

SENATE No. 1908

The Commonwealth of Massachusetts

PRESENTED BY:

Jennifer L. Flanagan

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act upgrading mobile broadband coverage in the Commonwealth.

PETITION OF:

NAME:

Jennifer L. Flanagan

DISTRICT/ADDRESS:

Worcester and Middlesex

SENATE No. 1908

By Ms. Flanagan, a petition (accompanied by bill, Senate, No. 1908) of Jennifer L. Flanagan for legislation relative to upgrading mobile broadband coverage in the Commonwealth. Telecommunications, Utilities and Energy.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act upgrading mobile broadband coverage in the Commonwealth.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to expand and improve mobile broadband coverage and connectivity, promote robust wireless communication services, enhance economic development, enhance public safety, and improve quality of life for all residents and businesses throughout the commonwealth by establishing uniform standards and expedited permitting for collocation of wireless facilities on existing structures, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The general court finds and declares that:

2 (a) It is the policy of this commonwealth to facilitate the provision of broadband and
3 other advanced wireless communication services across the entirety of the commonwealth; and
4 that it is further the policy to promote access to broadband and advanced wireless
5 communication services for all residents, students, government agencies and businesses to ensure
6 the availability of world-class educational opportunities, economic development, and public
7 safety services throughout the commonwealth.

8 (b) The deployment of wireless infrastructure is critical to ensuring first responders can
9 provide for the health and safety of all residents of the commonwealth and that, consistent with
10 section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No.
11 112-96, which, among other things, creates a national wireless emergency communications
12 network for use by first responders that in large measure will depend on facilities placed on
13 existing wireless communications support structures, it is the policy of this commonwealth to

14 facilitate the collocation of wireless facilities on existing support structures in all areas of the
15 commonwealth.

16 (c) This act shall be known and may be cited as the “Act Upgrading Mobile Broadband
17 Coverage in the Commonwealth.”

18 SECTION 2. Section 3 of chapter 40A of the General Laws, as appearing in the 2012
19 Official Edition, is hereby amended by inserting at the end thereof the following paragraph:-

20 No zoning ordinance or by-law shall prohibit, regulate or restrict collocation of wireless
21 facilities on existing structures in a manner inconsistent with chapter 43F.

22 SECTION 3. The General Laws are hereby amended by inserting after chapter 43E,
23 the following chapter:-

24 CHAPTER 43F.

25 EXPEDITED COLLOCATION PERMITTING

26 Section 1. As used in this chapter the following words shall, unless the context clearly
27 requires otherwise, have the following meanings:-

28 “Accessory Equipment”, any equipment serving or being used in conjunction with a
29 wireless facility or wireless support structure. The term includes utility or transmission
30 equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and
31 storage sheds, shelters or similar structures.

32 “Antenna”, communications equipment that transmits and receives electromagnetic radio
33 signals used in the provision of all types of wireless communications services.

34 “Applicant”, any person engaged in the business of providing wireless
35 telecommunications services or the wireless telecommunications infrastructure required for
36 wireless telecommunications services who submits a collocation application.

37 “Building Permit”, a permit issued by an issuing authority prior to the collocation of
38 wireless facilities, solely to ensure that the work to be performed by the applicant satisfies the
39 applicable building code.

40 “Collocation”, the placement, installation, replacement, upgrade or modification of
41 wireless facilities on or in existing structures capable of structurally supporting the attachment of
42 wireless facilities in compliance with applicable codes. The term collocation includes the
43 placement, installation, replacement, upgrade or modification of wireless facilities within a
44 previously approved equipment compound, but does not include a substantial modification. The
45 term collocation excludes the placement or installation of wireless facilities on the exterior of a
46 building or structure listed on the national or state register of historic places unless the

47 Massachusetts historical commission’s state historic preservation officer has made a finding that
48 this placement or installation either would have no adverse effect on that building or structure or
49 that any effect shall be appropriately mitigated.

50 “Collocation Application”, a request submitted by an applicant to an issuing authority for
51 collocation of wireless facilities on an existing structure.

52 “Equipment Compound”, an area surrounding or near the base of a wireless support
53 structure within which wireless facilities are located.

54 “Existing Structure”, any structure that is capable of supporting the attachment of
55 existing wireless facilities in compliance with applicable codes, including, but not limited to,
56 towers, buildings and water towers. The term shall not include any utility pole.

57 “Issuing Authority”, each state, county, regional, district, city, town, municipal and
58 governmental body, board, agency, office, department, authority, commission, political
59 subdivision or instrumentality authorized to make legislative, quasi-judicial, or administrative
60 decisions relative to the construction, installation, modification, or siting of wireless facilities
61 and wireless support structures; provided that an “issuing authority” shall not include state courts
62 having jurisdiction over land use, planning, or zoning decisions made by an “issuing authority”.

63 “Substantial Modification”, the mounting of a proposed wireless facility on a wireless
64 support structure which: (i) increases the existing vertical height of the structure and existing
65 wireless facilities by (a) more than 10 per cent, or (b) the height of one additional antenna array
66 with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or
67 (ii) involves adding an appurtenance to the body of an existing wireless support structure that
68 protrudes horizontally from the edge of the wireless support structure more than 20 feet, or more
69 than the width of the existing wireless support structure at the level of the appurtenance,
70 whichever is greater (except where necessary to shelter the antenna from inclement weather or to
71 connect the antenna to the tower via cable); or (iii) increases the square footage of the existing
72 equipment compound by more than 2,500 square feet.

73 “Utility Pole”, a structure owned or operated by a public utility, municipality, electric
74 membership corporation or that is designed specifically for and used to carry lines, cables, or
75 wires for telephony, cable television, or electricity or to provide lighting. This term shall not
76 apply to towers, overhead wires and associated overhead structures used exclusively in the
77 transmission but not the distribution of electricity.

