Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Technology & Economic Development Committee

HB 2175

Brief Description: Removing barriers to economic development in the telecommunications industry.

Sponsors: Representatives Morris, Morrell and Stanford.

Brief Summary of Bill

- Amends the definition of "microcell".
- Requires binding arbitration of disputes related to pole attachment rates, terms, or conditions established by a locally-regulated utility.

Hearing Date: 1/17/14

Staff: Jasmine Vasavada (786-7301).

Background:

Wireless Telecommunications Services.
Over the past two decades, as the demand for wireless telecommunications services has increased, the demand for wireless antenna sites has correspondingly increased. According to the Federal Communications Commission (FCC), in recent years there has been increasing demand for facilities, such as microcells, that expand capacity and wireless coverage in a local area through small, low-mounted antennas.

The specific locations chosen by wireless companies to site antennas depend on a variety of factors, such as the proximity of adjacent antenna sites, engineering and topographical considerations, community response, and the existence of a willing property owner. Antenna siting may be contentious, in large part due to neighborhood concerns about possible health, safety, and aesthetic effects.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

State Environmental Policy Act.
The State Environmental Policy Act (SEPA) establishes a review process for state agencies and local governments to identify possible environmental impacts that may result from governmental decisions, including the issuance of permits or the adoption of or amendment to land use plans and regulations. The siting of wireless service facilities that meet specific conditions is categorically exempt in statute from the SEPA review process.

Washington Law on "Microcells".
In 1996 and 1997, Washington enacted legislation to encourage local governments, when a telecommunications service provider applies to site several microcells and/or minor facilities in a single geographical area: (1) to allow the applicant to file a single set of State Environmental Policy Act documents and land use permit documents that would apply to all the microcells and/or minor facilities to be sited; and (2) to render decisions in a single administrative proceeding. The legislation defined a "microcell" as a wireless communication facility consisting of an antenna that is either: (1) four feet in height and with an area of not more than 580 square inches; or (2) if a tubular antenna, no more than four inches in diameter and no more than six feet in length. This definition has not been amended since 1997.

Federal Requirement to Approve the Siting of Certain Wireless Communication Facilities.
In the Telecommunications Act of 1996, Congress directed the Federal Communications Commission to encourage the deployment of telecommunications facilities by working to "remove barriers to infrastructure investment" in a manner consistent with the public interest, convenience, and necessity. In 2012 federal law was amended to require state and local governments to approve requests for the modification of an existing wireless tower or base station for certain facilities, if the modification does not substantially change the physical dimensions of the tower or base.

In September 2013 the FCC issued a notice of proposed rulemaking addressing potential measures to expedite the environmental and historic preservation review of new wireless facilities, as well as rules concerning state and local review of wireless siting proposals. The notice discusses various proposals to expedite environmental processing for various distributed antenna systems and small cell facilities.

Pole Attachments.
The Federal Communications Commission (FCC) regulates the rates, terms, and conditions for pole attachments by cable television and telecommunications services providers or investor-owned utilities (IOUs), unless a state has adopted its own regulatory program. In Washington, the Utilities and Transportation Commission (UTC) has been granted authority to regulate attachment to poles owned by IOUs.

In 2008 the Legislature enacted a state law specifying how pole attachment rates must be calculated for utility poles owned or controlled by a public utility district (PUD), and providing time frames under which a PUD must respond to a request to enter into or renew a pole attachment contract.

Uniform Arbitration Act.

Arbitration is a form of non-judicial, "alternative" dispute resolution. Contracting parties may explicitly agree to settle claims arising from a contract through arbitration, rather than judicial proceedings. In Washington, arbitration proceedings are governed by the Washington Uniform Arbitration Act (UAA), which prescribes procedures for initiating and conducting arbitration and for enforcing and appealing arbitration awards and rulings. In order to be enforceable, an arbitration proceeding must comply with the provisions of the UAA.

Summary of Bill:

The definition of "microcell" is amended to include a cell whose working range covers less than two kilometers.

An arbitration clause is added to the pole attachment statute, providing that disputes related to pole attachment rates, terms, or conditions established by a locally-regulated utility must be resolved by arbitration. The arbitration must be conducted to the procedures of the Washington Uniform Arbitration Act. The findings and conclusion of the arbitrator or panel of arbitrators is binding upon both parties. A party may petition the Thurston County Superior Court to enforce the decision of the arbitrator or panel of arbitrators.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.