

## **Ohio Senate Bill 331 – Passed 12/7/16**

### **1 When does the statute take effect?**

- Effective: March 21, 2017; Sections 3 and 4 effective December 19, 2016

### **2 Is there a grandfather provision for rates on existing leased municipal facilities?**

- (Page 11, Lines 5-9) “(b) This subchapter does not limit, abrogate, or supersede the 5 jurisdiction of the Arkansas Public Service Commission, or any rule or order 6 of the commission concerning pole attachments under § 23-4-1001 et seq., or 7 any agreement of a utility pole owner and attacher related to the rates, 8 terms, and conditions for a pole attachment.”
- (Page 22) “Sec. 4939.08. (A) Nothing in sections 4939.01 to 4939.07 of the Revised Code applies to a franchise or to any agreement with a public utility or cable operator, or micro wireless facility operator, for the balance of its term, if the franchise or agreement meets all of the following, as applicable:
  - (1) The (a) With respect to a public utility or cable operator, the franchise was granted, or the agreement was authorized by ordinance or otherwise and was entered into, by a municipal corporation prior to the effective date of this section July 2, 2002.
  - (b) With respect to a micro wireless facility operator, the agreement was authorized by ordinance or otherwise and was entered into by a municipal corporation and the micro wireless facility operator prior to the effective date of the amendments to this section by S.B. 331 of the 131st general assembly.
- (2) The franchise or agreement authorizes the occupation or use of public ways.
- (3) The public utility or micro wireless facility operator agrees with the applicable public way fees, or nonmonetary compensation, if any, or the cable operator pays the applicable fee or utilizes the credit, offset, or deduction specified in division (B)(4) of section 4939.05 of the Revised Code.

### **3 What structures are included in the statute?**

- (Page 17) “(O) ‘Utility pole’ means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service.”

- (Page 17) “(R) ‘Wireless support structure’ means a pole, such as a monopole, either guyed or self- supporting, light pole, traffic signal, sign pole, or utility pole capable of supporting wireless facilities. As used in section 4939.031 of the Revised Code, ‘wireless support structure’ excludes a utility pole or other facility owned or operated by a municipal electric utility.”

#### 4 Does the statute apply definitions for telecommunications facility, small cell, micro transmitter or similar? If so, what are the definitions?

- (Page 16) “(B) ‘Antenna’ means communications equipment that transmits or receives radio frequency signals in the provision of wireless service, including associated accessory equipment.”
- (Page 16) “(D) ‘Distributed antenna system’ means a network or facility to which all of the following apply:
  - (1) It distributes radio frequency signals to provide wireless service.
  - (2) It meets the height and size characteristics of a small cell facility.
  - (3) It consists of all of the following:
    - (a) Remote antenna nodes deployed throughout a desired coverage area;
    - (b) A high-capacity signal transport medium connected to a central hub site;
    - (c) Equipment located at the hub site to process or control the radio frequency signals through the antennas.
    - (4) It conforms to the size limitations specified in division (N) of this section.”
- (Page 16) “(F) ‘Micro wireless facility’ includes both a distributed antenna system and a small cell facility, and the related wireless facilities.”
- (Page 17) “(N) ‘Small cell facility’ means a wireless facility that meets the requirements of division (N) (1) of this section and also division (N)(2) of this section:
  - (1)(a) Each antenna is located inside an enclosure of not more than six 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 enclosure of not more than six cubic feet in volume.
  - (b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches,

and vertical cable runs for the connection of power and other services.

(2) If the wireless facility were placed on a wireless support structure, the increased height would be not more than ten feet or the overall resulting height would be not more than fifty feet.”

- (Page 17) “(P) "Wireless facility" means an antenna, accessory equipment, or other wireless device or equipment used to provide wireless service.”

## **5 Are there maximum rates for providing access to municipally owned structures (lease or license rates)?**

- (Page 22) “Sec. 4939.0325. (A) A municipal corporation shall permit, for the purpose of providing wireless service, an attachment by a micro wireless facility operator to a wireless support structure owned or operated by the municipal corporation and located in the public way.

(B)(1) The total annual charges and fees for the attachment and any activities related to the attachment shall be the lesser of the actual, direct, and reasonable costs related to the use of the wireless support structure by the operator or two hundred dollars per attachment.

(2) In any controversy concerning the appropriateness of a charge or fee under this section, the municipal corporation shall have the burden of proving that the charge or fee is reasonably related to its actual, direct, and reasonable costs.

