests to lease space on such Communications Network Support Structure from the Authority for the purposes of installing elements of a Communications Network. The Authority may require that an engineering study be conducted to ensure that the Communications Network Support Structure is structurally capable of supporting the proposed equipment. The Authority may also retain enough space on the Communications Network Support Structure for reasonably anticipated public safety and/or civil service needs and shall not be required to enter into any lease agreement that impinges upon such needs.

#### **13. Buildings and other Vertical Assets**

1.3.1. Unless addressed elsewhere in this code and subject to Articles 3 and 4, Buildings and other Vertical Assets (other than Communications Network Support Structure) that are located outside of the public right of way, and owned or operated by an Authority may be leased to any private sector Communications Provider when a private sector Communications Provider requests to lease space on such building or other Vertical Asset from the

Authority for the purposes of installing elements of a Communications Network. The Authority may require that an engineering study be conducted to ensure that the building or other Vertical Asset is structurally capable of supporting the proposed equipment. The Authority may also retain enough space on the building or other Vertical Assets for reasonably anticipated public service needs and shall not be required to enter into any lease agreement that impinges upon such needs.

1.3.2. In the event that the building or Vertical Asset has historical or religious significance, the Authority may require additional impact studies prior to granting the lease and may set reasonable and necessary restrictions on the types of equipment that can be deployed and the types of mounting devices that can be used.

#### **14. Leases**

The terms of any lease entered into pursuant to this Article 4 may be determined by reasonable negotiations between the Authority and a private sector Communications Provider. Any lease granted shall be non-exclusive and must be granted on a non-discriminatory basis.

#### **15. Fees**

For purposes of this Article, Leases fees for assets described in this section shall be reasonable, nondiscriminatory, competitively neutral, and publicly disclosed. Nothing in this Act shall require the voiding or amendment of any contract, lease, license, franchise or any other binding legal agreement entered into by a Private sector Communications Provider and a Network Support Infrastructure Owner prior to the effective date of this Act except to the extent consistent provided in any such agreement.

#### **16. Disputes**

Disputes relating to matters dealt with by this subsection 5, shall, if not resolved between the parties within 30 working days, be referred to the state enforcement authority.

## ARTICLE 4: SPECIAL PROVISIONS FOR RIGHTS OF ACCESS TO POLES IN THE COMMUNICATIONS SPACE<sup>2</sup>

### 1. Make Ready Provisions

1.1. Upon approval of an Attachment Application by an [Owner/ Authority], Pre-Existing Third Party Users shall allow an Attacher, using Preapproved Contractors and at the Attacher's expense, to perform Make Ready by transferring, relocating, rearranging, or altering the Attachments of any Pre-Existing Third Party User to the extent necessary or appropriate to accommodate the Attacher's Attachment; provided, however:

1.1.1. For complex work in the communications space, the Attacher will give notice to the Pole owner and Pre-existing Third Party User to complete the contemplated make-ready work within 30 days. If the make-ready work cannot be completed within 30 days for reasons of safety or service interruption, the Pole owner or Pre-existing Third Party User will provide written notice to the Attacher explaining the need for the extension and the proposed completion date. If the extended date exceeds 60 days from the original notice, the Attacher can perform the make- ready work itself. To assist with any sequencing of the performance of the complex make-ready work, it will be the responsibility of the qualified contractor and the Attacher to provide notification to the Pole owner and Pre-existing Third Party Attacher to outline the necessary sequencing of make-ready work."

1.1.2. Nothing in this Article authorizes an Attacher to perform any act with respect to Attachments located above the 'Communication Worker Safety Zone', as such term is defined in the then-current National Electrical Safety Code, or any electric supply facilities wherever located. Notwithstanding the foregoing, a Pole owner in its discretion may establish conditions to allow such acts to be performed if such Attachments are for small cell Antennas and have been approved by the [Owner/ Authority].

1.1.3. The Attacher will not perform Simple Make Ready without first providing 25 days' prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User.

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<sup>2</sup> This section has been drafted in a manner that is consistent with the one-touch make ready recommendation previously approved by the Broadband Deployment Advisory Committee. In the event the FCC should adopt the one-touch make ready provisions proposed in the FCC Final Report\*, this section shall be referred to the BDAC for revision to conform to the provisions so adopted by the FCC.



- 1.1.4. For simple Attachments, an Attacher would be authorized to proceed with one-touch Make-Ready after providing notice to the [Owner/Authority] and existing Attachers of at least 25 days describing the proposed work and contractor of choice. Such notice must include the Attacher's certification that its contractor meets the required qualifications.
12. In the event a Pre-Existing Third Party User fails to transfer, relocate, rearrange or alter any of its Attachments within 30 days of receiving the written notice required in Article 5.1.1.1., the Attacher, using Pre-Approved Contractors, may undertake Complex Make Ready with respect to such Attachments by transferring, relocating, rearranging, or altering the Attachments at the Attacher's expense; provided, however, that the Pre-Existing Third Party User will have 60 days from the date of notice to perform Complex Make Ready if the designated representatives mutually agree to such extension in the field meeting required in Article 5.1.1.1.
  13. The Attacher will place its Attachment where instructed by the [Owner/Authority].
  14. At its own expense, Attacher shall ensure that any Make Ready Attachments that are transferred, relocated, rearranged or altered are done in accordance with all applicable Laws and regulations; and all applicable engineering and safety standards.
  15. The Attacher shall immediately notify the [Owner/Authority] and any Pre-Existing Third Party User if the Attacher has any reason to believe that, in the performance of any Make Ready, the Pre-Existing Third Party's equipment or services may have been compromised.
  16. Within 30 days of the Attacher's completion of Make Ready that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested, the [Owner/Authority]. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and [Owner/Authority] may conduct a field inspection within 60 days without waiving any rights. The Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and [Owner/Authority] for performing such field inspection.
  17. If a transfer, relocation, rearrangement, or alteration results in an

Attachment of a Pre-Existing Third Party User failing to conform with the applicable clearance, separation, or other standards applicable to Poles or structures of the type in question established by the Owner, State, and/or locality, the Pre-Existing Third Party User or Owner shall notify the Attacher in writing, which includes electronic communication, within the 60 day inspection window without waiving any rights. In the written notice, the Pre-Existing Third Party User will elect either (1) to perform the correction itself and bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (2) to instruct the Attacher to perform the correction at the Attacher's expense using a Pre-Approved Contractor. Any post-inspection corrections performed by the Attacher must be completed within 30 days of written notice to the Attacher from the Pre-Existing Third Party User or Owner. Within 30 days of the Attacher's completion of any post-inspection corrections that resulted in the transfer, relocation, rearrangement, or alteration of an Attachment of a Pre-Existing Third Party User, the Attacher shall send written notice, which includes electronic communication, of the transfer, relocation, rearrangement, or alteration and As-Built Reports to the applicable Pre-Existing Third Party User and, if requested by the [Owner/Authority] or the Pre-Existing Third Party User, the [Owner/Authority].

- 1.8. An Attacher that exercises any right to transfer, relocate, rearrange or alter (each an "Alteration") the Facilities of a Pre-Existing Third Party User pursuant to this Article shall indemnify, defend and hold harmless the [Owner/Authority] of the affected Pole or similar structure to the extent permitted by applicable Law and if not otherwise agreed to in a pole attachment or similar agreement between the Attacher and the [Owner/Authority], from and against any demands, losses, claims, actions, suits, or proceedings (collectively, "Claims") arising from any such Alteration, including Claims for death, personal injury or damage to the Pole, other structure, Facilities and/or any adjacent facilities, but excluding any consequential or incidental damages.
- 1.9. An Attacher that exercises any right to make an Alteration pursuant to this Article shall indemnify, defend and hold harmless any Pre-Existing Third Party Users to the extent permitted by applicable Law, from and against any Claims for death, personal injury or damage to such Pole, other structure, Facilities, and/or any adjacent facilities, but excluding any consequential or incidental damages.
- 1.10. Prior to exercising its right to make an Alteration pursuant to this Article, the Attacher must agree to use an approved licensed and insured contractor and must agree to the indemnification obligations specified

in Sections 1.8 and 1.9.