78 “Water Tower”, a water storage tank, or a standpipe or an elevated tank situated on a
79 support structure, originally constructed for use as a reservoir or facility to store or deliver water.

80 “Wireless Support Structure”, a freestanding structure, such as a monopole or tower,
81 designed to support wireless facilities. This term does not include utility poles.

82 “Wireless Facility”, the set of equipment and network components, exclusive of the
83 underlying wireless support structure, including, but not limited to, antennas, accessory
84 equipment, transmitters, receivers, base stations, power supplies, cabling and associated
85 equipment necessary to provide wireless telecommunications services.

86 Section 2. Notwithstanding any other general or special law, ordinance, by-law, rule or
87 regulation to the contrary, in order to ensure uniformity throughout the commonwealth, each
88 issuing authority shall follow the following process for reviewing and deciding collocation
89 applications:

90 (1) Subject to this Act, collocation applications shall be reviewed for conformity with
91 applicable building permit requirements but shall not otherwise be subject to zoning or land use
92 requirements.

93 (2) The issuing authority, within 45 calendar days of receiving a collocation application,
94 shall:

95 (a) Review the Collocation Application in light of its conformity with applicable
96 building permit requirements and consistency with this Act. A collocation application is
97 considered complete unless the issuing authority notifies the applicant in writing, within 15
98 calendar days of submission of the collocation application, of the specific deficiencies in the
99 collocation application which, if cured, would make the collocation application complete. Upon
100 receipt of a timely written notice that a collocation application is deficient, an applicant may take
101 15 calendar days from receiving that notice to cure the specific deficiencies. If the applicant
102 cures the deficiencies within 15 calendar days, the collocation application shall be reviewed and
103 processed within 45 calendar days from the initial date the collocation application was received.
104 If the applicant requires a period of time beyond 15 calendar days to cure the specific
105 deficiencies, the 45 calendar day deadline for review shall be extended by the same period of
106 time;

107 (b) Make its final decision to approve or disapprove the collocation application; and

108 (c) Advise the applicant in writing of its final decision.

109 (3) If the issuing authority fails to act on a collocation application within the 45 calendar
110 day review period, the collocation application shall be considered approved.

111 (4) Notwithstanding anything to the contrary in this chapter, an issuing authority may not
112 mandate or require the installation, location or use of wireless facilities on utility poles.

113 (5) An applicant aggrieved by the final decision of an issuing authority to disapprove the
114 collocation application under section 2(2)(b) of this chapter, or by the issuing authority’s failure
115 to act on a collocation application within the 45 calendar days under section 2(2) of this chapter,
116 may bring an action for judicial review within 30 days after the receipt by the applicant of the

117 final decision of the issuing authority or within 30 days after the failure of the issuing authority
118 to take final action within the required time, as applicable, in the land court department or the
119 superior court department in which the land concerned is situated.

120 Section 3. Notwithstanding any other general or special law, ordinance, by-law, rule or
121 regulation to the contrary, the following uniform rules and limitations shall apply to a collocation
122 application to any issuing authority throughout the commonwealth. In order to ensure uniformity
123 across the commonwealth with respect to the consideration of every collocation application, an
124 issuing authority shall not:

125 (1) Require an applicant to submit information about, or evaluate an applicant's business
126 decisions with respect to: its designed service, customer demand for service, or quality of its
127 service to or from a particular area or site or discriminate on the basis of the ownership of any
128 property, structure or tower when evaluating collocation applications;

129 (2) Evaluate a collocation application based on the availability of other potential
130 locations for the placement of wireless support structures or wireless facilities;

131 (3) Dictate the type of wireless facilities, infrastructure or technology to be used by the
132 applicant;

133 (4) Require the removal of existing wireless support structures or wireless facilities,
134 wherever located, as a condition to approval of a collocation application;

135 (5) Reject a collocation application based on perceived environmental effects of radio
136 frequency emissions pursuant to 47 U.S.C. section 332(c)(7)(b)(4) or impose environmental
137 testing, sampling, or monitoring requirements for radio frequency emissions on wireless facilities
138 that are excluded under the Federal Communication Commission's rules for radio frequency
139 emissions, including 47 CFR 1.1307(b)(1), or otherwise establish or enforce regulations or
140 procedures for radio frequency signal strength or the adequacy of service quality;

141 (6) Impose any restrictions with respect to objects in navigable airspace that are greater
142 than or in conflict with the restrictions imposed by the Federal Aviation Administration;

143 (7) Prohibit the placement of emergency power systems that comply with federal and
144 state environmental requirements;

145 (8) Charge an application fee, consulting fee or other fee associated with the submission,
146 review, processing and approval of a collocation application that is not required for similar types
147 of commercial development within the issuing authority's jurisdiction. Fees imposed by an
148 issuing authority or by a third-party entity providing review or technical consultation to the
149 issuing authority must be based on actual, direct and reasonable administrative costs incurred for
150 the review, processing and approval of a collocation application, but in no case should total
151 charges and fees exceed \$500. Notwithstanding the foregoing: (a) an issuing authority or any

152 third-party entity shall not include within its charges any travel expenses incurred in a third-
153 party's review of a collocation application; and (b) an applicant shall not be required to pay or
154 reimburse an issuing authority for consultant or other third party fees based on a contingency or
155 result-based arrangement;

156 (9) Condition the approval of a collocation application on the applicant's agreement to
157 provide space on or near any wireless support structure for local governmental services at less
158 than the market rate for space or to provide other services via the structure or facilities at less
159 than the market rate for those services; or

160 (10) Limit the duration of the approval of a collocation application.