



**Regular Meeting Agenda
5/20/2019 6:30 PM
Council Chambers**

Title of Item:	Approve the RESOLUTION to authorize the Master Right-Of-Way License Agreement with New Cingular Wireless PCS, LLC.
Agenda Comments:	New Cingular Wireless PCS, LLC (Provider) has proposed to the City, a project to install a small cell wireless communication network within the rights of way of the City. Newly adopted State legislation allows for these networks to be placed in public rights of way with regulation beginning October 1, 2019. The City and the Provider has agreed to follow the new legislation before it becomes effective. This agreement reflects the terms that will become law October 1, 2019 and will be used for this agreement. The Public Works Director recommends approval of the agreement and asked to authorize the Mayor to sign the attached Resolution and Agreement. The City Attorney has reviewed and approved.
Funding Line(s)	

ATTACHMENTS:

Description	Upload Date	Type
Agreement	5/9/2019	Exhibit
Attachment	5/9/2019	Backup Material
Resolution	5/15/2019	Resolution

MASTER RIGHT OF WAY LICENSE AGREEMENT

This Master Right of Way Agreement (the “**Agreement**”) made this ___ of _____, 20__ (“Effective Date”), between **CITY OF KENNESAW, GEORGIA**, with its principal offices located at 2529 J.O. Stephenson Avenue, Kennesaw, Georgia 30144 (hereinafter designated “**CITY**”) and NEW CINGULAR WIRELESS PCS, LLC. a Delaware limited liability company d/b/a AT&T Mobility, with its principal offices located at 575 Morosgo Drive, NE, Atlanta, Georgia 30324, hereinafter designated “**PROVIDER**.” CITY and PROVIDER are at times collectively referred to hereinafter as the “**Parties**” or individually as a “**Party**”.

WITNESSETH

WHEREAS, CITY desires to promote the health, safety and general welfare of the public by regulating the siting and placement of communications technologies in the public rights of way, including the encouragement of location and collocation of communications technologies on existing structures to the maximum extent possible; and

WHEREAS, PROVIDER desires to install, maintain and operate communications facilities in and/or upon CITY’s right-of-way (“**Right-of-Way**”); and

WHEREAS, the General Assembly of Georgia recently enacted the Streamlining Wireless Facilities and Antennas Act (“the Act”), a copy of which is attached as Appendix A hereto, to streamline the deployment of wireless broadband in the public rights of way; and

WHEREAS, the majority of the provisions of the Act become effective October 1, 2019; and

WHEREAS, CITY desires to allow PROVIDER to deploy wireless facilities in compliance with all of the provisions of the Act beginning on the Effective Date of this agreement;

WHEREAS, notwithstanding that the City has not yet had an opportunity to evaluate its current code of ordinances in order to identify opportunities for the City to legislate certain matters consistently with the Act, the City would like to process applications submitted by or on behalf of PROVIDER for permits to deploy small wireless facilities and associated poles prior to certain provisions of the law becoming effective on October 1, 2019 so as to cooperate with PROVIDER and expedite the issuance of such permits;

WHEREAS, in light of the foregoing, PROVIDER is willing to acknowledge and stipulate to certain requirements that the City would like to impose as a condition of any such permit prior to October 1, 2019;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. To the extent that City is authorized to request a meeting with PROVIDER pursuant to subsection 36-66C-3(b) of the Act, CITY will submit a written request for such meeting to PROVIDER on or before August 1, 2019 and will be available for such a meeting on or before September 15, 2019.

2. Beginning on the Effective Date of this Agreement, PROVIDER is authorized to deploy wireless facilities within CITY’s Right-of-Way in compliance with all of the provisions of the Act as though those provisions became effective on the Effective Date of this Agreement rather than on October 1, 2019,

provided that PROVIDER acknowledges and agrees to the following with regard to poles, decorative poles, and small wireless facilities installed prior to October 1, 2019:

A. PROVIDER stipulates and agrees that notwithstanding whether the City currently has requirements adopted pursuant to O.C.G.A. 36-66C-7(i)(1) and (2) of the Act, PROVIDER agrees to comply with any reasonable and nondiscriminatory requirements imposed by the Public Works Department as a condition of any permit prior to October 1, 2019 that prohibit or otherwise address the installation of poles in the right of way in an area designated solely for underground or buried facilities;

B. PROVIDER stipulates and agrees that notwithstanding whether the City currently has aesthetic and structural requirements adopted that comply with O.C.G.A. § 36-66C-10 of the Act, PROVIDER agrees to comply with any reasonable, objective, and nondiscriminatory aesthetic and structural requirements for the location or collocation of any wireless facilities in any of the City of Kennesaw's Historic Districts imposed by the Public Works Department as a condition of any permit prior to October 1, 2019;

C. PROVIDER stipulates and agrees that notwithstanding whether the City currently has laws contemplated by O.C.G.A. § 36-66C-7(j)(11) of the Act, PROVIDER agrees to comply with any reasonable, objective, nondiscriminatory laws of general applicability that address the occupancy or management of the right of way that are not otherwise inconsistent with the Act imposed by the Public Works Department as a condition of any permit granted prior to October 1, 2019; and

D. Nothing in this Agreement prohibits or otherwise restricts PROVIDER's right to withdraw any application submitted under this agreement or, prior to beginning any work in the right-of-way pursuant to any permit granted, cancel such permit and re-submit an application for the same or a similar installation pursuant to the Act on or after October 1, 2019.

3. This Agreement is a Georgia agreement made under the laws of the State. It will be enforced according to Georgia law without regard to its conflict of laws rules or any other rules directing referral to foreign law or forums. Any action related to this Agreement in any way shall be brought in the Superior Court of Cobb County, Georgia, the Georgia Public Service Commission, or the Federal Communications Commission to the extent that such court or agency has subject matter jurisdiction, and each party hereto hereby consents to the jurisdiction and venue of such Court or agency and the appropriate appellate courts therefrom in any such action and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the personal jurisdiction and venue of such court and to any claim of inconvenient forum. Each Party hereby agrees to execute an acknowledgment of service of process at the request of the other Party in any litigation related to this Agreement.

4. This Agreement, and each Permit under it, may be sold, assigned or transferred by PROVIDER without any approval or consent of CITY to any parent, subsidiary, affiliate, or any person, firm or corporation that shall control, be under the control of, or be under common control with PROVIDER, or to any entity into which PROVIDER may be merged or consolidated or which purchases substantially all of the assets of PROVIDER that are subject to this Agreement. As to other parties, this Agreement and each Permit may not be sold, assigned or transferred without the written consent of CITY, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of PROVIDER or transfer upon partnership or corporate dissolution of PROVIDER shall constitute a sale, assignment, or transfer hereunder.

5. This Agreement contains all agreements, promises and understandings between CITY and PROVIDER regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either CITY or PROVIDER in any dispute, controversy or proceeding. If any part of any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, said part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of said provision or the remaining provisions of this Agreement. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, and such Party shall have the right to enforce such rights at any time. The performance of this Agreement via each Permit shall be governed interpreted, construed and regulated by the laws of the State of Georgia (now and as it may be amended or interpreted in the future), without reference to its conflicts of law principles. This Agreement is subject to all applicable Federal, State and Local laws, and regulations, rulings and orders of governmental agencies.

6. CITY acknowledges that it will make this Agreement available for public inspection and available for adoption upon the same terms and conditions to any requesting wireless provider.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written and have caused this Agreement to be executed in separate counterparts, each to be considered an original by their authorized representative.

[Remainder of page intentionally left blank; signature page to follow.]

WITNESS

CITY:

_____, **GEORGIA**

By: _____

Name: _____

Title: _____

Date:

WITNESS

NEW CINGULAR WIRELESS PCS, LLC.

