

Draft 12/06/18

Broadband Deployment Advisory Committee

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

DISCUSSION DRAFT

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

INDEX

ARTICLE 7: NEW AND MODIFIED INFRASTRUCTURE TO BE
BROADBAND READY 3

ARTICLE 8: BUILDINGS AND NETWORK ACCESS POINTS TO BE
BROADBAND READY 5

ARTICLE 9: DEPLOYMENT OF COMMUNICATIONS NETWORK FACILITIES 7

ARTICLE 12: RURAL MUNICIPAL-OWNED BROADBAND NETWORKS..... 22

ARTICLE 7: 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 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 the state enforcement authority shall prevail.
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.

ARTICLE 8: 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 9: 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 by minimum separation distances to: (a) establish reasonable and nondiscriminatory 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 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 owned by the Communications Provider and/or Communications Infrastructure Provider; or

- 1.4.3. 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.

1.5.1. 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.

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. The Owner/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/Authority must determine and notify the Applicant whether the Application is complete; or if an Application is incomplete, the Owner/Authority must specifically identify the missing information, and may toll the approval interval in Subsection 1.8.1(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/Authority) in which case a new Application and Application Fee for same must be submitted;

(2) The Owner/Authority must make its final decision to

approve or deny the Application within sixty (60) days for a collocation, and ninety (90) days for any new structure, after the Application is complete (or deemed complete); and

- (3) The Owner/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/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/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/Authority shall approve or deny the revised Application within thirty (30) days of receipt of the revised Application. The subsequent review by the Owner/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.

1.7.2. If the Owner/Authority fails to act on an Application within the review period referenced in Subsection 1.8.1(2), the Applicant may provide the Owner/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. The Applicant shall provide notice to the Owner/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.

1.7.3. Notwithstanding any other provision of this Article, the

Owner/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.
 - 19.1. 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.
112. The Authority, in the exercise of its administration and regulation

related to the management of the Public Right-of-Way should be technology-agnostic and transparent.

2 Additional Procedures for Deployment of Small Wireless Facilities

21. The siting, mounting, placement, construction, modification and operation 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. If the proposal involves Collocation on or Replacement of a Decorative Pole, such collocation or Replacement must comply with Section 1.6.1 above.
 - 2.3.3. If the proposal involves attachment to or a new Pole or tower on or adjacent to a Historic Property, consider further requirements.
 - 2.3.4. [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. An Authority may not enter into an exclusive arrangement with any Person for the right to attach equipment to Authority Poles.
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 Wireless Support Structure at a location where a Wireless Support Structure or Pole does not exist, and within the review timeframe specified in Subsection 1.8.2, 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 Wireless Support Structure, if the existing Pole or the existing Wireless 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 or support structure 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 25 Small Wireless Facilities if the jurisdiction's population is 100,000 or more, or up to five (5) Small Wireless Facilities if the jurisdiction's population is less than 100,000. 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.
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 future public safety 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 future public safety use.
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. Application requirements, processes, timeframes and remedies for Small Wireless Facilities. All requirements, procedures, timeframes and remedies set forth in Article 9.1 shall apply to Applications for Small Wireless Facilities, except that the period within which an Authority must approve or deny an Application is 60 days for all Small Wireless Facilities. A complete Application is deemed approved if an Authority fails to approve or deny the Application within 60 days after receipt of the Application.

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 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.¹ 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

¹ 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.

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 without the consent of the property owner.

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 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. Dispute Resolution

All disputes arising under this Article 9 shall be determined in accordance with Article 13. Unless agreed otherwise and pending resolution of a Public Right-of-Way access rate dispute, the Authority controlling access to and use of the Public Right-of-Way shall allow the placement of a Communications Network Facility or Communications Network Facility Support Structure at a temporary rate of one-half of Authority-proposed annual rates or ___, whichever is less, with rates to be trued up upon final resolution of the dispute. Pending resolution of a dispute concerning rates for Collocation of Communications Network Facilities on Authority Poles or Poles, the Person owning or controlling the Pole shall allow the collocating Person to Collocate on its Poles at annual rates of no more than \$___ per year per Authority Pole, with rates to be trued up upon final resolution of the dispute. Complaints shall be resolved no later than 180 days after a complaint or petition is filed.

10. 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.

101. 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.

102. 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.
103. 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.
104. 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 12: RURAL MUNICIPAL-OWNED BROADBAND NETWORKS

1. Preamble. The preference of the State is that municipal Broadband networks be built, owned, and operated by private industry. But 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.
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 at least five options for providing Broadband services for feasibility and sustainability. These are, in order of preference:
 41. 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 evaluate each of the other options for viability and also 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.

53. 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, 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 the state enforcement authority shall not have the authority to reject a Rural municipality's decision, but shall provide comments and guidance if the 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 the state enforcement authority identifies as not being in the Rural municipality's best interest.