

*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

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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.

development needs and is capable of expansion to meet future needs.

- 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 State-wide 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 the 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, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address safety, reliability, threats of destruction of property or injury to Persons, or local codes or ordinances adopted to implement this subsection.
4. “**Applicant**” means a Person who submits an Application under this Model Code.
5. “**Application**” means a request submitted by an Applicant to an Authority for a permit to construct new Facilities, complete a Substantial Modification, or to Collocate Communications Network Facilities in, along, or outside the Public Right-of-Way.
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 Utility 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 Utility 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, or similar entity 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.
11. “**Authority Pole**” means a Utility Pole owned, managed or operated by or on behalf of an Authority 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 meet the highest speed definition of ‘advanced telecommunications capability’ as determined by the FCC from time to time, regardless of technology.
14. **“Broadband Dependent Subscription Service”** means a retail service for which consumers pay a one time or recurring fee which requires 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, or replace one or more Communications Network Facilities on, under, within, or adjacent to a Communications Network Support Structure or Utility Pole. The term does not include the installation of a new Utility Pole 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”** 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 Utility Pole.
22. **“Communications Provider”** means any provider of Communications Network Facilities or Communications Services to customers; any Communications Infrastructure Provider; or any Communications Network operated by an Authority.
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 Make Ready that will cause or would reasonably be expected to cause a customer outage, as determined by the contractor chosen by the new Attacher from the approved contractor list maintained by the pole owner.
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. **“Duct”** means a a single enclosed raceway for conductors, cable and/or wire.

29. **“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:
  - 29.1. water;
  - 29.2. sewage;
  - 29.3. electronic, telephone, or telegraphic communications;
  - 29.4. Fiber ;
  - 29.5. cable television;
  - 29.6. electric energy;
  - 29.7. oil;
  - 29.8. natural gas; or
  - 29.9. hazardous liquids.
30. **“FCC”** means The Federal Communications Commission, an independent agency of the United States government created by statute 47 U.S.C. § 151 and 47 U.S.C § 154.
31. **“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.
32. **“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.
33. **“Infrastructure”** means any physical infrastructure of any nature including Network Support Infrastructure or otherwise.
34. **“Latency”** means the delay before a transfer of data begins following an instruction for its transfer.
35. **“Law”** means any federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
36. **“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.

37. **“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.
38. **“Manager”** means the State Broadband Infrastructure Manager as defined in Article 13
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, buildings, cabinets, communications exchanges, Conduits, Ducts, inspection chambers, manholes, masts, Network Access Points, Network components within buildings, pipes, poles, roads, railways, towers, Transportation Networks, Utility Networks, Utility 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. **“NSIR”** means the Network Support Infrastructure Register.
47. **“NSIR Center”** means a center certified by the Manager to facilitate the collection of NSIR data.
48. **“Owner”** means a Person owning or operating a Utility 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.
49. **“Overlash”** means the tying of additional communications facilities to those previously attached to Utility Poles.
50. **“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.
51. **“Permit”** means written permission required by an Authority to install, maintain, modify, mount, operate, or replace a Communications Network

Facility or Communications Network Support Structure upon, over, or under any Public Right-of-Way or waters or on a Utility Pole located in, along, or outside the Public Right-of-Way.

52. **“Person”** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an Authority.
53. **“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.
54. **“Pre-Existing Third Party User”** means the owner of any pre-existing Attachment located in the Public Right-of-Way.
55. **“Public Right-of-Way”** means only the area of real property in which the Authority has a dedicated or acquired right-of-way interest in such real property. It shall include the area on, below or above the present and future streets, sidewalks, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include easements obtained by utilities or private easements in platted subdivisions or tracts.
56. **“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.
57. **“Rural” means**, if not otherwise defined by the State, a county with an average population density of less than 500 persons per square mile, excluding the county seat.<sup>2</sup>
58. **“Simple Make Ready”** means any Make Ready that is not a Complex Make Ready.
59. **“Small Wireless Facility”** means a wireless facility that meets the following qualifications:
  - 59.1. Each Antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of Antennas that have exposed elements, each Antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

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<sup>2</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.

