



January 23, 2015

HOUSE BILL No. 1318

DIGEST OF HB 1318 (Updated January 21, 2015 3:16 pm - DI 103)

Citations Affected: IC 8-1; IC 14-8; IC 14-18.

Synopsis: Communications services and providers. Provides that a person that provides Internet Protocol enabled services is not a public utility solely by reason of providing the services. Establishes a uniform statewide procedure for applications for and issuance of permits for the construction and modification of structures and facilities for the provision of wireless communications service. Defines "utility" for purposes of IC 14-18-10 (the law concerning utility easements) to include a communications service provider. Provides that the director of the department of natural resources may not impose a charge to issue a permit to erect or construct a utility line upon or across a public highway right-of-way that passes through state land.

Effective: July 1, 2015.

Koch, Frye R

January 13, 2015, read first time and referred to Committee on Utilities, Energy and Telecommunications.
January 22, 2015, amended, reported — Do Pass.

HB 1318—LS 7416/DI 103



January 23, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1318

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-1, AS AMENDED BY P.L.27-2006,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 1. (a) Except as provided in section 1.1 of this
4 chapter, "public utility", as used in this chapter, means every
5 corporation, company, partnership, limited liability company,
6 individual, association of individuals, their lessees, trustees, or
7 receivers appointed by a court, that may own, operate, manage, or
8 control any plant or equipment within the state for the:
9 (1) conveyance of telegraph or telephone messages;
10 (2) production, transmission, delivery, or furnishing of heat, light,
11 water, or power; or
12 (3) collection, treatment, purification, and disposal in a sanitary
13 manner of liquid and solid waste, sewage, night soil, and
14 industrial waste.
15 The term does not include a municipality that may acquire, own, or

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- 1 operate any of the foregoing facilities.
- 2 (b) "Municipal council", as used in this chapter, means the
3 legislative body of any town or city in Indiana wherein the property of
4 the public utility or any part thereof is located.
- 5 (c) "Municipality", as used in this chapter, means any city or town
6 of Indiana.
- 7 (d) "Rate", as used in this chapter, means every individual or joint
8 rate, fare, toll, charge, rental, or other compensation of any utility or
9 any two (2) or more such individual or joint rates, fares, tolls, charges,
10 rentals, or other compensation of any utility or any schedule or tariff
11 thereof, but nothing in this subsection shall give the commission any
12 control, jurisdiction, or authority over the rate charged by a municipally
13 owned utility except as in this chapter expressly provided.
- 14 (e) "Service" is used in this chapter in its broadest and most
15 inclusive sense and includes not only the use or accommodation
16 afforded consumers or patrons but also any product or commodity
17 furnished by any public or other utility and the plant, equipment,
18 apparatus, appliances, property, and facility employed by any public or
19 other utility in performing any service or in furnishing any product or
20 commodity and devoted to the purposes in which such public or other
21 utility is engaged and to the use and accommodation of the public.
- 22 (f) "Commission", as used in this chapter, means the commission
23 created by IC 8-1-1-2.
- 24 (g) "Utility", as used in this chapter, means every plant or equipment
25 within the state used for:
- 26 (1) the conveyance of telegraph and telephone messages;
27 (2) the production, transmission, delivery, or furnishing of heat,
28 light, water, or power, either directly or indirectly to the public;
29 or
30 (3) collection, treatment, purification, and disposal in a sanitary
31 manner of liquid and solid waste, sewage, night soil, and
32 industrial waste.
- 33 The term does not include a municipality that may acquire, own, or
34 operate facilities for the collection, treatment, purification, and disposal
35 in a sanitary manner of liquid and solid waste, sewage, night soil, and
36 industrial waste. A warehouse owned or operated by any person, firm,
37 limited liability company, or corporation engaged in the business of
38 operating a warehouse business for the storage of used household
39 goods is not a public utility within the meaning of this chapter.
- 40 (h) "Municipally owned utility", as used in this chapter, includes
41 every utility owned or operated by a municipality.
- 42 (i) "Indeterminate permit", as used in this chapter, means every



1 grant, directly or indirectly from the state, to any corporation, company,
 2 partnership, limited liability company, individual, association of
 3 individuals, their lessees, trustees, or receivers appointed by a court, of
 4 power, right, or privilege to own, operate, manage, or control any plant
 5 or equipment, or any part of a plant or equipment, within this state, for
 6 the:

7 (1) production, transmission, delivery, or furnishing of heat, light,
 8 water, or power, either directly or indirectly to or for the public;

9 (2) collection, treatment, purification, and disposal in a sanitary
 10 manner of liquid and solid waste, sewage, night soil, and
 11 industrial waste; or

12 (3) furnishing of facilities for the transmission of intelligence by
 13 electricity between points within this state;

14 which shall continue in force until such time as the municipality shall
 15 exercise its right to purchase, condemn, or otherwise acquire the
 16 property of such public utility, as provided in this chapter, or until it
 17 shall be otherwise terminated according to law.