By: _____

Name: _____

Title: _____

Date:

APPENDIX A
STREAMLINING WIRELESS FACILITIES AND ANTENNAS ACT

Senate Bill 66

By: Senators Gooch of the 51st, Ginn of the 47th, Lucas of the 26th, Dugan of the 30th, Cowsert of the 46th and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 36 of the Official Code of Georgia Annotated, relating to local government,
 2 so as to enact the "Streamlining Wireless Facilities and Antennas Act"; to streamline the
 3 deployment of wireless broadband in the public rights of way; to provide for definitions; to
 4 require certain meetings between applicants and authorities before applications are submitted
 5 under this Act; to provide the manner in which this Act may be implemented; to provide rate
 6 and fee caps and the process to be followed for the removal of small wireless facilities; to
 7 authorize wireless providers to collocate small wireless facilities on authority poles and
 8 decorative poles in the right of way subject to administrative review and to occupy the right
 9 of way for certain uses, including certain placements of poles and certain collocations of
 10 small wireless facilities, subject to administrative review; to provide a permit application
 11 process with certain exemptions and certain limitations on an authority's use and
 12 administration of the right of way; to provide certain time frames and other requirements for
 13 the application process, permits, relocations, reconditioning, make-ready work,
 14 abandonment, imminent risks to public safety, repair of damage to the right of way, and
 15 notices; to require certain applications for other uses to comply with applicable law; to
 16 require an applicant to comply with certain requirements in the right of way; to provide for
 17 certain requirements in historic districts; to provide a process by which an authority may
 18 propose alternative locations for new poles in the right of way in areas zoned for residential
 19 use; to provide for certain requirements for decorative poles; to provide for consolidated
 20 applications and the tolling of application processing once certain volumes have been
 21 reached; to provide for a process for the resolution of conflicting application requests; to
 22 provide for indemnification by wireless providers and limitations of liability for authorities
 23 and their officers, employees, or agents; to provide that, absent an agreement to the contrary,
 24 an authority may not require a wireless provider to provide services unrelated to the
 25 collocation for which approval is sought; to address the applicability of this Act to
 26 agreements between authorities and wireless providers entered into before October 1, 2019;
 27 to provide that, except to the extent authorized by federal law, nothing in this Act authorizes
 28 the state or any political subdivision thereof, including an authority, to require small wireless

29 facility deployment or to regulate wireless services; to address any perceived conflicts
 30 between this Act and Chapter 66B of Title 36; to address the law applicable to certain
 31 activities relating to wireline backhaul facilities; to provide that the approval of certain
 32 activities relating to small wireless facilities shall not authorize the provision of
 33 communications services; to provide for certain limitations on the regulation of certain
 34 communications facilities and the regulation and imposition of a tax, fee, or charge on certain
 35 communications services; to provide that this Act shall not apply to an authority to the extent
 36 such authority uses communications facilities to provide free Wi-Fi services to the public;
 37 to provide that nothing in this Act relieves any person of any duties provided for in Chapter 9
 38 of Title 25; to provide for related matters; to provide for effective dates; to repeal conflicting
 39 laws; and for other purposes.

40 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

41 **SECTION 1.**

42 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
 43 by adding a new chapter to read as follows:

44 "CHAPTER 66C

45 36-66C-1.

46 This chapter shall be known and may be cited as the 'Streamlining Wireless Facilities and
 47 Antennas Act.'

48 36-66C-2.

49 As used in this chapter, the term:

50 (1) 'Administrative review' means review by an authority, including authority staff, of
 51 an application to determine whether the issuance of a permit is in conformity with the
 52 applicable provisions of this chapter.

53 (2) 'Antenna' means:

54 (A) Communications equipment that transmits, receives, or transmits and receives
 55 electromagnetic radio frequency signals used in the provision of wireless services or
 56 other wireless communications; or

57 (B) Communications equipment similar to equipment described in subparagraph (A)
 58 of this paragraph used for the transmission, reception, or transmission and reception of
 59 surface waves.

60 Such term shall not include television broadcast antennas, antennas designed for amateur
 61 radio use, or satellite dishes for residential or household purposes.

62 (3) 'Applicable codes' means uniform building, fire, safety, electrical, plumbing, or
63 mechanical codes adopted by a recognized national code organization to the extent such
64 codes have been adopted by the state or an authority or are otherwise applicable in the
65 jurisdiction in which the application is submitted.

66 (4) 'Applicant' means any person that submits an application.

67 (5) 'Application' means a written request submitted by an applicant to an authority for
68 a permit to:

69 (A) Collocate a small wireless facility in a right of way; or

70 (B) Install, modify, or replace a pole or decorative pole in a right of way on which a
71 small wireless facility is or will be collocated.

72 (6) 'Authority' means any county, consolidated government, or municipality or any
73 agency, district, subdivision, or instrumentality thereof. Such term shall not include an
74 electric supplier.

75 (7) 'Authority pole' means a pole owned, managed, or operated by or on behalf of an
76 authority. Such term shall not include poles, support structures, electric transmission
77 structures, or equipment of any type owned by an electric supplier.

78 (8) 'Class I Authority' means any county which has 100,000 parcels or more of real
79 property within the unincorporated area of such county, any consolidated government
80 which has 100,000 parcels or more of real property within the consolidated area, or any
81 municipality which has 100,000 parcels or more of real property within the municipality.

82 (9) 'Class II Authority' means any county which has at least 10,000 parcels but less than
83 100,000 parcels of real property within the unincorporated area of such county, any
84 consolidated government which has at least 10,000 parcels but less than 100,000 parcels
85 of real property within the consolidated area, or any municipality which has at least
86 10,000 parcels but less than 100,000 parcels of real property within the municipality.

87 (10) 'Class III Authority' means any county which has less than 10,000 parcels of real
88 property within the unincorporated area of such county, any consolidated government
89 which has less than 10,000 parcels of real property within the consolidated area, or any
90 municipality which has less than 10,000 parcels of real property within the municipality.

91 (11) 'Collocate' or 'collocation' means to install, mount, modify, or replace a small
92 wireless facility on or adjacent to a pole, decorative pole, or support structure.

93 (12) 'Communications facility' means the set of equipment and network components,
94 including wires and cables and associated equipment and network components, used by
95 a communications service provider to provide communications services.

96 (13) 'Communications service provider' means a provider of communications services.

97 (14) 'Communications services' means cable service as defined in 47 U.S.C.
98 Section 522(6); telecommunications service as defined in 47 U.S.C. Section 153(53);

99 information service as defined in 47 U.S.C. Section 153(24), as each such term existed
 100 on January 1, 2019; or wireless services.

101 (15) 'Consolidated application' means an application for the collocation of multiple small
 102 wireless facilities on existing poles or support structures or for the installation,
 103 modification, or replacement of multiple poles and the collocation of associated small
 104 wireless facilities.

105 (16) 'Decorative pole' means an authority pole that is specially designed and placed for
 106 aesthetic purposes.

107 (16.1) 'Electric supplier' shall have the same meaning as provided in Code
 108 Section 46-3-3.

109 (17) 'Eligible facilities request' means an eligible facilities request as set forth in 47
 110 C.F.R. Section 1.40001(b)(3), as it existed on January 1, 2019.

111 (18) 'FCC' means the Federal Communications Commission of the United States.

112 (19) 'Fee' means a one-time, nonrecurring charge based on time and expense.

113 (20) 'Historic district' means:

114 (A) Any district, site, building, structure, or object included in, or eligible for inclusion
 115 in, the National Register of Historic Places maintained by the secretary of the interior
 116 of the United States in accordance with Section VI.D.1.a.i-v of the Nationwide
 117 Programmatic Agreement codified by 47 C.F.R. Part 1;

118 (B) Any area designated as a historic district under Article 2 of Chapter 10 of Title 44,
 119 the 'Georgia Historic Preservation Act'; or

120 (C) Any area designated as a historic district or property by law prior to the effective
 121 date of this Code section.

122 (21) 'Law' means and includes any and all federal, state, or local laws, statutes, common
 123 laws, codes, rules, regulations, orders, or ordinances.

124 (22) 'Metropolitan statistical area' means a standard metropolitan statistical area which
 125 is located within this state and recognized by the United States Department of Commerce,
 126 Bureau of the Census, according to the United States decennial census of 2010 or any
 127 future such census.

128 (23) 'Micro wireless facility' means a small wireless facility not larger in dimension
 129 than 24 inches in length, 15 inches in width, and 12 inches in height that has an exterior
 130 antenna, if any, no longer than 11 inches.

131 (24) 'Permit' means a written authorization, in electronic or hard copy format, required
 132 to be issued by an authority to initiate, continue, or complete the collocation of a small
 133 wireless facility or the installation, modification, or replacement of a pole or decorative
 134 pole upon which a small wireless facility is collocated.

135 (25) 'Person' means an individual, corporation, limited liability company, partnership,
136 association, trust, or other entity or organization, including an authority.

137 (26) 'Pole' means a vertical pole such as a utility, lighting, traffic, or similar pole made
138 of wood, concrete, metal, or other material that is lawfully located or to be located within
139 a right of way, including without limitation a replacement pole and an authority pole.
140 Such term shall not include a support structure, decorative pole, or electric transmission
141 structure.

142 (27) 'Rate' means a recurring charge.

143 (28) 'Reconditioning work' means the activities associated with substantially painting,
144 reconditioning, improving, or repairing authority poles.

145 (29) 'Replace,' 'replacement,' or 'replacing' means to replace a pole or decorative pole
146 with a new pole or a new decorative pole, similar in design, size, and scale to the existing
147 pole or decorative pole consistent with 47 C.F.R. 1.40001(b)(7) as it existed on
148 January 1, 2019, in order to address limitations of, or change requirements applicable to,
149 the existing pole to structurally support the collocation of a small wireless facility.

