

SENATE BILL NO. 198
INTRODUCED BY E. STONINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO WIRELESS TELECOMMUNICATIONS FACILITIES; DEFINING "PERSONAL WIRELESS TELECOMMUNICATIONS CARRIER" AND "WIRELESS TELECOMMUNICATIONS FACILITY"; INCLUDING WIRELESS TELECOMMUNICATIONS FACILITIES UNDER PLANNING BOARD POLICY CONSIDERATIONS; ALLOWING A COUNTY TO REGULATE THE SITING, CONSTRUCTION, OR MODIFICATION OF A WIRELESS TELECOMMUNICATIONS FACILITY; PROVIDING NOTIFICATION REQUIREMENTS; AUTHORIZING PERMITS AND FEES FOR PERMITS; AMENDING SECTIONS 69-3-803 AND 76-1-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-803, MCA, is amended to read:

"69-3-803. Definitions. As used in this part, the following definitions apply:

- (1) "Commission" means the public service commission.
- (2) "Eligible telecommunications carrier" means a telecommunications provider designated by the commission under 69-3-840.
- (3) "Fund" means the universal service fund established in 69-3-842.
- (4) "Incumbent local exchange carrier" means, with respect to an area, the local exchange carrier that:
 - (a) on February 8, 1996, provided telephone exchange service in the area; and
 - (b) on February 8, 1996, was considered to be a member of the exchange carrier association pursuant to 47 CFR 69.601(b) or is a person or entity that, after that date, became a successor or assign of a member of the exchange carrier association.
- (5) "Personal wireless telecommunications carrier" means a telecommunications provider of commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as described in 47 U.S.C. 153 and 332.

~~(5)~~(6) "Private telecommunications service" means a system, including the construction, maintenance, or operation of the system, for the provision of telecommunications service or any portion of the service, by a person or entity for the sole and exclusive use of that person or entity and not for resale, directly or indirectly. For

purposes of this definition, the term "person or entity" includes a corporation and all of its affiliates and subsidiaries if the corporation, affiliates, and subsidiaries have a common ownership or control of 80% of the outstanding voting shares.

~~(6)~~(7) (a) "Regulated telecommunications service" means two-way switched, voice-grade access and transport of communications originating and terminating in this state and nonvoice-grade access and transport if intended to be converted to or from voice-grade access and transport.

(b) The term does not include the provision of terminal equipment used to originate or terminate the regulated service, private telecommunications service, one-way transmission of television signals, cellular communication, or provision of radio paging or mobile radio services.

~~(7)~~(8) "Retail revenue" means the gross Montana revenue from telecommunications services that originate or terminate in Montana and are billed for a service address in Montana, excluding revenue from the resale of telecommunications services to another telecommunications services provider that uses the telecommunications services to provide telecommunications services to the ultimate retail consumer who originates or terminates the transmission.

~~(8)~~(9) "Rural telephone company" means a local exchange carrier operating entity to the extent that the entity:

(a) provides common carrier service to any local exchange carrier study area that does not include either:

(i) all or any part of an incorporated place of 10,000 inhabitants or more based on the most recently available population statistics of the United States bureau of the census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the United States bureau of the census as of August 10, 1993;

(b) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(c) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(d) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996.

~~(9)~~(10) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing without a change in the form or content of the information upon receipt.

~~(10)~~(11) "Telecommunications carrier" or "carrier" means ~~any~~ a provider of telecommunications services, including wire-based and wireless communications. A person providing other products and services in addition to telecommunications services is considered a telecommunications carrier only to the extent that it is engaged

in providing telecommunications services. The term does not mean aggregators of telecommunications services as defined in 47 U.S.C. 226.

(12) (a) "Wireless telecommunications facility" means:

(i) a fixed tower used for wireless telecommunications signals;

(ii) an unstaffed enclosure used for the transmission or reception of telecommunications signals, whether by wire, radio frequency, microwave, or other signal for communications purposes;

(iii) an antenna support structure, which includes towers and alternative fixed support structures such as utility poles, church steeples, clock towers, flagpoles, or any other existing or new structure used to support an antenna within the surrounding setting; or

(iv) an antenna, which is a fixed structure or a device used for the purpose of receiving or transmitting radio frequency signals or electromagnetic waves, including but not limited to directional antennae, such as panels, microwave dishes, and satellite dishes, and omni-directional antennae, such as whip antennae, but not including satellite earth stations.

