

**SUMMERS COUNTY, WEST VIRGINIA  
WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE**

**Section 1. Title**

This ordinance shall be known and cited as the “Wireless Telecommunications Facilities Ordinance” of Summers County, West Virginia (hereinafter referred to as the “ordinance”).

**Section 2. Purpose**

The purpose of this ordinance is to ensure the citizens of Summers County, West Virginia have access to wireless technology and to protect the residents of the County from the proliferation of freestanding towers, which detract from the beauty of the County. The specific purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunication facilities in order to:

Implement a county policy concerning the provision of wireless telecommunication services, and the siting of their facilities;

Establish clear guidelines, standards and time frames for the exercise of county authority to regulate wireless telecommunications facilities;

Allow competition in telecommunications service;

Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Summers County;

Encourage the location, design, and construction of wireless communication facilities and antennae which will have minimal impact on the location, will have minimal visual impact on the scenic resources of the county and minimize the total number of towers and tower sites throughout the County.

Permit reasonable access to the public rights of way for telecommunications purposes on a competitively neutral basis;

Ensure that all telecommunications carriers providing facilities or services within Summers County comply with federal, state and local regulations;

Ensure that Summers County can continue to fairly and reasonably protect the public health, safety and welfare;

Encourage the co-location of new and existing wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;

Encourage the use of existing structures as an alternative to new Wireless Communications Facility construction;

Further the goals and objectives of the county comprehensive plan, while promoting orderly development with minimal impacts on existing uses; and

Protect the scenic and visual character of the community.

### **Section 3. Applicability**

Wireless telecommunications facilities may not be constructed or expanded without a permit issued in accordance with the provisions of this ordinance, except as provided in Section 3.1. Wireless communication facilities in existence on the effective date of this ordinance are required to comply with this ordinance in the event the facility is modified after the effective date of this ordinance.

**3.1 Exemptions.** To receive determination of exemption, the applicant shall submit an application for exemption to the County Planning Official on forms provided by the Summers County Planning Commission, hereinafter referred to as the "Planning Commission", and shall also submit a \$250.00 fee.

The following are exempt from this ordinance, except as provided herein:

**A. Emergency Wireless Telecommunications Facility.** Wireless telecommunication facilities exclusively for emergency communications by public officials.

**B. Amateur (ham) Radio Stations.** Any antenna of less than one hundred (100) feet in height which is owned and operate, exclusively, by an amateur radio operator licensed by the Federal Communications Commission (FCC).

**C. Temporary wireless telecommunications facility.** Temporary wireless telecommunications facility, in operation for a maximum period of one hundred twenty (120) days. An extension of this period may be requested for good cause, in writing, addressed to the County Planning Official if requested at least 30 days prior to the extension. An extension of time may not exceed thirty (30) days without approval of the Planning Commission.

**D. Antennas as accessory uses.** An antenna that is an accessory use to a residential dwelling unit, not including satellite dish antennas under 3-feet in diameter and less than 8-feet high.

### **Section 4. General Requirements**

#### **4.1. Lighting**

Lighting shall not exceed the Federal Aviation Administration (FAA) minimum if lighting is required by the FAA. To the extent allowed by the FAA, artificial lights and

strobes shall not be used for lighting. If lighting is required, the lights shall be up-shielded and oriented so as not to project directly onto surrounding property, consistent with FAA requirements. Prior to issuance of a building permit, the Applicant shall be required to submit documentation from the FAA that the proposed lighting is the minimum required by the FAA.

#### **4.2. Structural Standards**

Wireless Communications Facilities shall conform to the most current revision of the Electronics Industries Association Standard 222 and all applicable state and county ordinances and regulations regarding construction standards.

#### **4.3. Height Restrictions**

A. No Wireless Communications Facility shall exceed one hundred ninety-nine (199) feet in height, unless the applicant justifies to the Planning Commission 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 199 feet.