18 **(j) "Communications service provider", as used in this chapter,**
 19 **has the meaning set forth in IC 8-1-2.6-13.**

20 SECTION 2. IC 8-1-2-1.1, AS ADDED BY P.L.27-2006, SECTION
 21 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,
 22 2015]: Sec. 1.1. A person or an entity that:

23 (1) transmits communications through Internet Protocol enabled
 24 ~~retail~~ services, including:

25 (A) voice;

26 (B) data;

27 (C) video; or

28 (D) any combination of voice, data, and video
 29 communications; or

30 (2) provides the necessary software, hardware, transmission
 31 service, or transmission path for communications described in
 32 subdivision (1);

33 is not a public utility solely by reason of engaging in any activity
 34 described in subdivisions (1) through (2).

35 SECTION 3. IC 8-1-2-5 IS AMENDED TO READ AS FOLLOWS
 36 [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Every public utility, ~~and~~
 37 **every communications service provider**, every municipality, and
 38 every person, association, limited liability company, or corporation
 39 having tracks, conduits, subways, poles, or other equipment on, over,
 40 or under any street or highway shall for a reasonable compensation,
 41 permit the use of the same by any other public utility **or**
 42 **communications service provider** or by a municipality owning or



1 operating a utility, whenever public convenience and necessity require
2 such use, and such use will not result in irreparable injury to the owner
3 or other users of such equipment, nor in any substantial detriment to
4 the service to be rendered by such owners or other users. Every public
5 utility for the conveyance of telephone messages shall permit a physical
6 connection or connections to be made, and telephone service to be
7 furnished, before any telephone system operated by it, and the
8 telephone toll line operated by another such public utility or between
9 its toll line and the telephone system of another such public utility, or
10 between its toll line and the toll line of another such public utility, or
11 between its telephone system and the telephone system of another such
12 public utility, whenever public convenience and necessity require such
13 physical connection or connections and such physical connection or
14 connections will not result in irreparable injury to the owner or other
15 users of the facilities of such public utilities, nor in any substantial
16 detriment to the service to be rendered by such public utilities. If any
17 prospective consumers or patrons of any public utility for the
18 production, transmission, delivery, or furnishing of light or power,
19 living in territory outside of cities and towns, and within not to exceed
20 one-half (1/2) mile of the transmission line of such utility, shall agree
21 to and shall construct and install the necessary equipment, in
22 compliance with plans and specifications prescribed by such utility,
23 such public utility shall permit the necessary physical connection or
24 connections to be made and service to be furnished to the person or
25 persons who have constructed and installed such equipment. The term
26 "physical connection", as used in this section, shall mean such number
27 of trunk lines or complete wire circuits and connections as may be
28 required to furnish reasonably adequate telephone service between
29 such public utilities.

30 (b) In case of failure to agree upon such use or the conditions or
31 compensations for such use, or in case of failure to agree upon such
32 physical connection or connections, or the terms and conditions upon
33 which the same shall be made, any public utility or any person,
34 association, limited liability company, or corporation interested may
35 apply to the commission and if after investigation the commission shall
36 ascertain that public convenience and necessity require such use or
37 such physical connections, and that such use or such physical
38 connection or connections would not result in irreparable injury to the
39 owner or other users of such equipment or the facilities of such public
40 utilities, nor in any substantial detriment to the service to be rendered
41 by such owner or other public utilities or other users of such equipment
42 or facilities, it shall by order direct that such use be permitted and



1 prescribe reasonable conditions and compensations for such joint use
 2 and that such physical connection or connections be made and
 3 determine how and within what time such connection or connections
 4 shall be made, and by whom the expense of making and maintaining
 5 such connection or connections shall be paid.

6 (c) Such use so ordered shall be permitted, and such physical
 7 connection or connections so ordered shall be made and such
 8 conditions and compensation so prescribed for such use, and such
 9 terms and conditions upon which such physical connection or
 10 connections shall be made, as so determined, shall be lawful conditions
 11 and compensations for such use, and the lawful terms and conditions
 12 upon which such physical connection or connections shall be made, to
 13 be observed, followed, and paid, subject to recourse to the courts upon
 14 the complaint of any interested party as provided in sections 73 and 74
 15 of this chapter and IC 8-1-3, and such statute so far as applicable shall
 16 apply to any action arising on such complaint so made. Any such order
 17 of the commission may be from time to time revised by the commission
 18 upon application of any interested party or upon its own motion.