- 1.11. In the event of any disputes arising out of this Article, the parties may exercise any of their legal rights, including the ability to negotiate a resolution in good faith.
- 1.12. An Attacher performing Make Ready must have adequate insurance or post an adequate performance bond to guarantee the timely and proper performance of Make Ready.

## **2. Make-ready Process for Authority Poles**

- 2.1. For an Authority Pole that supports an aerial facility used to provide Communications Services or electric service, the parties shall comply with the process for Make-Ready under applicable federal and State regulations. The good faith estimate of the person owning or controlling the Pole for any Make-Ready necessary to enable the Pole to support the requested Collocation must include Pole replacement if necessary.
- 2.2. For an Authority Pole that does not support an aerial Facility used to provide communications services or electric service, the Authority shall provide a good faith estimate for any Make-Ready necessary to enable the Pole to support the requested Collocation, including necessary Pole replacement, within 60 days after receipt of a complete Application. Make-Ready, including any Pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the Applicant. Alternatively, an Authority may require the Applicant seeking to Collocate a Communications Network Facility to provide a Make-Ready estimate at the Applicant's expense for the work necessary to support the Communications Network Facility, including Pole replacement, and perform the Make-Ready work. If Pole replacement is required, the scope of the Make-Ready estimate is limited to the design, fabrication, and installation of a Pole that is substantially similar in color and composition. The Authority may not condition or restrict the manner in which the Applicant obtains, develops, or provides the estimate or conducts the Make-Ready work subject to usual construction restoration standards for work in the Public Right of-Way. The replaced or altered Pole shall remain the property of the Authority.
- 2.3. An Authority may not require more Make-Ready than is required to meet Applicable Codes or industry standards. Fees for Make-Ready may not include costs related to pre-existing damage or prior noncompliance. Fees for Make-Ready, including any Pole replacement, may not exceed actual costs or the amount charged to other Communications Providers

for similar work and may not include any consultant fee or expense.

**3. Overlashing**

- 3.1. A Communications Service Provider need not submit an Attachment Application to the Pole Owner to Overlash additional communications wires or cables onto or attach small equipment to communications wires or cables that are already attached to the Pole. Notice of such Overlashing must be provided in accordance with FCC pole attachment rules.
- 3.2. A Communications Service Provider's wires, cables or equipment may not be Overlashed on or attached to a Pre-Existing Third Party User's Attachments without the Pre-Existing Third Party User's consent.

## **ARTICLE 5: SPECIAL PROVISIONS FOR RAILROAD CROSSINGS**

### **1. Title of Public Right-of- Way for Railroad Crossings**

To the extent not prohibited by federal law, Notwithstanding any other provisions, when Railroad operations cross on a Public Right-of-Way owned by the relevant Authority, the title or interest held by the Authority in such Public Right-of-Way shall be retained by the Authority for future transportation purposes and such other purposes as are not inconsistent with future transportation purposes; except that such Public Right- of-Way shall not be used by members of the general public without permission of the Authority as managed by the state enforcement authority. The Authority shall allow abutting farm operations to use the land over which the Public Right-of-Way passes for agricultural purposes. Unless use and occupancy of Railroad rights-of-way adversely affect Railroad safety, Broadband Facilities and wireless and other telecommunications Facilities that are installed along or within the Railroad right-of-way in compliance with applicable operations and safety standards at the time of installation are consistent with existing and future transportation purposes.

### **2. Rights of Access to Railroad Crossings**

#### **2.1. Application**

2.1.1. This Article applies to:

- (1) any Crossing in existence before the effective date of this Model Code if an agreement concerning the Crossing has expired or has been terminated. In such instance, if the collective amount that equals or exceeds the standard Crossing fee under subsection 2.4. has been paid to the Railroad during the existence of the Crossing, no additional fee is required; and
- (2) any Crossing commenced on or after the effective date of this Article.

#### **2.2. Railroad Right-of-Way Crossing; Application for Permission**

2.2.1. Any Communications Provider or Network Support Infrastructure Owner that intends to place a Facility across or upon a Railroad right-of-way shall request prior permission from the Railroad.

2.2.2. The request must be in the form of a completed Crossing Application, including an engineering design showing the location

of the proposed Crossing and the Railroad's property, tracks, and wires that the Communications Provider or Network Support Infrastructure Owner will cross. The engineering design must conform with guidelines published in the most recent edition of the (1) National Electric Safety Code, or (2) Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association. The Communications Provider or Network Support Infrastructure Owner must submit the Crossing Application on a form provided or approved by the Railroad, if available.

2.2.3. The Application must be accompanied by the standard Crossing fee specified in subsection 2.4. and evidence of insurance as required in subsection 2.5. The Communications Provider or Network Support Infrastructure Owner must send the Application to the Railroad by certified mail, with return receipt requested.

2.2.4. Within 15 calendar days of receipt of an Application that is not complete, the Railroad must inform the Applicant regarding any additional necessary information and submittals.

### **2.3. Railroad Right-of-Way Crossing; Construction**

Beginning 35 calendar days after the receipt by the Railroad of a completed Crossing Application, Crossing fee, and certificate of insurance, the Communications Provider or Network Support Infrastructure Owner may commence the construction of the Crossing unless the Railroad notifies the Communications Provider or Network Support Infrastructure Owner in writing that the proposed Crossing or Paralleling is a serious threat to the safe operations of the Railroad or to the current use of the Railroad right-of-way.

### **2.4. Standard Crossing Fee**

2.4.1. Unless otherwise agreed by the parties, a Communications Provider or Network Support Infrastructure Owner that crosses a Railroad right-of-way, other than a Crossing within a Public Right-of-Way, must pay the Railroad a onetime standard Crossing fee of \$500 per Crossing adjusted as provided in Subsection 2.4.5, for each Crossing. Except as otherwise provided in this subdivision, the standard Crossing fee is paid in lieu of any license, permit, Application, processing fee, or any other fee or charge to reimburse the Railroad for direct expenses incurred by the Railroad as a result of the Crossing. No other fee or charge may be assessed to the Communications Provider or Network Support Infrastructure

Owner by the Railroad.

- 2.4.2. In addition to the standard Crossing fee, the Communications Provider or Network Support Infrastructure Owner shall also reimburse the Railroad for any reasonable and necessary flagging expense associated with a Crossing, based on the Railroad traffic at the Crossing.
- 2.4.3. No Crossing fee is required if the Crossing is located within a Public Right-of-Way.
- 2.4.4. The placement of a single Conduit and its content is a single Facility. No additional fees are payable based on the individual fibers, wires, lines, or other items contained within the Conduit.
- 2.4.5. Annually, the standard Crossing fee under Subsection 2.4.1 must be adjusted based on the percentage change in the annual average producer price index for the preceding year compared to the year prior to the preceding year. Each adjustment is effective for Applications submitted on or after July 1. The producer price index is final demand, finished consumer energy goods, as prepared by the Bureau of Labor Statistics of the United States Department of Labor.

## **2.5. Certificate of Insurance; Coverage**

2.5.1. The certificate of insurance or coverage submitted by:

- (1) a municipal Utility or municipality must include commercial general liability insurance or an equivalent form with a limit of at least \$1,000,000 for each occurrence and an aggregate of at least \$2,000,000;
- (2) a Utility providing natural gas service must include commercial general liability insurance with a combined single limit of at least \$5,000,000 for each occurrence and an aggregate limit of at least \$10,000,000; or
- (3) a Communications Provider or Network Support Infrastructure Owner not specified in Subsections (1) and (2) must include commercial general liability insurance with a combined single limit of at least \$2,000,000 for each occurrence and an aggregate limit of at least \$6,000,000.
- (4) the Railroad may require protective liability insurance with a combined single limit of \$2,000,000 for each occurrence and

\$6,000,000 aggregate. The coverage may be provided by a blanket Railroad protective liability insurance policy if the coverage, including the coverage limits, applies separately to each individual Crossing. The coverage is required only during the period of construction, repair, or replacement of the Facility.

