

The deployment of reliable small wireless facilities and other next generation wireless and broadband network technology is a matter of statewide concern and important to the continued economic development and diversification in the state of West Virginia. Small wireless facilities are integral to delivering wireless access to advanced technology, broadband, and 911 services to homes, businesses, and schools. Because of the integral role that the delivery of broadband and wireless technology plays in the economic vitality of the state and in the lives of its citizens, the West Virginia Legislature has determined that a law addressing the further deployment of wireless technology is of vital interest to the state. Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, may often be deployed most effectively in public rights-of-way.

To meet the key objectives of recently approved legislation, wireless Providers must have access to certain public rights-of-way and the ability to attach or collocate on existing infrastructure that will permit these Providers to offer next generation wireless and broadband technology. To ensure that public and private West Virginia consumers may benefit from these services, as soon as possible, and to ensure that Providers of wireless access have a fair and predictable process for the deployment of small wireless facilities, in a manner consistent with the character of the area in which the small wireless facilities are deployed, the West Virginia Legislature has specified the regulatory authority for the collocation, installation and maintenance of small and micro wireless facilities.

I. DEFINITIONS.

- A. “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.
- B. “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes, including the National Electrical Safety Code.
- C. “Applicant” means any person who submits an application and is a wireless Provider.
- D. “Application” means a request submitted by an applicant to the Division for a permit to collocate small wireless facilities or to approve the installation, modification, or replacement of a utility pole or wireless support structure.
- E. “CII” means Critical Infrastructure Industries.
- F. “Collocate” or “collocation” means to install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole.

- G. “Commissioner” means the Commissioner of the West Virginia Division of Highways or his or her designee.
- H. “Communications service” means cable service, as defined in 47 U.S.C. 522(6), as amended; information service, as defined in 47 U.S.C. 153(24), as amended; telecommunications service, as defined in 47 U.S.C. 153(53), as amended; mobile service, as defined in 47 U.S.C. 153(33), as amended; or wireless service other than mobile service.
- I. “Communications service Provider” means any entity that provides communications service.
- J. “Day” means an interval of 24 hours as represented by a calendar day in which normal business operations are conducted by the Division, Monday through Friday from 7:30 am to 4:00 pm. When determining the time in which an act must be completed the provisions of W. Va. Code §2-2-1 shall be followed.
- K. “District” means one of the management areas of the state, which include one or more counties, established by the Division of Highways, with each district headed by a separate district engineer or manager. A list of the Division of Highways’ Districts and contact information for each is available on the Division’s website at <https://transportation.wv.gov/highways/districts/Pages/default.aspx>.
- L. “Division” means the West Virginia Division of Highways.
- M. “FCC” means the Federal Communications Commission of the United States.
- N. “Fee” means a one-time, nonrecurring charge.
- O. “Law” means a federal or state statute, common law, code, rule, regulation, order, or a local ordinance or resolution.
- P. “Micro wireless facility” means a small wireless facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and any exterior antenna 11 inches or less.
- Q. “Permit” means a written authorization required by the Division to perform an action or initiate, continue, or complete a project on the Division’s right-of-way.
- R. “Right-of-way” or “R/W” means the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including interstate highway.
- S. “Small wireless facility” means a wireless facility that meets both of the following qualifications:

1. Each antenna could fit within an imaginary enclosure of no more than 6 cubic feet; and

2. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: Electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and communications services.

T. “Utility pole” means a pole or similar structure that is or may be used, in whole or in part, by a communication services Provider, or for electric distribution, lighting, traffic control, signage (if the pole is 15 feet or taller), or a similar function, or for the collocation of small wireless facilities. However, “utility pole” does not include wireless support structures or electric transmission structures.

U. “Wi-Fi” means the standard wireless local area network (WLAN) technology for connecting computers and myriad electronic devices to each other and to the internet. It is the wireless version of a wired Ethernet network, and is commonly deployed alongside it.