150 (30) 'Replacement work' means the activities associated with replacing an authority pole.

151 (31) 'Right of way' has the same meaning as provided in paragraph (25) of Code
152 Section 32-1-3; provided, however, that such term shall apply only to property or an
153 interest therein that is under the ownership or control of an authority and shall not include
154 property or any interest therein acquired for or devoted to an interstate highway or the
155 public rights, structures, sidewalks, facilities, and appurtenances described in
156 subparagraph (K) or (R) of paragraph (24) of Code Section 32-1-3.

157 (32) 'Small wireless facility' means radio transceivers; surface wave couplers; antennas;
158 coaxial, fiber optic, or other cabling; power supply; backup batteries; and comparable and
159 associated equipment, regardless of technological configuration, at a fixed location or
160 fixed locations that enable communication or surface wave communication between user
161 equipment and a communications network and that meet both of the following
162 qualifications:

163 (A) Each wireless provider's antenna could fit within an enclosure of no more than six
164 cubic feet in volume; and

165 (B) All other wireless equipment associated with the facility is cumulatively no more
166 than 28 cubic feet in volume, measured based upon the exterior dimensions of height
167 by width by depth of any enclosure that may be used. The following types of
168 associated ancillary equipment are not included in the calculation of the volume of all
169 other wireless equipment associated with any such facility:

170 (i) Electric meters;

171 (ii) Concealment elements;

172 (iii) Telecommunications demarcation boxes;

173 (iv) Grounding equipment;

174 (v) Power transfer switches;

175 (vi) Cut-off switches; and

176 (vii) Vertical cable runs for connection of power and other services.

177 Such term shall not include a pole, decorative pole, or support structure on, under, or
 178 within which the equipment is located or collocated or to which the equipment is attached
 179 and shall not include any wireline backhaul facilities or coaxial, fiber optic, or other
 180 cabling that is between small wireless facilities, poles, decorative poles, or support
 181 structures or that is not otherwise immediately adjacent to or directly associated with a
 182 particular antenna.

183 (33) 'State' means the State of Georgia.

184 (34) 'Support structure' means a building, billboard, water tank, or any other structure to
 185 which a small wireless facility is or may be attached. Such term shall not include a
 186 decorative pole, electric transmission structure, or pole.

187 (35) 'Wireless infrastructure provider' means any person, including a person authorized
 188 to provide telecommunications services in this state, that builds, installs, or operates small
 189 wireless facilities, poles, decorative poles, or support structures on which small wireless
 190 facilities are or are intended to be used for collocation but that is not a wireless services
 191 provider.

192 (36) 'Wireless provider' means a wireless infrastructure provider or a wireless services
 193 provider.

194 (37) 'Wireless services' means any services provided to the public using licensed or
 195 unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

196 (38) 'Wireless services provider' means a person that provides wireless services.

197 (39) 'Wireline backhaul facility' means an aboveground or underground wireline facility
 198 used to transport communications data from a telecommunications demarcation box
 199 associated with small wireless facility to a network.

200 36-66C-3.

201 (a) An applicant that has not previously held a meeting with a Class I Authority that
 202 complies with this Code section shall meet with the Class I Authority at least 30 days
 203 before submitting applications under Code Section 36-66C-6 to inform such authority in
 204 good faith when such applicant expects to commence deployment of small wireless
 205 facilities and poles within such authority pursuant to this chapter, the number of small
 206 wireless facilities and poles it expects to deploy during the 24 months after
 207 commencement, and the expected timing of such deployments.

208 (b) Upon request by any Class II Authority that is located within a metropolitan statistical
 209 area and with which the applicant has not previously held a meeting that complies with this
 210 Code section, an applicant shall meet with such authority at least 30 days before submitting
 211 applications under Code Section 36-66C-6 to inform such authority in good faith when
 212 such applicant expects to commence deployment of small wireless facilities and poles
 213 within such authority pursuant to this chapter, the number of small wireless facilities and
 214 poles it expects to deploy during the 24 months after commencement, and the expected
 215 timing of such deployments.

216 (c) All documents or other information provided by the applicant in the course of, or in
 217 association with, any meetings provided for in this Code section shall be presumed to be
 218 confidential and proprietary and a trade secret as such term is defined in Code
 219 Section 10-1-761, shall be subject to exemption from disclosure under state and federal
 220 law, and shall not be subject to disclosure under Article 4 of Chapter 18 of Title 50.

221 36-66C-4.

222 A wireless provider may collocate small wireless facilities and install, modify, or replace
 223 associated poles or decorative poles under this chapter without an agreement with an
 224 authority and without an implementing ordinance. An authority may make available to
 225 wireless providers rates, fees, and other terms that comply with this chapter and that are
 226 adopted by ordinance, resolution, or another document by the authority after public notice.
 227 In the absence of an ordinance, a resolution, or another document that complies with this
 228 chapter, and until any such ordinance, a resolution, or other document is adopted, if at all,
 229 a wireless provider may collocate small wireless facilities and install, modify, or replace
 230 associated poles or decorative poles pursuant to the requirements of this chapter. An
 231 authority may not require a wireless provider to enter into an agreement to implement this
 232 chapter, but nothing in this chapter shall prohibit an authority and a wireless provider from
 233 voluntarily entering one or more such agreements, including such agreements with rates,
 234 fees, and other terms that differ from those in this chapter; provided, however, that the
 235 authority shall make each such agreement available for public inspection and available for
 236 adoption upon the same terms and conditions to any requesting wireless provider.

237 36-66C-5.

238 (a) As a condition to the issuance of a permit to collocate a small wireless facility or to
 239 install, modify, or replace a pole or a decorative pole for collocation of a small wireless
 240 facility in a right of way, the applicant shall pay the following fees and rates:

241 (1) A fee for each application for the collocation of each small wireless facility on an
 242 existing pole assessed by the authority not to exceed \$100.00 per small wireless facility;

243 (2) A fee for each application for each replacement pole with an associated small
244 wireless facility assessed by the authority not to exceed \$250.00;

245 (3) A fee for each application for each new pole with an associated small wireless facility
246 assessed by the authority not to exceed \$1,000.00 per pole with an associated small
247 wireless facility;

248 (4) An annual right of way occupancy rate assessed by the authority for nonexclusive
249 occupancy of the right of way by the applicant not to exceed:

250 (A) One hundred dollars per year for each small wireless facility collocated on any
251 existing or replacement pole, including an existing or replacement authority pole; or
252 (B) Two hundred dollars per year for each new pole, other than a replacement pole,
253 with an associated small wireless facility;

254 (5) An annual attachment rate for collocations on authority poles not to exceed \$40.00
255 per year per small wireless facility, which shall be nondiscriminatory regardless of the
256 services provided by the collocating wireless provider;

257 (6) A fee for make-ready work, as provided in subsection (n) of Code Section 36-66C-7;
258 and

259 (7) Generally applicable nondiscriminatory fees for any permit required under generally
260 applicable law; provided, however, that an applicant shall not be required to obtain or pay
261 any fees for a building permit, as the permit issued pursuant to this chapter serves as a
262 building permit for the applicable poles and small wireless facilities.

263 (b) The monetary caps provided in paragraphs (1), (2), (3), (4), and (5) of subsection (a)
264 of this Code section shall increase 2.5 percent annually beginning January 1, 2021.

265 (c) If, in a final adjudication not subject to further appeal or to review by the United States
266 Supreme Court, a federal court reviewing Accelerating Wireless Broadband Deployment
267 by Removing Barriers to Infrastructure Investment, et al., Declaratory Ruling and Third
268 Report and Order, WT Docket No. 17-79 and WC Docket No. 17-84, FCC 18-133
269 (released September 27, 2018), or a related FCC order, or a Georgia federal district court,
270 the United States Court of Appeals for the Eleventh Circuit, or the United States Supreme
271 Court interpreting 47 U.S.C. Section 253(c) as it existed on January 1, 2019, determines
272 that fair and reasonable compensation includes not only cost based charges but also market
273 based charges with respect to application fees or right of way occupancy rates for the
274 installation of small wireless facilities or poles, or to authority pole attachment rates for
275 small wireless facilities, then:

276 (1) Beginning on July 1 of the calendar year following the date that the final adjudication
277 is no longer subject to further appeal or to review by the United States Supreme Court,
278 the monetary caps provided in paragraphs (1), (2), (3), (4), and (5) of subsection (a) of
279 this Code section for the fees or rates to which the determination applies, excluding any

280 increases that have been made under subsection (b) of this Code section, shall double;
 281 and
 282 (2) Beginning on July 1 of the second calendar year following the date that the final
 283 adjudication is no longer subject to further appeal or to review by the United States
 284 Supreme Court, the monetary caps in paragraphs (1), (2), (3), (4), and (5) of
 285 subsection (a) of this Code section for the fees or rates to which the determination applies
 286 shall terminate. In place of any monetary caps that terminate pursuant to this subsection,
 287 applicants shall pay fees or rates, as each may be applicable, that constitute the fair and
 288 reasonable compensation due to the authority under applicable law.