- 59.2. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and Utility Poles or other support structures.
- 59.3. The term does not include the structure or improvements on, under, or within which the equipment is Collocated; wireline backhaul facilities; or coaxial or Fiber optic cable that is between wireless structures or Utility Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna
60. **“State Broadband Infrastructure Manager”** or **“Manager”** is as defined in Article 13
61. **“Subscriber”** means any Person that uses or is authorized to use a Network Service, whether for value or otherwise.
62. **“Substantial Modification”** means a proposed modification of an existing Communications Network Support Structure or Utility Pole which will substantially change the physical dimensions of the Communications Network Support Structure or Utility Pole under the objective standard for substantial change adopted by the FCC pursuant to 47 C.F.R. § 1.40001.
63. **“Underserved”** means an area in which less than 10% of the persons in such area have access to Broadband Services.
64. **“Unserved”** means an area that is not served by Broadband Services .
65. **“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.
66. **“Utility Pole”** means a structure that is designed for and used to carry lines, cables, wires, and related equipment for the provision of cable television, telecommunications, internet, electricity, or wireless services, and that is owned or controlled by a "utility" as that term is defined in Section 224 of the Communications Act, but not including electric transmission poles or

structures, or light poles, lamp posts, and other structures whose primary purpose is to provide public lighting.

67. **“Vertical Asset”** means any pole, cellular tower, building, water tower, granary, or other structure capable of being used to deploy any Communications Service.
68. **“Wireless Services”** means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Communications Network Facilities and/or Utility Poles.

### ARTICLE 3: NETWORK SUPPORT INFRASTRUCTURE REGISTER

1. A centralized Network Support Infrastructure Register containing the data of all available Network Support Infrastructure that is or may be used to facilitate the efficient deployment of Broadband services and that is owned, managed or operated by or on behalf of a Network Support Infrastructure Owner shall be created. The principal purpose of the NSIR is to help to accelerate the roll out of such Broadband services.
2. All Network Support Infrastructure Owners shall be required to register with the NSIR within [90] days of the creation of the NSIR and shall, within 30 days of such registration, complete a Network Support Infrastructure Component (“NSIC”) form, the format of which shall be determined by the Manager, which shall include, but not be limited to:
  - 2.1. Maps and specifications of network routes, network architecture, Network Support Infrastructure assets including their current use of the Network, maintenance access facilities, all in electronic format, and a single point of contact.
  - 2.2. Where such information is not available in electronic format, the Network Support Infrastructure Owner shall provide such information in electronic format within 150 working days of having registered with the Manager or, if so requested by the Manager, render the information into electronic format to the Manager within 40 working days of such a request having been received.
3. Network Support Infrastructure Owners that are not Authorities may, at their discretion, opt to register some or all of their Network Support Infrastructure with the NSIR in accordance with the terms of this Model Code.
4. The NSIR shall be overseen by the State Broadband Infrastructure Manager whose powers are set out in Article 13. The Manager may appoint local NSIR Centers to facilitate the collection of NSIR data. Every such NSIR Center shall be certified by the Manager which shall determine the optimum number of NSIR Centers in the State and define the area to be served by such. Any entity may apply to the Manager to be certified as the NSIR Center for that area. The Manager shall have authority to grant, amend, or revoke certificates under regulations promulgated relating to certification of the NSIR Center.
5. The NSIR shall also include details of additional Network Support Infrastructure to be created pursuant to the issue of a Minimum Network Specification Notice under Article 7.3 and the Register of Civil Works referred to in Article 7.6.

6. The Manager 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, commercially sensitive intellectual property or the insignificance of the scope or value of Network Support Infrastructure concerned. Releasing information to a Communications Provider shall be at the discretion of the Manager, which discretion shall be exercised on a non-discriminatory and transparent basis.
7. In the event that Network Support Infrastructure Owners refuse to provide adequate or any information for the NSIR or fail to respond to or meet any reasonable request of the Communications Providers made pursuant to Articles 3.5 or 4, the Manager may impose and enforce civil penalties or take such other action as it sees fit in accordance with Article 13.
8. Any dispute between a Network Support Infrastructure Owner and the Manager shall be resolved in accordance with Article 13.

## **ARTICLE 4: RIGHTS OF ACCESS TO EXISTING NETWORK SUPPORT INFRASTRUCTURE**

### **1. Request for Information**

1.1. Subject to Article 3.6, Communications Providers shall be entitled to apply to the Manager to access information on the NSIR, on a confidential basis, once they have completed an initial Request for Information form (“RFI”), the format of which shall be determined by the Manager, which request shall specify the relevant components of the Network Support Infrastructure Owner’s Network and the purpose the information is required for.

### **2. Request for Access and Site Surveys**

2.1. All Network Support Infrastructure Owners shall be entitled to offer Communications Providers access to their Network Support Infrastructure and shall be obliged to grant all reasonable requests from Communications Providers to give access to their Network Support Infrastructure for the purpose of implementing components of Communications Networks.

2.2. Requests for access by Communications Providers shall be made using a Request for Access (“RFA”) form, the format of which shall be determined by the Manager, but shall include sufficient information to enable the Network Support Infrastructure Owner to arrive at a fully informed decision within 30 working day of receipt of an RFA.