V. “Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including:

1. Equipment associated with wireless communications; and

2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. “Wireless facility” includes small wireless facilities. “Wireless facility” does not include:

- a. The structure or improvements on, under, or within which the equipment is collocated; or

- b. Wireline backhaul facilities, coaxial or fiber-optic cable that is between wireless support structures or utility poles, or coaxial or fiber-optic cable that is otherwise not immediately adjacent to, or directly associated with, an antenna.

W. “Wireless infrastructure Provider” means any person or entity, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities, wireless support structures, or utility poles, but that is not a wireless Provider.

X. “Wireless provider” or “Provider” means a wireless infrastructure provider or a wireless service provider.

Y. “Wireless services” means any services, using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile location, provided to the public using wireless facilities.

Z. “Wireless service provider” means a person who provides wireless services.

AA. “Wireless support structure” means a structure, such as a monopole; tower, either guyed or self-supporting; billboard; or other existing or proposed structure designed to support or capable of supporting wireless facilities. “Wireless support structure” does not include a utility pole.

AB. “Wireline backhaul facility” is a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

II. APPLICABILITY.

This document provides guidance concerning the considerations within the Utility Manual and the provisions of W.Va. Code that allow Telecommunications Carriers to install within Division right-of-way telecommunications facilities upon such terms as are acceptable to the Division and the FHWA. This guidance does not supersede existing federal or State guidelines, policy or procedures, or violate any provisions identified in the West Virginia Code of State Regulations pertaining to utility installation within Division rights-of-way. The provisions of this document are applicable to all Telecommunications Carriers that perform work within the State of West Virginia. Further, this guidance is applicable to any fully or partially controlled access right-of-way, non-controlled access right-of-way, or other property or real estate owned by the Division.

Telecommunications Carriers seeking to locate facilities within Division right-of-way may provide some form of compensation to the Division for costs incurred as a result of use and occupancy of the right-of-way, and those Telecommunications Carriers will be required to comply with all other applicable requirements of the federal Telecommunications Act of 1996, as amended. Except where they are expressly exempted from the requirements and rules of the Utility Manual, Telecommunications Carriers will comply with and observe all other restriction and requirements contained within the Utility Manual. Telecommunications Carriers do not have to provide proof that they have the power of eminent domain.

Small Wireless Facilities permit applications (DOH Form MM-109), which have specific deadlines set by law, will be given by the DOH priority over all other permit applications.

A. This guidance applies to all activities of a wireless Provider within the R/W and provides DOH employees and Providers instruction on the permit process. Additional review may be necessary for activities of a wireless Provider seeking to collocate on a DOH utility pole or wireless support structure, including review by Traffic Engineering.

B. An application for an encroachment permit for a small or micro wireless facility is time-sensitive and is the number one priority permit for review and action by the Division and Districts. The timeframes for action must be strictly adhered to or the application is approved by operation of law.

C. A Provider planning to install, maintain, modify and replace its own poles or, with the permission of the owner, a third party's utility pole, along, across, upon, and under the Division's R/W, by the use of small or micro wireless facilities, shall submit a permit application to the Division of Highways (permit application electronically available at <https://transportation.wv.gov/highways/engineering/files/MM-109.pdf>) by mailing the application to the appropriate District Office. District addresses are available in the Utility Manual at the following address:

https://transportation.wv.gov/highways/engineering/files/ACCOMMODATION_OF_UTILITIES.pdf

D. By signing the Encroachment Permit Application (MM-109), the applicant is affirming permission from the pole owner to install a small wireless or micro wireless facility on the utility pole or wireless support structure.

E. The Division will assign a tracking number to the application and promptly begin the review.

F. At a minimum, the following information is required:

1. A complete Permit Application, MM-109, with all necessary attachments.
2. Plan View (submitted in .pdf, .kmz, or .dgn formats) with coordinates that indicate the proposed small or micro wireless facilities locations.
3. Description of work within the Division's R/W with details, including but not limited to:
 - a. Size of transmitter/receiver.
 - b. Height of installation not to exceed the greater of 10 feet in height above the tallest existing utility pole in place on March 5, 2019, located within 500 feet of the new pole in the same right-of-way; or 50 feet above ground level.

