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SECOND REPRINT

A.B. 344

ASSEMBLY BILL NO. 344—ASSEMBLYWOMAN CARLTON

MARCH 18, 2019

Referred to Committee on Growth and Infrastructure

SUMMARY—Makes various changes to modernize the provision of cellular coverage. (BDR 58-838)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to utilities; requiring a political subdivision of this State to allow the construction, installation, maintenance, operation, repair and replacement of micro wireless facilities under certain circumstances; affirming the authority of political subdivisions of this State to exercise certain powers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 8 of this bill requires a political subdivision of this State to allow a video service provider, or an affiliate thereof, to construct, install, place, maintain, operate, repair or replace micro wireless facilities on the video service network of the provider. **Section 8** also requires a video service provider to install a switch near certain locations where radio antennas are mounted on strand of the provider to allow the disconnection of power from the antenna. Finally, **section 8** provides that these provisions do not otherwise: (1) limit the authority of a local government to license telecommunication providers and establish certain conditions on such licenses; or (2) affect the authority of a local government to manage the public rights-of-way or exercise its police powers and land use powers.

Existing law authorizes a local government to impose a franchise fee on video service providers. (NRS 711.670) **Section 12** of this bill provides that: (1) such a fee is in lieu of any recurring rental charge that may be imposed by a political subdivision of this State on a video service provider or an affiliate thereof for the use of a public right-of-way or highway by a micro wireless facility installed by the provider or affiliate; and (2) the provisions of NRS 711.670 do not otherwise restrict the right of a local government to impose certain other fees on an affiliate.



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

Section 1. Chapter 711 of NRS is hereby amended by adding thereto the provisions set forth as sections 3, 4 and 8 of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. *“Affiliate” means an entity that:*

1. Holds a certificate of public convenience and necessity from the Public Utilities Commission of Nevada; and

2. Directly or indirectly through one or more intermediaries, is wholly owned or controlled by, or is under common control of a holder of a certificate of authority.

Sec. 4. *“Micro wireless facility” means a wireless telecommunications facility that:*

1. Is not larger in dimension than 36 inches in length, 22 inches in width and 12 inches in height;

2. Does not have an exterior antenna which is longer than 11 1/2 inches; and

3. Is installed directly on a video service network that is owned by a video service provider.

Sec. 5. (Deleted by amendment.)

Sec. 6. (Deleted by amendment.)

Sec. 7. (Deleted by amendment.)

Sec. 8. *1. A political subdivision of this State shall allow a video service provider, or an affiliate of such a provider, to construct, install, place, maintain, operate, repair or replace one or more micro wireless facilities on the video service network of the provider.*

2. The construction, installation, placement, maintenance, operation, repair or replacement of a micro wireless facility which is allowed pursuant to subsection 1 must be performed in compliance with the National Electrical Safety Code and the certificate of authority which was granted to the video service provider.

3. A video service provider shall install a switch at a pole near each location where a radio antenna is mounted on strand of the provider to allow the disconnection of power from the antenna.

4. The provisions of this section do not:

(a) Limit the authority of a local government to:

(1) License telecommunications providers; or

(2) Establish conditions on those licenses that are:

(I) Competitively neutral and nondiscriminatory; and

(II) Consistent with federal and state law.

(b) Affect the authority of a local government to:



1 (1) *Manage the public rights-of-way within its boundaries;*

2 *or*

3 (2) *Exercise its police powers and land use powers.*

4 **Sec. 9.** (Deleted by amendment.)

5 **Sec. 10.** NRS 711.020 is hereby amended to read as follows:

6 711.020 As used in this chapter, unless the context otherwise
7 requires, the words and terms defined in NRS 711.022 to 711.151,
8 inclusive, *and sections 3 and 4 of this act* have the meanings
9 ascribed to them in those sections.

10 **Sec. 11.** NRS 711.640 is hereby amended to read as follows:

11 711.640 1. A local government shall not require a video
12 service provider to place its facilities in ducts or conduits or on
13 poles owned or leased by the local government.