B. Wireless Communications Facilities located atop or within existing buildings or structures may result in an overall increase in height of the structure of no more than ten percent of the structure's height without the facility or the maximum height allowed in the zoning district in which the structure is located, whichever is less.

#### **4.4. Co-location**

A. In all applications for construction of new Wireless Communications Facility, the Applicant must demonstrate by substantial evidence that a bona fide need exists for the facility and that no reasonable combination of locations, techniques, or technologies will obviate the need. The applicant must further demonstrate that it has made all reasonable efforts to procure antenna space on existing facilities.

B. Prior to the issuance of a permit for a Wireless Communications Facility, the Applicant shall demonstrate commitment to joint use as follows:

a) The Applicant requesting the permit 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 Communications 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 communications services within Summers and adjacent counties, or a class II 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 business days.

b) The Applicant shall sign an instrument, agreeing to encourage and promote the joint use of telecommunications towers within Summers County, 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.

c) Wireless Communications Facilities other than Alternative Antenna Support Structures, shall be designed and built to accommodate a minimum of three (3) telecommunications providers; towers greater than one hundred ninety-nine feet in height shall be designed and built to accommodate at least four (4) telecommunications providers. The owner of the tower must certify to the County that the tower is available for use by other telecommunications service providers on a reasonable and non-discriminatory basis.

#### **4.5. Setback**

In addition to any setbacks required by any applicable Zoning Ordinance or Performance Standard, no Wireless Communications Facility shall be constructed without a setback from the tower base of at least one hundred and ten percent (110%) the tower height to a public or private road, and at least one hundred and ten percent (110%) the tower height to the nearest property line.

In addition, no tower shall be constructed closer to a habitable residence than one hundred and ten percent (110%) the tower height from the base of the tower.

#### **4.6. Collapse Zone**

No habitable structure shall be located within the collapse zone. Further, the applicant shall demonstrate that the entire collapse zone is either under lease or owned by the applicant so that no habitable structure will be constructed in the collapse zone while the tower is standing.

#### **4.7. Equipment Shelters**

No equipment shelter for a Wireless Communications Facility shall exceed seven hundred fifty (750) square feet in area nor twelve (12) feet in height. All equipment shelters shall be located with the Tower base and shall be enclosed within a minimum of a six (6) foot security fence and a locked gate.

#### **4.8. Signs**

No commercial messages nor any other signs beyond safety warnings and an identification sign shall be placed on any tower or equipment shelter.

#### **4.9. Landscaping**

A. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. Trees existing within one hundred (100) feet of the Wireless Communications Facility shall not be removed except as required for the tower footprint and security perimeter, to install ingress/egress and utilities and for the operation of 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 in the event that such existing vegetation is removed or destroyed, the applicant/permittee shall meet the landscaping specified in paragraph B below within six (6) months thereafter.

B. Wireless Communications Facilities shall be landscaped within six (6) months after the tower is erected with a visual buffer of plant materials that effectively screens the view of the shelters 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 trees 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 Summers County, West Virginia. In the case where towers are sited on large wooded lots, the applicant may request that the natural growth preserved around the tower site may be a sufficient visual barrier without the need for additional landscaping. Such a request shall accompany the concept plan and shall include photographs of the natural growth to be preserved.

#### **4.10. Additional Approval Requirements for the Location of Towers or Antenna in or near Historic Structures, Historic Districts, and Designated Scenic Resources.**

Wireless Communications Facilities and antennae may be approved in or near historic structures and districts and designated scenic resources, only after public hearing by the Planning Commission in accordance with this ordinance, and only when the applicant demonstrates that the wireless communications facility or antenna will be so concealed as to be substantially not visible as a tower. Applications for Wireless Communications Facilities or antenna 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 and/or antennae. In no instance shall a Wireless Communications Facility subject to the provisions of this paragraph exceed 199 feet in height.

#### **4.11 Prioritization of Location**

A. Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and three (3) being the lowest priority.