- c. New small wireless facilities in the right-of-way on a new utility pole may not extend above the height permitted for a new utility pole.
- d. Attachment details.
- e. Point of electrical service and meter location.
- f. Fiber optic connections.
- g. Location map.
- h. Temporary traffic control plan.
- i. Inspection fees and bond, as applicable.
- j. Completed Submission Checklist. A copy of the checklist is attached as Appendix A.
- k. Existing utility status report.

G. The applicant shall coordinate the installation, maintenance, and modification of an existing facility with the District Traffic Engineer or his or her designee.

III. PROCESSING THE APPLICATION.

A. The responsible District or Districts shall review the application for completeness and accuracy **within 10 days** of receipt of the application by the Division. If the application is incomplete the District shall send the applicant a letter detailing the deficiencies of the application.

B. The District **must approve or deny** a completed application for **collocation** of a small or micro wireless facility **within 60 days** of the receipt of the application. An application for installation, modification, or replacement of a **utility pole** in the R/W must be approved or denied **within 90 business days** from the receipt of the application. **Applications not acted upon within the processing deadlines are deemed approved by law.** The processing deadlines may be extended by written approval of the Provider and the District.

C. The applicant may correct the deficiencies and return the application to the District. The deadlines are stopped pending receipt of the requested information. Once the supplemental information is received, the District has **10 days to review the supplemental information** for completeness and notify the Provider of any deficiency in the supplemental information.

D. If the application meets all statutory and regulatory requirements and this guidance, the District shall issue a permit granting access to the right of way as specified in the permit.

1. The District will scan and add the Permit to its tracking system.
2. The District will send a scanned copy of the Permit and attachments to DR-Utility.

E. Denial of an application **at any stage of the process** must be in writing and provide the basis for the denial including the specific federal or state law, code, regulation, or rule provisions on which the denial was based.

1. An application for collocation of a small or micro wireless facility or installation, modification, or replacement of a utility pole that meets the requirements of the Small Wireless Facilities Act, W. Va. Code 31H-1-1 *et seq.*, and this guidance may be denied only if the proposed application:

- a. Materially interferes with the safe maintenance or operation of traffic control equipment;
- b. Materially interferes with sight lines or clear zones for transportation or pedestrians;
- c. Materially interferes with compliance with the Americans with Disabilities Act, Public Rights-of-Way Accessibility or similar federal or state standards regarding pedestrian access or movement;
- d. Fails to comply with reasonable and nondiscriminatory spacing requirements of general application adopted by legislative rule or standards that concern the location of ground-mounted equipment and new utility poles. Such spacing requirements may not prevent a wireless Provider from serving any location.
- e. Fails to comply with applicable codes, legislative rule, and generally applicable standards that are consistent with the Small Wireless Facilities Act adopted by the Division for construction and public safety in the rights-of-way, including reasonable and nondiscriminatory wiring and cabling requirements, grounding requirements, and abandonment and removal provisions;
- f. Fails to attest that a small wireless facility will comply with relevant Federal Communications Commission (FCC) regulations concerning:
 - i. Radio frequency emissions from radio transmitters; and
 - ii. Unacceptable interference with the public safety spectrum and CII spectrum, including compliance with the abatement and resolution procedures for interference with the public safety

spectrum and CII spectrum established by the FCC set forth in 47 C.F.R. 22.970 through 47 C.F.R. 22.973 and 47 C.F.R. 90.672 through 47 C.F.R. 90.675;

2. The denial is effective the day the District mails, by United States Mail or electronic means, the denial to the applicant.
3. The applicant may cure the deficiencies listed in the denial and resubmit the application within 30 business days without paying an additional application fee. Review of the resubmitted application is limited to the specific deficiencies listed in the denial. If the resubmittal is deficient, the Division must submit a second denial in writing to the applicant and provide the basis for the denial including the specific federal or state code, regulation, or rule provisions on which the denial was based. The applicant may cure the deficiencies listed in the second denial and resubmit the application within 30 business days without paying an additional application fee.