2.3. Where the Network Support Infrastructure Owner consents to access, the terms offered must be fair and reasonable including as to time, price and conditions and set forth using a Consent to Access (“CTA”) form, the format of which shall be determined by the Manager.

2.4. Once a valid RFA has been submitted, the Network Support Infrastructure Owner, shall grant all reasonable requests from the issuer of the RFA to conduct a site survey relating to the components of its Network Support Infrastructure specified in the RFA. Such request shall be made using a Site Survey Request (“SSR”) form, the format of which shall be determined by the Manager. The Network Support Infrastructure Owner shall have 15 working days to respond to such request.

2.5. Where the Network Support Infrastructure Owner consents to the site survey, the terms offered shall be fair and reasonable including as to

time, price and conditions and made using a Consent to Survey (“CTS”) form, the format of which shall be determined by the Manager.

**3. Refusal of Access**

3.1. Where the Network Support Infrastructure Owner refuses access, the basis of refusal shall be fair and reasonable and shall be communicated to the entity requesting access within a reasonable time and in any event, no later than 30 working days from the date of receipt of the request, and shall be specified in a Refusal of Access (“ROA”) form, the format of which shall be determined by the Manager but which shall include a number of grounds for refusal including, without limitation, technical suitability, network capacity, national security, public health and safety, reasonable, objective, technically feasible and non-discriminatory aesthetic or historic considerations, commercially sensitive intellectual property and the availability of more suitable alternatives.

**4. Dispute Resolution**

4.1. Where Network Support Infrastructure Owners do not respond to an RFI, RFA or SSR form within 30 working days or where the terms of a CTS, CTA or ROA form are in dispute and where the parties have been unable to reach agreement within 30 working days, Communications Providers may refer the case to the Manager. Cases referred to the Manager shall be dealt with in accordance with Article 13.

4.2. The Manager may, at its discretion, exercise its power to impose and enforce civil penalties in accordance with the terms of Article 13.

**5. Special Provisions Relating to the Right to Lease certain Publicly Owned Assets.**

**5.1. Dark Fiber**

5.1.1. Subject to Articles 3 and 4, Dark Fiber that is owned or operated by an Authority shall be leased to any private sector Communications Provider on a cost-based basis 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.

## **5.2. Communications Network Support Structure**

5.2.1. Subject to Articles 3 and 4, Communications Network Support Structure that is owned or operated by an Authority shall be leased to any private sector Communications Provider on a nondiscriminatory, competitively neutral and publicly disclosed cost-based basis 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.

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

5.3.1. Subject to Articles 3 and 4, Buildings and other Vertical Assets (other than Communications Network Support Structure) that are owned or operated by an Authority shall be leased to any private sector Communications Provider on a cost-based basis 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.

5.3.2. 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.

## **5.4. 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.

#### **5.5. Fees**

Lease fees shall be based solely on the Authority's actual, direct and reasonable costs and shall be nondiscriminatory, competitively neutral and publicly disclosed and generally be based on the principles, as adapted for and applied to this subsection 5, set out in Article 9.3. No fees may result in a double recovery where existing fees already recover the Authority's actual, direct and reasonable costs, nor be based on any other factors or conditions including the Communications Provider's revenue or customer counts.

#### **5.6. 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 Manager to be dealt with in accordance with Article 13.

## ARTICLE 5: SPECIAL PROVISIONS FOR RIGHTS OF ACCESS TO POLES IN THE COMMUNICATIONS SPACE

### 1. Make Ready Provisions

1.1. Upon approval of an Attachment Application by an Owner, 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. The Attacher will not perform Complex Make Ready without first providing 30 days' prior written notice, which includes electronic communication, to the applicable Pre-Existing Third Party User so that a field meeting can be scheduled within that time frame with technicians from the Pre-Existing Third Party and the Attacher. The designated representatives will decide what steps need to be taken to complete the Complex Make Ready, including coordinating to minimize any disruption caused by the Complex Make Ready on the Pre-Existing Third Party User's business;

1.1.2. Nothing in this Article authorizes an Attacher to perform any act requiring an electric supply outage; and

1.1.3. 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, unless such Attachments are for small cell Antennas and have been approved by the pole owner.

1.1.4. 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.

1.1.5. For simple attachments, an attacher would be authorized to proceed with one-touch make-ready after providing notice to the pole owner and existing attachers of at least 25 calendar days describing the proposed work and contractor of choice. Such notice would constitute the attacher's certification that its contractor meets the required qualifications.

1.2. 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.

- 1.3. The Attacher will place its Attachment where instructed by the Owner.
- 1.4. 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.
- 1.5. The Attacher shall immediately notify the Owner 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.
- 1.6. 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. Upon receipt of the As-Built Reports, the Pre-Existing Third Party User and Owner 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 for performing such field inspection.
- 1.7. 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 Utility 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 to either (1) perform the correction itself or bill the Attacher for the actual, reasonable, and documented expenses of the correction incurred by the Pre-Existing Third Party User, or (ii) 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, the Owner.