(C) The charges, fees, terms, and conditions for attachments under this section, including the processes and time for approval of applications and permits for the attachments, shall be nondiscriminatory as to all attaching operators regardless of the types of services provided by the operators.”

- (Page 23) “(D) Nothing in sections 4939.01 to 4939.07 and this section of the Revised Code prohibits a municipal corporation from doing either of the following:

(1) Charging a cable operator a franchise fee in accordance with the ‘Cable Communications Policy Act of 1984,’ 98 Stat. 2779, 47 U.S.C.A. 542;

(2) Allowing a credit, offset, or deduction against the payment of a construction permit fee for any franchise fee a cable operator pays to the municipal corporation.”

## **6 Is a transfer of municipal assets to another ownership entity prohibited?**

- The new law does not specifically address this issue.

## **7 Is there a restriction on exclusive management or subleasing of municipal assets?**

- Yes, (Page 22) “Sec. 4939.0327. A municipal corporation shall not enter into an exclusive arrangement with any entity for the right to attach to the municipal corporation's wireless support structures.”

## **8 Are municipally owned public utilities exempt?**

- Yes, (Page 19) “Except as provided in this chapter as well as any franchise, pole attachment, or other agreements between a municipal corporation and a cable operator or public utility, a municipal corporation shall not require any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or operation of a micro wireless facility, or otherwise prohibit or restrain the activities as described in this section.”

## **9 Does the state have a home rule provision?**

- Yes, (Ohio Constitution XVIII.07 Home Rule) “Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.”

## **10 Can there be application fees? If so, what amount?**

- (Page 22) “Sec. 4939.0319. Any fee charged by a municipal corporation for a request for consent under section 4939.031 of the Revised Code shall not exceed the lesser of two hundred fifty dollars per micro wireless facility or the amount charged by the municipal corporation for a building permit for any other type of commercial development or land use development.”

## **11 Can there be inspection fees? If so, what amount?**

- This new law does not specifically address inspection fees, but it states: (Page 20) “Sec. 4939.0311. (A) Consent shall not be required for either of the following activities conducted in the public way:  
(1) Routine maintenance of wireless facilities;”

## **12 Can local zoning or building codes apply restrictions? If so, what are the allowable restrictions?**

- (Page 17) “(C)(1) No person shall occupy or use a public way without first obtaining, under this section or section 1332.24 or 4939.031 of the Revised Code, any requisite consent of the municipal corporation owning or controlling the public way.”
- (Page 19) “(B) Except as provided in this chapter as well as any franchise, pole attachment, or other agreements between a municipal corporation and a cable operator or public utility, a municipal corporation shall not require any zoning or other approval, consent, permit, certificate, or condition for the construction, replacement, location, attachment, or

operation of a micro wireless facility, or otherwise prohibit or restrain the activities as described in this section.”

- (Page 19) “Sec. 4939.033. A request for consent under section 4939.031 of the Revised Code shall be deemed a permitted use and shall be exempt from local zoning review.”

**13 Are strand mounted devices or facilities exempt?**

- This new law does not exempt strand mounted devices or facilities.

**14 Are privately owned structures in ROW exempt?**

- This new law does not exempt privately owned structures in ROW.

**15 Are there design restrictions? If so what are they?**

- (Pages 20 and 21) “Sec. 4939.0315. With respect to the provision of any micro wireless facility, a municipal corporation shall not do any of the following: ...
  - (D) Evaluate the request based on the availability of other potential locations for the placement of the micro wireless facility or associated wireless support structure, including the options to submit a request under division (A)(1) or (2) of section 4939.031 of the Revised Code or under division (A)(4) of that section to modify an existing micro wireless facility or associated wireless support structure except that a municipal corporation may propose an alternate location within fifty feet of the proposed location, which the requestor shall use if it has the right to use the alternate structure on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs;...
  - (I) Impose unreasonable requirements regarding the maintenance or appearance of the micro wireless facility or associated wireless support structure and accessory equipment, including the types of materials to be used and the screening or landscaping of wireless facilities; ...
  - (M) Impose setback or fall-zone requirements for the associated wireless support structure that are different from requirements imposed on other types of structures in the public way;
  - (N) Impose environmental testing, sampling, or monitoring requirements that exceed federal law or that are not imposed on other types of construction or elements of the construction; ...
  - (P) Impose separation requirements that require any space to be maintained between wireless facilities or wireless support structures;

(Q) Prevent the requestor from locating the micro wireless facility or wireless support structure in a residential area or within a specific distance from a residence or other structure.”

