

Telecommunications Sample Ordinance

Additional notes or issues for consideration within the subsection of the model ordinance are intended as commentary or guidance for drafters, not for adoption in a final ordinance. Such notes are bracketed and in all caps. Internal cross references, terms that are locality specific, and information needed by a specific locality are also bracketed and to be updated by the locality when using this model ordinance.

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ARTICLE XXX WIRELESS TELECOMMUNICATIONS FACILITIES

Section XXX.01 Purpose.

This ordinance seeks to ensure the citizens of the [JX] have access to wireless telecommunication technology, to protect the residents of the [JX] from the proliferation of freestanding towers, and to provide a process and standards for the construction, maintenance, and modification of wireless telecommunication facilities through the following:

- a. Establishing clear guidelines, standards, and time frames for the exercise of authority for wireless telecommunications facilities through the [JX]'s zoning, planning, and design standards;
- b. Allowing competition in telecommunications service;
- c. Encouraging the provision of advanced telecommunications services to the largest number of businesses, institutions, and residents of the [JX];
- d. Encouraging the location, design, and construction of wireless telecommunication facilities that will have minimal impact on the location, minimal visual impact on the scenic resources, and minimize the total number of towers and tower sites throughout the [JX].
- e. Permitting reasonable access to the public rights-of-way for telecommunications facilities on a competitively neutral basis;
- f. Ensuring that all telecommunications carriers providing facilities or services comply with federal, state, and local regulations;
- g. Encouraging the use of existing structures as an alternative to new wireless telecommunications facility construction, including the collocation of new and existing wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community; and
- h. Protecting the scenic and visual character of the community.

Section XXX.03 Definitions.

The following definitions apply only to this Article. Terms used within this Article and defined in Sections [Use Definitions & General Definitions cross-reference] shall have their defined meaning. [CHECK CONSISTENCY WITH THE GENERAL DEFINITIONS.]

1. "Alternative support structure" means man-made trees, clock towers, steeples, light poles, flag poles, power transmission towers, buildings, signs, and similar alternative design mounting structures that partially or fully camouflage or conceal the presence of antennas or towers.
2. "Antenna" means a communication apparatus designed for the purpose of emitting electromagnetic radiofrequency (RF) signals for the delivery of personal wireless telecommunication services and other wireless telecommunication services.
3. "Applicant" means any authorized person or entity that submits an application under this Article. Shall include persons or entities authorized in writing, by property owner, to act as an agent, employee, consultant, or contractor pursuant to this Article.
4. "Base station" means the structure or equipment at a fixed location that enables wireless telecommunications licensed or authorized by the FCC, between user

equipment and a communications network.

- i. Includes, but is not limited to, equipment associated with wireless telecommunications services, such as private, broadcast, and public safety services, as well as unlicensed wireless telecommunication services and fixed wireless telecommunication services, such as microwave backhaul.
 - ii. Includes, but is not limited to, radio transceivers, antennas affixed to the base station, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
 - iii. Includes any structure other than a tower that, at the time an eligible facilities modification application is filed with the [JX], supports or houses equipment described in paragraphs (i) and (ii) above, and that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
 - iv. Does not include any structure that, at the time a completed eligible facilities modification application is filed with the [JX] under this Article, does not support or house equipment described in paragraphs (i) and (ii) above.
 - v. The term does not encompass a “tower” as defined in this Section, or any equipment associated with a tower.
5. "Camouflage" means the same as “stealth,” “conceal,” or “concealment.”
6. "Collapse Zone" means an area where a tower may collapse based on the site and design specifications and which is certified and stamped by an engineer licensed in the State of West Virginia.
7. "Collocation" means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting or receiving radio frequency signals for communications purposes, whether there is an existing antenna on the structure.
8. “Conceal” or “Concealment” means when eligible support structures, transmission facilities, alternative support structures, and equipment are designed to look like a feature other than a wireless telecommunications tower or base station and which has similar design and coloration features as the surrounding environment. This term shall also mean “camouflage,” or “stealth.”
9. "Designated Scenic Resources" means a specific location, view or corridor identified as a scenic resource in the comprehensive plan or by a local, state, or federal agency or government and consists of:
 - i. A three dimensional area extending out from a particular viewpoint on a public right of way, within a public recreational area, or within a component of a state or national park system, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
 - ii. Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public right of way, within a public recreational