- 1.8. To the extent permitted by applicable Law, an Attacher that exercises the right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's Facilities pursuant to this Article shall indemnify, defend and hold harmless the Owner of the affected Utility Pole or similar structure from and against any action, suit, or proceeding by an affected Pre-Existing Third Party User arising from such transfer, relocation, rearrangement or alteration.
- 1.9. To the extent permitted by applicable Law, an Attacher that exercises their right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's facilities pursuant to this Article shall indemnify, defend and hold harmless Pre-Existing Third Party Users against any losses, claims or demands arising out of bodily injury, death or damage to or loss of property that results from the performance of Attacher's Make Ready.
- 1.10. Prior to exercising its right to transfer, relocate, rearrange or alter a Pre-Existing Third Party User's Facilities 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 Utility 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 Utility 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 Utility 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 Utility 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 Utility 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 6: SPECIAL PROVISIONS FOR RAILROAD CROSSINGS**

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

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 Manager. 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 Manager 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 Manager must issue an order within 120 days of filing of the petition. The order may be appealed. The Manager must assess the costs associated with a petition equitably among the parties.

## **2.7. Additional Requirements; Objection and Petition to Manager**

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 Manager 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 Manager shall determine, after notice and opportunity for hearing, whether special circumstances exist that necessitate additional requirements for the placement of the Crossing. The Manager must issue an order within 120 days of filing of the petition. The order may be appealed. The Manager 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.

## 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 Manager.
2. Any MNSN issued by the Manager 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 Manager 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 Manager shall add any MNSNs to the NSIR set out in Article 3 and all registered users of the NSIR shall be advised of the MNSN within 10 working days of the issue of any MNSN. Parties interested in financing part or all of the Network Support Infrastructure required by the MNSN or wishing to add their own Network Support Infrastructure as part of the same Civil Works will be invited to apply to the relevant Network Support Infrastructure Owner subject to the terms of Article 2.3 of this Article.

4. The Manager 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.
5. Where the Manager decides that no MNSN shall be issued, it may still, at its discretion, publish the details of the proposed Civil Works on the NSIR and invite interested parties to contact the relevant Network Support Infrastructure Owner with a view to discussing implementing components of Communications Networks.
6. The Manager shall maintain, as part of the NSIR, a Register of Civil Works.
  - 6.1. Civil Works that are to be conducted by or on behalf of Network Support Infrastructure Owners shall be registered with the NSIR at least 45 working days before the first related License Application is made for such Civil Works. Registrations shall be in electronic format using the Civil Works Registration (“CWR”) form, the format of which shall be determined by the Manager. The CWR shall include at least the same information as is required for License Applications including without limitation:
    - 6.1.1. Location and type of works clearly marked on a map;
    - 6.1.2. Details of the Network Support Infrastructure involved;
    - 6.1.3. Estimated start date and duration of the proposed works; and
    - 6.1.4. A single contact point.
  - 6.2. The Manager shall ensure that all registered users of the NSIR shall be advised of any Civil Works so registered within 10 working days of any such registration.
  - 6.3. Coordination of Civil Works
    - 6.3.1. The License to conduct Civil Works shall be conditional upon a requirement to coordinate Civil Works with other Network Support Infrastructure Owners in accordance with a Civil Works Coordination Notice (“CWCN”) issued by the Manager.
    - 6.3.2. Any such CWCN issued by the Manager shall be objective, transparent and proportionate and shall contain a clear explanation of the grounds for the issue of the notice taking into account industry best practices and the terms of such coordination.

6.3.3. If no such CWCN is issued within 30 working days of Civil Works being registered with the NSIR, Network Support Infrastructure Owners shall, for a further 30 working days, meet any reasonable request to coordinate Civil Works from Network Support Infrastructure Owners on transparent and non-discriminatory terms. Where such terms cannot be agreed upon within 20 working days, the case may be referred to the Manager.

#### 6.4. Prevention of Civil Works

6.4.1. The Manager may, in the absence of being advised of sound reasons based on industry best practice for not doing so, seek to prevent Civil Works by refusing consent to a License where:

- (1) In the transparent and non-discriminatory opinion of the Manager, there is already sufficient spare and appropriate Communications Network capacity available to the Applicant as evidenced by the NSIR, or
- (2) The Applicant is seeking to conduct Civil Works involving a public highway or other public place which has been the subject of Civil Works by a Network Support Infrastructure Owner in the previous [six] months and the Applicant was aware of such Civil Works in that it was a matter of record on the NSIR and, as such, had an adequate opportunity to apply to coordinate Civil Works at that time.

