**IC 8-1-32.3 Chapter 32.3.**

**Permits for Wireless Service Providers**

IC 8-1-32.3-1 "Antenna"

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

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-2 "Base station"

Sec. 2. As used in this chapter, "base station" means a station located at a specific site that is authorized to communicate with mobile stations. The term includes all radio transceivers, antennas, coaxial cables, power supplies, and other electronics associated with a station.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-3 "Business day"

Sec. 3. As used in this chapter, "business day" means a day other than a Saturday, a Sunday, or a legal holiday (as defined in IC 1-1-9-1).

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-4 "Collocation"

Sec. 4. As used in this chapter, "collocation" means the placement or installation of wireless facilities on existing structures that include a wireless facility or a wireless support structure, including water towers and other buildings or structures. The term includes the placement, replacement, or modification of wireless facilities within an approved equipment compound.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-5 "Electrical transmission tower"

Sec. 5. As used in this chapter, "electrical transmission tower" means a structure that physically supports high voltage overhead power lines. The term does not include a utility pole.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-6 "Equipment compound"

Sec. 6. As used in this chapter, "equipment compound" means the area that: (1) surrounds or is near the base of a wireless support structure; and (2) encloses wireless facilities.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-7 "Existing structure"

Sec. 7. As used in this chapter, "existing structure" does not include a utility pole or an electrical transmission tower.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-8 "Permit authority"

Sec. 8. As used in this chapter, "permit authority" means a unit, a board, a commission, or any other governing body that makes legislative or administrative decisions concerning the construction, installation, modification, or siting of wireless facilities or wireless support structures. The term does not include:

(1) the Indiana department of transportation;

(2) the Indiana finance authority;

(3) the state or any of its agencies, departments, boards, commissions, authorities, or instrumentalities;

(4) the director of the department of natural resources; or

(5) a court or other judicial body that reviews decisions or rulings made by a permit authority.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-9 "Small cell facility"

Sec. 9. (a) As used in this chapter, "small cell facility" means:

(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)~~ **six (6)** cubic feet or less.

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

~~(C)~~ **(B)** The primary equipment enclosure located with the facility has a volume of ~~seventeen (17)~~ **twenty-eight (28)** cubic feet or less.

(b) For purposes of subsection ~~(a)(2)(C)~~, **(a)(2)(B),** the volume of the primary equipment enclosure does not include the following equipment that is located outside the primary equipment enclosure:

(1) Electric meters.

(2) Concealment equipment.

(3) Telecommunications demarcation boxes.

(4) Ground based enclosures.

(5) Back up power systems.

(6) Grounding equipment.

(7) Power transfer switches.

(8) Cut off switches.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-10 "Small cell network"

Sec. 10. As used in this chapter, "small cell network" means a collection of interrelated small cell facilities designed to deliver wireless service.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-11 "Substantial modification of a wireless support structure"

Sec. 11. (a) As used in this chapter, "substantial modification of a wireless support structure" means the mounting of a wireless facility on a wireless support structure in a manner that:

(1) increases the height of the wireless support structure by the greater of:

(A) ten percent (10%) of the original height of the wireless support structure; or

(B) twenty (20) feet;

(2) adds an appurtenance to the wireless support structure that protrudes horizontally from the wireless support structure more than the greater of:

(A) twenty (20) feet; or (B) the width of the wireless support structure at the location of the appurtenance; or (3) increases the square footage of the equipment compound in which the wireless facility is located by more than two thousand five hundred (2,500) square feet.

(b) The term does not include the following:

(1) Increasing the height of a wireless support structure to avoid interfering with an existing antenna.

(2) Increasing the diameter or area of a wireless support structure to:

(A) shelter an antenna from inclement weather; or

(B) connect an antenna to the wireless support structure by cable.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-12 "Utility pole"

Sec. 12. As used in this chapter, "utility pole" means a structure that is:

(1) owned or operated by:

(A) a public utility;

(B) a communications service provider;

(C) a municipality;

(D) an electric membership corporation; or

(E) a rural electric cooperative; and

(2) designed ~~and~~ **or** used to:

(A) carry lines, cables, or wires for telephony, cable television, or electricity; or

(B) provide lighting. The term does not include a wireless support structure or an electrical transmission tower.

**(C) provide traffic control; or**

**(D) provide signage.**

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-13 "Wireless facility"

Sec. 13. As used in this chapter, "wireless facility" means the set of equipment and network components necessary to provide wireless communications service. The term does not include a wireless support structure.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-14 "Wireless support structure"

Sec. 14. **(a)** As used in this chapter, "wireless support structure" means a freestanding structure **that is:**

 **(1)** designed to support**; or**

**(2) capable of supporting;**

wireless facilities.