19 SECTION 4. IC 8-1-2.6-1.1, AS AMENDED BY P.L.1-2007,
 20 SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2015]: Sec. 1.1. The commission shall not exercise
 22 jurisdiction over:

- 23 (1) advanced services (as defined in 47 CFR 51.5);
- 24 (2) broadband service, however defined or classified by the
 25 Federal Communications Commission;
- 26 (3) information service (as defined in 47 U.S.C. 153(20));
- 27 (4) Internet Protocol enabled ~~retail~~ services:
 - 28 (A) regardless of how the service is classified by the Federal
 29 Communications Commission; and
 - 30 (B) except as expressly permitted under IC 8-1-2.8;
- 31 (5) commercial mobile service (as defined in 47 U.S.C. 332); or
- 32 (6) any service not commercially available on March 28, 2006.

33 SECTION 5. IC 8-1-32.3 IS ADDED TO THE INDIANA CODE
 34 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2015]:

36 **Chapter 32.3. Permits for Wireless Service Providers**

37 **Sec. 1. As used in this chapter, "antenna" means any**
 38 **communications equipment that transmits or receives**
 39 **electromagnetic radio signals used in the provision of wireless**
 40 **communications service.**

41 **Sec. 2. As used in this chapter, "base station" means a station**
 42 **located at a specific site that is authorized to communicate with**



1 mobile stations. The term includes all radio transceivers, antennas,
2 coaxial cables, power supplies, and other electronics associated
3 with a station.

4 Sec. 3. As used in this chapter, "collocation" means the
5 placement or installation of wireless facilities on existing
6 structures, including electrical transmission towers, water towers,
7 and other buildings or structures. The term includes the placement,
8 replacement, or modification of wireless facilities within an
9 approved equipment compound.

10 Sec. 4. As used in this chapter, "electrical transmission tower"
11 means a structure that physically supports high voltage overhead
12 power lines. The term does not include a utility pole.

13 Sec. 5. As used in this chapter, "equipment compound" means
14 the area that:

- 15 (1) surrounds or is near the base of a wireless support
16 structure; and
- 17 (2) encloses wireless facilities.

18 Sec. 6. As used in this chapter, "existing structure" does not
19 include a utility pole.

20 Sec. 7. As used in this chapter, "permit authority" means a unit,
21 a board, a commission, or any other governing body that makes
22 legislative or administrative decisions concerning the construction,
23 installation, modification, or siting of wireless facilities or wireless
24 support structures. The term does not include a court or other
25 judicial body that reviews decisions or rulings made by a permit
26 authority.

27 Sec. 8. (a) As used in this chapter, "small cell facility" means:

- 28 (1) a personal wireless service facility (as defined by the
29 Federal Telecommunications Act of 1996 as in effect on July
30 1, 2015); or
- 31 (2) a wireless service facility that satisfies the following
32 requirements:

33 (A) Each antenna, including exposed elements, has a
34 volume of three (3) cubic feet or less.

35 (B) All antennas, including exposed elements, have a total
36 volume of six (6) cubic feet or less.

37 (C) The primary equipment enclosure located with the
38 facility has a volume of seventeen (17) cubic feet or less.

39 (b) For purposes of subsection (a)(2)(C), the volume of the
40 primary equipment enclosure does not include the following
41 equipment that is located outside the primary equipment
42 enclosure:



- 1 (1) Electric meters.
 2 (2) Concealment equipment.
 3 (3) Telecommunications demarcation boxes.
 4 (4) Ground based enclosures.
 5 (5) Back up power systems.
 6 (6) Grounding equipment.
 7 (7) Power transfer switches.
 8 (8) Cut off switches.
- 9 **Sec. 9.** As used in this chapter, "small cell network" means a
 10 collection of interrelated small cell facilities designed to deliver
 11 wireless service.
- 12 **Sec. 10. (a)** As used in this chapter, "substantial modification of
 13 a wireless support structure" means the mounting of a wireless
 14 facility on a wireless support structure in a manner that:
 15 (1) increases the height of the wireless support structure by
 16 the greater of:
 17 (A) ten percent (10%) of the original height of the wireless
 18 support structure; or
 19 (B) twenty (20) feet;
 20 (2) adds an appurtenance to the wireless support structure
 21 that protrudes horizontally from the wireless support
 22 structure more than the greater of:
 23 (A) twenty (20) feet; or
 24 (B) the width of the wireless support structure at the
 25 location of the appurtenance; or
 26 (3) increases the square footage of the equipment compound
 27 in which the wireless facility is located by more than two
 28 thousand five hundred (2,500) square feet.
- 29 **(b)** The term does not include the following:
 30 (1) Increasing the height of a wireless support structure to
 31 avoid interfering with an existing antenna.
 32 (2) Increasing the diameter or area of a wireless support
 33 structure to:
 34 (A) shelter an antenna from inclement weather; or
 35 (B) connect an antenna to the wireless support structure by
 36 cable.
- 37 **Sec. 11.** As used in this chapter, "utility pole" means a structure
 38 that is:
 39 (1) owned or operated by:
 40 (A) a public utility;
 41 (B) a communications service provider;
 42 (C) a municipality;



- 1 (D) an electric membership corporation; or
 2 (E) a rural electric cooperative; and
 3 (2) designed and used to:
 4 (A) carry lines, cables, or wires for telephony, cable
 5 television, or electricity; or
 6 (B) provide lighting.
- 7 Sec. 12. As used in this chapter, "wireless facility" means the set
 8 of equipment and network components necessary to provide
 9 wireless communications service. The term does not include a
 10 wireless support structure.
- 11 Sec. 13. As used in this chapter, "wireless support structure"
 12 means a freestanding structure designed to support wireless
 13 facilities. The term does not include a utility pole.
- 14 Sec. 14. This chapter applies to permits issued by a permit
 15 authority for the following:
 16 (1) Construction of a new wireless support structure.
 17 (2) Substantial modification of a wireless support structure.
 18 (3) Collocation of wireless facilities on an existing structure.
- 19 Sec. 15. (a) A permit authority may not require an applicant to
 20 pay a fee associated with the submission, review, processing, or
 21 approval of an application for a permit unless the permit authority
 22 requires payment of the same or a similar fee for applications for
 23 permits for similar types of commercial development within the
 24 jurisdiction of the permit authority.
- 25 (b) A fee associated with the submission, review, processing, or
 26 approval of an application for a permit, including a fee imposed by
 27 a third party that provides review, technical, or consulting
 28 assistance to a permit authority, must be based on actual, direct,
 29 and reasonable costs incurred for the review, processing, and
 30 approval of the application.
- 31 (c) A fee described in this section may not include:
 32 (1) travel expenses incurred by a third party in its review of
 33 an application; or
 34 (2) direct payment or reimbursement of third party fees
 35 charged on a contingency basis.
- 36 Sec. 16. (a) A permit authority may not discriminate among
 37 communications service providers or public utilities with respect
 38 to the following:
 39 (1) Approving applications, issuing permits, or otherwise
 40 establishing terms and conditions for construction of wireless
 41 or wireline communications facilities.
 42 (2) Authorizing or approving tax incentives for wireless or



1 wireline communications facilities.

2 (3) Providing access to rights-of-way, infrastructure, utility
3 poles, river and bridge crossings, and other physical assets
4 owned or controlled by the permit authority.

5 (b) Notwithstanding subsection (a), a permit authority may not
6 impose a setback or fall zone requirement for a wireless support
7 structure that is designed to collapse within an area that is smaller
8 than the setback or fall zone requirement unless the permit
9 authority demonstrates to the satisfaction of the applicant that the
10 engineering certification for the wireless support structure is
11 flawed.

12 Sec. 17. A permit authority may not limit the height of a wireless
13 structure to less than two hundred (200) feet.

14 Sec. 18. This chapter does not:

15 (1) affect the ability of a permit authority to exercise zoning,
16 land use, planning, or permitting authority otherwise allowed
17 under law with respect to the siting of new wireless support
18 structures; or

19 (2) exempt an applicant from complying with applicable laws
20 and ordinances concerning land use.

21 Sec. 19. (a) The following may apply for a permit under this
22 chapter on a form and in the manner prescribed by the
23 appropriate permit authority:

24 (1) A person that provides wireless communications service.

25 (2) A person that owns or otherwise makes available
26 infrastructure required for wireless communications service.

27 (b) An application for a permit must include the following:

28 (1) The name, business address, and point of contact for the
29 applicant.

30 (2) The location of the proposed or affected wireless support
31 structure or wireless facility.