1. On existing Towers or other structures without increasing the height of the tower or structure;
2. On County-owned properties;

3. Within Established Acceptable Areas for new site development in the County.

B. Request for Prioritization Exception. If the proposed site is not the highest priority listed above, or if the site is located in a Prohibited Area for new site development, the applicant shall submit a Request for Prioritization Exception. This request shall include, but is not limited to, a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the rationale for the site selection. The request for Prioritization Exception must demonstrate the financial, environmental, or other factors that the applicant feels an exception is justified.

C. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the County may disapprove an application for any of the following reasons:

- a) Conflict with safety and safety-related codes and requirements or not within defined Acceptable Area for new site development;
- b) Conflict with the historic nature or character of a neighborhood or historical district;
- c) That the facility would create an unacceptable risk, or the reasonable probability of an unacceptable risk;
- d) Conflicts with the provisions of this Ordinance.

#### **4.12 Additional Conditions**

The Planning Commission may impose additional conditions and/or improvements to be clearly noted on the final approved site plan.

### **Section 5. Approval Authority**

The County Planning Official or the Planning Commission shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with the regulations.

#### **5.1 County Planning Official Approval**

The County Planning Official may, without public hearing by the Planning Commission, review and approve or reject, within thirty (30) calendar days from the date of receipt of a completed Application for:

- A. Co-Location: New antenna locating on an existing Wireless Communications Facility or alternative antenna support structure not causing an increase in height;
- B. New alternative antenna support structures;

C. New antenna installed on a structure other than a Tower; provided that the antenna and supporting electrical and mechanical equipment must be of a neutral color that is closely compatible with the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible;

D. Existing Wireless Communications Facilities to be extended in height up to forty (40) feet beyond existing height, but the total may not exceed one hundred (100) feet in height; or

E. New Wireless Communications Facilities that are one hundred (100) feet or less in height.

F. Replacement of an existing tower to increase carrier capability. Replacement tower must not exceed forty (40) feet greater than the existing tower. The replacement tower must be built on the same property within one hundred (100) feet of the existing tower. The existing tower must be removed after the replacement tower is constructed and service providers are on the air. A surety bond is required to cover the removal of the existing tower and proof of the bond must be presented with the application materials.

**5.2 Planning Commission Approval.** Permits for all Wireless Communication Facilities not exempt or not subject to the administrative approval procedure shall be subject to the full Planning Commission approval process. If an Application subject to the Planning Commission Approval is deemed complete, within forty-five (45) days of the completeness determination, the Planning Commission shall schedule a public hearing on the Application. Such public hearing shall require a class II legal advertisement of the date, place, time and reason for the hearing. The legal advertisement shall identify the location of the proposed Wireless Communications Facility.

## **Section 6. Approval Process**

### **6.1 Pre-Application Conference**

All persons seeking approval of the County Planning Official or the Planning Commission under this ordinance may meet with the County Planning Official no less than thirty (30) days before the filing deadline(s). At this meeting, the County Planning Official shall explain to the applicant the regulations, as well as application forms and submissions that will be required under this ordinance.

### **6.2 Application**

All persons seeking approval of the County Planning Official or the Planning Commission under this ordinance shall submit an application as provided below. In circumstances in which the application requires approval by the Planning Commission,

the County Planning Official shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

### **6.3 Submission Materials**

An application for approval shall be submitted to the County Planning Official. The application must include the following information:

1. Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including name and address of the property owner and the applicant and proof that the same has been recorded, or will be recorded, in the office of the Clerk of the County Commission of Summers County, West Virginia.
2. The owner of the facility's full legal name, address of the applicant (the same shall be placed on the structure).
3. Whether the applicant requests administrative approval pursuant to section 5.1.
3. Copies of any easements necessary to access the property and proof that the same has been recorded, or will be recorded, in the Office of the Clerk of the County Court of Summers County, West Virginia.
4. Certification of the facility's co-location capabilities or whether the proposal is a co-location on an existing facility and whether the applicant anticipates other leasees will be able to utilize the facility.
6. 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 complies with current FCC regulations.
7. Evidence of compliance with applicable State and Federal Historic Preservation laws and regulations, including, a copy of a written request sent to the necessary local, state and federal historic preservation authorities and said authorities written response.
8. A USGS topographical 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 county.
9. A site plan:
  - (a). prepared and certified by a professional engineer indicating the location including GPS coordinates, 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 Communications Facility. The site shall be physically and visually marked in the field, for immediate identification, with any combination of survey irons or flags;
  - (c). a storm 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). identification of the 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 for the lease hold area and/or owned area for the project performed by a land surveyor licensed by the State of West Virginia, including the access road and vicinity map; and
  - (g) photo simulations of the proposed facility taken from at least two perspectives, including residential areas, public rights of way, public parks, designated scenic resource, and any historic district or place designated on the national Historic Register determined by the County Planning Official, or their designee, during the pre-application conference. The photos shall demonstrate whether the facility will be a stealth tower. Each photo must be labeled with the line of sight, elevation, and with the date taken.
10. 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 Communications 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; location of existing structures, trees, and other significant site features, the proposed lighting method;
  - (c). a description and visual simulation of possible stealth tower design(s);
  - (d). a description of the lighting and type of lighting the facility will implement, including the color of the lighting and whether it will be constant, flashing, or strobe.
  - (e). a narrative discussing:
    - i. the extent to which the proposed facility would be visible from a residential area,
    - ii. the tree line elevation of vegetation within 100' of the facility; and

- iii. the distance to the proposed facility from a designated scenic resources noted viewpoints.

11. A propagation map, before and after, of how the proposed facility fits in the applicant's telecommunications network and which shall justify the height and location of the Wireless Communications Facility. 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 county planning official, as an agent of the Planning Commission, is 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 map(s).

12. Evidence demonstrating whether an existing building, site, or structure can 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, meets or is required to meet the applicant's engineering requirements,
- (b). evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost 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:
  - i. 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;
  - ii. 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; or,
  - iii. 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 ordinance. 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 co-location on an existing facility, building, or structure, and has been denied access.

13. A form of surety approved by the Planning Commission to pay for the costs of removing the facility to a depth of 3' below ground level if it is abandoned.

14. Proof of compliance with all applicable federal, state and local regulations.

15. A statement from the county 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.

16. A NEPA (National Environmental Policy Act) Environmental Compliance Checklist prepared in accordance with section 106 of NEPA; which shall be provided prior to the issuance of a permit.

17. Notice to Property Owners. The Applicant shall notify all property owners adjacent to the proposed Wireless Communications Facility site, and all other property owners within 300' of the proposed site, by certified U.S. mail, return receipt requested. The notice shall identify the proposed Wireless Communications Facility site and height. In addition, if administrative approval is sought, the notice shall contain the statement that *"The recipient is hereby notified of your right to request a hearing before the Summers County Planning Commission on the matter of the proposed tower. Such a request must be made in writing and by certified mail to The County Planning Official, Summers County Planning Commission, 120 Ballengee Street, Hinton, WV 25951. Your request must be received by The County Planning Official within fifteen (15) days of your receipt of this notice."*

#### **6.4 Submission Waiver**

The County Planning Official may waive any of the submission requirements based upon a written request of the applicant submitted at the time of the application. A waiver of any submission requirement may be granted only if the County Planning Official finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

### **6.5 Application Fee and Costs**

An application for approval shall include a payment of an Application Fee and the costs necessary to provide notice of the proposed facility in accordance with this ordinance. The application shall not be considered complete until this Application Fee is paid. If application is made and it is determined that the construction or expansion is exempt from this ordinance, the Application Fee will be returned within ten business days of written notification that the application is unnecessary by the County Planning Official. The applicant is entitled to a refund of the Application Fee if the application is withdrawn within fifteen (15) days of date of filing. The Applicant shall generally not be required to pay the fees and other costs of contract engineers or other professional consultants engaged by the County to review an application, except as and to the extent permitted by Section 11.