289 (d) An applicant shall not be subject to any fees or rates other than those expressly
 290 provided for by this Code section or as may be otherwise voluntarily negotiated between
 291 an applicant and the authority in accordance with Code Section 36-66C-4.

292 (e) The applicant, or the person that owns or operates the small wireless facility collocated
 293 in the right of way, may remove its small wireless facilities at any time from the right of
 294 way upon not less than 30 days' prior written notice to the authority and may cease paying
 295 to the authority any applicable fees and rates for such use, as of the date of the actual
 296 removal of the small wireless facilities. In the event of such removal, the right of way shall
 297 be, to the extent practicable in the reasonable judgment of the authority, restored to its
 298 condition prior to the removal. If the applicant fails to return the right of way, to the extent
 299 practicable in the reasonable judgment of the authority, to its condition prior to the removal
 300 within 90 days of the removal, the authority may, at the sole discretion of the authority,
 301 restore the right of way to such condition and charge the applicant the authority's
 302 reasonable, documented cost of removal and restoration, plus a penalty not to exceed
 303 \$500.00. The authority may suspend the ability of the applicant to receive any new permits
 304 from the authority until the applicant has paid the amount assessed for such restoration
 305 costs and the penalty assessed, if any; provided, however, that the authority shall not
 306 suspend such ability of any applicant that has deposited the amount in controversy in
 307 escrow pending an adjudication of the merits of the dispute by a court of competent
 308 jurisdiction.

309 36-66C-6.

310 (a) A wireless provider may collocate small wireless facilities on authority poles and
 311 decorative poles in the right of way, subject to administrative review only and the issuance
 312 of a permit as set forth in this Code section. Subject to administrative review only and the
 313 issuance of a permit as set forth in this Code section, a wireless provider may occupy the
 314 right of way for the following uses, provided that such uses shall be in accordance with

315 applicable provisions of this chapter, including without limitation, those set forth in Code
316 Section 36-66C-9:

317 (1) Collocation of a small wireless facility on or adjacent to a pole or a support structure
318 that does not exceed the limitations set forth in paragraph (3) of subsection (h) of Code
319 Section 36-66C-7 or on or adjacent to a decorative pole in compliance with Code
320 Section 36-66C-12; and

321 (2) Installation, modification, or replacement of a pole or a decorative pole for
322 collocation of a small wireless facility that does not exceed the limitations set forth in
323 paragraphs (1) and (2) of subsection (h) of Code Section 36-66C-7.

324 (b) No wireless provider shall collocate any small wireless facility in the right of way or
325 install, modify, or replace a pole or decorative pole for collocation of a small wireless
326 facility in the right of way without first filing an application and obtaining a permit
327 therefor, except as otherwise expressly provided in subsection (e) of this Code section.
328 Any failure to comply with this subsection by a wireless provider shall allow the applicable
329 authority, at the sole discretion of the authority, to restore the right of way, to the extent
330 practicable in the reasonable judgment of the authority, to its condition prior to the
331 unpermitted collocation or installation and to charge the responsible wireless provider its
332 reasonable, documented cost of doing so, plus a penalty not to exceed \$1,000.00. The
333 authority may suspend the ability of the wireless provider to receive any new permits from
334 the authority until the wireless provider has paid the amount assessed for such restoration
335 costs and the penalty assessed, if any; provided, however, that the authority shall not
336 suspend such ability of any applicant that has deposited the amount in controversy in
337 escrow pending an adjudication of the merits of the dispute by a court of competent
338 jurisdiction.

339 (c) The authority shall make accepted applications publicly available; provided, however,
340 that an applicant may designate portions of its application materials that it reasonably
341 believes contain trade secrets by following the procedures set forth in paragraph (34) of
342 subsection (a) of Code Section 50-18-72.

343 (d) The application shall be made by the applicable wireless provider or its duly authorized
344 representative and shall contain the following:

345 (1) The applicant's name, address, telephone number, and email address, including
346 emergency contact information for the applicant;

347 (2) The names, addresses, telephone numbers, and email addresses of all consultants, if
348 any, acting on behalf of the applicant with respect to the filing of the application;

349 (3) A general description of the proposed work and the purposes and intent of the
350 proposed facility. The scope and detail of such description shall be appropriate to the

351 nature and character of the physical work to be performed, with special emphasis on
352 those matters likely to be affected or impacted by the physical work proposed;
353 (4) Detailed construction drawings regarding the proposed use of the right of way;
354 (5) To the extent the proposed facility involves collocation on a pole, decorative pole,
355 or support structure, a structural report performed by a duly licensed engineer evidencing
356 that the pole, decorative pole, or support structure will structurally support the
357 collocation, or that the pole, decorative pole, or support structure may and will be
358 modified to meet structural requirements, in accordance with applicable codes;
359 (6) For any new aboveground facilities, visual depictions or representations if such are
360 not included in the construction drawings;
361 (7) Information indicating the horizontal and approximate vertical location, relative to
362 the boundaries of the right of way, of the small wireless facility for which the application
363 is being submitted;
364 (8) If the application is for the installation of a pole or replacement of a decorative pole,
365 a certification that complies with subsection (k) of this Code section;
366 (9) If the small wireless facility will be collocated on a pole or support structure owned
367 by a third party, other than an authority pole or a decorative pole, a certification that the
368 wireless provider has permission from the owner to collocate on the pole or support
369 structure; and
370 (10) If the applicant is not a wireless services provider, a certification that a wireless
371 services provider has requested in writing that the applicant collocate the small wireless
372 facilities or install, modify, or replace the pole or decorative pole at the requested
373 location.
374 (e) An application shall not be required for the following activities, provided that a
375 wireless provider may be required to obtain permits for such activities, such as electrical
376 permits or street opening permits, if otherwise required by generally applicable law:
377 (1) With respect to a pole or decorative pole on which a small wireless facility is
378 collocated, inspections, testing, repairs, and modifications that maintain functional
379 capacity and aesthetic and structural integrity, provided that modifications are limited by
380 the structural load analysis supplied by the applicant in its prior application to the
381 authority; and
382 (2) With respect to a small wireless facility, inspections, testing, or repairs that maintain
383 functional capacity or the replacement or upgrade of antennas or other components of the
384 small wireless facility such as a swap out or addition of antennas and radio equipment as
385 required by the applicant, with antennas and other components that are substantially
386 similar in color, aggregate size, and other aesthetics to that previously permitted by the
387 authority and consistent with the height and volume limits for small wireless facilities

388 under this chapter, so long as the pole, decorative pole, or support structure will
389 structurally support, or prior to installation will be modified to support, the structural load
390 in accordance with the structural load analysis supplied by the applicant in its prior
391 application to the authority.

392 (f) An authority shall not require a wireless provider to obtain a permit or any other
393 approval or require fees or rates for the installation, placement, maintenance, operation, or
394 replacement of micro wireless facilities that are suspended on cables that are strung
395 between poles or support structures in the right of way in compliance with applicable
396 codes; provided, however, that an authority may require a wireless provider to obtain
397 permits for any additional activities such as electrical work, excavation, or closure of
398 sidewalks or vehicular lanes within the right of way if otherwise required by generally
399 applicable law. Such permits shall be issued on a nondiscriminatory basis upon terms and
400 conditions applied to any other person's similar activities in the right of way.

401 (g) Any material change to information contained in an application shall be submitted in
402 writing to the authority within 30 days after the events necessitating the change.

403 (h) Unless otherwise provided by applicable law, all applications pursuant to this chapter
404 shall be accompanied by the fees required under Code Sections 36-66C-4 and 36-66C-5.

405 (i) An authority shall not enter into an exclusive arrangement with any person for use of
406 the right of way for the collocation of small wireless facilities or the installation, operation,
407 marketing, modification, maintenance, or replacement of poles or for the right to attach to
408 authority poles. A person that purchases or otherwise acquires an authority pole is subject
409 to the requirements of this subsection.

410 (j) The authority, in the exercise of its administration and regulation of the management
411 of the right of way, shall be competitively neutral and nondiscriminatory with regard to
412 other users of the right of way.

