

As Passed by the Senate

132nd General Assembly

Regular Session

2017-2018

Sub. H. B. No. 478

Representatives Smith, R., LaTourette

Cosponsors: Representatives Becker, Blessing, Boggs, Carfagna, Celebrezze, Duffey, Faber, Gavarone, Hambley, Koehler, Lang, Lipps, Miller, Patton, Pelanda, Perales, Reineke, Rezabek, Romanchuk, Schaffer, Seitz, Sykes, Thompson, West, Anielski, Craig, DeVitis, Greenspan, Johnson, Kent, Ryan, Scherer, Schuring, Stein, Wiggam, Young, Speaker Rosenberger

Senators Beagle, Burke, Eklund, Hoagland, Kunze, McColley, Peterson

A BILL

To amend sections 1332.23, 4939.01, 4939.02, 1
4939.03, 4939.031, 4939.035, 4939.038, 2
4939.0311, 4939.0313, 4939.0315, 4939.0319, 3
4939.0325, and 4939.08; to amend, for the 4
purpose of adopting new section numbers as 5
indicated in parentheses, sections 4939.035 6
(4939.036), 4939.038 (4939.037), 4939.039 7
(4939.038), 4939.0313 (4939.0312), 4939.0315 8
(4939.0313), 4939.0317 (4939.0315), 4939.0319 9
(4939.0316), 4939.0325 (4939.0322), 4939.0327 10
(4939.0323), and 4939.08 (4939.09); to enact new 11
sections 4939.032, 4939.033, 4939.039, 12
4939.0317, and 4939.08 and sections 4939.0314 13
and 4939.0329; and to repeal sections 4939.032, 14
4939.033, 4939.037, and 4939.0321 of the Revised 15
Code to modify the law regarding wireless 16
service and the placement of small cell wireless 17
facilities in the public way. 18

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1332.23, 4939.01, 4939.02, 19
4939.03, 4939.031, 4939.035, 4939.038, 4939.0311, 4939.0313, 20
4939.0315, 4939.0319, 4939.0325, and 4939.08 be amended; 21
sections 4939.035 (4939.036), 4939.038 (4939.037), 4939.039 22
(4939.038), 4939.0313 (4939.0312), 4939.0315 (4939.0313), 23
4939.0317 (4939.0315), 4939.0319 (4939.0316), 4939.0325 24
(4939.0322), 4939.0327 (4939.0323), and 4939.08 (4939.09) be 25
amended for the purpose of adopting new section numbers as 26
indicated in parentheses; and new sections 4939.032, 4939.033, 27
4939.039, 4939.0317, and 4939.08 and sections 4939.0314 and 28
4939.0329 of the Revised Code be enacted to read as follows: 29

Sec. 1332.23. (A) Except as otherwise provided in 30
divisions (B) (1) and (2) of this section, no person shall 31
provide video service in this state on or after ~~the effective~~ 32
~~date of this section~~ September 24, 2007, except pursuant to a 33
video service authorization issued under section 1332.24 of the 34
Revised Code. Nothing in sections 1332.21 to 1332.34 of the 35
Revised Code equates authority to construct and operate 36
telecommunications facilities in a public right-of-way to 37
authority to provide access to video service. 38

(B) (1) (a) Subject to division (B) (2) of this section, a 39
person that offers service under a franchise or competitive 40
video service agreement in effect on ~~the effective date of this~~ 41
~~section~~ September 24, 2007, may continue on and after that date 42
to provide service within the franchise area or the respective 43
municipal corporation or unincorporated area of a township 44
pursuant to the terms and conditions of the franchise or 45
agreement. However, no such franchise or agreement shall be 46

renewed or extended beyond the existing term of the franchise or 47
agreement or its earlier termination pursuant to the terms and 48
conditions of the franchise or agreement. With respect to such a 49
franchise or competitive video service agreement but only for 50
the time the franchise or agreement is in effect as provided 51
under divisions (B)(1)(a) and (2) of this section, the authority 52
of a township under sections 505.90 to 505.92 of the Revised 53
Code, as those sections existed on the day before their repeal 54
by Am. Sub. S.B. 117 of the 127th ~~General Assembly~~ general 55
assembly, shall continue, notwithstanding their repeal by that 56
act. 57

(b) Any person that is providing video service in this 58
state on ~~the effective date of this section~~ September 24, 2007, 59
pursuant to the terms and conditions of an expired franchise or 60
competitive video service agreement, or is otherwise providing 61
video service on that date other than as described in division 62
(B)(1)(a) of this section, has ninety days beginning on ~~the~~ 63
~~effective date of this section~~ September 24, 2007, to file an 64
application for a video service authorization under section 65
1332.25 of the Revised Code. 66

(2) A person that offers service under a franchise or 67
competitive video service agreement pursuant to division (B)(1) 68
(a) of this section may apply, under any of the following 69
circumstances, under section 1332.25 of the Revised Code for a 70
video service authorization to provide video service within an 71
area served by its video service network on ~~the effective date~~ 72
~~of this section~~ September 24, 2007, under that franchise or 73
agreement: 74

(a) Not sooner than one hundred twenty days before the 75
expiration or termination of the person's franchise or 76

competitive video service agreement for that area in accordance 77
with its terms and conditions; 78

(b) After any other person provides or sells video service 79
in that area; 80

(c) After receiving notice pursuant to division (A) of 81
section 1332.27 of the Revised Code; 82

(d) After a determination by the federal communications 83
commission under 47 C.F.R. 76.907 that the person is subject in 84
that area to effective competition as defined in 47 C.F.R. 85
76.905(b). 86

Upon the effective date of a video service authorization 87
obtained by the person under division (B)(2) of this section, 88
the franchise or competitive video service agreement terminates, 89
and no provision of that franchise or agreement is enforceable. 90

(C) Video service constitutes cable service over a cable 91
system for the purposes of sections 1332.01 to 1332.10 of the 92
Revised Code. For purposes of division (B)(4) of section 4939.05 93
and divisions (A)(3) and (D)(2) of section ~~4939.08~~ 4939.09 of 94
the Revised Code, a municipal corporation that receives a video 95
service provider fee described in section 1332.32 of the Revised 96
Code constitutes a municipal corporation that charges a 97
franchise fee, and a video service authorization described in 98
section 1332.24 of the Revised Code constitutes a franchise 99
between a cable operator and a municipal corporation. 100

Sec. 4939.01. As used in sections 4939.01 to ~~4939.08~~ 101
4939.09 of the Revised Code: 102

(A) ~~"Accessory equipment" means any equipment used in~~ 103
~~conjunction with a wireless facility or wireless support~~ 104
~~structure. "Accessory equipment" includes utility or~~ 105

