CHAPTER 11

Radio Common Carriers

Article 1

Duties, Restrictions, Rights and Changes in Rates

**SECTION 58-11-10. Definitions.**

When used in this chapter:

(a) The term "commission" means the Public Service Commission of the State of South Carolina.

(b) The term "commissioner" means one of the members of the Public Service Commission.

(c) The term "corporation" includes all bodies corporate, joint stock companies, or associations, domestic or foreign, their lessees, assignees, trustees, receivers or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships.

(d) The term "person" includes all individuals, partnerships or associations other than corporations.

(e) The term "public" means the public generally, or any limited portion of the public, including a person or corporation.

(f) The term "radio common carrier" includes persons and corporations, their lessees, assignees, trustees, receivers, or other successors in interest now or hereafter owning or operating in this State equipment or facilities for the transmission of intelligence by a modulated radio frequency signal, for compensation to the public, including all things incident thereto and related to the operation of radio transmission, but shall not include telephone utilities or services regulated by Articles 1 through 13 of Chapter 9 of Title 58 of the 1976 Code.

(g) The term "intelligence" means the transfer of information either one way, or two way, by tone, data bit, voice, or other means as may be used to convey information to a person, persons, or machine.

(h) The term "rate" means and includes every compensation, charge, toll, rental and classification, or any of them, demanded, observed, charged or collected by any carrier for any communications service offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, toll, rental or classification.

(i) The term "securities" means and includes stock, stock certificates, bonds, notes, debentures, or other evidences of indebtedness, and any assumption or guaranty thereof.

(j) The term "service area" shall include that geographical area covered by a radio common carrier system by county unless otherwise specified by the Public Service Commission.

(k) The term "communication service" shall mean a service to transmit audio intelligence by means of a modulated radio frequency signal and shall not include telephone answering services.

(l) The term "regulatory staff" means the executive director or the executive director and the employees of the Office of Regulatory Staff.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 73, eff May 24, 2006; 2006 Act No. 318, § 74, eff May 24, 2006.

**SECTION 58-11-20. Rates shall be just and reasonable.**

Every rate made, demanded, or received by any radio common carrier, or by any two or more radio common carriers jointly, shall be just and reasonable.

HISTORY: 1975 (59) 598.

**SECTION 58-11-30. Filing schedules of rates, rules and regulations.**

Under such rules and regulations as the commission may prescribe, every radio common carrier shall file with the commission and the Office of Regulatory Staff, within such time and in such form as the commission may designate, schedules showing all rates, rules, and regulations established by it and collected or enforced, or to be collected or enforced within the jurisdiction of the commission, and the radio common carrier shall keep copies of such schedules open to public inspection upon request at reasonable intervals during business hours under such rules and regulations as the commission may prescribe.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 75, eff May 24, 2006.

**SECTION 58-11-40. Compensation different from that in schedule shall not be charged or received.**

No radio common carrier shall directly or indirectly, by any device whatsoever, or in any way, charge, demand, collect or receive from any communications person or corporation a greater or less compensation for any service rendered or supplied, or to be rendered or supplied, such radio common carrier, than that prescribed in the schedules of such radio common carrier applicable thereto then filed in the manner provided in this chapter, nor shall any person or corporation receive or accept any service, from a radio common carrier for a compensation greater or less than that prescribed in such schedules.

HISTORY: 1975 (59) 598.

**SECTION 58-11-50. Unreasonable preferences and differences in rates shall not be made; reasonable classifications may be established.**

No radio common carrier shall, as to rates, or services, make or grant any unreasonable preference or advantage to any person or corporation or subject any person or corporation to any unreasonable prejudice or disadvantage. No radio common carrier shall establish or maintain any unreasonable difference as to rates or service, either as between localities or as between classes of service. Subject to the approval of the Commission, however, radio common carriers may establish classifications of rates and services, and such classifications may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered, the cost of equipment at time of installation, or any other reasonable consideration. The Commission may determine any question arising under this section.

HISTORY: 1975 (59) 598.

**SECTION 58-11-60. Procedure for changes in rates initiated by radio common carrier.**

Whenever a radio common carrier desires to put into operation a new rate which affects the radio common carrier's general body of subscribers, the radio common carrier shall give the commission and the Office of Regulatory Staff not less than thirty days' notice of its intention to file and shall, after the expiration of the notice period, then file with the commission a schedule setting forth the proposed changes; provided, however, a hearing shall not be required when the proposed rate is a proposal to institute or modify an offering or regulation that is not part of a general rate case and does not affect the radio common carrier's general body of subscribers. Subject to the provisions of subsections (B) and (C) of Section 58-11-70, the proposed changes must not be put into effect in full or in part until approved by the commission.

HISTORY: 1975 (59) 598; 1983 Act No. 138 § 24, eff June 15, 1983; 2006 Act No. 318, § 76, eff May 24, 2006.

**SECTION 58-11-70. Hearing on new schedule of rates; suspension of new rates pending such hearing; putting new rates into effect despite suspension by filing of bond.**

(A) Whenever there is filed with the commission by any radio common carrier, a schedule stating a new rate or rates which affects the radio common carrier's general body of subscribers, the commission shall, after notice to the Office of Regulatory Staff and the public such as the commission may prescribe, hold a hearing concerning the lawfulness or reasonableness of the rate or rates; provided, however, that when the proposed rate is a proposal to institute or modify an offering or regulation that is not part of a general rate case and does not affect the radio common carrier's general body of subscribers, the commission may approve such filing with a hearing.

(B) The commission shall rule and issue its order approving or disapproving the changes in full or in part within six months of the time of filing. If the commission rules and issues its order within the time aforesaid, and the radio common carrier shall appeal from the order, by filing with the commission a petition for rehearing, the radio common carrier may put the rate or rates requested in its schedule into effect under bond during the appeal and until final disposition of the case. The bond must be filed with the commission and must be in a reasonable amount approved by the commission, with sureties approved by the commission, conditioned upon the refund, in a manner to be prescribed by order of the commission, to the persons, corporations, or municipalities respectively entitled to the amount of excess, if the rate or rates put into effect are finally determined to be excessive. There may be substituted for the bond other arrangements satisfactory to the commission for the protection of the parties interested. During any period in which a radio common carrier shall charge increased rates under bond, it shall provide records or other evidence of payments made by its subscribers under the rate or rates which the radio common carrier has put into operation in excess of the rate or rates in effect immediately prior to the filing of its schedule.

All increases in rates put into effect under the provisions of this section which are not approved and for which a refund is required shall bear interest at a rate of twelve percent per annum. The interest shall commence on the date the disallowed increase is paid and continue until the date the refund is made.

In all cases in which a refund is due, the commission shall order a total refund of the difference between the amount collected under bond and the amount finally approved.

(C) If the commission fails to rule and issue its order within six months after the date the schedule is filed, the radio common carrier may put into effect the change in rate or rates it requested in its schedule. The change is to be treated as an approval of the new rate schedule by the commission.

(D) After the date the schedule, which affects the radio common carrier's general body of subscribers, is filed with the commission and the Office of Regulatory Staff, no further rate change request which affects the radio common carrier's general body of subscribers may be filed until twelve months have elapsed from the date of the filing of the schedule; provided, however, this section shall not apply to a request for a rate reduction.

HISTORY: 1975 (59) 598; 1983 Act No. 138 § 25, eff June 15, 1983; 2006 Act No. 318, § 77, eff May 24, 2006.

**SECTION 58-11-80. Service shall be adequate and efficient.**

Every radio common carrier shall provide and maintain facilities and equipment to furnish reasonably adequate and efficient service to its customers in this State.

HISTORY: 1975 (59) 598.

**SECTION 58-11-90. Commission may permit interconnection of facilities of radio common carriers and telephone utilities; determination of compensation and terms when parties fail to agree.**

Whenever the Commission shall find that public convenience and necessity require the interconnection of radio common carrier facilities to facilities of telephone utilities, and that the radio common carrier and telephone utility have failed to agree upon such interconnection or the terms and conditions or compensation for the same, the Commission may order that such interconnection be permitted and prescribe a reasonable compensation, terms and condition for the interconnection.

HISTORY: 1975 (59) 598.

**SECTION 58-11-100. Certificate of public convenience as prerequisite to construction or operation of system; applicability to commercial mobile service providers.**

(A) No radio common carrier shall begin or continue the construction or operation of a radio common carrier system, either directly or indirectly, without first obtaining from the commission a certificate that the public convenience and necessity requires the construction or operation.

(B) Notwithstanding the provisions of subsection (A) or another provision of law, neither the commission nor the Office of Regulatory Staff may impose requirements related to the terms, conditions, rates, or availability of, or otherwise regulate "commercial mobile service" as that term is presently defined in 47 U.S.C.A. Section 332(d)(1) for as long as Section 332 of 47 U.S.C. or similar federal legislation remains in effect.

(C) Nothing in this section affects any jurisdiction conferred upon the commission by Section 58-9-280(E)(3).

(D) Nothing in this section affects the commission's jurisdiction or authority to address and resolve issues relating to arrangements and compensation between telecommunications carriers and commercial mobile service providers, pursuant to 47 U.S.C. Sections 251 and 252 or pursuant to other applicable provisions of law.

(E) Nothing in this section shall prohibit the commission from applying to commercial mobile service providers that have sought and received designation from the commission, and operate as eligible telecommunications carriers, pursuant to 47 U.S.C. Section 214(e), or as carriers of last resort, as defined in Section 58-9-10(10), the same rules, requirements, or standards that are generally applicable to carriers that are subject to alternative regulation under Section 58-9-576 and that operate as eligible telecommunications carriers or as carriers of last resort.

HISTORY: 1975 (59) 598; 2005 Act No. 40, § 1, eff April 15, 2005; 2006 Act No. 318, § 78, eff May 24, 2006.

**SECTION 58-11-110. Carrier shall file application with Federal Communications Commission.**

A radio common carrier upon receiving a certificate of authorization from the Commission shall file with the Federal Communications Commission an application for the service within ninety days from date of certificate as issued by the Commission or on August 15, 1975, whichever is later. The Commission shall revoke any certificate granted should the radio common carrier fail to file with the Federal Communications Commission within the required time set forth above. The radio common carrier shall furnish proof of such Federal Communications Commission filing to the Commission within thirty days after such filing.