IV. INSTALLATION

A. The Provider is required to:

1. Install and maintain its structures and facilities in a manner that will not obstruct or hinder the usual travel or public safety on the right-of-way or obstruct the legal use of the right-of-way by the Division or other entities permitted by the Division to access the right-of-way.
2. Install and maintain its structures and facilities on specific utility poles or category of poles designated by the Division, install multiple antenna systems on a single utility pole, or utilize underground placement if required by the Division.
3. Install its small wireless facilities within specific minimum separation distances if required by the Division.
4. Repair all damage to the right-of-way directly caused by the Provider's activities and return the right-of-way to its functional equivalence prior to the damage, as determined by the Division.
 - a. The Division shall give written notice to the Provider of the repairs to be made and a reasonable period of time in which to complete the repairs.
 - b. If the Provider fails to make the repairs required in the time allowed, the Division may complete the repairs and charge the Provider the reasonable, documented cost of the repairs.

c. After providing written notice, the Division may assess a fine of \$100 per day that the Provider fails to make the required repairs.

B. The Provider shall coordinate its work with the District, which includes but is not limited to the following:

1. The Provider is required to contact the District Utility Supervisor a minimum of 48 hours prior to construction or as designated in the permit application; and
2. The Provider will cooperate in allowing the District to inspect the work performed by the Provider within the Division's R/W.

V. FEES.

A. The Division will charge \$65.00 per utility pole, annually, for small facilities installations on Division-owned utility poles. The fee may be increased ten percent (10%) every five (5) years; rounded to the nearest \$5.00.

B. The Division will charge a lump sum \$200.00 application fee for the first five (5) small wireless facilities in the same application, and \$100.00 for each additional facility thereafter in the same application. The fee may be increased ten percent (10%) every five (5) years; rounded to the nearest \$5.00.

C. The Division will charge a \$250.00 application fee for each application for a permitted use to install, modify or replace a utility pole and the collocation of small wireless facilities within the R/W. The fee may be increased ten percent (10%) every five (5) years; rounded to the nearest \$5.00.

D. The Division will charge a \$1,000.00 application fee for each application to install, modify or replace a utility pole for a use that is not permitted in accordance with the specifications of the Small Wireless Facilities Act and the collocation of small wireless facilities within the R/W. The fee may be increased ten percent (10%) every five (5) years; rounded to the nearest \$5.00.

VI. INSURANCE AND BONDS.

A. The Division may require the Provider to carry, at the Provider's own cost and expense, the following insurance:

1. Property insurance for its property's replacement cost against all risks;
2. Workers' compensation insurance, as required by law; or

3. commercial general liability insurance with respect to its activities on the Division's R/W or other property to afford minimum protection limits consistent with its requirements of other uses of the R/W, including coverage for bodily injury and property damage. The Division may require a Provider to include the Division as an additional insured on the commercial general liability policy and provide certification and documentation of inclusion of the Division in a commercial general liability policy.

B. The Division may require the Provider to obtain a bond per the terms of the permit.

VII. DOH AUTHORIZATIONS

A. Individual authorizations shall NOT be created when entering the permit into the database.

B. District-wide authorizations have been set up in order for WVDOH to track expenses associated with small cell installations. It is imperative that these authorizations be used when reviewing a small cell permit or inspecting a small cell installation.

C. The authorizations are as follows:

- | | |
|-------------------------|--------------------------|
| a. District 1 – PC1000R | f. District 6 – PC5000R |
| b. District 2 – PC2000R | g. District 7 – PC7000R |
| c. District 3 – PC3000R | h. District 8 – PC8000R |
| d. District 4 – PC4000R | i. District 9 – PC9000R |
| e. District 5 – PC5000R | j. District 10 – PC1010R |

VIII. MISCELLANEOUS.

A. Relocations or modifications of existing telecommunication facilities in the Division's R/W, as a result of a Division's project, shall be in accordance with the provisions of W.Va. Code §17-4-17b and the "*Accommodation of Utilities on Highway Right of Way and Adjustment and Relocation of Utility Facilities on Highway Projects*".

