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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 739

- 02/02/2017 Authored by O'Neill, Hoppe, Garofalo, Kresha, Thissen and others
- The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform
- 03/02/2017 Adoption of Report: Amended and re-referred to the Committee on Government Operations and Elections Policy
- 03/08/2017 Adoption of Report: Amended and re-referred to the Committee on Job Growth and Energy Affordability Policy and Finance
- 05/17/2017 Adoption of Report: Placed on the General Register as Amended
- Pursuant to Joint Rule 2.03, re-referred to the Committee on Rules and Legislative Administration
- Adoption of Report: Placed on the General Register
- Joint Rule 2.03 has been waived for any subsequent committee action on this bill
- Read for the Second Time

1.1 A bill for an act

1.2 relating to telecommunications; providing for collocation of small wireless facilities;

1.3 amending Minnesota Statutes 2016, sections 237.162, subdivisions 2, 4, 9, by

1.4 adding subdivisions; 237.163, subdivisions 2, 4, 6, 7, by adding subdivisions.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 237.162, subdivision 2, is amended to read:

1.7 Subd. 2. **Local government unit.** "Local government unit" means a county, home rule

1.8 charter or statutory city, ~~or town,~~ or the Metropolitan Council.

1.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

1.10 Sec. 2. Minnesota Statutes 2016, section 237.162, subdivision 4, is amended to read:

1.11 Subd. 4. **Telecommunications right-of-way user.** (a) "Telecommunications right-of-way

1.12 user" means a person owning or controlling a facility in the public right-of-way, or seeking

1.13 to own or control a facility in the public right-of-way, that is used or is intended to be used

1.14 for providing wireless service, or transporting telecommunications or other voice or data

1.15 information.

1.16 (b) A cable communication system defined and regulated under chapter 238, and

1.17 telecommunications activities related to providing natural gas or electric energy services

1.18 ~~whether provided by~~ by a public utility as defined in section 216B.02, a municipality, a

1.19 municipal gas or power agency organized under chapter 453 or 453A, or a cooperative

1.20 electric association organized under chapter 308A, are not telecommunications right-of-way

1.21 users for the purposes of this section and section 237.163, except to the extent these entities

1.22 are offering wireless services.

2.1 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.2 Sec. 3. Minnesota Statutes 2016, section 237.162, subdivision 9, is amended to read:

2.3 Subd. 9. **Management costs or rights-of-way management costs.** (a) "Management
2.4 costs" or "rights-of-way management costs" means the actual costs a local government unit
2.5 incurs in managing its public rights-of-way, and includes such costs, if incurred, as those
2.6 associated with registering applicants; issuing, processing, and verifying right-of-way or
2.7 small wireless facility permit applications; inspecting job sites and restoration projects;
2.8 maintaining, supporting, protecting, or moving user equipment during public right-of-way
2.9 work; determining the adequacy of right-of-way restoration; restoring work inadequately
2.10 performed after providing notice and the opportunity to correct the work; and revoking
2.11 right-of-way or small wireless facility permits.

2.12 (b) Management costs do not include:

2.13 (1) payment by a telecommunications right-of-way user for the use of the public
2.14 right-of-way;

2.15 (2) unreasonable fees of a third-party contractor used by a local government unit as part
2.16 of managing its public rights-of-way, including but not limited to any third-party contractor
2.17 fee tied to or based upon customer counts, access lines, revenue generated by the
2.18 telecommunications right-of-way user, or revenue generated for a local government unit;
2.19 or

2.20 (3) the fees and cost of litigation relating to the interpretation of this section or section
2.21 237.163 or any ordinance enacted under those sections, or the local unit of government's
2.22 fees and costs related to appeals taken pursuant to section 237.163, subdivision 5.

2.23 **EFFECTIVE DATE.** This section is effective the day following final enactment.

2.24 Sec. 4. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
2.25 read:

2.26 Subd. 10. **Collocate.** "Collocate" or "collocation" means to install, mount, maintain,
2.27 modify, operate, or replace a small wireless facility on, under, within, or adjacent to an
2.28 existing wireless support structure that is owned privately or by a local government unit.