Fee schedule A below includes New Tower, Tower Replacement, and similar activities that require significant time investment by the county to ensure the safety, needs, and best interest of the residents are met. Fee schedule B includes all other activities covered by this ordinance.

A. Application Fee Cost. Schedule A: \$5000

B. Application Fee Cost, Schedule B: \$500

### **6.6 Notice of Complete Application**

Upon receipt of an application, the County Planning Official shall provide the applicant with a dated receipt. Within ten (10) business days of receipt of an application, the County Planning Official shall review the application and determine if the application meets the submission requirements. The County Planning Official shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the County Planning Official shall notify the applicant in writing of this determination and, if the application is to be reviewed by the Planning Commission, require the applicant to provide a sufficient number of copies of the application for the Planning Commission.

If the application is not complete, the County Planning Official shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, and requires Planning Commission review, the applicant shall notify all property owners within 300' of the leased site as shown on the Assessor's records, by first-class mail, that a public hearing has been scheduled and shall cause a notice to be published as a Class I legal

advertisement in a newspaper of general circulation in the county. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location, information about where a copy of the application is available for inspection, and provide the date, time, and place of the public hearing before the Planning Commission.

### **6.7 Public Hearing**

For applications for Planning Commission approval under Section 5.2, a public hearing shall be held not less than ten (10) days nor more than forty-five (45) days from the date the County Planning Official notified the applicant of a complete application.

### **6.8 Approval**

**A. Administrative Approval by the County Planning Official.** For approval under Section 5.1, within thirty (30) days of notifying the applicant of receipt of a complete application, the County Planning Official shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The County Planning Official shall approve the application if the County Planning Official finds that the application complies with the general requirements of this ordinance.

**B. Planning Commission Approval.** Within ninety (90) days of the public hearing on the application for approval under Section 5.2, the Planning Commission shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based.

### **Section 7. Amendment to an Approved Application**

Any changes to an approved application must be approved by the County Planning Official or the Planning Commission, in accordance with Section 5, and may be subject to the application fee, at the discretion of the County Planning Official.

### **Section 8. Abandonment**

The applicant and/or Wireless Communications Facility owner shall notify the Planning Commission within thirty days of the date on which a wireless communications facility becomes vacant with respect to the location of active telecommunication facilities thereon.

A wireless telecommunications facility that is not operated for a continuous period of eighteen (18) months shall be considered abandoned. The County Planning Official shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the County Planning Official that the facility has not been abandoned. However, if negotiations are pending

with a service provider a letter of intent shall be provided to the County Planning Official prior to the expiration of the eighteen (18) months.

If the owner fails to show that the facility is in active operation, the owner shall have ninety (90) days to remove the facility. If the facility is not removed within this time period, the County may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its preconstruction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the County for removal of the facility, the owner of the facility may apply to the Planning Commission for release of the surety only when the facility and related equipment are removed by the owner to the satisfaction of the Planning Commission.

### **Section 9. Appeals**

Any person aggrieved by a decision of the County Planning Official or the Planning Commission under this ordinance may appeal the decision to the Summers County Commission. Written notice of an appeal must be filed with the Summers County Commission within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal.

### **Section 10. Administration and Enforcement**

After adoption of this ordinance by the Summers County Commission and a certified copy of the ordinance has been filed with the County Clerk, the Summers County Commission and its assigned agency, the Planning Commission, shall be charged with enforcement of this ordinance and shall have oversight of all wireless telecommunications facilities constructed in Summers County, West Virginia.