413 (k) A wireless provider shall not apply to install a pole or replace a decorative pole unless
414 it has determined after diligent investigation that it cannot meet the service objectives of
415 the permit by collocating on an existing pole or support structure on which:

416 (1) The wireless provider has the right to collocate subject to reasonable terms and
417 conditions; and

418 (2) Such collocation would not impose technical limitations or significant additional
419 costs. The wireless provider shall certify that it has made such a determination in good
420 faith, based on the assessment of a licensed engineer, and shall provide a written
421 summary of the basis for such determination.

422 (l) Requests for installation, modification, or replacement of a support structure are not
423 eligible for administrative review as set forth in this Code section.

424 (m) An application that is subject to administrative review shall be approved except as
425 provided in subsection (j) of Code Section 36-66C-7.

426 (n) The provisions of this chapter concerning the collocation of small wireless facilities
427 on poles and the installation, modification, and replacement of poles by wireless providers
428 apply only to poles that are lawfully located or are to be lawfully located within the right
429 of way. An authority has the burden of establishing that an existing pole's location within
430 the right of way is not lawful.

431 36-66C-7.

432 (a) The requirements of this Code section govern an authority's review of applications for
433 uses that are subject to administrative review as described in subsection (a) of Code
434 Section 36-66C-6.

435 (b) Within 20 days of receipt of a written application, the authority shall:

436 (1) Notify the applicant in writing of the commencement and completion dates of any
437 widening, repair, reconstruction, or relocation of the applicable right of way that is
438 scheduled to commence, or is anticipated in good faith to commence, within 24 months
439 after the application is filed;

440 (2) Notify the applicant, based on the authority's good faith preliminary review of the
441 information provided in the application, of any aspect of the application that appears to
442 be grounds for the authority's denial of the application pursuant to subsection (j) of this
443 Code section; and

444 (3) Determine whether the application is complete and inform the applicant of its
445 determination in writing. If the authority determines that an application is incomplete,
446 it shall specifically identify to the applicant in writing all missing information within such
447 20 day period; otherwise the application is deemed complete. If the authority identifies
448 missing information to the applicant as provided in this paragraph, the applicant may
449 submit such missing information to the authority within 20 days of receipt of notification
450 in writing from the authority that the application is incomplete without paying any
451 additional application fee, and any subsequent review of the application by the authority
452 for completeness shall be limited to the previously identified missing information. If the
453 authority determines that an application remains incomplete, or if the authority
454 determines that the applicant has made material changes to the application other than to
455 address the missing information identified by the authority, the authority shall notify the
456 applicant of such determination in writing within ten days of receipt of the resubmission
457 of the written application, and absent an agreement to the contrary between the authority
458 and the applicant that is confirmed by email or other writing, such notice shall constitute

459 a denial of the application. If the authority does not provide such written notification to
460 the applicant within this ten-day period, the application shall be deemed complete.

461 (c) The authority shall make its final decision to approve or deny the application within 30
462 days of the written determination that the application is complete or when the application
463 is deemed complete under paragraph (3) of subsection (b) of this Code section, whichever
464 is earlier, for a collocation, and within 70 days of the written determination that the
465 application is complete or when the application is deemed complete under paragraph (3)
466 of subsection (b) of this Code section, whichever is earlier, for the installation,
467 modification, or replacement of a pole or decorative pole.

468 (d) A decision to deny an application pursuant to this Code section shall be in writing,
469 shall identify all reasons for the denial, and shall identify the provisions of applicable codes
470 or other standards applicable pursuant to this chapter on which the denial was based. The
471 decision to deny shall be sent to the applicant contemporaneously. The review period shall
472 run until the written decision is delivered to the applicant in accordance with subsection (s)
473 of this Code section.

474 (e) If the authority fails to act on an application within the review period provided for in
475 subsection (d) of this Code section, the applicant may provide the authority written notice
476 that the time period for acting has lapsed, and the authority shall then have 20 days after
477 receipt of such notice to render its written decision. The application shall be deemed
478 approved by passage of time and operation of law if the authority does not render its
479 written decision within such 20 days.

480 (f) An applicant may, at the applicant's discretion and subject to the consolidated
481 application requirements and processes under Code Section 36-66C-13, file a consolidated
482 application.

483 (g) Notwithstanding any other provision of this chapter and to the extent that an
484 application constitutes an eligible facilities request, the authority shall not deny the
485 application and shall approve the application within 60 days according to the procedures
486 established under 47 C.F.R. 1.40001(c).

487 (h) Small wireless facilities and new, modified, or replacement poles to be used for
488 collocation of small wireless facilities may be placed in the right of way as a permitted use
489 in accordance with Code Section 36-66C-6, subject to applicable codes and the following
490 requirements:

491 (1) Each such new, modified, or replacement pole installed in the right of way in a
492 historic district and in an area zoned primarily for residential use shall not exceed 50 feet
493 above ground level;

494 (2) Each such new, modified, or replacement pole installed in the right of way not in
 495 historic district or in an area zoned primarily for residential use shall not exceed the
 496 greater of:

497 (A) Fifty feet above ground level; or

498 (B) Ten feet greater in height above ground level than the tallest existing pole in the
 499 same authority right of way in place as of January 1, 2019, and located within 500 feet
 500 of the new proposed pole; and

501 (3) New small wireless facilities in the right of way shall not exceed:

502 (A) For a collocation on an existing pole or support structure, more than ten feet above
 503 the existing pole or support structure; or

504 (B) For a collocation on a new, modified, or replacement pole under paragraph (1)
 505 or (2) of this subsection, the height limit provided in such paragraphs.

506 (i)(1) A wireless provider shall comply with reasonable and nondiscriminatory
 507 requirements that prohibit communications service providers and electric service
 508 providers from installing poles in a right of way in an area designated solely for
 509 underground or buried facilities of communications service providers and electric service
 510 providers where the authority:

511 (A) Has required all such facilities other than light poles and attachments to be placed
 512 underground and all such undergrounding has been completed prior to the submission
 513 of the application, or, for rights of way where such facilities other than light poles and
 514 attachments have not been deployed, has in effect a reasonable and nondiscriminatory
 515 zoning or development ordinance or regulation that requires such facilities other than
 516 light poles and attachments to be placed underground;

517 (B) Does not prohibit the replacement of light poles or the collocation of small wireless
 518 facilities in the designated area; and

519 (C) Permits wireless providers to seek a waiver of the underground requirements for
 520 the placement of a new pole to support small wireless facilities, which waivers shall be
 521 addressed in a nondiscriminatory manner and consistent with applicable law.

522 (2) An authority that adopts undergrounding requirements shall:

523 (A) Allow a wireless provider to maintain in place any previously collocated small
 524 wireless facilities subject to any applicable pole attachment agreement; or

525 (B) Either allow the wireless provider to replace the pole associated with previously
 526 collocated small wireless facilities at the same location or propose an alternate location
 527 within 50 feet of the prior location, which the wireless provider shall use unless such
 528 alternate location imposes technical limits or significant additional costs.

529 (j) An authority shall approve an application for permitted uses described in subsection (a)
530 of Code Section 36-66C-6 unless the requested collocation of a small wireless facility or
531 the requested installation, modification, or replacement of a pole or decorative pole:

- 532 (1) Interferes with the operation of traffic control equipment;
- 533 (2) Interferes with sight lines or clear zones for transportation or pedestrians;
- 534 (3) Fails to comply with the federal Americans with Disabilities Act, 42 U.S.C. Section
535 12101, et seq., or similar laws of general applicability regarding pedestrian access or
536 movement;
- 537 (4) Requests that ground-mounted small wireless facility equipment be located more than
538 7.5 feet in radial circumference from the base of the pole, decorative pole, or support
539 structure to which the small wireless facility antenna would be attached, provided that the
540 authority shall not deny the application if a greater distance from the base of the pole,
541 decorative pole, or support structure is necessary to avoid interfering with sight lines or
542 clear zones for transportation or pedestrians or to otherwise protect public safety;
- 543 (5) Fails to comply with applicable codes;
- 544 (6) Fails to comply with the maximum limitations set forth in subsection (h) of this Code
545 section or the requirements of subsection (i) of this Code section;
- 546 (7) With respect to an application to install a pole or decorative pole, interferes with the
547 widening, repair, reconstruction, or relocation of a public road or highway by an authority
548 or the Department of Transportation that has been advertised for bid and scheduled for
549 completion within six months after the application is filed;
- 550 (8) With respect to an application to install a pole or decorative pole, interferes with a
551 public works construction project governed by Chapter 91 of Title 36 and scheduled for
552 completion within six months after the application is filed;
- 553 (9) Fails to comply with Code Section 36-66C-10, 36-66C-11, or 36-66C-12;
- 554 (10) Fails to comply with laws of general applicability that address pedestrian and
555 vehicular traffic and safety requirements; or
- 556 (11) Fails to comply with laws of general applicability that address the occupancy or
557 management of the right of way and that are not otherwise inconsistent with this chapter.