2.29 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.1 Sec. 5. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
3.2 read:

3.3 Subd. 11. **Small wireless facility.** "Small wireless facility" means:

3.4 (1) a wireless facility that meets both of the following qualifications:

3.5 (i) each antenna is located inside an enclosure of no more than six cubic feet in volume
3.6 or, in the case of an antenna that has exposed elements, the antenna and all its exposed
3.7 elements could fit within an enclosure of no more than six cubic feet; and

3.8 (ii) all other wireless equipment associated with the small wireless facility, excluding
3.9 electric meters, concealment elements, telecommunications demarcation boxes, battery
3.10 backup power systems, grounding equipment, power transfer switches, cutoff switches,
3.11 cable, conduit, vertical cable runs for the connection of power and other services, and any
3.12 equipment concealed from public view within or behind an existing structure or concealment,
3.13 is in aggregate no more than 28 cubic feet in volume; or

3.14 (2) a micro wireless facility.

3.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.16 Sec. 6. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
3.17 read:

3.18 Subd. 12. **Utility pole.** "Utility pole" means a pole that is used in whole or in part to
3.19 facilitate telecommunications or electric service.

3.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.21 Sec. 7. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
3.22 read:

3.23 Subd. 13. **Wireless facility.** (a) "Wireless facility" means equipment at a fixed location
3.24 that enables the provision of wireless services between user equipment and a wireless service
3.25 network, including:

3.26 (1) equipment associated with wireless service;

3.27 (2) a radio transceiver, antenna, coaxial or fiber-optic cable, regular and backup power
3.28 supplies, and comparable equipment, regardless of technological configuration; and

3.29 (3) a small wireless facility.

3.30 (b) "Wireless facility" does not include:

4.1 (1) wireless support structures;

4.2 (2) wireline backhaul facilities; or

4.3 (3) coaxial or fiber-optic cables (i) between utility poles or wireless support structures,
4.4 or (ii) that are not otherwise immediately adjacent to or directly associated with a specific
4.5 antenna.

4.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.7 Sec. 8. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
4.8 read:

4.9 Subd. 14. **Micro wireless facility.** "Micro wireless facility" means a small wireless
4.10 facility that is no larger than 24 inches long, 15 inches wide, and 12 inches high, and whose
4.11 exterior antenna, if any, is no longer than 11 inches.

4.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.13 Sec. 9. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision to
4.14 read:

4.15 Subd. 15. **Wireless service.** "Wireless service" means any service using licensed or
4.16 unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or by
4.17 means of a mobile device, that is provided using wireless facilities. Wireless service does
4.18 not include services regulated under Title VI of the Communications Act of 1934, as
4.19 amended, including a cable service under United States Code, title 47, section 522, clause
4.20 (6).

4.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.22 Sec. 10. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision
4.23 to read:

4.24 Subd. 16. **Wireless support structure.** "Wireless support structure" means a new or
4.25 existing structure in a public right-of-way designed to support or capable of supporting
4.26 wireless facilities, as reasonably determined by a local government unit.

4.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.1 Sec. 11. Minnesota Statutes 2016, section 237.162, is amended by adding a subdivision
5.2 to read:

5.3 Subd. 17. **Wireline backhaul facility.** "Wireline backhaul facility" means a facility
5.4 used to transport communications data by wire from a wireless facility to a communications
5.5 network.

5.6 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.7 Sec. 12. Minnesota Statutes 2016, section 237.163, subdivision 2, is amended to read:

5.8 Subd. 2. **Generally.** (a) Subject to this section, a telecommunications right-of-way user
5.9 authorized to do business under the laws of this state or by license of the Federal
5.10 Communications Commission may construct, maintain, and operate small wireless facilities,
5.11 conduit, cable, switches, and related appurtenances and facilities along, across, upon, above,
5.12 and under any public right-of-way.

5.13 (b) Subject to this section, a local government unit has the authority to manage its public
5.14 rights-of-way and to recover its rights-of-way management costs. Except as provided in
5.15 subdivisions 3a, 3b, and 3c, the authority defined in this section may be exercised at the
5.16 option of the local government unit. ~~The exercise of this authority and~~ is not mandated under
5.17 this section. A local government unit may, by ordinance:

5.18 (1) require a telecommunications right-of-way user seeking to excavate or obstruct a
5.19 public right-of-way for the purpose of providing telecommunications services to obtain a
5.20 right-of-way permit to do so and to impose permit conditions consistent with the local
5.21 government unit's management of the right-of-way;

