

REQUEST FOR BOARD ACTION

HENDERSON COUNTY PLANNING BOARD

MEETING DATE: March 21, 2024

SUBJECT: Discussion of Communication Facilities in Land Development Code

PRESENTER: Autumn Radcliff, Planning Director
Matt Champion, Zoning Administrator

ATTACHMENTS:

1. Existing LDC Text on Communication Facilities
2. Communication Facilities Application
3. NCGS 160D Wireless Telecommunication Facilities
4. Title 47 of the US Code

SUMMARY OF REQUEST:

During the adoption of the Land Development Code (LDC) in September of 2007, Henderson County implemented specific requirements with regards to Communication Facilities. The LDC broke Communication Facilities into three (3) categories: Category 1, Category 2, and Category 3. Category 1 and 2, facilities less than 200', are permitted by right in all zoning districts and Category 3, facilities greater than 200', is only allowed as a special use permit in the Industrial (I) zoning district.

When Chapter 160D was adopted by the NC Legislature, the purpose was aimed at "advanced mobile broadband and wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare." This specific general statute went on to further explain "placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act and the Middle Class Tax Relief and Job Creation Act."

Staff will provide an overview of the existing regulations found in the Henderson County LDC, NCGS, and Federal regulations pertaining to Communication Facilities.

BOARD ACTION:

No Board action is requested at this meeting.

Suggested Motion:

None.

SR 9.3. Communication Facilities

(1) General Standards.

- a. Site Plan. Communication Facility *Site Plan* in accordance with §42-327 (Communication Facility Site Plan Review).
- b. Certification, Licensure and Permitting. Prior to erecting, installing or operating a communication facility, a structural engineering certification certifying the integrity of the communication facility, shall be signed and sealed by a professional engineer.
- c. Minor Modifications. Minor modifications are permitted and include any of the following:
 1. Increasing the existing vertical height of the structure by less than ten (10) percent or less than the height of one additional antenna array to the tower with separation from the nearest existing antenna not to exceed twenty (20) feet.
 2. Increasing the tower by twenty (20) feet or less in width or no more than the width of the support structure at the level of the new appurtenance (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable).

3. Increasing the existing equipment compound by 2,500 square feet or less.
 - d. Communication facilities proposed to be constructed in areas designated as *Protected Mountain Ridges* shall not exceed 100 feet in height.
 - e. Lighting. No permanent strobe lights shall be permitted on the *communication tower* unless required by local, state or federal laws pertaining to the establishment and operation of a communications facility. Ground level security lighting may be permitted if designed to minimize impacts on adjacent properties.
 - f. Noise. Unusual sound emissions, including but not limited to buzzers and alarms, shall not be permitted.
 - g. Screening. Screen Class Four (4) shall be provided consistent with the requirements of §42-181 (Screen Classification)).
 - h. Sign Standards. A *sign* which includes the name of the communication facility *owner(s)/operator(s)*, emergency telephone numbers and the assigned communication facility registration number shall be displayed in a visible location near the *structure*. A minimum of two (2) “warning/no trespassing” *signs* are required. The *Communication Facilities Administrator* may require additional signage (of the type described above) as needed. No other signage shall be permitted on the *communication tower site*.
 - i. Option to County on Collocation Opportunity. For all new *communication towers*, the *applicant* shall give the County the option of collocating, for governmental use, an *antenna* on the new *communication tower* at fair *market value*, if technically feasible and if requested by the County in writing within 30 days of the submission of a permit application.
- (2) Communication Facility Types. Communication facilities shall be broken into three (3) distinctive classes, as follows:
 - a. *Category One (1) Communication Facilities* include the following:
 1. Towers and/or *antennas* constructed or permitted prior to the effective date of this Chapter; towers for residential, *amateur radio* or governmental *use* which are less than 90 feet in height; and towers less than 50 feet in height; and
 2. *Collocation antennas* on existing communications towers.
 - b. *Category Two (2) Communication Facilities* include the following:
 1. The location of *antennas* on *alternative structures*;
 2. Replacement towers; and
 3. Towers used for residential, *amateur radio* and/or governmental purposes 90 feet or greater in height; and all other towers 50 feet or greater in height.
 - c. *Category Three (3) Communications Facilities* include any and all towers 200 feet or greater in height.
- (3) Communication Facility Specific Standards. The following standards shall apply to the three categories of communication facilities:
 - a. *Category One (1) Communication Facilities*:
 1. A *category one (1) communication facility* is permitted by right in all zoning districts.

2. Height. In no case will a *collocation* be permitted where the additional *antenna* height would cause category classification change of the proposed host *communication tower*.
- b. *Category Two (2) Communication Facilities*:
1. Height. In no event shall a replacement *communication tower* exceed the height of the existing *communication tower*. No tower shall exceed 200 feet in height. In addition, no communication facility (tower and/or *antenna*) affixed on an *alternative structure*, shall exceed 50 feet in height above the maximum height of the *alternative structure*. Final height of the *communication tower* and/or *antenna*, including *structure* height above highest grade level, must not exceed 200 feet.
 2. Replacement. Replacement *communication towers* must be placed as close to the existing *communication tower* as feasible, but in no case further than 100 feet from the existing *communication tower base*. The existing *communication tower* shall be removed within 90 days of completion of the replacement *communication tower*.
 3. Communication Tower Site. All *category two (2) communication facilities* must be located on a designated *communication tower site* or an approved *alternative structure*. At a minimum a *communication tower site* must: (1) encompass all components of the proposed project; (2) consist of a *lot of record* or deeded *easement*; and (3) accommodate all-weather movement of construction, maintenance and emergency response equipment to and from the site.
 4. Separation from Existing Communication Facilities. *Category two (2) communication facilities* must be a minimum of one-half ($\frac{1}{2}$) mile from any existing *communication facility category two (2) or three (3)* unless constructed on the same *communication tower site* (a *lot of record* or deeded *easement*) or *alternative structure*. A proposed *category two (2) communication facility (antenna)* will only be permitted on the same *communication tower site* or *alternative structures* as an existing communication facility when it has been proven that the proposed site is the only feasible location for providing coverage to the anticipated service area and all existing communication facilities are incapable of accommodating the proposed *antenna*.
 5. Separation from Existing Occupied Buildings. *Communication towers* must be constructed a minimum distance equivalent to 110 percent of the height of the proposed *communication tower* from existing occupied *structures*. *Communication towers* unable to conform to *occupied building* separation requirements may submit affidavits of understanding from the *owners* of property and/or *structures* within the 110 percent height radius in place of conforming to the separation standards. Affidavits of understanding shall state that the property *owners* do not object to the construction of the *communication tower* as proposed in the application, and agree to hold the County harmless from any and all liability for the location and construction of the *communication tower* as proposed in the application. Such affidavits should also site the specific