- (5) The insurance coverage under Subsections (1) and (2) of 2.5.1. must not contain an exclusion or limitation related to railroads or to activities within 50 feet of Railroad property.

2.5.2. The certificate of insurance must be from an insurer of the Communications Provider's or Network Support Infrastructure Owner's choosing.

## **2.6. Objection to Crossing; petition to State Regulatory Authority**

2.6.1. If a Railroad objects to the proposed Crossing or Paralleling due to the proposal being a serious threat to the safe operations of the Railroad or to the current use of the Railroad right-of-way, the Railroad must notify the Communications Provider or Network Support Infrastructure Owner of the objection and the specific basis for the objection. The Railroad shall send the notice of objection to the Communications Provider or Network Support Infrastructure Owner by certified mail, with return receipt requested.

2.6.2. If the parties are unable to resolve the objection, either party may petition the state enforcement authority for assistance via mediation or arbitration of the disputed Crossing Application. The petition must be filed within 60 days of receipt of the objection. Before filing a petition, the parties shall make good faith efforts to resolve the objection.

2.6.3. If a petition is filed, the state enforcement authority must issue an order within 120 days of filing of the petition. The order may be appealed. The state enforcement authority must assess the costs associated with a petition equitably among the parties.

## **2.7. Additional Requirements; Objection and Petition to the state enforcement authority.**

2.7.1. If a Railroad imposes additional requirements on a Communications Provider or Network Support Infrastructure Owner for crossing its lines, other than the proposed Crossing



being a serious threat to the safe operations of the Railroad or to the current use of the Railroad right-of-way, the Communications Provider or Network Support Infrastructure Owner may object to one or more of the requirements. If it objects, the Communications Provider or Network Support Infrastructure Owner shall provide notice of the objection and the specific basis for the objection to the Railroad by certified mail, with return receipt requested.

2.7.2. If the parties are unable to resolve the objection, either party may petition the state enforcement authority for resolution or modification of the additional requirements. The petition must be filed within 60 days of receipt of the objection. Before filing a petition, the parties shall make good faith efforts to resolve the objection.

2.7.3. If a petition is filed, the state enforcement authority shall determine, after notice and opportunity for hearing, whether special circumstances exist that necessitate additional requirements for the placement of the Crossing. The state enforcement authority must issue an order within 120 days of filing of the petition. The order may be appealed. The state enforcement authority shall assess the costs associated with a petition equitably among the parties.

## **2.8. Operational Relocation**

2.8.1. A Railroad may require a Communications Provider or Network Support Infrastructure Owner to relocate a Facility when the Railroad determines that relocation is essential to accommodate Railroad operations, and the relocation is not arbitrary or unreasonable. Before agreeing to the relocation, a Communications Provider or Network Support Infrastructure Owner may require a Railroad to provide a statement and supporting documentation identifying the operational necessity for requesting the relocation. A Communications Provider or Network Support Infrastructure Owner must perform the relocation within a reasonable period of time following the agreement.

2.8.2. Relocation is at the expense of the Communications Provider or Network Support Infrastructure Owner. A standard fee under subsection 2.4 may not be imposed for relocation.

## **2.9. Existing Agreements**

Nothing in this Article prevents a Railroad and Communications

Provider or Network Support Infrastructure Owner from continuing under an existing agreement, or from otherwise negotiating the terms and conditions applicable to a Crossing or the resolution of any disputes relating to the Crossing. A Communications Provider or Network Support Infrastructure Owner may elect to undertake a Crossing or Paralleling under this Article. Nothing in this Article impairs the authority of a Communications Provider or Network Support Infrastructure Owner to secure crossing rights by easement through exercise of the power of eminent domain.

### **3.0 Indemnification of Authorities**

No liability shall inure to the Authority or any servant, agent or employ thereof for compliance with this Article.

## ARTICLE 6: NEW AND MODIFIED INFRASTRUCTURE TO BE BROADBAND READY

1. Where the creation of new Infrastructure or the modification of existing Infrastructure by or on behalf of any Network Support Infrastructure Owner amounts to Civil Works (“**New Infrastructure**”), the License to create the New Infrastructure shall be conditional upon the incorporation into the New Infrastructure of Network Support Infrastructure capable of supporting components of Communications Networks in accordance with a Minimum Network Specification Notice (“**MNSN**”) issued by the state enforcement authority.
2. Any MNSN issued by the state enforcement authority shall be objective, transparent and proportionate and shall contain a minimum of the following information, arrived at in accordance with industry best practices:
  - 2.1. Technical specifications including, without limitation:
    - 2.1.1. Network capacity, which shall be determined by taking into account the projected growth in demand for Communications Networks over a 20-year period, which projection shall be determined by the state enforcement authority each year in consultation with industry experts and made publicly available;
    - 2.1.2. The proposed network architecture including, without limitation, network depth, construction and related facilities including inspection chambers, man holes, pull tapes and general access and maintenance facilities.
  - 2.2. Formulas for the basis of compensation for the Network Support Infrastructure Owner for complying with the MNSN including identification of the source of the funding for the MNSN.
  - 2.3. Terms and conditions of access, including information access, and transparent, non-discriminatory cost-based pricing formulas, for Communications Providers wishing to contribute Network Support Infrastructure to or access the new Network Support Infrastructure created in accordance with the MNSN.
3. The state enforcement authority may, for transparent and non-discriminatory reasons, make exceptions to the requirements of this Article for reasons including, but not limited to, national security, public health and safety or the insignificance of the scope, duration or relative value of the proposed Civil Works.

4. Where the state enforcement authority decides that no MNSN shall be issued, it may still, at its discretion, publish the details of the proposed Civil Works and invite interested parties to contact the relevant Network Support Infrastructure Owner with a view to discussing implementing components of Communications Networks.
5. The state enforcement authority may, for transparent and non-discriminatory reasons, make exceptions to the requirements of this Article for reasons including, but not limited to, national security, public health and safety or the insignificance of the scope, duration or value of the proposed Civil Works.
6. Any dispute between a Network Support Infrastructure Owner and the state enforcement authority shall be brought before the circuit court where the state capital resides [or other dispute resolution process already in place].
7. All reasonable expenses incurred by a Network Support Infrastructure Owner in compliance with this Article shall be reimbursed within 30 days of presentation to the state enforcement authority from a state fund that is administered by the state enforcement authority. No obligations shall be imposed on any Network Support Infrastructure Owner until the state enforcement authority has certified there are sufficient funds to reimburse such obligations.
8. The state enforcement authority shall promulgate all rules and regulations to implement this article.

## **ARTICLE 7: BUILDINGS AND NETWORK ACCESS POINTS TO BE BROADBAND READY**

### **1. Right to Access Network Access Points, Subject to Consent**

11. Communications Providers shall have the right to roll out their Networks, at their own cost, up to Network Access Points (“NAP”), whether within or outside any building or premises, subject to getting any necessary consents to do so from the entity or entities controlling access to the NAP.
12. Any entity or entities controlling access to a NAP shall meet all reasonable requests for access from Communications Providers on fair and non-discriminatory terms and conditions including price, except where they can demonstrate that a commercially viable NAP alternative exists or that to consent would be contrary to the interests of national security, public health or safety or commercially sensitive intellectual property.
13. Where such access is not granted within 20 working days, Communications Providers may refer the case to the state enforcement authority.