~~transmission equipment, power storage, generation or control-~~ 106
~~equipment, cables, wiring, and equipment cabinets.~~ 107
"Abandoned" 108
means any small cell facilities or wireless support structures 108
that are unused for a period of three hundred sixty-five days 109
without the operator otherwise notifying the municipal 110
corporation and receiving the municipal corporation's approval. 111

(B) "Antenna" means communications equipment that 112
transmits or receives radio frequency signals in the provision 113
of wireless service,~~including associated accessory equipment.~~ 114

(C) "Cable operator," "cable service," and "franchise" 115
have the same meanings as in the "Cable Communications Policy 116
Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 522. 117

(D) ~~"Distributed antenna system" means a network or-~~ 118
~~facility to which all of the following apply:~~ 119

~~(1) It distributes radio frequency signals to provide-~~ 120
~~wireless service.~~ 121

~~(2) It meets the height and size characteristics of a-~~ 122
~~small cell facility.~~ 123

~~(3) It consists of all of the following:~~ 124

~~(a) Remote antenna nodes deployed throughout a desired-~~ 125
~~coverage area;~~ 126

~~(b) A high-capacity signal transport medium connected to a-~~ 127
~~central hub site;~~ 128

~~(c) Equipment located at the hub site to process or-~~ 129
~~control the radio frequency signals through the antennas.~~ 130

~~(4) It conforms to the size limitations specified in-~~ 131
~~division (N) of this section.~~ 132

~~(E)~~ "Collocation" or "collocate" means to install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure. 133
134
135

(E) "Decorative pole" means a pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: 136
137
138
139
140

(1) Electric lighting; 141

(2) Specially designed informational or directional signage; 142
143

(3) Temporary holiday or special event attachments. 144

(F) "Eligible facilities request" has the same meaning as in 47 U.S.C. 1455(a)(2). 145
146

~~(F) "Micro wireless facility" includes both a distributed antenna system and a small cell facility, and the related wireless facilities.~~ 147
148
149

~~(G) "Micro wireless facility operator" means a public utility or cable operator that operates a micro wireless facility.~~ 150
151
152

~~(H)~~(G) "Historic district" means a building, property, or site, or group of buildings, properties, or sites that are either of the following: 153
154
155

(1) Listed in the national register of historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with 156
157
158
159
160

section VI.D.1.a.i-v of the nationwide programmatic agreement 161
codified at 47 C.F.R. part 1, Appendix C; 162

(2) A registered historic district as defined in section 163
149.311 of the Revised Code. 164

(H) "Micro wireless facility" means a small cell facility 165
that is not more than twenty-four inches in length, fifteen 166
inches in width, and twelve inches in height and that does not 167
have an exterior antenna more than eleven inches in length 168
suspended on cable strung between wireless support structures. 169

(I) "Municipal electric utility" has the same meaning as 170
in section 4928.01 of the Revised Code. 171

~~(I)~~ (J) "Occupy or use" means, with respect to a public 172
way, to place a tangible thing in a public way for any purpose, 173
including, but not limited to, constructing, repairing, 174
positioning, maintaining, or operating lines, poles, pipes, 175
conduits, ducts, equipment, or other structures, appurtenances, 176
or facilities necessary for the delivery of public utility 177
services or any services provided by a cable operator. 178

(K) "Operator" means a wireless service provider, cable 179
operator, or a video service provider that operates a small cell 180
facility and provides wireless service as defined in division 181
(T) of this section. For the purpose of this chapter, "operator" 182
includes a wireless service provider, cable operator, or a video 183
service provider that provides information services as defined 184
in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 185
153(20), and services that are fixed in nature or use unlicensed 186
spectrum. 187

~~(J)~~ (L) "Person" means any natural person, corporation, or 188
partnership and also includes any governmental entity. 189

~~(K)~~(M) "Public utility" means a wireless service provider 190
as defined in division (A) (20) of section 4927.01 of the Revised 191
Code or any company described in section 4905.03 of the Revised 192
Code except in divisions (B) and (I) of that section, which 193
company also is a public utility as defined in section 4905.02 194
of the Revised Code; and includes any electric supplier as 195
defined in section 4933.81 of the Revised Code. 196

~~(L)~~(N) "Public way" means the surface of, and the space 197
within, through, on, across, above, or below, any public street, 198
public road, public highway, public freeway, public lane, public 199
path, public alley, public court, public sidewalk, public 200
boulevard, public parkway, public drive, public easement, and 201
any other land dedicated or otherwise designated for a 202
compatible public use, which, on or after July 2, 2002, is owned 203
or controlled by a municipal corporation. "Public way" excludes 204
a private easement. 205

~~(M)~~(O) "Public way fee" means a fee levied to recover the 206
costs incurred by a municipal corporation and associated with 207
the occupancy or use of a public way. 208

~~(N)~~(P) "Small cell facility" means a wireless facility 209
that meets both of the following requirements of division (N) (1) 210
of this section and also division (N) (2) of this section: 211

(1) ~~(a)~~ Each antenna is located inside an enclosure of not 212
more than six cubic feet in volume or, in the case of an antenna 213
that has exposed elements, the antenna and all of its exposed 214
elements could fit within an enclosure of not more than six 215
cubic feet in volume. 216

~~(b)~~(2) All other wireless equipment associated with the 217
facility is cumulatively not more than twenty-eight cubic feet 218

in volume. The calculation of equipment volume shall not include 219
electric meters, concealment elements, telecommunications 220
demarcation boxes, grounding equipment, power transfer switches, 221
cut-off switches, and vertical cable runs for the connection of 222
power and other services. 223

~~(2) If the wireless facility were placed on a wireless-~~ 224
~~support structure, the increased height would be not more than-~~ 225
~~ten feet or the overall resulting height would be not more than-~~ 226
~~fifty feet.~~ 227

~~(Q)~~ (Q) "Utility pole" means a structure that is designed 228
for, or used for the purpose of, carrying lines, cables, or 229
wires for electric or telecommunications service. "Utility pole" 230
excludes street signs and decorative poles. 231

~~(P)~~ (R) "Video service provider" has the same meaning as 232
in section 1332.21 of the Revised Code. 233

~~(S) (1) "Wireless facility" means an antenna, accessory-~~ 234
~~equipment, or other wireless device or equipment used to provide-~~ 235
~~wireless service.~~ 236

~~(Q)~~ at a fixed location that enables wireless 237
communications between user equipment and a communications 238
network, including all of the following: 239

(a) Equipment associated with wireless communications; 240

(b) Radio transceivers, antennas, coaxial or fiber-optic 241
cable, regular and backup power supplies, and comparable 242
equipment, regardless of technological configuration. 243