- area or within a component of a state or national park system.
10. "Eligible facilities request" means a request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station involving:
 - i. collocation of new transmission equipment,
 - ii. removal of transmission equipment, or
 - iii. replacement of transmission equipment.
 11. "Eligible support structure" means any tower or base station, as defined in this Section, provided that such tower or base station is in existence at the time the eligible facilities request application is filed with the [JX].
 12. "Equipment cabinet" means an enclosure, room, shelter, structure, or building used to encapsulate, enclose, contain or otherwise support equipment associated with a wireless telecommunication facility.
 13. "Existing tower or base station" means a lawfully constructed tower or base station approved under the applicable zoning and siting process of the [JX], approved under another state or local regulatory review process, or permitted to continue to operate as a nonconforming use.
 14. "FAA" means the Federal Aviation Administration, or its lawful successor.
 15. "FCC" means the Federal Communications Commission, or its lawful successor.
 16. "Habitable structure" means any structure intended to be used for living, sleeping, eating, or assembly purposes, including but not limited to dwellings, churches, schools, food facilities, and commercial and industrial buildings.
 17. "Height" means the vertical distance measured from the base of the alternative support structure at grade to the highest point of the structure, including any antennas.
 - i. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the tower is located on a sloped grade, then the average between the highest and lowest grades immediately surrounding the perimeter of the tower base shall be used in calculating the antenna height.
 - ii. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.
 18. "Modification" or "Modify" means the physical change to any existing wireless telecommunications tower or base station that may or may not be related to eligible facilities request and that involves:
 - i. collocation of new transmission equipment;
 - ii. removal of transmission equipment;
 - iii. replacement of transmission equipment; or
 - iv. any expansion of wireless telecommunication tower or base station.
 19. "Personal wireless telecommunication services" means commercial mobile services, unlicensed wireless telecommunication services, and common carrier wireless telecommunication exchange access services.
 20. "Public recreational area" means a regionally or locally significant area, as

designated by state or federal regulation, or by the [JX], and which is meant to serve a recreational purpose.

21. "Site" means the current boundaries of the leased or owned property surrounding the tower and base station and any access or utility easements currently related to the site; and, for other eligible support structures, means that area in proximity to the structure and to other transmission equipment already deployed on the ground. This term does not apply to towers or base stations in public rights-of-way.
22. "Small wireless telecommunication facility" means a wireless telecommunication facility that meets both of the following qualifications:
 - i. Each antenna could fit within an imaginary enclosure of no more than six (6) cubic feet; and
 - ii. All other wireless telecommunication equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: Electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and communications services.
23. "Small cell network" means a collection of interrelated small wireless telecommunication facilities designed to deliver personal wireless telecommunication services.
24. "Spectrum Act" means the "Middle Class Tax Relief and Job Creation Act of 2012" (Public Law 112-96; codified at 47 U.S.C. § 1455(a)).
25. "Substantial change criteria" means the criteria set forth in Section [XXX.07].
26. "Stealth" means the same as "camouflage," "conceal," or "concealment."
27. "Surety" means a financial guaranty that the activities proposed in the application are made as planned. If activities are not made by the applicant, the local government can use surety funds to complete the work as planned or return the land to its original state. Includes but is not limited to performance bonds, cash in escrow, a letter of credit, and similar collateral.
28. "Targeted market coverage area" means the area which is targeted to be served by the wireless telecommunications facility proposed in an application.
29. "Transmission equipment" means equipment that facilitates transmission for any wireless telecommunication service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.
30. "Tower" means any structure capable of supporting any antennas affixed to the tower and their associated facilities, licensed or authorized by the FCC, and constructed for the sole or primary purpose of supporting wireless telecommunications facilities.
31. "Viewpoint" means a location identified either in the [JX] comprehensive plan or by a federal or state agency and which serves as the basis for the location and determination of a designated scenic resource.
32. "Wireless telecommunication facility" or "facility" means any structure, antenna, tower, base station, or other device that provides or is suitable to provide radio/television transmission, commercial mobile wireless telecommunication

services, cellular phone services, specialized mobile radio communications (SMR), broadband telecommunications services, common carrier wireless telecommunication exchange phone services, and personal communications service (PCS) or pager service. The following are not wireless telecommunication facilities for purposes of this ordinance:

- i. “Emergency wireless telecommunications facility” means wireless telecommunication facilities exclusively for emergency communications.
- ii. “Amateur (ham) Radio Stations” means any antenna of less than one hundred (100) feet in height owned and operated exclusively by an amateur radio operator licensed by the Federal Communications Commission (FCC).
- iii. “Temporary wireless telecommunications facility means a temporary wireless telecommunications facility, either operational or in operation for a maximum period of one hundred twenty (120) calendar days per calendar year within the jurisdiction.
- iv. “Antennas as accessory uses” means an antenna that is an accessory use to a residential dwelling unit.

Section XXX.05 Applicability.

Wireless telecommunications facilities may not be constructed or modified without a zoning permit issued in accordance with the provisions of this Article. Modifications to existing wireless telecommunication facilities, as of the effective date of this Article, are required to comply with this Article.

This Section does not apply to the replacement of any component of a wireless telecommunication facility where the replacement is identical to the component being replaced or to the normal repair and maintenance of a wireless telecommunication facility that does not involve the addition, removal, or change of any of the externally discernable physical components of a wireless telecommunication facility from that which was originally permitted.

Section XXX.07 Substantial Change Criteria.

For the purposes of determining whether a requested modification is an eligible facilities request for modification under this Section, a proposed facilities modification will substantially change the physical dimensions of an eligible support structure, and therefore not be eligible for the expedited modification process and corresponding eligible facilities application process under this Article, if the requested modification meets any of the following criteria:

- a. For towers other than towers in the public rights-of-way, the requested increases the height of the tower by more than ten (10) percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten (10) percent or more than ten (10) feet, whichever is greater.
- b. Changes in height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in

other circumstances, changes in height shall be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

- c. For towers other than towers in the public right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty (20) feet, or more than the width of the tower structure at the level of appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six (6) feet.
- d. For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or, for towers in the public right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten (10) percent larger in height or overall volume than any other ground cabinets associated with the structure.
- e. It entails any excavation or deployment outside the current site.
- f. It would defeat the concealment elements of the eligible support structure.
- g. It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in this section.

Section XXX.09 General Requirements.

- a. *Lighting.* Lighting affixed to any wireless telecommunication facilities shall meet, but not exceed, the minimum lighting required by the Federal Aviation Administration (FAA). For any application where lighting is required, the applicant shall submit documentation from the FAA stating that the proposed lighting meets all applicable FAA standards and regulations.
- b. *Structural Standards.* Wireless telecommunication facilities shall conform to the most current versions of the ANSI/ASSE A10.48 “Standard Criteria for Safety Practices with the Construction, Demolition, Modification and Maintenance of Communication Structures”; ANSI/TIA-222 Standard, “Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures”; and ANSI/TIA-322 Standard, “Loading, Analysis and Design Criteria Related to the Installation, Alteration and Maintenance of Communication Structures.” Wireless telecommunication facilities shall also meet any applicable local building code standards.
- c. *Height Restrictions.* No wireless telecommunication facility shall exceed one hundred ninety-nine (199) feet in height, unless the applicant sufficiently justifies that the height of the tower will eliminate other similar towers or that the provision of service cannot be accomplished without a tower height in excess of one hundred ninety-nine (199) feet. Any applicant proposing a wireless telecommunication facility greater than one hundred ninety-nine (199) feet in height must provide evidence that the applicant notified the FAA of the intent to build the facility and

received a final determination of “no hazard” from the FAA. Wireless telecommunications facilities located atop or within an alternative support structure may extend ten (10%) percent above the height of the structure or to the maximum height permitted in the zoning district in which the structure is located, whichever is less.