7. The Manager 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.

8. Any dispute between a Network Support Infrastructure Owner and the Manager shall be referred to the Manager in accordance with Article 13.

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

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

- 1.1. 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.
- 1.2. 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.
- 1.3. Where such access is not granted within 20 working days, Communications Providers may refer the case to the Manager.

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

- 2.1. 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.
- 2.2. 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.
- 2.3. Where such access is not granted within 20 working days, Communications Providers may refer the case to the Manager.

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

- 3.1. 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
- 3.2. 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.
- 3.3. 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 Manager.
- 3.4. The Manager 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

1.1. 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.

1.1.1. An Authority may not institute, either expressly or de facto, a moratorium on (1) filing, receiving or processing Applications or (2) issuing Permits or other approvals for a Communications Network Facility or a Communications Network Support Structure.

1.2. 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, including but not limited to reserving Fiber, Conduit or pole space for the Authority.

1.3. 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 not limit the placement of Communications Network Facilities or Communications Network Support Structures by minimum separation distances.

1.4. An Applicant's business decision on the type and location of Communications Network Facilities, Communications Network Support Structures, Utility 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 Utility 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.

1.5. An Authority shall not

1.5.1. 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, Utility 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, Utility Pole, or Communications Network Facility as of right;

1.5.2. 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 Applicant; or

1.5.3. 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.

1.6. 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.

1.7. 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.

1.8. Application Timeframes:

1.8.1. Within 30 days after receiving an Application, an Authority must determine and notify the Applicant by electronic mail or by first class USPS mail, or other method as agreed by the Authority and

Applicant, as as to whether the Application is complete. If an Application is deemed incomplete, the Authority must specifically identify the missing information within that same 30-day period. An Application is deemed complete if the Authority fails to provide notification to the Applicant within 30 days.

- 1.8.2. An Application must be processed on a nondiscriminatory basis. An Authority must approve or deny an Application within 60 days after the date the Authority receives a complete Application to construct a new or make a Substantial Modification to a Communications Network Support Structure or a complete Application for a Communications Network Facility. A complete Application is deemed approved if an Authority fails to approve or deny the Application within 60 days after receipt of the Application. If an Authority has review procedures beyond review and action on an Application, those procedures must also be completed within 60 days. Applicant shall provide notice to the Authority within seven days of 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 Authority or other entity to the deployment. Construction or Collocation pursuant to a Permit issued pursuant to an approved or deemed approved Application, Construction or Collocation shall commence within two years of such approval, which period may be extended by the Authority, and shall be pursued to completion. Any time limitation placed on Permits shall be void unless the Applicant subsequently and voluntarily requests that the Permit be terminated. Applicant shall provide notice to the Authority upon completion of Construction or Collocation of the permitted Communications Network Support Structure or Communications Network Facility.
- 1.8.3. An Authority must notify the Applicant of approval or denial by [the mode of transmission of the Applicant's choosing (?)] electronic mail. If the Application is denied, the Authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the Applicant by electronic mail on the day the Authority denies the Application. The timeline for sending such documentation may be extended for up to five business days as necessary and as requested by the Authority. In response to a denial, an Applicant may cure the deficiencies identified by the Authority and resubmit the Application within 30 days after notice

of the denial is sent to the Applicant without paying an additional Application fee. The Authority shall approve or deny the resubmitted Application within 30 days after receipt or the Application is deemed approved. Any subsequent review of the resubmitted Application shall be limited to the deficiencies cited in the denial.

- 1.9. Applicants may consolidate Applications where the Applications are sufficiently similar in nature and scope.
- 1.10. An Applicant may, at its discretion, seek authorization for a specific geographic area as described below.
  - 1.10.1. 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.
- 1.11. A Communications Network Support Structure granted a Permit and installed pursuant to this subsection shall comply with federal regulations pertaining to airport airspace protections.
- 1.12. An Authority shall not 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, or to require a Communications Provider to obtain insurance naming the Authority or its officers and employees an additional insured against any of the foregoing.
- 1.13. The Authority, in the exercise of its administration and regulation related to the management of the Public Right-of-Way must be competitively neutral with regard to other users of the Public Right-of-

Way, including that terms may not be unreasonable or discriminatory and may not violate any applicable Law.

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

2.1. 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.

2.2. A Communications Provider has the right to locate or Collocate Small Wireless Facilities on an Authority Pole, and/or other Authority-owned poles and other property in the Public Right-of-Way, except that such facilities or networks shall not be located or mounted on any apparatus, pole or signal with tolling collection or enforcement equipment attached. In addition, an Authority may deny a proposed Collocation of a Small Wireless Facility in the Public Right-of-Way if the proposed Collocation:

2.2.1. Materially interferes with the safe operation of traffic control equipment;

2.2.2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;

2.2.3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or State standards regarding pedestrian access or movement; and/or

2.2.4. Materially fails to comply with applicable State authority.

2.3. An Authority may not require the placement of Small Wireless Facilities on any specific Utility Pole or category of poles or require multiple Antenna systems on a single Utility Pole. An Authority may not enter into an exclusive arrangement with any Person for the right to attach equipment to Authority Poles.