**(b)** The term does not include a utility pole or an electrical transmission tower.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-15 Application; permits for new construction, substantial modification, or collocation

Sec. 15. **(a)** This chapter applies to permits issued by a permit authority, under local law and consistent with IC 36-7, for the following:

(1) Construction of a new wireless support structure.

(2) Substantial modification of a wireless support structure.

(3) Collocation of wireless facilities on an existing structure.

**(4) A permit authority may not require an application or a permit for:**

 **(1) the routine maintenance of wireless facilities; or**

 **(2) the replacement of wireless facilities with wireless facilities that are:**

 **(A) substantially similar to; or**

 **(B) the same size or smaller than;**

 **the wireless facility being replaced.**

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-16 Application fees; prohibited unless required for similar types of development; limitations

Sec. 16. (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.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-17 Discrimination among providers or utilities prohibited; limits on fall zone requirements

Sec. 17. (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) A permit authority may not impose a fall zone requirement that:

(1) applies to a wireless support structure; and

(2) is larger than the area within which the wireless support structure is designed to collapse, as set forth in the applicant's engineering certification for the wireless support structure. However, a permit authority may impose a fall zone requirement that is larger than the area described in subdivision (2) if the permit authority provides evidence that the applicant's engineering certification is flawed. The permit authority's evidence must include a study performed and certified by a professional engineer.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-18 Zoning, land use, planning, and permitting authority not affected; land use laws and ordinances apply

Sec. 18. This chapter does not:

(1) affect the ability of a permit authority to exercise zoning, land use, planning, or permitting authority otherwise allowed under law, including IC 36-7, with respect to the siting of new wireless support structures; or

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

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-19 Eligible applicants; application requirements

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

(1) A person that provides wireless communications service.

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

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

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

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

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-20 Application to construct new wireless support structure; requirements; review for completeness; notification of approval or denial; additional time for review

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.

(4) If an applicable zoning ordinance specifies that a special exception, special use, contingent use, or conditional use must be approved for the proposed wireless support structure in accordance with IC 36-7-4-918.2, evidence showing that the application complies with the criteria set forth in the ordinance with respect to the special exception, special use, contingent use, or conditional use.

(5) If the proposed wireless support structure is not a permitted use under an applicable zoning ordinance, evidence showing that the application complies with the criteria for a variance of use from the terms of the zoning ordinance in accordance with IC 36-7-4-918.4. A permit authority may not require an applicant to submit information about, and may not evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand, service quality, or desired signal strength to a particular location.

(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) business 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) Subject to subsection (f), 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.

(f) Notwithstanding the ninety (90) day period set forth in subsection (e), the following apply:

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

(2) If the application for the proposed wireless support structure requires a variance of use from the terms of an applicable zoning ordinance in accordance with IC 36-7-4-918.4, the permit authority may have not more than thirty (30) additional days to comply with subsection (e).

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-21 Application for substantial modification of wireless support structure; requirements; review for completeness; notification of approval or denial; additional time for review

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.

(3) If an applicable zoning ordinance specifies that a special exception, special use, contingent use, or conditional use must be approved for the proposed substantial modification of a wireless support structure in accordance with IC 36-7-4-918.2, evidence showing that the application complies with the criteria set forth in the ordinance with respect to the special exception, special use, contingent use, or conditional use.

(4) If the proposed substantial modification of a wireless support structure is not a permitted use under an applicable zoning ordinance, evidence showing that the application complies with the criteria for a variance of use from the terms of the zoning ordinance in accordance with IC 36-7-4-918.4. A permit authority may not require an applicant to submit information about, and may not evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand, service quality, or desired signal strength to a particular location.

(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) business 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) Subject to subsection (f), 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.

(f) Notwithstanding the ninety (90) day period set forth in subsection (e), the following apply:

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

(2) If the application for the proposed substantial modification of a wireless support structure requires a variance of use from the terms of an applicable zoning ordinance in accordance with IC 36-7-4-918.4, the permit authority may have not more than thirty (30) additional days to comply with subsection (e).

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-22 Application for collocation; requirements; conformance with building permit requirements; consolidated application; review for completeness; notification of approval or denial; additional time for review

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 shall 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 shall 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 ten (10) business 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.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-23 Written notice of approval or denial; basis for decision; application considered approved upon authority's failure to act

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.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-24 Guidelines to protect confidential or proprietary information

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

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-25 Utility poles and electrical transmission towers; requirements and regulations prohibited

Sec. 25. A permit authority may not require or regulate the installation, location, or use of wireless service facilities on utility poles or electrical transmission towers.