### **2. Right to Create Network Access Points, Subject to Consent**

21. Where, in order to deliver a Network Service to a Subscriber, Communications Providers require to create a new NAP, Communications Providers shall have the right to create such NAP, at their own cost, whether within or outside any building or premises, subject to getting any necessary consents to do so from the entity or entities controlling access to the proposed location of the new NAP.
22. Any entity or entities controlling access to such proposed NAP location shall meet all reasonable requests for access from Communications Providers on fair and non-discriminatory terms and conditions including price, except where they can demonstrate that a commercially viable NAP alternative exists or that to consent would be contrary to the interests of national security, public health or safety or commercially sensitive intellectual property.
23. Where such access is not granted within 20 working days, Communications Providers may refer the case to the state enforcement authority.

### **3. Network Access Points, Ducts and Conduits in New or Renovated Buildings**

31. All multi-tenant buildings constructed after [date], whether publicly or privately funded or whether for commercial, civic, or residential use shall, as a condition of their License to build, be equipped with sufficient NAPs and high-speed network compatible Conduits so as to make the building high-speed network ready; and
32. In all such buildings, if built before [date] but renovated after such date and with such renovations amounting to Civil Works, the License to conduct such Civil Works shall be conditional upon the renovated building being equipped with sufficient NAPs and Communications Network Compatible Ducts and Conduits so as to make the building Network ready.
33. For the purposes of this Article, NAPs, Ducts and Conduits shall, to the extent technically possible and in accordance with best industry practices, be of the same design and specification without discrimination between Communications Providers, shall be suitable for use by and connection to Communications Networks and shall be specified from time to time by the state enforcement authority.
34. The state enforcement authority may, for transparent and non-discriminatory reasons, make exceptions to the requirements of this Article for reasons including, but not limited to, national security, public health and safety, the insignificance of the scope, duration or value of the proposed Civil Works, or for reasons of conservation or preservation of national heritage.

## ARTICLE 8: DEPLOYMENT OF COMMUNICATIONS NETWORK FACILITIES

### 1. Deployment of Communications Network Facilities and Communications Network Support Structures Generally

11. Except as provided in this Article or Article 4, an Authority may not prohibit, effectively prohibit, regulate, or charge for the construction or Collocation of Communications Network Facilities and Communications Network Support Structures, whether through any Law or practice.
12. An Authority may require an Application process in accordance with this subsection, and Permit and/or other fees in accordance with Article 9.3. An Authority shall accept Applications for Permits and shall process and issue Permits subject to the following requirements, but may not directly or indirectly require an Applicant to perform services unrelated to the Communications Network Facility or Communications Network Support Structure for which approval is sought, such as in-kind contributions, except reserving Fiber, Conduit or pole space for the Authority. Notwithstanding the foregoing, an Applicant may offer in-kind contributions related to Communications Network Facility or Communications Network Support Structure for which approval is sought, on a reasonable and nondiscriminatory basis, including by contributing the cash value of an in-kind contribution already provided to the Authority by another party.
13. An Applicant may not be required to provide more information to obtain a Permit than is necessary to demonstrate the Applicant's compliance with this section, nor may an Authority require an Applicant to provide more information than is necessary to demonstrate the Applicant's compliance with Applicable Codes for the placement of Communications Network Facilities in the locations identified in the Application. An Authority may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, Authority liability, or Authority warranties. Such provisions must be reasonable and nondiscriminatory and set forth in writing. An Authority may only limit the placement of Communications Network Facilities or Communications Network Support Structures in the public right of way by limits which are reasonable and nondiscriminatory, relative to other occupants of the right of way, to: (a) establish limits on the placement of new or additional facilities within specific congested segments of the public right-of-way; (b) prohibit placement of fixtures or equipment where they will interfere with any existing facility; (b) ensure no unnecessary

interference with usual traffic patterns or rights or the reasonable convenience of owners of property abutting the right-of-way; and (c) assign specific corridors within the public right-of-way or any segment thereof as may be necessary for each type of facilities that are or are expected, by the city engineer and pursuant to current technology, to someday be located in the public right-of-way.

14. An Applicant's business decision on the type and location of Communications Network Facilities, Communications Network Support Structures, Poles, or technology to be used, is presumed to be reasonable. This presumption does not apply with respect to the height of Communications Network Facilities, Communications Network Support Structures or Poles. An Authority may consider the height of such structures in its zoning review, provided that it may not unreasonably discriminate between the Applicant and other Communications Providers. An Authority shall not

- 1.4.1. Require an Applicant to submit information about, or evaluate, an Applicant's business decisions with respect to (1) the need for the Communications Network Support Structure, Pole, or Communications Network Facility or (2) its service, customer demand for service, or quality of service. Nothing in this Section 1.5.1 shall permit an Applicant to construct a Communications Network Support Structure, Pole, or Communications Network Facility as of right;

- 1.4.2. Require the applicant to place an Antenna or other Communications Network equipment on publicly owned land or on a publicly or privately owned water tank, building, or electric transmission tower as an alternative to the location proposed by the applicant.

15. Any requirements regarding the appearance of Communications Network Facilities or Communications Network Support Structure, including those relating to materials used or arranging, screening, or landscaping must be reasonable. All aboveground Communications Network Facilities and Communications Network Support Structures shall conform to the following reasonable, non-discriminatory, and published design guidelines generally applicable to all facilities in the public right-of-way: (1) shape and other requirements for attachments and ground-based equipment; (2) further requirements for attachments to new Poles or towers on or adjacent to historic property; and (3) other specified requirements.



16. Any setback or fall zone requirements must be substantially similar to such a requirement that is imposed on other types of commercial structures of a similar height.
17. Review of Applications for Administrative Review:
  - 1.7.1. For the purposes of this section only, Applications shall include a written request submitted by an Applicant to an Owner in addition of an Authority.
  - 1.7.2. The Owner and/or Authority shall review the Application in light of its conformity with applicable provisions of this Chapter, and shall issue a Permit on nondiscriminatory terms and conditions, subject to the following requirements:
    - (1) Within twenty (20) days of receiving an Application, the Owner and/or Authority must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the Owner and/or Authority must specifically identify the missing information, and may toll the approval interval in Subsection 1.7.2(2), below. The Applicant may resubmit the completed Application within twenty (20) days without additional charge, and the subsequent review will be limited to the specifically identified missing information subsequently completed, except to the extent material changes to the proposed facility have been made by the Applicant (other than those requested or required by the Owner and/or Authority) in which case a new Application and Application Fee for same must be submitted;
    - (2) Unless mutually agreed to otherwise, the Owner and/or Authority must make its final decision to approve or deny the Application within sixty (60) days for a Collocation, and ninety (90) days for other applications new structure, after the Application is complete (or deemed complete); and
    - (3) The Owner and/or Authority must advise the Applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions and/or regulations on which the denial was based. A decision to deny an application shall be in writing and supported by substantial evidence contained in a written record, publicly released, and sent to the applicant. The written decision, supported by such substantial evidence,

shall constitute final action by Owner and/or Authority. The review period or “shot clock” shall run until the written decision, supported by substantial evidence, is released and sent to the Applicant contemporaneously. The Applicant may cure the deficiencies identified by the Owner and/or Authority and resubmit the Application within 30 days of the denial without paying an additional Application Fee unless denial was issued due to non-compliance with Design Guidelines or other requirements under this Article (in which case a new Application Fee must be paid). The Owner and/or Authority shall approve or deny the revised Application within thirty (30) days of receipt of the revised Application. The subsequent review by the Owner and/or Authority shall be limited to the deficiencies cited in the original denial and any material changes to the Application made to cure any identified deficiencies.

1.7.3. If the Owner and/or Authority fails to act on an Application within the review period referenced in Subsection 1.8.1(2), the Applicant may provide the Owner and/or Authority written notice that the time period for acting has lapsed, and the Owner/Authority then has twenty (20) days after receipt of such notice within which to render its written decision, failing which the Application is then deemed approved by passage of time and operation of law and a Permit shall be deemed issued for such Application. The Applicant shall provide notice to the Owner and/or Authority at least seven (7) days prior to beginning construction or collocation pursuant to a Permit issued pursuant to a deemed approved Application, and such notice shall not be construed as an additional opportunity for objection by the Owner/Authority or other entity to the deployment.