2.4. Notwithstanding the general prohibition on separation distances in this Article, within 14 days after the date of filing the 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 Utility Pole does not exist, an Authority may propose, as an alternative location for the proposed Small Wireless Facility, that the Small Wireless Facility be Collocated on an existing Utility Pole or on an existing Wireless Support Structure, if the existing Utility 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. The Applicant must notify the Authority within 30 days of the date of the request whether the Applicant will use the alternative location. If the Applicant notifies the Authority that it will use the alternative location, the Application shall be deemed granted for that alternative location and all other locations in the Application. 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.

- 2.5. An Authority shall permit the Collocation of a Small Wireless Facility which extends no more than 10 feet above the Utility Pole or structure upon which the Facility is to be Collocated. An Authority shall permit the installation of a new pole or support structure to hold facilities that is no taller than 10 feet above the tallest existing Utility Pole as of the effective date of this Act, located in the same Public Right-of-Way, other than a Utility 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 Utility Pole within 500 feet, the Authority shall permit the installation of a pole that is no taller than 50 feet. An Authority may approve Small Wireless Facilities or new poles that do not meet the height limits of this section subject to reasonable restrictions.
- 2.6. 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 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.
- 2.7. 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.
- 2.8. 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.

- 2.9. An Authority may require an Application under this section for the installation of new, replacement or modified Utility Poles associated with the Collocation of Small Wireless Facilities. An Authority shall approve an Application unless the Authority finds that the Utility Pole fails to comply with local code provisions or regulations that concern any of the following:

- 2.9.1. public safety;

- 2.9.2. 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.

- 2.10. 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**

- 3.1. 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 Manager, shall not be included in the Authority's actual, direct and reasonable 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.

- 3.2. 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) be in the form of a franchise or other fee based on revenue or customer counts; (3) be unreasonable or discriminatory; or (4) 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.
- 3.3. The [State Legislature], the Manager or its appropriate designee shall promulgate rules governing the collection of Permit fees by Authorities, including caps on fees described in this section.
- 3.4. 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 3.3].
- 3.5. 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].
- 3.6. 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. installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility 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**

- 5.1. 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.
- 5.2. An Authority and Persons owning or controlling Authority Poles and Utility 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**

This subsection does not limit an Authority's jurisdiction to enforce historic preservation zoning regulations 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 enforce local codes, administrative rules, or regulations adopted by ordinance in effect on April 1, 2017, which are applicable to a historic area designated by the relevant Authority. An Authority may enforce pending local ordinances, administrative rules, or regulations applicable to a historic area designated by the Authority if the intent to adopt such changes has been publicly declared on or before April 1, 2017. 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 Utility 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**

8.1. 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 Utility 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.

8.2. 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 \$20, 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 Utility 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 \$20 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.

## ARTICLE 10: STATE FRANCHISE AGREEMENTS

### 1. Procedures.

- 1.1. To promote broadband deployment, particularly in unserved and underserved areas, a Communications Provider may elect to apply for a State-wide franchise with respect to one or more types of Communications Service.
  - 1.1.1. No Communications Provider shall be required to obtain an authorization under this Article 10 for the provision of a Communications Service. or to obtain access to a Public Right-of-Way.
  - 1.1.2. A Communications Provider that offers Cable service may elect to satisfy its obligations under 47 U.S.C. § 541 by obtaining a State-wide franchise under this Article 10.
  - 1.1.3. Nothing in this Article exempts a Communications Provider that has received a State-wide franchise pursuant to this Article from complying with the provisions and requirements of Article 9 for any Communications Service not covered by the State-wide franchise.
- 1.2. The (designated State agency) shall notify an applicant within 10 business days of receipt of the application for a State-wide franchise whether the application is complete, and if not what deficiencies must be addressed.
- 1.3. The (designated State agency) shall have 180 days from the determination that an application for a State-wide franchise is complete to render a decision on the application.

