Introduced by Friesen, 34.

Read first time January 19, 2021

Committee: Transportation and Telecommunications

1 A BILL FOR AN ACT relating to telecommunications and technology; to
define terms; and to provide for applications for the collocation of
certain wireless facilities.

4 Be it enacted by the people of the State of Nebraska,
Section 1. (1) For purposes of this section:

(a) Authority means any county, city, or village whose authorization is necessary prior to the deployment of a wireless facility;

(b) Collocate or collocation means to install or place a wireless facility on or adjacent to existing structures, including, but not limited to, buildings, electrical transmission towers, poles, towers, water towers, and other structures capable of supporting the attachment of wireless facilities in compliance with applicable codes;

(c) Eligible facilities request means a request (i) to modify an existing tower or wireless support structure that hosts a wireless facility and (ii) that does not substantially change the physical dimensions of such tower or wireless support structure involving collocation of equipment, removal of equipment, replacement of equipment, or modification to a tower site that would include ground excavation or deployment of up to thirty feet in any direction outside a tower's site;

(d) Site means towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a state or local government, if the approval of the modification occurred prior to the federal Middle Class Tax Relief and Job Creation Act of 2012, as such act existed on January 1, 2021, or otherwise outside of the section 6409(a) process of such act;

(e) Substantially change means to modify the physical dimensions of an existing tower or wireless support structure that hosts a wireless facility if such modification:

(i) Increases the height of a tower outside the public right-of-way
by more than ten percent or the height of one additional antenna array
with a separation not to exceed twenty feet, whichever is greater, or
increases the height of a tower inside the public right-of-way by more
than ten percent or ten feet, whichever is greater. Such increases shall
be measured from the existing tower's approved height;

(ii) Involves adding an appurtenance to a tower not in the public
right-of-way that would protrude from the edge of the tower more than
twenty feet or the width of the tower at the level of the appurtenance,
whichever is greater, or involves adding an appurtenance to the body of a
tower in the public right-of-way that would protrude by more than six
feet;

(iii) Involves the installation of more than the standard number of
new equipment cabinets, not to exceed four equipment cabinets; or

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

(f) Tower means any structure built for the sole or primary purpose
of supporting any licensed or authorized antennas and associated
facilities, including structures constructed for wireless communications;

(g)(i) Wireless facility means equipment at a fixed location that
enables wireless communications between user equipment and a
communications network, including (A) equipment associated with wireless
communications and (B) radio transceivers, antennas, coaxial or fiber-
optic cable, regular power supply, and small back-up battery, regardless
of technological configuration. Wireless facility does not include a
small wireless facility.

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

(h) Wireless support structure means a structure, such as a tower or other existing or proposed structure designed to support or capable of supporting wireless facilities other than a structure designed solely for the collocation of a small wireless facility.

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

(a) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by an outside consultant; or

(b) Reimbursement for a consultant that is based on a contingent fee or a results-based arrangement.

(3) An application fee under this section shall not exceed:

(a) Five hundred dollars for the review of an eligible facilities request or collocation application on an existing wireless support structure; or

(b) One thousand dollars for the review of an application to place a
new tower and associated wireless facility.

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

(5) A reviewing authority shall be subject to the sixty-day shot clock to review and approve an application for an eligible facilities request or modification. The shot-clock commences when (a) the applicant takes the first procedural step that the local jurisdiction requires as part of its applicable regulatory review process and (b) the applicant submits documentation showing that the modification qualifies for streamlined review.

(6)(a) A reviewing authority shall approve any eligible facility's request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(b) When an applicant asserts in writing that a request for modification is covered by this section, the reviewing authority may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A reviewing authority may not require an applicant to submit any other documentation, including, but not limited to, documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(c) Within sixty days of the date after which an applicant submits a request seeking approval under this section, the reviewing authority shall approve the application unless it determines that the application is not covered by this section.

(d)(i) The sixty-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing authority determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of
applications.

(ii) The reviewing authority shall provide written notice to the applicant within thirty days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under subdivision (6)(b) of this section.

(iii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the reviewing authority's notice of incompleteness.

(iv) Following a supplemental submission, the reviewing authority will have ten days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in subdivision (6)(d)(i) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(e) In the event the reviewing authority fails to approve or deny a request seeking approval under this section within the timeframe for review, accounting for any tolling, the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired, accounting for any tolling, that the application has been deemed granted.