The County Planning Official, as appointed by the Planning Commission, shall enforce this ordinance. If the County Planning Official finds that any provision of this ordinance has been violated, the County Planning Official shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The County Planning Official shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Summers County Commission, or its authorized agent, is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a result of erroneous advice given by an authorized county official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; or, the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

## **Section 11. Expert Assistance for the County**

**11.1.** When the County determines that it requires technical assistance in connection with the review of an Application, the Applicant shall make its engineers or other experts available for consultation at the Applicant's expense and provide the credentials for those individuals to the County. The Applicant's engineers and/or experts shall work in good faith with the County to address the County's technical questions and concerns. In the event that the Applicant's engineers and experts are not able to fully address the questions or concerns of the County, the County may hire any telecommunications consultant and/or expert ("Consultant") necessary to assist the County in reviewing and evaluating the Application, and any site inspections. Any such Consultant shall (a) be a registered engineer in the State of West Virginia, (b) meet all applicable credentialing standards, and (c) be selected on the basis of a competitive bidding process, if required by law. The role of a selected Consultant shall be limited to advising the County and under no circumstance may a Consultant exercise, or purport to exercise, any governmental authority. If a Consultant is selected to provide the County advice on an Application, the County will promptly provide the Consultant a copy of the Application and the Consultant shall provide its opinion regarding the completeness of the Application within 15 days of its receipt of the application. For an application that has been deemed to be complete, the Consultant shall report its findings to the Planning Commission within an additional 30 days of the determination of completeness.

**11.2.** When the County engages a Consultant, the Applicant will be responsible for the actual, direct, and reasonable cost of such consultation, in an amount not to exceed \$3,000.00, including travel expenses. Notwithstanding the foregoing, in no event will an Applicant be required to pay or reimburse such a Consultant based on a contingency or other result-based agreement. The Applicant shall be given at least 30 days' notice of any such fees required to be paid, and if such fees are not paid by the due date they may be subject to a late payment fee of 1.5% per month simple interest.

## **Section 12. Indemnification.**

Any application for Wireless Telecommunication Facilities that is proposed for County property pursuant to this Ordinance shall contain a provision with respect to indemnification. Such provision shall require the Applicant to the extent permitted by law, to at all times defend, indemnify and protect save, hold harmless, and exempt the County, its officers, Commissions, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products of performance, use, operation, maintenance, repair, installation,

replacement, removal, or restoration of 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 County, or its servants or agents. 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 County. Notwithstanding the above, an indemnification provision shall not be required in those instances where the County itself applies for and secures a Location Permit for Wireless Telecommunication Facilities.

### **Section 13. Other permits required**

Compliance with this ordinance does not exempt compliance with all other applicable federal, state, and local regulations, ordinances, or requirements. A building permit is required for wireless telecommunication facilities and may be acquired through the Summers County FEMA coordinator or as set forth in the County Comprehensive Plan, any applicable subdivision or land development ordinance or zoning ordinance.

### **Section 14. Penalties**

Any person who owns or controls any building or property that violates this ordinance shall be fined not less than \$300.00 per day. Each day such violation continues after notification by the County Planning Official shall constitute a separate offense.

### **Section 15. Conflict and Severability**

#### **15.1 Conflicts with other Ordinances**

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

#### **15.2 Severability**

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

### **Section 16. Territorial Limits**

The ordinance contained herein shall apply within the unincorporated parts of Summers County under the jurisdiction of Summers County, West Virginia, unless the same is adopted by the governing bodies of the incorporated parts of Summers County, West Virginia.

### **Section 17. Definitions**

The terms used in this ordinance shall have the following meanings:

“Alternative Antenna Support Structure” means man-made trees, clock towers, steeples, light poles, flag poles, power transmission towers, signs and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.



“Antenna” means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

“Antenna Height” means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. 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 support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

“Collapse Zone” means an area delineated on the applicant’s site plan illustrating where the tower may collapse based on the site and design specifications stamped by an engineer licensed in the State of West Virginia.