558 (k)(1) A permit from the authority authorizes an applicant to undertake only certain
559 activities in accordance with this chapter and shall not create a property right or grant
560 authorization or license to the applicant to impinge upon the rights of other persons that
561 may already have an interest in the right of way.

- 562 (2) Collocation, installation, modification, or replacement for which a permit is issued
563 under this chapter shall be completed within six months after issuance, provided that an
564 extension shall be granted for up to an additional six months upon written request made
565 to the authority before the end of the initial six-month period if a delay results from

566 circumstances beyond the reasonable control of the applicant. Issuance of a permit
567 authorizes the applicant to:

568 (A) Undertake the collocation, installation, modification, or replacement approved by
569 the permit; and

570 (B) Operate and maintain the small wireless facilities and any associated pole covered
571 by the permit for a period of not less than ten years, which shall be renewed for
572 equivalent durations so long as the applicant is in compliance with the criteria set forth
573 in subsection (j) of this Code section, subject to the relocation requirements described
574 in subsection (l) of this Code section and the applicant's right to terminate at any time.

575 (l) If, in the reasonable exercise of police powers, an authority requires widening, repair,
576 reconstruction, or relocation of a public road or highway, or relocation of poles, support
577 structures, or small wireless facilities is required as a result of a public project, a wireless
578 provider shall relocate poles and support structures that such wireless provider has installed
579 in the right of way for the collocation of small wireless facilities pursuant to this chapter
580 at no cost to the authority in the event that such poles and support structures are found by
581 the authority to unreasonably interfere with the widening, repair, reconstruction, or
582 relocation project or the public project. If widening, repair, reconstruction, or relocation
583 is required as a condition or result of a project by a person other than an authority, such
584 person shall bear the cost of relocating such poles or support structures and any
585 communications facilities on such poles or support structures. The wireless provider shall
586 relocate the poles or support structures:

587 (1) By the date designated in a written notice from the authority that contains a good
588 faith estimate by the authority of the date by which the authority intends to commence
589 work, whenever the authority has determined that such removal, relocation, change, or
590 alteration is reasonably necessary for the construction, repair, maintenance, or installation
591 of any authority improvement or operations in or upon the right of way so long as the
592 same time frames are applied to all utilities in the right of way; provided, however, that
593 the date designated for relocation shall be at least 45 days after the authority provides the
594 written notice to the wireless provider; or

595 (2) Within the time frame that the wireless provider estimates in good faith is reasonably
596 needed to complete the relocation, so long as the wireless provider provides the authority
597 written notice of its good faith estimate within 30 days following receipt of the written
598 notice provided by the authority pursuant to paragraph (1) of this subsection and explains
599 in detail why such wireless provider cannot reasonably complete the relocation by the
600 date designated in the authority's written notice.

601 (m)(1) The wireless provider shall reasonably cooperate with the authority to carry out
602 reconditioning work activities in a manner that minimizes interference with the wireless
603 provider's approved use of the facility.

604 (2) The authority shall use reasonable efforts to provide the wireless provider with
605 written notice of reconditioning work at least 120 days before such reconditioning work
606 begins. Upon receiving such notice, it shall be the wireless provider's sole responsibility
607 to provide adequate measures to cover, remove, or otherwise protect the wireless
608 provider's communications facility from the consequences of the reconditioning work,
609 including but not limited to paint and debris fallout. The authority reserves the right to
610 require the wireless provider to remove all of the wireless provider's communications
611 facilities from the authority pole and surrounding premises during reconditioning work,
612 provided that the requirement to remove such is contained in the written notice required
613 by this Code section. All costs associated with the protection measures, including
614 temporary removal, shall be the sole responsibility of the wireless provider. If the
615 authority fails in good faith to give notice within at least 120 days, it shall not affect the
616 authority's rights under this subsection. In all cases, as much notice as possible shall be
617 provided, but less than 30 days' notice shall be prohibited. The authority shall provide
618 the wireless provider with a date by which its equipment must be protected or removed.

619 (3) The wireless provider may request a modification of the authority procedures for
620 carrying out reconditioning work in order to reduce interference with the wireless
621 provider's operation of its communications facility. If the authority agrees to the
622 modification, the wireless provider shall be responsible for all reasonable incremental
623 costs related to the modification.

624 (4) The authority shall provide the wireless provider with at least 120 days written notice
625 of any replacement work before the authority may remove the wireless provider's
626 communications facilities. The authority shall also promptly notify the wireless provider
627 when the authority poles have been replaced and the wireless provider can reinstall its
628 equipment. During the replacement work, the wireless provider may maintain a
629 temporary communications facility on the property, or after approval by an authority on
630 any land owned or controlled by an authority in the vicinity of the property. If the
631 property will not accommodate the wireless provider's temporary communications facility
632 or if the parties cannot agree on a temporary location, the wireless provider, at its sole
633 discretion, shall have the right to suspend the applicable permit until the replacement pole
634 is installed, upon 30 days' written notice to the authority.

635 (n) For any collocation on authority poles in the right of way, the authority shall provide
636 a good faith estimate for any make-ready work necessary to enable the authority pole to
637 support the proposed facility, including replacement of the pole if necessary, within 60

638 days after receipt of a completed application requesting attachment to the authority pole.
639 Alternatively, the authority may require the wireless provider to perform the make-ready
640 work and notify the wireless provider of such within the 60 day period. If the wireless
641 provider or its contractor performs the make-ready work, the wireless provider shall
642 indemnify the authority for any negligence by the wireless provider or its contractor in the
643 performance of such make-ready work, the work shall not be deemed to violate Chapter 91
644 of this title, and the work shall otherwise comply with applicable law. If the authority opts
645 to perform the make-ready work itself, the authority shall complete the work, including any
646 pole replacement, within 90 days of receipt of written acceptance of the good faith estimate
647 by the wireless provider. Such acceptance shall be signified by payment via check or other
648 commercially reasonable and customary means specified by the authority. The authority
649 may require that the replacement authority pole have the same functionality as the pole
650 being replaced. If the authority pole is replaced, the authority shall operate authority
651 fixtures on the pole, and, absent an agreement to the contrary between the authority and the
652 wireless provider that is confirmed in writing, the authority shall take ownership of the new
653 pole.

654 (o) If the wireless provider fails to relocate a support structure or pole or fails to provide
655 a written good faith estimate of the time needed to relocate a support structure or pole
656 within the time period prescribed in subsection (l) of this Code section, the authority shall
657 have the right and privilege, ten days or more after the wireless provider receives written
658 notice from the authority, to cut power to or move any support structure or pole located
659 within the right of way, as the authority may determine to be necessary, appropriate, or
660 useful in order to commence work on the public project.

661 (p)(1) If a wireless provider decides to abandon any small wireless facility, support
662 structure, or pole, it shall notify the authority in writing as soon as practicable, but no
663 later than 30 days prior to the abandonment. Following receipt of such notice, the
664 authority shall instruct the wireless provider in writing to remove all or any portion of the
665 small wireless facility, support structure, or pole if the authority determines that such
666 removal will be in the best interest of public safety and welfare. If the wireless provider
667 fails to remove the abandoned small wireless facility, support structure, or pole within 90
668 days after such notice, the authority may do so and recover the actual and reasonable
669 expenses of doing so from the wireless provider, its successors, or its assigns, plus a
670 penalty not to exceed \$500.00. The authority may suspend the ability of the wireless
671 provider, its successors, or its assigns, as applicable, to receive any new permits from the
672 authority until the wireless provider, its successors, or its assigns, as applicable, have paid
673 the amount assessed for such removal costs and the penalty assessed, if any; provided,
674 however, that the authority shall not suspend such ability of any applicant that has

675 deposited the amount in controversy in escrow pending an adjudication of the merits of
676 the dispute by a court of competent jurisdiction. Nothing in this chapter precludes an
677 authority from adopting reasonable and nondiscriminatory requirements that are not
678 inconsistent with this subsection with respect to the removal of abandoned small wireless
679 facilities, support structures, or poles.