d. *Collocation.*

1. An applicant for a new wireless telecommunication facility must demonstrate by substantial evidence that a bona fide need exists for the construction of a new tower and that no reasonable combination of locations, techniques, or technologies would obviate the need. The applicant for a new facility must further demonstrate that all reasonable efforts have been made to collocate wireless telecommunication facilities on existing towers or alternative support structures.
2. Prior to the approval of an application for a wireless telecommunications facility, the applicant shall demonstrate commitment to joint use as follows:
 - i. The applicant shall submit evidence as part of the application demonstrating that a genuine effort has been made to solicit additional users for the proposed new wireless telecommunications facility. Evidence of this shall include, at a minimum, copies of notices sent by registered mail, return receipt requested, to all other providers of cellular and wireless telecommunications services within the same county and within adjacent counties, or a Class II legal advertisement, advising of the intent to construct a new tower, identifying the location, inviting the joint use and sharing of costs, and requesting a written response within fifteen (15) business days.
 - ii. As part of the application, the applicant shall attest that the company will encourage the joint use of telecommunications towers within the [JX], committing that there shall be no unreasonable act or omission that would have the effect of excluding, obstructing, or delaying joint use of any tower where fair and just market reasonable compensation is offered for such use.
 - iii. Wireless telecommunications facilities, other than alternative support structures, shall be designed and built to accommodate a minimum of three (3) wireless telecommunications provider’s equipment. The owner of the tower, if different than the applicant, must certify to the [JX] that the tower is available for use by other telecommunications service providers on a reasonable and non-discriminatory basis.

e. *Concealment.*

- i. All new or modified wireless telecommunication facilities must be concealed in a way that minimizes the adverse visual impact of the facilities through careful design, siting, landscaping, screening, and innovative camouflaging and stealth techniques, unless applicant shows substantial evidence that to do so is impracticable.
- ii. Concealment techniques include fake trees, parapet extensions, silos, fake chimneys, water towers, fiberglass flagpoles, and steeples.

- iii. A description must be included in the application of the possibilities for concealment that have been explored, and why the proposed option was chosen.
 - iv. Visual impact analysis of the wireless telecommunication facility is required using existing information, predictive modeling techniques, photographs, and simulations, to accurately and impartially communicate the potential visual impacts from proposed project.
 - v. If determined to be impracticable by [Official] for a tower or alternative support structure to be entirely concealed, the applicant will describe how they will utilize materials, colors, textures, screening and landscaping to blend facilities into the natural setting and surrounding buildings.
 - vi. If an antenna is installed on an alternative support structure, the antenna and supporting electrical and mechanical equipment must be a neutral color that is identical to or closely compatible with the color of the alternative support structure so as to make the antenna and related equipment as visually unobtrusive as possible.
 - vii. Any equipment shelter or cabinet must be concealed from public view or made compatible with the architecture of the surrounding structures or placed underground
- f. Replacement or modification of any previously approved concealed tower or facility must substantially conform to previous design characteristics. *Setback.* Each tower shall have a setback of at least one hundred and ten (110%) percent the tower height measured from the tower base to the nearest property line.
- g. *Collapse Zone.* No habitable structure may be located within the proposed collapse zone. The applicant shall demonstrate that the entire collapse zone is either under lease or owned by the applicant and that no habitable structure will be constructed in the collapse zone while the tower is standing.
- h. *Equipment Cabinets.* No equipment cabinet for a wireless telecommunications facility shall exceed seven hundred fifty (750) square feet in area, nor twelve (12) feet in height. All equipment cabinets shall be located with the tower and shall be enclosed within a minimum of a six (6) foot security fence and a locked gate.
- i. *Signs.* No commercial messages nor any other signs beyond that which is required, not to exceed twelve (12) square feet cumulatively, shall be placed on any tower, equipment cabinet, or security fence.
- j. *Landscaping.*
- 1. Existing mature tree growth and natural landforms shall be preserved to the maximum extent possible. Trees existing within one hundred (100) feet of the wireless telecommunications facility shall not be removed except as required for tower construction, security fence construction, installation of ingress or egress, and the installation of utilities to the facility. To the extent that existing vegetation is the basis for a waiver of the landscaping requirement, preservation of such vegetation shall be a condition of the permit, and if such existing vegetation is removed or destroyed, the applicant shall meet the landscaping specified in Subsection 2 below within six (6) months thereafter.