5.22 (2) require a telecommunications right-of-way user using, occupying, or seeking to use
5.23 or occupy a public right-of-way for the purpose of providing telecommunications services
5.24 to register with the local government unit by providing the local government unit with the
5.25 following information:

5.26 (i) the applicant's name, gopher state one-call registration number under section 216D.03,
5.27 address, and telephone and facsimile numbers;

5.28 (ii) the name, address, and telephone and facsimile numbers of the applicant's local
5.29 representative;

5.30 (iii) proof of adequate insurance; and

5.31 (iv) other information deemed reasonably necessary by the local government unit for
5.32 the efficient administration of the public right-of-way; and

6.1 (3) require telecommunications right-of-way users to submit to the local government
6.2 unit plans for construction and major maintenance that provide reasonable notice to the
6.3 local government unit of projects that the telecommunications right-of-way user expects to
6.4 undertake that may require excavation and obstruction of public rights-of-way.

6.5 (c) A local government unit may also require a telecommunications right-of-way user
6.6 that is registered with the local government unit pursuant to paragraph (b), clause (2), to
6.7 periodically update the information in its registration application.

6.8 (d) Notwithstanding sections 394.34 and 462.355, or any other law, a local government
6.9 unit must not establish a moratorium with respect to:

6.10 (1) filing, receiving, or processing applications for right-of-way or small wireless facility
6.11 permits; or

6.12 (2) issuing or approving right-of-way or small wireless facility permits.

6.13 (e) A telecommunications right-of-way user may place a new wireless support structure
6.14 or collocate small wireless facilities on wireless support structures located within a public
6.15 right-of-way, subject to the approval procedures under this section and, for collocation on
6.16 wireless support structures owned by a local government unit, the reasonable terms,
6.17 conditions, and rates set forth under this section. A local government unit may prohibit,
6.18 regulate, or charge a fee to install wireless support structures or to collocate small wireless
6.19 facilities only as provided in this section.

6.20 (f) The placement of wireless support structures and small wireless facilities is a permitted
6.21 use in a public right-of-way, except that a local government unit may require a person to
6.22 obtain a special or conditional land use permit to install a new wireless support structure
6.23 for the siting of a small wireless facility on property zoned and used exclusively for
6.24 single-family residential use or within a historic district established by state law or city
6.25 ordinance as of the date of application for a small wireless facility permit. This paragraph
6.26 does not apply to areas outside a public right-of-way that are zoned and used exclusively
6.27 for single-family residential use.

6.28 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.29 Sec. 13. Minnesota Statutes 2016, section 237.163, is amended by adding a subdivision
6.30 to read:

6.31 Subd. 3a. **Small wireless facility permits; general.** (a) A local government unit:

7.1 (1) may require a telecommunications right-of-way user to obtain a permit or permits
7.2 under this section to place a new wireless support structure or collocate a small wireless
7.3 facility in a public right-of-way managed by the local government unit;

7.4 (2) must not require an applicant for a small wireless facility permit to provide any
7.5 information that:

7.6 (i) has previously been provided to the local government unit by the applicant in an
7.7 application for a small wireless permit; and

7.8 (ii) is discriminatory in terms of the type of information the local government unit
7.9 requires from a provider of nonwireless telecommunications services, except for information
7.10 related to demonstrating compliance with applicable Federal Communications Commission
7.11 regulations governing radio frequency exposure, or other information required by this
7.12 section;

7.13 (3) must ensure that any application for a small wireless facility permit is processed on
7.14 a nondiscriminatory basis; and

7.15 (4) must specify that the term of a small wireless facility permit is equal to the length
7.16 of time that the small wireless facility is in use, unless the permit is revoked under this
7.17 section.

7.18 (b) An applicant may file a consolidated permit application to collocate up to 15 small
7.19 wireless facilities, or a greater number if agreed to by a local government unit, provided
7.20 that all the small wireless facilities in the application:

7.21 (1) are located within a two-mile radius;

7.22 (2) consist of substantially similar equipment; and

7.23 (3) are to be placed on similar types of wireless support structures.

7.24 In rendering a decision on a consolidated permit application, a local government unit may
7.25 approve a permit for some small wireless facilities and deny a permit for others, but may
7.26 not use denial of one or more permits as a basis to deny all the small wireless facilities in
7.27 the application.