(b) The term does not include facilities for amateur radio or for television or radio broadcasting as defined under Title 47 U.S.C. 153."

Section 2. Section 76-1-106, MCA, is amended to read:

"76-1-106. Role of the planning board. (1) To ensure the promotion of public health, safety, morals, convenience, or order or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a growth policy and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may also propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities, including wireless telecommunications facilities as defined in 69-3-803;

(c) the issuance of improvement location permits on platted and unplatted lands; or

(d) the laying out and development of public ways and services to platted and unplatted lands."

NEW SECTION. Section 3. Siting of wireless telecommunications facilities -- county regulations.

(1) Under the provisions of the national wireless telecommunications siting policy, 47 U.S.C. 253 and 47 U.S.C. 332(c), states and local authorities are prohibited from barring market entry of personal wireless

telecommunications carriers but are allowed to impose requirements to protect the public safety or welfare.

(2) A county may regulate through ordinance, pursuant to 7-5-103, the placement, construction, or modification of wireless telecommunications facilities on nonfederal lands within county boundaries. Regulations adopted by a county under this section:

(a) may not discriminate among telecommunications carriers that provide functionally equivalent services;

(b) may not prevent telecommunications carriers from offering services within the county;

(c) may not use environmental concerns about radio frequency emissions that are within the limits allowed by the federal communications commission under 47 U.S.C. 332(c)(7)(B)(iv);

(d) must encourage grouping of wireless telecommunications facilities if total emissions do not exceed radio frequency emissions allowed by the federal communications commission;

(e) must require action on a request for placement, construction, or modification in a specified period;

(f) must require written documentation of a denied request, accompanied by material that explains and supports the denial;

(g) may include a requirement for a surety bond to address abandonment without cleanup or removal of a wireless telecommunications facility. Counties may provide incentives through a surety bond to telecommunications carriers that cooperate with competitors in colocating telecommunications facilities.

(h) may not regulate wireless telecommunications facilities established for public safety services, as defined by 47 U.S.C. 337(f)(1).

(3) A county may allow telecommunications carriers to establish wireless telecommunications facilities on existing rights-of-way unless:

(a) public safety or welfare is impaired;

(b) the existing rights-of-way cannot accommodate additional telecommunications facilities; or

(c) an air traffic corridor is impaired.

(4) A county may establish requirements for maintenance and removal of an abandoned telecommunications facility.

NEW SECTION. Section 4. Notification requirements. (1) A personal wireless telecommunications carrier applying for the placement, construction, or modification of a wireless telecommunications facility on privately owned or nonfederal public land within a county shall file with the board of county commissioners in the county in which the action is to take place a notification of intent to place, construct, or modify a wireless

telecommunications facility. The notification of intent is required regardless of whether a county has adopted regulations for the placement, construction, or modification of wireless telecommunications facilities. The notification of intent must include the proposed location of the wireless telecommunications facility and the name, address, and contact information for an officer at the company responsible for the wireless telecommunications facility.

(2) The board of county commissioners that receives a notification of intent under subsection (1) shall notify:

(a) the aeronautics division of the department of transportation regarding the proposed location of the wireless telecommunications facility and the contact information for the company responsible for the facility; and
 (b) adjacent landowners of record.

(3) A notification of intent under subsection (1) must be provided at least 3 weeks prior to placement, construction, or modification or in time to meet deadlines of county ordinances, if they exist, whichever provides the longest notification period.

NEW SECTION. **Section 5. Permits authorized.** The board of county commissioners may require permits for placement, construction, or modification of wireless telecommunications facilities and may set fees for the permits. Fees must be reasonable and may not discriminate among personal wireless telecommunications carriers. Fees collected under this section must be deposited in the county's general fund.

NEW SECTION. **Section 6. Codification instruction.** [Sections 3 through 5] are intended to be codified as an integral part of Title 69, chapter 3, part 8, and the provisions of Title 69, chapter 3, part 8, apply to [sections 3 through 5].

NEW SECTION. **Section 7. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 9. Applicability.** [This act] applies to a wireless telecommunications facility that is placed, constructed, or modified after [the effective date of this act].

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