HISTORY: 1975 (59) 598.

**SECTION 58-11-120. Extension of existing facilities.**

Any radio common carrier may establish, construct, maintain, and operate any reasonable extension of its facilities within its service area, after due notice of intent to the commission and the Office of Regulatory Staff by letter, without public hearing before the commission, unless otherwise ordered by the commission.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 79, eff May 24, 2006.

**SECTION 58-11-130. Abandonment of service.**

No radio common carrier shall abandon all or any portion of its service to the public, except for ordinary discontinuance of service for nonpayment of lawful charge, or except for violation of rules and regulations approved by the Commission, unless written application is first made to the Commission for the issuance of a certificate and until the Commission in its discretion issues such certificate.

HISTORY: 1975 (59) 598.

**SECTION 58-11-140. Sale or other disposition of property, powers, franchises or privileges.**

No radio common carrier, without the approval of the Commission after due hearing and compliance with all other existing requirements of the laws of the State in relation thereto, shall sell, transfer, lease, consolidate or merge its property, powers, franchises or privileges or any of them used directly in the conduct of business as a radio common carrier.

HISTORY: 1975 (59) 598.

**SECTION 58-11-150. Restrictions on capitalization for rate-making purposes.**

No radio common carrier for rate-making purposes shall capitalize its franchises, rights, powers, privileges, or right to own and operate or enjoy any such franchise, rights, powers, or privileges in excess of the amount paid to the State or to any political subdivision of the State as the consideration for the grant thereof; or to capitalize any lease, or contract of sale or contract for consolidation or merger of two or more radio common carriers; or issue by way of substitution any capital stock, trust certificates, bonds, notes, or other evidences of indebtedness, or other securities for any consolidated or merged company exceeding the aggregate value of the properties so consolidated or merged and any additional property or labor actually contributed in cash, and any additional property or labor actually contributed; provided, that the determination of such consideration or value as aforesaid shall be subject to the approval of the Commission.

HISTORY: 1975 (59) 598.

**SECTION 58-11-160. Systems of accounts.**

The Office of Regulatory Staff may, in its discretion, subject to approval of the commission, prescribe systems of accounts to be kept by radio common carriers subject to its jurisdiction, and it may prescribe the manner in which the accounts shall be kept, and may require every radio common carrier to keep its books, papers, and records accurately and faithfully according to the system of accounts as prescribed by the Office of Regulatory Staff; provided, however, that nothing in this section shall be construed to be in conflict with or in violation of the provisions of the Communications Act of Congress of 1934, as amended (U.S.C.A. Title 47, Sections 151 through 609), nor shall they be construed to be in conflict with any lawful order of the Federal Communications Commission issued pursuant to the authority invested in it by such act of Congress.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 80, eff May 24, 2006.

**SECTION 58-11-170. Depreciation and retirement charges.**

Every radio common carrier shall have the right, and may be so required, to charge annually as an operating expense a reasonable sum for depreciation and credit the same to a reserve account for such purpose, which reserve account shall be charged with plant retirements, but if the reserve thus created shall at any time in the judgment of the Commission be excessive, the Commission after due hearing shall make such order as will result in credits to such reserve thereafter conforming to actual facts and conditions as ascertained by the Commission; provided, that the Commission shall have the right and power to control or limit such depreciation reserve; provided, further, that nothing in this section shall be construed to be in conflict with or in violation of the provisions of the Communications Act of Congress of 1934, as amended (U.S.C.A. Title 47, Sections 151 through 609), nor shall they be construed to be in conflict with any lawful order of the Federal Communications Commission issued pursuant to the authority invested in it by such act of Congress.

HISTORY: 1975 (59) 598.

**SECTION 58-11-180. Transactions with affiliates.**

When in the judgment of the Commission there is a reasonably substantial affiliation of any radio common carrier engaged in business in this State with any other corporation or person or when in the judgment of the Commission any other corporation or person either exercises, or is in position to exercise, by reason of ownership or control of securities or for any other cause, any reasonably substantial control over the business or policies of any radio common carrier engaged in business in this State, the burden of proof shall be upon the radio common carrier to establish as determined by the Commission the reasonableness, fairness, and absence of injurious effect upon the public interest of any fees or charges growing out of any transactions between any radio common carrier and such other corporation or person. Every radio common carrier shall be required to produce, if so ordered by the Commission, for the information of the commission and the public, all such contracts, papers, and documents relating thereto and explanatory thereof as may be required by the Commission, and unless the reasonableness of such fees and charges is established, as determined by the Commission, the same shall not be allowed by the Commission for rate-making purposes.

The Commission shall not allow for rate-making purposes any fees or expenses included in any contract or agreement with an affiliate representing charges that the Commission has directly disallowed in its rate-making orders.

HISTORY: 1975 (59) 598; 1983 Act No. 138 § 15, eff June 15, 1983.

**SECTION 58-11-190. Participation in profits from efficiency.**

For the purposes of encouraging economy, efficiency, and improvements in methods of service any radio common carrier may participate, subject to the approval of the Commission, to such extent as may be permitted by the Commission, in the additional profits arising from any economy, efficiency or improvement in methods or service instituted by such radio common carrier.

HISTORY: 1975 (59) 598.

**SECTION 58-11-200. Annual and special reports.**

The Office of Regulatory Staff may require any radio common carrier to file annual reports in such form and of such content as the Office of Regulatory Staff may require and special reports concerning any matter about which the Office of Regulatory Staff is authorized to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the Office of Regulatory Staff. At the same time a radio common carrier files a report with the Office of Regulatory Staff, it also must provide a copy to the commission.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 81, eff May 24, 2006.

**SECTION 58-11-210. Companies subject to chapter even before commencing operations.**

Corporations formed to acquire property, or to transact business which would be subject to the provisions of this chapter, and corporations possessing franchises, powers or privileges for any of the purposes contemplated by this chapter shall be deemed to be subject to the provisions of this chapter, although no property may have been acquired, business transacted or franchises, powers or privileges exercised.

HISTORY: 1975 (59) 598.

**SECTION 58-11-220. Office in State.**

Each radio common carrier shall have an office in one of the counties of this State in which its property or some part thereof is located, and shall keep in such office all books, accounts, papers, and records, as shall reasonably be required by the Office of Regulatory Staff to be kept within the State. No books, accounts, papers, or records required by the Office of Regulatory Staff to be kept within the State shall be removed at any time from the State except upon such conditions as may be prescribed by the Office of Regulatory Staff.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 82, eff May 24, 2006.

**SECTION 58-11-230. Compliance with orders and regulations.**

Each radio common carrier shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the commission and every direction, rule, or regulation made or prescribed by the Office of Regulatory Staff in the performance of their duties under this chapter, or in relation to any other matter in any way relating to or affecting the business of such radio common carrier, and shall do everything necessary or proper in order to secure compliance with and observance of every order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 83, eff May 24, 2006.

**SECTION 58-11-240. Procedure for issuance of securities by nonmunicipal radio common carriers.**

No radio common carrier, except municipalities, shall issue any securities, as in this chapter defined, without the approval of the commission. Any radio common carrier, except a municipality, desiring to issue any securities may apply to the commission for approval of any proposed issue by filing with the commission and providing to the Office of Regulatory Staff an application, together with a statement verified by its president and secretary, or other proper officers, or two of its incorporators, or by its owner, or owners, if it has no such officers, setting forth:

(1) the amount and character of securities proposed to be issued;

(2) the purpose for which they are to be issued;

(3) the consideration for which they are to be issued;

(4) the description and estimated value of any property, if any, to be acquired through the proposed issue;

(5) the terms and conditions of their issuance;

(6) the financial condition of the radio common carrier and its previous operations so far as relevant. The commission, after giving notice and opportunity to be heard to the radio common carrier and the Office of Regulatory Staff, shall determine whether the purpose of the issue is proper, it shall value the property or services, if any, to be acquired by the issue, if any, it shall find and determine the amount of such securities reasonably necessary for the purpose for which they are to be issued, and to the extent that the commission may approve the proposed issue it shall grant to the radio common carrier a certificate of authority stating:

[1] the amount of such securities reasonably necessary for the purpose for which they are to be issued, and the character of such securities; and

[2] the value of any property or services, if any, to be acquired thereby.

Such radio common carrier shall not issue any securities in greater amounts than specified in such certificate and shall apply the proceeds of such issue to the purposes specified in its petition. Nothing herein contained shall apply to any issue of securities payable within one year from the date thereof, except in case of issues made to refund such short time obligations, but such short time obligations may be renewed by similar obligations without the approval of the commission for an aggregate of not exceeding two years. Nothing herein contained shall be construed to impose or imply any guaranty or obligation as to such securities on the part of the State of South Carolina, or any agency thereof, nor shall the commission by virtue of the approval of the issuance of such securities be deemed to be required to prescribe or approve any rate for the reason that such rate may be necessary to provide funds reasonably sufficient to retire such securities or the interest thereon.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 84, eff May 24, 2006.

**SECTION 58-11-250. Radio common carriers shall not permit employees to sell securities of others during employment nor require them to purchase any securities.**

No radio common carrier shall permit any employee to sell, offer for sale, or solicit the purchase of any security of any other person or corporation during such hours as such employee is engaged to perform any duty of such radio common carrier; nor shall any radio common carrier by any means or device whatsoever require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; nor shall any radio common carrier require any employee to permit the deduction from his wages or salary of any sum as a payment or to be applied as a payment on any purchase or contract to purchase any securities of such radio common carrier or of any other person or corporation.

HISTORY: 1975 (59) 598.

**SECTION 58-11-260. Revocation of certificate of authorization upon revocation of articles of incorporation.**

If the articles of incorporation of any radio common carrier are revoked by the Secretary of State, the Public Service Commission shall immediately revoke the certificate of authorization granted to such carrier. Whenever such certificate is revoked for any cause, the Office of Regulatory Staff and the appropriate bureau of the Federal Communications Commission shall be promptly notified of such revocation by the Public Service Commission.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 85, eff May 24, 2006.