1.7.4. Notwithstanding any other provision of this Article, the Owner and/or Authority shall approve and may not deny Applications for Eligible Facilities Requests within sixty (60) days according to the procedures established under 47 C.F.R. 1.40001(c).

18. Any Permit for construction issued under this Article shall be valid for a period of six (6) months after issuance, provided that the six-month period shall be extended for up to an additional 6 months upon written request of the Applicant (made prior to the end of the initial 6-month period) if the failure to complete construction is delayed as a result of circumstances beyond the reasonable control of the Applicant. Applicants may consolidate Applications where the Applications are

sufficiently similar in nature and scope.

19. An Applicant may, at its discretion, seek authorization for a specific geographic area as described below.

1.9.1. A Permit issued pursuant to this subsection by the Authority shall be applicable to a geographic area that is no smaller than –

- (1) An area that is coextensive with the geographic area within the boundaries of the Authority’s jurisdiction; or
- (2) An area that is within the boundaries of the Authority’s jurisdiction and contains no fewer than –
  - (a) 20,000 households, or
  - (b) 300 route miles of underground installation.

110. A Communications Network Support Structure granted a Permit and installed pursuant to this subsection shall comply with federal regulations pertaining to airport airspace protections.

111. An Authority may require a Communications Provider to indemnify and hold the Authority and its officers and employees harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses or fees, except when a court of competent jurisdiction has found that the negligence of the Communications Provider while installing, repairing or maintaining caused the harm that created such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees, and require a Communications Provider to obtain insurance naming the Authority or its officers and employees an additional insured against any of the foregoing.

**2 Additional Procedures for Deployment of Small Wireless Facilities**

21. The Colocation of a Small Wireless Facility is a permitted use by right in any zone and not subject to zoning review or approval.

22. All deployments of Communications Facilities in the Public Right-of-Way shall comply with the following:

2.2.1. Compliance with ADA and other applicable Federal, State and local Laws and standards.

2.2.2. Pedestrian and vehicular traffic and safety requirements established by the Authority.

2.2.3. Existing Public Right-of-Way occupancy or management ordinances, not otherwise inconsistent with this Chapter.

23. Design Standards. All aboveground Communications Facilities in the Public ROW requiring Administrative Review only shall conform to the following non-discriminatory design guidelines generally applicable to all facilities in the Public ROW [ESTABLISH, THROUGH PUBLIC PROCESS AS DESIRED OR REQUIRED, DEFINITIVE, OBJECTIVE DESIGN GUIDELINES THAT AN APPLICANT CAN FOLLOW AND INCORPORATE FOR COMPLIANCE WITH ADMIN REVIEW ONLY PROCESS]:

2.3.1. Add shape and other requirements for attachments and ground-based equipment.

2.3.2. An Applicant may install a Small Wireless Facility on a Decorative Pole, or may replace a Decorative Pole with a new Decorative Pole that is in keeping with the aesthetics of the existing Decorative Pole, in the event the existing Decorative Pole will not structurally support the attachment, subject to issuance of a permit under Section 2 of this Article, and so long as the attachment and/or the new Decorative Pole is in keeping with the aesthetics of the existing Decorative Pole.

2.3.3. Require the removal of existing Communications Network Support Structures or Communications Network Facilities as a condition to approval of an Application for a new Communications Network Facility or Communications Network Support Structure unless such existing Communications Network Support Structure or Communications Network Facility is abandoned and/or a hazard to public safety where reasonable notice and an opportunity to cure has been given;

2.3.4. If the proposal involves attachment to or a new Pole or tower on or adjacent to a Historic Property, consider further requirements.

2.3.5. [Other].

24. Additional Permits. In addition to obtaining a Permit for installation of a Communications Facility in the Public ROW, an Applicant must obtain the following additional permits: [street

opening permit, electrical permit, insert other specific local permits].

25. Placement of facilities. The Authority engineer may assign specific corridors within the Public ROW, or any particular segment thereof as may be necessary, for each type of facilities that is or, pursuant to current technology that the Authority engineer expects will someday be located within the Public ROW. All excavation, obstruction, or other Permits issued by the [City] engineer involving the installation or replacement of facilities shall designate the proper corridor for the facilities.
26. An Authority may not require the placement of Small Wireless Facilities on any specific Pole or category of Poles or require multiple Antenna systems on a single Pole.
27. Notwithstanding the general prohibition on separation distances in this Article, in reviewing an Application for the construction, placement, or use of a Small Wireless Facility and the associated Pole at a location where a Support Structure or Pole does not exist, and within the review timeframe specified in Subsection 1.7.2, an Authority may propose, as an alternative location for the proposed Small Wireless Facility, that the Small Wireless Facility be Collocated on an existing Pole or on an existing Support Structure, if the existing Pole or the existing Support Structure is located within 50 feet of the location proposed in the Application. The Applicant shall use the alternative location proposed by the Authority if: (A) the Applicant's right to use the alternative location is subject to reasonable terms and conditions; and (B) the alternative location will not result in technical limitations or additional costs, as determined by the Applicant. If the Applicant notifies the Authority that it will use the alternative location, the Application shall be deemed immediately granted for that alternative location. If the Applicant will not use the alternative location, the Authority must grant or deny the original Application within 60 days after the date the Application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.
28. An Authority shall permit the Collocation of a Small Wireless Facility which extends no more than five (5) feet above the Pole or ten (10) feet on utility Poles where required by utility separation requirements. An Authority shall permit the installation of a new Pole to hold facilities that are no taller than 5 feet above the tallest existing Pole as of the effective

date of this Act, located in the same Public Right-of-Way, other than a Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Pole within 500 feet, the Authority shall permit the installation of a Pole that is no taller than 50 feet.

29. An Applicant seeking to construct or Collocate Small Wireless Facilities within the jurisdiction of a single Authority may, at the Applicant's discretion, file a consolidated Application and receive a single Permit for the Collocation of up to twenty-five (25) Small Wireless Facilities if the jurisdiction's population is 50,000 or more, or up to five (5) Small Wireless Facilities if the jurisdiction's population is less than 50,000. If the Application includes multiple Small Wireless Facilities, an Authority may separately address individual Small Wireless Facility Collocations for which incomplete information has been received or which are denied; provided, however, that the denial of one or more small Small Wireless Facilities in a consolidated applications shall not delay processing of any other Small Wireless Facilities in the same consolidated Application
210. Collocation of a Small Wireless Facility on an Authority Pole does not provide the basis for the imposition of an ad valorem tax on the Pole.
211. An Authority may reserve space on Authority Poles for its own reasonably foreseeable future governmental, not-for-resale uses. However, a reservation of space may not preclude Collocation of a Small Wireless Facility. If replacement of the Pole is necessary to accommodate the Collocation of the Facility and the future public safety use, the Pole replacement is subject to Make-Ready provisions and the replaced Pole shall accommodate the reasonably foreseeable future governmental, not-for-resale uses..
212. An Authority may require an Application under this section for the installation of new, replacement or modified Poles associated with the Collocation of Small Wireless Facilities. An Authority shall approve an Application unless the Authority finds that the Pole fails to comply with local code provisions or regulations that concern any of the following:
  - 2.12.1. reasonable public safety standards.
  - 2.12.2. objective design standards and reasonable stealth and concealment requirements that are consistent and set forth in writing, provided that such design standards may be waived by the Authority upon a showing that the design standards are not reasonably compatible for the particular

location of a Small Wireless Facility or that the design standards impose an excessive expense.