(2) The term includes small cell facilities. 244

(3) The term does not include any of the following: 245

<u>(a) The structure or improvements on, under, or within</u>	246
<u>which the equipment is collocated;</u>	247
<u>(b) Coaxial or fiber-optic cable that is between wireless</u>	248
<u>support structures or utility poles or that is otherwise not</u>	249
<u>immediately adjacent to or directly associated with a particular</u>	250
<u>antenna.</u>	251
<u>(T) "Wireless service" means any services using licensed</u>	252
<u>or unlicensed wireless spectrum, whether at a fixed location or</u>	253
<u>mobile, provided to the public using wireless facilities.</u>	254
(R) <u>(U) "Wireless service provider" means a person who</u>	255
<u>provides wireless service as defined in division (A) (19) of</u>	256
<u>section 4927.01 of the Revised Code.</u>	257
<u>(V) "Wireless support structure" means a pole, such as a</u>	258
<u>monopole, either guyed or self-supporting, street light pole,</u>	259
<u>traffic signal pole, a fifteen-foot or taller sign pole, or</u>	260
<u>utility pole capable of supporting wireless-small cell</u>	261
<u>facilities. As used in section 4939.031 of the Revised Code this</u>	262
<u>chapter, "wireless support structure" excludes a-all of the</u>	263
<u>following:</u>	264
<u>(1) A utility pole or other facility owned or operated by</u>	265
<u>a municipal electric utility;</u>	266
<u>(2) A utility pole or other facility used to supply</u>	267
<u>traction power to public transit systems, including railways,</u>	268
<u>trams, streetcars, and trolleybuses.</u>	269
<u>(W) "Wireline backhaul facility" is a facility used for</u>	270
<u>the transport of communications service or any other electronic</u>	271
<u>communications by coaxial, fiber-optic cable, or any other wire.</u>	272
<u>(X) "Work permit" means a permit issued by a municipal</u>	273

corporation that must be obtained in order to perform any work 274
in, on, above, within, over, below, under, or through any part 275
of the public way, including, but not limited to, the act or 276
process of digging, boring, tunneling, trenching, excavating, 277
obstructing, or installing, as well as the act of opening and 278
cutting into the surface of any paved or improved surface that 279
is part of the public way. 280

Sec. 4939.02. (A) It is the public policy of this state to 281
do all of the following: 282

(1) Promote the public health, safety, and welfare 283
regarding access to and the occupancy or use of public ways, to 284
protect public and private property, and to promote economic 285
development in this state; 286

(2) Promote the availability of a wide range of utility, 287
communication, and other services to residents of this state at 288
reasonable costs, including the rapid implementation of new 289
technologies and innovative services; 290

(3) Promote the rapid deployment of small cell facility 291
infrastructure and related capital investment in this state by 292
ensuring that municipal corporations grant or deny consent to 293
install, operate, modify, or replace wireless facilities in a 294
timely manner; 295

(4) Ensure that access to and occupancy or use of public 296
ways advances the state policies specified in sections 4927.02, 297
4928.02, and 4929.02 of the Revised Code; 298

~~(4)~~ (5) Recognize the authority of a municipal corporation 299
to manage access to and the occupancy or use of public ways to 300
the extent necessary with regard to matters of local concern, 301
and to receive cost recovery for the occupancy or use of public 302

ways in accordance with law;	303
(5) <u>(6)</u> Ensure in accordance with law the recovery by a	304
public utility of public way fees and related costs;	305
(6) <u>(7)</u> Promote coordination and standardization of	306
municipal management of the occupancy or use of public ways, to	307
enable efficient placement and operation of structures,	308
appurtenances, or facilities necessary for the delivery of	309
public utility or cable services;	310
(7) <u>(8)</u> Encourage agreement among parties regarding public	311
way fees and regarding terms and conditions pertaining to access	312
to and the occupancy or use of public ways, and to facilitate	313
the resolution of disputes regarding public way fees;	314
(8) Expedite the installation and operation of micro, and	315
smaller, wireless facilities in order to facilitate the	316
deployment of advanced wireless service throughout the state <u>(9)</u>	317
<u>Protect the integrity of the residential and historic locations</u>	318
<u>and ensure that access to and occupancy or use of public ways in</u>	319
<u>such districts is technologically and aesthetically appropriate.</u>	320
(B) This policy establishes fair terms and conditions for	321
the use of public ways and does not unduly burden persons	322
occupying or using public ways or persons that benefit from the	323
services provided by such occupants or users.	324
Sec. 4939.03. (A) No person shall occupy or use a public	325
way except in accordance with law.	326
(B) In occupying or using a public way, no person shall	327
unreasonably compromise the public health, safety, and welfare.	328
(C) (1) No person shall occupy or use a public way without	329
first obtaining, under this section or section 1332.24 or	330

4939.031 of the Revised Code, any requisite consent of the 331
municipal corporation owning or controlling the public way. 332

(2) Except as otherwise provided in division (C) ~~(5)~~ (6) of 333
this section and sections 4939.031 and ~~4939.035~~ 4939.036 of the 334
Revised Code, a municipal corporation, not later than sixty days 335
after the date of filing by a person of a completed request for 336
consent, shall grant or deny its consent. 337

(3) A municipal corporation shall not unreasonably 338
withhold or deny consent. 339

(4) If a request by a person for consent is denied, the 340
municipal corporation shall provide to the person in writing its 341
reasons for denying the request and such information as the 342
person may reasonably request to obtain consent. If a request 343
for consent is denied for an activity described in section 344
4939.031 of the Revised Code, the reasons required under this 345
division shall be supported by substantial, competent evidence 346
and the denial of consent shall not unreasonably discriminate 347
against the entity requesting the consent. 348

(5) Except in the case of a public utility subject to the 349
jurisdiction and recognized on the rolls of the public utilities 350
commission or of a cable operator possessing a valid franchise 351
awarded pursuant to the "Cable Communications Policy Act of 352
1984," 98 Stat. 2779, 47 U.S.C.A. 541, a municipal corporation, 353
for good cause shown, may withhold, deny, or delay its consent 354
to any person based upon the person's failure to possess the 355
financial, technical, and managerial resources necessary to 356
protect the public health, safety, and welfare. 357

(6) Initial consent for occupancy or use of a public way 358
shall be conclusively presumed for all lines, poles, pipes, 359

conduits, ducts, equipment, or other appurtenances, structures, 360
or facilities of a public utility or cable operator that, on 361
July 2, 2002, lawfully so occupy or use a public way. However, 362
such presumed consent does not relieve the public utility or 363
cable operator of compliance with any law related to the ongoing 364
occupancy or use of a public way. 365