**SECTION 58-11-270. Commission shall furnish forms and information so as to permit orderly compliance by carriers.**

All report forms required to be completed by carriers pursuant to the provisions of this chapter and any other information necessary to enable carriers to remain in compliance with such provisions shall be furnished by the Public Service Commission to all carriers on a time schedule which will permit orderly compliance by the carriers.

HISTORY: 1975 (59) 598.

Article 3

Powers of Commission

**SECTION 58-11-410. Changes of rates; factors considered in determining reasonable rates.**

Whenever the commission after a hearing finds that the existing rates in effect and collected by any radio common carrier for any service are unjust, unreasonable, insufficient, or unreasonably discriminatory, or in any way in violation of any provision of law, the commission shall determine the just, reasonable, and sufficient rates to be thereafter observed and in force, and shall fix such rates by its order. In determining just, reasonable, and sufficient rates the commission shall give due consideration to the radio common carrier's property devoted to the public service; the revenues received for the service; the reasonable operating expenses and other costs necessary to provide the service; the total earnings required for the proper discharge of the radio common carrier's public duty; the capitalization of the radio common carrier and the net income required on its net worth; and such other matters, circumstances, and conditions as the commission may find necessary. Provided, that the rates so fixed shall not be higher than necessary to give a fair return to the stockholders.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 86, eff May 24, 2006.

**SECTION 58-11-420. Orders for more reasonably adequate and efficient service.**

Whenever the commission, after hearing, finds that the service of any radio common carrier is not reasonably adequate and efficient, the commission shall make its findings and issue an order thereon requiring such radio common carrier to provide reasonably adequate and efficient service.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 87, eff May 24, 2006.

**SECTION 58-11-430. Miscellaneous regulations.**

The commission may ascertain and fix just and reasonable classification, regulations, practices, or service to be furnished, imposed, observed, and followed by any or all radio common carriers; prescribe reasonable regulations for the examination and testing of such service and for the measurement thereof; establish or approve reasonable rules, regulations, specifications, and standards; and provide for the examination and testing of any and all appliances used for the service of any radio common carrier.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 88, eff May 24, 2006.

**SECTION 58-11-440. Fixing value of carrier.**

The Commission may after hearing ascertain and fix the value of the whole or any part of the property of any radio common carrier insofar as such property is material to the exercise of the jurisdiction of the Commission.

HISTORY: 1975 (59) 598.

**SECTION 58-11-450. Investigations.**

The Office of Regulatory Staff may investigate and examine the condition and operation of radio common carriers or any particular radio common carrier.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 89, eff May 24, 2006.

**SECTION 58-11-460. Reparation orders; suit to enforce order.**

When petition has been made to the commission concerning any rate or charge for service performed by any radio common carrier, and the commission has found after hearing that the radio common carrier has charged an unreasonable, excessive, or discriminatory amount for such service, the commission may order that the radio common carrier make due reparation to the complainant therefor, with interest from the date of collection; provided, such reparation will not result in establishing unreasonable discrimination and provided, further, that no order for the payment of reparation upon the ground of unreasonableness shall be made by the commission in any instance wherein the rate or charge in question has been authorized by law, and, provided, further, that no assignment of a reparation claim shall be recognized by the commission except assignments by operation of law as in case of death, insanity, bankruptcy, receivership, or order of court. If the radio common carrier does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover such reparation and upon trial of such suit a duly certified copy of the order of the commission shall be prima facie evidence of the facts therein set forth. All complaints concerning unreasonable, excessive, or discriminatory charges on which reparation orders may be made shall be filed with the commission and provided to the Office of Regulatory Staff within two years from the time the cause of action accrues, and the suit for enforcement of the order shall be commenced in the court within one year from the date of the order of the commission. The remedy provided in this section shall be cumulative and in addition to any other remedy or remedies in this chapter for failure of a radio common carrier to obey an order or decision of the commission. The commission must not be a party to any proceeding.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 90, eff May 24, 2006.

**SECTION 58-11-470. Commission shall not grant certificate for operation or extension into established service area unless necessary for public convenience and necessity.**

The Commission shall not grant a certificate for a proposed radio common carrier operation or extension thereof into an established service area of another certified radio common carrier unless after hearing it shall be shown by the applicant that public convenience and necessity will be best met by the radio common carrier being granted authority to serve such area.

HISTORY: 1975 (59) 598.

**SECTION 58-11-480. Applicant for certificate for operation or extension into established service area shall notify carrier in that area.**

Should application be made for a proposed radio common carrier operation or extension thereof into a service area, or portion thereof, of another certified radio common carrier, the applicant shall notify the radio common carrier with copies of all information filed with the commission and provided to the Office of Regulatory Staff within ten days from the date filed with the commission.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 91, eff May 24, 2006.

**SECTION 58-11-490. Inspections of property; audits of records; examinations of officers and employees.**

The Office of Regulatory Staff at any reasonable time shall have the right to inspect the property, plant, and facilities of any radio common carrier, and to inspect or audit at reasonable times the accounts, books, papers, and documents of any radio common carrier, and for the purposes herein mentioned are authorized to examine under oath any officer, agent, or employee of such radio common carrier in relation to the business and affairs of such radio common carrier, but written record of the testimony or statement so given under oath shall be made.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 92, eff May 24, 2006.

**SECTION 58-11-500. Inspection and copying of tax returns, reports and other information.**

In the performance of its duties under this chapter, the Office of Regulatory Staff is hereby authorized to inspect or make copies of all income, property, or other tax returns, reports, or other information filed by radio common carrier with or otherwise obtained by any other department, commission, board, or agency of the state government.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 93, eff May 24, 2006.

**SECTION 58-11-510. Joint investigations, hearings and orders with other state or Federal boards or commissions.**

The commission may hold joint hearings and issue joint or concurrent orders in conjunction or concurrence with any official board or commission of any state or of the United States. The Office of Regulatory Staff may make joint investigations with any official board or commission of any state or of the United States.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 94, eff May 24, 2006.

**SECTION 58-11-520. Actions to discontinue or prevent violation of law or order.**

Whenever it shall appear that any radio common carrier is failing or omitting, or about to fail or omit, to do anything required of it by law or by order of the commission or the Office of Regulatory Staff, or is doing anything, or about to do anything, or permitting anything, or about to permit anything, to be done contrary to or in violation of law or of any order of the commission, an action or proceeding shall be prosecuted by the Office of Regulatory Staff in any court of competent jurisdiction in the name of the Office of Regulatory Staff for the purpose of having such violation or threatened violation discontinued or prevented, either by mandamus, injunction, or other appropriate relief, and in such action or proceeding it shall be permissible to join such other persons or corporations as parties thereto as may be reasonably necessary to make the order of the court in all respects effective.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 95, eff May 24, 2006.

**SECTION 58-11-530. Hearing before one or more commissioners; approval and filing.**

Any hearing which the commission has power to hold may be held before any one or more of the commissioners, upon condition, however, that the commissioner or commissioners shall have been authorized by the commission to hold the hearing. Any determination, ruling, or order of a commissioner or commissioners, upon any hearing, shall not become effective until due notice has been given to the commission and the Office of Regulatory Staff and has been approved and confirmed by at least a quorum of the commission and ordered to be filed in its office; provided, that any such determination involving the fixing or regulation of general schedule of rates shall not become effective until due notice has been given the radio common carrier concerned and an opportunity has been given such carrier to be heard before, and the same has been approved and confirmed by, at least a quorum of the commission. Upon such confirmation and order, such determination, ruling, or order shall be the determination, ruling, or order of the commission. In any hearing now pending or which may hereafter be instituted, the commission is hereby authorized to employ a hearing officer who shall have power to administer oaths and receive evidence in any locality which the commission, having regard to the public convenience and the proper discharge of its functions and duties, may designate. The testimony and evidence so taken or received shall have the same force and effect as if taken or received by the commission, or any one or more of the commissioners as above provided.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 96, eff May 24, 2006.

**SECTION 58-11-540. Promulgation of rules and regulations.**

The Commission may make such rules and regulations not inconsistent with law as may be proper in the exercise of its powers or for the performance of its duties under this chapter, all of which shall have the force of law.

HISTORY: 1975 (59) 598.

**SECTION 58-11-550. Rules governing pleadings, practice and procedure.**

The Commission is authorized to prescribe rules governing pleadings, practice and procedures not inconsistent with the provisions of this chapter or any other provisions of law. The provisions of Articles 1 through 13 of Chapter 9, Title 58 of the 1976 Code shall be applicable to all hearing and appellant procedures of the Commission in relation to radio common carriers, including penalty provisions, specifically including but not limited to matters provided for in Articles 9, 11 and 13 of Chapter 9 of the 1976 Code.

HISTORY: 1975 (59) 598.

**SECTION 58-11-560. Enforcement powers generally.**

In addition to the foregoing expressly enumerated powers the Commission shall have full power and authority, and it shall be its duty to enforce, execute, administer, and carry out by its order, ruling, regulation, or otherwise, all the provisions of this chapter and any other provisions of law regulating radio common carriers.

HISTORY: 1975 (59) 598.

**SECTION 58-11-570. Employment of technical, administrative and clerical staff.**

The Commission shall have power to employ such technical, administrative and clerical staff as it may deem necessary to carry out the provisions of this chapter and to perform the duties and exercise the powers conferred upon it by law.

HISTORY: 1975 (59) 598.

**SECTION 58-11-580. Enumeration of powers not exclusive.**

The enumeration of the powers of the commission and the Office of Regulatory Staff as herein set forth shall not be construed to exclude the exercise of any power which the commission and the Office of Regulatory Staff would otherwise have under the provisions of law.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 97, eff May 24, 2006.

**SECTION 58-11-600. Chapter shall not affect municipalities, interstate commerce or private or cost-shared systems; certain restrictions on cost-shared systems.**

(a) Nothing contained in this chapter shall be so construed as to modify, abridge or impair any of the rights or powers granted to cities and towns under any provision of the Constitution of this State and every right, power or privilege conferred upon any city or town by the Constitution of this State, otherwise appearing to be modified, abridged or impaired by any provision of this chapter, is to be deemed excepted from the operation thereof.