2. Wireless telecommunications facilities shall be landscaped within six (6) months after the tower and base station are erected with a visual buffer of plant materials that effectively screens the view of the equipment cabinet from adjacent property. The standard visual buffer shall consist of a landscaped strip of at least four (4) feet wide outside the perimeter of the security fencing enclosing the facilities. The visual buffer shall include vegetation of at least eight (8) feet tall, planted ten (10) feet apart behind a contiguous hedge of shrubs three (3) feet deep. All plant materials shall be species native to West Virginia. In the case where the tower and base station are sited on large wooded lots, the applicant may request that the natural growth preserved around the tower site be considered a sufficient visual barrier, without the need for additional landscaping. Such a request shall accompany the application and shall include photographs of the natural growth to be preserved.
- k. *Location of Towers or Antenna in or near Historic Sites, Historic Districts, and Designated Scenic Resources.* Applications for wireless telecommunications facilities or antennas subject to this Section shall also demonstrate that the views of, and vistas from, such structures, districts, and resources shall not be impaired or diminished by the placement of the proposed tower or antennas. In no instance shall a wireless telecommunications facility subject to the provisions of this paragraph exceed one hundred and ninety-nine (199) feet in height.
- l. *Site Demarcation.* The site shall be physically and visually marked in the field, for immediate identification, with any combination of survey irons or flags as needed during the application process or during construction.

Section XXX.11 Approval Authority and Process.

Applications for wireless telecommunications facilities shall follow the requirements of this section and written findings shall be made by the [JX] as to whether the proposed facility complies with the regulations outlined in this Section.

- a. *Voluntary Pre-application Conference.* All persons seeking approval under this Article may meet with the [JX] prior to filing an application. It is recommended that the meeting occur no less than thirty (30) days prior to the anticipated filing of the application to ensure adequate consideration and adequate time to address concerns. At this meeting, the [JX] shall explain to the applicant the regulations as well as application forms and submissions that will be required under this Article.
- b. *Submission Materials.* Where telecommunications facilities are a permitted use, applications shall be submitted to the Zoning Officer, who may confer with the Planning Commission in the application process as needed. Where telecommunications facilities are a conditional use, applications shall be submitted to the Board of Zoning Appeals. No application shall be deemed complete unless it is in writing, is accompanied by the applicable fees, includes the required submittals, and is attested to by the applicant, certifying the truth and accuracy of the information provided in the application.
 1. All applications shall include the following, in addition to the applicable subsections below:

- i. The following contact information for the applicant:
 - A. Name,
 - B. Title,
 - C. Mailing address,
 - D. Phone number,
 - E. West Virginia tax number, and
 - F. Electronic mail address (optional).
 - ii. If a corporation, the name and address of the registered agent of applicant in West Virginia and the state of incorporation of applicant.
 - iii. If applicant is an entity other than a corporation, such as a partnership or limited liability company, the names and business addresses of the principals.
 - iv. If the applicant is not the owner or person in control of the structure or site, the following shall be required:
 - A. Attestation that the owner or person in control of the structure or site has consented to the new facility, collocation, or for any modification that require a substantial change or are otherwise not considered an eligible facilities modification.
 - B. If the structure is in a public right-of-way, the applicant must also attest to having authorization to install, maintain, and operate a wireless telecommunication facility in, under, and above the public right-of-way.
 - v. If the applicant proposes a modification involving collocation of transmission equipment or the replacement of transmission equipment, the following shall be required: Complete copies of the underlying land use approvals for siting of the tower or base station proposed to be modified, establishing that, at the time of submittal of the application, such tower or base station constituted an eligible support structure.
2. Applications for eligible facilities requests, as defined herein and subject to a determination under Section XXX.07 Substantial Change Criteria:
- i. Attestation that the proposed request is subject to review under Section 6409 of the Spectrum Act as an “eligible facilities modification.”
 - ii. If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the following shall be required: Record drawings, as-built plans, or the equivalent, showing the height of the eligible support structure, (a) as originally constructed and granted approval by the [JX] or other applicable local zoning or similar regulatory authority, or (b) as of the most recent modification that received approval, prior to the passage of Section 6409(a) of the Spectrum Act of 2012, whichever height is greater.
 - iii. If the applicant proposes an eligible facilities request for modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by the [JX] ordinances, the following shall be

required: A copy of the document setting forth such pre-existing restrictions or requirements, together with a certification that the proposed facilities modification conforms to such restrictions or requirements.

