

CHAPTER.....

AN ACT relating to wireless telecommunications; providing for standards and procedures for approval by a state or local land use authority of an application for the construction of a facility for personal wireless service under certain circumstances; authorizing a land use authority to assess an applicant for the actual costs incurred by the authority to process an application; requiring that a denial of an application be in writing, set forth each ground for denial and describe the documents relied upon; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The Legislature finds and declares that:

1. Congress enacted the Wireless Communications and Public Safety Act of 1999, Public Law 106-81, 113 Stat. 1286, to encourage states to make efforts to facilitate the development of seamless, ubiquitous and reliable personal wireless services networks as a means of promoting public safety by providing immediate and critical communications links among members of the public, emergency medical service providers and emergency dispatch providers. The widespread use of personal wireless services in the rescue, relief and recovery efforts following the September 11, 2001, terrorist attacks, in which landline communication networks were unavailable or unsuited to meeting exigent public safety communications needs, demonstrated the versatility and robustness of personal wireless services networks and their resulting importance to public safety and homeland security. It is the intent of the Legislature in enacting the provisions of sections 3 to 10, inclusive, of this act to reaffirm the federal policy of facilitating the development of seamless, ubiquitous and reliable personal wireless services networks as reflecting the public policy of the State of Nevada, and to set forth uniform standards and procedures that will give effect to this policy.

2. A large percentage of the residents of this state subscribe to personal wireless services, and there is a substantial public interest in permitting the residents of this state to enjoy the increase in personal productivity, flexibility and convenience attributable to the availability of seamless, ubiquitous and reliable personal wireless services. Seamless, ubiquitous and reliable personal wireless services also facilitate telecommuting, flexible hours and other alternate work arrangements that are integral to the service economy of this state and strategies for reducing road congestion.

3. Local governments in this state retain an important role in decisions concerning the construction of facilities for personal wireless services in order to ensure that such decisions give consideration to legitimate local concerns. Nevertheless, because personal wireless services networks must be seamless, ubiquitous and reliable to be effective, there is a preeminent state interest in ensuring the availability of such services throughout the State. Furthermore, in the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56, Congress required that applications for facilities for personal wireless services be acted upon in an expeditious manner and without unreasonable delay. It is the intent of the Legislature in enacting the provisions of sections 3 to 10, inclusive, of this act to balance local, state and national interests by specifying uniform statewide procedures for the review by the State and by any local governments of applications to construct facilities for personal wireless service and to encourage the State and any local governments to allow the construction of facilities for personal wireless service on government property.

Sec. 2. Chapter 707 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 10, inclusive, of this act.

Sec. 3. *As used in sections 3 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *“Facility for personal wireless service” includes any building, structure, antenna and other equipment used to provide personal wireless service. The term includes a telecommunications tower.*

Sec. 5. *“Land use authority” means an agency, bureau, board, commission, department, division, officer or employee of the State or of a local government authorized by law to take action on an application to construct a facility for personal wire service.*

Sec. 6. *“Personal wireless service” has the meaning ascribed to it in 47 U.S.C. § 332(c)(7)(C), as that provision existed on July 1, 2003.*

Sec. 7. *“Telecommunications tower” means any freestanding tower, monopole or similar structure used to provide personal wireless services.*

Sec. 8. 1. *Notwithstanding any specific statute or ordinance to the contrary, a land use authority with jurisdiction over an application to construct a facility for personal wireless service shall:*

(a) Establish procedures and standards for the review and approval of such an application, including, without limitation, procedures for:

(1) Review and approval of such an application by administrative staff pursuant to this section; and

(2) Consideration of such an application by the land use authority if the administrative staff denies the application; and

(b) Authorize administrative staff to review and approve such an application pursuant to this section.

2. The administrative staff authorized to review and approve an application to construct a facility for personal wireless service may approve such an application if:

(a) The applicant complies with the procedures established by the land use authority pursuant to this section;

(b) The facility for personal wireless service meets the standards established by the land use authority pursuant to this section;

(c) The applicant is a provider of wireless telecommunications that is licensed by the Federal Communications Commission to provide wireless telecommunications services over a designated radio frequency and authorized to do business in this state; and

(d) The facility for personal wireless service is to be:

(1) Architecturally integrated with its surroundings so that it appears to be an architectural feature of a building or other structure and its nature as a facility for personal wireless service is not readily apparent;

(2) Collocated with a facility for personal wireless service approved, or capable of being approved, by the land use authority, if the facility for personal wireless service that is the subject of the application is architecturally integrated as described in subparagraph (1) at least to the extent that the facility for personal wireless service with which it is to be collocated is architecturally integrated;

(3) Constructed on an existing building or structure owned by a public utility or on property owned by the State or by a local government; or

(4) If constructed on an existing building or structure not owned by a public utility, architecturally compatible with the building or structure.

3. If the administrative staff authorized pursuant to this section to review and approve an application to construct a facility for personal wireless service denies such an application, the administrative staff shall provide to the applicant and the land use authority a written explanation that identifies each procedure and standard that the applicant, application or facility for personal wireless service failed to meet.

4. The land use authority shall not:

(a) Consider the environmental effects of radio frequency emissions from a facility for personal wireless service if the facility

complies with the regulations of the Federal Communications Commission concerning such emissions.

(b) If the application to construct a facility for personal wireless services requests the use of a public right-of-way, deny the application based on the use of the public right-of-way if the proposed use:

(1) Meets all applicable state and local requirements for use of a public right-of-way, including, without limitation, any requirements established by the land use authority; and

(2) Does not endanger the public health or safety.

Sec. 9. *A land use authority, in connection with an application to construct a facility for personal wireless service, may assess the applicant for the actual costs incurred by the land use authority to process the application.*

Sec. 10. *1. A land use authority that denies the approval of an application to construct a facility for personal wireless service shall issue a written decision. The decision must:*

(a) Set forth with specificity each ground on which the authority denied the approval of the application; and

(b) Describe the documents relied upon by the land use authority in making its decision.

2. A person who brings an action against a land use authority pursuant to NRS 278.0233 shall file a copy of the decision and record with the court.

Sec. 11. This act becomes effective on July 1, 2003.