(b) Nothing contained in this chapter shall be so construed as to limit or restrict the right of cities and towns to adopt and enforce reasonable police regulations and ordinances affecting radio common carriers, not inconsistent with the provisions of this chapter, in the interest of public safety, morals, convenience, health and good order.

(c) Neither this chapter nor any provision thereof shall apply or be construed to apply to commerce among the several states of the United States, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress.

(d) The provisions of this chapter shall not be construed to limit or restrict the rights or operations of private or cost-shared systems as herein defined. "Private system" means a system used by a single licensee. "Cost-shared system" means a system for which more than one person is licensed to operate on the same frequencies and who use the same common facilities. "Licensee" as used herein means a person licensed to operate a system by the Federal Communications Commission.

No cost-shared system shall directly or indirectly, by any device whatsoever, charge, demand, collect or receive from any person a greater or lesser compensation for any communication service rendered or supplied or to be rendered or supplied to the users and owners of the system. All equipment common to such systems shall be jointly owned or leased by the users thereof.

All cost-shared systems shall annually report to the Public Service Commission and the Office of Regulatory Staff a record of all compensation received from or charged to users of the system.

HISTORY: 1975 (59) 598; 2006 Act No. 318, § 98, eff May 24, 2006.

Article 5

Small Wireless Facilities Deployment Act

**SECTION 58-11-800. Short title; legislative findings.**

(A) This article must be known and may be cited as the "South Carolina Small Wireless Facilities Deployment Act".

(B) The General Assembly finds that:

(1) the deployment of small wireless facilities and other next-generation wireless and broadband network facilities is a matter of statewide concern and interest;

(2) wireless and broadband products and services are a significant and continually growing part of the state's economy; accordingly, encouraging the development of strong and robust wireless and broadband communications networks throughout the State is integral to the state's economic competitiveness;

(3) rapid deployment of small wireless facilities serves numerous important statewide goals and public policy objectives including, but not limited to, meeting growing consumer demand for wireless data, increasing competitive options for communications services available to the state's residents; promoting the ability of the state's citizens to communicate with other citizens and with their state and local governments; and promoting public safety;

(4) small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, are deployed most effectively in the right of way (ROW);

(5) to meet the key objectives of this article, wireless providers must have access to the ROW and the ability to attach to infrastructure in the ROW to densify their networks and provide next generation wireless services;

(6) uniform rates and fees for the permitting and deployment of small wireless facilities in the ROW and on authority infrastructure, including poles, throughout the State is reasonable and encourages the development of robust next-generation wireless and broadband networks for the benefit of citizens throughout the State;

(7) the procedures, rates, and fees in this article are fair and reasonable when viewed from the perspective of the state's citizens and the state's interest in having robust, reliable, and technologically advanced wireless and broadband networks; and reflect a balancing of the interests of the wireless providers deploying new facilities and the interests of authorities in recovering their costs of managing access to the ROW and the attachment space provided on authority infrastructure in the ROW; and

(8) this article supersedes and preempts any enactment by an authority that contradicts, expands, contracts, or otherwise modifies the provisions of this article with respect to the regulation of the placement of small wireless facilities and of support structures and poles for small wireless facilities in the ROW provided; however, that nothing in this item limits any power granted to any authority under this article including, but not limited to, the power to enforce city-wide compliant provisions in previous enactments, so long as those provisions do not violate federal law.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-810. Definitions.**

For purposes of this article:

(1) "Antenna" means:

(a) communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services; and

(b) similar equipment used for the transmission or reception of surface waves.

(2) "Applicable codes" means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes that are of general application, address public safety, and are consistent with this article.

(3) "Applicant" means any person that submits an application.

(4) "Application" means a request submitted by an applicant to an authority:

(a) for a permit to collocate small wireless facilities; or

(b) to approve the installation, modification, or replacement of a pole.

(5) "Authority" means any county, municipality, or consolidated government or any agency, district, subdivision or instrumentality thereof.

(6) "Authority pole" means a pole owned, managed, or operated by or on behalf of an authority, provided however, that an authority pole shall not include any pole, support structure, electric transmission structure, or equipment of any type that is part of a municipally owned or municipally controlled electric plant or system for furnishing of electricity to the public for compensation.

(7) "Collocate or collocation" means to install, mount, maintain, modify, operate, or replace small wireless facilities on or adjacent to a support structure or pole.

(8) "Communications facility" means the set of equipment and network components, including wires, cables, surface wave couplers, and associated facilities used by a cable operator, as defined in 47 U.S.C. Section 522(5); a provider of "video service" as defined in Section 58-12-300(10); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); a provider of information service, as defined in 47 U.S.C. Section 153(24); or a wireless services provider to provide communications services, including cable service, as defined in 47 U.S.C. Section 522(6); telecommunications service, as defined in 47 U.S.C. Section 153(53); an information service, as defined in 47 U.S.C. Section 153(24); wireless service; surface wave communication, or other one-way or two-way communications service.

(9) "Communications network" means a network used to provide communications service.

(10) "Communications service" means cable service as defined in 47 U.S.C. Section 522(6), information service as defined in 47 U.S.C. Section 153(24), telecommunications service as defined in 47 U.S.C. Section 153(53), or wireless service.

(11) "Communications service provider" means a cable operator, as defined in 47 U.S.C. Section 522(5); a provider of information service, as defined in 47 U.S.C. Section 153(24); a telecommunications carrier, as defined in 47 U.S.C. Section 153(51); or a wireless provider.

(12) "Compliant provision" means a provision or regulation in an enactment applicable to poles, support structures, replacement poles, and small wireless facilities that:

(a) addresses only: aesthetics, design, concealment, or stealth requirements that are technically feasible and technologically neutral; decorative poles; underground districts; design districts; or historical districts;

(b) is reasonable;

(c) is published within thirty days prior to becoming applicable with regard to any wireless provider; and

(d) is not an effective prohibition of service that is prohibited by federal law.

(13) "Decorative pole" means an authority pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility, public safety devices, or specially designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory municipal rules or codes.

(14) "Design district" means a discrete area within the jurisdiction of the authority that is clearly defined in an enactment published at least thirty days before it becomes effective, and for which the authority maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis among all occupants of the ROW, on the grounds that the characteristics of the discrete area warrant design and aesthetic standards that differ from those that apply to the vast majority of the areas within the jurisdiction of the authority.

(15) "Design manual" means a binding measure adopted by an authority that sets forth examples of small wireless facility deployments that the authority deems to comply with this article.

(16) "Enactment" means any ordinance, rule, policy, design manual, or equivalently binding measure adopted by an authority.

(17) "FCC" means the Federal Communications Commission of the United States.

(18) "Fee" means a one-time, nonrecurring charge.

(19) "Historic district" means a group of buildings, properties, or sites that is either:

(a) listed in the National Register of Historic Places or formally determined eligible for listing by the Keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register, in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified at 47 C.F.R. Part 1, Appendix C; or

(b) a registered historic district pursuant to state law at the time the permit for the small wireless facility or pole is submitted; or

(c) an overlay zone, as defined in and limited by Section 6-29-720(C)(5):

(i) that has been established by the authority with regulatory control of zoning within the specified geographic area at least sixty days prior to the relevant application;

(ii) for which the special public interest to be protected is the preservation and protection of historic and architecturally valuable districts and neighborhoods or archaeologically significant resources according to uniform design standards; and

(iii) for which the authority maintains and enforces objective standards that are published in advance and applied on a uniform and nondiscriminatory basis.

(20) "Law" means an enactment or a federal or state law, statute, common law, code, rule, regulation, or order.

(21) "Micro wireless facility" means a small wireless facility that meets the following qualifications:

(a) is not larger in dimension than twenty-four inches in length, fifteen inches in width, and twelve inches in height; and

(b) any exterior antenna that is no longer than eleven inches.

(22) "Network interface device" means the telecommunications demarcation device and cross connect point demarcating the boundary with any wireline backhaul facility and which is on or adjacent to the pole or support structure supporting the small wireless facility.

(23) "Permit" means a written authorization, in electronic or hard copy format, required to be issued by an authority to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a pole upon which a small wireless facility is to be collocated.

(24) "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

(25) "Pole" means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way including, but not limited to, a replacement pole and an authority pole. A 'pole' shall not include a support structure or electric transmission structure.

(26) "Rate" means a recurring charge.

(27) "Right of way" or "ROW" means the area through, upon, over, or under a road, highway, street, sidewalk, alley, or similar property provided; however, that such term shall apply only to property or any interest therein that is under the ownership or control of an authority and shall not include property or any interest therein acquired for or devoted to a federal interstate highway.

(28) "Small wireless facility" means radio transceivers; surface wave couplers; antennas; coaxial or fiber optic cable located on a pole or support structure, immediately adjacent to a pole or support structure, or directly associated with equipment located on a pole or support structure and within a one hundred-foot radius of the pole or support structure; regular and backup power supplies and rectifiers; and associated ancillary equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meets both of the following qualifications:

(a) each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and

(b) all other wireless equipment associated with the small wireless facility, whether ground or pole mounted, is cumulatively no more than twenty-eight cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters, concealment elements, network interface devices, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services. The term "small wireless facility" does not include: the pole, support structure, or improvements on, under, or within which the equipment is located or collocated or to which the equipment is attached; wireline backhaul facilities; or coaxial or fiber optic cable that is between small wireless facilities, poles, or support structures or that is otherwise not immediately adjacent to or directly associated with a particular antenna. For purposes of this subsection, in order to be considered directly associated with equipment located on a pole or support structure, coaxial or fiber optic cable must not extend more than one hundred feet in radial circumference from the base of the pole or support structure to which the small wireless facility antenna is attached. No portion of a small wireless facility as defined in this subsection may be used as a wireline backhaul facility.

(29) "Support structure" means a building, billboard, or any other structure in the ROW to which a small wireless facility is or may be attached. A "support structure" shall not include an electric transmission structure or pole.

(30) "Technically feasible" means that by virtue of engineering or spectrum usage the proposed placement for a small wireless facility, or its design, concealment measures, or site location can be implemented without a material reduction in the functionality of the small wireless facility.