Sec. 4939.031. (A) Subject to section 4939.0314 of the 366
Revised Code and approval of an application under this section, 367
an operator may, as a permitted use not subject to zoning review 368
or approval, collocate a small cell facility and construct, 369
maintain, modify, operate, or replace wireless support 370
structures in, along, across, upon, and under the public way. An 371
operator shall comply with generally applicable standards that 372
are consistent with this chapter and adopted by a municipal 373
corporation for construction and public safety in a public way. 374
All structures and facilities shall be constructed and 375
maintained so as not to impede or impair public safety or the 376
legal use of the public way by the municipal corporation, the 377
traveling public, or other public utilities. 378

(B) A municipal corporation, not later than ninety days 379
after the date of filing by an entity of a completed request for 380
consent ~~for any of the following, under divisions (B) (1) and (2)~~ 381
of this section or one hundred twenty days under division (B) (3) 382
of this section to be done in a public way, shall, subject to 383
sections 4939.03, 4939.033 to 4939.037, and 4939.0313 to 384
4939.0319 of the Revised Code this chapter, grant or deny its 385
consent to: 386

(1) Attaching micro wireless Collocate small cell 387
facilities to on a wireless support structure; 388

(2) Locating two or more wireless service providers' micro 389

~~wireless facilities on the same wireless support structure;~~ 390

~~(3) Replacing or modifying a micro wireless~~ Replace or 391
modify a small cell facility on a wireless support structure, if 392
consent is required under this section; 393

~~(4) Constructing, modifying, or replacing~~ (3) Construct, 394
modify, or replace a wireless support structure associated with 395
a ~~micro wireless~~ small cell facility. 396

~~(B)~~ (C) If a municipal corporation fails to approve or 397
deny a request for consent under this section or a request for a 398
relevant work permit within the required time period, provided 399
the time period is not tolled under section 4939.036 of the 400
Revised Code, the request shall be deemed granted upon the 401
requesting entity providing notice to the municipal corporation 402
that the time period for acting on the request has lapsed. 403

(D) Except as provided in division (B) of section 404
4939.0311 of the Revised Code, this chapter as well as, and any 405
franchise, pole attachment, or other agreements between a 406
municipal corporation and a cable operator or public utility, a 407
municipal corporation shall not require any zoning or other 408
approval, consent, permit, certificate, or condition for the 409
construction, replacement, location, attachment, or operation of 410
a ~~micro wireless~~ small cell facility in the public way, or 411
otherwise prohibit or restrain the activities as described in 412
this section. 413

(E) For purposes of submitting a request for municipal 414
corporation consent under this section, "operator" also includes 415
any person that, at the time of filing the request, provides the 416
municipal corporation the person's written authorization to 417
perform the specific work for which consent has been requested 418

on behalf of an operator. 419

Sec. 4939.032. Applications for requests for consent 420
pursuant to section 4939.03 or 4939.031 of the Revised Code 421
shall include the name of the person who owns or will own the 422
small cell facility or wireless support structure for which 423
consent is requested. A permit or other record of consent issued 424
by a municipal corporation that authorizes the use of the public 425
way pursuant to section 4939.03 or 4939.031 of the Revised Code 426
shall include the name of the person who owns or will own the 427
facility or structure. 428

Sec. 4939.033. A person who is not an operator under 429
section 4939.031 of the Revised Code shall request, pursuant to 430
and in accordance with the requirements of section 4939.03 of 431
the Revised Code, municipal corporation consent to collocate a 432
small cell facility and construct, maintain, modify, operate, or 433
replace wireless support structures in, along, across, upon, and 434
under a public way. 435

Sec. ~~4939.035~~ 4939.036. (A) The ~~ninety-day~~ time period 436
required in section 4939.031 of the Revised Code may be tolled 437
only: 438

(1) By mutual agreement between the entity requesting 439
consent and the municipal corporation; 440

(2) In cases where the municipal corporation determines 441
that the application is incomplete; or 442

(3) By the municipal corporation in the event it has an 443
extraordinary number of wireless facilities contained in pending 444
requests, in which case If the number of requests for consent 445
for small cell facilities or wireless support structures 446
received is likely to result in difficulty processing 447

applications within the time limits set forth in section 448
4939.031 of the Revised Code due to the lack of resources of the 449
municipal corporation, then the municipal corporation may toll 450
the ninety day period for a reasonable amount of days not 451
exceeding an additional ninety days time limits as follows: 452

(a) The time period may be tolled for up to twenty-one 453
days for the first fifteen small cell facility or wireless 454
support structure requests received by a municipal corporation 455
above the thresholds provided in divisions (A) (3) (a) (i) to (v) 456
of this section and for the first thirty small cell facility or 457
wireless support structure requests received by a municipal 458
corporation above the thresholds provided in division (A) (3) (a) 459
(vi) of this section, within any consecutive thirty-day period: 460

(i) For a municipal corporation having a population of 461
thirty thousand persons or less when it receives applications 462
for at least fifteen small cell facility or wireless support 463
structure requests; 464

(ii) For a municipal corporation having a population of 465
thirty thousand one to forty thousand persons when it receives 466
applications for at least twenty small cell facility or wireless 467
support structure requests; 468

(iii) For a municipal corporation having a population of 469
forty thousand one to fifty thousand persons when it receives 470
applications for at least twenty-five small cell facility or 471
wireless support structure requests; 472

(iv) For a municipal corporation having a population of 473
fifty thousand one to sixty thousand persons when it receives 474
applications for at least thirty small cell facility or wireless 475
support structure requests; 476

(v) For a municipal corporation having a population of 477
sixty thousand one to one hundred thousand persons when it 478
receives applications for at least sixty small cell facility or 479
wireless support structure requests; 480

(vi) For a municipal corporation having a population of 481
one hundred thousand one persons or more when it receives 482
applications for at least ninety small cell facility or wireless 483
support structure requests. 484

(b) Further, for every additional fifteen requests that 485
the municipal corporation receives above the thresholds provided 486
in divisions (A)(3)(a)(i) to (v) of this section, and every 487
additional thirty requests that the municipal corporation 488
receives above the threshold provided in division (A)(3)(a)(vi) 489
of this section within any consecutive thirty-day period, the 490
municipal corporation may toll the time period for those 491
requests for up to fifteen days in addition to the time period 492
provided in division (A)(3)(a) of this section. 493

(c) In no instance shall a municipal corporation toll the 494
time period for any small cell facility or wireless support 495
structure request by more than ninety consecutive days. Upon 496
request, a municipal corporation shall provide an operator 497
written notice of the time limit for a small cell facility or 498
wireless support structure request. 499