213. The timeframes in 1.7 includes all permits required to deploy Small Wireless Facilities.

### **3 Permitting Fees**

31. General requirements for fees. An Authority may charge an Application fee or other fee only if such fee is required for similar types of commercial development within the Authority's jurisdiction. Any Application fee or other fee an Authority may charge for reviewing and acting on Applications and issuing Permits for Communications Network Facilities or Communications Network Support Structures shall be based solely on the actual, direct and reasonable costs to process and review such Applications and managing the Public Right-of-Way. Such fees shall be reasonably related in time to the incurring of such costs. Any such fees shall also be nondiscriminatory, shall be competitively neutral, and shall be publicly disclosed. Fees paid by an Authority for (1) travel expenses incurred by a third-party in its review of an Application, (2) direct payment or reimbursement of third-party rates or fees charged on a contingency basis or a result-based arrangement, or (3) fees paid to the state enforcement authority, shall be included in the Authority's actual costs. In any dispute concerning the appropriateness of a fee, the Authority has the burden of proving that the fee meets the requirements of this subsection.
32. No rate or fee may: (1) result in a double recovery where existing rates, fees or taxes already recover the direct and actual costs of reviewing Applications, issuing Permits, and managing the Public Right-of-Way; (2) unreasonable or discriminatory; or (3) violate any applicable Law. Notwithstanding the foregoing, in recognition of the public benefits of the deployment of Communications Services, an Authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate or fee to a Communications Provider for the use of the Public Right-of-Way.
33. The [State Legislature], the state enforcement authority or its appropriate designee shall promulgate rules governing the collection of Permit fees by Authorities, including caps on fees described in this section.
34. Application fees, where permitted, for Applications processed pursuant to Article 9.1 shall not exceed the lesser of the amount charged by the Authority for: (i) a building permit for any similar commercial

construction, activity, or land use development; or (ii) \$\_\_ [fee cap to be inserted pursuant to section Rates and Fee's Working Group].

35. Fees for Small Wireless Facilities. Application fees, where permitted, for Applications processed pursuant to Article 9.2 shall not exceed the lesser of (1) the actual, direct, and reasonable costs to process and review Applications for such Facilities; (2) the amount charged by the city for permitting of any similar activity; or (iii) \$\_per Facility for the first five facilities addressed in an Application, plus \$ for each additional Facility addressed in the Application [fee caps to be inserted pursuant to section 3.3].

36. Authority Poles. Any annual or other recurring fee an Authority may charge for attaching a Communications Network Facility on an Authority Pole shall not exceed the rate computed pursuant to rules adopted by FCC rules for telecommunications pole Attachments if the rate were regulated by the FCC or \$ per year per Authority Pole, whichever is less. An Authority may not require any Application or approval, or assess fees or other charges for:

3.6.1. routine maintenance;

3.6.2. replacement of existing Communications Network Support Structures with Communications Network Support Structures that are substantially similar or of the same or smaller size.

3.6.3. except as required in section 10.4, the installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Poles in compliance with Applicable Codes by or for a Communications Provider authorized to occupy the Public Rights-of-Way; notice of such installation, placement, maintenance, or replacement must be provided. Notwithstanding this paragraph, an Authority may require a right-of-way Permit for work that involves excavation, closure of a sidewalk, or closure of a vehicular lane.

#### **4 Exclusive Agreements Prohibited.**

No agreement pursuant to this section shall provide any Applicant with an exclusive right to access the Public Right-of-Way or other Authority Infrastructure.

#### **5 Transition Period**

51. Agreements between Authorities and Communications Providers that are in effect on the effective date of this Act remain in effect for Facilities already subject to the Agreements, and subject to applicable termination



provisions. The Communications Provider may accept the rates, fees, and terms established under this subsection that are the subject of an Application submitted after the rates, fees, and terms become effective.

52. An Authority and Persons owning or controlling Authority Poles and Poles shall offer rates, fees, and other terms that comply with this section no later than three months after the enactment of this Act. No later than that date, an Authority shall also rescind or otherwise terminate any ordinances, regulations or procedures that prohibit or have the effect of prohibiting the construction or installation of Communications Network Facilities or Communications Network Support Structures.

## **6. Historic Preservation**

To the extent consistent with federal law, an Authority may enforce local codes, administrative rules, or regulations adopted by ordinance which are applicable to a historic area designated by the relevant Authority.<sup>3</sup> This subsection does not limit an Authority's jurisdiction to enforce historic preservation zoning regulations or enforcement of environmental protection under the National Environmental Protection Act consistent with the preservation of local zoning authority under 47 U.S.C. § 332(c) (7), the requirements for Facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement such Laws. An Authority may waive any ordinances or other requirements that are subject to this paragraph.

## **7. Privately-owned Structures**

This subsection does not authorize a Person to Collocate or attach Communications Network Facilities on a privately owned Pole, a privately owned Communications Network Facility Support Structure, or other private property located in the Public Right of Way without the consent of the property owner, which consent shall not be unreasonably withheld.

## **8. State and Local Authority**

81. Subject to the provisions of this Model Code and applicable federal Law, an Authority may continue to exercise zoning, land use, planning and permitting authority within its territorial boundaries, including with respect to Communications Network Support Structures and Poles; except that no Authority shall have or exercise any jurisdiction or authority over the design, engineering, construction, installation, or

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<sup>3</sup> On July 2, 2018, the Federal Communications Commission's rules excluding small wireless facilities (meeting certain requirements) deployed on non-Tribal lands from National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) review became effective.

operation of any Communications Network Facility located in an interior structure or upon the site of any campus, stadium, or athletic facility not otherwise owned or controlled by the Authority, other than to comply with Applicable Codes. Nothing in this Model Code authorizes an Authority, to require Communications Network Facility deployment or to regulate Communications Services.

82 Subject to the provisions of this Article, the Authority shall have the authority to prohibit the use or occupation of a specific portion of Public Right-of-Way by a Communications Provider due to a reasonable public interest necessitated by public health, safety, and welfare so long as the authority is exercised in a competitively neutral manner and is not unreasonable or discriminatory. A reasonable public interest shall include the following:

8.2.1. the prohibition is based upon a recommendation of the Authority engineer, is related to public health, safety and welfare and is nondiscriminatory among Communications Providers, including incumbent Communications Providers;

8.2.2. the Communications Provider has rejected a reasonable, competitively neutral and nondiscriminatory justification offered by the Authority for requiring an alternate method or alternate route that will result in neither unreasonable additional installation expense nor a diminution of service quality;

8.2.3. the Authority reasonably determines, after affording the Communications Provider reasonable notice and an opportunity to be heard, that a denial is necessary to protect the public health and safety and is imposed on a competitively neutral and nondiscriminatory basis; or

8.2.4. the specific portion of the Public Right-of-Way for which the Communications Provider seeks use and occupancy is environmentally sensitive as defined by Law or lies within a previously designated historic district as defined by any Law, and the proposed facility is not otherwise excluded from review under any Law.

## **9. Undergrounding Provisions**

The Authority shall administer undergrounding provisions in a non-discriminatory manner. It shall be the objective of the Authority and all Public Right-of-Way occupants to minimize disruption or discontinuance of service of all kinds to consumers, through mutual obligation to coordinate and timely complete such projects.