(31) "Underground district" means a group of buildings, properties, or sites:

(a) that has been established by the authority with regulatory control of zoning within the specified geographic area;

(b) in which the authority, at least sixty days prior to the relevant application, has required all communications and electric lines in the specified geographic area to be placed underground; and

(c) for which the authority maintains and enforces objective standards that are published in advance and applied on a uniform and nondiscriminatory basis.

(32) "Wireless communications" means any communications using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public.

(33) "Wireless infrastructure provider" means any person, including a person authorized to provide telecommunications service in the State, acting to build or install wireless communication transmission equipment, wireless facilities or support structures, but that is not a wireless services provider.

(34) "Wireless provider" means a wireless infrastructure provider or a wireless services provider.

(35) "Wireless services" means any services using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public.

(36) "Wireless services provider" means a person who provides wireless services.

(37) "Wireline backhaul facility" means an above-ground or underground wireline facility used to transport communications between a small wireless facility network interface device and a network or another small wireless network interface device.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-815. Agreements predating this act; application of article.**

(A) If an authority and a wireless provider entered into a written agreement addressing the subject matter of this article prior to the effective date of this act:

(1) this article shall not apply until such agreement expires or is terminated pursuant to its terms with regard to poles, support structures, replacement poles, and small wireless facilities installed pursuant to such agreement prior to the effective date of this act; otherwise,

(2) the provisions of this article shall apply to poles, support structures, replacement poles, and small wireless facilities installed in the ROW on or after the effective date of this act.

(B) With regard to any enactment that was adopted prior to the effective date of this article and that addresses the subject matter of this article:

(1) any compliant provisions in such enactment remain in effect and, to the extent that such compliant provisions apply to decorative poles, underground districts, design districts, or historic districts, shall apply in lieu of Section 58-11-820(F)(2), (G)(1), and (H); and

(2) all other provisions of any such enactment are invalid, and all other provisions of this article apply in lieu thereof.

(C) An authority may adopt an enactment that:

(1) adopts compliant provisions, which to the extent that such compliant provisions apply to decorative poles, underground districts, design districts, or historic districts, shall apply in lieu of the provisions of Section 58-11-820(F)(2), (G)(1), and (H);

(2) authorizes wireless providers to install and operate small wireless facilities and associated poles and support structures in strict compliance with all other provisions of this article; and

(3) if the authority is a municipality, grants any consent that has not previously been granted, either expressly or otherwise, for wireless providers to install and operate small wireless facilities and associated poles and support structures in compliance with items (1) and (2).

(D) An enactment that strictly complies with subsection (B) or (C) complies with this article and shall be fully applicable within the territorial jurisdiction of such authority. In the absence of such an enactment, and until such an enactment is adopted, if at all, a wireless provider may install and operate small wireless facilities and associated poles and support structures under the requirements of this article on and after the effective date of this act.

(E)(1) Other than an agreement provided for in Section 58-11-815(G), an authority must not require a wireless provider to enter into an agreement including, but not limited to, a franchise agreement whether memorialized in an enactment or in any other manner, to implement this article, but nothing in this article prohibits an authority and a wireless provider from voluntarily entering one or more such agreements after the effective date of this article, including such agreements with rates, fees, and other terms that differ from those in this article provided; however, that the authority must make each such agreement available for public inspection and available for adoption upon the same terms and conditions to any requesting wireless provider.

(2) Agreements entered into pursuant to item (1) are public-private arrangements and are matters of legitimate and significant statewide concern.

(F) Nothing in this article limits an authority's powers with respect to wireless facilities that are not small wireless facilities in the ROW, or poles that are used for purposes other than installation of small wireless facilities in the ROW.

(G) Nothing in this article prevents an authority from requiring a provider seeking to collocate small wireless facilities on authority poles to enter an agreement establishing the terms and conditions for use of those authority poles. Upon request by a wireless provider, the authority must make available such an agreement with terms and conditions that are just, reasonable, nondiscriminatory, and compliant with the provisions of this article. If the wireless provider requests additional or different terms and conditions, the parties shall seek to negotiate an agreement expeditiously and in good faith.

(H) Nothing in this article permits a wireless provider to use public property outside the ROW or private property without the consent of the property owner.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-820. Provisions applying to activities of wireless provider within ROW to deploy small wireless facilities and associated poles; limitations on new or modified poles; decorative poles; installation of poles in underground and historic districts; repair of damage to ROW; abandonment of small wireless facility; business license taxes.**

(A) The provisions of this section shall apply only to activities of a wireless provider within the ROW to deploy small wireless facilities and associated poles.

(B) An authority may not enter into an exclusive arrangement with any person for use of the ROW for the collocation of small wireless facilities or the installation, operation, marketing, modification, maintenance, or replacement of poles.

(C)(1) Subject to the exceptions in Section 58-11-830(F)(1), an authority may charge a wireless provider a rate or fee for the use of the ROW with respect to the collocation of small wireless facilities or the installation, maintenance, modification, operation, or replacement of a pole in the ROW only if such rate or fee is nondiscriminatory and only if the authority charges other similarly situated entities for use of the ROW.

(2) Notwithstanding the provisions of item (1) of this subsection, an authority is permitted, on a nondiscriminatory basis, to refrain from charging any rate or fee to a wireless provider for the use of the ROW. The rates or fees for such use of the ROW and associated applications and attachments to authority poles are provided in Section 58-11-850.

(D) Subject to the provisions of this section, a wireless provider shall have the right, as a permitted use subject only to administrative review pursuant to Section 58-11-830, to collocate small wireless facilities and install, maintain, modify, operate, and replace poles in the ROW. These structures and facilities must be installed and maintained so as not to: create a safety hazard; obstruct or hinder the usual travel in or the public's safe use of the ROW; or obstruct the legal use of the ROW by utilities.

(E)(1) Each new or modified pole installed in the ROW may not exceed the greater of ten feet in height above the tallest existing pole in place as of the effective date of this article located within five hundred feet of the new pole in the same ROW, or fifty feet above ground level provided; however, that for applications to place poles in residential zoning districts to deploy small wireless facilities, the authority may propose an alternate location in the ROW within one hundred fifty feet of the location set forth in the application, and the wireless provider shall use the authority's proposed alternate location unless the location is not technically feasible or imposes significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

(2) New small wireless facilities in the ROW may not extend more than ten feet above an existing pole in place as of the effective date of this article; or for small wireless facilities on a new pole, above the height permitted for a new pole pursuant to this section.

(3) To the extent permitted by and approved under applicable zoning or other regulations, a wireless provider shall have the right to collocate a small wireless facility on and install, maintain, modify, operate, and replace poles in the ROW that exceed the height limits set forth in item (1).

(F)(1) Subject to an authority's ability to deny the proposal as set forth in this article, a wireless provider must be permitted to collocate on or replace decorative poles when necessary to deploy a small wireless facility.

(2) An authority may require the collocation on a decorative pole or the replacement of a decorative pole to reasonably conform to the design aesthetics of the original decorative pole, provided these requirements are technically feasible.

(3)(a) For applications to replace decorative poles to deploy small wireless facilities, the authority may propose an alternate location in the ROW within one hundred fifty feet of the location set forth in the application, and the wireless provider shall use the authority's proposed alternate location unless the location is not technically feasible or imposes significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

(b) For applications to collocate small wireless facilities on decorative poles, the authority may propose collocation on a new pole or on an existing pole or structure in the ROW within one hundred fifty feet of the location set forth in the application, and the wireless provider shall use the authority's proposed alternative unless the location is not technically feasible or imposes significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

(G)(1) A wireless provider shall comply with reasonable and nondiscriminatory requirements that prohibit the installation of poles in the ROW in an underground district where:

(a) no less than sixty days prior to the submission of the application, the authority has required all such lines to be placed underground;

(b) poles the authority allows to remain are made available to wireless providers for the collocation of small wireless facilities and may be replaced by a wireless provider to accommodate the collocation of small wireless facilities in compliance with this article; and

(c) a wireless provider is allowed to install a new pole when it is not able to provide wireless service by collocating on a remaining pole or support structure provided; however, that for any such application to install a new pole, the authority may propose an alternate location in the ROW within one hundred fifty feet of the location set forth in the application, and the wireless provider shall use the authority's proposed alternate location unless the location is not technically feasible or imposes significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

(2) For small wireless facilities installed before an authority adopts requirements that comply with subsection (G)(1), an authority adopting such requirements shall:

(a) permit a wireless provider to maintain the small wireless facilities in place subject to any applicable pole attachment agreement with the pole owner; or

(b) permit the wireless provider to replace the associated pole within fifty feet of the prior location, provided that the wireless provider shall allow communications service providers with attachments on the existing pole to place those attachments on the replacement pole under the same or reasonably similar fees, rates, terms, and conditions as applied to those attachments on the existing pole.

(H)(1) Subject to Section 58-11-830(D), an authority may require reasonable, technically feasible, nondiscriminatory, and technologically neutral design requirements, height limitations of no less than forty feet, or concealment measures in a design district or historic district. These design requirements, height limitations, or concealment measures may not have the effect of prohibiting any provider's technology or the provision of wireless services; nor may any such measures be considered a part of the small wireless facility for purposes of the size restrictions in the definition of small wireless facility.

(2) For applications to place poles in a design district or a historic district to deploy small wireless facilities, the authority may propose an alternate location in the ROW within one hundred fifty feet of the location set forth in the application, and the wireless provider shall use the authority's proposed alternate location unless the location is not technically feasible or imposes significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and it shall provide a written summary of the basis for such determination.

(I) The authority, in the exercise of its administration and regulation related to the management of the ROW, must be reasonable, competitively neutral, nondiscriminatory with regard to all users of the ROW, and compliant with applicable law.

(J) A wireless provider shall repair all damage to the ROW directly caused by the activities of the wireless provider in the ROW and shall restore the ROW to its condition before the damage occurred pursuant to the competitively neutral and reasonable requirements and specifications of the authority. If within thirty calendar days after written notice the wireless provider fails to the extent practicable in the reasonable judgment of the authority to restore the ROW to its condition prior to the damage in compliance with this subsection, the authority may, at the sole discretion of the authority, restore the ROW to such condition and charge the applicable party the reasonable, documented cost of the restoration, plus a penalty not to exceed five hundred dollars provided; however, that the wireless provider may request additional time to make such repairs, and the authority shall not unreasonably deny such a request. The authority may suspend the ability of the wireless provider to receive any new permits from the authority until the wireless provider has paid the amount assessed for such restoration costs, if any provided; however, that the authority shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by the Administrative Law Court.