32 Sec. 20. (a) An application for a permit to construct a new
33 wireless support structure must include only the following:

34 (1) All information required by section 19 of this chapter.

35 (2) A construction plan that describes the proposed wireless
36 support structure and all equipment and network
37 components, including antennas, transmitters, receivers, base
38 stations, power supplies, cabling, and related equipment.

39 (3) Evidence supporting the choice of location for the
40 proposed wireless support structure, including a sworn
41 statement from the individual responsible for the choice of
42 location demonstrating that collocation of wireless facilities



1 on an existing wireless support structure was not a viable
2 option because collocation:

- 3 (A) would not result in the same wireless service
4 functionality, coverage, and capacity;
5 (B) is technically infeasible; or
6 (C) is an economic burden to the applicant.

7 (b) An application that contains the information required under
8 subsection (a) is considered complete.

9 (c) A permit authority shall review an application within ten
10 (10) days of its receipt to determine if the application is complete.
11 If a permit authority determines that an application is not
12 complete, the permit authority shall notify the applicant in writing
13 of all defects in the application. If a permit authority does not
14 notify an applicant in writing of all defects in the application, the
15 application is considered complete.

16 (d) An applicant that receives a written notice under subsection
17 (c) may cure the defects set forth in the notice and resubmit the
18 corrected application to the permit authority within thirty (30)
19 days of receiving the notice. If an applicant is unable to cure the
20 defects within the thirty (30) day period, the applicant shall notify
21 the permit authority of the additional time the applicant requires
22 to cure the defects.

23 (e) Not more than ninety (90) days after making an initial
24 determination of completeness under subsection (c), a permit
25 authority shall:

- 26 (1) review the application to determine if it complies with
27 applicable laws and ordinances governing land use and
28 zoning; and
29 (2) notify the applicant in writing whether the application is
30 approved or denied.

31 However, if the applicant requested additional time under
32 subsection (d) to cure defects in the application, the ninety (90) day
33 period is extended for a corresponding amount of time.

34 Sec. 21. (a) An application for a permit for substantial
35 modification of a wireless support structure must include only the
36 following:

- 37 (1) All information required by section 19 of this chapter.
38 (2) A construction plan that describes the proposed
39 modifications to the wireless support structure and all
40 equipment and network components, including antennas,
41 transmitters, receivers, base stations, power supplies, cabling,
42 and related equipment.



1 (b) An application that contains the information required under
2 subsection (a) is considered complete.

3 (c) A permit authority shall review an application within ten
4 (10) days of its receipt to determine if the application is complete.
5 If a permit authority determines that an application is not
6 complete, the permit authority shall notify the applicant in writing
7 of all defects in the application. If a permit authority does not
8 notify an applicant in writing of all defects in the application, the
9 application is considered complete.

10 (d) An applicant that receives a written notice under subsection
11 (c) may cure the defects set forth in the notice and resubmit the
12 corrected application to the permit authority within thirty (30)
13 days of receiving the notice. If an applicant is unable to cure the
14 defects within the thirty (30) day period, the applicant shall notify
15 the permit authority of the additional time the applicant requires
16 to cure the defects.

17 (e) Not more than ninety (90) days after making an initial
18 determination of completeness under subsection (c), a permit
19 authority shall:

- 20 (1) review the application to determine if it complies with
21 applicable laws and ordinances governing land use and
22 zoning; and
23 (2) notify the applicant in writing whether the application is
24 approved or denied.

25 However, if the applicant requested additional time under
26 subsection (d) to cure defects in the application, the ninety (90) day
27 period is extended for a corresponding amount of time.

28 Sec. 22. (a) An application for a permit for collocation must
29 include only the following:

- 30 (1) All information required by section 19 of this chapter.
31 (2) Evidence of conformance with applicable building permit
32 requirements.

33 (b) An application for a permit for collocation:

- 34 (1) is not required to comply with zoning or land use
35 requirements; and
36 (2) is not subject to public hearing.

37 (c) A permit authority may allow an applicant to submit a single
38 consolidated application to collocate multiple wireless service
39 facilities that are located within the jurisdiction of the permit
40 authority. The permit authority may issue a single permit for all
41 wireless service facilities included in the application rather than
42 individual permits for each wireless service facility.



1 (d) A permit authority shall review an application within five (5)
 2 days of its receipt to determine if the application is complete. If a
 3 permit authority determines that an application is not complete,
 4 the permit authority shall notify the applicant in writing of all
 5 defects in the application. If a permit authority does not notify an
 6 applicant in writing of all defects in the application, the application
 7 is considered complete.

