

Siting of Wireless Telecommunications Infrastructure; Permit Application Process Between Wireless Service Providers and Municipalities; Kansas Universal Service Fund; Senate Sub. for HB 2131

Senate Sub. for HB 2131 creates law concerning the siting of wireless telecommunications infrastructure and the permit application process between wireless service providers and municipalities. In addition, the bill amends law regarding rural telephone companies and the Kansas Universal Service Fund (KUSF). The bill makes several changes to how a rural telephone company changes its local service rates, how KUSF support for rate of return carriers is determined, and the regulation of rural telephone companies that use VoIP or IP-enabled services.

Siting of Wireless Telecommunications Infrastructure

The bill establishes the Kansas Legislature finds and declares that wireless facilities are critical for Kansas citizens to have access to broadband and other advanced technology and information, along with the facilities being critical for the state's economy, and that the facilities are matters of statewide concern and interest.

Definitions

The following terms are among the 24 terms defined in the bill.

“Authority” means any governing body, board, agency, office, or commission of a city, county, or the State that is authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application. “Authority” does not include any school district, as defined in law, or any court having jurisdiction over land use, planning, zoning, or other decisions made by an authority.

“Public right-of-way” means only the area of real property in which the authority has a dedicated or acquired right-of-way interest in the real property. It includes the area on, below, or above present and future streets, alleys, avenues, roads, highways, parkways, or boulevards dedicated or acquired as right-of-way. “Public right-of-way” does not include any state, federal, or interstate highway right-of-way, which generally includes the area that runs contiguous to, parallel with, and is generally equidistant from the center of that portion of the highway improved, designed, or ordinarily used for public travel.

“Small cell facility” means a wireless facility that meets both of the following qualifications:

- 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 can fit within an imaginary enclosure of no more than six cubic feet; and
- Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the Federal Communications

Commission (FCC) has excluded from review pursuant to federal law. Associated equipment can be located outside the primary equipment and, if so located, is not to be included in the calculation of equipment volume. (Under the bill, 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, cut-off switch, and vertical cable runs for the connection of power and other services.)

“Small cell network” means a collection of interrelated small cell facilities designed to deliver wireless service.

“Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to:

- Equipment associated with wireless services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and
- Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

Fees

The bill establishes the application process for the siting of a wireless facility, including:

- The types of fees that an authority can or cannot charge or assess;
- The expenses that an authority can incur during an application review; and
- The cap on total charges and fees that can be assessed by the authority.

In addition, the authority will not be allowed to charge a fee to locate a wireless facility or support structure on any public right-of-way controlled by the authority, if the authority does not charge other providers for the same use. If the authority does charge other providers, then the fee charged to locate a wireless facility will be required to be competitively neutral and not unreasonable or discriminatory.

Construction, Maintenance, and Operation of Wireless Services within the Public Right-of-way

The wireless service provider will have the right to construct, maintain, and operate wireless services along, across, upon, under, or above the public right-of-way. The bill further specifies this provision should not be interpreted to grant any right to construct, maintain, or operate wireless services on property owned by the authority outside the public right-of-way.

The right to construct, maintain, and operate wireless services within the public right-of-way will always be subject and subordinate to the reasonable public health, safety, and welfare requirements and regulations of the authority, about which the authority may exercise its Home Rule powers, so long as doing so is competitively neutral and not unreasonable. Additionally, the authority may prohibit use or occupation of a part of the public right-of-way due to a reasonable public interest, so long as the reason is competitively neutral and not unreasonable or discriminatory.

The authority will be permitted to require a wireless services provider to repair damage to a public right-of-way that is caused by the activities of that provider or provider's agent while occupying, installing, repairing, or maintaining facilities in the public right-of-way. The authority also will have the ability to request a wireless services provider to relocate or adjust its facilities within the public right-of-way at no cost to the authority, as long as the request similarly binds all users of the right-of-way. The bill will require the authority to provide advance notice and for the relocation be directly related to public health, safety, or welfare.

The authority will have a cause of action against a provider for violation of this law that causes damages and can recover damages, including reasonable attorney fees, if the provider is found liable by a court of competent jurisdiction.

Wireless services and infrastructure providers will be required to indemnify and hold the authority harmless against any claims, lawsuits, judgments, costs, liens, losses, expenses, and fees to the extent it is found by a court of competent jurisdiction to be caused by the negligence of the wireless services or infrastructure provider.

An authority will have the ability to enter into a lease with an applicant for the use of public lands, buildings, and facilities, with the offered leases being at least ten years in duration, unless otherwise agreed to by both the applicant and the authority, and at market rates. Charges for placement of wireless facilities on public lands, if the authority chooses to charge, are required to be competitively neutral and not unreasonable, discriminatory, or in violation of existing federal or state law.