“Co-locate” means to locate communications equipment from more than one provider on a single site.

“Co-location” means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

“County Planning Official” means any person designated by the Planning Commission, with approval of the County Commission.

“Designated Scenic Resources” means a specific location, view or corridor identified as a scenic resource in the county’s comprehensive plan or by a local, State, or federal agency or government and shall consist of:

1. 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
2. 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.

“Expansion” means the addition of antennas, towers, or other devices to an existing structure.

“FAA” means the Federal Aviation Administration, or its lawful successor.

“FCC” means the Federal Communications Commission, or its lawful successor.

“Height” means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. 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.

“Historic District” means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the county’s comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places.

“Historic Landmark” means any improvement, building or structure of particular historic or architectural significance to the community relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the county’s comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

“Historic Resource” means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district; or
3. Individually listed on a state inventory of historic places with historic preservation programs approved by the Secretary of the Interior.

“Lattice tower” means a support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

“Line of sight” means the direct view of the object from the designated scenic resource.

“Modification or Modify” means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Tower as a co-location is a modification. A modification shall not include the replacement of any components of a wireless facility

where the replacement is substantially equivalent to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

“Monopole” means a support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

“Parabolic Antenna” (also known as a satellite dish antenna) means an antenna which is bowl shaped, designed for the reception and/or transmission of radio frequency communication signals in a specific directional pattern.

“Principal Use” means the use other than one which is wholly incidental or accessory to another use on the same premises.

“Public Recreational Facility” means a regionally or locally significant facility, as defined and identified either by State statute, federal regulation or in the county’s comprehensive plan, designated to serve recreational needs.

“Setback” means distance in linear feet to any point on the telecommunications facility’s circumference, with the facility serving as the center.

“Stealth Tower” means concealed or camouflaged tower facilities designed so that the facilities have the appearance of a structure other than a telecommunications facility and such a manner that is consistent with the existing landscape, streetscape, or development pattern, and which render the tower to be substantially invisible as a tower.

“Structure” means anything constructed or erected which requires permanent location to the ground or attachment to something having a permanent location on the ground. The word “structure” shall include buildings.

“Targeted Market Coverage Area” means the area which is targeted to be served by this proposed telecommunications facility.

“Tower” means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including but not limited to self-supporting lattice towers, guy towers, or monopole towers.

“Unreasonable Adverse Impact” means that the proposed project would produce a result that is:

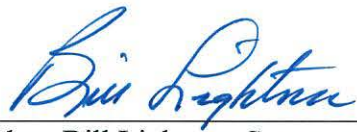
1. Excessively out of character with the designated scenic resources affected, including existing building, structures and features within the designated scenic resource; and
2. would significantly diminish the scenic value of the designated scenic resource.

“Viewpoint” means the location which is identified either in the county comprehensive plan or by a federal or state agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

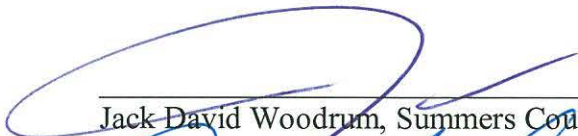
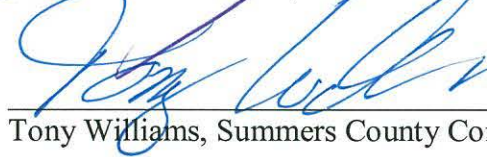
“Wireless Telecommunication Facility” or “Facility” means any structure, antenna, tower, or other device which provides or is suitable to provide radio/television transmission, commercial mobile wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, and personal communications service (PCS) or pager service.

**Section 18. Effective Date**

This ordinance becomes effective on January 6, 2014 by order of the County Commission.



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President Bill Lightner, Summers County Commission

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Jack David Woodrum, Summers County Commission

\_\_\_\_\_  
Tony Williams, Summers County Commission



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Attest, Mary E. Merritt, Clerk of the Summers County Commission