91. An Applicant shall comply with nondiscriminatory Authority undergrounding requirements that 1) are in place prior to the date of initial filing of the Application, and 2) prohibit electric, telecommunications and cable providers from installing above-ground horizontal cables, Poles, or equivalent vertical structures in the Public Right-of-Way; and the Authority may require the removal of overhead cable and subsequently unused Poles. In areas where existing aerial utilities are being moved underground, Communications Provider(s) and Communications Infrastructure Provider(s) shall retain the right to remain in place, under their existing authorization, by buying out the ownership of the Pole(s), subject to the concurrence of the Pole owner and consent of the Authority (which consent may not be unreasonably withheld, conditioned or delayed) or, alternatively, the Communications Provider(s) and Communications Infrastructure Provider(s) may reasonably replace the existing Pole(s) or vertical structure locations for Antennas and accessory equipment, as a permitted use, within 50 feet of the prior location, unless a minimally greater distance is necessary for compelling public welfare.
92. In neighborhoods or areas with existing underground utilities that do not have Small Wireless Facilities deployed as a permitted use, a new Applicant applying after utilities have been placed underground shall first seek existing vertical structure locations, if technically feasible for the wireless service to be deployed. To the degree such vertical structures are not available, and upon receiving an approved Permit, the Applicant shall be entitled to place Poles or vertical structures as necessary to provide the wireless service using vertical structures commensurate with other vertical structures in the neighboring underground utility area.
93. In neighborhoods or areas with existing underground utilities that do have Small Wireless Facilities deployed as a permitted use, a new Applicant applying after utilities have been placed underground shall first seek existing vertical structure locations, if technically feasible for the wireless service to be deployed. To the degree such vertical structures are not available, and upon receiving an approved Permit, the Applicant shall be entitled to place Poles or vertical structures as necessary to provide the wireless service using vertical structures commensurate with other vertical structures of Communications Provider(s) and Communications Infrastructure Provider(s) in the neighboring underground utility area.
94. In neighborhoods with underground utilities, whether being converted from overhead utilities or initially underground, micro wireless facilities, typically strand-mounted, shall be treated like other Small Wireless Facilities in the Public ROW, requiring permitted use status, and subject to non-recurring and recurring Fees and Rates.

## ARTICLE 9: RURAL<sup>3</sup> BROADBAND DEPLOYMENT ASSISTANCE FUND

1. Optional language:
  11. Every provider of Communications Services in the State shall contribute to the Rural Broadband Deployment Assistance Fund in an equitable and non-discriminatory manner. The State Universal Service Administrator (“Administrator”) shall determine the appropriate State Universal Service assessment methodology and rate consistent with federal law and FCC policy. The Administrator shall engage stakeholders in a rulemaking process to determine the source of funding. If Broadband Dependent Services shall be subject to State sales tax, it shall be deposited to the Rural Broadband Deployment Assistance Fund; or
  12. Every provider of Communications Services and Broadband Dependent Services in the State shall contribute to the Rural Broadband Deployment Assistance Fund in an equitable and non- discriminatory manner. The State Universal Service Administrator (“Administrator”) shall determine the appropriate State Universal Service assessment methodology and rate consistent with federal law and FCC policy. The Administrator shall engage stakeholders in a rulemaking process to determine the source of funding; or
  13. State Universal Service Fund
    - 1.3.1. Communications Service providers shall be eligible for grants from the State Universal Service Fund to support Networks that deliver Broadband Communications Services.
    - 1.3.2. Eligible Communications Service providers receiving State Universal Service Fund funds for calendar year 2019 are capped at 90% of the amount received in 2017; for calendar year 2020 funds are capped at 85% of the amount received in 2017; in calendar year 2021 capped at 80%; and for calendar year 2022 and beyond, capped at 75%.
  14. Total funds in the State Universal Service Fund shall not be reduced below the amount of money collected in calendar year 2017.
  15. Monies in excess of the annual capped amount provided to eligible Communications Service providers (as established in 2 above) shall be designated and deposited in the Rural Broadband Deployment & Maintenance Fund.
  16. Rural Broadband Deployment & Maintenance Fund

1.6.1. Eligible Communications Service providers as recognized by the State's public utility commission and that meet the requirements of Section 3.1 of this Article 11, may submit applications to the Rural Broadband Deployment & Maintenance Fund administrator or the public utility commission for funding from the Rural Broadband Deployment & Maintenance Fund to deploy Communications Networks to Unserved consumers

1.6.2. Applications for funding pursuant to Section 3.5.1 shall clearly state:

- (1) the geographic area and number of consumers in the area to be served,
- (2) The length of time necessary to construct the necessary infrastructure to serve the prospective customers,
- (3) Proposed efforts to sign to service contracts by customers within the designated geographic area - this may include preconstruction petitions, deposits, or other forms of customer commitment acceptable to the Rural Broadband Deployment & Maintenance Fund administrator, and
- (4) Such other information as the Rural Broadband Deployment & Maintenance Fund administrator shall deem necessary to assess the scope and feasibility of the proposed deployment.

1.6.3. Applicants for State Rural Broadband Deployment & Maintenance Fund funds must demonstrate that such funding will be no greater than a percentage of project costs as determined at the time of project approval by the Rural Broadband Deployment & Maintenance Fund administrator or public utility commission.

1.6.4. If multiple eligible Communications Service providers seek to serve the same geographic area's customers, the Rural Broadband Deployment & Maintenance Fund administrator or public utility commission shall give preference to:

- (1) Applicants proposing to deploy in Unserved areas;
- (2) Applicants that demonstrate that they already have the resources to cover that portion of the project costs that will not be covered by assistance in addition to a reasonable percentage of potential cost over-runs associated with the

project;

- (3) Applicants requesting the lowest amount of money per consumer proposed to be covered by the project from the Rural Broadband Deployment & Maintenance Fund; and
- (4) Applicants proposing to deploy a Communications Network capable of delivering broadband that meets the FCC's definition of Advanced Telecommunications Capability in its most recent annual broadband progress report.

1.6.5. Eligible Communications Service providers awarded funds from the Rural Broadband Deployment & Maintenance Fund shall be reimbursed by the administrator or public utility commission to the dollar amount agreed upon submission of verifiable invoices for infrastructure deployment costs.

1.6.6. Construction of the accepted project must be completed within five years of the date of the Administrator or public utility commission approving the project and authorizing State financial assistance.

17. The Administrator or public utility commission shall have administrative rules and regulation authority to implement and administer the Rural Broadband Deployment & Maintenance Fund.

2. State Broadband Data Collection - The Administrator, public utility commission, or the state enforcement authority may work with private and public sector Communications Service providers to collect and maintain a database and interactive map that displays voluntarily submitted residential and commercial broadband data availability, technologies and speeds. This data may be displayed on a publicly available website and may be made available for other State and national websites.

**[The following language is offered in the alternative to the previous language for States that do not already have a broadband fund.]**

**PREAMBLE:** The availability of high-speed broadband services in unserved and under-served rural areas is important for economic development, education, health care, and emergency services. While federal funding has been made available for deploying broadband, it may not be sufficient to provide reasonably priced and reliable broadband to all areas within a state. States, therefore, should proactively

create programs to collect and/or distribute funds to support private sector investments in areas that otherwise would be uneconomical for the private sector because of low population density or high cost geography associated with deploying broadband in unserved areas.

**1. DEFINITIONS:**

- 1.1. "Broadband" means any high-speed, telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any transmission media or technology and at a minimum shall meet the definition of 'advanced telecommunications capability' as determined by the FCC from time to time except in Unserved or Rural areas where, at minimum, it shall; 1) Meet the highest speed definition of 'advanced telecommunications capability' as determined by the FCC from time to time, regardless of technology; 2) Latency that does not exceed 100 milliseconds round trip; and 3) Minimum usage allowance of 150 gigabytes (GB) per month.
- 1.2. "Broadband Service" means a fixed or mobile, including satellite, transmission media or technology capable of delivering Broadband.
- 1.3. 'Broadband services provider' means any provider of broadband services or a public utility or any other person or entity that builds or owns a broadband network project.
- 1.4. 'Qualified broadband provider' means an entity that is authorized to apply for or that obtains a certificate of authority issued pursuant to state law.
- 1.5. 'Served area' means an area designated by the state that is not designated by the FCC as an eligible area for federal funding under the Connect America Fund program and has or will receive broadband services at 25/3 speeds.
- 1.6. 'Under-served Area' means an area designated by the state in which broadband services at minimum speeds of 25/3 are not available to 10 percent or more of the locations.
- 1.7. 'Unserved' means homes, businesses and community anchor institutions that do not have access to broadband services at minimums speeds of 25/3 and are located in an Under-served Area.

- 2. BROADBAND GRANT BOARD:** The state broadband program will be administered by an independent board comprised of various stakeholders. The

board will implement and administer the deployment of broadband service in unserved and under-served areas from the fund.