### 2. Authorizations and Fees.

- 2.1. No Authority in the State shall require a Communications Provider that has received a State-wide franchise pursuant to this Article to obtain a separate franchise, license, authorization, certificate, or other approval with respect to the same type of Communications Service covered by the franchise; nor may any Authority in the State require a fee of the Communications Provider above the State authorized franchise fee for any Communications Service authorized by the franchise.
- 2.2. The (designated State agency) shall establish the necessary rules and regulations to implement this provision. Such rules and regulations shall include, but not be limited to, appropriate and reasonable filing fees, requirements for corporate financial capabilities, designation of corporate officials and contact information, designation of service territory, reasonable rules or regulations relating to access to public rights of way and infrastructure and to placement or maintenance of

Communications Network Facilities used to deploy the Communications Service authorized by the franchise, and the franchise fee. Such rules and regulations shall also be subject to the requirements and limitations on franchise requirements and fees established in 47 U.S.C. §§ 541 et seq., to the extent such statutory provisions are applicable to the type of Communications Service for which the franchise is being granted, including the prohibition on fees greater than 5 percent of Cable revenues for any Communications Provider that offers Cable service.

- 2.3. The (designated State agency) shall establish time and performance deadlines for a franchised Communications Provider to deploy its technology and serve potential customers, subject to the limitations and requirements established in 47 U.S.C. §§ 541 et seq., to the extent such statutory provisions are applicable to the type of Communications Service for which the franchise is being granted.

## ARTICLE 11: RURAL<sup>3</sup> BROADBAND DEPLOYMENT ASSISTANCE FUND

1. Optional language:
  - 1.1. 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 Subscription Services shall be subject to State sales tax, it shall be deposited to the Rural Broadband Deployment Assistance Fund; or
  - 1.2. Every provider of Communications Services and Broadband Dependent Subscription 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.
2. The fee level on current providers shall not be increased above 2017 assessments and may be reduced if ‘communications service’ is provided through a company with physical connections to the customer’s home, business, or portable device.
3. State Universal Service Fund
  - 3.1. Communications Service providers shall be eligible for grants from the State Universal Service Fund to support Networks that deliver Broadband Communications Services.
  - 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%

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<sup>3</sup> While there are Unserved and Underserved residents in urban areas that will benefit by increased access for Broadband providers to municipal infrastructures, a potentially greater benefit of such access is to reduce the costs of deploying to Rural residents beyond the municipalities’ limits.

of the amount received in 2017; in calendar year 2021 capped at 80%; and for calendar year 2022 and beyond, capped at 75%.

3.3. Total funds in the State Universal Service Fund shall not be reduced below the amount of money collected in calendar year 2017.

3.4. 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.

3.5. Rural Broadband Deployment & Maintenance Fund

3.5.1. 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

3.5.2. 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.

3.5.3. 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.

3.5.4. 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.

3.5.5. 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.

3.5.6. 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.

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

4. State Broadband Data Collection - The Administrator, public utility commission, or State Broadband Infrastructure Manager 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.

## **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:
  - 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.
  - 4.2. 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.

- 4.3. 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.
  - 4.4. 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.
  - 4.5. 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.
  - 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, 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 Manager for review. The Manager shall not have the authority to reject a Rural municipality's decision, but shall provide comments and guidance if the Manager 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 Manager identifies as not being in the Rural municipality's best interest.

**ARTICLE 13: STATE BROADBAND INFRASTRUCTURE MANAGER**

1. The principal purpose of the State Broadband Infrastructure Manager is to implement and manage the State Model Code for Accelerating Broadband Infrastructure Deployment and Investment with a view to promoting an increase in the availability of affordable Broadband internet facilities including by reducing the time, cost and environmental impact of rolling-out Communications Networks.
2. State Broadband Infrastructure Manager
  - 2.1. The State hereby [designates the Director of [name agency] as the State Broadband Infrastructure Manager] [creates the position of State Broadband Infrastructure Manager as a cabinet-level advisory position].
  - 2.2. The State Broadband Infrastructure Manager shall coordinate the State's efforts to expand and improve Broadband capacity and availability by:
    - 2.2.1. Serving as a single point of contact for:
      - (1) Authorities including State agencies, boards, commissions, and constitutional officers, including without limitation the Governor, Department of Education, Department of Higher Education, and State Highway and Transportation Department;
      - (2) Private businesses, enterprises, and Broadband providers;
      - (3) Nonprofit organizations;
      - (4) Governmental entities and organizations organized under federal law or the law of another State; and
      - (5) Individuals and entities that seek to assist the State's efforts to improve economic development, elementary education, and secondary education through the use of Broadband technology;
    - 2.2.2. Gathering, compiling, and maintaining information obtained independently or from an individual or entity described in subsection 2.2.1 of this section;
    - 2.2.3. Formulating, updating, and maintaining a State Broadband Plan;
    - 2.2.4. Promulgating any rules or regulations necessary to implement, enforce and manage this Model Code including the establishment,

if appropriate, of reasonable fees for subscriptions, Applications, and receipt of information, as well as civil penalties for non-compliance with the Model Code (any such fees and civil penalties to be transparent, proportionate and non-discriminatory and shall, where appropriate, be published;

2.2.5. Agreeing with the relevant State authorities, who shall have jurisdiction to determine disputes arising under the Model Code. In reviewing this, regard shall be had to the importance of establishing fast, efficient and cost-effective procedures for dispute resolution so as to help promote aims and objectives of the Model Code; nothing in this Article shall affect the right of any Person subject to this Code to seek a remedy from a court of competent jurisdiction, binding arbitration, or relevant Authority with authority over utilities or communications services.