- plan or drawing reviewed by the property *owner*. Or the *applicant* can submit a *fall zone* letter, sealed by an engineer, identifying the towers specific fall radius. If *applicants* utilize the *fall zone letter* option, the *applicant* must also provide proof of liability insurance with a limit of liability of at least \$1 million by the owner of the Communication Facility and submit an as-built certification of the Communication Facility, showing that the Communication Facility was built in accord with the design as certified by the engineer, for permit closeout.
6. Stealth Designs. Communications towers and *antennas* on *alternative structures* in *residential zoning districts* must be constructed as stealth designs.
 7. Color. *Communication towers* not constructed as stealth designs must be a color that is consistent with *existing development* or natural conditions.
 8. Security. Adequate measures must be taken to ensure *antennas* on *alternative structures* are not potential sources of physical danger to the public.
 9. Design to Accommodate Additional User. All new *category two (2) communication towers* shall be designed to accommodate a minimum of three (3) communication *antenna* arrays.
- c. Category Three (3) Communication Facilities:
1. Communication Tower Site. All communication facilities must be located on a designated *communication tower site*. At a minimum a *communication tower site* must: (1) encompass all components of the proposed project, (2) consist of a *lot of record* or deeded *easement* and (3) accommodate all-weather movement of construction, maintenance and emergency response equipment to and from the site.
 2. Separation from Existing Communication Facilities. *Category three (3) communication facilities* must be a minimum of one (1) mile from any existing *communication facility category two (2) or three (3)* unless constructed on the same *communication tower site* (a *lot of record* or deeded *easement*). A proposed *category three (3) communication facility* will only be permitted on the same *communication tower site* as an existing communication facility when it has been proven that the proposed site is the only feasible location for providing coverage to the anticipated service area, and all existing communication facilities are incapable of accommodating the proposed *antenna*.
 3. Separation from Existing Occupied Buildings. *Communication towers* must be constructed a minimum distance equivalent to 110 percent of the height of the proposed *communication tower* from existing occupied *structures*. *Communication towers* unable to conform to *occupied building* separation requirements may submit affidavits of understanding from the *owners* of property and/or *structures* within the 110 percent height radius in place of conforming to the separation standards. Affidavits of understanding shall state that the property *owners* do not object to the construction of the *communication tower* as proposed in the application, and agree to hold the County harmless from any and all

liability for the location and construction of the *communication tower* as proposed in the application. Such affidavits should also site the specific plan or drawing reviewed by the property *owner*. Or the *applicant* can submit a *fall zone* letter, sealed by an engineer, identifying the towers specific fall radius. If *applicants* utilize the *fall zone letter* option, the *applicant* must also provide proof of liability insurance with a limit of liability of at least \$1 million by the owner of the Communication Facility and submit an as-built certification of the Communication Facility, showing that the Communication Facility was built in accord with the design as certified by the engineer, for permit closeout.

4. Stealth Designs. *Communication towers* in *residential zoning districts* must be constructed as stealth designs.
5. Color. *Communication towers* not constructed as stealth designs must be a color that is consistent with *existing development* or natural conditions.
6. Design to Accommodate Additional User. All new *category three (3) communication facilities* shall be designed to accommodate a minimum of four (4) communication *antenna* arrays.

ARTICLE XI
REVIEW PROCESSES AND PROCEDURES

Subpart A. Site Plan Review and Approval

§42-326. General

Site Plans shall contain all applicable information as required herein and shall adhere to the applicable review and approval process as outlined in this subpart. To lessen the time required to obtain all necessary approvals, the *Site Plan* approval processes may run concurrently with a *building* plan review, an application for a land-disturbing permit, or other applications for approvals required for the particular development. When a watershed development plan approval is required, that approval shall be a prerequisite to *Site Plan* approval. *Site Plans* are required where the individual consideration of design, configuration and/or operation of a *use* at a proposed site is/are necessary to ensure site appropriateness, compatibility with surrounding *uses* and the protection of the public health, safety and welfare.

§42-327. Communication Facility Site Plan Review.

- A. Approval Authority. *Communication Facilities Administrator*.
- B. Staff Review. The *Communication Facilities Administrator* shall review the proposal and determine its completeness, finding that the regulations of this Chapter that set forth specific development standards (see SR 9.3 (Communication Facilities) and (§42-347 (Category One (1) or Two (2) Communication Facility Permits) and §42-348 (Category Three (3) Communication Facility Permits)) have been met.
- C. Permit Validity. The *Communication Facilities Administrator* or Zoning Board of Adjustment (*ZBA*) (as determined by facility category) shall grant the applicable *Communication Facility Permit*, in accordance with the process outlined in this section, only after review and approval of the *site plan*.

Subpart E. Permit Approval Processes

§42-346. General

All permit applications shall include, at minimum: (1) the name(s) and address(es) of the *owner(s)* of the property in question; (2) the location of the property; (3) the *PIN* as shown on the County tax listing; (4) a description and/or statement of the present zoning district; (5) the appropriate level of *site plan*; and, where an *applicant* chooses to appoint an agent to speak on their behalf, (6) an agent form. Permit applications may run concurrently with *site plan* review, amendment requests or other applications for approvals required for the particular development. All permit applications shall adhere to the applicable review and approval process as outlined in this Article. Unless provided otherwise by this Chapter, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Chapter attach to and run with the land.

