

Amendment No. 350

Assembly Amendment to Assembly Bill No. 344	(BDR 58-838)
<b>Proposed by:</b> Assembly Committee on Growth and Infrastructure	
<b>Amends:</b> Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

DP/WLK



Date: 4/20/2019

A.B. No. 344—Makes various changes to modernize the provision of cellular coverage. (BDR 58-838)





## 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; ~~prohibiting a political subdivision of this State from discriminating against or preventing certain uses of a telecommunication system or cable television system under certain circumstances;~~ 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 7 of this bill prohibits a political subdivision of this State from discriminating against or preventing certain uses of a telecommunication system or cable television system in the public rights of way by a telecommunication provider or a wireless infrastructure provider if the provider complies with applicable federal and state requirements.~~

Section 8 of this bill requires a political subdivision of this State to allow a ~~telecommunication provider or a wireless infrastructure~~ video service provider, or an affiliate thereof, to construct, install, place, maintain, operate, repair or replace micro wireless facilities on ~~certain cables owned by~~ the video service network of the provider, or affiliate under the provisions of a franchise which was granted to the provider or affiliate, as applicable.

~~Section 9 of this bill~~ 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 of this bill do not otherwise limit the authority of a political subdivision of this State local government to license telecommunication providers and establish certain conditions on such licenses, or (2) affect the authority of a political subdivision 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 ~~707~~ 711 of NRS is hereby amended by adding thereto the provisions set forth as sections ~~2 to 9, inclusive,~~ 3, 4 and 8 of this act.

Sec. 2. ~~As used in sections 2 to 9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meanings ascribed to them in those sections.~~ (Deleted by amendment.)

Sec. 3. "Affiliate" means ~~a person or~~ an entity that ~~directly~~ ;

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, ~~owns, controls,~~ is wholly owned or controlled by, or is under common ~~ownership or~~ control ~~with another person or entity,~~ of a holder of a certificate of authority.

Sec. 4. "Micro wireless facility" means a ~~small~~ wireless telecommunications facility that:

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

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. ~~"Small wireless facility" means a wireless facility that meets the following qualifications:~~

~~1. Each antenna is located inside an enclosure of not more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of not more than 6 cubic feet; and~~

~~2. All other wireless equipment associated with the facility has a cumulative volume of not more than 28 cubic feet or such higher limit as is established by the Federal Communications Commission.~~ (Deleted by amendment.)

Sec. 6. ~~"Wireless infrastructure provider" means any person who:~~

~~1. Is authorized to provide telecommunication service in this State; or~~

~~2. Builds or installs:~~

~~(a) Transmission equipment;~~

~~(b) Wireless facilities; or~~

~~(c) Micro wireless facilities or structures.~~

~~The term does not include a provider of wireless services.~~ (Deleted by amendment.)

Sec. 7. ~~A political subdivision of this State may not:~~

~~1. Discriminate against a telecommunication provider or a wireless infrastructure provider in the use of a telecommunication system or cable television system; or~~

~~2. Prevent a telecommunication provider or a wireless infrastructure provider from using a telecommunication system or cable television system;~~

~~in the public rights-of-way to provide services other than telecommunication service if the telecommunication provider or wireless infrastructure provider, as applicable, complies with applicable federal and state requirements.~~ (Deleted by amendment.)

1        **Sec. 8. 1. A political subdivision of this State shall allow a**  
 2 ~~telecommunication provider or a wireless infrastructure~~ **video service provider,**  
 3 **or an affiliate of such a provider, to construct, install, place, maintain, operate ,**  
 4 **repair or replace one or more micro wireless facilities on** ~~feables that are strung~~  
 5 ~~between utility poles and owned by~~ **the video service network of the provider .** ~~for~~  
 6 ~~affiliate, as applicable, under the provisions of a franchise which was granted to~~  
 7 ~~the provider or affiliate, as applicable, to provide telecommunication service or~~  
 8 ~~cable television service.~~

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

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

17        **4. The provisions of this section do not limit the authority of a local**  
 18 **government to:**

19        **(a) License telecommunications providers; or**

20        **(b) Establish conditions on those licenses that are:**

21        **(1) Competitively neutral and nondiscriminatory; and**

22        **(2) Consistent with federal and state law.**

23        **Sec. 9. ~~[The provisions of sections 2 to 9, inclusive, of this act do not:~~**

24 ~~1. Limit the authority of a political subdivision of this State to:~~

25 ~~(a) License telecommunication providers; or~~

26 ~~(b) Establish conditions on those licenses that are:~~

27 ~~(1) Competitively neutral and nondiscriminatory; and~~

28 ~~(2) Consistent with federal and state law.~~

29 ~~2. Affect the authority of a political subdivision of this State to:~~

30 ~~(a) Manage the public rights of way within its boundaries; or~~

31 ~~(b) Exercise its police powers and land use powers.] (Deleted by~~  
 32 **amendment.)**

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

34        711.020 As used in this chapter, unless the context otherwise requires, the  
 35 words and terms defined in NRS 711.022 to 711.151, inclusive, **and sections 3 and**  
 36 **4 of this act** have the meanings ascribed to them in those sections.

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

38        711.640 1. A local government shall not require a video service provider to  
 39 place its facilities in ducts or conduits or on poles owned or leased by the local  
 40 government.

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

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

45        (b) Is competitively neutral and does not:

46        (1) Discriminate among video service providers; or

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

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

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

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

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

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

6. If there is a situation necessitating emergency response work or repair in, on, under or over any public right-of-way or highway, a video service provider may begin that work or repair without prior approval from a local government if the provider notifies the local government as promptly as reasonably possible after learning of the need for that work or repair.

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

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

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

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

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

5. A video service provider may:

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

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

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

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

(b) Is in lieu of any other fee, tax, assessment or charge that may be imposed by a local government on a video service provider for its occupation or use of any public right-of-way or highway. ~~It is~~ **and**

**(c) 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 of such a provider for the occupation or use of any public right-of-way or highway by a micro wireless facility installed by the provider or affiliate pursuant to section 8 of this act.**

1           7. This section does not restrict the right of a local government to impose on a  
2 video service provider ~~or~~ or an affiliate;

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

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