2.2.6. Deciding, in conjunction with the relevant State authorities, how the costs of implementing and managing the Model Code (including the State Broadband Infrastructure Manager, the Broadband Infrastructure Advisory Council and the NSIR) shall be managed and funded.

2.2.7. On or before January 1 and July 1 of each year, filing a written report of the activities and operations of the State Broadband Infrastructure Manager for the preceding six (6) months with the:

- (1) Governor;
- (2) Legislative Council; and
- (3) [Name any State committees that should receive a copy of the written report.]

2.3. Broadband Infrastructure Advisory Council; purpose; membership; compensation; chairman

2.3.1. The Broadband Infrastructure Advisory Council is established as an advisory council, within the meaning of [cite appropriate code section], in the executive branch of State government. The purpose of the Council shall be to advise the Governor and State Broadband Infrastructure Manager on policy and funding priorities to expedite deployment and reduce the cost of Broadband access in the State and on matters relating to managing and implementing the Model Code.

2.3.2. The Council shall have a total membership of fourteen members that may consist of two legislative members, five non-legislative citizen members, five industry professionals representing each of the cable, fiber, fixed line, satellite and wireless telecommunications industries (“Industry Professionals”) and two ex officio members. Members shall be appointed as follows:

- (1) the Speaker of the House or his/her delegate;
- (2) the President Pro Tempore of the Senate or his/her delegate;
- (3) four citizen representatives to be appointed by the Governor, provided that at least one representative must come from agriculture or other organization that represents Rural areas of the State; and
- (4) one citizen representative as selected by the [State] Municipal League;
- (5) five Industry Professionals to be appointed by the Governor in conjunction with the Manager

The State may, in the alternative, choose to structure this body as an advisory council consisting of private sector broadband providers, federal, State and local government officials involved in broadband issues and relevant nonprofits and businesses.

2.3.3. The Governor may, on the advice of the Manager, appoint to a sub-committee, such other persons with expertise in the areas relevant to the Model Code (including from Network Support Infrastructure Owners; Communications Providers, industry bodies, professional advisers and such other persons as the Manager shall deem appropriate) in order for the Governor, the Council and the Manager to be properly advised regarding matters relating to the Model Code.

2.3.4. The [Director/Secretary] of the [State Economic Development office] and the [Director/Secretary] of the [State office of Information Services] shall serve ex officio. Legislative members shall serve terms coincident with their terms of office. Other members shall be appointed for terms of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

- 2.3.5. All members shall serve without compensation. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided [cite appropriate State statute]. Funding for the costs of expenses of the non-legislative citizen members and all other expenses of the Council shall be provided by the [the Office of Economic Development or the Office of Information Services].
- 2.3.6. The Council shall elect a chairman and a vice chairman annually from among its membership. A majority of the members shall constitute a quorum. The Council shall meet at such times as may be called by the chairman or a majority of the Council.
- 2.3.7. Staff to the Council shall be provided by the [appropriate State office].
- 2.3.8. The members of the Council shall, in the absence of fraud or willful misconduct, be immune individually and jointly, from civil liability for any act or omission done or made in performance of their duties while serving as members of such Council.

#### 2.4. Powers and Duties of the Council

The Council shall have the power and duty to:

- 2.4.1. Perform duties assigned by the State Broadband Infrastructure Manager (in consultation with the Governor), including establishing industry best practice, advising on matters of compliance with the Model Code and advising on fees and civil penalties and may make recommendations to the Governor and State Broadband Infrastructure Manager accordingly.
- 2.4.2. Identify opportunities and recommend actions to use the economic development engine offered by the State to improve Broadband infrastructure deployment;
- 2.4.3. Identify barriers, including taxation or regulatory, to the deployment of Broadband to Unserved and Underserved residences and businesses in the State;
- 2.4.4. Make recommendation as to policy, legislative actions, and funding to promote the deployment of Broadband infrastructure to Unserved and Underserved residences and business in the State;

- 2.4.5. Provide an annual report to the Governor and the General Assembly regarding progress and barriers to closing the digital divide between served and Unserved/Underserved areas of the State with recommendations for closing that divide; and
- 2.4.6. Provide interim reports as requested by the Governor and/or the General Assembly.