7.28 (c) If a local government unit receives applications within a single seven-day period
7.29 from one or more applicants seeking approval of permits for more than 30 small wireless
7.30 facilities, the local government unit may extend the 90-day deadline imposed in subdivision
7.31 3c by an additional 30 days. If a local government unit elects to invoke this extension, it
7.32 must inform in writing any applicant to whom the extension will be applied.

8.1 (d) A local government unit is prohibited from requiring a person to pay a fee, obtain a
8.2 small wireless facility permit, or enter into a small wireless facility collocation agreement
8.3 solely in order to conduct any of the following activities:

8.4 (1) routine maintenance of a small wireless facility;

8.5 (2) replacement of a small wireless facility with a new facility that is substantially similar
8.6 or smaller in size, weight, height, and wind or structural loading than the small wireless
8.7 facility being replaced; or

8.8 (3) installation, placement, maintenance, operation, or replacement of micro wireless
8.9 facilities that are suspended on cables strung between existing utility poles in compliance
8.10 with national safety codes.

8.11 A local government unit may require advance notification of these activities if the work
8.12 will obstruct a public right-of-way.

8.13 (e) Nothing in this subdivision affects the need for an entity seeking to place a small
8.14 wireless facility on a wireless support structure that is not owned by a local government
8.15 unit to obtain from the owner of the wireless support structure any necessary authority to
8.16 place the small wireless facility, nor shall any provision of this chapter be deemed to affect
8.17 the rates, terms, and conditions for access to or placement of a small wireless facility or a
8.18 wireless support structure not owned by a local government unit. This subdivision does not
8.19 affect any existing agreement between a local government unit and an entity concerning
8.20 the placement of small wireless facilities on local government unit-owned wireless support
8.21 structures.

8.22 (f) No later than six months after the effective date of this act or three months after
8.23 receiving a small wireless facility permit application from a wireless service provider, a
8.24 local government unit that has elected to set forth terms and conditions of collocation in a
8.25 standard small wireless facility collocation agreement shall develop and make available an
8.26 agreement that complies with the requirements of this section and section 237.162. A
8.27 standard small wireless facility collocation agreement shall be written to be substantially
8.28 complete so that a wireless service provider may accept it with little substantive negotiation.
8.29 Notwithstanding any law to the contrary, the parties to a small wireless facility collocation
8.30 agreement may incorporate additional terms and conditions mutually agreed upon into a
8.31 small wireless facility collocation agreement. A small wireless facility collocation agreement
8.32 between a local government unit and a wireless service provider is considered public data
8.33 not on individuals and is accessible to the public under section 13.03.

9.1 (g) An approval of a small wireless facility permit under this section authorizes the
9.2 installation, placement, maintenance, or operation of a small wireless facility to provide
9.3 wireless service and shall not be construed to confer authorization to (1) provide any service
9.4 other than a wireless service, or (2) install, place, maintain, or operate a wireline backhaul
9.5 facility in the right-of-way.

9.6 (h) The terms and conditions of collocation under this subdivision:

9.7 (1) may be set forth in a small wireless facility collocation agreement, if a local
9.8 government unit elects to utilize such an agreement;

9.9 (2) must be nondiscriminatory, competitively neutral, and commercially reasonable; and

9.10 (3) must comply with this section and section 237.162.

9.11 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.12 Sec. 14. Minnesota Statutes 2016, section 237.163, is amended by adding a subdivision
9.13 to read:

9.14 Subd. 3b. **Small wireless facility permits; placement.** (a) A local government unit may
9.15 not require the placement of small wireless facilities on any specific wireless support structure
9.16 other than the wireless support structure proposed in the permit application.

9.17 (b) A local government unit must not limit the placement of small wireless facilities,
9.18 either by minimum separation distances between small wireless facilities or maximum
9.19 height limitations, except that each wireless support structure installed in the right-of-way
9.20 after the effective date of this act shall not exceed 50 feet above ground level, unless the
9.21 local government unit agrees to a greater height.

9.22 (c) Notwithstanding paragraph (b), a wireless support structure that replaces an existing
9.23 wireless support structure that is higher than 50 feet above ground level may be placed at
9.24 the height of the existing wireless support structure, unless the local government unit agrees
9.25 to a greater height.

9.26 (d) Wireless facilities constructed in the right-of-way after the effective date of this act
9.27 may not extend more than ten feet above an existing wireless support structure in place as
9.28 of the effective date of this act.