680 (2) A small wireless facility that is not operated or a support structure or pole that is not
681 utilized for a continuous period of 12 months shall be considered abandoned, and the
682 owner of such small wireless facility, support structure, or pole shall remove such within
683 90 days after receipt of written notice from the authority notifying such owner of such
684 small wireless facility, support structure, or pole of the abandonment. The authority shall
685 send the notice by certified or registered mail, return receipt requested, to such owner at
686 the last known address of such owner of the small wireless facility, support structure, or
687 pole. If the owner does not provide written notice that the small wireless facility has not
688 been out of operation or the support structure or pole has in fact been utilized for a
689 continuous period of 12 months or does not remove such small wireless facility, support
690 structure, or pole within the 90 day period, the authority may remove or cause the
691 removal of such small wireless facility, support structure, or pole pursuant to the terms
692 of its support structure or pole attachment agreement for authority poles or through
693 actions provided for abatement of nuisances or by other law for removal and cost
694 recovery.

695 (q) If the authority determines that a wireless provider's activity in a right of way
696 pursuant to this chapter creates an imminent risk to public safety, the authority may
697 provide written notice to the wireless provider and demand that the wireless provider
698 address such risk. If the wireless provider fails to reasonably address the risk within 24
699 hours of the written notice, the authority may take or cause to be taken action to
700 reasonably address such risk and charge the wireless provider the reasonable documented
701 cost of such actions.

702 (r) The authority may require a wireless provider to repair all damage to a right of way
703 directly caused by the activities of the wireless provider, while occupying, installing,
704 repairing, or maintaining small wireless facilities, poles, or support structures, in such
705 right of way and to restore the right of way to its condition before the damage occurred
706 pursuant to the competitively neutral and reasonable requirements and specifications of
707 the authority. If the wireless provider fails to return the right of way, to the extent
708 practicable in the reasonable judgment of the authority, to its condition prior to the
709 damage within 90 days of receipt of written notice from the authority, the authority may,
710 at the sole discretion of the authority, restore the right of way to such condition and
711 charge the wireless provider its reasonable, documented cost of doing so, plus a penalty

712 not to exceed \$500.00. The authority may suspend the ability of the wireless provider to
 713 receive any new permits from the authority until the wireless provider has paid the
 714 amount assessed for such restoration costs and the penalty assessed, if any; provided,
 715 however, that the authority shall not suspend such ability of any applicant that has
 716 deposited the amount in controversy in escrow pending an adjudication of the merits of
 717 the dispute by a court of competent jurisdiction.

718 (s) An authority shall send any notice or decision required by this Code section by
 719 registered or certified mail, statutory overnight delivery, hand delivery, or email
 720 transmission. The decision or notice shall be deemed delivered upon email transmission,
 721 deposit into overnight mail or regular mail receptacle with adequate postage paid, or
 722 actual receipt if delivered by hand.

723 36-66C-8.

724 Applications for any other uses that are not expressly set forth or referenced in
 725 subsection (a) of Code Section 36-66C-6 or that are not otherwise addressed by this chapter
 726 shall require compliance with, and issuance of a permit under, applicable law. Without
 727 limiting the foregoing, any modification, maintenance, repair, or replacement that is not set
 728 forth in subsections (e) and (f) of Code Section 36-66C-6 or that is not eligible for
 729 administrative review under Code Section 36-66C-7 shall require compliance with, and
 730 issuance of a permit under, applicable law.

731 36-66C-9.

732 (a) An applicant in the right of way shall employ due care during the installation and
 733 maintenance process and shall comply with all safety and right of way protection
 734 requirements of general applicability set forth in applicable law.

735 (b) An applicant in the right of way shall not place any small wireless facilities, support
 736 structures, poles, or decorative poles where they will interfere with any existing
 737 infrastructure or equipment and shall locate its lines and equipment in such a manner as not
 738 to interfere unnecessarily with the usual vehicular or pedestrian traffic patterns or with the
 739 rights or reasonable convenience of owners of property that abuts any right of way.

740 36-66C-10.

741 Notwithstanding any provision of this chapter to the contrary, within a historic district, an
 742 applicant may collocate a small wireless facility and may place or replace a pole, only upon
 743 satisfaction of the following:

744 (1) The issuance of a permit under subsection (a) of Code Section 36-66C-6; and

745 (2)(A) Compliance with any objective, reasonable, and nondiscriminatory aesthetic and
 746 structural requirements that have been made publicly available in writing by the
 747 authority at least 30 days prior to submission of the application; provided, however, that
 748 any such requirements may not have the effect of materially inhibiting any wireless
 749 provider's technology or service, and compliance with any such requirements shall not
 750 be considered a part of the small wireless facility for purposes of the size restrictions
 751 in the definition of small wireless facility; or
 752 (B) In the absence of any such requirements, a replacement pole shall be substantially
 753 similar in height and appearance to the pole being replaced.

754 36-66C-11.

755 For applications for new poles in the right of way in areas zoned for residential use, the
 756 authority may propose an alternate location in the right of way within 100 feet of the
 757 location set forth in the application, and the wireless provider shall use the authority's
 758 proposed alternate location unless the location imposes technical limits or significant
 759 additional costs. The wireless provider shall certify that it has made such a determination
 760 in good faith, based on the assessment of a licensed engineer, and it shall provide a written
 761 summary of the basis for such determination.

762 36-66C-12.

763 Notwithstanding any provision of this chapter to the contrary, an applicant may collocate
 764 a small wireless facility on a decorative pole, or may replace a decorative pole with a new
 765 decorative pole, in the event the existing decorative pole will not structurally support the
 766 attachment, only upon satisfaction of the following:

767 (1) The issuance of a permit under subsection (a) of Code Section 36-66C-6; and

768 (2)(A) Compliance with any objective and reasonable aesthetic and structural
 769 requirements that have been made publicly available in writing by the authority at least
 770 30 days prior to submission of the application; provided, however, that any such
 771 requirements shall not have the effect of materially inhibiting any wireless provider's
 772 technology or service, and compliance with any such requirements shall not be
 773 considered a part of the small wireless facility for purposes of the size restrictions in the
 774 definition of small wireless facility; or

775 (B) In the absence of any such requirements, a replacement decorative pole shall be
 776 substantially similar in height and appearance to the decorative pole being replaced.

777 The authority shall operate authority fixtures on the replaced decorative pole, and, absent
 778 an agreement to the contrary between the authority and the wireless provider that is

779 confirmed by email or other writing, the authority shall take ownership of the new
780 decorative pole.

781 36-66C-13.

782 (a) An applicant may submit a single consolidated application, provided that such a
783 consolidated application shall be for a geographic area no more than two miles in diameter
784 and shall comply with this Code section. The denial of one or more small wireless
785 facilities or poles in a consolidated application shall not delay the processing of any other
786 small wireless facilities or poles in the same application. An authority may issue a single
787 permit or multiple permits for the small wireless facilities and poles in a consolidated
788 application.

789 (b) In a Class I Authority:

790 (1) A consolidated application for the placement of new poles and the collocation of one
791 or more small wireless facilities on such new poles may include no more than ten poles
792 and any associated small wireless facilities. While an applicant has applications,
793 including consolidated applications, pending before the Class I Authority for review of
794 25 or more new poles and the collocation of associated small wireless facilities, the Class
795 I Authority may, but shall not be required to, toll the processing requirements under Code
796 Section 36-66C-7 for any application subsequently submitted by the same applicant for
797 the placement of new poles and the collocation of associated small wireless facilities.
798 The number of new poles with collocated small wireless facilities pending for review
799 before the Class I Authority that may toll the processing requirements for subsequent
800 applications pursuant to this paragraph shall increase to 30, effective July 1, 2020; to 35,
801 effective July 1, 2021; to 40, effective July 1, 2022; to 45, effective July 1, 2023; and to
802 50, effective July 1, 2024; and

803 (2) A consolidated application for the collocation of small wireless facilities on existing
804 poles or support structures may include no more than 20 sites. While an applicant has
805 applications, including consolidated applications, pending before the Class I Authority
806 for review of 70 or more sites for the collocation of small wireless facilities on existing
807 poles or support structures, the Class I Authority may, but shall not be required to, toll
808 the processing requirements under Code Section 36-66C-7 for any application
809 subsequently submitted by the same applicant for the collocation of small wireless
810 facilities on existing poles or support structures. The number of sites for the collocation
811 of small wireless facilities pending for review before the Class I Authority that may toll
812 the processing requirements for subsequent applications pursuant to this subparagraph
813 shall increase to 80, effective July 1, 2020; to 90, effective July 1, 2021; to 100, effective
814 July 1, 2022; to 110, effective July 1, 2023; and to 120, effective July 1, 2024.