§42-347. Category One (1) or Two (2) Communication Facility Permits

- A. Purpose. Category One (1), or Two (2) *Communication Facility Permits* are required for any construction, alteration or expansion of a communication facility of these categories.
- B. Permit Issuance. The *Communication Facilities Administrator* shall issue permits. No permit shall be issued until a communication facility *site plan* has been reviewed and approved by the *Communication Facilities Administrator*. The permitting process for communication permits complies with *NCGS 160D-930*, including all federal and state requirements, and should be interpreted as such.
- C. Application.
 - (1) Pre-application Conference. Each *applicant* for a permit shall meet with the *Communication Facilities Administrator* in a pre-application conference prior to,

or at the time of, the submittal of a request for approval of the communication facility. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.

- (2) Application. Each application for a permit shall be submitted with a communication facility *site plan* to the *Communication Facilities Administrator*. The application shall be filed on a form provided by the *Communication Facilities Administrator*. The *applicant* shall be notified within 15 days if the application is deemed incomplete. A full description of deficiencies shall be identified for the applicant with the understanding that if these deficiencies are cured, the application will be deemed complete. Incomplete applications must be resubmitted within ten (10) business days or will not be processed until the following month. Applications may be modified by the *Communication Facilities Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the communication facility. Applications for a *Communication Facility Permit Two (2)* shall also include the following:
- a. Statement Regarding Accommodation of Additional Users. A statement which indicates the number of additional users the proposed facility will accommodate, as signed and sealed by an active, registered North Carolina Professional Engineer.
 - b. Statement Regarding Collocation. A written statement, by the *applicant*, which indicates willingness to allow future *collocations*, available at fair *market value*.
 - c. Evidence of Mailing of Notices of Intent. A document, submitted by the *applicant*, which shows that the *applicant* has sent required notices of intent to file an application for a *Communication Facility Permit Two (2)* to all *owners* of property immediately adjacent to the parcel containing the facility site and all *owners* of property within a 500 foot radius as measured from the facility site perimeter. *Mailed notices of intent* shall be mailed no fewer than ten (10) days and no more than 30 days prior to the date on which an application for a *Communication Facility Permit Three (3)* is filed. *Mailed notices of intent* shall include a: (1) vicinity map showing the proposed facility location; (2) sketch of the facility with dimensions which indicate the proposed tower type and height; and (3) statement from the *Communication Facilities Administrator* indicating the processes and procedures by which the communication facility may be permitted.
 - d. Evidence of Lack of Alternative Antenna Sites. A document, submitted by the *applicant*, which demonstrates that a reasonable effort has been made to collocate the proposed *antenna* on an existing communication facility/*alternative structure*, and that there are no feasible alternatives to constructing the proposed communication facility.
 - e. Evidence of Compliance with Regulations. Documentation, submitted by the *applicant*, which demonstrates compliance with all applicable state and

federal statutes, ordinances and regulations which is satisfactory to the *Communication Facilities Administrator*.

- f. Easement Acquisition Documents. Statements of intent, submitted by the *applicant*, from adjacent property *owners* (where any portion of said property is within a distance of the tower height from the tower base) to grant an *easement* to the *applicant*. Or the *applicant* can submit a *fall zone* letter, sealed by an engineer, identifying the towers specific fall radius. If *applicants* utilize the *fall zone letter* option, the *applicant* must also provide proof of liability insurance with a limit of liability of at least \$1 million by the owner of the Communication Facility and submit an as-built certification of the Communication Facility, showing that the Communication Facility was built in accord with the design as certified by the engineer, for permit closeout.

(3) Review Schedule. None established.

(4) Fees. Any review fee established by the Commissioners shall be submitted with the application.

(5) Streamlined Collocation Process. Applications for collocation that meet the following requirements shall have a streamlined process.

- a. The collocation does not increase the overall height of the *communication tower* or wireless support structure to which the wireless facilities are attached;
- b. The collocation does not increase the ground space area approved in the *communication facility site plan* for equipment enclosures and ancillary facilities; and
- c. The wireless facilities in the proposed collocation comply with application regulations, restrictions, or conditions, if any applied to the initial wireless facilities placed on the *communication tower* or other wireless support structure.

Applications entitled to the streamlined process shall be reviewed for conformance with applicable building permit requirements, if any, but shall not otherwise be subject to zoning requirements, including design or placement requirements or public hearing review.

D. Staff Review. The *Communication Facilities Administrator* shall process all applications for a permit and approve, approve conditionally or deny the approval of the application within 15 business days from the date the application is filed. If the permit application is denied, the *Communication Facilities Administrator* shall notify the *applicant* in writing stating the reasons for denial. Any denial shall be supported by substantial evidence and set forth reasons for denial with sufficient particularity that a reviewing authority may review the evidence supporting denial.

E. Formal Review. None required.

F. Permit Validity. Upon the issuance of a permit, the communication facility will be issued a Communication Facility Registration Number. The *applicant* shall have six (6) months

from the date of issuance thereon to obtain a building permit or begin substantial construction work on the project. Failure to obtain a building permit or make substantial construction progress within six (6) months shall render the permit void. The *Communication Facilities Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension.

§42-348. Category Three (3) Communication Facility Permits

- A. Purpose. Category Three (3) *Communication Facility Permits* are required for any construction, alteration or expansion of a communication facility of this category.
- B. Permit Issuance. The Zoning Board of Adjustment (*ZBA*) shall grant the permit and the *Communication Facilities Administrator* shall issue permits. No permit shall be issued until a communication facility *site plan* has been reviewed and approved by the *Communication Facilities Administrator*. No *Communication Facility Permit Three (3)* shall be issued without the approval of the *ZBA* in accordance with the requirements and procedures set forth in this subsection. The permitting process for communication permits complies with *NCGS 160D-930*, including all federal and state requirements, and should be interpreted as such.
- C. Application.
 - (1) Pre-application Conference. Each *applicant* for a permit shall meet with the *Communication Facilities Administrator* in a pre-application conference prior to, or at the time of, the submittal of a request for approval of the communication facility. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.
 - (2) Application. Each application for a permit shall be submitted along with the appropriate fee(s), *site plan*, statements, evidences and *easement* acquisition documents to the *Communication Facilities Administrator*. Applications shall also include the following:
 - a. Statement Regarding Accommodation of Additional Users. A statement which indicates the number of additional users the proposed facility will accommodate, as signed and sealed by an active, registered North Carolina Professional Engineer.
 - b. Statement Regarding Collocation. A written statement, by the *applicant*, which indicates willingness to allow future *collocations*, available at fair *market value*.
 - c. Evidence of Mailing of Notices of Intent. A document, submitted by the *applicant*, which shows that the applicant has sent required notices of intent to file an application for a *Communication Facility Permit Three (3)* to all *owners* of property immediately adjacent to the parcel containing the facility site, and all *owners* of property within a 1,000 foot radius as measured from the facility site perimeter. *Mailed notices of intent* shall be mailed no fewer than ten (10) days and no more than 30 days prior to the date on which an application for a permit is filed. *Mailed notices of intent*

