

AMENDMENTS TO LB1144

(Amendments to E&R amendments, ER161)

Introduced by Friesen, 34.

1 1. Insert the following new section:

2 Sec. 17. (1) For purposes of this section:

3 (a) Authority means any county, city of the first class, city of the
4 second class, or village whose authorization is necessary prior to the
5 deployment of a wireless facility;

6 (b)(i) Base station means a structure or equipment at a fixed
7 location that enables Federal Communications Commission-licensed or
8 authorized wireless communications between user equipment and a
9 communications network. The term does not encompass a tower as defined in
10 this section or any equipment associated with a tower. The term includes,
11 but is not limited to:

12 (A) Equipment associated with wireless communications services such
13 as private, broadcast, and public safety services, as well as unlicensed
14 wireless services and fixed wireless services such as microwave backhaul;

15 (B) Radio transceivers, antennas, coaxial or fiber-optic cable,
16 regular and backup power supplies, and comparable equipment, regardless
17 of technological configuration, including distributed antenna systems and
18 small-cell networks; and

19 (C) Any structure other than a tower that, at the time the relevant
20 application is filed with the authority, supports or houses equipment
21 described in subdivision (1)(b)(i)(A) or (B) of this section that has
22 been reviewed and approved under the applicable zoning or siting process,
23 or under another state or local regulatory review process, even if the
24 structure was not built for the sole or primary purpose of providing such
25 support.

26 (ii) Base station does not include any structure that, at the time

1 the relevant application is filed with the authority, does not support or
2 house equipment described in subdivision (1)(b)(i)(A) or (B) of this
3 section;

4 (c) Collocate or collocation means the mounting or installation of
5 transmission equipment on an eligible support structure for the purpose
6 of transmitting or receiving radio frequency signals for communications
7 purposes;

8 (d) Eligible facilities request means any request for modification
9 of an existing tower or base station that does not substantially change
10 the physical dimensions of such tower or base station involving (i)
11 collocation of new transmission equipment, (ii) removal of transmission
12 equipment, or (iii) replacement of transmission equipment;

13 (e) Eligible support structure means any tower or base station as
14 defined in this section that is existing at the time the relevant
15 application is filed with the authority;

16 (f) Site means for towers other than towers in the public rights-of-
17 way, the current boundaries of the leased or owned property surrounding
18 the tower and any access or utility easements currently related to the
19 site, and, for other eligible support structures, further restricted to
20 that area in proximity to the structure and to other transmission
21 equipment already deployed on the ground. The current boundaries of a
22 site are the boundaries that existed as of the date that the original
23 support structure or a modification to that structure was last reviewed
24 and approved by a state or local government, if the approval of the
25 modification occurred prior to the passage of the federal Middle Class
26 Tax Relief and Job Creation Act of 2012 or otherwise outside of the
27 process provided in section 6409(a) of such act;

28 (g) Small wireless facility has the same meaning as in section
29 86-1226;

30 (h) Substantially change means a modification that substantially
31 changes the physical dimensions of an eligible support structure if such

1 modification meets any of the following criteria:

2 (i) For towers other than towers in the public rights-of-way, it
3 increases the height of the tower by more than ten percent or by the
4 height of one additional antenna array with separation from the nearest
5 existing antenna not to exceed twenty feet, whichever is greater. For
6 other eligible support structures, it increases the height of the
7 structure by more than ten percent or more than ten feet, whichever is
8 greater. Changes in height should be measured from the original support
9 structure in cases where deployments are or will be separated
10 horizontally, such as on building rooftops. In other circumstances,
11 changes in height should be measured from the dimensions of the tower or
12 base station, inclusive of originally approved appurtenances and any
13 modifications that were approved prior to the passage of the federal
14 Middle Class Tax Relief and Job Creation Act of 2012;

15 (ii) For towers other than towers in the public rights-of-way, it
16 involves adding an appurtenance to the body of the tower that would
17 protrude from the edge of the tower more than twenty feet, or more than
18 the width of the tower structure at the level of the appurtenance,
19 whichever is greater. For other eligible support structures, it involves
20 adding an appurtenance to the body of the structure that would protrude
21 from the edge of the structure by more than six feet;

22 (iii) For any eligible support structure, it involves installation
23 of more than the standard number of new equipment cabinets for the
24 technology involved, but not to exceed four cabinets, or, for towers in
25 the public rights-of-way and base stations, it involves installation of
26 any new equipment cabinets on the ground if there are no pre-existing
27 ground cabinets associated with the structure, or involves installation
28 of ground cabinets that are more than ten percent larger in height or
29 overall volume than any other ground cabinets associated with the
30 structure;