- iv. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required: Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure. If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict, to scale, the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
- v. If the applicant proposes a modification that will result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower or will protrude from the edge of a non-tower eligible support structure, the following shall be required: Record drawings and as-built plans, or the equivalent, showing, at a minimum, the edge of the eligible support structure at the location of the proposed modification.
- vi. If the applicant proposes a modification to an eligible support structure that (a) will include any excavation, (b) would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or (c) would protrude from the edge of a non-tower eligible support structure, the following shall be required: A description of the boundaries of the site and a scaled drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation, and dimensions of the new or replacement transmission equipment. The [JX] may require a survey by a land surveyor licensed in the state of West Virginia when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.
- vii. If the applicant proposes a modification to a tower, the following shall be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the tower with the proposed modifications will comply with applicable structural,

electrical, and safety codes, including by way of example, but not limited to, the most recent revision of EIA/TIA-222, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:

- A. the number and type of antennas that can be accommodated;
- B. the basis for the calculation of capacity; and
- C. a written statement that the proposal complies with all federal guidelines regarding interference and ANSI standards as adopted by the FCC.

The [JX] may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of compliance.

- viii. If the applicant proposes a modification to a base station, the following shall also be required: A stamped report by a state of West Virginia registered or licensed professional engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical, and safety codes.
- ix. If the applicant proposes a modification requiring an alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required: A detailed site plan and drawings, showing the true north point, drawn to an appropriate decimal scale, indicating and depicting:
 - A. the location, elevation, and dimensions of the existing eligible support structure;
 - B. the location, elevation, and dimensions of the existing transmission equipment;
 - C. the location, elevation, and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment;
 - D. the location, elevation, and dimensions of any proposed new equipment cabinets and the intended use of each;
 - E. any proposed modification to the eligible support structure;
 - F. the location of existing structures on the site, including fencing, screening, trees, and other significant site features; and
 - G. the location of any areas where excavation is proposed, showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.
- x. Copies of any environmental documents required by any state or federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (Part 1—Practice and Procedure), Section

1.1307, as amended, or, in the event that an environmental assessment is not required, a statement that describes the specific factors that obviate the requirement for an environmental assessment.

3. Applications for new facilities, collocations, or for any modifications that require a substantial change or are otherwise not considered an eligible facilities modification, as defined by this Article, shall include the following in the application submittal:
 - i. Copies of any easements necessary to access the property and proof that the same has been recorded, or will be recorded, in the applicable county clerk's office.
 - ii. Certification of the wireless telecommunication facility's collocation capabilities or whether the proposal is a collocation on an existing facility and whether the applicant anticipates other lessees will be able to utilize the facility.
 - iii. A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility will comply with current FCC regulations.
 - iv. Evidence of compliance with applicable local, state, and federal historic preservation laws and regulations, including a copy of a written request for a statement of compliance sent to the necessary local, state, and federal historic preservation authorities and said authorities' written responses.
 - v. A map showing the location of all wireless telecommunications facilities above ground level, except antennas located on roof tops, within a three (3) air-mile radius of the proposed facility, unless this information has been previously made available to the [JX].
 - vi. A site plan is required and shall include:
 - A. Certification by a professional engineer indicating the location, including latitude and longitude, type, and height of the proposed facility; antenna capacity; on-site and abutting off-site land uses; topography; setbacks; parking; fencing; landscaping; the collapse zone; easements or other means of access; and all applicable American National Standards Institute (ANSI) technical and structural codes.
 - B. A topographic map identifying the location of the site for the proposed wireless telecommunications facility.
 - C. A stormwater and erosion control plan for the access road to the site, or a written statement that there will be no changes implemented with regards to any existing roads.
 - D. Proximity of the proposed site to flood hazard areas.
 - E. Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions.
 - F. A boundary survey completed by a land surveyor licensed by the State of West Virginia, and which includes the access road and vicinity map.