- (Page 22) “Sec. 4939.0321. No municipal corporation shall have or exercise any jurisdiction, authority, or control over the design, engineering, construction, installation, or operation of any micro wireless facility located in an interior structure not owned or controlled by the municipal corporation.”

## 16 What are the shot clocks as defined by statute?

- (Page 18) “(2) Except as otherwise provided in division (C)(5) of this section and sections 4939.031 and 4939.035 of the Revised Code, a municipal corporation, not later than sixty days after the date of filing by a person of a completed request for consent, shall grant or deny its consent.”
- (Page 19) “Sec. 4939.031. (A) A municipal corporation, not later than ninety days after the date of filing by an entity of a completed request for consent for any of the following, to be done in a public way, shall, subject to sections 4939.03, 4939.033 to 4939.037, and 4939.0313 to 4939.0319 of the Revised Code, grant or deny its consent:
  - (1) Attaching micro wireless facilities to a wireless support structure;
  - (2) Locating two or more wireless service providers' micro wireless facilities on the same wireless support structure;
  - (3) Replacing or modifying a micro wireless facility on a wireless support structure;
  - (4) Constructing, modifying, or replacing a wireless support structure associated with a micro wireless facility.”
- (Pages 19 and 20) “Sec. 4939.035. (A) The ninety-day time period required in section 4939.031 of the Revised Code may be tolled only:
  - (1) By mutual agreement between the entity requesting consent and the municipal corporation;
  - (2) In cases where the municipal corporation determines that the application is incomplete; or
  - (3) By the municipal corporation in the event it has an extraordinary number of wireless facilities contained in pending requests, in which case the municipal corporation may toll the ninety-day period for a reasonable amount of days not exceeding an additional ninety days.
 (B) To toll the time period for incompleteness, the municipal corporation shall provide written notice to the entity requesting consent not later than thirty days after receiving the request, clearly and specifically delineating all missing documents or information. The missing



documents or information shall be reasonably related to determining whether the request meets the requirements of applicable federal and state law. Any notice of incompleteness requiring other information or documentation, including information of the type described in section 4939.0315 of the Revised Code or documentation intended to illustrate the need for the request or to justify the business decision for the request, does not toll the time period.

- (C) The time period begins running again when the entity makes a supplemental submission in response to the municipal corporation's notice of incompleteness.
- (D) If a supplemental submission is inadequate, the municipal corporation shall notify the entity not later than ten days after receiving the supplemental submission that the supplemental submission did not provide the information identified in the original notice delineating missing documents or information. The time period may be tolled in the case of second or subsequent notices under the procedures identified in divisions (A) to (C) of this section. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.”

- (Page 20) “Sec. 4939.037. If a municipal corporation fails to approve a request for consent under section 4939.031 of the Revised Code or a request for a relevant construction permit within the required time period, provided the time period is not tolled under section 4939.035 of the Revised Code, the request shall be deemed granted upon the requesting entity providing notice to the municipal corporation that the time period for acting on the request has lapsed.”
- (Page 20) “Sec. 4939.039. Notwithstanding sections 4939.031 to 4939.037 of the Revised Code, a municipal corporation shall approve within sixty days, and may not deny, an eligible facilities request under 47 C.F.R. 1.40001.”
- (Pages 20 and 21) “Sec. 4939.0315. With respect to the provision of any micro wireless facility, a municipal corporation shall not do any of the following:
  - ...(L) Limit the duration of any permit that is granted, except that a municipal corporation may require that construction commence within two years;”

## 17 Does the statute require local acceptance of bulk applications?

- (Page 20) “Sec. 4939.0313. (A) An entity seeking to construct, modify, or replace more than one micro wireless facility within the jurisdiction of a single municipal corporation may file, at the entity's discretion, a

consolidated request for consent under division (A)(4) of section 4939.031 of the Revised Code and receive a single permit for the construction, modification, or replacement of the micro wireless facilities or associated wireless support structures.

(B) In the case of a consolidated request, the fees provided for in section 4927.0319 of the Revised Code may be cumulative.”

**18 Is the city required to complete the make ready work? If so, is there a limit on what they can charge and any requirements they must meet?**

- The new law does not address make ready work.