(K) A wireless provider must not be required to replace or upgrade an existing pole except for reasons of structural necessity, compliance with applicable codes, or compliance with this article. A wireless provider may, with the permission of the pole owner, replace or modify existing poles, but any such replacement or modification must be consistent with the design aesthetics of the poles being modified or replaced.

(L) A wireless provider shall notify the authority in writing as soon as practicable, but no later than thirty days before its abandonment of a small wireless facility. Following receipt of such notice, the authority may direct the wireless provider to remove all or any portion of the small wireless facility if the authority determines that such removal is in the best interest of the public safety and public welfare. If the wireless provider fails to remove the abandoned facility within ninety days after such notice, the authority may undertake to do so and recover the actual and reasonable expenses of doing so from the wireless provider, its successors or assigns, plus a penalty not to exceed five hundred dollars. The authority may suspend the ability of the wireless provider, its successors, or its assigns, as applicable, to receive any new permits from the authority until the wireless provider, its successors, or its assigns, as applicable, have paid the amount assessed for such removal costs, if any provided; however, that the authority shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by the Administrative Law Court.

(M) If the authority determines that a wireless provider's activity in a ROW pursuant to this article creates an imminent risk to public safety, the authority may provide written notice to the wireless provider and demand that the wireless provider address such risk. If the wireless provider fails to reasonably address the risk within twenty-four hours of the written notice, the authority may take or cause to be taken action to reasonably address such risk and charge the wireless provider the reasonable documented cost of such actions.

(N) Nothing in this article relieves any person including, but not limited to, any wireless provider, of any applicable obligation to pay business license taxes including, but not limited to, those provided for in Article 20, Chapter 9, Title 58, or franchise fees. Any entity that uses the ROW, directly or indirectly, including through leased facilities, to provide services in a municipality is responsible for all applicable taxes and fees related to the services provided.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-830. Applications for permits for the collocation of small wireless facilities; requirements; fees; application review.**

(A) The provisions of this section shall apply to the permitting of the collocation of small wireless facilities by a wireless provider in the ROW and to the permitting of the installation, modification, and replacement of associated poles by a wireless provider inside the ROW.

(B) Except as provided in this article, an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities and associated poles described in subsection (A).

(C) An authority may require an applicant to obtain a permit to collocate a small wireless facility or to install a new, modified, or replacement pole associated with a small wireless facility as provided in Section 58-11-830(E). An authority also may require an applicant to obtain additional permits for such activity, provided that: such additional permits are of general applicability and do not apply exclusively to wireless facilities; an applicant shall not be required to obtain or pay any fees for a building permit, as the permit issued pursuant to this article serves as a building permit for the applicable poles and small wireless facilities; and any applications for any such additional permits, once submitted, must be acted upon within the same number of days as an application for permit under this article. An authority requiring additional permits pursuant to this subsection must publish and keep current a list of each additional permit that is required, and the authority must make the list available to any person upon request.

(D) An authority may adopt a design manual for an applicant's installation and construction of small wireless facilities and new poles to support such facilities in the public ROW that allows for, but does not require, preapproval of designs in addition to those that may be authorized in compliance with this article.

(E) An authority shall receive applications for, process, and issue such permits subject to the following requirements:

(1) The application shall be made by the applicable wireless provider or its duly authorized representative and shall contain the following:

(a) the applicant's name, address, telephone number, and email address, including emergency contact information for the applicant;

(b) the names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application;

(c) a general description of the proposed work and the purposes and intent of the proposed facility. The scope and detail of such description shall be appropriate to the nature and character of the physical work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed;

(d) detailed construction drawings regarding the proposed use of the ROW;

(e) to the extent the proposed facility involves collocation on a pole, decorative pole, or support structure, a structural report performed by a duly licensed engineer in South Carolina evidencing that the pole, decorative pole, or support structure will structurally support the collocation, or that the pole, decorative pole, or support structure may and will be modified to meet structural requirements, in accordance with applicable codes;

(f) for any new aboveground facilities, visual depictions or representations if such are not included in the construction drawings;

(g) information indicating the approximate horizontal and vertical locations, relative to the boundaries of the ROW, of the small wireless facility for which the application is being submitted;

(h) if the application is for the installation of a new pole or replacement of a decorative pole, a certification that the wireless provider has determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support structure on which:

(i) the wireless provider has the right to collocate subject to reasonable terms and conditions; and

(ii) such collocation would be technically feasible and would not impose significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of an engineer licensed in South Carolina, and shall provide a written summary of the basis for such determination;

(i) if the small wireless facility will be collocated on a pole or support structure owned by a third party, other than an authority pole, a certification that the wireless provider has permission from the owner to collocate on the pole or support structure;

(j) an affirmation that the applicant is, on the same date, submitting applications for the permits identified in the list the authority maintains pursuant to Section 58-11-830(C); and

(k) any additional information reasonably necessary to demonstrate compliance with the criteria set forth in item (10).

(2) An applicant must not be required to provide more information to obtain a permit than is set forth in item (1).

(3) An authority may not directly or indirectly require an applicant to perform services or provide goods unrelated to the permit, such as in-kind contributions to the authority including, but not limited to, reserving fiber, conduit, or pole space for the authority.

(4) Except as expressly permitted by this article, an authority may not require:

(a) the collocation of small wireless facilities on a specific pole or category of poles or require multiple antenna systems on a single pole;

(b) the use of specific pole types or configurations when installing new or replacement poles provided; however, that nothing in this subitem prohibits an authority from enforcing the provisions of Section 58-11-820(F)(2), (G)(1), and (H) or any compliant provisions adopted pursuant to Section 58-11-815(B) or (C); or

(c) except as authorized by Section 58-11-820(G)(1) or any compliant provisions adopted pursuant to Section 58-11-815(B) or (C), the underground placements of small wireless facilities that are or are designated in an application to be pole-mounted or ground-mounted.

(5) Without limiting an authority's ability to adopt spacing requirements for ground-mounted equipment and new poles in accordance with this article, an authority may not limit the collocation of small wireless facilities by minimum horizontal separation distance requirements between small wireless facilities and: (a) existing small wireless facilities; (b) poles; or (c) other structures.

(6) The authority may require an applicant to include an attestation that the small wireless facilities will be operational for use by a wireless services provider within one year after the permit issuance date, unless: the authority and the applicant agree to extend this period; or delay is caused by lack of commercial power or by the lack of communications transport facilities to be provided to the site by an entity that is not an affiliate, as that term is defined in 47 U.S.C. Section 153(2), of the applicant.

(7) An authority may require an applicant that is not a wireless services provider to include an attestation that a wireless services provider has requested in writing that the applicant collocate the small wireless facilities or install, modify, or replace the pole at the requested location, and the authority may require the applicant to submit proof that such wireless services provider is licensed by the FCC or otherwise authorized to provide wireless services within the geographic jurisdiction of the authority.

(8) Within ten days of receiving an application, an authority must determine and notify the applicant in writing whether the application is complete. If an application is incomplete, an authority shall specifically identify the missing information in writing. The processing deadline in item (9) is tolled from the time the authority sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline also may be tolled by agreement of the applicant and the authority, confirmed in writing.

(9) An application must be processed on a nondiscriminatory basis. The authority shall make its final decision to approve or deny the application within sixty days of receipt of a complete application for collocation of small wireless facilities and within ninety days of receipt of a complete application for the installation, modification, or replacement of a pole and the collocation of associated small wireless facilities on the installed, modified, or replaced pole. If the authority fails to act on an application within the applicable time period, the applicant may provide the authority written notice that the time period for acting has lapsed, and the authority shall then have twenty days after receipt of such notice to render its written decision. The application shall be deemed to have been approved by passage of time and operation of law if the authority does not render its written decision within the noticed twenty days.

(10) An authority may deny an applicant's proposed collocation of a small wireless facility or a proposed installation, modification, or replacement of a pole that meets the requirements in Section 58-11-820(E) only if the proposed collocation, installation, modification, or replacement:

(a) interferes with the safe operation of traffic control or public safety equipment;

(b) interferes with sight lines or clear zones for transportation or pedestrians;

(c) interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;

(d) requests that ground-mounted small wireless facility equipment be located more than seven and one-half feet in radial circumference from the base of the pole, decorative pole, or support structure to which the small wireless facility antenna is to be attached, provided that the authority shall not deny the application if a greater distance from the base of the pole, decorative pole, or support structure is necessary to avoid interfering with sight lines or clear zones for transportation or pedestrians or to otherwise protect public safety;

(e) fails to comply with the height limitations permitted by this article or with reasonable and nondiscriminatory horizontal spacing requirements of general application adopted by an enactment that concern the location of ground-mounted equipment and new poles. These spacing requirements may not be applied in a manner that constitutes an effective prohibition of service that is prohibited by federal law;

(f) designates the location of a new pole for the purpose of collocating a small wireless facility within seven feet in any direction of an electrical conductor, unless the wireless provider obtains the written consent of the power supplier that owns or manages the electrical conductor;

(g) fails to comply with applicable codes;

(h) fails to comply with Section 58-11-820(F), (G)(1), or (H) or any compliant provisions adopted in accordance with Section 58-11-815(B) or (C);

(i) fails to comply with laws of general applicability that address pedestrian and vehicular traffic and safety requirements; or

(j) fails to comply with laws of general applicability that address the occupancy or management of the ROW and that are not otherwise inconsistent with this article.

(11) The authority shall document the basis for a denial, including the specific provisions of this article on which the denial was based, and send the documentation to the applicant on or before the day the authority denies an application. The applicant may cure the deficiencies identified by the authority and resubmit the application within thirty days of the denial without paying an additional application fee. The authority shall approve or deny the revised application within thirty days of resubmission and limit its review to the deficiencies cited in the denial. If the authority fails to act on a revised application within this thirty-day period, the applicant may provide the authority written notice that the time period for acting has lapsed, and the authority shall then have five days after receipt of such notice to render its written decision approving or denying the revised application. The revised application shall be deemed to have been approved by passage of time and operation of law if the authority does not render its written decision within the noticed five days.