14 2. A local government shall manage the use of any public
15 right-of-way or highway by video service providers in a manner
16 that:

17 (a) Is consistent with federal and state law and the lawful police
18 powers of the local government; and

19 (b) Is competitively neutral and does not:

20 (1) Discriminate among video service providers; or

21 (2) Discriminate between video service providers and any
22 other users of the public right-of-way or highway for the
23 construction and operation of facilities.

24 3. In managing any public right-of-way or highway, a local
25 government may:

26 (a) Require a video service provider *or affiliate* that is
27 constructing, installing, working within, maintaining or repairing
28 facilities in, on, under or over any public right-of-way or highway to
29 obtain a construction, encroachment or occupancy permit or license
30 for such work; and

31 (b) Inspect the construction, installation, maintenance or repair
32 work performed on such facilities.

33 4. If a video service provider makes a request for such a permit
34 or license, the local government shall act upon the request not later
35 than 10 business days after the date on which the request is made.

36 5. A local government may charge a video service provider a
37 fee to issue such a permit or license or to perform any inspection
38 authorized by this section. The amount of any fee charged by a local
39 government pursuant to this subsection may not exceed the actual
40 costs incurred by the local government in administering the process
41 of issuing such permits or licenses and performing such inspections.

42 6. If there is a situation necessitating emergency response work
43 or repair in, on, under or over any public right-of-way or highway, a
44 video service provider may begin that work or repair without prior
45 approval from a local government if the provider notifies the local



1 government as promptly as reasonably possible after learning of the
2 need for that work or repair.

3 **Sec. 12.** NRS 711.670 is hereby amended to read as follows:

4 711.670 1. For the privilege of providing video service
5 through a video service network that occupies or uses, in whole or in
6 part, any public right-of-way or highway within the jurisdiction of a
7 local government, the local government may require a video service
8 provider to pay a franchise fee to the local government based on the
9 gross revenue that the provider receives from its subscribers within
10 the jurisdiction of the local government.

11 2. To require the payment of the franchise fee, the governing
12 body of the local government must adopt a nondiscriminatory
13 ordinance or resolution that imposes the franchise fee equally and
14 uniformly on all video service providers operating within the
15 jurisdiction of the local government.

16 3. The local government shall not require a video service
17 provider to pay a franchise fee for any year in a total amount that
18 exceeds 5 percent of the gross revenue that the provider received
19 during that year from its subscribers within the jurisdiction of the
20 local government.

21 4. The entire amount of the franchise fee must be paid by a
22 video service provider directly to the local government in legal
23 tender of the United States or in a check, draft or note that is payable
24 in legal tender of the United States.

25 5. A video service provider may:

26 (a) Pass the franchise fee through to and collect the franchise fee
27 from its subscribers within the jurisdiction of the local government
28 based on the gross revenue received from each such subscriber; and

29 (b) Designate the amount of the franchise fee collected from
30 each subscriber as a separate line item on the subscriber's bill.

31 6. Except as otherwise provided in subsection 7, the franchise
32 fee authorized by this section:

33 (a) Is the only fee, tax, assessment or other charge that a local
34 government may impose on a video service provider for the
35 privilege of providing video service or constructing or operating a
36 video service network within the jurisdiction of the local
37 government; ~~{and}~~

38 (b) Is in lieu of any other fee, tax, assessment or charge that may
39 be imposed by a local government on a video service provider for its
40 occupation or use of any public right-of-way or highway ~~{H}~~; and

41 *(c) Is in lieu of any recurring rental charge that may be*
42 *imposed by a political subdivision of this State on a video service*
43 *provider or an affiliate of such a provider for the occupation or*
44 *use of any public right-of-way or highway by a micro wireless*



1 *facility installed by the provider or affiliate pursuant to section 8*
2 *of this act.*

3 7. This section does not restrict the right of a local government
4 to impose on a video service provider ~~§~~ *or an affiliate:*

5 (a) The fees authorized by subsection 5 of NRS 711.640; and

6 (b) Any generally applicable and nondiscriminatory fees, ad
7 valorem taxes, sales taxes or other taxes that are lawfully imposed
8 on other businesses within the jurisdiction of the local government.