31 (iv) It entails any excavation or deployment outside the current

1 site, except that for towers other than towers in the public rights-of-
2 way, it entails any excavation or deployment of transmission equipment
3 outside of the current site by more than thirty feet in any direction.
4 The site boundary from which the thirty feet is measured excludes any
5 access or utility easements currently related to the site;

6 (v) It would defeat the concealment elements of the eligible support
7 structure; or

8 (vi) It does not comply with conditions associated with the siting
9 approval of the construction or modification of the eligible support
10 structure or base station equipment, except that this limitation does not
11 apply to any modification that is noncompliant only in a manner that
12 would not exceed the thresholds identified in subdivisions (1)(h)(i)
13 through (iv) of this section;

14 (i) Tower means any structure built for the sole or primary purpose
15 of supporting any Federal Communications Commission-licensed or
16 authorized antennas and their associated facilities, including structures
17 that are constructed for wireless communications services, including, but
18 not limited to, private, broadcast, and public safety services, as well
19 as unlicensed wireless services and fixed wireless services such as
20 microwave backhaul, and the associated site;

21 (j) Transmission equipment means equipment that facilitates
22 transmission for any Federal Communications Commission-licensed or
23 authorized wireless communication service, including, but not limited to,
24 radio transceivers, antennas, coaxial or fiber-optic cable, and regular
25 and backup power supply. The term includes equipment associated with
26 wireless communications services, including, but not limited to, private,
27 broadcast, and public safety services, as well as unlicensed wireless
28 services and fixed wireless services such as microwave backhaul;

29 (k)(i) Wireless facility means equipment at a fixed location that
30 enables wireless communications between user equipment and a
31 communications network including (A) equipment associated with wireless

1 communications and (B) radio transceivers, antennas, coaxial or fiber-
2 optic cable, regular power supply, and small back-up battery, regardless
3 of technological configuration.

4 (ii) Wireless facility does not include a small wireless facility.
5 Wireless facility does not include (A) the structure or improvements on,
6 under, or within the equipment which is collocated, (B) coaxial or fiber-
7 optic cable that is between wireless structures or utility poles or that
8 is otherwise not immediately adjacent to, or directly associated with, a
9 particular antenna, or (C) a wireline backhaul facility;

10 (1) Wireless support structure means a structure, such as a tower or
11 other existing or proposed structure, designed to support or capable of
12 supporting wireless facilities other than a structure designed solely for
13 the collocation of a small wireless facility; and

14 (m) Wireline backhaul facility has the same meaning as in section
15 86-1235.

16 (2)(a) Subject to the limitations in this section, an authority may
17 fix and charge an application fee for the submission, processing, and
18 review of an eligible facilities request to collocate a new wireless
19 facility, site a new wireless support structure, or substantially change
20 an existing wireless facility or wireless support structure. The
21 application fee shall be based on the authority's actual, direct, and
22 objectively reasonable costs incurred for all aspects of an application
23 review process. Any costs incurred by an authority for review by an
24 outside consultant shall be included in the application fee, be based on
25 objectively reasonable costs, and not exceed the usual and customary fee
26 charged for the services provided. The charges included in the
27 application fee or amended application fee shall be itemized and
28 separately identified and disclosed to the applicant.

29 (b) The application fee imposed by an authority shall not be used
30 for (i) travel time or expenses, meals, or overnight accommodations
31 incurred in the review of an application by an outside consultant or (ii)

1 reimbursement for a consultant that is based on a contingent fee or a
2 results-based arrangement.

3 (3) Nothing in this section shall be construed to otherwise limit,
4 alter, or expand an authority's existing ability to charge an applicant a
5 rate or fee for the use of or access to a public right-of-way for the
6 construction, installation, maintenance, modification, or operation of
7 fiber-optic cables, coaxial cables, or conduit facilities.

8 (4) Nothing in this section shall be construed to apply to an
9 application submitted to an authority pursuant to the Small Wireless
10 Facilities Deployment Act.

11 (5) A reviewing authority shall be subject to a sixty-day shot clock
12 to review and approve or deny an application for an eligible facilities
13 request or modification. For purposes of this subsection, the authority
14 shall follow the guidelines set by the Federal Communications Commission
15 in its decisions issued in FCC 14-153, 29 FCC Record 12865 (16), and FCC
16 20-75, 35 FCC Record 5977 (7), as guidance for compliance with section
17 6409(a) of the federal Middle Class Tax Relief and Job Creation Act of
18 2012, 47 U.S.C. 1455, and 47 C.F.R. 1.6100(c)(2), as such order, ruling,
19 section, act, and regulations existed on January 1, 2022.

20 (6) This section shall terminate on September 30, 2026, unless
21 extended by the Legislature.

22 2. On page 15, line 28, strike "and 18" and insert "17, and 19".

23 3. Renumber the remaining sections accordingly.