8 (e) An applicant that receives a written notice under subsection
 9 (d) may cure the defects set forth in the notice and resubmit the
 10 corrected application to the permit authority within fifteen (15)
 11 days of receiving the notice. If an applicant is unable to cure the
 12 defects within the fifteen (15) day period, the applicant shall notify
 13 the permit authority of the additional time the applicant requires
 14 to cure the defects.

15 (f) Not more than forty-five (45) days after making an initial
 16 determination of completeness under subsection (d), a permit
 17 authority shall:

- 18 (1) review the application to determine its conformity with
- 19 applicable building permit requirements; and
- 20 (2) notify the applicant in writing whether the application is
- 21 approved or denied.

22 However, if the applicant requested additional time under
 23 subsection (e) to cure defects in the application, the forty-five (45)
 24 day period is extended for a corresponding amount of time.

25 Sec. 23. (a) In a written notice issued under section 20, 21, or 22
 26 of this chapter, a permit authority shall state clearly the basis for
 27 its decision to approve or deny an application. If the permit
 28 authority denies an application, the written notice must include
 29 substantial evidence in support of the denial.

30 (b) For purposes of this section, a notice is considered written if
 31 it is included in the minutes of a public meeting of a permit
 32 authority.

33 (c) If a permit authority fails to act on an application within the
 34 applicable deadline under section 20, 21, or 22 of this chapter, the
 35 application is considered approved.

36 Sec. 24. A permit authority shall establish guidelines to protect
 37 any confidential or proprietary information disclosed in an
 38 application.

39 Sec. 25. A permit authority may not require or regulate the
 40 installation, location, or use of wireless service facilities on utility
 41 poles.

42 Sec. 26. A permit authority may allow an applicant to submit a



1 **single consolidated application for multiple small cell facilities that**
 2 **are located within the permit authority's jurisdiction and comprise**
 3 **a single small cell network. The permit authority may issue a single**
 4 **permit for the small cell network rather than multiple permits for**
 5 **each small cell facility.**

6 **Sec. 27. An applicant may:**

7 **(1) bring an action for a violation of this chapter in any court**
 8 **with jurisdiction; and**

9 **(2) seek recovery of litigation costs and attorney's fees.**

10 SECTION 6. IC 8-1-32.5-14, AS ADDED BY P.L.27-2006,
 11 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2015]: Sec. 14. A communications service provider that holds
 13 a certificate issued under this chapter:

14 **(1) is exempt from local franchises and related fees; and**

15 **(2) enjoys access to public rights-of-way;**

16 to the same extent as a communications service provider that holds a
 17 certificate of territorial authority or an indeterminate permit issued
 18 under IC 8-1-2 before July 1, 2009.

19 SECTION 7. IC 14-8-2-294.5 IS ADDED TO THE INDIANA
 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2015]: **Sec. 294.5. "Utility", for purposes of**
 22 **IC 14-18-10, includes a communications service provider (as**
 23 **defined in IC 8-1-32.5-4).**

24 SECTION 8. IC 14-18-10-2 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. The director may
 26 issue to any person, without charge, a permit to erect or construct a
 27 utility, telephone, or telegraph line as described in section 1 of this
 28 chapter under the rules and restrictions that the director considers
 29 necessary:

30 (1) for the protection and preservation of the natural scenic
 31 conditions of the land; or

32 (2) to prevent the line from interfering with or obstructing the use
 33 and enjoyment of the property by the public.

34 **However, the director shall not impose a charge to issue a permit**
 35 **to erect or construct a utility, telephone, or telegraph line as**
 36 **described in section 1(5) of this chapter.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1318, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 18, after "provider"" insert "**as used in this chapter,**".

Page 3, delete lines 35 through 42, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Every public utility, ~~and every communications service provider~~, every municipality, and every person, association, limited liability company, or corporation having tracks, conduits, subways, poles, or other equipment on, over, or under any street or highway shall for a reasonable compensation, permit the use of the same by any other public utility **or communications service provider** or by a municipality owning or operating a utility, whenever public convenience and necessity require such use, and such use will not result in irreparable injury to the owner or other users of such equipment, nor in any substantial detriment to the service to be rendered by such owners or other users. Every public utility for the conveyance of telephone messages shall permit a physical connection or connections to be made, and telephone service to be furnished, before any telephone system operated by it, and the telephone toll line operated by another such public utility or between its toll line and the telephone system of another such public utility, or between its toll line and the toll line of another such public utility, or between its telephone system and the telephone system of another such public utility, whenever public convenience and necessity require such physical connection or connections and such physical connection or connections will not result in irreparable injury to the owner or other users of the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such public utilities. If any prospective consumers or patrons of any public utility for the production, transmission, delivery, or furnishing of light or power, living in territory outside of cities and towns, and within not to exceed one-half (1/2) mile of the transmission line of such utility, shall agree to and shall construct and install the necessary equipment, in compliance with plans and specifications prescribed by such utility, such public utility shall permit the necessary physical connection or connections to be made and service to be furnished to the person or



