

1 **SENATE FLOOR VERSION**

2 March 2, 2023

3 SENATE BILL NO. 1099

By: Treat of the Senate

4 and

5 McCall of the House

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9 An Act relating to small wireless facilities;
10 amending 11 O.S. 2021, Section 36-503, which relates
11 to rights and limitations on authorities and wireless
providers; requiring certain repairs; and providing
an effective date.

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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 11 O.S. 2021, Section 36-503, is
17 amended to read as follows:

18 Section 36-503. A. The provisions of this section shall only
19 apply to the collocation of small wireless facilities by a wireless
20 provider in the right-of-way and the deployment of utility poles to
21 support small wireless facilities by a wireless provider in the
22 right-of-way.

23 B. An authority may not enter into an exclusive arrangement
24 with any person for use of the right-of-way for the collocation of

1 small wireless facilities or the installation, operation, marketing,
2 modification, maintenance or replacement of utility poles.

3 C. An authority may only charge a wireless provider a rate or
4 fee for the use of the right-of-way with respect to the collocation
5 of small wireless facilities or the installation, maintenance,
6 modification, operation or replacement of a utility pole in the
7 right-of-way, if the authority charges nonpublic entities for use of
8 the right-of-way. Notwithstanding the foregoing, an authority is
9 permitted, on a nondiscriminatory basis, to refrain from charging
10 any rate to a wireless provider for the use of the right-of-way.
11 The rate for use of the right-of-way is provided in Section 6 of
12 this act.

13 D. Subject to the provisions of this section and approval of an
14 application pursuant to Section 4 of this act, a wireless provider
15 shall have the right, as a permitted use not subject to zoning
16 review or approval, to collocate small wireless facilities and
17 install, maintain, modify, operate and replace utility poles along,
18 across, upon and under the right-of-way. Such structures and
19 facilities shall be so installed and maintained as not to obstruct
20 or hinder the usual travel or public safety on such right-of-way or
21 obstruct the legal use of such right-of-way by other occupants of
22 the right-of-way, including public utilities, or violate right-of-
23 way regulations of general application that are consistent with this
24 act.

1 E. Each new or modified utility pole installed in the right-of-
2 way shall not exceed the greater of:

3 1. Ten (10) feet in height above the tallest existing utility
4 pole in place as of the effective date of this act located within
5 five hundred (500) feet of the new pole in the same right-of-way; or

6 2. Fifty (50) feet above ground level.

7 New small wireless facilities in the right-of-way may not extend
8 more than ten (10) feet above an existing utility pole in place as
9 of the effective date of this act or, for small wireless facilities
10 on a new utility pole, above the height permitted for a new utility
11 pole under this section.

12 F. A wireless provider shall have the right to collocate a
13 small wireless facility and install, maintain, modify, operate and
14 replace a utility pole that exceeds the height limits in subsection
15 E of this section along, across, upon and under the right-of-way,
16 subject to applicable zoning or other land-use regulations.

17 G. An authority may adopt written guidelines establishing
18 reasonable and objective stealth or concealment criteria for small
19 wireless facilities in designated areas, reasonable and objective
20 design criteria for small wireless facilities to be collocated on
21 decorative poles and reasonable and objective design criteria for
22 utility poles deployed in areas with decorative poles. Such
23 guidelines may be adopted by any appropriate means, including
24 without limitation by inclusion in the authority's zoning code, but

1 such inclusion shall not subject small wireless facilities and
2 utility poles classified as permitted uses in subsection D of this
3 section to zoning review. Such guidelines may be adopted only if
4 they apply on a nondiscriminatory basis to all other occupants of
5 the right-of-way, including the authority. A wireless provider that
6 seeks to collocate small wireless facilities on a decorative pole
7 shall comply with Section 4 of this act. A wireless provider that
8 is required to replace a decorative pole at its expense in
9 compliance with Section 5 of this act shall conform the new
10 decorative pole to the design aesthetics and material of the
11 decorative pole(s) being replaced.

12 H. Wireless providers shall comply with reasonable and
13 nondiscriminatory requirements that prohibit communications service
14 providers from installing utility poles or other structures in the
15 right-of-way in an area designated solely for underground or buried
16 cable and utility facilities where:

17 1. The authority has required all cable and utility facilities
18 other than authority poles and attachments to be placed underground
19 (i) by a date certain before the application is submitted or (ii) by
20 a date certain within two (2) years after the application is
21 submitted, if relocation of facilities has commenced;

22 2. The authority does not prohibit the replacement of authority
23 poles in the designated area; and

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1 3. The authority permits wireless providers to seek a waiver of
2 the undergrounding requirements for the placement of a new utility
3 pole to support small wireless facilities, which waivers shall be
4 addressed in a nondiscriminatory manner.

5 I. Subject to Section 4 of this act and subsection D of this
6 section, and except for facilities excluded from evaluation for
7 effects on historic properties under 47 C.F.R., Section 1.1307(a)(4)
8 of the FCC rules, an authority may require reasonable, technically
9 feasible, nondiscriminatory and technologically neutral design or
10 concealment measures in a historic district. Any such design or
11 concealment measures may not have the effect of prohibiting any
12 provider's technology, nor may any such measures be considered a
13 part of the small wireless facility for purposes of the size
14 restrictions in the definition of small wireless facility.

15 J. The authority, in the exercise of its administration and
16 regulation related to the management of the right-of-way, must be
17 competitively neutral with regard to other users of the right-of-
18 way, including that terms may not be unreasonable or discriminatory
19 and may not violate any applicable law.

20 K. The authority ~~may~~ shall require a wireless provider to
21 repair all damage to the right-of-way directly caused by the
22 activities of the wireless provider in the right-of-way and to
23 return the right-of-way to its functional equivalence before the
24 damage pursuant to the competitively neutral, reasonable

1 requirements and specifications of the authority. If the wireless
2 provider fails to make the repairs required by the authority within
3 a reasonable time after written notice, the authority may effect
4 those repairs and charge the applicable party the reasonable,
5 documented cost of such repairs. A wireless provider shall be
6 required to comply with right-of-way and vegetation management
7 practices adopted by the authority that apply to all occupants of
8 the right-of-way.

9 L. Nothing in this act precludes an authority from adopting
10 reasonable and nondiscriminatory requirements with respect to the
11 removal of abandoned small wireless facilities. A small wireless
12 facility that is not operated for a continuous period of twelve (12)
13 months shall be considered abandoned, and the owner of the facility
14 must remove the small wireless facility within ninety (90) days
15 after receipt of written notice from the authority notifying the
16 owner of the abandonment. The notice shall be sent by certified or
17 registered mail, return receipt requested, by the authority to the
18 owner at the last-known address of the owner. If the owner neither
19 provides the authority written notice that the small wireless
20 facility has not been out of operation for a continuous period of
21 twelve (12) months nor removes the small wireless facility within
22 the ninety-day period, the authority may remove the small wireless
23 facility, take ownership of the small wireless facility and assess
24 the cost of removal to the owner.

1 SECTION 2. This act shall become effective November 1, 2023.

2 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND TELECOMMUNICATIONS
3 March 2, 2023 - DO PASS
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