(B) To toll the time period for incompleteness, the 500
municipal corporation shall provide written notice to the ~~entity~~ 501
person requesting consent not later than thirty days after 502
receiving the request, clearly and specifically delineating all 503
missing documents or information. The missing documents or 504
information shall be reasonably related to determining whether 505
the request meets the requirements of applicable federal and 506

state law. Any notice of incompleteness requiring other 507
information or documentation, including information of the type 508
described in section ~~4939.0315~~ 4939.0313 of the Revised Code or 509
documentation intended to illustrate the need for the request or 510
to justify the business decision for the request, does not toll 511
the time period. 512

(C) The time period ~~begins running again~~ resumes when the 513
entity makes a supplemental submission in response to the 514
municipal corporation's notice of incompleteness. 515

(D) If a supplemental submission is inadequate, the 516
municipal corporation shall notify the entity not later than ten 517
days after receiving the supplemental submission that the 518
supplemental submission did not provide the information 519
identified in the original notice delineating missing documents 520
or information. The time period may be tolled in the case of 521
second or subsequent notices under the procedures identified in 522
divisions (A) to (C) of this section. Second or subsequent 523
notices of incompleteness may not specify missing documents or 524
information that ~~were was~~ not delineated in the original notice 525
of incompleteness. 526

Sec. ~~4939.038~~ 4939.037. Nothing in this chapter precludes 527
a municipal corporation from applying its generally applicable 528
health, safety, and welfare regulations when granting consent 529
for a ~~micro wireless~~ small cell facility or wireless support 530
structure. 531

Sec. ~~4939.039~~ 4939.038. Notwithstanding sections 4939.031 532
to 4939.037 of the Revised Code, a municipal corporation shall 533
approve within sixty days, and may not deny, an eligible 534
facilities request under 47 C.F.R. 1.40001. 535

Sec. 4939.039. Any operator who owns or operates small 536
cell facilities or wireless support structures in the public way 537
shall indemnify, protect, defend, and hold the municipal 538
corporation and its elected officials, officers, employees, 539
agents, and volunteers harmless against any and all claims, 540
lawsuits, judgments, costs, liens, losses, expenses, fees to 541
include reasonable attorney fees and costs of defense, 542
proceedings, actions, demands, causes of action, liability and 543
suits of any kind and nature, including personal or bodily 544
injury or death, property damage or other harm for which 545
recovery of damages is sought, to the extent that it is caused 546
by the negligence of the operator who owns or operates small 547
cell facilities and wireless service in the public way, any 548
agent, officer, director, representative, employee, affiliate, 549
or subcontractor of the operator, or their respective officers, 550
agents, employees, directors, or representatives while 551
installing, repairing, or maintaining facilities in a public 552
way. 553

Sec. 4939.0311. (A) Consent of a municipal corporation 554
shall not be required for either of the following activities 555
conducted in the public way: 556

(1) Routine maintenance of wireless facilities; 557

(2) The replacement of wireless facilities with wireless 558
facilities that are consistent with the municipal corporation's 559
current design guidelines and that are either of the following: 560

(a) Substantially similar to the existing wireless 561
facilities; 562

(b) The same size or smaller than the existing wireless 563
facilities. 564

(B) A municipal corporation may require a work permit for an any activity described in division (A) of this section and 565
for any activity for which consent is authorized under section 566
4939.031 of the Revised Code. Any such permit shall be subject 567
to any applicable law in this chapter. 568
569

(C) Notwithstanding the amendments and enactments made to 570
sections 4939.01 to 4939.09 of the Revised Code by H.B. 478 of 571
the 132nd General Assembly, a cable or video service provider 572
shall not be required to obtain permits from a municipal 573
corporation or to pay fees, with the exception of work permits 574
and associated fees, to place, operate, maintain, or replace 575
micro wireless facilities pursuant to an existing franchise or 576
video service authorization under Chapter 1332. of the Revised 577
Code; nor shall a holder of an existing franchise or video 578
service authorization be required to obtain additional 579
authorizations or to pay additional fees for the placement of 580
micro wireless facilities already covered under an existing 581
franchise or video service authorization under Chapter 1332. of 582
the Revised Code. 583

(D) The permitting procedures and authorizations set forth 584
in the amendments and enactments made to sections 4939.01 to 585
4939.09 of the Revised Code by H.B. 478 of the 132nd General 586
Assembly shall apply only to the placement of small cell 587
facilities and wireless support structures in the public way, 588
and do not authorize the construction and operation of a 589
wireline backhaul facility. 590

Sec. ~~4939.0313~~ 4939.0312. (A) An entity A municipal 591
corporation shall permit a person seeking to construct, modify, 592
collocate, or replace more than one ~~micro~~ small cell facility or 593
more than one wireless ~~facility~~ support structure within the 594

jurisdiction of a single municipal corporation ~~may to file~~, at 595
the ~~entity's person's~~ discretion, a consolidated ~~request~~ 596
application for consent under ~~division (A)(4) of~~ section 597
4939.031 of the Revised Code for up to thirty small cell 598
facilities requests in a single application or up to thirty 599
wireless support structure requests in a single application and 600
receive a single permit for the construction, modification, 601
collocation, or replacement of the ~~micro wireless small cell~~ 602
facilities or ~~associated wireless support structures~~. However, 603
this single application may only address multiple small cell 604
facilities or multiple wireless support structures if they each 605
involve substantially the same type of small cell facilities or 606
substantially the same type of wireless support structures. A 607
municipal corporation may separately address small cell facility 608
collocations or wireless support structures for which incomplete 609
information has been received or which are denied. 610

(B) In the case of a consolidated ~~request application~~, the 611
fees provided for in section ~~4927.0319-4939.0316~~ of the Revised 612
Code may be cumulative. However, a municipal corporation, at its 613
discretion, may opt to reduce such fees in order to encourage 614
persons to submit consolidated applications. 615

(C) In the case of a consolidated application, each small 616
cell facility or wireless support structure proposed to be 617
constructed, modified, collocated on, or replaced shall 618
constitute a separate request for consent for purposes of 619
tolling the response deadline as authorized under section 620
4939.036 of the Revised Code. A request by a single operator for 621
a new or replacement support structure and associated small cell 622
facility constitutes one request. 623

Sec. ~~4939.0315-4939.0313~~. With respect to the provision of 624

any ~~micro wireless~~ small cell facility or the associated 625
wireless support structure in a public way, a municipal 626
corporation shall not do any of the following: 627

(A) Require ~~the requestor~~ a person to submit information 628
about, or evaluate a ~~requestor's~~ person's business decisions 629
with respect to, the ~~requestor's~~ person's service, customer 630
demand, or quality of service to or from a particular area or 631
site as a condition for approval of the request; 632

(B) Require ~~the requestor~~ a person to submit information 633
about the need for the ~~micro wireless~~ small cell facility or the 634
associated wireless support structure, including additional 635
wireless coverage, capacity, or increased speeds, as a condition 636
for approval of the request; 637