persons who have constructed and installed such equipment. The term "physical connection", as used in this section, shall mean such number of trunk lines or complete wire circuits and connections as may be required to furnish reasonably adequate telephone service between such public utilities.

(b) In case of failure to agree upon such use or the conditions or compensations for such use, or in case of failure to agree upon such physical connection or connections, or the terms and conditions upon which the same shall be made, any public utility or any person, association, limited liability company, or corporation interested may apply to the commission and if after investigation the commission shall ascertain that public convenience and necessity require such use or such physical connections, and that such use or such physical connection or connections would not result in irreparable injury to the owner or other users of such equipment or the facilities of such public utilities, nor in any substantial detriment to the service to be rendered by such owner or other public utilities or other users of such equipment or facilities, it shall by order direct that such use be permitted and prescribe reasonable conditions and compensations for such joint use and that such physical connection or connections be made and determine how and within what time such connection or connections shall be made, and by whom the expense of making and maintaining such connection or connections shall be paid.

(c) Such use so ordered shall be permitted, and such physical connection or connections so ordered shall be made and such conditions and compensation so prescribed for such use, and such terms and conditions upon which such physical connection or connections shall be made, as so determined, shall be lawful conditions and compensations for such use, and the lawful terms and conditions upon which such physical connection or connections shall be made, to be observed, followed, and paid, subject to recourse to the courts upon the complaint of any interested party as provided in sections 73 and 74 of this chapter and IC 8-1-3, and such statute so far as applicable shall apply to any action arising on such complaint so made. Any such order of the commission may be from time to time revised by the commission upon application of any interested party or upon its own motion."

Delete page 4.

Page 5, delete lines 1 through 18.

Page 5, line 38, delete "and" and insert "or".

Page 6, delete lines 27 through 35, begin a new paragraph and insert:

"Sec. 8. (a) As used in this chapter, "small cell facility" means:

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(1) a personal wireless service facility (as defined by the Federal Telecommunications Act of 1996 as in effect on July 1, 2015); or

(2) a wireless service facility that satisfies the following requirements:

(A) Each antenna, including exposed elements, has a volume of three (3) cubic feet or less.

(B) All antennas, including exposed elements, have a total volume of six (6) cubic feet or less.

(C) The primary equipment enclosure located with the facility has a volume of seventeen (17) cubic feet or less."

Page 6, line 36, delete "(a)(2)(B)," and insert "(a)(2)(C),".

Page 8, delete lines 16 through 42, begin a new paragraph and insert:

"Sec. 15. (a) A permit authority may not require an applicant to pay a fee associated with the submission, review, processing, or approval of an application for a permit unless the permit authority requires payment of the same or a similar fee for applications for permits for similar types of commercial development within the jurisdiction of the permit authority.

(b) A fee associated with the submission, review, processing, or approval of an application for a permit, including a fee imposed by a third party that provides review, technical, or consulting assistance to a permit authority, must be based on actual, direct, and reasonable costs incurred for the review, processing, and approval of the application.

(c) A fee described in this section may not include:

(1) travel expenses incurred by a third party in its review of an application; or

(2) direct payment or reimbursement of third party fees charged on a contingency basis.

Sec. 16. (a) A permit authority may not discriminate among communications service providers or public utilities with respect to the following:

(1) Approving applications, issuing permits, or otherwise establishing terms and conditions for construction of wireless or wireline communications facilities.

(2) Authorizing or approving tax incentives for wireless or wireline communications facilities.

(3) Providing access to rights-of-way, infrastructure, utility poles, river and bridge crossings, and other physical assets owned or controlled by the permit authority.



(b) Notwithstanding subsection (a), a permit authority may not impose a setback or fall zone requirement for a wireless support structure that is designed to collapse within an area that is smaller than the setback or fall zone requirement unless the permit authority demonstrates to the satisfaction of the applicant that the engineering certification for the wireless support structure is flawed.

Sec. 17. A permit authority may not limit the height of a wireless structure to less than two hundred (200) feet."

