AN ACT concerning telecommunications; relating to wireless communications, deployment of equipment; concerning municipalities and state entities.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) The Kansas legislature finds and declares that:

(1) The permitting, construction, modification, maintenance and operation of broadband and wireless facilities are critical to ensuring that all citizens in the state have true access to advanced technology and information;

(2) these facilities are critical to ensuring that businesses and schools throughout the state remain competitive in the global economy;

(3) wireless telecommunications facilities that enable mobile broadband have a significant economic benefit; and

(4) the permitting, construction, modification, maintenance and operation of these facilities, to the extent specifically addressed in this section, are declared to be matters of statewide concern and interest.

(b) As used in this section:

(1) "Accessory equipment" means any equipment serving or being used in conjunction with a wireless communications facility or wireless support structure including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

(2) "Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services, including on-site accessory equipment associated with the antenna.

(3) "Applicant" means any person or entity that submits an application for placement of a wireless facility that is engaged in the business of providing wireless telecommunications services or the wireless telecommunications infrastructure required for wireless telecommunications services.

(4) "Application" means a request submitted by an applicant to an authority: (A) To construct a new wireless support structure;

(B) for the substantial modification of a wireless support structure; or

(C) for collocation of a wireless facility or replacement of a wireless
facility on an existing structure or utility pole.

(5) "Authority" means any governing body, board, agency, office or commission of a municipality, county or the state that is authorized by law to make legislative, quasi judicial or administrative decisions concerning an application. "Authority" shall not include any court having jurisdiction over land use, planning or zoning decisions made by an authority.

(6) "Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics.

(7) "Collocation" means the mounting or installation of an antenna or equipment on a wireless support structure, tower, utility pole, base station, building or structure with existing antenna, telecommunications, electric or cable equipment for the purpose of transmitting or receiving radio frequency signals for communications purposes.

(8) "Distributed antenna system" means a network that distributes radio frequency signals and consisting of: (A) Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception; (B) a high capacity signal transport medium that is connected to a central communications hub site; and (C) radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

(9) "Existing structure" means a structure that exists at the time an application to collocate wireless facilities on a structure is filed with an authority. The term includes any structure that is capable of supporting the attachment of wireless facilities in compliance with applicable building codes, national electric safety codes and recognized industry standards for structural safety, capacity, reliability and engineering, including, but not limited to, towers, buildings and water towers.

(10) "Replacement" includes constructing a new wireless support structure of comparable proportions and of comparable height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation and includes the associated removal of the pre-existing wireless facilities, if any, or wireless support structure.

(11) "Small cell facility" means a personal wireless service facility as defined by the federal telecommunications act of 1996, as in effect on the effective date of this act, that meets both of the following qualifications: (A) Each antenna is located inside an enclosure of no more than six cubic
feet in volume, or in the case of an antenna that has exposed elements, the
antenna and all of the antenna's exposed elements could fit within an
imaginary enclosure of no more than six cubic feet; and
(B) primary equipment enclosures are no larger than 17 cubic feet in
volume, or facilities comprised of such higher limits as the federal
communications commission has excluded from review pursuant to 16
U.S.C. § 470f. Associated equipment includes, but is not limited to, any
electric meter, concealment, telecommunications demarcation box,
ground-based enclosures, back-up power systems, grounding equipment,
power transfer switch and cut-off switch.
(12) "Small cell network" means a collection of interrelated small cell
facilities designed to deliver wireless service.
(13) "Substantial modification" means a proposed modification to an
existing wireless support structure or base station that will substantially
change the physical dimensions of the wireless support structure or base
station under the objective standard for substantial change, established by
the federal communications commission pursuant to 47 C.F.R. 1.40001.
(14) "Transmission equipment" means equipment that facilitates
transmission for a wireless communications service licensed or authorized
by the federal communications commission including, but not limited to,
radio transceivers, antennas, coaxial or fiber optic cable and regular and
backup power supply. "Transmission equipment" includes equipment
associated with wireless communications services including, but not
limited to, private, broadcast and public safety services such as wireless
local area network services, and services utilizing a set of specifications
developed by the institute of electrical and electronics engineers for
interface between a wireless client and a base station or between two
wireless clients, as well as unlicensed wireless services and fixed wireless
services, such as microwave backhaul.
(15) "Wireless facility" means the set of equipment and network
components used to provide wireless data and wireless
telecommunications services, exclusive of the underlying wireless support
structure, including antennas, transmitters, receivers, base stations, power
supplies, cabling and accessory equipment.
(16) "Wireless Services" means "personal wireless services" and
"personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)
(C), including commercial mobile services as defined in 47 U.S.C.
§332(d), provided to personal mobile communication devices through
wireless facilities.
(17) "Wireless support structure" means a freestanding structure, such
as a monopole, guyed or self-supporting tower or other suitable existing or
alternative structure designed to support or capable of supporting wireless
facilities. "Wireless support structure" shall not include any telephone or
electrical utility pole or any tower used for the distribution or transmission
of electrical service.