9.29 **EFFECTIVE DATE.** This section is effective the day following final enactment.

10.1 Sec. 15. Minnesota Statutes 2016, section 237.163, is amended by adding a subdivision
10.2 to read:

10.3 Subd. 3c. **Small wireless facility permits; approval.** (a) Except as provided in
10.4 subdivision 4, a local government unit shall issue a small wireless facility permit to a
10.5 telecommunications right-of-way user seeking to install a new or replacement wireless
10.6 support structure for a small wireless facility, or to collocate a small wireless facility on a
10.7 wireless support structure in a public right-of-way. In processing and approving a small
10.8 wireless facility permit, a local government unit may condition its approval on compliance
10.9 with:

10.10 (1) generally applicable and reasonable health, safety, and welfare regulations consistent
10.11 with the local government unit's public right-of-way management;

10.12 (2) reasonable accommodations for decorative utility poles or signs; and

10.13 (3) any reasonable restocking, replacement, or relocation requirements when a new
10.14 wireless support structure is placed in a public right-of-way.

10.15 (b) A local government unit has 90 days after the date a small wireless facility permit
10.16 application is filed to issue or deny the permit, or the permit is automatically issued. To toll
10.17 the 90-day clock, the local government unit must provide a written notice of incompleteness
10.18 to the applicant within 30 days of receipt of the application, clearly and specifically
10.19 delineating all missing documents or information. Information delineated in the notice is
10.20 limited to documents or information publicly required as of the date of application and
10.21 reasonably related to a local government unit's determination whether the proposed equipment
10.22 falls within the definition of a small wireless facility and whether the proposed deployment
10.23 satisfies all health, safety, and welfare regulations applicable to the small wireless facility
10.24 permit request. Upon an applicant's submittal of additional documents or information in
10.25 response to a notice of incompleteness, the local government unit has ten days to notify the
10.26 applicant in writing of any information requested in the initial notice of incompleteness that
10.27 is still missing. Second or subsequent notices of incompleteness may not specify documents
10.28 or information that were not delineated in the original notice of incompleteness. Requests
10.29 for information not requested in the initial notice of incompleteness do not toll the 90-day
10.30 clock. Parties can mutually agree in writing to toll the 90-day clock at any time. Section
10.31 15.99 does not apply to this paragraph or paragraph (c).

10.32 For the purposes of this subdivision, "toll the 90-day clock" means to halt the progression
10.33 of days that count towards the 90-day deadline.

11.1 (c) Except as provided in subdivision 3a, paragraph (c), a small wireless facility permit
11.2 and any associated encroachment or building permit required by a local government unit,
11.3 are deemed approved if the local government unit fails to approve or deny the application
11.4 within 90 days after the permit application has been filed, unless the applicant and the local
11.5 government unit have mutually agreed in writing to extend the 90-day deadline.

11.6 (d) Nothing in this subdivision precludes a local government unit from applying generally
11.7 applicable and reasonable health, safety, and welfare regulations when evaluating and
11.8 deciding to approve or deny a small wireless facility permit.

11.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.

11.10 Sec. 16. Minnesota Statutes 2016, section 237.163, subdivision 4, is amended to read:

11.11 Subd. 4. **Permit denial or revocation.** (a) A local government unit may deny any
11.12 application for a right-of-way or small wireless facility permit if the telecommunications
11.13 right-of-way user does not comply with a provision of this section.

11.14 (b) A local government unit may deny an application for a right-of-way permit if the
11.15 local government unit determines that the denial is necessary to protect the health, safety,
11.16 and welfare or when necessary to protect the public right-of-way and its current use.

11.17 (c) A local government unit may revoke a right-of-way or small wireless facility permit
11.18 granted to a telecommunications right-of-way user, with or without fee refund, in the event
11.19 of a substantial breach of the terms and conditions of statute, ordinance, rule, or regulation
11.20 or any material condition of the permit. A substantial breach by a permittee includes, but
11.21 is not limited to, the following:

11.22 (1) a material violation of a provision of the right-of-way or small wireless facility
11.23 permit;

11.24 (2) an evasion or attempt to evade any material provision of the right-of-way or small
11.25 wireless facility permit, or the perpetration or attempt to perpetrate any fraud or deceit upon
11.26 the local government unit or its citizens;

11.27 (3) a material misrepresentation of fact in the right-of-way or small wireless facility
11.28 permit application;

11.29 (4) a failure to complete work in a timely manner, unless a permit extension is obtained
11.30 or unless the failure to complete work is due to reasons beyond the permittee's control; and

12.1 (5) a failure to correct, in a timely manner, work that does not conform to applicable
 12.2 standards, conditions, or codes, upon inspection and notification by the local government
 12.3 unit of the faulty condition.