shall include a: (1) vicinity map showing the proposed facility location; (2) sketch of the facility with dimensions which indicate the proposed tower type and height; and (3) statement from the *Communication Facilities Administrator* indicating the processes and procedures by which the communication facility may be permitted.

- d. Evidence of Lack of Alternative Antenna Sites. A document, submitted by the *applicant*, which demonstrates that a reasonable effort has been made to collocate the proposed *antenna* on an existing communication facility/*alternative structure*, and that there are no feasible alternatives to constructing the proposed communication facility.
- e. Evidence of Compliance with Regulations. Documentation, submitted by the *applicant*, which demonstrates compliance with all applicable state and federal statutes, ordinances and regulations which is satisfactory to the *Communication Facilities Administrator*.
- f. Easement Acquisition Documents. Statements of intent, submitted by the *applicant*, from adjacent property *owners* (where any portion of said property is within a distance of the tower height from the tower base) to grant an *easement* to the *applicant*.

Applications may be modified by the *Communication Facilities Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the communication facility.

- (3) Review Schedule. As per NCGS §62A-42, a written decision approving or denying the application shall be given within 30 days in the case of collocation and modification applications, and within 45 days in the case of other applications. This time shall be measured from the date the application is deemed complete.
 - (4) Fees. Any review fee established by the Commissioners shall be submitted with the application.
- D. Staff Review. The *Communication Facilities Administrator* shall process and review all applications for a permit and prepare a staff recommendation for the *ZBA* on the permit application. An application shall be deemed complete unless the *applicant* is notified in writing within 15 days of submissions of the application. Specific deficiencies in the application must be identified and if cured the resubmission must be deemed complete.
 - E. Formal Review. Prior to taking any action on a permit, the *ZBA* shall consider the *Communication Facilities Administrator's* recommendation on the permit application.
 - F. Public Hearing. Prior to considering a *communication facility permit* application the *ZBA* shall hold a public hearing on the application in accordance with §42-371 (Quasi-Judicial Process Standards).
 - G. Public Notification. Public notification of such hearing shall comply with the provisions of §42-371 (Quasi-Judicial Process Standards). The *Communication Facilities Administrator* shall be responsible for all necessary public notifications.

- H. Quasi-judicial Proceeding. The concurring vote of a majority of the *ZBA* shall be necessary to grant the permit. As per NCGS §62A-42, a written decision approving or denying the application shall be given within 30 days in the case of collocation and modification applications, and within 45 days in the case of other applications. This time shall be measured from the date the application is deemed complete.
- (1) Standards of Review. The *ZBA* shall not approve a permit unless it makes written findings that the regulations of this Chapter that set forth specific standards for the communication facility have been met. Any approval or denial of the request must be in writing and be permanently filed with the office of the *ZBA* and with the *Communication Facilities Administrator* as a public record.
 - a. Any decision denying an application must be supported by substantial evidence in the record before the authority and must set forth the reasons for the denial with sufficient particularity to allow a reviewing entity to review the evidence supporting the reasons for denial.
 - b. An authority may deny an application to construct a new wireless support structure based upon an *applicant's* unwillingness to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing structure within the *applicant's* search ring according to NCGS §62A-43
 - (2) Conditions. The *ZBA* shall, in granting a permit, prescribe that required *easement* documents be recorded and copies of said recorded *easements* be submitted to the *Communication Facilities Administrator*.
- I. Permit Validity. Upon the approval of the *ZBA* and the submittal of recorded *easements*, the *Communication Facilities Administrator* may issue the permit and the required County Communication Facility Registration Number. The *applicant* shall have six (6) months from the date of issuance thereon to obtain a building permit or begin substantial construction work on the project. Failure to obtain a building permit or make substantial construction progress within six (6) months shall render the permit void. The *Communication Facilities Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension.
- (1) Permit Revocation. The *Communication Facilities Administrator* and/or *ZBA* may revoke a permit for *violations* of any part of this Chapter. Failure to secure and record any of the required *easements* shall be grounds for revocation. If the *Communication Facilities Administrator* finds a communication facility to be in *violation*, he/she shall notify the *applicant* in writing, stating the specific *violations* and setting reasonable time limits for corrective actions and subsequent inspections. In the event that the *applicant* takes no action to correct *violations*, the *Communication Facilities Administrator* shall notify him/her, by certified mail, that the permit will be revoked at the close of ten (10) business days from the date of the written notice. Should the *applicant* correct the *violations* prior to the permit being revoked, he shall request that the *Communication Facilities Administrator* conduct an inspection. If the *Communication Facilities Administrator* finds that the communication facility is no longer in *violation*,

he/she shall notify the *applicant* that the permit will continue to be valid. If the *violations* have not been remedied, the permit shall be revoked. Where use of a communication facility is discontinued, such notice of discontinuance shall be made in writing by the *applicant* and submitted to the *Communication Facilities Administrator*; further, where the *use* of the communication facility is discontinued for a 12 month period, such permit shall be revoked. Such revocation and the reasons for such shall be made in writing to the *applicant*.