(12) An applicant seeking to collocate small wireless facilities within the jurisdiction of a single authority may submit a single consolidated application, provided that such a consolidated application shall be for a geographic area no more than two miles in diameter, for up to thirty small wireless facilities and receive a single permit for the collocation of multiple small wireless facilities provided; however, the denial of one or more small wireless facilities in a consolidated application must not delay processing of any other small wireless facilities in the same consolidated application. Solely for purposes of calculating the number of small wireless facilities in a consolidated application, a small wireless facility includes any pole on which such small wireless facility will be collocated.

(13) Installation or collocation for which a permit is granted pursuant to this section must be completed within one year of the permit issuance date unless: the authority and the applicant agree to extend this period, or a delay is caused by the lack of commercial power or by the lack of communications facilities to be provided to the site by an entity that is not an affiliate, as that term is defined in 47 U.S.C. Section 153(2), of the applicant. Approval of an application authorizes the applicant to:

(a) undertake the installation or collocation; and

(b) subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of no less than ten years, which must be renewed for equivalent durations so long as the installation or collocation is in compliance with the criteria set forth in item (10).

(14) An authority may not institute, either expressly or de facto, a moratorium on filing, receiving, or processing applications, or issuing permits or other approvals, if any, for the collocation of small wireless facilities or the installation, modification, or replacement of poles to support small wireless facilities.

(15) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this section neither constitutes an authorization nor affects any authorization a provider may have to provide a communication service or to install, place, maintain, or operate any other communications facility, including a wireline backhaul facility, in a ROW.

(F)(1) Subject to item (2), an authority may not require a permit or any other approval or charge fees or rates for:

(a) routine maintenance;

(b) the replacement of small wireless facilities with small wireless facilities that are substantially similar or the same size or smaller; or

(c) the installation, placement, maintenance, operation, or replacement of micro wireless facilities that are suspended on cables that are suspended between poles or support structures in compliance with applicable codes.

(2) Notwithstanding the provisions of item (1), an authority may require that prior to performing the activities described in item (1), an applicant must apply for and receive a permit for work that requires excavation or closure of sidewalks or vehicular lanes within the ROW for the activities described in item (1). Such a permit must be issued to the applicant on a nondiscriminatory basis upon terms and conditions that are consistent with applicable codes and that apply to the activities of any other person in the ROW that require excavation or the closing of sidewalks or vehicular lanes.

(G) No wireless provider shall collocate any small wireless facility in the ROW or install, modify, or replace a pole or decorative pole for collocation of a small wireless facility in the ROW without first filing an application and obtaining a permit therefor, except as otherwise expressly provided in subsection (F). Any failure to comply with this subsection by a wireless provider shall allow the applicable authority, at the sole discretion of the authority, to restore the ROW, to the extent practicable in the reasonable judgment of the authority, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider its reasonable, documented cost of restoration, plus a penalty not to exceed one thousand dollars. The authority may suspend the ability of the wireless provider to receive any new permits from the authority until the wireless provider has paid the amount assessed for such restoration costs, if any provided; however, that the authority shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by the Administrative Law Court.

(H) If, in the reasonable exercise of police powers, an authority requires widening, repair, reconstruction, or relocation of a public road or highway, or relocation of poles, support structures, or small wireless facilities as a result of a public project, a wireless provider shall relocate poles and support structures that such wireless provider has installed in the ROW for the collocation of small wireless facilities pursuant to this article at no cost to the authority if such poles and support structures are found by the authority to unreasonably interfere with the widening, repair, reconstruction, or relocation project or the public project. If widening, repair, reconstruction, or relocation is required as a condition or result of a project by a person other than an authority, such person shall bear the cost of relocating such poles or support structures and any communications facilities on such poles or support structures.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-840. Processing of applications to collocate small wireless facilities on a nondiscriminatory basis; conditions for denial; nondiscriminatory terms and conditions.**

(A) The provisions of this section apply to the collocation of small wireless facilities on an authority pole in the ROW by a wireless provider.

(B) A person owning, managing, or controlling authority poles in the ROW may not enter into an exclusive arrangement with any person for the right to attach to such poles. A person who purchases or otherwise acquires an authority pole is subject to the requirements of this section.

(C) Subject to an authority's ability to deny a permit application as set forth in this article, an authority shall allow the collocation of small wireless facilities on authority poles on nondiscriminatory terms and conditions in compliance with this article.

(D) The rates to collocate on authority poles must be nondiscriminatory regardless of the services provided by the collocating wireless provider and must be as set forth in Section 58-11-850.

(E)(1) The rates, fees, terms, and conditions for make-ready work to collocate on an authority pole must be nondiscriminatory, competitively neutral, commercially reasonable, and in compliance with this article.

(2)(a) The authority shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation by a wireless provider, including pole replacement if necessary, within sixty days after receipt of a complete application. Alternatively, the authority may require the wireless provider to perform the make-ready work and notify the wireless provider of such within the sixty-day period. If the wireless provider or its contractor performs the make-ready work, the wireless provider shall indemnify the authority for any negligence by the wireless provider or its contractor in the performance of such make-ready work and the work shall otherwise comply with applicable law.

(b) Make-ready work performed by or on behalf of an authority, including any pole replacement, must be completed within sixty days of written acceptance of the good faith estimate by the applicant. An authority may require replacement of the authority pole only if it demonstrates that the collocation would make the authority pole structurally unsound.

(3) The person owning, managing, or controlling the authority pole must not require more make-ready work than required to meet applicable codes or industry standards. Fees assessed by or on behalf of an authority for make-ready work, including any pole replacement, must not:

(a) include costs related to preexisting or prior damage or noncompliance;

(b) exceed either actual costs or the amount charged to other communications service providers for similar work on similar types of authority poles; or

(c) include any revenue or contingency-based consultant's fees or expenses of any kind.

(4) A wireless provider collocating on an authority pole pursuant to this article is responsible for reimbursing third parties for their actual and reasonable costs of any make-ready work reasonably required by the third party to accommodate the collocation. If the authority includes such costs of a third party in the good faith estimate provided pursuant to item (2), payment of that estimate to the authority constitutes reimbursement of the third party by the wireless provider. Otherwise, the third party may bill the wireless provider for such reimbursement within six months of the completion of the third party's make-ready work.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-850. Rates and fees for the collocation of a small wireless facility.**

(A) Except as provided in Section 58-11-830(F), this section governs an authority's rates and fees for the collocation of a small wireless facility and the installation, modification, or replacement of an associated pole.

(B) Except to the extent permitted by this article or otherwise specifically authorized by state or federal law including, but not limited to, Article 20, Chapter 9, Title 58 and Chapter 12, Title 58, an authority may not:

(1) adopt or enforce any regulations or requirements on the placement or operation of communications facilities in a ROW by a communications service provider authorized by federal, state, or local law to operate in a ROW;

(2) regulate any communications services; or

(3) impose or collect any tax, fee, or charge for the provision of any communications service over the communications service provider's communications facilities in a ROW.

(C) Without limiting the foregoing, a wireless provider is authorized to deploy small wireless facilities and associated poles in a ROW in compliance with this article regardless of whether the provider has sought or obtained any certificate or other authority from the Public Service Commission of South Carolina provided; however, that nothing in this article prohibits an authority from requiring proof that a wireless services provider is licensed by the FCC or otherwise authorized to provide service within the geographic jurisdiction of the authority.

(D)(1) A municipality may charge an application fee to a wireless provider regardless of whether the provider is subject to a business license tax that is or may be imposed upon it pursuant to Section 58-9-2220 and a franchise, consent, or administrative fee that is or may be imposed upon it pursuant to Section 58-9-2230.

(2) A municipality may charge an application fee to a communications service provider regardless of whether the provider is subject to a franchise fee that is or may be imposed upon it pursuant to Section 58-12-330.

(3) An authority may charge an application fee, so long as the fee is reasonable, nondiscriminatory, and recovers no more than an authority's direct costs for processing an application provided; however, the fee may not exceed:

(a) for applications to collocate small wireless facilities on existing poles or structures, one hundred dollars each for the first five small wireless facilities in the same application and fifty dollars for each additional small wireless facility in the same application; or

(b) for applications to collocate small wireless facilities on new poles, one thousand dollars for each pole, which fee covers both the installation of the new pole and the collocation on the new pole of associated small wireless facilities that are a permitted use in accordance with the specifications in Section 58-11-820(D); and

(c) for applications to collocate small wireless facilities on modified or replacement poles, two hundred fifty dollars for each pole, which fee covers both the modification or replacement of the pole and the collocation on the pole of associated small wireless facilities that are permitted uses in accordance with the specifications in Section 58-11-820(D).

(4)(a) Beginning on the effective date of this section and ending upon completion of the fourth year immediately following the effective date of this section, a municipality with a need for consultation in the review of a permit application may engage an outside consultant for consultation, review, and processing of the application and may charge the applicant the fees described in subitem (b) for such engagement. The fee the authority charges the applicant for such review shall not be used for:

(i) travel expenses incurred in the review of a collocation application by an outside consultant or other third party; or

(ii) direct payment or reimbursement for an outside consultant or other third party based on a contingent fee basis or results-based arrangement.