12.4 (d) Subject to this subdivision, a local government unit may not deny an application for
 12.5 a right-of-way or small wireless facility permit for failure to include a project in a plan
 12.6 submitted to the local government unit under subdivision 2, paragraph (b), clause (3), when
 12.7 the telecommunications right-of-way user has used commercially reasonable efforts to
 12.8 anticipate and plan for the project.

12.9 (e) In no event may a local government unit unreasonably withhold approval of an
 12.10 application for a right-of-way or small wireless facility permit, or unreasonably revoke a
 12.11 permit.

12.12 (f) Any denial or revocation of a right-of-way or small wireless facility permit must be
 12.13 made in writing and must document the basis for the denial. The local government unit must
 12.14 notify the telecommunications right-of-way user in writing within three business days of
 12.15 the decision to deny or revoke a permit. If a permit application is denied, the
 12.16 telecommunications right-of-way user may cure the deficiencies identified by the local
 12.17 government unit and resubmit its application. If the telecommunications right-of-way user
 12.18 resubmits the application within 30 days of receiving written notice of the denial, it may
 12.19 not be charged an additional filing or processing fee. The local government unit must approve
 12.20 or deny the revised application within 30 days after the revised application is submitted.

12.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.

12.22 Sec. 17. Minnesota Statutes 2016, section 237.163, subdivision 6, is amended to read:

12.23 Subd. 6. **Fees.** (a) A local government unit may recover its right-of-way management
 12.24 costs by imposing a fee for registration, a fee for each right-of-way or small wireless facility
 12.25 permit, or, when appropriate, a fee applicable to a particular telecommunications right-of-way
 12.26 user when that user causes the local government unit to incur costs as a result of actions or
 12.27 inactions of that user. A local government unit may not recover costs from a
 12.28 telecommunications right-of-way user ~~costs~~ or an owner of a cable communications system
 12.29 awarded a franchise under chapter 238 caused by another entity's activity in the right-of-way.

12.30 (b) Fees, or other right-of-way obligations, imposed by a local government unit on
 12.31 telecommunications right-of-way users under this section must be:

12.32 (1) based on the actual costs incurred by the local government unit in managing the
 12.33 public right-of-way;

13.1 (2) based on an allocation among all users of the public right-of-way, including the local
13.2 government unit itself, which shall reflect the proportionate costs imposed on the local
13.3 government unit by each of the various types of uses of the public rights-of-way;

13.4 (3) imposed on a competitively neutral basis; and

13.5 (4) imposed in a manner so that aboveground uses of public rights-of-way do not bear
13.6 costs incurred by the local government unit to regulate underground uses of public
13.7 rights-of-way.

13.8 (c) The rights, duties, and obligations regarding the use of the public right-of-way
13.9 imposed under this section must be applied to all users of the public right-of-way, including
13.10 the local government unit while recognizing regulation must reflect the distinct engineering,
13.11 construction, operation, maintenance and public and worker safety requirements, and
13.12 standards applicable to various users of the public rights-of-way. For users subject to the
13.13 franchising authority of a local government unit, to the extent those rights, duties, and
13.14 obligations are addressed in the terms of an applicable franchise agreement, the terms of
13.15 the franchise shall prevail over any conflicting provision in an ordinance.

13.16 (d) A wireless service provider may collocate small wireless facilities on wireless support
13.17 structures owned or controlled by a local government unit and located within the public
13.18 roads or rights-of-way without being required to apply for or enter into any individual
13.19 license, franchise, or other agreement with the local government unit or any other entity,
13.20 other than a standard small wireless facility collocation agreement under subdivision 3a,
13.21 paragraph (f), if the local unit of government elects to utilize such an agreement.

13.22 (e) Any initial engineering survey and preparatory construction work associated with
13.23 collocation must be paid by the cost causer in the form of a onetime, nonrecurring,
13.24 commercially reasonable, nondiscriminatory, and competitively neutral charge to recover
13.25 the costs associated with a proposed attachment.