Delete page 9.

Page 10, delete lines 1 through 13.

Page 10, line 14, delete "20." and insert "18."

Page 10, line 21, delete "21." and insert "19."

Page 10, delete lines 32 through 42, begin a new paragraph and insert:

"Sec. 20. (a) An application for a permit to construct a new wireless support structure must include only the following:

(1) All information required by section 19 of this chapter.

(2) A construction plan that describes the proposed wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.

(3) Evidence supporting the choice of location for the proposed wireless support structure, including a sworn statement from the individual responsible for the choice of location demonstrating that collocation of wireless facilities on an existing wireless support structure was not a viable option because collocation:

(A) would not result in the same wireless service functionality, coverage, and capacity;

(B) is technically infeasible; or

(C) is an economic burden to the applicant.

(b) An application that contains the information required under subsection (a) is considered complete.

(c) A permit authority shall review an application within ten (10) days of its receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.

(d) An applicant that receives a written notice under subsection



(c) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within thirty (30) days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

(e) Not more than ninety (90) days after making an initial determination of completeness under subsection (c), a permit authority shall:

- (1) review the application to determine if it complies with applicable laws and ordinances governing land use and zoning; and
- (2) notify the applicant in writing whether the application is approved or denied.

However, if the applicant requested additional time under subsection (d) to cure defects in the application, the ninety (90) day period is extended for a corresponding amount of time.

Sec. 21. (a) An application for a permit for substantial modification of a wireless support structure must include only the following:

- (1) All information required by section 19 of this chapter.
- (2) A construction plan that describes the proposed modifications to the wireless support structure and all equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment.

(b) An application that contains the information required under subsection (a) is considered complete.

(c) A permit authority shall review an application within ten (10) days of its receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.

(d) An applicant that receives a written notice under subsection (c) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within thirty (30) days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.



(e) Not more than ninety (90) days after making an initial determination of completeness under subsection (c), a permit authority shall:

- (1) review the application to determine if it complies with applicable laws and ordinances governing land use and zoning; and
- (2) notify the applicant in writing whether the application is approved or denied.

However, if the applicant requested additional time under subsection (d) to cure defects in the application, the ninety (90) day period is extended for a corresponding amount of time.

Sec. 22. (a) An application for a permit for collocation must include only the following:

- (1) All information required by section 19 of this chapter.
- (2) Evidence of conformance with applicable building permit requirements.

(b) An application for a permit for collocation:

- (1) is not required to comply with zoning or land use requirements; and
- (2) is not subject to public hearing.

(c) A permit authority may allow an applicant to submit a single consolidated application to collocate multiple wireless service facilities that are located within the jurisdiction of the permit authority. The permit authority may issue a single permit for all wireless service facilities included in the application rather than individual permits for each wireless service facility.

(d) A permit authority shall review an application within five (5) days of its receipt to determine if the application is complete. If a permit authority determines that an application is not complete, the permit authority shall notify the applicant in writing of all defects in the application. If a permit authority does not notify an applicant in writing of all defects in the application, the application is considered complete.

(e) An applicant that receives a written notice under subsection (d) may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within fifteen (15) days of receiving the notice. If an applicant is unable to cure the defects within the fifteen (15) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.

(f) Not more than forty-five (45) days after making an initial determination of completeness under subsection (d), a permit



authority shall:

- (1) review the application to determine its conformity with applicable building permit requirements; and**
- (2) notify the applicant in writing whether the application is approved or denied.**

However, if the applicant requested additional time under subsection (e) to cure defects in the application, the forty-five (45) day period is extended for a corresponding amount of time.

Sec. 23. (a) In a written notice issued under section 20, 21, or 22 of this chapter, a permit authority shall state clearly the basis for its decision to approve or deny an application. If the permit authority denies an application, the written notice must include substantial evidence in support of the denial.

(b) For purposes of this section, a notice is considered written if it is included in the minutes of a public meeting of a permit authority.

(c) If a permit authority fails to act on an application within the applicable deadline under section 20, 21, or 22 of this chapter, the application is considered approved."

Delete page 11.

Page 12, delete lines 1 through 3.

Page 12, line 4, delete "26." and insert "**24.**".

Page 12, line 7, delete "27." and insert "**25.**".

Page 12, line 10, delete "28." and insert "**26.**".

Page 12, delete lines 16 through 42.

Page 13, delete lines 1 through 7.

Page 13, line 8, delete "31." and insert "**27.**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1318 as introduced.)

KOCH

Committee Vote: yeas 9, nays 2.