(18) "Utility pole" means a structure owned or operated by a public
utility as defined in K.S.A. 66-104, and amendments thereto, a
municipality as defined in K.S.A. 75-6102, and amendments thereto, or an
electric cooperative as defined in K.S.A. 2015 Supp. 17-4652, and
amendments thereto, that is designed specifically for and used to carry
lines, cables or wires for telecommunications, cable, electricity or to
provide lighting.

(19) "Water tower" means a water storage tank or a standpipe, or an
elevated tank situated on a support structure that was originally
constructed for use as a reservoir or facility to store or deliver water.

(20) "Wireless services provider" means a provider of wireless
services.

(c) (1) An authority shall not charge an application fee, consulting fee
or other fee associated with the submission, review, processing and
approval of an application that is not required for similar types of
commercial development within the authority's jurisdiction.

(2) An authority shall only assess fees or charges for the actual costs
relating to the granting or processing of an application that are directly
incurred by the authority and the authority shall not charge any market-
based or value-based fees for the processing of an application. Such fees
and charges shall be reasonably related in time to the occurrence of such
costs.

(3) Any fee assessed by an authority may not include any travel
expenses incurred by a third party in the party's review of an application or
any direct payment or reimbursement of third-party fees charged on a
contingency basis or a result-based arrangement. In any dispute of a fee or
charge, the authority shall have the burden of proving that the fee or
charge is reasonably related to the direct costs incurred by the authority.

(4) The total charges and fees shall be the lesser of the amount
charged by the authority for: (A) A building permit for any other type of
commercial development or land use development;

(B) $500 for a collocation application, small cell facility application
or distributed antenna system application; or

(C) $1,000 for an application for a new wireless support structure or
for a substantial modification of a wireless support structure.

(d) (1) An authority may not charge a wireless services provider or
wireless infrastructure provider any rental, license or other fee to locate a
wireless facility or wireless support structure on any public right-of-way
controlled by the authority, if the authority does not charge other
telecommunications or video service providers, alternative infrastructure
or wireless services providers or any public or municipally-owned utilities
for the use of public right-of-way. If an authority does assess a charge, any
such charge must be competitively neutral, with regard to other users of
the public right-of-way, including public or municipally-owned utilities,
and may not be unreasonable or discriminatory or violate any applicable
state or federal law, rule or regulation.

(2) (A) Subject to the provisions of this subsection, a wireless
services provider shall have the right to construct, maintain and operate
wireless support structures, small cell wireless facilities or distributed
antenna systems along, across, upon or under the public right-of-way. Such
facilities shall be so constructed and maintained so as not to obstruct or
hinder the usual travel or public safety on such public right-of-ways or
obstruct the legal use of such public right-of-ways by other utilities. In the
exercise of an authority's administration and regulation related to the
management of the public right-of-way, the authority must be
competitively neutral with regard to other users of the public right-of-way,
may not be unreasonable or discriminatory and may not violate any
applicable state or federal law, rule or regulation.