(b) The fee the municipality charges an applicant pursuant to subitem (a) may not exceed the lesser of:

(i) the amount the municipality pays the outside consultant for engagements that are consistent with subitem (a); or

(ii) the following amounts:

(aa) for applications to collocate small wireless facilities on existing poles or structures: seventy dollars each for the first five small wireless facilities in the same application and thirty-five dollars for each additional small wireless facility in the same application during the first year immediately following the effective date of this section; sixty dollars each for the first five small wireless facilities in the same application and thirty dollars for each additional small wireless facility in the same application during the second year immediately following the effective date of this section; fifty dollars each for the first five small wireless facilities in the same application and twenty-five dollars for each additional small wireless facility in the same application during the third year immediately following the effective date of this section; and forty dollars each for the first five small wireless facilities in the same application and twenty dollars for each additional small wireless facility in the same application during the fourth year immediately following the effective date of this section;

(bb) for applications to collocate small wireless facilities on new poles: six hundred fifty dollars during the first year immediately following the effective date of this section; five hundred twenty dollars during the second year immediately following the effective date of this section; four hundred fifty-five dollars during the third year immediately following the effective date of this section; and three hundred ninety-nine dollars during the fourth year immediately following the effective date of this section; and

(cc) for applications to collocate small wireless facilities on modified or replacement poles: two hundred dollars during the first year immediately following the effective date of this section; one hundred eighty-five dollars during the second year immediately following the effective date of this section; one hundred fifty dollars during the third year immediately following the effective date of this section; and one hundred twenty-five dollars during the fourth year immediately following the effective date of this section.

(c) In any dispute concerning the appropriateness of a fee under this subitem, the municipality has the burden of proving that the fee meets the requirements of this subitem.

(E)(1) A municipality may charge a rate for the occupancy and use of the ROW to a wireless provider regardless of whether the provider is subject to a business license tax that is or may be imposed upon it pursuant to Section 58-9-2220 and a franchise, consent, or administrative fee that is or may be imposed upon it pursuant to Section 58-9-2230.

(2) A municipality may charge a rate for the occupancy and use of the ROW to a communications service provider regardless of whether the provider is subject to a franchise fee that is or may be imposed upon it pursuant to Section 58-12-330.

(3) An authority may charge a wireless provider for the occupancy and use of the ROW, so long as such rate is reasonable, nondiscriminatory, and does not exceed: one hundred dollars per year for each small wireless facility collocated on any existing or replacement pole, including an existing or replacement authority pole; or two hundred dollars per year for each small wireless facility collocated on a new pole, other than a replacement pole, which two hundred dollar rate shall cover the new pole and the small wireless facility collocated on it.

(F)(1) An authority may charge a rate for collocation of a small wireless facility on an authority pole, but any such rate must be reasonable, nondiscriminatory, and recover no more than the authority's direct costs associated with such collocation, not to exceed fifty dollars per authority pole per year.

(2) Other than requiring a wireless provider to pay attachment rates as permitted by item (1), an authority may not require any person or entity with facilities installed on a pole or support structure to pay any additional attachment rates or fees as a result of the granting of an application for a permit under this article.

(G) The applicant or the person that owns or operates the small wireless facility collocated in the ROW may remove its small wireless facilities at any time from the ROW upon not less than thirty days' prior written notice to the authority and may cease paying to the authority any applicable fees and rates for such use, as of the date of the actual removal of the small wireless facilities. In the event of such removal, the ROW shall be, to the extent practicable in the reasonable judgment of the authority, restored to its condition prior to the removal. If the applicant fails, to the extent practicable in the reasonable judgment of the authority, to return the ROW to its condition prior to the removal within ninety days of the removal, the authority may, at the sole discretion of the authority, restore the ROW to such condition and charge the applicant the authority's reasonable, documented cost of removal and restoration, plus a penalty not to exceed five hundred dollars. The authority may suspend the ability of the applicant to receive any new permits from the authority until the applicant has paid the amount assessed for such restoration, if any provided; however, that the authority shall not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by the Administrative Law Court.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-853. Wireline backhaul facilities.**

The construction, installation, maintenance, modification, operation, and replacement of wireline backhaul facilities in the ROW are not addressed by this article, and any such activity shall comply with the applicable provisions of the 1976 Code including, but not limited to, Section 58-9-280(A) and (B) and Chapter 12, Title 58.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-857. No interference with existing infrastructure, equipment, or service.**

An applicant in the ROW must not install, maintain, modify, operate, repair, or replace any small wireless facilities, support structures, or poles in a manner that interferes with any existing infrastructure, equipment, or service including, but not limited to, infrastructure, equipment, or service used to provide communications, electric, gas, water, sewer, or public safety services.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-860. Activities in the ROW.**

The provisions of this section apply only to activities in the ROW. Nothing in this article must be interpreted to:

(1) allow an entity to provide services regulated pursuant to 47 U.S.C. Sections 521 to 573, without compliance with all laws applicable to such providers; or

(2) impose any new requirements on cable providers for the provision of such service in this State.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-870. Authority's exercise of zoning, land use, planning, and permitting authority; limitations.**

Pursuant to the provisions of this article and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within its territorial boundaries with respect to small wireless facilities, poles, and support structures outside of the ROW, including the enforcement of applicable codes. An authority does not have and may not exercise any jurisdiction or authority over the design, engineering, construction, installation, or operation of a small wireless facility located in an interior structure or upon the site of a campus, stadium, or athletic facility not owned or controlled by the authority, other than to require compliance with applicable codes. Nothing in this article authorizes the State or any agency, department, or instrumentality thereof, including an authority, to require any wireless facility deployment or to regulate wireless services.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-880. Article does not apply to poles owned by investor-owned utility; exception.**

This article does not apply to poles owned by an investor-owned utility, except as it concerns a wireless provider's access to the ROW and permits for the collocation of small wireless facilities on such poles.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-900. Jurisdiction of Administrative Law Court over disputes.**

The Administrative Law Court has contested case jurisdiction to determine all disputes arising under this article between an applicant and an authority or any person or entity acting on behalf of an authority. Any request filed with the Administrative Law Court pursuant to this article must be filed in accordance with its Rules of Procedure. Pending resolution of a dispute concerning rates for collocation of small wireless facilities on authority poles, the person owning or controlling the pole must allow the collocating person to collocate on its poles at annual rates of no more than fifty dollars, with the actual rate to be settled upon final resolution of the dispute. Disputes subject to this section must be adjudicated pursuant to accelerated docket or complaint procedures including, but not limited to, procedures in Section 1-23-600(B), if available.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-910. Indemnification; insurance; bonding requirements.**

(A) Subject to the requirements of this section, an authority may adopt reasonable indemnification, insurance, and bonding requirements related to facilities, poles, or support structures that are subject to this article.

(B) With regard to facilities, poles, and support structures that are subject to this article, an authority may not require a wireless 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 wireless provider while siting, installing, maintaining, repairing replacing, relocating, permitting, operating, or locating facilities, poles, or support structures pursuant to this article caused the harm that created such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees. In no event shall any authority or any officer, employee, or agent affiliated therewith, while in the performance of its or his or her official duties, be liable for any claim related to the siting, installation, maintenance, repair, replacement, relocation, permitting, operation or location of facilities, poles, or support structures that are subject to this article. An authority is immune under the laws of South Carolina against any claim of violating a private deed when enforcing the terms of this article for the deployment of small wireless facilities and associated poles and support structures in the ROW.

(C) An authority may require a wireless provider to have in effect insurance coverage consistent with this section, so long as the authority imposes similar requirements on other ROW users and such requirements are reasonable and nondiscriminatory.

(1) An authority may not require a wireless provider to obtain insurance naming the authority or its officers and employees as additional insureds.

(2) An authority may require a wireless provider to furnish proof of insurance, if required, prior to the effective date of a permit issued for a small wireless facility.

(D) An authority may adopt bonding requirements for small wireless facilities if the authority imposes similar requirements in connection with permits issued for other ROW users.

(1) The purpose of such bonds must be to provide for the:

(a) removal of abandoned or improperly maintained small wireless facilities, including those that an authority determines must be removed to protect public health, safety, or welfare;

(b) restoration of the ROW as provided in Section 58-11-820(J); and

(c) recoupment of rates or fees that have not been paid by a wireless provider in over twelve months, so long as the wireless provider has received reasonable notice from the authority of any of the noncompliance listed in this subitem and given an opportunity to cure.

(2) Bonding requirements may not exceed two hundred dollars per small wireless facility. For wireless providers with multiple small wireless facilities within the jurisdiction of a single authority, the total bond amount across all facilities may not exceed ten thousand dollars and that amount may be combined into one bond instrument.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-920. Conditioning access to ROW on wireless provider's seeking or obtaining certificate or other authority from Public Service Commission of South Carolina.**

(A) Neither the State nor any agency, department, or instrumentality thereof may condition a wireless provider's access to any ROW or a wireless provider's deployment of small wireless facilities and associated poles in any ROW on the wireless provider's seeking or obtaining any certificate or other authority from the Public Service Commission of South Carolina.

(B) Without limiting the provisions of subsection (A):

(1) a wireless services provider seeking access to a ROW as described in subsection (A) may be required to provide proof that it is licensed by the FCC or otherwise authorized to provide wireless services within the State; and

(2) a wireless provider seeking access to a ROW as described in subsection (A) that is not also a wireless services provider may be required to submit an attestation that a wireless services provider has requested in writing that the wireless provider deploy small wireless facilities or associated poles at the requested location and provide proof that such wireless services provider is licensed by the FCC or otherwise authorized to provide service within the State.

(C) To the extent that an authority is otherwise authorized to address a wireless provider's deployment of small wireless facilities and associated poles in the ROW of the State or of any agency, department, or instrumentality thereof, the authority must do so in strict compliance with the provisions of this article.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.

**SECTION 58-11-930. Meetings with requesting authority.**

(A) Within thirty days after written request by any authority with a population of greater than twenty-seven thousand according to the official 2010 United States Decennial Census and with which the applicant has not previously held a meeting that complies with this section, an applicant shall meet with the requesting authority to inform the authority in good faith:

(1) when the applicant expects to commence deployment of small wireless facilities and poles within the authority pursuant to this article;

(2) the number of small wireless facilities and poles it expects to deploy during the twenty-four months after commencement; and

(3) the expected timing of such deployments.

(B) All documents or other information provided by the applicant in the course of, or in association with, any meetings provided for in this section:

(1) are presumed to be 'trade secrets' as defined in Section 30-4-40(a)(1);

(2) are not public information under the Freedom of Information Act; and

(3) are not subject to public disclosure.

(C) The pendency of a meeting requested pursuant to this section shall not relieve an authority from reviewing and acting upon applications that have been or are submitted as set forth in this article.

HISTORY: 2020 Act No. 179 (H.4262), § 1, eff September 29, 2020.