(2) Implications of Revoked Permit. Where a permit has been revoked:

- a. The operation of the communication facility shall be terminated, and the *use* may only be reinstated upon application as in the case of a new matter.
- b. The *applicant* (*facility owner/operator* and/or *site owner*) shall not be allowed to *collocate* any additional communication facilities at that site, erect another communication facility or obtain any additional permits.
- c. The *facility owner/operator* and/or *site owner* shall be jointly and severally responsible for the required removal of the communication facility within 180-days of receipt of written notification of *Communication Facility Permit Three (3)* revocation.

**HENDERSON COUNTY
COMMUNICATION FACILITY APPLICATION FORM**

GENERAL INFORMATION

Date of Application: _____

Previously Submitted (Circle One): Yes No **Date of Previous Submittal:** _____

Date of Pre-Application Conference: _____

COMMUNICATION FACILITY INFORMATION

Communication Facility Type: Category 1 Category 2 Category 3

Communication Facility Height (feet): _____

Existing Communication Facility Onsite: Yes No Replacement Tower: Yes No

The site consists of a (please circle one): Lot of Record Deeded Easement

PARCEL INFORMATION

PIN: _____ Deed Book/Page: _____ Tract Size (Acres): _____

Zoning District: _____ Fire District: _____ Watershed: _____

Floodplain: _____ Protected Mountain Ridge Buffer: _____

Location of property to be developed: _____

APPLICATIONS FOR CATEGORY TWO (2) AND CATEGORY THREE (3) FACILITIES

If applying for a Category Two (2) or Category Three (3) Communication Facility attached is the following:

- _____ Communication Facility Site Plan
- _____ Signed and sealed statement by an active registered North Carolina Professional Engineer regarding the number of additional users the facility with accommodate
- _____ Written statement, by the applicant, regarding allowing future collocation
- _____ Documentation (including the list of property owners mailed and the letter with its attachments which was provided in the mailing) to serve as evidence of mailed notices of intent
- _____ Written statement, by the applicant, regarding attempt to collocate on existing facilities
- _____ Evidence of compliance with other applicable local, State and Federal regulations, rules, laws and ordinances
- _____ Statement of intent from adjacent property owners to grant an easement to the applicant (if applicable)
- _____ Affidavits of understanding from the owners of property and/or structures which meet the classification of "occupied building" which are located within the 110 percent height radius (if applicable)
- _____ Written statement, by the applicant, indicating intent to remove the original communication facility within 90 days of completion of the replacement communication facility (if applicable)

CONTACT INFORMATION

Property Owner:

Name: _____ Phone: _____

Address: _____ City, State, Zip: _____

Applicant:

Name: _____ Phone: _____

Address: _____ City, State, Zip: _____

Agent:

Name: _____ Phone: _____

Address: _____ City, State, Zip: _____

Agent Form (Circle One): Yes No

Plan Preparer:

Name: _____ Phone: _____

Address: _____ City, State, Zip: _____

I certify that the information shown above is true and accurate and is in conformance with the Land Development regulations of Henderson County.

Print Applicant (Owner or Agent) Signature Applicant (Owner or Agent) Date

County Use Only

Fee: \$ _____ Paid: _____ Method: _____ Received by: _____

Date of Notification of Completion of Application: _____

**HENDERSON COUNTY
COMMUNICATION FACILITY SITE PLAN REQUIREMENTS**

The following information shall be shown on the plan for information and discussion purposes unless not applicable or specifically waived by the Communication Facilities Administrator. Three full-sized copies and one reduced copy (11 x 17) shall be provided. If the Communication Facility Site Plan does not contain the required items by the submittal deadline, the application will be considered incomplete and the plan need to be resubmitted to the Communication Facilities Administrator. For each item below, please indicate if the requested information has been provided.

Title Block	
	Title of map (Must state: "Communication Facility Site Plan")
	Type of proposed facility (Must state: "Category 1 Communication Facility", "Category 2 Communication Facility", or "Category 3 Communication Facility")
	Owner name/address/daytime phone
	Applicant name/address/daytime phone (if other than owner)
	Plan preparer name/address/daytime phone ¹
	Date plan prepared
	Date plan revised (if applicable)
	Plat book or deed reference
	Scale (written and graphic)
Plan Details	
	North arrow (not oriented toward bottom of plan)
	Boundaries of the tract with bearings and distances
	Acreage in tract (total)
	Existing contours at no more than five (5) foot intervals with a minimum of at least two (2) contours per plan
	Vicinity map
	Legend providing appropriate symbols
	Adjoining property owner(s) name(s)
	Jurisdiction, zoning district, and fire district boundaries/lines (if applicable)
	Zoning district(s) of site and required setbacks
	Zoning district(s) of adjacent property
	Existing land use(s) and structure(s) of site labeled
	Existing land use(s) of adjacent property labeled

¹ It is recommended that a professional land surveyor, North Carolina registered professional engineer, or other certified professional prepare the plan.

Proposed and Existing Uses and Structures	
	Location/dimension/use(s) of proposed structures, including any mounting structures/foundations/antennas
	Communication facility profile
	Ground elevation of the base of the proposed communication facility to the nearest foot
	Communication facility type of stealth design used ²
	Communication facility color
	Number of antenna arrays that can be accommodated by the communication facility (minimum of three (3) in Category Two (2); minimum of four (4) in Category Three (3))
	Location/dimension/use(s) of existing structures, including any mounting structures/foundations/antennas
	Distance from any existing communication facility located: (1) on site (Category One (1) Communication Facility); or (2) onsite and within ½ mile (Category Two (2) Communication Facility); or (3) onsite and within 1 mile (Category Three (3) Communication Facility).
	Radius from the proposed communication facility base equal to 110 percent of the proposed communication facility height, and including any tract or portion thereof falling within the radius
	Location of existing occupied buildings within the communication facility's radius (if applicable)
Roads, Driveways and Parking Areas	
	Location of existing roads (with type (public/private) and right-of-way)
	Location of proposed roads/drives (with right-of-way and easements) to accommodate all-weather movement of construction, maintenance and emergency response equipment to and from the site
	Length of proposed roads/drives (total)
	Location and dimensions of proposed parking areas
	Proposed road names approved by the Henderson County Property Addressing Office (if applicable) ³
Streams, Floodway/Floodplain, Surface Water Buffers and Related Information	
	Location of existing ponds/lakes/watercourses/drainageways and direction of flow on the site and off site if within the communication facility's radius (if applicable)
	Location of floodplain and floodway (if applicable)
	Location of water supply watershed (if applicable)
	Location of 30 foot buffer from all perennial and intermittent surface waters
Protected Mountain Ridges	
	Location of protected mountain ridges (if applicable) ⁴

² Applies only if the facility is located within a residential zoning district

³ The applicant should contact the Henderson County Property Addressing Office for road name approval. The Code Enforcement Services Department may verify this with the Property Addressing Office.