(B) An authority may require a wireless services provider to repair all
damage to a public right-of-way caused by the activities of the wireless
services provider, while occupying, installing, repairing or maintaining
wireless facilities in a public right-of-way and to return the right-of-way to
its functional equivalence before the damage, pursuant to the
competitively neutral, reasonable requirements and specifications of the
authority. If the wireless services provider fails to make the repairs
required by the authority within a reasonable time after written notice, the
authority may effect those repairs and charge the provider the reasonable
cost of those repairs, provided such costs are subject to substantiation by
proof satisfactory to the wireless services provider before any payment
may become due.

(C) The provisions of this subsection shall not apply or give any
authority jurisdiction over the activities of wireless services providers in
public utility easements, private easements or on privately owned property.

(e) (1) An authority may enter into a lease with an applicant for the
applicant's use of public lands, buildings and facilities. When entering into
a lease for use of publicly owned lands, an authority shall offer leases or
contracts for applicants to use publicly-owned lands that are at least 20
years in duration and at market rates. Due to the benefit of increased
broadband and wireless services to the citizens of the authority, an
authority may choose not to charge for the placement of wireless facilities
on public lands. Any charges for use of publicly-owned lands and facilities
must be competitively neutral with regard to other users of the publicly-
owned lands and facilities, including public service or municipally-owned
utilities, may not be unreasonable or discriminatory and may not violate
any applicable state or federal law, rule or regulation.

(2) If the applicant and the authority do not agree on the applicable market rate for the use or lease of public land and are unable to agree on a process to determine the applicable market rate for any such public land, then the market rate will be determined by a panel of three appraisers. The panel will consist of one appraiser appointed by each party and a third appraiser selected by the two appointed appraisers. Each appraiser will independently appraise the appropriate lease rate and the market rate shall be set at the mean between the highest and lowest market rates among all three independent appraisals, unless the mean between the highest and lowest appraisals is greater than or less than 10% of the appraisal of the third appraiser chosen by the parties' appointed appraisers, in which case the third appraiser will determine the rate for the lease. The appraisal process shall be concluded within 150 calendar days from the date the applicant first tenders a proposed lease rate to the authority. Each party will bear the cost of the party's own appointed appraiser, and the parties shall share equally the cost of the third appraiser chosen by the two appointed appraisers.

(3) This subsection (e) shall not apply to public rights-of-way governed by subsection (d).

(f) To ensure uniformity across the state with respect to consideration of every application, an authority shall not:

(1) Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand for service or quality of the applicant's service to or from a particular area or site;

(2) require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. An authority may not require proprietary, confidential or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies;

(3) evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities including, but not limited to, the option to collocate, instead of construct, a new wireless support structure or for substantial modifications of a support structure;

(4) dictate the type of wireless facilities, infrastructure or technology to be used by the applicant including, but not limited to, requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure or discriminate between different types of infrastructure or technology;
(5) require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. This paragraph shall not preclude an authority from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;

(6) impose any restrictions with respect to objects in navigable airspace that are greater than, or in conflict with, any restrictions imposed by the federal aviation administration;

(7) establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality;

(8) impose surety requirements, including bonds, escrow deposits, letters of credit or any other type of financial surety to ensure that abandoned or unused facilities can be removed, unless the authority imposes similar requirements on other permits for other types of commercial development or land uses, and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the facility. If surety requirements are imposed, any such requirements shall be competitively neutral, non-discriminatory, reasonable in amount and commensurate with the historical record for local facilities and structures that are abandoned;

(9) discriminate or create a preference on the basis of the ownership, including ownership by the authority, of any property, structure or tower when promulgating rules or procedures for siting wireless facilities or for evaluating applications;

(10) impose any requirements or obligations regarding the presentation, appearance or function of the wireless facilities and equipment including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening or landscaping of facilities, if such regulations or obligations are unreasonable;