- G. Photo simulations of the proposed facility taken from at least two perspectives, with emphasis placed on residential areas, public rights-of-way, public parks, designated scenic resources, and any historic site or district. The photos shall demonstrate whether the facility will be a stealth tower. Each photo must be labeled with the line of sight, elevation, and date taken.
- vii. The applicant shall identify and demonstrate consideration of each and every designated scenic resource or viewshed, as recognized by federal, state, or local government in which the proposed wireless telecommunications facility is located or visible and shall provide a scenic assessment for the project area consisting of the following:
 - A. Elevation drawings of the proposed facility, showing height above ground level.
 - B. A landscaping plan indicating the proposed placement of the facility on the site.
 - C. Location of existing structures, trees, and other significant site features.
 - D. A description and visual simulation of possible stealth tower design.
 - E. A description of the lighting and type of lighting the facility will implement, including, but not limited to, the color of the lighting and whether it will be constant, flashing, or strobe.
 - F. A narrative discussing the extent to which the proposed facility would be visible from any residential areas, height of vegetation within one hundred (100) feet of the facility at the time of application, and the distance to the proposed facility from a designated scenic resource's noted viewpoints.
- viii. A propagation map, before and after, of how the proposed facility fits in the existing telecommunications network. The applicant must provide written evidence of a tenant for the proposed wireless telecommunications facility and the anticipated date that the facility will be occupied and used by such tenant. Such evidence may include a lease or letter of intent from the tenant. This submission requirement does not require disclosure of confidential business information. The Zoning Officer, Planning Commission, and Board of Zoning Appeals are hereby authorized to and may enter into a non-disclosure agreement with the applicant provided the non-disclosure agreement relates only to the applicant's propagation maps.
- ix. Evidence demonstrating that an existing building, site, or structure cannot accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
 - A. Evidence that no existing facilities, located within the targeted market coverage area, meet the applicant's engineering requirements.
 - B. Evidence that existing facilities do not have sufficient height

and cannot be increased in height at a cost not exceeding fifty (50%) percent of the cost required to construct the existing tower in present-day dollars, to meet the applicant's engineering requirements.

C. Evidence that existing facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment. Specifically:

1. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of the existing facilities, and the existing facilities cannot be reinforced to accommodate the new equipment.
2. The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment with the existing facility would cause interference with the applicant's proposed antenna.
3. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.

D. Evidence that the fees, costs, or contractual provisions required by the owner of the existing facility or structure in order to share or adapt an existing facility are unreasonable, provided the existing facility was constructed prior to the effective date of the Article. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable.

E. Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access.

- x. A form of surety approved by the [JX] to pay for the costs of removing the facility to a depth of three (3) feet below ground level if it is abandoned.
- xi. Proof of compliance with all applicable federal, state, and local regulations, including the NEPA (National Environmental Policy Act) Environmental Compliance Checklist and Section 106 of NHPA (National Historic Preservation Act).
- xii. A statement from the applicable county's assessor indicating the modification in real property taxation, if any, including the applicable tax rate to be charged, the real property subject to the tax rate, and the person or persons responsible for the payment of the real property taxes.

c. *Application Fee and Costs.* An application shall include a non-refundable payment in accordance with the fee schedule adopted by the [JX]. The application shall not be considered complete until this fee is paid.

d. *Notice of Complete Application.*

1. Upon receipt of an application, the applicant shall be provided with a dated receipt of submission.
 2. Within thirty (30) calendar days of receipt of an application, the application shall be reviewed to determine if the application meets the submission requirements. Any requests for a waiver from the submission requirements shall be reviewed prior to determining the completeness of the application.
 3. If the application is not complete, the applicant shall be notified in writing, specifying the additional materials or information required to complete the application.
 4. If the application is complete, the applicant shall be notified in writing of this determination and, if the application is to be reviewed by the Planning Commission or Board of Zoning Appeals, require the applicant to provide a sufficient number of copies of the application for the Planning Commission or Board of Zoning Appeals.
- e. *Modification of Application Prior to Approval.* In the event that after submittal of the application, or as a result of any subsequent submittals, the applicant materially modifies the proposed facilities described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period and application fee; provided that, applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the [JX] to request additional submittals and additional time that may be reasonably necessary for review of the modified application.
- f. *Approval of Application.* The shot clock period begins to run when the application is filed and may be tolled only by mutual agreement or in cases where the application is incomplete and notice is provided to the applicant that the application is insufficient.
1. Approval of Eligible Facilities Modifications. Within sixty (60) calendar days of the date of receipt of an eligible facilities modification application, a determination shall be made as to whether the proposed modification is an eligible facilities modification, and contemporaneously a permit issued or the application denied.
 2. Approval of Applications involving (1) collocation or (2) modifications that are not eligible facilities modifications. Within ninety (90) calendar days of the date on which the [JX] receives an application for collocation, as defined by this Article, or a modification that is not an eligible facilities requests, as defined by this Article, a determination shall be made on the application, and contemporaneously a permit issued or the application denied.
 3. Approval of All New Towers. Within one hundred and fifty (150) calendar days of the date on which the [JX] receives an application for the construction of a new wireless telecommunication facility, or any modification that is not solely for a collocation, and that does not meet the requirements for eligible facilities modification under this Article, a determination shall be made on the application, and contemporaneously a permit issued or the application denied.
- g. *Denial of All Applications.* A denial of an application shall set forth in writing the reasons for the denial and shall be provided to the applicant contemporaneously with the denial of the application.