13.26 (f) Total application fees for a small wireless facility permit must comply with this
13.27 subdivision with respect to costs related to the permit.

13.28 (g) A local government unit may elect to charge each small wireless facility attached to
13.29 a wireless support structure owned by the local government unit a fee, in addition to other
13.30 fees or charges allowed under this subdivision, consisting of:

13.31 (1) up to \$125 per year for rent to occupy space on a wireless support structure;

13.32 (2) up to \$25 per year for maintenance associated with the space occupied on a wireless
13.33 support structure; and

14.1 (3) a flat monthly fee for electricity costs incurred by the local government unit related
14.2 to a small wireless facility at the rate of:

14.3 (i) \$73 per radio node under 100 max watts; or

14.4 (ii) \$182 per radio node over 100 max watts.

14.5 **EFFECTIVE DATE.** This section is effective the day following final enactment.

14.6 Sec. 18. Minnesota Statutes 2016, section 237.163, subdivision 7, is amended to read:

14.7 Subd. 7. **Additional right-of-way provisions.** (a) In managing the public rights-of-way
14.8 and in imposing fees under this section, no local government unit may:

14.9 (1) unlawfully discriminate among telecommunications right-of-way users;

14.10 (2) grant a preference to any telecommunications right-of-way user;

14.11 (3) create or erect any unreasonable requirement for entry to the public rights-of-way
14.12 by telecommunications right-of-way users; or

14.13 (4) require a telecommunications right-of-way user to obtain a franchise or pay for the
14.14 use of the right-of-way.

14.15 (b) A telecommunications right-of-way user need not apply for or obtain right-of-way
14.16 permits for facilities that are located in public rights-of-way on May 10, 1997, for which
14.17 the user has obtained the required consent of the local government unit, or that are otherwise
14.18 lawfully occupying the public right-of-way. However, the telecommunications right-of-way
14.19 user may be required to register and to obtain a right-of-way permit for an excavation or
14.20 obstruction of existing facilities within the public right-of-way after May 10, 1997.

14.21 (c) Data and documents exchanged between a local government unit and a
14.22 telecommunications right-of-way user are subject to the terms of chapter 13. A local
14.23 government unit not complying with this paragraph is subject to the penalties set forth in
14.24 section 13.08.

14.25 (d) A local government unit may not collect a fee imposed under this section through
14.26 the provision of in-kind services by a telecommunications right-of-way user, nor may a
14.27 local government unit require the provision of in-kind services as a condition of consent to
14.28 use the local government unit's public right-of-way or to obtain a small wireless facility
14.29 permit.

14.30 (e) Except as provided in this chapter or required by federal law, a local government
14.31 unit shall not adopt or enforce any regulation on the placement or operation of

15.1 communications facilities in the right-of-way where the entity is already authorized to
15.2 operate in the right-of-way, and shall not regulate or impose or collect fees on
15.3 communications services except to the extent specifically provided for in the existing
15.4 authorization, and unless expressly required by state or federal statute.

15.5 Sec. 19. Minnesota Statutes 2016, section 237.163, is amended by adding a subdivision
15.6 to read:

15.7 Subd. 9. **Authorized contractors.** (a) Nothing in this section precludes a
15.8 telecommunications right-of-way user from authorizing another entity or individual to act
15.9 on its behalf to install, construct, maintain, or repair a facility or facilities owned or controlled
15.10 by the telecommunications right-of-way user.

15.11 (b) A local government unit is prohibited from imposing fees or requirements on an
15.12 authorized entity or individual for actions on behalf of a telecommunications right-of-way
15.13 user that are in addition to or different from the fees and requirements it is authorized to
15.14 impose on the telecommunications right-of-way user under this section.

15.15 **EFFECTIVE DATE.** This section is effective the day following final enactment.

15.16 Sec. 20. Minnesota Statutes 2016, section 237.163, is amended by adding a subdivision
15.17 to read:

15.18 Subd. 10. **Exemption.** Notwithstanding any other provision in this chapter, this section
15.19 does not apply to a wireless support structure owned, operated, maintained, or served by a
15.20 municipal electric utility.

15.21 **EFFECTIVE DATE.** This section is effective the day following final enactment.