(C) Require ~~the requestor~~ a person to justify the need for 638
the new ~~micro wireless~~ small cell facility or associated 639
wireless support structure, or to submit business information, 640
including strategy documents, propagation maps, or 641
telecommunications traffic studies as a condition for approval 642
of the request; 643

(D) Evaluate ~~the request based on the availability of~~ 644
~~other potential locations for the placement of the micro~~ 645
~~wireless facility or associated wireless support structure,~~ 646
~~including the options to submit a request under division (A)(1)~~ 647
~~or (2) of section 4939.031 of the Revised Code or under division~~ 648
~~(A)(4) of that section to modify an existing micro wireless~~ 649
~~facility or associated wireless support structure except that a~~ 650
~~municipal corporation may propose an alternate location within~~ 651
~~fifty feet of the proposed location, which the requestor shall~~ 652
~~use if it has the right to use the alternate structure on~~ 653
~~reasonable terms and conditions and the alternate location does~~ 654

~~not impose technical limits or additional costs;~~ 655

~~(E)~~ Require the removal of existing wireless support 656
structures or ~~wireless~~ small cell facilities, wherever located, 657
as a condition for approval of the request, unless the existing 658
wireless support structures or small cell facilities have been 659
unused or abandoned. This division shall not preclude a 660
municipal corporation from adopting reasonable rules intended to 661
ensure the public health, safety, and welfare with respect to 662
the removal of an abandoned wireless support structure or 663
abandoned wireless ~~facilities~~ facility. 664

~~(F)~~ (E) Impose restrictions with respect to objects in 665
navigable airspace that are stricter than or in conflict with 666
any restrictions imposed by the federal aviation administration; 667

~~(G)~~ Impose requirements for bonds, escrow deposits, 668
letters of credit, or any other type of financial surety to 669
ensure removal of abandoned or unused wireless facilities, 670
unless the municipal corporation imposes similar requirements on 671
other permits for occupancy of the public way; 672

~~(H)~~ (F) Unreasonably discriminate among providers of 673
functionally equivalent services; 674

~~(I)~~ Impose unreasonable requirements regarding the 675
maintenance or appearance of the micro wireless facility or 676
associated wireless support structure and accessory equipment, 677
including the types of materials to be used and the screening or 678
landscaping of wireless facilities; 679

~~(J)~~ Require that the requestor purchase, lease, or use (G) 680
Condition the grant of consent on the requirement that a person 681
purchase or lease facilities, networks, or services owned or 682
operated by the municipal corporation, in whole or in part, or 683

owned or operated, in whole or in part, by any entity in which 684
the municipal corporation has an economic governance interest; 685

~~(K)~~ (H) Condition the grant of consent on the requestor's 686
agreement to permit other wireless facilities to be placed at, 687
attached to, or located on the associated wireless support 688
structure; 689

~~(L)~~ ~~Limit the duration of any permit that is granted,~~ 690
~~except that a municipal corporation may require that~~ 691
~~construction commence within two years;~~ 692

~~(M)~~ (I) Impose setback or fall-zone requirements for the 693
associated wireless support structure that are different from 694
requirements imposed on other similar types of structures in the 695
public way; 696

~~(N)~~ (J) Impose environmental testing, sampling, or 697
monitoring requirements that exceed rules and regulations 698
established under state or federal law or that are not imposed 699
on other types of construction or elements of the construction; 700

~~(O)~~ (K) Impose any regulations pertaining to radio 701
frequency emissions or exposure to such emissions that are 702
contrary to or exceed rules of the federal communications 703
commission; 704

~~(P)~~ ~~Impose~~ (L) Except as set forth in section 4939.0314 of 705
the Revised Code, impose separation requirements that require 706
any space to be maintained regarding spacing between an 707
operator's facilities and other wireless facilities or, 708
wireless support structures; 709

~~(Q)~~ ~~Prevent the requestor from locating the micro wireless~~ 710
~~facility or wireless support structure in a residential area or~~ 711
~~within a specific distance from a residence or other structure,~~ 712

utility poles, ground-mounted equipment, or other utility 713
facilities within the public way. 714

Sec. 4939.0314. With respect to the placement of any small 715
cell facility or wireless support structure in a public way, a 716
municipal corporation may do any of the following: 717

(A) Reserve space for future public safety or 718
transportation uses in the public way or on a wireless support 719
structure or pole owned by a municipal corporation in a 720
documented and approved plan in place at the time an application 721
is filed. A reservation of space shall not preclude placement of 722
a pole or collocation of a small cell facility. If replacement 723
of the municipal corporation's pole or wireless support 724
structure is necessary to accommodate the collocation of the 725
small cell facility and the future use, the operator shall pay 726
for the replacement of the pole or wireless support structure, 727
and the replaced pole or wireless support structure must 728
accommodate the future use. 729

(B) Require reasonable and nondiscriminatory spacing 730
requirements for the location of new wireless support structures 731
set forth in an ordinance, local rule, or design guidelines. 732
Such spacing requirements shall not prohibit, or have the effect 733
of prohibiting, the provision of wireless service to any 734
location. 735

(C) Adopt reasonable written design guidelines with 736
objective, technologically feasible criteria that reasonably 737
match the aesthetics and character of the immediate area 738
regarding all of the following: 739

(1) The location of any ground-mounted small cell 740
facilities; 741

(2) The location of a small cell facility on a wireless support structure; 742
743

(3) The appearance and concealment of small cell facilities, including those relating to materials used for arranging, screening, or landscaping; 744
745
746

(4) The design and appearance of a wireless support structure including any height requirements adopted by a municipality in accordance with division (F) of this section. 747
748
749

Any such guidelines shall be applied in a nondiscriminatory manner. Materials utilized to comply with the appearance and concealment criteria established in the guidelines shall not be considered part of the small cell facility for purposes of facility size restrictions in this chapter. 750
751
752
753
754
755

(D) Propose an alternate location to the proposed location of a new wireless support structure that is within one hundred feet of the proposed location or within a distance that is equivalent to the width of the public way in or on which the new wireless support structure is proposed, whichever is greater, which the operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs. 756
757
758
759
760
761
762
763
764

(E) Require that a collocation or a new wireless support structure for which a permit is granted shall be completed within one hundred eighty days after issuance of the permit, unless the municipal corporation and the operator agree to extend this period or a delay is caused by make-ready work for a municipally owned wireless support structure or decorative pole 765
766
767
768
769
770

or by the lack of commercial power or backhaul availability at 771
the site, provided that the operator has made a timely request 772
within sixty days after the issuance of the permit for 773
commercial power or backhaul services, and the additional time 774
to complete installation does not exceed three hundred sixty 775
days after issuance of the permit. Otherwise, the permit shall 776
be void unless the municipal corporation grants an extension in 777
writing to the operator. 778