As added by P.L.145-2015, SEC.3.

IC 8-1-32.3-26 Small cell facilities constituting single network; consolidated application; single permit

Sec. 26. **(a) An application for a permit or approval for construction placement or use of small cell facilities is subject to the following:**

 **(1) Placement of a small cell facility and the associated supporting structure in the public right of way shall be deemed a permitted use and shall be exempt from local zoning review if the total height of the structure supporting the small cell facility does not exceed the greater of:**

 **(a) fifty (50) feet measured from grade; or**

**(b) ten (10) feet higher than an existing utility pole in place within five hundred (500) feet of the proposed small cell facility.**

**(2)** A permit authority shall allow an applicant to submit a single consolidated application for multiple small cell facilities that are located within the permit authority's jurisdiction and constitute a single small cell network. The permit authority shall issue a single permit for the small cell network rather than multiple permits for each small cell facility.

**(3) The total of any application fees allowed under this section may not exceed the lesser of:**

**(A) the amount charged by the permit authority for an application for a building permit for any similar type of commercial:**

 **(i) construction;**

 **(ii) activity; or**

 **(iii) land use development;**

 **Within the jurisdiction of the permit authority; or**

**(B) an amount equal to:**

**(i) for the first five (5) small cell facilities included in the application, one hundred dollars ($100) per small cell facility included in the application; plus**

**(ii) for any additional small cell facility included in the application above the first five (5) referenced in item (i), fifty dollars ($50) per small cell facility included in the application.**

**(4) With respect to the construction, placement or use of any small cell facility and associated supporting structure, a permit authority shall follow application rules and time limits for review and approval established for colocation applications in IC 8-1-32.3-22.**

**(b) With respect to the construction, placement or use of any small cell facility and the associated supporting structure , a permit authority shall not do any of the following:**

**(1) limit the placement of small cell facilities by minimum separation distances or maximum height limitations;**

**(2) impose unreasonable requirements regarding the maintenance or appearance of the small cell facility, associated supporting structure, including the types of materials to be used and the screening or landscaping of the location;**

**(3) condition the grant of approval on the applicant’s agreement to permit other wireless facilities to be placed at, attached to, or located on the associated wireless support structure or utility pole;**

**(4) limit the duration of any permit that is granted except that a permit authority may require that construction commence within two years;**

**(5) prevent an applicant from locating a small cell facility, wireless support structure or utility pole in a residential area or within a specific distance from a residence or other structure;**

**(6) impose setback or fall-zone requirements for the associated wireless support structure or utility pole that are different from requirements imposed on other types of structures in the right of way;**

**(7) require the removal of existing wireless support structures, wireless facilities or utility poles, wherever located, as a condition for approval of the request. This provision does not preclude the permit authority from adopting reasonable rules intended to ensure the public health, safety, and welfare with respect to the removal of an abandoned wireless support structure or abandoned wireless facilities.**

**(c) The collocation of small cell facilities on a utility pole owned or controlled by a unit is subject to the following:**

1. **The rate for the collocation of small cell facilities on a utility pole owned or controllec by a unit may not exceed the lesser of:**

**(A) the annual recurring rate that would apply under the regulations adopted by the Federal Communications Commission under 47 U.S.C. 224(e) if the rates were regulated by the Federal Communications Commission; or (b) twenty dollars ($20) per utility pole per year.**

**(2) For a utility poles used to provide communications services or electric service the parties to the collocation shall comply with the process for make-ready work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation shall include pole replacement if necessary.**

**(3) For utility poles that do not support aerial facilities used to provide communications services or electric service, the unit shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including pole replacement if necessary, within 60 days after receipt of a complete application. Make-ready work including any pole replacement shall be completed within 60 days of written acceptance of the good faith estimate by the applicant.**

**(4) The unit shall not require more make-ready work than required to meet applicable codes or industry standards.  Fees for make-ready work shall not include costs related to pre-existing or prior damage or noncompliance.  Fees for make-ready work including any pole replacement shall not exceed actual costs or the amount charged to communications service providers for similar work and shall not include any consultants’ fees or expenses.**

**(5) Units shall offer rates, fees, and other terms that comply with this chapter. Within the later of six months of the effective date of the Act or three months after receiving a request to collocate its first small wireless facility on a utility pole owned or controlled by a unit, a person owning or controlling the utility poles shall make available, through ordinance or otherwise, the rates, fees, and terms for the collocation of small cell facilities on such poles that comply with this chapter**.

As added by P.L.145-2015, SEC.3.