815 (c) In a Class II Authority:

816 (1) A consolidated application for the placement of new poles and the collocation of one
817 or more small wireless facilities on such new poles may include no more than five poles
818 and any associated small wireless facilities. While an applicant has applications,
819 including consolidated applications, pending before the Class II Authority for review of
820 15 or more new poles and the collocation of associated small wireless facilities, the Class
821 II Authority may, but shall not be required to, toll the processing requirements under
822 Code Section 36-66C-7 for any application subsequently submitted by the same applicant
823 for the placement of new poles and the collocation of associated small wireless facilities;
824 and

825 (2) A consolidated application for the collocation of small wireless facilities on existing
826 poles or support structures may include no more than 15 sites. While an applicant has
827 applications, including consolidated applications, pending before the Class II Authority
828 for review of 45 or more sites for the collocation of small wireless facilities on existing
829 poles or support structures, the Class II Authority may toll the processing requirements
830 under Code Section 36-66C-7 for any application subsequently submitted by the same
831 applicant for the collocation of small wireless facilities on existing poles or support
832 structures.

833 (d) In a Class III Authority:

834 (1) A consolidated application for the placement of new poles and the collocation of one
835 or more small wireless facilities on such new poles may include no more than two poles
836 and any associated small wireless facilities. While an applicant has applications,
837 including consolidated applications, pending before the Class III Authority for review of
838 eight or more new poles and the collocation of associated small wireless facilities, the
839 Class III Authority may, but shall not be required to, toll the processing requirements
840 under Code Section 36-66C-7 for any application subsequently submitted by the same
841 applicant for the placement of new poles and the collocation of associated small wireless
842 facilities; and

843 (2) A consolidated application for the collocation of small wireless facilities on existing
844 poles or support structures may include no more than six sites. While an applicant has
845 applications, including consolidated applications, pending before the Class III Authority
846 for review of 24 or more sites for the collocation of small wireless facilities on existing
847 poles or support structures, the Class III Authority may, but shall not be required to, toll
848 the processing requirements under Code Section 36-66C-7 for any application
849 subsequently submitted by the same applicant for the collocation of small wireless
850 facilities on existing poles or support structures.

851 (e) For purposes of subsections (b), (c), and (d) of this Code section:

852 (1) Small wireless facilities and poles that a wireless services provider applicant has
853 requested a third party to deploy and that are included in a pending application by the
854 third party shall be counted as pending requests by the wireless services provider
855 applicant; and

856 (2) When the processing of an application is tolled pursuant to subsection (b), (c), or (d),
857 the application is no longer counted as pending. As processing of applications is
858 completed, the authority shall begin processing previously tolled applications in the order
859 in which they were submitted, unless the applicant specifies a different order.

860 36-66C-14.

861 If multiple applications are received by the authority to install two or more poles or
862 decorative poles at the same location or to collocate two or more small wireless facilities
863 on the same pole, decorative pole, or support structure, the authority shall resolve
864 conflicting requests in an appropriate, reasonable, and nondiscriminatory manner.

865 36-66C-15.

866 (a) An authority shall not require a wireless provider to indemnify and hold the authority
867 and its officers and employees harmless against any claims, lawsuits, judgments, costs,
868 liens, losses, expenses, or fees arising from the wireless provider's activities in the public
869 right of way under this chapter, except when a court of competent jurisdiction has found
870 that the negligence of the wireless provider while conducting such activities caused the
871 harm that resulted in such claims, lawsuits, judgments, costs, liens, losses, expenses, or fees
872 or to require a wireless provider to obtain insurance naming the authority or its officers and
873 employees an additional insured against any of the foregoing.

874 (b) In no event shall any authority or any officer, employee, or agent affiliated therewith,
875 while in the performance of its or his or her official duties, be liable for any claim related
876 to the siting, installation, maintenance, repair, replacement, relocation, permitting, or
877 location of wireless equipment, facilities, poles, or infrastructure, including, but not limited
878 to, any claim for destruction, damage, business interruption, or signal interference with
879 other communications service providers wherein such siting, installation, maintenance,
880 repair, replacement, relocation, permitting, or location was undertaken in substantial
881 compliance with this chapter.

882 36-66C-16.

883 Absent an agreement to the contrary that is made public and that is available for adoption
884 upon the same terms and conditions to any requesting wireless provider, an authority shall
885 not require an applicant to perform services unrelated to the collocation for which approval

886 is sought, such as in-kind contributions to the authority, including reserving fiber, conduit,
887 or space on a utility pole or a wireless support structure for the authority, and such
888 authority may not require an applicant to transfer small wireless facilities, poles, decorative
889 poles, or support structures to the authority, provided that the authority may require transfer
890 of an authority pole replaced by the applicant to accommodate its collocation.

891 36-66C-17.

892 If an authority and a wireless provider entered into an agreement addressing the subject
893 matter of this chapter prior to October 1, 2019:

894 (1) This chapter shall not apply until such agreement expires or is terminated pursuant
895 to its terms with regard to poles, decorative poles, support structures, replacement poles,
896 and small wireless facilities installed pursuant to such agreement prior to October 1,
897 2019; and

898 (2) Otherwise, the provisions of this chapter shall apply to poles, decorative poles,
899 support structures, replacement poles, and small wireless facilities installed on or after
900 October 1, 2019.

901 36-66C-18.

902 Except to the extent authorized by current or future federal law, nothing in this chapter
903 shall authorize this state or any political subdivision thereof, including, but not limited to,
904 an authority, to require small wireless facility deployment or to regulate wireless services.

905 36-66C-19.

906 In the event of any conflict between the provisions of this chapter and the provisions of
907 Chapter 66B of this title, this chapter shall control as to the collocation of small wireless
908 facilities and the construction, installation, maintenance, modification, operation, and
909 replacement of poles or support structures by wireless providers in the right of way.

910 36-66C-20.

911 (a) The construction, installation, maintenance, modification, operation, and replacement
912 of wireline backhaul facilities in the right of way are not addressed by this chapter, and any
913 such activity shall comply with Code Section 46-5-1, Chapter 76 of this title, and other
914 applicable law.

915 (b) The approval of the installation, placement, maintenance, or operation of a small
916 wireless facility pursuant to this chapter shall not authorize the provision of any
917 communications services.

918 (c) Except as provided in this chapter or otherwise expressly authorized by state or federal
919 law, an authority shall not adopt or enforce any ordinances, regulations, or requirements
920 as to the placement or operation of communications facilities in a right of way by a
921 communications services provider authorized by state or local law to operate in a right of
922 way, regulate any communications services, or impose or collect any tax, fee, or charge for
923 the provision of communications services over the communications services provider's
924 communications facilities in a right of way.

925 (d) This chapter shall not apply to an authority to the extent that such authority uses
926 communications facilities to provide free Wi-Fi services to the public.

927 36-66C-21.

928 Nothing in this chapter relieves any person of any duties set forth in Chapter 9 of Title 25."

929

SECTION 2.

930 (a) Code Sections 36-66C-1, 36-66C-2, and 36-66C-3 of this Act shall become effective
931 upon this Act's approval by the Governor or upon this Act becoming law without such
932 approval.

933 (b) Except as provided for in subsection (a) of this section, this Act shall become effective
934 on October 1, 2019.

935

SECTION 3.

936 All laws and parts of laws in conflict with this Act are repealed.

**CITY OF KENNESAW
GEORGIA**

RESOLUTION NO. 2019-__, 2019

**RESOLUTION TO APPROVE MASTER RIGHT OF WAY LICENSE AGREEMENT
NEW CINGULAR WIRELESS PCS, LLC (dba AT&T MOBILITY)**

**BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF KENNESAW,
COBB COUNTY, GEORGIA, AS FOLLOWS:**

WHEREAS, City of Kennesaw (CITY) desires to promote the health, safety and general welfare of the public by regulating the siting and placement of communications technologies in the public rights of way, including the encouragement of location and collocation of communications technologies on existing structures to the maximum extent possible; and

WHEREAS, New Cingular Wireless PCS, LLC. d/b/a AT&T Mobility (PROVIDER) desires to install, maintain and operate communications facilities in and/or upon CITY's right-of-way ("Right-of-Way"); and

WHEREAS, the General Assembly of Georgia recently enacted the Streamlining Wireless Facilities and Antennas Act ("the Act"), a copy of which is attached as Appendix A hereto, to streamline the deployment of wireless broadband in the public rights of way; and

WHEREAS, the majority of the provisions of the Act become effective October 1, 2019; and

WHEREAS, CITY desires to allow PROVIDER to deploy wireless facilities in compliance with all of the provisions of the Act beginning on the Effective Date of this agreement.

NOW, THEREFORE BE IT RESOLVED the City of Kennesaw authorizes the Mayor to sign the Master Right Of Way License Agreement New Cingular Wireless PCS, LLC (dba AT&T Mobility).

PASSED AND ADOPTED by the Kennesaw City Council on this 20th day of May, 2019.

ATTEST:

CITY OF KENNESAW

Debra Taylor, City Clerk

Derek Easterling, Mayor