(F) Set restrictions for the height of a wireless support 779
structure and the placement of a wireless facility as follows: 780

(1) For a new wireless support structure, the overall 781
height of the wireless support structure and any collocated 782
antennas shall not be more than forty feet in height above 783
ground level. 784

(2) Notwithstanding division (F) of this section, and 785
except that the cap shall not be below thirty-five feet in 786
height above ground level, a municipal corporation may adopt 787
design guidelines under division (C) of this section to cap the 788
permissible height of small cell facilities in areas meeting the 789
following criteria: 790

(a) The area is within three hundred feet of the proposed 791
site for a new wireless support structure in the same public way 792
or a connecting public way, and there are no wireless support 793
structures or utility poles taller than thirty feet in height 794
above ground level; 795

(b) The maximum allowable height for building construction 796
in the underlying zoning district is thirty-five feet in height 797
above ground level or less. 798

(3) For an existing wireless support structure, the 799

antenna and any associated shroud or concealment material are 800
permitted to be collocated at the top of the existing wireless 801
support structure and shall not increase the height of the 802
existing wireless support structure by more than five feet. 803

(G) Require an operator to comply with reasonable and 804
nondiscriminatory requirements that prohibit public utilities or 805
cable operators from installing structures and facilities in the 806
public way because an area is either designated solely for 807
undergrounding or structures and facilities are required to be 808
placed elsewhere in the public way, if the following apply: 809

(1) The municipal corporation has required all structures 810
and facilities, including structures and facilities owned by a 811
municipal electric company, but not including structures and 812
facilities owned by a municipal corporation or a transit 813
authority, to be placed underground or elsewhere in the public 814
way or a utility easement by a date certain that is three months 815
prior to the submission of the application; 816

(2) Subject to the provisions of this chapter, the 817
municipal corporation does not prohibit the replacement of 818
wireless support structures or the collocation of small cell 819
facilities on wireless support structures in the designated 820
area; 821

(3) The municipal corporation permits operators to seek a 822
waiver of the undergrounding or alternative location 823
requirements for the placement of a new wireless support 824
structure to support small cell facilities if the operator is 825
unable to achieve its service objective using a small cell 826
facility under the following circumstances: 827

(a) From a location in the public way where the 828

prohibition does not apply; 829

(b) In a utility easement the operator has the right to 830
access; or 831

(c) In or on other suitable locations or structures made 832
available by the municipal corporation at reasonable rates, 833
fees, and terms. A municipal corporation shall process waivers 834
in a reasonable and nondiscriminatory manner that does not have 835
the effect of prohibiting the provision of wireless service. 836

(H) Subject to section 4939.0313 of the Revised Code, and 837
except for facilities excluded from evaluation for effects on 838
historic properties under 47 C.F.R. 1.1307(a) (4) of the federal 839
communications commission's rules, a municipal corporation may 840
require reasonable, technically feasible, and nondiscriminatory 841
design or concealment measures in an historic district. Any such 842
design or concealment measures may not have the effect of 843
prohibiting any operator's technology, nor may any such measures 844
be considered a part of the small cell facility for purposes of 845
the size restrictions in the definition of small cell facility. 846

(I) If multiple requests are received by the municipal 847
corporation to install two or more poles that would violate 848
applicable spacing requirements under division (B) of this 849
section, or to collocate two or more small cell facilities on 850
the same wireless support structure, notwithstanding division 851
(I) of section 4939.0313 of the Revised Code, the municipal 852
corporation may resolve conflicting requests through whatever 853
reasonable and nondiscriminatory manner the municipal 854
corporation deems appropriate. 855

(J) Impose reasonable requirements for bonds, escrow 856
deposits, letters of credit, or any other type of financial 857

surety to ensure removal of abandoned or unused wireless 858
facilities or damage to municipal property caused by an operator 859
or its agent. 860

Sec. ~~4939.0317~~ 4939.0315. No municipal corporation may 861
institute a moratorium on the filing, acceptance of filings, 862
consideration, or approval of requests for consent described in 863
section 4939.031 of the Revised Code. 864

Sec. ~~4939.0319~~ 4939.0316. Any fee charged by a municipal 865
corporation ~~for a request for consent~~ under section 4939.031 of 866
the Revised Code for granting or processing an application for 867
consent shall not exceed ~~the lesser~~ a one-time fee of two 868
hundred fifty dollars per ~~micro wireless~~ small cell facility ~~or~~ 869
~~the amount charged by the~~ . Beginning on the effective date of 870
this section, a municipal corporation ~~for a building permit for~~ 871
~~any other type of commercial development or land use development~~ 872
may adjust this fee ten per cent every five years, rounded to 873
the nearest five dollars. During each five-year period, the 874
adjustment may be applied incrementally or as a single 875
adjustment. 876

Sec. 4939.0317. A municipal corporation's approval term of 877
an attachment to a wireless support structure shall be for a 878
period of not less than ten years, with presumption of renewal 879
for successive five-year terms, subject to terms providing for 880
early termination or nonrenewal for cause or by mutual agreement 881
and unless otherwise agreed to by both the operator and the 882
municipal corporation, except for generally applied permitting 883
to safeguard the public health, safety, and welfare. An operator 884
may remove its small cell facilities at any time subject to 885
applicable work permit requirements and may stop paying annual 886
charges or fees under division (B) of section 4939.0322 of the 887

Revised Code. 888

Sec. ~~4939.0325~~ 4939.0322. (A) A municipal corporation 889
shall permit, ~~for the purpose of providing wireless service, an~~ 890
~~attachment by a micro wireless facility operator to~~ consistent 891
with this chapter and for the purpose of providing wireless 892
service, a collocation of a small cell facility by an operator 893
to a wireless support structure owned by the municipal 894
corporation and located in the public way, provided that the 895
operator comply with any applicable design guidelines under 896
division (C) of section 4939.0314 of the Revised Code and 897
reasonable terms and conditions for such collocations adopted by 898
the municipal corporation that are consistent with the design 899
guidelines and this chapter. The municipal corporation may 900
condition approval of the collocation on replacement or 901
modification of the wireless support structure at the operator's 902
cost if the municipal corporation determines that replacement or 903
modification is necessary for compliance with its written 904
construction or safety standards. A replacement or modification 905
of the wireless support structure shall conform to the 906
applicable design guidelines and the municipal corporation's 907
applicable specifications for the type of structure being 908
replaced. The municipal corporation may retain ownership of a 909
replacement wireless support structure. 910