⁴ If proposed on a Protected Mountain Ridge, the communication facility shall not exceed 100 feet in height.

Buffering and Screening	
	Type/location/plant materials and approximate placement/dimensions of buffering (as required)
	Type/location/plant materials and approximate placement/dimensions of screening (as required)
Signs	
	Location/dimension of signs (including the communication facility identification sign and two (2) "warning/no trespassing" signs)
Lighting Mitigation	
	Location/type of exterior lighting
Additional Forms and Fees Required	
	Agent form (filled out and signed by the property owner if applicable)
	Communication Facilities Application form (filled out and signed by the property owner or agent (if an agent form is provided))
	Fee
Additional Approval Required⁵	
	Erosion and sedimentation control plan approval from the Erosion Control Division or certification that no plan approval is required.
	A structural engineering certification certifying the integrity of the communication facility, shall be signed and sealed by a professional engineer
	Any other approvals as required by Federal, State or local agencies

⁵ The Communication Facility Administrator may conditionally approve the Communication Facility Site Plan subject to receipt of such information if it is not available at the time of review.



Henderson County, NC Code Enforcement Services

Month Day, Year

The Henderson County Land Development Code requires notification to adjoining property owners for new Communication Towers. Please see the language below from the Land Development Code detailing the permitting process.

§42-347. Category One (1) or Two (2) Communication Facility Permits

A. Purpose. Category One (1), or Two (2) *Communication Facility Permits* are required for any construction, alteration or expansion of a communication facility of these categories.

B. Permit Issuance. The *Communication Facilities Administrator* shall issue permits. No permit shall be issued until a communication facility *site plan* has been reviewed and approved by the *Communication Facilities Administrator*. The permitting process for communication permits complies with NCGS 160D-930, including all federal and state requirements, and should be interpreted as such.

C. Application.

(1) Pre-application Conference. Each *applicant* for a permit shall meet with the *Communication Facilities Administrator* in a pre-application conference prior to, or at the time of, the submittal of a request for approval of the communication facility. The purposes of this conference are to provide information to the *applicant* regarding the review process and assist in the preparation of the application.

(2) Application. Each application for a permit shall be submitted with a communication facility *site plan* to the *Communication Facilities Administrator*. The application shall be filed on a form provided by the *Communication Facilities Administrator*. The *applicant* shall be notified within 15 days if the application is deemed incomplete. A full description of deficiencies shall be identified for the applicant with the understanding that if these deficiencies are cured, the application will be deemed complete. Incomplete applications must be resubmitted within ten (10) business days or will not be processed until the following month. Applications may be modified by the *Communication Facilities Administrator* as necessary, who may require the *applicant* to supply additional information pertaining to the communication facility. Applications for a *Communication Facility Permit Two (2)* shall also include the following:

- a. Statement Regarding Accommodation of Additional Users. A statement which indicates the number of additional users the proposed facility will accommodate, as signed and sealed by an active, registered North Carolina Professional Engineer.
- b. Statement Regarding Collocation. A written statement, by the *applicant*, which indicates willingness to allow future *collocations*, available at fair *market value*.

- c. Evidence of Mailing of Notices of Intent. A document, submitted by the *applicant*, which shows that the *applicant* has sent required notices of intent to file an application for a *Communication Facility Permit Two (2)* to all *owners* of property immediately adjacent to the parcel containing the facility site and all *owners* of property within a 500-foot radius as measured from the facility site perimeter. *Mailed notices of intent* shall be mailed no fewer than ten (10) days and no more than 30 days prior to the date on which an application for a *Communication Facility Permit Three (3)* is filed. *Mailed notices of intent* shall include a: (1) vicinity map showing the proposed facility location; (2) sketch of the facility with dimensions which indicate the proposed tower type and height; and (3) statement from the *Communication Facilities Administrator* indicating the processes and procedures by which the communication facility may be permitted.
- d. Evidence of Lack of Alternative Antenna Sites. A document, submitted by the *applicant*, which demonstrates that a reasonable effort has been made to collocate the proposed *antenna* on an existing communication facility/*alternative structure*, and that there are no feasible alternatives to constructing the proposed communication facility.
- e. Evidence of Compliance with Regulations. Documentation, submitted by the *applicant*, which demonstrates compliance with all applicable state and federal statutes, ordinances and regulations which is satisfactory to the *Communication Facilities Administrator*.
- f. Easement Acquisition Documents. Statements of intent, submitted by the *applicant*, from adjacent property *owners* (where any portion of said property is within a distance of the tower height from the tower base) to grant an *easement* to the *applicant*. Or the *applicant* can submit a *fall zone* letter, sealed by an engineer, identifying the towers specific fall radius. If *applicants* utilize the *fall zone letter* option, the *applicant* must also provide proof of liability insurance with a limit of liability of at least \$1 million by the owner of the Communication Facility and submit an as-built certification of the Communication Facility, showing that the Communication Facility was built in accord with the design as certified by the engineer, for permit closeout.

(3) Review Schedule. None established.

(4) Fees. Any review fee established by the Commissioners shall be submitted with the application.

(5) Streamlined Collocation Process. Applications for collocation that meet the following requirements shall have a streamlined process.

- a. The collocation does not increase the overall height of the *communication tower* or wireless support structure to which the wireless facilities are attached;
- b. The collocation does not increase the ground space area approved in the *communication facility site plan* for equipment enclosures and ancillary facilities; and
- c. The wireless facilities in the proposed collocation comply with application regulations, restrictions, or conditions, if any applied to the initial wireless facilities placed on the *communication tower* or other wireless support structure.