2.1. The board will promulgate rules and policies to administer the program and evaluate applications for grants, and shall make awards to those applications in conformance with the established criteria set forth below.

3. **BROADBAND DEPLOYMENT FUND:** The Broadband Grant Board will establish a mechanism for the support of universal service to provide financial assistance as a support mechanism to provide access to broadband service through broadband networks in unserved and under-served areas.

3.1. Funding of the Broadband Deployment Fund will shall be equitable and on a nondiscriminatory, competitively neutral basis through assessments, which may include a rate element, on all Communications Providers in the state and/or other forms of assessment that capture those entities that financially benefit from access to a broadband system that is ubiquitously available.

3.1.1. Every Communications Service Provider in the state shall contribute to the Broadband Deployment Fund, and

3.1.2. Every provider of Broadband Dependent Service shall contribute to the Broadband Deployment Fund.

3.1.3. The Broadband Grant Board will develop a method for calculating the amount of each contribution charge assessed to a broadband service provider and other benefitting entity.

3.2. The fund is also subject to receipt of additional funds through appropriations by the legislature and gifts, grants, federal funding and other donations received for broadband deployment, which will be administered by the Broadband Grant Board.

4. **BROADBAND GRANT PROGRAM:** The program shall award grants to qualified broadband providers entities that are cooperatives, corporations, limited liability companies, government, partnerships or other private business entities that provide broadband services.

4.1. Grants shall be awarded pursuant to the criteria developed by the Board, with priority given to projects that:

4.1.1. Seek to leverage grant funds through private investment and extension of existing infrastructure;

4.1.2. Serve locations with demonstrated community support, including, but not limited to, documented support from local government;



- 4.1.3. Demonstrate the operator's technical and managerial capabilities to complete the project within three years of the grant;
- 4.1.4. Demonstrate the applicants' necessary financial resources;
- 4.1.5. Are most cost effective and technically efficient in that they propose to serve the highest number of unserved homes, businesses, and community anchor institutions located in an Under-served area for the least cost and best level of service, emphasizing projects including the highest broadband speeds;
- 4.2. Applications for eligible projects will be evaluated according to a scoring system developed by the Board that incorporates the priorities listed in this section, with grant awards being published within ninety days after expiration of the filing window.
- 4.3. Grant applications shall be published by Board at the end of the filing window, and existing service providers shall have thirty days from the date of publication to file objections to the eligibility of a proposed project.
  - 4.3.1. The Board shall address any objections within thirty days of submission and shall make any appropriate changes to grant awards based on a finding of ineligibility resulting from such protest.
- 4.4. Grants shall be conditioned on project completion within three years of awarding of the grant.
- 4.5. Eligible projects from a qualified broadband provider shall include, but not be limited to projects that have received funds through other federal universal service funding programs designed specifically to encourage broadband deployment in an unserved or under-served area. However, funding will not be provided to more than one entity in a geographical area.

## **ARTICLE 10: RURAL BROADBAND NETWORKS - PUBLIC-PRIVATE and MUNICIPAL-OWNED**

**[This Article is intended to create a framework for municipal ownership of broadband facilities in states where such ownership is either banned or not addressed. It is not intended to replace statutes already in place allowing municipal broadband networks.]**

1. Preamble. The preference of the State is that municipal Broadband networks be built, owned, and operated by private industry. The State also recognizes that in Rural areas the economics of building such networks may be economically less viable, relative to other areas of the State, such that private industry interest in deploying Broadband Facilities may not exist in a timeframe or at a price to the consumer that the municipality finds reasonably acceptable. In such instances, a public private partnership and/or municipal ownership of Broadband Facilities may be necessary.
2. In addition to the educational, health care, and other disadvantages brought about by the lack of Broadband in Unserved and Underserved areas, the economic damage suffered by Rural residents is particularly substantial and worsens significantly with time. Such economic damage includes farmers unable to participate in electronic sales of commodities/livestock, the absence of home healthcare monitoring necessitating moving to urban communities, declining populations as high school and college graduates leave because of the lack of economic opportunities, local businesses leaving so they can compete with firms with Broadband, and government agencies requiring the filing of documents electronically. The lack of Broadband in Rural areas exacerbates and accelerates the ever-deepening cycle of economic and quality of life gaps between urban and Rural residents. The digital divide is real and the consequences for residents, local communities, and States as a whole are significant and quantifiable.
3. These time and risk factors in Rural areas of the State demonstrate that exceptions to the normal State preferences for Broadband development are both necessary and justified. In such cases, municipal leaders have an obligation to identify a strategy by which their constituents will have access to Broadband services and the opportunities that therefor result.
4. Public-Private Models. Municipal officials in Rural municipalities shall evaluate various options for providing Broadband services for feasibility and sustainability. Examples of the types of public-private partnerships to consider are as follows:
  - 4.1. Private-led Investment with Public Assistance. In which a privately-owned entity constructs, maintains, and operates the Broadband network, and the municipality assists by facilitating permitting,

granting, and customer sign-ups and ensures that the Broadband service is not discriminatory in its service standards or areas served.

42. **Balanced Public-Private Partnerships.** In which a Rural municipality provides all or some of the necessary capital funds to construct the network, and one selected service provider is granted an exclusive franchise agreement for a finite period of time sufficient for the Broadband provider to recover its capital investment. At the end of that timeline, the system is open access with the incumbent Broadband provider retaining responsibility for system maintenance and operations.
  43. **Public Assets – Open Access.** In which one or more Broadband providers contract for access to a community-owned infrastructure that is developed through a local improvement district, fee for services, donations, grants, and/or other non-tax revenue sources.
  44. **Public-Led Contracting.** In which the community serves as the lead entity and Broadband provider by constructing, financing, and owning the network infrastructure with a private sector partner providing crucial network operations or other duties specifically negotiated.
  45. **Fully Public Funded and Operated Networks.** In which the Rural municipality designs, builds, operates, and manages a community-wide ISP, and the Rural municipality is responsible for all aspects of the network, including customer support and installations.
5. **Required Evaluation.**
- 5.1. Before initiating the planning or deployment of a Fully Public Funded and Operated Network or investing or engaging in Public-Led Contracting, a Rural municipality shall design and implement a process through which to solicit and accept proposals to deploy a Broadband network from private Communications Providers.
  - 5.2. Prior to a Rural municipality investing in a fully Publicly-Funded and Operated Broadband Network and/or investing in Public-Led Contracting, Rural municipal leaders shall determine the following:
    - 5.2.1. That the benefits associated with purchasing or constructing the facilities outweigh the costs;
    - 5.2.2. That the project is both feasible and sustainable; and
    - 5.2.3. That the purchase and construction of the facilities is in the interest of the general public.
  - 5.3. If, and only if, the Rural municipality receives no reasonable and

credible proposal from a private Communications Provider to build a Broadband network and otherwise determines that none of the first three options in Section 4 of this Article are viable and if, and only if, the Rural municipality makes a positive determination of costs, timeliness, feasibility, sustainability, and that the action is in the interest of the general public may the Rural municipality invest in a Fully Public Funded and Operated Network and/or engage in Public-Led Contracting.

6. Any facilities constructed or purchased pursuant to Section 4.4 or 4.5 of this Article must be made available to private entities on a non-discriminatory basis under the same terms and conditions as for the facilities listed in Article 9.
7. Documentation detailing the rationale for the Rural municipality's preferred Broadband build-out strategy shall be provided to the state enforcement authority for review. The state enforcement authority shall not have the authority to reject a Rural municipality's decision, but shall provide comments and guidance if the state enforcement authority deems that Rural municipal officials ignored or over/under-estimated key operational or economic factors, possible inequitable contractual obligations, feasibility of accomplishing the objectives in the proposed timeline, and on any other factors the state enforcement authority identifies as not being in the Rural municipality's best interest.