

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 SENATE BILL 1099

By: Treat

4  
5  
6 AS INTRODUCED

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

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

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

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

20 B. An authority may not enter into an exclusive arrangement  
21 with any person for use of the right-of-way for the collocation of  
22 small wireless facilities or the installation, operation, marketing,  
23 modification, maintenance or replacement of utility poles.

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

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

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

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

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

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

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

15          G. An authority may adopt written guidelines establishing  
16 reasonable and objective stealth or concealment criteria for small  
17 wireless facilities in designated areas, reasonable and objective  
18 design criteria for small wireless facilities to be collocated on  
19 decorative poles and reasonable and objective design criteria for  
20 utility poles deployed in areas with decorative poles. Such  
21 guidelines may be adopted by any appropriate means, including  
22 without limitation by inclusion in the authority's zoning code, but  
23 such inclusion shall not subject small wireless facilities and  
24 utility poles classified as permitted uses in subsection D of this

1 section to zoning review. Such guidelines may be adopted only if  
2 they apply on a nondiscriminatory basis to all other occupants of  
3 the right-of-way, including the authority. A wireless provider that  
4 seeks to collocate small wireless facilities on a decorative pole  
5 shall comply with Section 4 of this act. A wireless provider that  
6 is required to replace a decorative pole at its expense in  
7 compliance with Section 5 of this act shall conform the new  
8 decorative pole to the design aesthetics and material of the  
9 decorative pole(s) being replaced.

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

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

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

22 3. The authority permits wireless providers to seek a waiver of  
23 the undergrounding requirements for the placement of a new utility  
24

1 pole to support small wireless facilities, which waivers shall be  
2 addressed in a nondiscriminatory manner.

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

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

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

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

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

23 SECTION 2. This act shall become effective November 1, 2023.  
24  
25

1 59-1-1113 BG 1/19/2023 2:44:44 PM

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25