Limits on the Authority

To ensure uniformity across the state with respect to consideration of every application, the bill establishes 18 restrictions on the authority regarding what information can or cannot be required during the application process. The bill specifies the new law does not apply to military installations and would clarify the authority cannot impose restrictions at or near civilian airports. The bill also requires the authority to consider input from property owners adjoining the affected public right-of-way.

Small Cell Networks

Applicants for small cell networks involving no more than 25 individual small cell facilities of substantially similar design will be permitted 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 facility. The authority will be required to

render a decision no later than 60 days after the submission of an application regarding small cell facilities.

Timing for Review

The authority will be required to review an application, make a final decision, and advise the applicant of the decision in writing within 150 calendar days of receiving an application for a new wireless support structure or within 90 calendar days of receiving an application for a substantial modification to an existing wireless support structure, or any other application that will not constitute an eligible facilities request as defined in federal law.

The bill also provides for a time period when applications are found to be incomplete and will require approval of an application if the authority fails to act on an application within the required time frame. The authority cannot institute any moratorium on applications.

Interior Structures

The bill allows the authority to continue to exercise zoning, land use, planning, and permitting authority within the authority's territorial boundaries, with regard to the siting of new or the modification of existing wireless structures. The bill restricts the authority's ability to exercise any zoning or siting jurisdiction, authority, and control over the construction, installation, or operation of any small cell facility or distributed antennae system located in an interior structure or upon the site of any campus, stadium, or athletic facility.

Definition of "Provider" Clarified

The bill specifies the definition of "provider" in a continuing statute does not include an applicant as defined above.

Effective Date

The provisions regarding siting of wireless telecommunications infrastructure will take effect on and after October 1, 2016, and upon publication in the statute book.

Kansas Universal Service Fund

Limitation on Use of KUSF

The bill restricts a local exchange carrier (LEC) electing to operate under traditional rate of return regulation, or an entity in which a carrier directly or indirectly owns an equity interest of 10.0 percent or more, from using KUSF funding. An exception exists for Kansas Lifeline Service Program purposes, providing telecommunication services in an area outside the carrier's authorized service area.

Price Regulation of Telecommunications Services

Rates for the initial residential local exchange access line and up to four business local exchange access lines at one location will remain subject to price cap regulation and all other rates, except rates for switched-access services, will be deemed price-deregulated.

In addition, the LEC will be authorized to adjust rates, without the Kansas Corporation Commission's (KCC) approval, by not more than the greater of the percentage increase in the consumer price index for all urban consumers or the amount necessary to maintain the local rate floor as determined by the FCC in any one-year period, and the rates cannot be adjusted below the price floor established in continuing law.

Reporting Requirements

The bill removes the requirement for the KCC to determine the weighted, statewide average rate of non-wireless basic local telecommunications service and telecommunications services in exchanges that have been price-deregulated and report that information annually to the Governor, the Legislature, and each member of the standing committees of the House and Senate that are assigned telecommunications issues. The bill also eliminates the KCC's annual reporting requirement on the current rates for services provided by all telecommunications carriers, services in price-deregulated exchanges, service offerings, and number of competitors in price-deregulated exchanges.

Individual Customer Pricing

The bill allows a LEC to offer individual customer pricing without prior approval by the KCC. In response to a complaint filed with the KCC that an individual customer pricing agreement is priced below the price floor set forth in continuing law, the KCC will be required to issue an order within 60 days after the filing, unless the complainant agrees to an extension.

Application by Rural Telephone Companies; FUSF Support

The KCC will be required to approve an application within 45 days by a rural telephone company to increase the company's local service rates in a necessary amount for the company to maintain eligibility for full Federal Universal Service Fund (FUSF) support. If the KCC does not approve the application within 45 days, the application will be deemed approved.

KUSF Contributions and Support; Regulation

The bill changes the required contributions to the KUSF to be based upon the provider's intrastate telecommunications services net retail revenues on an equitable and non-discriminatory basis. (Prior law required KUSF contributions to be on an equitable and non-discriminatory basis.) In addition, the KCC will be restricted from requiring any provider to contribute to the KUSF under a different contribution methodology than the provider uses for purposes of the FUSF, including for bundled offerings.

Additionally, for each LEC electing to operate under traditional rate of return regulation, all KUSF support will ensure the reasonable opportunity for recovery of the carrier's intrastate embedded costs, revenue requirements, investments, and expenses, subject to the annual cap of \$30.0 million.

No KUSF support received by a LEC electing to operate under traditional rate of return regulation will be allowed to be used to offset any reduction of FUSF support for recovery of the carrier's interstate costs and investments.

In any year the total KUSF support for carriers may exceed the annual cap of \$30.0 million, each carrier's KUSF support will be proportionately based on the amount of support each carrier would have received, absent the cap.

The bill also specifies that law regarding regulation of VoIP services, IP-enabled services, or any combination thereof cannot be construed to modify the regulation of any rural telephone company.