Applications entitled to the streamlined process shall be reviewed for conformance with applicable building permit requirements, if any, but shall not otherwise be subject to zoning requirements, including design or placement requirements or public hearing review.

D. Staff Review. The *Communication Facilities Administrator* shall process all applications for a permit and approve, approve conditionally or deny the approval of the application within 15 business days from the date the application is filed. If the permit application is denied, the *Communication Facilities Administrator* shall notify the *applicant* in writing stating the reasons for denial. Any denial shall be supported by substantial evidence and set forth reasons for denial with sufficient particularity that a reviewing authority may review the evidence supporting denial.

E. Formal Review. None required.

F. Permit Validity. Upon the issuance of a permit, the communication facility will be issued a Communication Facility Registration Number. The *applicant* shall have six (6) months from the date of issuance thereon to obtain a building permit or begin substantial construction work on the project. Failure to obtain a building permit or make substantial construction progress within six (6) months shall render the permit void. The *Communication Facilities Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the *applicant* of sufficient justification for the extension.

Please contact me if you have any further questions,

Matt Champion, MPA CZO
Zoning Administrator &
Code Enforcement Services Director
mchampion@hendersoncountync.gov

Part 3. Wireless Telecommunication Facilities.

§ 160D-930. Purpose and compliance with federal law.

(a) The purpose of this section is to ensure the safe and efficient integration of facilities necessary for the provision of advanced mobile broadband and wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare.

(b) The deployment of wireless infrastructure is critical to ensuring first responders can provide for the health and safety of all residents of North Carolina and, consistent with section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), create a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures. Therefore, it is the policy of this State to facilitate the placement of wireless communications support structures in all areas of North Carolina. The following standards shall apply to a local government's actions, as a regulatory body, in the regulation of the placement, construction, or modification of a wireless communications facility.

(c) The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 U.S.C. § 332, as amended, section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1455(a), and in accordance with the rules promulgated by the Federal Communications Commission.

(d) Nothing in this Part shall be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

§ 160D-932. Local authority.

A local government may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and in conformity with this Part. Except as expressly stated, nothing in this Part shall limit a local government from regulating applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 160D-930. For purposes of this Part, public safety includes, without limitation, federal, State, and local safety regulations but does not include requirements relating to radio frequency emissions of wireless facilities. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

§ 160D-933. Construction of new wireless support structures or substantial modifications of wireless support structures.

(a) Any person that proposes to construct a new wireless support structure or substantially modify a wireless support structure within the planning and development regulation jurisdiction of a local government must do both of the following:

- (1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.
- (2) Comply with any local ordinances concerning land use and any applicable permitting processes.

(b) A local government's review of an application for the placement or construction of a new wireless support structure or substantial modification of a wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the local government may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. A local government may not 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. A local government may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application, the local government may review the following:

- (1) Applicable public safety, land-use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
- (2) Information or materials directly related to an identified public safety, land development, or zoning issue including evidence that no existing or previously approved wireless support structure can reasonably be used for the wireless facility placement instead of the construction of a new wireless support structure that residential, historic, and designated scenic areas cannot be served from outside the area or that the proposed height of a new wireless support structure or initial wireless facility placement or a proposed height increase of a substantially modified wireless support structure or replacement wireless support structure is necessary to provide the applicant's designed service.
- (3) A local government may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the existing wireless support structure is unwilling to enter into a contract for such use at fair market value. Local governments may require information necessary to determine whether collocation on existing wireless support structures is reasonably feasible.

(c) The local government shall issue a written decision approving or denying an application under this section within a reasonable period of time consistent with the issuance of other development approvals in the case of other applications, each as measured from the time the application is deemed complete.

(d) A local government may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site new wireless support structures or to substantially modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and

customary for such services. Any charges or fees assessed by a local government on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the local government in connection with the regulatory review authorized under this section. The foregoing does not prohibit a local government from imposing additional reasonable and cost-based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant. The fee imposed by a local government for review of the application may not be used for either of the following:

- (1) Travel time or expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party.
- (2) Reimbursements for a consultant or other third party based on a contingent fee basis or a results-based arrangement.

(e) The local government may condition approval of an application for a new wireless support structure on the provision of documentation prior to the issuance of a building permit establishing the existence of one or more parties, including the owner of the wireless support structure, who intend to locate wireless facilities on the wireless support structure. A local government shall not deny an initial development approval based on such documentation. A local government may condition a development approval on a requirement to construct facilities within a reasonable period of time, which shall be no less than 24 months.

(f) The local government may not require the placement of wireless support structures or wireless facilities on local government owned or leased property but may develop a process to encourage the placement of wireless support structures or facilities on local government owned or leased property, including an expedited approval process.

(g) This section shall not be construed to limit the provisions or requirements of any historic district or landmark regulation adopted pursuant to this Article. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

PRIOR PROVISIONS

A prior section 331, act June 19, 1934, ch. 652, title III, § 331, as added Sept. 14, 1973, Pub. L. 93-107, § 1, 87 Stat. 350, related to broadcasting of games of professional sports clubs, prior to repeal by Pub. L. 93-107, § 2, Sept. 14, 1973, 87 Stat. 351, effective Dec. 31, 1975.

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-141 struck out at end: “The Commission shall report to the appropriate committees of Congress within 30 days after December 20, 1991, on how it intends to meet this policy goal.”

1994—Pub. L. 103-414 amended section catchline generally.

1991—Pub. L. 102-243 inserted “and AM radio stations” in section catchline, designated existing provisions as subsec. (a) and inserted heading, and added subsec. (b).

§ 332. Mobile services**(a) Factors which Commission must consider**

In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 151 of this title, whether such actions will—

- (1) promote the safety of life and property;
- (2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;
- (3) encourage competition and provide services to the largest feasible number of users; or
- (4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5 or section 1342 of title 31.

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) Regulatory treatment of mobile services**(1) Common carrier treatment of commercial mobile services**

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such

regulation, the Commission may not specify any provision of section 201, 202, or 208 of this title, and may specify any other provision only if the Commission determines that—

- (i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (ii) enforcement of such provision is not necessary for the protection of consumers; and
- (iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this title. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter.