(11) impose any requirements that an applicant purchase, subscribe to, use or employ facilities, networks or services owned, provided or operated by an authority, in whole or in part, or by any entity in which the authority has a competitive, economic, financial, governance or other interest;

(12) impose environmental testing, sampling or monitoring requirements that exceed federal law;

(13) impose any compliance measures for radio frequency emissions or exposure from wireless facilities that comply with federal communications commission rules for radio frequency;

(14) in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject a collocation application or modification application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions or exposure;
(15) prohibit the placement of emergency power systems that comply
with federal and state environmental requirements;
(16) condition or require the approval of an application based on the
applicant's agreement to permit any wireless facilities provided or
operated, in whole or in part, by an authority or by any other entity to be
placed at, or collocated with, the applicant's wireless support structure;
(17) impose a setback or fall-zone requirement for a wireless support
structure that is different from a requirement that is imposed on other types
of commercial structures;
(18) prohibit, or have the effect of prohibiting, the provision of
personal wireless services or personal wireless service facilities or the
ability of any entity to provide any service in support of personal wireless
service facilities; or
(19) limit the duration of the approval of an application, except that
construction of the approved structure or facilities shall commence within
two years of final approval and shall be diligently pursued to completion.

(f) An applicant for a small cell network involving multiple
individual small cell facilities within the jurisdiction of a single authority
shall be permitted, upon request by the applicant, to file a consolidated
application and receive a single permit for the installation, construction,
maintenance and repair of a small cell network instead of filing separate
applications for each individual small cell facility. The authority shall
render a decision regarding small cell facilities that satisfy the authority's
requirements in a single administrative proceeding.

(g)(1) Within 150 calendar days of receiving an application for a new
wireless support structure and within 90 calendar days of receiving an
application for a substantial modification to an existing wireless support
structure or base station, or any other application for placement,
installation or construction of transmission equipment that does not
constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a),
an authority shall: (A) Review the application in light of the application's
conformity with applicable local zoning regulations;
(B) make a final decision to approve or disapprove the application;
and
(C) advise the applicant in writing of the authority's final decision,
supported by substantial and competent evidence contained in a written
record and publicly released contemporaneously. If an authority denies an
application, there must be a reasonable basis for the denial. An authority
may not deny an application if such denial is discriminatory against the
wireless applicant with respect to the placement of the facilities of other
public utilities or wireless carriers.

(2) The number of days an authority has to act under this subsection
shall be calculated in accordance with any rules established by the federal
communications commission pursuant to 47 U.S.C. § 332(c)(7) for calculating the time to act, when the time to act commences and the circumstances under which the time to act may be tolled. Any request for missing information regarding any of the prohibited considerations set forth in this section or pursuant to applicable federal law shall not toll the authority's time to act on the application.

(3) An application shall be deemed approved if an authority fails to act on an application for a: (A) New wireless support structure within the 150 calendar days review period specified; or (B) substantial modification to an existing wireless support structure or base station or any other applications for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a) within the 90 calendar days review period specified.

(4) An authority shall approve applications for eligible facilities requests, as defined by 47 U.S.C. § 1455(a), within the time periods and procedures established by federal law under 47 C.F.R. 1.40001.

(5) A party aggrieved by the final action of an authority, either by the authority affirmatively denying an application or by the authority's inaction, may bring an action for review in any court of competent jurisdiction.

(h) An authority may not institute any moratorium on the filing, consideration or approval of applications, permitting or the construction of new wireless support structures, substantial modifications of wireless support structures or collocations.

(i) Subject to the provisions of this section and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within their territorial boundaries with regard to the siting of new or the modification of wireless support structures, wireless facilities, small cell facilities or utility poles, except that no authority shall have or exercise any jurisdiction, authority or control over the construction, installation or operation of any small cell facility or distributed antennae system located in an interior structure or located on privately-owned property or property not otherwise owned or controlled by the authority.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.