B. The Division, in its sole discretion, may deny any access to the R/W if access would compromise the safe, efficient, and convenient use of any road, route, highway, or interstate in this state for the traveling public.

C. Access to the Division's R/W under this Guidance does not abrogate, limit, supersede, or otherwise affect access granted or authorized pursuant to the Division's rules, policies, and guidelines.

APPENDIX A

Small Wireless Facilities Application Submission Checklist

Project Name: _____

Project Location (Route, County): _____

Submission Date: _____ Received by Division: _____

Completeness Review Date (Provided by District): _____

Approval Date (Provided by District): _____

1. Permit Application, as submitted by the Provider, for Small Wireless Facilities installation, extension, expansion or upgrade within WVDOH R/W in adherence to the West Virginia Code §31H-2-3.
 - a. Application (Submitted to WVDOH and Broadband Enhancement Council):
 - MM109.
 - Provider's Contact Information (Responsible Employee's Name, Mailing Address, Phone Number, Email Address).
 - Plan View (*.pdf, *.kmz, or *.dgn format), Profile View, Cross Sections (if applicable).
 - Description of Work, Location Map, Pole Numbers, Temporary Traffic Control Plan, Details (Transmitter/Receiver size, Height of Installation, Meter Location, Trench Repair, Conduit Size and Type, Number of Innerducts, etc. as applicable).
 - GPS Coordinates of each Location.
 - Insurance, Inspection Fees and Bond (if applicable).
 - Completed Application Submission Checklist.
 - b. Application Reviewed by District:
 - Determination of Completeness within 10 days of Submission.
 - Size of Transmitter/Receiver (As defined in WV Code §31H-1-2).
 - Height of Installation:
 - Top of Receiver may not exceed 10 feet above tallest utility pole as of March 5, 2019 within 500 feet of other poles in the same R/W.
 - New pole is within the same R/W.
 - New or modified utility pole does not exceed 50 feet in height above ground level.

Small Wireless Facilities Application Submission Checklist

- b. Application Reviewed by District (cont.):
 - A small wireless facility, in the R/W, may not extend more than 10 feet above a utility pole that was in existence as of March 5, 2019 nor exceed height permitted for a new pole.
 - Attachment Details:
 - Point of Electrical Service and Meter Location.
 - Fiber Optic Connections.
 - Location Map and GPS Coordinates.
 - Temporary Traffic Control Plan (Installation and Future Maintenance).
 - Proof of Insurance and Bond.
 - Attachment Affidavit.
 - Completed Application Submission Checklist.
 - Application Approval/Denial:
 - Determination of Approval/Denial within 30 days of Submission.
 - Provide Applicant, in writing, Reasons for Denial.
- 2. Calculate Rates or Application Fees (Adjustable every 5 years by 10%, rounded to nearest five dollars):
 - \$65 per year per pole to Collocate Small Wireless Facilities on Division's utility poles.
 - Application Fee of \$200 for first 5 Small Wireless Facilities in same application & \$100 for each additional Small Wireless Facility in the same application for Collocation of Small Wireless Facilities on existing utility pole.
 - Application Fee of \$250 for installation, modification or replacement of a utility pole and the Collocation of a Small Wireless Facility in a permitted use.
 - Application Fee of \$1,000 for installation, modification or replacement of a utility pole and the Collocation of a Small Wireless not in a permitted use.
- 3. Finalize Application (WVDOH Personnel)
 - Collect Fees.
 - Issue Permit.
 - Send Copy of Approved Permit to Council.
 - Applicant to inform WVDOH a minimum of 48 hours prior to commencing work.