(C) As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after August 10, 1993, complete a rule-making required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services

A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this chapter. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to August 10, 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption

(A) Notwithstanding sections 152(b) and 221(b) of this title, no State or local govern-

ment shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that—

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after August 10, 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance

of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation

Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 [47 U.S.C. 741 et seq.] of the corporation authorized by title III of such Act [47 U.S.C. 731 et seq.].

(5) Space segment capacity

Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership

The Commission, upon a petition for waiver filed within 6 months after August 10, 1993, may waive the application of section 310(b) of this title to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b) of this title.

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request

for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph—

(i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and

(iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

(8) Mobile services access

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) Definitions

For purposes of this section—

(1) the term “commercial mobile service” means any mobile service (as defined in section 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term “interconnected service” means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

(3) the term “private mobile service” means any mobile service (as defined in section 153 of this title) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

(June 19, 1934, ch. 652, title III, §332, formerly §331, as added Pub. L. 97-259, title I, §120(a), Sept. 13, 1982, 96 Stat. 1096; renumbered §332, Pub. L. 102-385, §25(b), Oct. 5, 1992, 106 Stat. 1502; amended Pub. L. 103-66, title VI, §6002(b)(2)(A), Aug. 10, 1993, 107 Stat. 392; Pub. L. 104-104, §3(d)(2), title VII, §§704(a), 705, Feb. 8, 1996, 110 Stat. 61, 151, 153; Pub. L. 115-141, div. P, title IV, §402(g), Mar. 23, 2018, 132 Stat. 1089.)

Editorial Notes

REFERENCES IN TEXT

Provisions of part III of title 5, referred to in subsec. (b)(2), are classified to section 2101 et seq. of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (b)(4), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

The Communications Satellite Act of 1962, referred to in subsec. (c)(4), is Pub. L. 87-624, Aug. 31, 1962, 76 Stat. 419, as amended. Titles III and IV of the Act are classified generally to subchapters III (§731 et seq.) and IV (§741 et seq.), respectively, of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 701 of this title and Tables.

The Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (c)(6), is Pub. L. 103-66, Aug. 10, 1993, 107 Stat. 312, as amended. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (b)(2), “section 1342 of title 31” substituted for “section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2018—Subsec. (c)(1)(C). Pub. L. 115-141 struck out first and second sentences which read as follows: “The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those condi-

tions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition.”

1996—Subsec. (c)(7). Pub. L. 104-104, § 704(a), added par. (7).

Subsec. (c)(8). Pub. L. 104-104, § 705, added par. (8).

Subsec. (d)(1), (3). Pub. L. 104-104, § 3(d)(2), substituted “section 153” for “section 153(n)”.

1993—Pub. L. 103-66 struck out “Private land” before “mobile services” in section catchline, struck out “land” before “mobile services” wherever appearing in subsecs. (a) and (b), added subsecs. (c) and (d), and struck out former subsec. (c) which related to service provided by specialized mobile radio, multiple licensed radio dispatch systems, and other radio dispatch systems; common carriers; and rate or entry regulations.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title VI, § 6002(c), Aug. 10, 1993, 107 Stat. 396, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 152, 153, and 309 of this title] are effective on the date of enactment of this Act [Aug. 10, 1993].

“(2) EFFECTIVE DATES OF MOBILE SERVICE AMENDMENTS.—The amendments made by subsection (b)(2) [amending this section and sections 152 and 153 of this title] shall be effective on the date of enactment of this Act [Aug. 10, 1993], except that—

“(A) section 332(c)(3)(A) of the Communications Act of 1934 [subsec. (c)(3)(A) of this section], as amended by such subsection, shall take effect 1 year after such date of enactment; and

“(B) any private land mobile service provided by any person before such date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, except for purposes of section 332(c)(6) of such Act [subsec. (c)(6) of this section], be treated as a private mobile service until 3 years after such date of enactment.”

AVAILABILITY OF PROPERTY

Pub. L. 104-104, title VII, § 704(c), Feb. 8, 1996, 110 Stat. 152, provided that: “Within 180 days of the enactment of this Act [Feb. 8, 1996], the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency’s mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.”

TRANSITIONAL RULEMAKING FOR MOBILE SERVICE PROVIDERS

Pub. L. 103-66, title VI, § 6002(d)(3), Aug. 10, 1993, 107 Stat. 397, provided that: “Within 1 year after the date

of enactment of this Act [Aug. 10, 1993], the Federal Communications Commission—

“(A) shall issue such modifications or terminations of the regulations applicable (before the date of enactment of this Act) to private land mobile services as are necessary to implement the amendments made by subsection (b)(2) [amending this section and sections 152 and 153 of this title];

“(B) in the regulations that will, after such date of enactment, apply to a service that was a private land mobile service and that becomes a commercial mobile service (as a consequence of such amendments), shall make such other modifications or terminations as may be necessary and practical to assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services;

“(C) shall issue such other regulations as are necessary to implement the amendments made by subsection (b)(2); and

“(D) shall include, in such regulations, modifications, and terminations, such provisions as are necessary to provide for an orderly transition.”

§ 333. Willful or malicious interference

No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government.

(June 19, 1934, ch. 652, title III, § 333, as added Pub. L. 101-396, § 9, Sept. 28, 1990, 104 Stat. 850.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 334. Limitation on revision of equal employment opportunity regulations

(a) Limitation

Except as specifically provided in this section, the Commission shall not revise—

(1) the regulations concerning equal employment opportunity as in effect on September 1, 1992 (47 C.F.R. 73.2080) as such regulations apply to television broadcast station licensees and permittees; or

(2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.

(b) Midterm review

The Commission shall revise the regulations described in subsection (a) to require a midterm review of television broadcast station licensees’ employment practices and to require the Commission to inform such licensees of necessary improvements in recruitment practices identified as a consequence of such review.

(c) Authority to make technical revisions

The Commission may revise the regulations described in subsection (a) to make nonsubstantive technical or clerical revisions in such regulations as necessary to reflect changes in technology, terminology, or Commission organization.