h. *Tolling Timeline for Approval Due to Incompleteness.*

1. To toll the timeline due to application incompleteness, written notice shall be provided to the applicant within thirty (30) calendar days of receipt of the application, clearly and specifically delineating all missing documents or information.
2. The timeline for review (when tolling ends) begins running again when the applicant makes a supplemental submission in response to the notice of incompleteness.
3. Following a supplemental submission, the [JX] shall have ten (10) business days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The timeline is tolled in the case of second or subsequent notices, and tolling ends when the applicant makes supplemental submissions. Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

Section XXX.13 Changes to Approved Application.

Any changes to an approved application must be processed pursuant to Section XXX.11 and may be subject to the application fee, at the discretion of the [JX].

Section XXX.15 Abandonment.

- a. Any wireless telecommunications facility that is not in operation for a continuous period of twelve (12) months shall be considered an abandoned facility. If negotiations are pending with a service provider to place equipment at the facility, a letter of intent shall be provided to the [JX] prior to the expiration of the twelve (12) months.
- b. The owner of an abandoned facility shall be notified in writing of an order to remove the facility within no less than ninety (90) calendar days of receipt of the written notice. Failure to remove the wireless telecommunication facility within ninety (90) calendar days shall be grounds to remove the wireless telecommunications facility at the owner's expense and may use the surety to pay this expense. If two or more users occupy a single tower or alternative support structure, this provision shall not become effective until all users cease using the tower or alternative support structure.
- c. The [JX] requires the posting of surety before commencement of construction of an approved wireless telecommunication facility to ensure removal after the facility is no longer being used. The owner of the facility may apply to the [JX] for release of the surety only when the facility and related equipment are removed by the owner to the satisfaction of the [JX].

Section XXX.17 Retention of Expert Assistance and Reimbursement by Applicant.

- a. The [JX] may hire any consultant or expert necessary to assist the [JX] in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.
- b. An applicant shall deposit with the [JX] funds sufficient to reimburse the [JX] for all

reasonable costs of consultant and expert evaluation and consultation to the [JX] in connection with the review of any application, including services needed during the construction and modification of the site, once permitted. The initial deposit shall be submitted with the application. The [JX] shall maintain a separate escrow account for all such funds. The consultants and experts shall invoice the [JX] for services rendered. If at any time during the process, this escrow account has a balance of less than _____, the applicant shall immediately, upon notification by the [JX], replenish said escrow account so that it has a balance of at least _____. Such additional escrow funds shall be deposited with the [JX] before any further action or consideration is taken on the application. If the amount held in escrow by the [JX] is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. Consultants and experts shall, upon request, provide copies of all billing to the applicant.

- c. The total amount of the funds needed as set forth in the Subsection b of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis, and inspection of any construction or modification.

Section XXX.19 Indemnification.

- a. Any application for wireless telecommunication facilities that is proposed for the [JX] property shall contain a provision with respect to indemnification. Such provision will require the applicant, to the extent permitted by law, to at all times indemnify and hold harmless the [JX], its commissions, and its agents, from any and all penalties, damages, or costs, arising out of any claims that might arise from said facility, excepting however, any portion of such claims, suits, demands, causes of action, or award of damages as may be attributable to the negligent or intentional acts or omissions of the [JX], or its commissions or agents.
- b. With respect to the penalties, damages, or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the [JX]. Notwithstanding the above, an indemnification provision shall not be required in those instances where the [JX] itself applies for and secures a permit for wireless telecommunication facilities.

Section XXX.21 Other Permits Required.

Compliance with this Section does not exempt compliance with all other applicable federal, state, and local regulations, Sections, or requirements.