(B) The total annual charges to reimburse the municipal 911
corporation for the attachment shall not exceed two hundred 912
dollars per small cell facility collocated on a wireless support 913
structure owned ~~or operated~~ by the municipal corporation and 914
located in the public way. Beginning on the effective date of 915
this section, a municipal corporation may adjust this charge ten 916
per cent every five years, rounded to the nearest five dollars. 917
During each five-year period, the adjustment may be applied 918

incrementally or as a single adjustment. 919

~~(B) (1) The total annual charges and fees for the attachment and any activities related to the attachment shall be the lesser of the actual, direct, and reasonable costs related to the use of the wireless support structure by the operator or two hundred dollars per attachment.~~ 920
921
922
923
924

~~(2) In any controversy concerning the appropriateness of a charge or fee under this section, the municipal corporation shall have the burden of proving that the charge or fee is reasonably related to its actual, direct, and reasonable costs.~~ 925
926
927
928

~~(C) The charges, fees, terms, and conditions for attachments under this section, including the processes and time for approval of applications and permits for the attachments, shall be nondiscriminatory as to all attaching operators regardless of the types of services provided by the operators~~ 929
930
931
932
933
Except for any applicable work permit under division (B) of section 4939.0311 of the Revised Code and financial surety under division (J) of section 4939.0314 of the Revised Code, a municipal corporation may not charge an operator any other charge or fee for a small cell facility or associated wireless support structure except as set forth in section 4939.0316 and division (B) of section 4939.0322 of the Revised Code. The fees set forth in sections 4939.0316 and 4939.0322 of the Revised Code are not public way fees. 934
935
936
937
938
939
940
941
942

~~(D) Nothing in this chapter affects the need for an entity seeking to place a micro wireless facility on a public utility owned utility pole to obtain from the public utility any necessary authority to place the facility~~ 943
944
945
Placement of small cell facilities in the public way or attachment of small cell facilities to a wireless support structure and any fees 946
947
948

associated therewith shall not subject a municipal corporation 949
to any state or local tax liabilities or assessments. 950

(E) To the extent that an investor-owned electric utility 951
whose rates are regulated by the public utilities commission, 952
its affiliate, an electric cooperative, or an independent 953
transmission company is not an operator as defined by this 954
chapter, nothing in sections 4939.01 and 4939.031 to 4939.039 of 955
the Revised Code shall be construed to modify, add to, replace, 956
or supersede any construction standard or engineering practice, 957
tariff, contractual obligation or right, or federal or state law 958
or regulation regarding utility poles, similar structures, or 959
equipment of any type owned or controlled by that investor-owned 960
electric utility, affiliate, electric cooperative, or 961
independent transmission company. 962

Sec. ~~4939.0327~~ 4939.0323. A municipal corporation shall 963
not enter into an exclusive arrangement with any entity for the 964
right to attach to the municipal corporation's wireless support 965
structures. 966

Sec. 4939.0329. A person may construct, modify, or 967
maintain a utility pole or wireless support structure along, 968
across, and under a public way in excess of the size limits, to 969
the extent permitted by the municipal corporation's applicable 970
regulations. 971

Sec. 4939.08. If requested by a municipal corporation, in 972
order to accomplish construction and maintenance activities 973
directly related to improvements for the health, safety, and 974
welfare of the public, an operator shall relocate or adjust its 975
facilities within the public way at no cost to the municipal 976
corporation, as long as such request similarly binds all users 977
in or on such public way. Such relocation or adjustment shall be 978

completed in accordance with local law. 979

Sec. ~~4939.08~~ 4939.09. (A) Nothing in sections 4939.01 to 980
~~4939.07~~ ~~4939.08~~ of the Revised Code applies to a franchise or to 981
any agreement with a public utility, cable operator, or ~~micro-~~ 982
~~wireless facility~~ operator, for the balance of its term, if the 983
franchise or agreement meets all of the following, as 984
applicable: 985

(1) (a) With respect to a public utility or cable operator, 986
the franchise was granted, or the agreement was authorized by 987
ordinance or otherwise and was entered into, by a municipal 988
corporation prior to July 2, 2002. 989

(b) With respect to a ~~micro wireless facility~~ an operator, 990
the agreement was authorized by ordinance or otherwise and was 991
entered into by a municipal corporation and the ~~micro wireless~~ 992
~~facility~~ operator prior to the effective date of the amendments 993
to this section by S.B. 331 of the 131st general assembly. 994

(2) The franchise or agreement authorizes the occupation 995
or use of public ways. 996

(3) The public utility or ~~micro wireless facility~~ operator 997
agrees with the applicable public way fees, or nonmonetary 998
compensation, if any, or the cable operator pays the applicable 999
fee or utilizes the credit, offset, or deduction specified in 1000
division (B) (4) of section 4939.05 of the Revised Code. 1001

(B) (1) Except as otherwise provided in division (A) of 1002
section 4939.06 of the Revised Code, nothing in sections 4939.01 1003
to ~~4939.07~~ ~~4939.08~~ of the Revised Code applies to an ordinance 1004
both governing public ways and enacted by a municipal 1005
corporation prior to September 29, 1999, unless, on or after 1006
that date, the ordinance is materially modified. 1007

(2) Division (B)(1) of this section does not apply to 1008
~~micro wireless facility~~ operators and their facilities. 1009

(C) Nothing in sections 4939.01 to ~~4939.07-4939.08~~ of the 1010
Revised Code authorizes a municipal corporation to levy a fee, 1011
other than a public way fee authorized by section 4939.05 of the 1012
Revised Code, on a pipeline company or an operator of a pipeline 1013
facility regulated under the "Accountable Pipeline Safety and 1014
Partnership Act of 1996," 110 Stat. 3793, 49 U.S.C.A. 60101, or 1015
on an operating partner or affiliated business unit operating 1016
under guidelines of the federal energy regulatory commission as 1017
they relate to the construction and operation of a pipeline. 1018

(D) Nothing in sections 4939.01 to ~~4939.07-4939.08~~ and 1019
this section of the Revised Code prohibits a municipal 1020
corporation from doing either of the following: 1021

(1) Charging a cable operator a franchise fee in 1022
accordance with the "Cable Communications Policy Act of 1984," 1023
98 Stat. 2779, 47 U.S.C.A. 542; 1024

(2) Allowing a credit, offset, or deduction against the 1025
payment of a construction permit fee for any franchise fee a 1026
cable operator pays to the municipal corporation. 1027

Section 2. That existing sections 1332.23, 4939.01, 1028
4939.02, 4939.03, 4939.031, 4939.035, 4939.038, 4939.039, 1029
4939.0311, 4939.0313, 4939.0315, 4939.0317, 4939.0319, 1030
4939.0325, 4939.0327, and 4939.08 and sections 4939.032, 1031
4939.033, 4939.037, and 4939.0321 of the Revised Code are hereby 1032
repealed. 1033